

PRESSURE, POLITICS AND THE PRESS

**THE STATE OF MEDIA FREEDOM IN BELARUS,
MOLDOVA AND UKRAINE**

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This report was researched and written by Federica Prina, ARTICLE 19 Europe Programme Officer, and Sophia Pugsley, former ARTICLE 19 campaigner on Belarus, Moldova and Ukraine. Editing and comments were provided by Luitgard Hammerer, ARTICLE 19 Europe Programme Director, and Iryna Smolina, ARTICLE 19 Europe Programme Officer. Legal oversight was provided by Toby Mendel, ARTICLE 19 Law Programme Director. Copy-editing was by Liz James, Pauline Donaldson and Neil Durkin.

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ABBREVIATIONS

ADEPT	Association for Participatory Democracy – Moldova
APEL	Association of Electronic Media of Moldova
API	Association of Independent Press – Moldova
BAJ	Belarusian Association of Journalists – Belarus
BANT	Belarusian Association of Independent Television
BDG	Belarusskaya Delovaya Gazeta – Belarus
Belta	Belarusian Telegraphic Agency
BETA	Belarusian Television Association
BHC	Belarusian Helsinki Committee
CAT	Convention against Torture
CCA	Co-ordination Council for the Audiovisual – Moldova
CEC	Central Election Commission – Belarus and Moldova
CIS	Commonwealth of Independent States
CPF	Committee for Press Freedom
CUC	Joint Control Commission – Transdnistria
ECHR	European Convention on Human Rights
EU	European Union
FOI	Freedom of Information
FOS Comm.	Freedom of Speech and Information Committee, Ukraine.
ICCPR	International Covenant on Civil and Political Rights
IMI	Institute for Mass Information – Ukraine
ISP	Internet Service Provider
IJC	Independent Journalism Center – Moldova
ITUMME	Independent Trade Union of Mass Media Employees – Ukraine
KHRP	Kharkiv Group for Human Rights Protection
LADOM	League for the Defence of Human Rights in Moldova
NCTR	National Council for Television and Radio Broadcasting –Ukraine
NGO	Non-governmental organisation
OSCE	Organisations for Security and Co-operation in Europe
PACE	Parliamentary Assembly of the Council of Europe
PCM	Communist Party of Moldova
PPCD	Christian Popular Democratic Party – Moldova
PSB	Public Service Broadcasting
PSBO	Public Service Broadcasting Organisation
STA	State Tax Administration – Ukraine
UDHR	Universal Declaration of Human Rights

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1 INTRODUCTION

According to Belarusian human rights NGOs, the situation of freedom of expression in Belarus deteriorated considerably during the year 2002:¹ not only has this fundamental right been repeatedly violated, but the lack of independence of the judiciary has meant that Belarusians have been unable to challenge such abuses. Although a crackdown on the Belarusian non-State media intensified during the 2001 presidential election campaign, the pressure did not cease following the victory of the incumbent, Alexander Lukashenka.²

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Although Belarus is the only country in Europe not to be a member of the Council of Europe, with a regime that has been repeatedly described as repressive, a number of parallels can be drawn between this country and Moldova, as well as neighbouring Ukraine. The three countries have a similar background and history as post-Communist States, following independence from the Soviet Union in 1991. They also lie between Russia and the European Union Accession States, and are destined to share a border with an enlarged European Union (EU). The three countries share a common language – Russian – although there are internal forces for the active promotion of their national languages and culture, after decades of Russification under Soviet rule.

Each country under consideration also faces complex political situations and financial constraints due to a difficult transition to a market economy, a transition that is, particularly in Belarus and Moldova, not always facilitated by the authorities. Corruption is a major obstacle to economic development, and it infiltrates the system at all levels, making it nearly impossible to act legally.

The media in the region covered by this report are also facing a number of challenges common to most democracies in transition. With a tradition that saw the old State media as government mouthpiece, the existing outlets still tend to be employed as propaganda tools in the hands of politicians or oligarchs. This results in various forms of interference in the work of the media, and a much-hindered progression from State-controlled media to genuine public service broadcasting and private media outlets. The few truly non-State media outlets struggle to overcome economic hardship.

This report examines the commonalities and differences between the three countries with respect to the media, outlines their responsibilities under international law, and provides relevant recommendations for change.³

¹ See for example, Human Rights Centre 'Viasna', *Review-Chronicle of the Human Rights Violations in Belarus in 2002*, Viasna: Minsk, 2003, 3.

² *Ibid*, at 4.

³ The report covers events up to August 2003.

1.1 Summary of Recommendations

General Recommendations

- The State is under a positive obligation to create an environment, including economic and other conditions, in which an independent, pluralistic media can flourish, including in the rural areas.
- Restrictions on the right to freedom of expression should be harmonised with international guarantees so that they are permitted only when:
 - a. they are provided for by law;
 - b. they serve one of the legitimate aims recognised under international law; and
 - c. they are necessary to protect one of these legitimate interests.
- Steps should be taken urgently to transform all State broadcasters into independent public service broadcasters with a mandate to serve the public rather than act as government mouthpiece.
- The government should divest itself of print media outlets or, at the very minimum, ensure that any State media is fully independent of the government and political interference. This implies that any State newspapers and State news agencies, as well as those that receive State subsidies, have a structure that protects their editorial and institutional independence from the State, as reflected in an independent board, with an appropriate appointments procedure.
- The practice of favouring the State print media economically through both direct and indirect subsidies, resulting in unfair competition, should be discontinued.
- Greater opportunities for the study of advanced journalism should be created.
- Measures should be introduced to ensure that media ownership is transparent. Rules on undue concentration of media ownership, including through oligarchies and family relationships, should also be introduced.
- Measures should be adopted to promote local content in broadcasting.
- Measures should be taken to facilitate wider access to the Internet. For example, Internet linked computers could be put in public places, such as schools and libraries.

Media Independence

- The authorities should refrain from interfering with the nascent practice of investigative journalism.
- The authorities should cease all forms of direct harassment of independent newspapers and should refrain from putting political pressure on the independent media, including at the local level.
- All forms of interference in the activities of State broadcasters should cease immediately and their editorial independence should be guaranteed both in law and in practice.
- The authorities should refrain from engaging in any form of interference in or harassment of the private media, including through interrogations, unfair dismissals and accreditation procedures.
- Access to Internet sites should never be blocked except where a court has held that this is necessary to prevent a breach of the law.
- The practice of confiscating equipment and/or seizing print runs from private media outlets (including the web-based media) should be discontinued.
- Adequate measures should be taken to end the climate of impunity, including by devoting sufficient resources and attention to preventing attacks on journalists and others exercising their right to freedom of expression, thoroughly and impartially investigating such attacks when they do occur, bringing those responsible to justice and compensating victims.
- Particular efforts should be made to ensure that officials do not engage in this form of harassment and that those who do are brought to justice.

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Legislation

- Regulatory obligations for the media, to the extent that they are legitimate, should be designed to place as little burden on the media as possible. Excessively onerous rules should, in particular, be avoided.
- Any legislation affecting the media should be adopted only after an adequate opportunity for wide public consultation has been provided.

Broadcasting

- The processes for obtaining licences should be fair and transparent.
- These processes should also be streamlined; ideally, applicants should only have to submit one application to be able to operate; where a licence is obtained, a frequency appropriate to that licence should be provided automatically.
- All public bodies which exercise powers in the areas of broadcast and/or telecommunications regulation should be protected against interference, particularly of a political or commercial nature. Their institutional autonomy and independence should be guaranteed and protected by law.

Press Laws

- Consideration should be given to repealing all press laws.
- If press laws are retained, steps should be taken to ensure that they do not impose excessively onerous obligations on the media and that they do not unduly restrict the right to freedom of expression.
- Print media outlets should not be required to register.
- If registration is retained, at a minimum it should be overseen by an independent body, it should not impose substantive conditions upon the print media or be excessively onerous, and there should be no discretion to refuse registration.

Closure of Media Outlets

- All provisions allowing for the closure of print media outlets should be repealed.
- Where permitted by law, the closure of broadcast media outlets should by law be imposed only as an absolute last resort where less draconian measures have been applied and have failed to correct the problem.

Extremism Laws

- Restrictions on free expression to prevent the dissemination of materials of an 'extremist nature' should be imposed only when:
 - a. the information in question poses a direct and imminent risk of hindering the legitimate interest of national security and public order;
 - b. the risk of such harm is substantial;
 - c. the harm threatened is serious;
 - d. the restriction imposed is the least restrictive means possible for protecting that interest; and
 - e. the restriction is likely to be effective in avoiding the threatened risk.

Provisions on Ethics

- Journalistic ethics should only be upheld as a matter of professionalism and through self-regulatory systems. Any legal requirements to abide by ethical rules should be repealed.

Defamation

- All criminal defamation laws should be repealed and replaced, where necessary, with civil defamation laws.

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- The State should take measures to limit the instigation of cases in which civil proceedings are brought with the sole purpose of deterring the practice of investigative and/or critical journalism, for example by providing for prosecution for malicious plaintiffs.
- Law and practice should only have defamation claims succeed where their genuine purpose and demonstrable effect is to address the harm caused to one's reputation through the dissemination of false facts.
- Public bodies should not have a right to bring a suit in defamation or insult.
- In all defamation cases, the penalty imposed should be proportional to the damage caused.
- When providing remedies for defamation, courts should take into account the potential 'chilling effect' these will have on journalists and freedom of expression.
- Non-pecuniary remedies should be prioritised over pecuniary ones.
- Judges should be provided with training to enable them to differentiate between fact and opinion and (in Moldova and Ukraine) to correctly apply Article 10 of the ECHR.
- In defamation and insult cases, judges should apply the principle that public officials are to tolerate a higher degree of criticism than ordinary citizens.
- Legislation should not contain provisions for the protection of national and State symbols against defamation and insult. State symbols are not natural or legal persons and therefore do not have a reputation.
- Everyone should benefit from the defences of reasonable publication and proof of truth in defamation cases.
- No one should be punished for the mere expression of an opinion. If liability for opinions is retained, it should apply only in cases where this was highly derogatory and disseminated with malicious intent to cause harm to a reputation.
- The establishment of self-regulatory mechanisms to deal with harmful expression in a manner that has the smaller possible impact on freedom of expression should be encouraged.

Freedom of Information

- Measures to increase the flow of information from the State institutions to the public should be enhanced and the culture of secrecy which still prevails should be actively addressed.
- Officials who wilfully obstruct access to information should be actively prosecuted.
- Laws on freedom of information should be adopted in all three countries. These laws should be based on the principle that *all* information is presumed to be openly accessible, subject to a limited regime of exceptions, which permits information to be withheld only when:
 - a. the information relates to a legitimate aim listed in the law;
 - b. disclosure threatens to cause substantial harm to that aim; and
 - c. the harm to the aim is greater than the public interest in having the information.
- Whistleblower protection should be provided by law.
- Accreditation should be required only for legitimate reasons (restricted space and security).
- The accreditation procedure must be politically impartial and fair, and not unduly onerous.

Media and Elections

- Election laws should provide for fair and balanced coverage by the broadcast media of election campaigns, allowing people to be exposed to the whole spectrum of political views.
- Specific guidelines should be established to require the public broadcaster and private broadcasters to provide fair and balanced coverage of different parties and political candidates. Special efforts should be made to ensure that the public broadcaster is not partisan during election periods.
- Where it is possible to purchase political advertising, the media should be required to offer such advertising on a non-discriminatory basis to all parties and candidates.

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- All forms of harassment of the private media with a view to affecting their coverage of political candidates should cease.
- The party in power, or the incumbent, should not unduly exploit their advantaged position vis-à-vis other candidates to get extra exposure.

Freedom from Indirect Interference

- Immediately cease using tax inspections as a form of intimidation of the non-State media.
- Advertising by public bodies should be allocated on a non-discriminatory basis, taking into account only relevant considerations such as distribution and cost. The authorities should not attempt to use advertising as a means of influencing editorial content in the media.
- Printing and distribution services should be offered to all media at equitable rates based only on market considerations; there should be no discrimination based on the content or ownership of the media, particularly by public printing and distribution services.
- Rental of transmitters should be done on a purely commercial basis and in a non-discriminatory manner.

Freedom of Assembly and Association

- There should be no requirement on NGOs to register. If registration is retained, at a minimum the process of registration should be supervised by an independent body, not be excessively onerous and there should be no discretion to refuse registration.
- No one should be arbitrarily arrested and detained for exercising his/her right to peaceful assembly.

2 RECENT HISTORY AND POLITICAL BACKGROUND

2.1 Political Developments Since Independence

Since gaining independence in 1991 the three countries have all suffered to varying degrees from political and economic instability, ethnic tension and difficult relations with the West.

2.1.1 *Belarus*

The post-Soviet development of the Republic of Belarus has been marked by an increasingly bitter political struggle between two camps: nationalists and pro-Russia integrationists, with the nationalists favouring greater integration into European structures. In 1994 a little-known former collective farm manager, Alexander Lukashenka, was elected President. The Lukashenka administration has vigorously pursued policies of integration with Russia; as a result Belarus has maintained closer political and economic relations with Russia than any post-Soviet country.⁴ Lukashenka reversed moves towards democracy instituted during the first period of independence, initiated a policy of 'market socialism' and restored some Soviet-era symbols.⁵ In November 1996, a controversial referendum⁶ was forced through to make changes to the 1994 Constitution. As a result, the elected Parliament⁷ was abolished and replaced by a new bicameral house, while significant power was concentrated in the President's hands. The Prime Minister and the Deputy Prime Minister are now appointed directly by the President.

In May 1999, a coalition of opposition parties and NGOs, along with the dissolved Thirteenth Supreme Soviet, decided to hold 'alternative' presidential elections to highlight what they considered to be the end of the five-year presidential term.⁸ These took place amid much harassment of opposition activists by the authorities and were subsequently declared invalid.

The October 2000 parliamentary elections were largely boycotted by the opposition in protest at the government's bad faith in the dialogue between the government and the opposition, as mediated by the Organisation for Security and Co-operation in Europe (OSCE).⁹ Some opposition activists who did try to stand were prevented from doing so by arbitrary rejection of their candidatures.¹⁰ The elections were

⁴ Its most tangible outcome was the signing of a treaty on 8 December 1999 on a two-State union for greater political and economic integration, although its implementation has been minimal.

⁵ For example, adopting the national flag under Soviet times, while outlawing the national white-red-white flag. The latter was used during the first Belarusian republic at the beginning of the century and reintroduced when the Soviet Union collapsed, until its abolition in 1996. The only difference between the current and the Soviet flags is that the hammer and sickle no longer appear.

⁶ Conducted amidst widespread allegations of election fraud. Many Western States and institutions refuse to recognise the results of the referendum.

⁷ The Thirteenth Supreme Soviet.

⁸ As a consequence of the 1996 Constitutional amendments, Lukashenka's term of office was *de facto* extended to 2001.

⁹ See *The Mechanics Of Repression: Obstacles to Free and Fair Elections*, London: ARTICLE 19, May 2001, <http://www.article19.by/publications/repression/>, at 10. The CIA World Factbook for Belarus states with regard to election results following the September 2001 parliamentary elections: 'party affiliation data unavailable; under present political conditions party designations are meaningless.' CIA, *The World Factbook 2003: Belarus*, <http://www.cia.gov/cia/publications/factbook/geos/bo.html>.

¹⁰ *The Mechanics of Repression*, note 9 above, at 11.

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ultimately condemned by Western institutions as neither free nor fair, as were the presidential elections of September 2001, in which Lukashenka won a crushing victory.¹¹

Lukashenka's power over the government is immense. On 10 July 2003 he dismissed the country's Prime Minister Gennadi Novitski, Deputy Prime Minister Alexander Popov and Minister of Agriculture Mikhail Rusoi. He then personally appointed replacements to all positions. According to the official version, the Ministers were dismissed for an alleged failure to meet effectively the issue of salary debts.¹²

On 14 July 2003 it was reported that several ministers from the Prime Minister's Cabinet resigned, including Minister of Information Mikhail Padhainy. It appears that this was 'pre-emptive' action while expecting dismissal orders from Lukashenka.¹³

The fired public officials were described by the opposition as 'scapegoats', blamed for incompetence, when, in reality, economic policies supported by Lukashenka were behind the economic crisis.¹⁴ Despite Lukashenka's measures, according to a 2003 poll, 52 per cent of Belarusians consider Lukashenka personally responsible for the country's economic difficulties.¹⁵

Lukashenka is also increasingly being painted into a corner because of sustained pressure by the opposition to explain political 'disappearances',¹⁶ US pressure over alleged arms sales to Iraq and increased tensions with Russia over the future of the Belarus–Russia Union.¹⁷ There are, however, rumours that Lukashenka might once again change the Constitution to be eligible to stand for a third term.¹⁸ It is not surprising that these facts have left the opposition demoralised.

The general situation of the non-State media remains more than critical and, overall, it has worsened since 2001. However, despite the general climate, some argue there has been a slight liberalisation in some spheres. This includes a few privatisation programmes and higher-quality programming on public television. Journalists have also learned to take full advantage of the limited opportunities available to them, as well as becoming more conscious of their rights.¹⁹

2.1.2 Moldova

Under President Mircea Snegur, a former Communist Party official, Moldova's early years of independence were dogged by an ineffective Parliament, economic instability and the separatist Gagauz and Transdnistrian movements.²⁰ Parliamentary Speaker Petru Lucinschi won the 1996 presidential elections. Though he managed to institute some reforms, his tenure was marked by constant legislative

¹¹ 75.6 per cent of votes, against 15.4 per cent for the opposition candidate Vladimir Goncharik.

¹² Lukashenka noted: 'Not only did they fail to fulfil my demands, but also deceived me ...'. He added that he was 'no longer going to put up with that'. Charter 97, 10 July 2003, <http://www.charter97.org/eng/news/2003/07/10/luka>.

¹³ In any case, Padhainy was in a vulnerable position due to investigations against him by the General Prosecutor, which had revealed grave violations of the law. Radio Svaboda, 'More High Dismissals Coming', 14 July 2003, in Charter 97, 14 July 2003, <http://www.charter97.org/eng/news/2003/07/14/otstavka>.

¹⁴ Charter 97, 10 July 2003, <http://www.charter97.org/eng/news/2003/07/10/luka>.

¹⁵ Radio Svaboda, 'More High Dismissals Coming', 14 July 2003, in Charter 97, 14 July 2003, <http://www.charter97.org/eng/news/2003/07/14/otstavka>.

¹⁶ The 'disappearance' of opposition politicians and a journalist, Dmitry Zavadski (see Section 6.1.1).

¹⁷ See note 4 above on the Union.

¹⁸ Radio Svaboda, 14 July 2003, in Charter 97, 'Lukashenka Ready for Referendum on Prolongation of Term', 14 July 2003, <http://www.charter97.org/eng/news/2003/07/14/luka>.

¹⁹ IREX, *Media Sustainability Index 2002*, IREX: Washington, 2003, 103–105.

²⁰ See Section 2.3.

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struggle with the increasingly Communist-dominated Parliament, which debated several votes of no confidence and dismissed a succession of moderate, pro-reform prime ministers.

In 2000 the Moldovan Parliament passed a decree declaring Moldova a parliamentary republic, with the presidency henceforth to be decided not by popular vote, but by parliamentary vote. As Parliament failed three times to elect a new President, Lucinschi dissolved Parliament and called new parliamentary elections.

In the February 2001 parliamentary elections, certified by international observers as free and fair, the Communists gained 71 of Parliament's 101 seats and so were able to elect as President their leader, Vladimir Voronin.²¹ There are two main explanations for the Communist victory. First, the centre-right coalitions, which formed two governments in 1998 and 1999, failed to implement reforms and suffered from frequent infighting. Second, most of the voters were older people, which might explain the choice of the Communist Party as the lesser evil, dictated by nostalgia for the greater economic and political stability of the Soviet period. Among the Moldovan youth there seems to have been widespread political apathy, while many talented young people have left Moldova to look for more favourable conditions abroad.

The central government has gained strength since the elections, as the Communists have acted to consolidate their newly acquired power base. Many pro-Western policies were reversed,²² leading Moldova to gravitate once again towards Russia, while attempting to sever the country's relationship with Romania.²³

From January to April 2002, there were non-stop anti-Communist demonstrations in Chişinău city centre sparked off by government efforts to introduce compulsory schooling in Russian. Thousands of people participated in these demonstrations to protest against 'anti-nationalist government policies' and to demand that the government step down.²⁴ These protests have also focused on the role of the authorities in curbing free expression. Many protests and demonstrations were organised and carried out by the opposition Christian Popular Democratic Party (PPCD).²⁵

Other centrist parties are the Social Democratic Alliance of Moldova (also referred to as Braghiş Alliance)²⁶, and the Liberal Party, which has a small group of loyal supporters. However, since 2001 centre-right opposition groups have been unable to form an effective coalition with a coherent message to face the Communist challenge.

²¹ Moldova was the first post-Soviet country to elect a Communist as its President. On this occasion, the Christian Democratic Popular Party gained 11 seats and the Braghiş Alliance 11. The Communist Party (PCM) got 50.1 per cent of votes, the Braghiş Alliance 13.4 per cent, the PPCD 8.2 per cent, and other parties 28.3 per cent. CIA, *The World Factbook 2003: Moldova*. <http://www.cia.gov/cia/publications/factbook/geos/md.html>.

²² However, the PCM later included in its political agenda moves towards closer relations with the EU. Yet the PPCD believes that the Communists are adopting policies which aim to return the country to collective farming. ARTICLE 19 interview with PPCD, February 2003.

²³ Moldova and Romania were once part of the same country (note 28 below). Romanians and Moldovans share a language and are not Slavs. The Moldovan flag has the same colour scheme as the Romanian one. However, there have also been tensions between the two countries, due to unresolved border disputes.

²⁴ International Federation of Journalists, cited in Independent Journalism Center (IJC), 'Offices of Communist Newspaper Bombed', 12 April 2002, Vol.2, No. 8, 23 April 2002, <http://ijc.iatp.md/en/mmmnews/2002/nr30.html>. Attempts to introduce schooling in Russian were abandoned and the political crisis was resolved only after the Moldovan government declared a moratorium on its decision to introduce Russian language as a compulsory subject in the school curriculum. This was also achieved thanks to intervention by the Council of Europe.

²⁵ Instead, other parties have mostly refrained from openly protesting.

²⁶ Throughout this report the expression 'Braghiş Alliance' is used.

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Transdnistria²⁷ and the Gagauz Autonomous Region

In Transdnistria (in the East) and Gagauzia (in the South), the possibility of reunification with Romania²⁸ (mooted during the early years of independence), fuelled calls for autonomy and/or separation from the rest of Moldova. Both regions declared independence, in August and September 1990 respectively.²⁹

While the Gagauz conflict was defused by the granting of local autonomy in 1994, the more problematic situation was in Transdnistria, which has high concentrations of Russians and Ukrainians.³⁰ In the ensuing conflict, approximately 1,000 people were killed. The presence of Russian troops prevented Transdnistria from succumbing to the Moldovan forces. Since the ceasefire negotiated in July 1992, the country has been *de facto* independent (though not internationally recognised), with the Transdnistrian authorities remaining in control of the territory of the 'Transdnistrian Republic of Moldova'.³¹ Officially, Moldova does not recognise Transdnistria and Transdnistrians are eligible to vote in Moldovan general elections.

In May 1997 the Transdnistrian President Igor Smirnov agreed to a future formation of a 'common State' but no practical measures were subsequently adopted. Talks with the newly elected Communist President Voronin in 2001 quickly broke down, despite the two leaders' similar political orientation.³² In the summer of 2002 a renewed round of negotiations began in Kyiv. The two sides agreed in principle to form a common State, but disagree on whether the State should be based on the concept of a confederation or a federation. Thus, negotiations on status remained deadlocked.³³ The most recent initiative to revive the talks was taken in February 2003 by President Voronin, who proposed to Transdnistria to become a 'participant and co-author' of a new Constitution of the Republic of Moldova. The attached roadmap foresees a full re-integration of the country by February 2005.³⁴

At the Istanbul OSCE Summit of 1999, Russia committed itself to destroying its military equipment in Transdnistria and to withdrawing its forces from the region by the end of 2002. This commitment was not adhered to and, after lengthy and complex negotiations, the deadline was extended to December 2003 at the OSCE 'Ministerial' in Portugal.

²⁷ The region is also referred to as 'Transnistria', and, overall, indicates the area east of the river Dniestr. In this report ARTICLE 19 will refer to the region as 'Transdnistria'. For more on the conflict and Transdnistria in general, see International Crisis Group, *Moldova: No Quick Fix*, ICG Europe Report No. 147, 12 August 2003, http://www.intl-crisis-group.org/projects/europe/moldova/reports/A401086_12082003.pdf. It should also be noted that the river does not always determine the actual division line..

²⁸ In 1856 the Western part of Moldova and the Romanian principality of Wallachia were united. Bessarabia (the Eastern part of the Moldovan principality), which had been annexed by Russia in 1812, joined this union in 1918. The Soviet Union annexed Bessarabia in 1940 (as agreed in the 1939 Nazi-Soviet Pact), and between 1941 (shortly after the German invasion of the Soviet Union) and 1944 it came once again under Romanian rule. After 1944, the whole of today's Moldova became part the Soviet Union.

²⁹ The Russian speakers in Transdnistria also generally feared being marginalised by Romanian speakers, even regardless of a potential reunification with Romania.

³⁰ Moldovans amount to only 49 per cent of the Transdnistrian population.

³¹ The OSCE became a mediator in the conflict in 1993 and Ukraine in 1995.

³² Vaux, T, *Conflicting Interests. Moldova and the Impact of Transdnistria*. Timbertop, UK: Humanitarian Initiatives, January 2003, 12.

³³ See International Crisis Group, note 27 above, at 9. The situation of this and other 'frozen conflicts' among the Council of Europe member States was also scheduled to be discussed in September 2003 in Chişinău, with the participation of President Voronin and the Secretary-General of the Council of Europe, Walter Schwimmer. 'Council of Europe Secretary General to take part in 'frozen conflicts' conference in Moldova', Council of Europe Press Release, Strasbourg, 9 September 2003, [http://press.coe.int/cp/2003/433a\(2003\).htm](http://press.coe.int/cp/2003/433a(2003).htm).

³⁴ See International Crisis Group, note 27 above, at 10.

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The reality is that there are many vested interests in the preservation of the status quo. Transnistria has been an area where smuggling (including fuel oils, cigarettes and luxury goods) has thrived, and the unofficial economy is believed to be larger than the official one.³⁵ Moldovan and Transnistrian élites, as well as some Russians, benefit financially from this situation.³⁶

While the élites prosper, the Transnistrian people have become deeply impoverished. Transnistria was once the wealthiest and most industrialised area of Moldova, yet many of the factories are operating at far below full production, with people surviving on subsidies from the State. In addition to making people's income precarious, this has created a very high level of dependency on the central system.³⁷

Furthermore, many of the old Soviet attitudes and practices are still retained by the governing bodies. The attitude of the Transnistrian authorities is reflected in the virtual absence of proper legal practice, allowing the authorities great leeway to take arbitrary measures. There is also little political mobility, with President Smirnov now serving his third presidential term.³⁸

The situation is also characterised by dependency on Russia: there are still Russian forces in Transnistria, supporting Russians and Ukrainians, and the region is dependent on Russia for trade and energy supplies.

In Gagauzia the tensions are centred more on political rivalry (between the local and Moldovan authorities) than the distinct Gagauz ethnicity and identity.³⁹ The conflict originated due to obstacles to the implementation of the Special Status agreement, granted by the Moldovan authorities in December 1994.⁴⁰ Gagauzia does not have the economic and military capacity to secede from Moldova.⁴¹

In 1999 the Bulgarian minority also managed to achieve a separate administrative district in Taraclia.

2.1.3 Ukraine

In contrast to Belarus, where most people supported the retention of the Soviet Union, Ukrainian voters overwhelmingly backed independence in a December 1991 referendum.⁴² In the same year, Leonid Kravchuk, former Chairman of the Supreme Council of the Ukrainian Soviet Socialist Republic and former head of the Ideology Department of the Ukrainian Communist Party, was elected President, in an election which the OSCE described as having failed to meet a number of OSCE standards. Some reforms were initiated, yet they soon stalled due to resistance within the government and legislature, partly from the old Soviet élite.⁴³

³⁵ Vaux, note 32 above, at 1.

³⁶ *Ibid*, at 6.

³⁷ *Ibid*, at 12.

³⁸ In the last elections of 9 December 2001, 80 per cent of people living in Transnistria were reported to have voted for him. 'Igor Smirnov has Become President of Transnistrian Republic of Moldova', *Pravda*, 10 December 2001, <http://english.pravda.ru/cis/2001/12/10/23277.html>

³⁹ Gagauz, a Turkic language, is spoken as a first language only by a minority of Gagauz people. They also do not have a separate religious identity, being Christian Orthodox. Vaux, note 32 above at 7–15.

⁴⁰ *Ibid*, at 7–11.

⁴¹ Nor the support from foreign powers, unlike the situation in Transnistria, where Russian support for the region provides an effective prop. Gagauzia looks to Turkey for support, but Turkey has little interest in Gagauz independence.

⁴² The Declaration of Independence was adopted in August 1991.

⁴³ CIA, *The World Factbook 2003: Ukraine*, <http://www.cia.gov/cia/publications/factbook/geos/up.html>.

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In July 1994, Leonid Kuchma was elected Ukraine's second President. A new Constitution was adopted in 1996, which mandates a pluralistic political system with protection of basic human rights and liberties.

Leonid Kuchma was re-elected President in November 1999 for another five-year term with 57.7 per cent of votes, and successfully assembled a parliamentary majority supportive of the government and its new Prime Minister, former Central Bank head and economic reformer Viktor Yushchenko. However, Yushchenko was voted out of office in April 2001 by Kuchma-backed oligarchs afraid that his plans for economic transparency and market reform would reduce their clout.⁴⁴ The parliamentary elections of March 2002 ended the Communist influence as the pro-presidential bloc 'For a United Ukraine'⁴⁵ acquired 182 seats and gained control of many parliamentary committees.⁴⁶ This party and the Social Democratic Party of Ukraine (united) (SDPU(u))⁴⁷ also managed to appoint people loyal to the President in key positions: chairman and deputy chairman of the Verkhovna Rada (the Ukrainian Parliament), Head of the Presidential Administration⁴⁸ and General Prosecutor.⁴⁹ This created an incestuous political system where hindrances to the adoption of new legislation and the possibility of impeachment of the President would be kept at bay.⁵⁰

Kuchma initiated a referendum in January 2000 on amendments to the Constitution to expand presidential powers and those of the Executive over the Parliament, which were criticised by the Council

⁴⁴ Deputy Prime Minister and Minister for Energy Yulia Tymoshenko was also removed in January 2001 for similar reasons. Since then Tymoshenko has started her own party, the opposition 'Yulia Tymoshenko Bloc'. Two criminal cases were started against Tymoshenko. The first regarded allegations of corruption, leading to her imprisonment in February 2001; charges were dropped only after the March 2002 parliamentary elections. The second, initiated in August 2002, accused her of illegally calling for the resignation of President Kuchma. Kuzio, T, 'Presidential Tactics', *Ukrainska Pravda*, 7 September 2002, http://www.pravda.com.ua/cgi-bin/print_en.cgi, and Human Rights Watch, *Negotiating the News. Informal State Censorship of Ukrainian Television*, Vol. 15, 2(d), March 2003, 5. <http://www.hrw.org/reports/2003/ukraine0303/>.

⁴⁵ It comprised five pro-presidential parties: Labour Ukraine, the Regions Party, the People's Democratic Party, the Agrarian Party, and the Party of Entrepreneurs. Soon after the elections, the For a United Ukraine bloc collapsed and splintered into different parties.

⁴⁶ Despite winning only 6 per cent of the votes. This is because, of a total of 450 MPs, 225 are elected in the majority districts and 225 according to the party lists. Yet, more significantly, For a United Ukraine was able to win over many independent and opposition MPs: there were reports that some members of the opposition were blackmailed and others bribed to leave their seats or switch sides (this form of bribery being a common practice for many parties). The number of MPs in the SDPU(u) faction has also been increasing. The actual results of the elections were: Our Ukraine – 23.56 per cent, Communist Party – 20 per cent, For a United Ukraine – 11.79 per cent, Yulia Tymoshenko Bloc – 7.25 per cent, Socialist Party – 6.87 per cent, SDPU (u) – 6.27 per cent. Data of the Central Election Committee, <http://news.dinau.com.ua:8101/election/blocks/res-parties-tab.htm>. See also Wilson, A, 'Ukraine's 2002 Elections: Less Fraud, More Virtuality', *East European Constitutional Review*, Vol.11, No. 3, Summer 2002, <http://www.law.nyu.edu/eecr/vol11num3/focus/wilson.html>.

⁴⁷ The leader of SPDU(u) is Viktor Medvedchuk, one of the richest men in Eastern Europe and now Head of the Presidential Administration. He represents the 'Kyiv clan', rival to the 'Donetsk clan' (the latter led by Prime Minister Yanukovich, who is from the city of Donetsk).

⁴⁸ Victor Medvedchuk, in June 2002.

⁴⁹ Sviatoslav Piskun, in July 2002.

⁵⁰ At the same time, the President has pursued a policy of splitting the opposition, to limit its rivals' ability to coalesce against him. Kuzio, note 44 above. It has been suggested that Kuchma is using a 'troika of corruption, surveillance and blackmail' to consolidate his power base. Darden, K, 'Blackmail as a Tool of State Domination: Ukraine under Kuchma', *East European Constitutional Review*, Vol.10, No. 2/3, Spring/Summer 2001, http://www.law.nyu.edu/eecr/vol10num2_3/focus/darden.html.

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of Europe.⁵¹ The proposed constitutional amendments were approved,⁵² yet the Verkhovna Rada did not ratify them as that would have drastically reduced its influence.⁵³ International observers also described another referendum on the Constitution, held in April 2000 and with the same objectives, as flawed in some respects. The referenda were supposedly part of the President's policy to consolidate his position by reducing that of the Verkhovna Rada, which Kuchma also attempted to denigrate by accusing the institution of being responsible for the country's economic stagnation.⁵⁴ In 2003 there was speculation that another referendum might be held regarding further plans to modify the Constitution. Two drafts for its amendments, one by the President and one by the Parliament, were submitted to the constitutional court for consideration.⁵⁵

In November 2000 tape recordings of conversations in the President's office made by Mykola Melnychenko⁵⁶ (the Melnychenko tapes) were made public by Oleksandr Moroz, leader of the Socialist Party of Ukraine. The tapes allegedly record Kuchma and his aides plotting ways to eliminate Georgiy Gongadze,⁵⁷ a journalist who 'disappeared' in September 2000.⁵⁸ The tapes also record the President authorising the sale of 'Kolchuga', early warning radar systems, to Iraq, in violation of United Nations sanctions. American experts who analysed the tapes stated that they believed these recordings to be 'authentic'⁵⁹ and, as a result, in September 2002 suspended a grant of US\$54 million already promised to the Ukrainian authorities.

Kuchma's credibility suffered enormously following this scandal, known as 'Kuchmagate', in tandem with an ongoing failure to resolve social and economic issues.⁶⁰ It gave rise to popular protests and rallies between February and March 2001, in the movement 'Ukraine without Kuchma', with participants from across various societal strata and geographical areas. In addition to Kuchmagate, the protests addressed issues such as high-level corruption, poverty and unemployment.⁶¹ To undermine the opposition, on 6 March 2001 Kuchma forced all government officials to either 'sever publicly any links to the opposition' or resign.⁶² The situation came to a head in September and October 2002, when protests

⁵¹ Council of Europe Parliamentary Assembly Resolution 1451 (2000) 'Reform of the Institutions of Ukraine', 4 April 2000 (10th sitting), <http://assembly.coe.int/Documents/AdoptedText/TA00/EREC1451.HTM>

⁵² The voter turnout was 80 per cent. Human Rights Watch, note 44 above, at 4.

⁵³ US Department of State, *Country Reports on Human Rights Practices: Ukraine, 2001*, 4 March 2002, <http://www.state.gov/g/drl/rls/hrrpt/2001/eur/8361.htm>, and Human Rights Watch, note 44 above, at 4. In fact the referendum could not have led to the automatic change of the Constitution, since, according to the Constitution itself, only the Parliament has the power to do so. The outcome of the referendum could only have been to show public opinion on the issue.

⁵⁴ *Ibid.* At this time there were also rumours that Kuchma would prolong his term in office. However, following public demonstrations and international pressure, he announced in 2003 that he was not intending to do so.

⁵⁵ Among one of the proposed amendments is the provision to hold parliamentary, presidential and local elections in the same year. This might effectively prolong the presidential term by two years. Another proposed amendment is to replace judges' life mandates with 10-year ones, which would make them more susceptible to external pressure.

⁵⁶ A former officer of the Special Communications Detachment of Ukraine's State Security Service.

⁵⁷ See Section 6.3.1. Gongadze had criticised the constitutional referendum and media repression by the authorities, as well as engaging in investigations into high-level corruption.

⁵⁸ See also Arel, D, 'Kuchmagate and the Demise of Ukraine's 'Geopolitical Bluff'', *East European Constitutional Review*, Vol.10, No. 2/3, Spring/Summer 2001, http://www.law.nyu.edu/eecr/vol10num2_3/focus/arel.html.

⁵⁹ Richard Boucher, US Department of State Spokesman, US Department of State Briefing, 24 September 2002.

⁶⁰ According to an August 2002 opinion poll, 72 per cent of Ukrainians wanted Kuchma to resign and 52 per cent wanted him impeached. Kuzio, note 44 above.

⁶¹ Human Rights Watch, note 44 above, at 4.

⁶² 'Constitutional Watch: Ukraine', *East European Constitutional Review*, Vol.10, No. 1 (Winter 2001), <http://www.law.nyu.edu/eecr/vol10num1/constitutionwatch/ukraine/hrml>.

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organised by opposition parties were held across the country.⁶³ The largest, 'Rise Up Ukraine', held in Kyiv on 16 September 2002, gathered more than 20,000 participants. This is despite the fact that the authorities attempted to prevent people from reaching Kyiv, for example by forbidding them from entering the city, changing schedules of buses and trains, harassing members of opposition parties and arresting participants.⁶⁴

On 29 August 2002 the opposition coalition Our Ukraine published an open letter to President Kuchma, warning him against a 'systematic crisis of the authority that has hit all spheres of social life ... one has the impression that the Parliament, the government and the media have been leased to the head of the presidential administration [Viktor Medvedchuk] and his oligarchic clan', the letter noted. Our Ukraine also complained that the opposition had no access to the State-run media.

Attempts by Kuchma to have Ukraine join an economic union with Russia in the summer of 2003⁶⁵ have made Ukrainians preoccupied with issues concerning potential loss of sovereignty, exacerbated by a lack of wide public discussion on the issue.

The Autonomous Republic of Crimea

In 1992 ethnic tensions in Crimea prompted a number of pro-Russian political organisations to advocate secession of Crimea and absorption into Russia.⁶⁶ In July of the same year the Crimean and Ukrainian Parliaments determined that Crimea would remain under Ukrainian jurisdiction while retaining significant cultural and economic autonomy.

Crimea is now an autonomous republic, with its own Constitution. The Crimean Parliament can adopt local decrees but these have to be in harmony with Ukrainian legislation, which is supreme in the autonomous republic. The Crimean Parliament can also make decisions regarding fiscal policy, local budget and cultural issues.

2.2 Economic Conditions

The three countries were relatively prosperous during the Soviet period. Moldova was a comparatively wealthy republic with one of the highest levels of university education within the Soviet Union.⁶⁷ Ukraine produced agricultural products and heavy industry goods for export to the other republics, as well as having a considerable missile production.⁶⁸ Belarus used to export sophisticated technical goods.

⁶³ According to a poll carried out around this time, 72 per cent of Ukrainians supported Kuchma's resignation. Human Rights Watch, note 44 above, at 7.

⁶⁴ Ibid.

⁶⁵ Agreement on a Common Economic Space between Belarus, Kazakhstan, the Russia Federation and Ukraine, signed at a summit in Yalta on 18–19 September 2003, for the 'free movement of goods, services, capitals and labour force ... common foreign trade policy and coordinated taxes, financial and currency policy.' *Ukrainska Pravda*, 'CES closes Ukraine's door to Europe. Since September 18 – just via Kremlin's wicket,' <http://www2.pravda.com.ua/en/archive/2003/september/1/1.shtml>.

⁶⁶ Crimea was ceded to Ukraine in 1954 as a gift from Nikita Khrushchev to mark the 300th anniversary of the Ukrainian union with Russia. According to unofficial sources, Crimea was in reality ceded for practical reasons, in light of the region's economic difficulties and the fact that many Ukrainians already lived there.

⁶⁷ The monthly salary was then one of the highest in the Soviet Union, approximately the equivalent of US\$300 a month. Vaux, note 32 above, at 15.

⁶⁸ CIA, *The World Factbook*, Ukraine, note 43 above.

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The situation has changed dramatically. The collapse of the Soviet Union affected the markets of the three countries deeply.⁶⁹ The early years of independence were characterised by initial bursts of capitalist reform accompanied by declining standards of living, widespread poverty, rising crime and hyperinflation. Belarus has since slowed (and in some cases reversed)⁷⁰ the pace of market reforms, pursuing policies of self-isolation from Western markets. Excessive government regulation in business remains a major obstacle to reform in Ukraine and Moldova, although this has enabled the social situation to stabilise and inflation to be tamed. Average monthly wages in the region now range from US\$30 to 120. Yet unemployment is a serious and widespread problem.⁷¹

The economies of all three countries remain largely tied to the Commonwealth of Independent States (CIS) and particularly Russia, with the majority of exports going there,⁷² making the three countries vulnerable to fluctuations in the Russian economy. Consequently, the Russian economic crisis of August 1998 had a extremely negative impact on these economies. They also remain dependent on Russia for cheap electricity supplies. For example, Ukraine imports 90 per cent of its oil and most of its natural gas from Russia, while its arrears on energy payments to Russia are estimated at US\$1.4 billion.⁷³ Moldova is dependent on Russia for imports of energy and raw materials. The Belarusian economy largely relies on direct subsidies from Russia.

Foreign investment is welcomed in principle by Ukraine and Moldova but hindered in practice by complex regulations, onerous taxation and corruption.⁷⁴ In all three countries, the 'black' economy plays a crucial role in the national economy, providing a significant proportion of income.⁷⁵

In Belarus, the current economic dislocation has nearly bankrupted the country. Financial hardship has intensified for several reasons: first, Lukashenka raised the average wage against all odds to win popular support on the eve of the 2001 elections; second, technical facilities are now old-fashioned and cannot produce sophisticated technical goods as Belarus did in Soviet times; third, the population is ageing, primarily due to the emigration of the young and talented; fourth, a cumbersome tax and legislative system undermine development.⁷⁶

Little structural reform has been carried out since Lukashenka came to power. Instead, he re-instituted administrative control over prices and currency exchange, and expanded the State's ability to interfere in the management of private enterprises, including through rigorous inspections, arbitrary changes of regulations and arrests of businesspeople.⁷⁷ Even the relationship with Russia has been

⁶⁹ For example, Moldova lost revenues from trade, as 77 per cent of Moldovan trade was with the former Soviet Union. Vaux, note 32 above, at 5.

⁷⁰ For example, prices of basic consumer goods are kept artificially low through government subsidies.

⁷¹ Official unemployment figures for Ukraine were 4.3 per cent for 2001, yet the International Labour Organisation rated it at 23.8 per cent. Cited in Human Rights Watch, note 44 above, at 4.

⁷² 51 per cent of Belarusian exports, 43 per cent of Moldovan exports and 22.6 per cent of Ukrainian exports. Imports are 65 per cent from Russia for Belarus, 15.1 per cent for Moldova and 36.9 per cent for Ukraine. CIA, *The World Factbook*, Belarus; CIA, *The World Factbook*, Moldova; CIA, *The World Factbook*, Ukraine. See notes 9, 21 and 43 above.

⁷³ US Department of State, Bureau of European and Asian Affairs Background Notes, 2002.

⁷⁴ US Department of State, Ukraine, 2001 note 53 above. In the 2002 *Transparency International Corruption Perception Index*, Ukraine ranked 85 out of 102 countries, together with Georgia and Vietnam and just above Kazakhstan. Belarus ranked 36 and Moldova 93. Transparency International, '2002 Corruption Perception Index', <http://www.transparency.org/cpi/2002/cpi2002.en.html>.

⁷⁵ It is estimated that it comprises anywhere between 40 and 60 per cent of the Moldovan national economy.

⁷⁶ IREX, note 19 above, at 101.

⁷⁷ CIA, *The World Factbook*, Belarus, note 9 above.

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deteriorating, despite plans for economic harmonisation. The closure of Russian NTV⁷⁸ in Minsk in July 2003 is a symptom of the souring of the relationship. In June 2003 Lukashenka failed to sign a decree allowing the use of Russian roubles in Belarus for a limited amount of transactions. The reason, he declared, was that he was concerned about possible implications for Belarusian sovereignty.⁷⁹ Some people indeed refuse to jeopardise Belarus' independence, yet others (mainly older people) long for a closer relationship with Russia.

In Moldova, most of the transactions are conducted via barter, and people survive by subsistence, very small welfare payments or pensions. There is widespread unemployment, or employment with payment below subsistence wages. The official daily income of 80 per cent of the population is under US\$1 a day.⁸⁰ The economy is a third of what it was before independence.⁸¹ Despite economic growth by 2.1 per cent in 2000 and 6.1 per cent in 2001, many remain below the poverty level.⁸²

Furthermore, in 2003 revenues from agriculture were disappointing due to a harsh winter, and some international financial organisations have stopped their support. Moldova has fertile soil, but there is also soil erosion resulting from poor farming and contamination of soil and groundwater due to the use of chemicals.⁸³ Salaries and pensions have still been raised by the authorities, which will inevitably result in a growing public deficit. Moldova is also heavily dependent on imports for supplies of oil, coal and natural gases and energy shortages are a serious problem; it is also very poor in minerals.⁸⁴ Post-independence reforms towards land privatisation and the removal of export control might be discontinued because of political support for heavy government controls.

Transnistria has been, overall, richer than the rest of Moldova, as it produces much heavy industry and steel. However, this does not benefit the general public, who, in some cases, have not received salaries for six years.⁸⁵ Barter is also often used as a form of payment. Standards of living are very low and industrial production has dropped, so that there is a deficit of 60 per cent, and the foreign debt is 30 times the budget of Transnistria. There is almost no middle class and pensioners make up most of the population.⁸⁶ Gagauzia, an exclusively agricultural area, is Moldova's poorest region.

In Ukraine wage arrears are a widespread problem, although they have decreased remarkably since 2000.⁸⁷ Ukraine is heavily dependent on imports for energy, particularly oil and natural gases.⁸⁸ Facing threats from the IMF to withdraw financial support, Kuchma has recently pledged to encourage entrepreneurship and induce structural reform. GDP grew, for the first time since independence, by 6 per cent in 2000 and 9 per cent in 2001, while industrial production rose by 12.9 per cent in 2000 and 14 per cent in 2001.⁸⁹ In mid-2003 the inflation rate stood at 12 per cent.⁹⁰

⁷⁸ See Section 7.2.1.

⁷⁹ Osokina, A, 'Belarusian Reporting Service', Institute for War & Peace Reporting, No. 23, 4 July 2003.

⁸⁰ Vaux, note 32 above, at 6.

⁸¹ Ibid.

⁸² Eight per cent of the population is unemployed, while 25 per cent of working age people are employed abroad. CIA, The World Factbook, Moldova, note 21 above.

⁸³ Some of these chemicals are banned but they are still used. Ibid.

⁸⁴ Ibid.

⁸⁵ ARTICLE 19 interview with OSCE Moldova, February 2003.

⁸⁶ ARTICLE 19 interviews with journalists in Tiraspol, February 2003. The Transnistrian smuggling also affects neighbouring countries. Ukraine and Moldova have been unable develop a joint custom policy to end smuggling of goods (including arms) and various other illegal activities. CIA, The World Factbook, Moldova, note 21 above.

⁸⁷ US Department of State, note 53 above.

⁸⁸ CIA, The World Factbook, Ukraine, note 43 above.

⁸⁹ Ibid.

2.3 Language and Ethnic Issues⁹¹

Russian is still the language most frequently used in the three countries, particularly in Belarus. The Russian-language press is also extremely widespread, and in many areas predominant, due to a long policy of Russification during the Soviet period. It is also the region's lingua franca.

2.3.1 Belarus

In Belarus 81.2 per cent of people are Belarusian, 11.4 per cent Russian, and 7.4 per cent are Polish, Ukrainian and other.⁹² Russian is often the first language even for those people who claim that Belarusian is their mother tongue,⁹³ and it is undoubtedly the language most widely used in Belarus.

The question of the Belarusian language has, since Lukashenka's accession to power, become a politically sensitive one and there are grounds to consider the State's attitude to the Belarusian language as discriminatory although it ostensibly enjoys equal official status with Russian. The Lukashenka administration has adopted measures which effectively marginalise Belarusian, by closing or converting Belarusian language schools to Russian.

2.3.2 Moldova

Moldovans (non-Slavic Romanian-speakers) amount to 64.5 per cent of the population. Other large minorities are Ukrainians (13.8 per cent) and Russians (13 per cent).⁹⁴ The remainder is made up mainly by Gagauz (3.5 per cent), Bulgarians (2.0 per cent), Jews, Roma and others.

In Moldova people identify primarily with their first language rather than with ethnicity or religion.⁹⁵ Approximately one-third of the Moldovan population is Russian-speaking, the rest being Romanian-speakers.⁹⁶ Chişinău has a majority (about 60 per cent) Slav population and Russian remains the language understood by most people. Romanian, referred to in the Constitution as 'Moldovan', is the official language.⁹⁷

In Transdnistria there are officially three State languages, as per the Law on Languages: Russian, Moldovan and Ukrainian.⁹⁸ In reality only Russian is used in public life. Estimates suggest that 100,000 of the 700,000 people in Transdnistria are Russian citizens.⁹⁹

⁹⁰ Ibid.

⁹¹ The issue of language rights is an emerging field in international law. The United Nations Human Rights Committee, in its May 1993 decision on the exclusive use of French in the Canadian province of Quebec, stated: A State may choose one or more official languages, but it may not exclude, outside the spheres of public life, the freedom to express oneself in a language of one's choice.

Ballantyne and Davidson v. Canada and McIntyre, cited in *ARTICLE 19 Handbook on Freedom of Expression, International and Comparative Law, Standards and Procedures*, London: ARTICLE 19, August 1993, 87. The Virtual Handbook is available at <http://www.article19.org/Homepage.asp?AreaID=42&SubAreaID=107>.

⁹² CIA, The World Factbook, Belarus, note 8 above.

⁹³ IREX, note 19 above at 104.

⁹⁴ 1989 estimate, CIA, The World Factbook, Moldova, note 19 above. The figures are likely to have changed due to emigrations from Moldova.

⁹⁵ Vaux, note 32 above, at 11.

⁹⁶ By this is meant people who regard Romanian as their first language. Romanian-speaking Moldovans, however, are also fluent in Russian.

⁹⁷ Article 13(1) of the Constitution. Moldovan is virtually the same language as Romanian. Article 13(2) states that 'the Moldovan State acknowledges and protects the right to preserve, develop and use the Russian language and other languages spoken within the national territory of the country.'

⁹⁸ As in Soviet times, Moldovan is still written in Cyrillic letters in Transdnistria. Instead, Article 13(1) of the Moldovan Constitution states that Moldovan is to be written with Latin letters.

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Gagauz people, who speak a Turkic language, gravitate towards Turkey, yet they also wish to maintain a separate Gagauz identity and resist the tendency by the Turks to consider Gagauz language a Turkish dialect.¹⁰⁰

2.3.3 Ukraine

Ukrainians amount to 77.8 per cent of the population and Russians 17.3 per cent. Other minorities are Crimean Tatars, Belarusians, Moldovans, Bulgarians, Hungarians, Romanians, Poles and Jews.¹⁰¹

Russian is widely used in conversation and as the language of official correspondence in Crimea and in the Eastern part of Ukraine, but it is only recognised as the second official language according to the Ukrainian Constitution. Ukrainian is particularly used in the Western part of the country, where the influence of the Soviet Union was not as dominant.

The debate on the Crimean Tatar minority was opened during the period of Glasnost, and culminated in 1991 with the creation of the Crimean Tatar National Mejlis¹⁰² and a declaration of sovereignty by Crimean Tatars. With the collapse of the Soviet Union, 500,000 Crimean Tatars attempted to return to Crimea from Uzbekistan, the Urals and Siberia,¹⁰³ yet tensions rose between Crimean Tatars and Russian and Ukrainians living in Crimea, particularly due to the presence of a pro-Russia Crimean government.¹⁰⁴ However, by 1993, 270,000 people had managed to return, and made progress in claiming the rights of repatriated Tatars. In 1993 the Mejlis agreed that Crimean Tatars would participate in the upcoming presidential and parliamentary elections. Fourteen Crimean Tatars were elected to the Crimean Parliament on 29 March 1994, while two representatives were elected to the Verkhovna Rada in March 1998 and three in March 2001.¹⁰⁵

⁹⁹ Vaux, note 32 above, at 11.

¹⁰⁰ Topal, I, 'The Press in Gagauzia', *Media in Moldova*, Chişinău: Independent Journalism Center, June 2002, <http://ijc.iatp.md/bulmm/offline/2002iunrus.pdf>.

¹⁰¹ CIA, *The World Factbook*, Ukraine, note 43 above.

¹⁰² The Crimean Parliament, which has, however, only symbolic power.

¹⁰³ They were sent to these regions in May 1944, in an ethnic-cleansing programme carried out by the Russians. Nearly half of them died of hunger and diseases during the forced deportation. Those who survived were made to relocate in 'special settlement camps', from which they were released only in 1956.

¹⁰⁴ This was aggravated by the fact that there were already 250,000 families in Crimea without permanent housing.

¹⁰⁵ The Crimean Tatar Fact Sheet: Chronology, <http://www.euronet.nl/users/sota/krfacts.html> and the Center of Information and Documentation of Crimean Tatars, <http://www.cidct.org.ua/en/about/>. On the elections, see in particular Belitser, N, *Indigenous Status of the Crimean Tatars in Ukraine: a History of Political Debate*, <http://www.cidct.org.ua/en/studii/15-16/2.html>.

3 OBLIGATIONS UNDER INTERNATIONAL LAW

3.1 The Importance of Freedom of Expression

Article 19 of the Universal Declaration of Human Rights (UDHR) guarantees the right to freedom of expression in the following terms:

Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.¹⁰⁶

The UDHR, as a UN General Assembly resolution, is not directly binding on States. However, parts of it, including Article 19, are widely regarded as having acquired legal force as customary international law since its adoption in 1948.

The International Covenant on Civil and Political Rights (ICCPR),¹⁰⁷ a treaty ratified or acceded to by 149 States including Belarus, Moldova and Ukraine, imposes formal legal obligations on States parties to respect its provisions, and elaborates on many rights included in the UDHR. Article 19 of the ICCPR guarantees the right to freedom of opinion and expression in terms very similar to those found at Article 19 of the UDHR. Moldova and Ukraine are party to the European Convention on Human Rights (ECHR),¹⁰⁸ which guarantees freedom of expression at Article 10.

Freedom of expression is a key human right, in particular because of its fundamental role in underpinning democracy. In its very first session in 1946 the United Nations General Assembly adopted Resolution 59(I), which stated, 'Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated.' Moreover, the European Court of Human Rights has repeatedly stated:

Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man ... it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'.¹⁰⁹

3.2 Freedom of Expression and the Media

Freedom of political debate has been recognised as an essential foundation of a democratic society by institutions and governments around the world. For example, the European Court of Human Rights has stated: '[F]reedom of political debate is at the very core of the concept of a democratic society.'¹¹⁰ The

¹⁰⁶ UN General Assembly Resolution 217A(III), 10 December 1948.

¹⁰⁷ UN General Assembly Resolution 2200A(XXI), 16 December 1966, in force 23 March 1976. Ukraine and Belarus ratified the ICCPR in 1973 and Moldova in 1993.

¹⁰⁸ Adopted 4 November 1950, in force 3 September 1953. Both Ukraine and Moldova ratified the ECHR in 1997.

¹⁰⁹ *Handyside v. United Kingdom*, 7 December 1976, Application No. 5493/72, (European Court of Human Rights), para. 49. Statements of this nature abound in the jurisprudence of courts and other judicial bodies around the world.

¹¹⁰ *Lingens v. Austria*, Judgment of 8 July 1986, Application No. 9815/82 (European Court of Human Rights), para. 42.

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fundamental importance of freedom of political expression rests in part on the importance of an informed electorate to the functioning of a genuine democracy.

The European Court of Human Rights has recognised that media freedom is one of the most important mechanisms for developing an informed citizenry.¹¹¹ Hence, the guarantee of freedom of expression applies with particular force to the media, including the broadcast media and public service broadcasters. The European Court of Human Rights has consistently emphasised ‘the pre-eminent role of the press in a State governed by the rule of law.’¹¹² It has further stated:

Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society.¹¹³

In addition, the Inter-American Court of Human Rights has held that: ‘It is the mass media that make the exercise of freedom of expression a reality.’¹¹⁴

The European Court of Human Rights has furthermore held that it is incumbent on the media to impart information and ideas in all areas of public interest:

Whilst the press must not overstep the bounds set [for the protection of the interests set forth in Article 10(2)] ... it is nevertheless incumbent upon it to impart information and ideas of public interest. Not only does it have the task of imparting such information and ideas; the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of ‘public watchdog’.¹¹⁵

The Court has also established that Article 10 applies not only to the content of expression, but also the means of transmission or reception.¹¹⁶

It may be noted that the obligation to respect freedom of expression lies with States, not with the media per se. However, these obligations do apply to publicly funded broadcasters.¹¹⁷

3.3 Pluralism

Article 2 of the ICCPR places an obligation on States to ‘adopt such legislative or other measures as may be necessary to give effect to the rights recognised by the Covenant.’ This means that States are required not only to refrain from interfering with human rights but also to take positive steps to ensure that rights, including freedom of expression, are respected. In effect, governments are under an obligation to create

¹¹¹ *Castells v. Spain*, Judgment of 23 April 1992, Application No. 11798/85 (European Court of Human Rights), para. 43.

¹¹² *Thorgeirson v. Iceland*, 25 June 1992, Application No. 13778/88 (European Court of Human Rights), para. 63.

¹¹³ *Castells v. Spain*, note 111 above, para. 43.

¹¹⁴ *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 of 13 November 1985, Series A, No. 5, para. 34.

¹¹⁵ See *Castells v. Spain*, note 111 above, para. 43; *The Observer and Guardian v. United Kingdom*, 26 November 1991, Application No. 13585/88 (European Court of Human Rights), para. 59; and *The Sunday Times v. UK (II)*, 26 November 1991, Application Number 13166/87, (European Court of Human Rights), para. 65.

¹¹⁶ *Autronic AG v. Switzerland*, 22 May 1990, Application No. 12726/87 (European Court of Human Rights), para. 47.

¹¹⁷ See Section 3.8.

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an environment in which a diverse, independent media can flourish, thereby satisfying the public's right to know.

An important aspect of States' positive obligations to promote freedom of expression and of the media is the need to promote pluralism within, and to ensure equal access of all to, the media. As the European Court of Human Rights stated: '[Imparting] information and ideas of general interest ... cannot be successfully accomplished unless it is grounded in the principle of pluralism.'¹¹⁸ The Inter-American Court of Human Rights has held that freedom of expression requires that 'the communication media be potentially open to all without discrimination or, more precisely, that there be no individuals or groups that are excluded from access to such media.'¹¹⁹

3.4 Independence of Media Bodies

In order to protect the right to freedom of information it is imperative that the media be permitted to operate independently of government control. This ensures the fulfilment of the media's role as public watchdog and the possibility for the public to have access to a wide range of opinions, especially on matters of public interest.

Under international law it is well established that bodies with regulatory or administrative powers over both public service and private broadcasters should be independent and free from political interference. For example, in a preambular paragraph, the European Convention on Transfrontier Television states that Member States '[reaffirm] their commitment to the principles of the free flow of information and ideas and the independence of broadcasters.' The Council of Europe's Committee of Ministers also considers the independence of regulatory authorities fundamentally important. Its Recommendation on the independence and functions of regulatory authorities for the broadcasting sector,¹²⁰ states in a preambular paragraph:

[T]o guarantee the existence of a wide range of independent and autonomous media in the broadcasting sector...specially appointed independent regulatory authorities for the broadcasting sector, with expert knowledge in the area, have an important role to play within the framework of the law.

The Recommendation goes on to note that Member States should set up independent regulatory authorities. Its guidelines provide that Member States should devise a legislative framework to ensure the unimpeded functioning of regulatory authorities, which clearly affirms and protects their independence.¹²¹ The Recommendation further provides that this framework guarantee that members of regulatory bodies be appointed in a democratic and transparent manner.

The Committee of Ministers' Recommendation on the Guarantee of the Independence of Public Service Broadcasting¹²² provides additional guidance on this issue. It states that members of the supervisory bodies of publicly funded broadcasters are to be appointed in an open and pluralistic

¹¹⁸ *Informationsverein Lentia and Others v. Austria*, 24 November 1993, Application No. 13914/88, (European Court of Human Rights), para. 38.

¹¹⁹ *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, note 114 above, para. 34.

¹²⁰ Recommendation No. R (00) 23, 20 December 2000. http://www.humanrights.coe.int/media/documents/legal_per cent20texts/regulatory-authorities.doc

¹²¹ *Ibid*, Guideline I.

¹²² Recommendation No. R (96) 10, 11 September 1996. <http://www.coe.fr/cm/ta/rec/1996/96r10.html>.

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manner¹²³ and that the rules governing the supervisory bodies are to be defined so as to ensure they are not at risk of political or other interference.

3.5 Restrictions on the Right to Freedom of Expression

The right to freedom of expression is, however, not absolute. Both international law and many countries' domestic laws recognise that freedom of expression may, in certain prescribed circumstances, be limited. For example, Article 10(2) of the European Convention on Human Rights provides:

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority or impartiality of the judiciary.

Article 19(3) of the ICCPR provides for restrictions in similar terms.

It is a maxim of Convention jurisprudence that all restrictions be given a narrow interpretation; this is especially true of Article 10 in view of its centrality in a democratic society. Accordingly, any restriction on the right to freedom of expression must meet a strict three-part test, as foreseen in paragraph 2 of Article 10.¹²⁴ First, the restriction must be prescribed by law. The Court has stated that this requirement will be fulfilled only where the law is accessible and 'formulated with sufficient precision to enable the citizen to regulate his conduct.'¹²⁵ Second, the restriction must pursue one of the aims listed in paragraph 2 of Article 10; the list of aims is an exhaustive one and thus a restriction which does not pursue one of those aims violates Article 10. Third, the restriction must be necessary to secure one of those aims. The word 'necessary' means that there must be a 'pressing social need' for the restriction. The reasons given by the State to justify the restriction must be 'relevant and sufficient' and the restriction must be proportionate to the aim pursued.¹²⁶

3.6 Freedom of Expression and Defamation

3.6.1 Protection of Public Officials

Provisions protecting public officials are clearly contrary to the right to freedom of expression, pursuant to which public figures should tolerate a *higher* degree of criticism than ordinary citizens. For example, the European Court of Human Rights in its landmark 1986 judgment in *Lingens v. Austria*, stated that:

[Politicians] knowingly and inevitably 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 [than ordinary members of the public]... [while politicians are entitled to protection of their reputation,] the requirements of such protection have to be weighed in relation to the interests of open discussion of political issues.¹²⁷

¹²³ Ibid, Guideline III.

¹²⁴ *The Sunday Times v. United Kingdom*, 26 April 1979, Application No. 6538/74 (European Court of Human Rights), para. 45.

¹²⁵ Ibid., para. 49.

¹²⁶ *Lingens v. Austria*, note 110 above, paras. 39–40.

¹²⁷ Ibid, paras 45 and 42.

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ARTICLE 19's Principle 7¹²⁸ states that in relation to statements of fact on matters of public concern, the onus should be on the person bringing the case to prove that the matter is false, rather than on the defendant to prove that it is true. This reflects the need to ensure open public debate about such matters, and the relative importance of this compared to individual reputations.

Furthermore, ARTICLE 19 believes that public bodies of all kinds – including all bodies which form part of the legislative, executive or judicial branches of government or which otherwise perform public functions – should be prohibited altogether from bringing defamation actions.¹²⁹ This is in recognition of the vital importance in a democracy of open criticism of government and public authorities, the limited and public nature of any reputation these bodies have and the ample means available to public authorities to defend themselves from criticism.

3.6.2 *Criminal or Civil?*

Although most European countries still have provisions for criminal defamation, these are very seldom applied in established democracies. Instead, criminal defamation provisions are often abused in some democracies in transition to stifle criticism of public officials.

ARTICLE 19 is of the opinion that all criminal provisions on defamation and insult should be abolished and replaced with appropriate civil defamation laws. The criminalisation of a particular activity implies a clear State interest in controlling it and imparts a social stigma to it, neither of which ARTICLE 19 believes to be justified in relation to the protection of individuals' reputations. International courts have stressed the need for governments to exercise restraint in applying criminal remedies when restricting fundamental rights. In many countries, the protection of reputations is adequately dealt with primarily or exclusively through the civil law, proving that a criminal approach is unnecessary.

Hence, ARTICLE 19 recommends the use of civil proceedings in defamation cases. However, at a minimum, immediate steps should be taken to ensure that any criminal defamation laws still in force conform fully to the following conditions:

- i no-one should be convicted for criminal defamation unless the party claiming to be defamed proves, beyond a reasonable doubt, the presence of all the elements of the offence, as set out below;
- ii the offence of criminal defamation shall not be made out unless it has been proven that the impugned statements are false, that they were made with actual knowledge of falsity, or recklessness as to whether or not they were false, and that they were made with a specific intention to cause harm to the party claiming to be defamed;
- iii public authorities, including police and public prosecutors, should take no part in the initiation or prosecution of criminal defamation cases, regardless of the status of the party claiming to have been defamed, even if he or she is a senior public official;
- iv prison sentences, suspended prison sentences, suspension of the right to express oneself through any particular form of media, or to practise journalism or any other profession, excessive fines and other harsh criminal penalties should never be available as a sanction for breach of defamation laws, no matter how egregious or blatant the defamatory statement.¹³⁰

3.6.3 *Insult*

¹²⁸ *Defining Defamation: Principles on Freedom of Expression and Protection of Reputation*, London: ARTICLE 19, July 2000, <http://www.article19.org/docimages/714.htm>.

¹²⁹ *Ibid*, Principle 3.

¹³⁰ *Defining Defamation* note 128 above Principle 4.

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The criminalisation of insult is also not infrequent in democracies in transition. However, it is important to note that the right to freedom of expression also covers statements which may be deemed to be insulting or otherwise shocking. The European Court of Human Rights, for example, has stated:

[The right to freedom of expression] is applicable not only to ‘information’ or ‘ideas’ that are favourably received... but also to those which offend, shock or disturb the State or any other sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no ‘democratic society’.¹³¹

ARTICLE 19 is of the view that no one should be held liable for the expression of an opinion.¹³² This finds some support in international jurisprudence, including that of the European Court of Human Rights, which has noted that:

[A] careful distinction must be made between facts and value-judgements. The existence of facts can be demonstrated, whereas the truth of value-judgements is not susceptible of proof. ...As regards value judgements this requirement [to prove their truth] is impossible of fulfilment and it infringes freedom of opinion itself....¹³³

3.7 Freedom of Information

A number of international bodies with responsibilities for promoting and protecting human rights have authoritatively recognised the fundamental and legal nature of the right to freedom of information, as well as the need for effective legislation to secure respect for that right in practice. These include the UN, the Commonwealth, the Organisation of American States, the Council of Europe and the African Union. Collectively, this amounts to clear international recognition of freedom of information as a human right.

Within the UN, freedom of information was recognised early on as a fundamental right. In 1946, during its first session, the UN General Assembly adopted Resolution 59(1), which stated:

Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the UN is consecrated.¹³⁴

In ensuing international human rights instruments, freedom of information was not set out separately but as part of the fundamental right of freedom of expression, which includes the right to seek, receive and impart information.

Articles 19 of the UDHR and ICCPR refer to the right to ‘*seek, receive and impart information*’ [italics added]. Article 10 of the ECHR differs slightly in that it protects the right to ‘receive and impart’, but not the right to ‘seek’, information. However, in a separate set of developments, the political bodies of the Council of Europe have made important moves towards recognising the right to freedom of information as a fundamental human right. In 1981 the Committee of Ministers of the Council of Europe

¹³¹ *Handyside v. United Kingdom*, note 109 above, para. 49.

¹³² *Defining Defamation*, note 128 above, Principle 10.

¹³³ *Oberschlick v. Austria*, Judgment of 23 May 1991, Application No. 11662/85 (European Court of Human Rights), para.13.

¹³⁴ 14 December 1946.

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adopted Recommendation No. R(81)19 on Access to Information Held by Public Authorities.¹³⁵

In 1994 the 4th European Ministerial Conference on Mass Media Policy adopted a Declaration recommending that the Committee of Ministers consider ‘preparing a binding legal instrument or other measures embodying basic principles on the right of access of the public to information held by public authorities.’¹³⁶ Instead, the Committee of Ministers opted for a recommendation, adopted on 21 February 2002.¹³⁷ The Recommendation includes the provision:

Member states should guarantee the right of everyone to have access, on request, to official documents held by public authorities. This principle should apply without discrimination on any ground, including national origin.

International law envisages the possibility of restrictions to the general right of freedom of information, yet these have to be as narrow as possible, while there should be a presumption of maximum disclosure. Restrictions are legitimate only when they meet the following strict test:

- (1) the information relates to a legitimate aim listed in the law;
- (2) disclosure threatens substantial harm to that aim; and
- (3) the harm to the aim is greater than the public interest in having the information.¹³⁸

The third part of the test, known as ‘public interest override’ is of paramount importance, as it ensures that information in the public interest¹³⁹ is subjected to public scrutiny. Similarly, Recommendation 2002(2) of 21 February 2001 states at Principle 4.2:

Access to a document may be refused if the disclosure of the information contained in the official document would or would be likely to harm any of the interests mentioned in paragraph 1, *unless there is an overriding public interest in disclosure* [italics added].

Despite the importance of the ‘public interest override’ in a democratic society, this principle is very often omitted from the legislation of democracies in transition, as well as some established democracies, giving the authorities great leeway to ban from public scrutiny wide categories of information, in disregard of the people’s right to know.

Another, often overlooked, principle, is that of whistleblower protection.¹⁴⁰ This principle provides that individuals should be protected from any legal, administrative or employment-related sanctions for releasing information on wrongdoing.¹⁴¹ Whistleblowers should benefit from protection as long as they acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing.

¹³⁵ 25 November 1981.

It states that:

Everyone within the jurisdiction of a member state shall have the right to obtain, on request, information held by the public authorities other than legislative bodies and judicial authorities (Guideline I).

¹³⁶ Declaration on Media in a Democratic Society, DH-MM (95) 4, 7–8 December 1994, para. 16.

¹³⁷ Recommendation 2002(2) of the Committee of Ministers to Member States on Access to Official Documents. http://cm.coe.int/stat/E/Public/2002/adopted_texts/recommendations/2002r2.htm

¹³⁸ *The Public’s Right to Know: Principles on Freedom of Expression Legislation*, London: ARTICLE 19, June 1999, Principle 4, <http://www.article19.org/docimages/512.htm>.

¹³⁹ Such as information on health, safety, the environment, wrongdoing and maladministration by public authorities.

¹⁴⁰ *The Public’s Right to Know*, note 138 above, Principle 9.

¹⁴¹ ‘Wrongdoing’ in this context includes the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or serious maladministration regarding a public body. It also includes a serious threat to health, safety or the environment, whether linked to individual wrongdoing or not.

3.8 Public Service Broadcasting

Public service broadcasting organisations (PSBOs) have a vital role in the creation of an environment in which a diverse and pluralistic media can flourish. Their main objective is to promote diversity in broadcasting in the overall public interest, by providing a wide range of informational, educational, cultural and entertainment programming. The PSBOs' remit should include, among other things, providing a service that:

- provides quality, independent programming that contributes to a plurality of opinions and an informed public;
- includes comprehensive news and current affairs programming, which is impartial, accurate and balanced;
- provides a wide range of broadcast material that strikes a balance between programming of wide appeal and specialised programmes that serve the needs of different audiences;
- is universally accessible and serves all the people and regions of the country, including minority groups;
- provides educational programmes and programmes directed towards children; and
- promotes local programme production, including through minimum quotas for original productions and material produced by independent producers.¹⁴²

An important implication of the guarantee of freedom of expression, and a prerequisite for the fulfilment of the above tasks, is the protection of the PSBOs from political or other forms of interference.¹⁴³

The State broadcasters in the countries under consideration do not yet enjoy this degree of independence. Mechanisms have to be set up for the development of genuine public service broadcasting, and to guarantee its autonomy from political and commercial forces.

3.9 Elections

Under international law political parties and candidates have a right to express their views freely through the media and the public has a corresponding right to hear those views. These principles are based on the rights to freedom of expression and non-discrimination, as well as the right to political participation. Guarantees of these rights are found both in international law and the three countries' Constitutions.

Of particular relevance in encapsulating international standards in this area is Recommendation No. R(99)15 of the Committee of Ministers of the Council of Europe on Measures Concerning Media Coverage of Election Campaigns (Recommendation R(99)15).¹⁴⁴ It states that '... the fundamental principle of editorial independence of the mass media gains special significance during elections'.

States' positive responsibility to ensure media pluralism and to encourage a diversity of sources of information extends to election periods. As Recommendation R(99)15 notes: 'During election campaigns, regulatory frameworks should encourage and facilitate the pluralistic expression of opinions

¹⁴² *Access to the Airwaves: Principles on Freedom of Expression and Broadcast Regulation*. London: ARTICLE 19, July 2000, Principle 27.

¹⁴³ See Recommendation of the Committee of Ministers of the Council of Europe on the Guarantee of the Independence of Public Service Broadcasting note 122 above.

¹⁴⁴ Adopted in September 1999.

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via the broadcast media.¹⁴⁵ Furthermore, States should ‘provide for the obligation to cover electoral campaigns in a fair, balanced and impartial manner in the overall programme services of broadcasters. Such an obligation should apply to both public service broadcasters as well as private broadcasters...’¹⁴⁶ The obligation applies in particular to news and current affairs programmes as well as other programmes that may have an influence on the attitude of voters. Finally, international law recognises that it may be legitimate to require the broadcast media to provide free access to airtime for political candidates. Where this is done, such access must be allocated in a fair and non-discriminatory manner and on the basis of clear and objective criteria.¹⁴⁷

3.10 The Internet

Different regulatory approaches are required for different media. As the European Commission of Human Rights has stated:

Article 10 of the [European Convention on Human Rights] clearly distinguishes between the degree of control that the State may legitimately exert over broadcasting, television or cinema enterprises, precisely by regulating access to these commercial activities by licensing procedures in which a wider margin of discretion is left to the States, and control over forms of exercise of freedom of expression, including the press and other printed media, which are subject only to the limitations laid down in para. 2 of Article 10.¹⁴⁸

The Internet, which did not exist when the major international human rights treaties were adopted, is clearly very different from either the print or broadcast media and any regulatory mechanism needs to take this into account. In many cases, it will not be possible to apply print or broadcast media standards to the Internet.

This was the clear conclusion of a US Supreme Court decision striking down the Communications Decency Act.¹⁴⁹ A key problem with the Act, according to the Court, was that it treated the Internet as though it were analogous to broadcasting by allowing restrictions regarding the time and manner of transmission, which is not possible with the Internet.¹⁵⁰ Special factors that have been used to justify the regulation of broadcasting – such as the history of extensive government regulation of broadcasting,¹⁵¹ the scarcity of available frequencies,¹⁵² and its ‘invasive’ nature¹⁵³ – do not apply to the Internet.

There are a number of problems with requiring Internet media to register. First, it imposes administrative fetters on Internet publishing, without any clear justification. Second, it would appear to apply to all Internet media, regardless of size. It is clear from the jurisprudence of the UN Human Rights Committee that a requirement for occasional or small-scale publishers to register is incompatible with the right to freedom of expression.

¹⁴⁵ Recommendation R(99)15 of the Committee of Ministers to Member States on Measures concerning Media Coverage of Election Campaigns, Appendix, Part II, Guideline II, <http://www.coe.fr/cm/ta/rec/1999/99r15.htm>.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid, Guideline IV.

¹⁴⁸ *Gaweda v. Poland*, Commission Report of 4 December 1998, Application No. 26229/95, para. 49.

¹⁴⁹ *Reno v. American Civil Liberties Union*, 117 S.Ct. 2329, 138 L.Ed.2d 874 (1997).

¹⁵⁰ Ibid, at 17–21.

¹⁵¹ See, for example, *Red Lion Broadcasting Co. v. FCC*, 395 U. S. 367, 399–400 (US Supreme Court).

¹⁵² See, for example, *Informationsverein Lentia and Others v. Austria*, note 118 above.

¹⁵³ See, for example, *Sable Communications of Cal., Inc. v. FCC*, 492 U. S. 115, 128 (US Supreme Court).

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In 2003 in Ukraine there were moves to introduce regulation on the Internet, and the possibility of doing so has also been discussed in the two other countries. In the adoption of any Internet regulation, it is essential that the following guidelines be strictly followed:

- Internet Service Providers (ISPs) should never be found liable for information placed on their systems by third parties: ISPs cannot control all information they indirectly disseminate and an obligation to do so would cause them to err on the side of caution, with a negative effect on the enjoyment of the right to free expression.
- Only those individuals who directly place information on the websites are to be found liable for any offence, such as defamatory statements. However, international standards on freedom of expression have to be applied.
- There should be no need for ISPs, their customers or websites generally to register: a provision of this nature would serve no practical purpose and may lead to unwarranted government interference.
- The State should promote wide access to the Internet.

3.11 Constitutional and International Guarantees

All three constitutions recognise the relevance of international law. Ukraine states that international law is part of Ukrainian law.¹⁵⁴ Moldova proclaims its supremacy at Article 4 and Belarus at Article 8 (1).

3.11.1 Belarus

Articles 33 and 34 of the Constitution of Belarus protect the right to freedom of expression and information in the following terms:

Article 33 [Expression]

1. Everyone is guaranteed freedom of opinion and convictions and their free expression.
2. No one may be forced to express his convictions or to deny them.
3. The monopolisation of mass media by the State, non-governmental organisations or individual citizens, and also censorship, is banned.

Article 34 [Information]¹⁵⁵

1. Citizens of the Republic of Belarus are guaranteed the right to receive, store, and disseminate complete, accurate and timely information on the activities of government bodies and non-governmental organisations on political, economic, cultural and international life, and on the state of the environment.
2. Government bodies, non-governmental organisations and officials shall afford citizens of the Republic of Belarus the opportunity to familiarize themselves with material that affects their rights and legitimate interests.

However, there are a number of specific exceptions including the ‘dignity, rights, liberties, and legitimate interests of others’.¹⁵⁶ The Constitution does not provide for any test which should be applied in weighing the interests of one person in the exercise of the right to freedom of expression and the obligation to respect the rights, liberties and legitimate interests of others.

¹⁵⁴ Article 9 of the Ukrainian Constitution states: ‘International treaties that are in force, agreed to be binding by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine.’

¹⁵⁵ See Section 9.1.1 for a more detailed analysis of the right of freedom of information in Belarus.

¹⁵⁶ Article 53.

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Belarus acceded to the ICCPR and, in 1992, the Helsinki Final Act. It is also an applicant for membership of the Council of Europe although it no longer enjoys the Special Guest status of the Parliamentary Assembly of the Council of Europe (PACE), suspended since the 1997 Referendum.¹⁵⁷ On this occasion Belarus was also suspended from the OSCE, although the country was later re-accepted as a Participating State.

Relations with international organisations have been problematic. For example, on 2 July 2003 PACE member Soim Vatslav Stankevich noted that he was alarmed by the media situation in Belarus.¹⁵⁸ During the 23–27 June 2003 PACE session he initiated a resolution highly critical of the media situation, calling on the authorities to explain forms of media harassment and end the practice of suspending media outlets. Without such measures, Stankevich said, Belarus would not be reconsidered for Special Guest status.

On 30 December 2002 the OSCE agreed to open a new office in Minsk as of 1 January 2003, to replace the OSCE Advisory Monitoring Group, which ceased its activities on 31 December 2002. The decision was taken by the 55 OSCE ambassadors following negotiations between Belarus and the OSCE's Portuguese chairmanship on a new (and narrower) mandate for the organisation.¹⁵⁹ Co-operation has been strained since the new office started operating. On 9 July 2003 the OSCE Parliamentary Assembly passed a resolution on Belarus stating that its government 'failed to ensure access of all political parties to the media' and to 'implement vital reforms in the legal field', including media laws.¹⁶⁰

3.11.2 Moldova

The Constitution of Moldova guarantees freedom of speech and of the press at Article 32(1):

All citizens are guaranteed freedom of opinion as well as the free public expression of their thoughts and opinions by way of word, image or any other possible means.

However, the same Article also places some restrictions on these rights, at paragraphs 2 and 3:

Freedom of expression may not harm the honour, dignity or rights of other people to have and express their own opinions or judgements.

All actions aimed at denying or slandering the State or the people are forbidden by law. Similarly instigation to sedition, wars of aggression, ethnic, racial or religious hatred, the incitement to discrimination, territorial separatism, public violence, or to actions threatening the constitutional order are forbidden by law.

Paragraphs 2 and 3 fail to impose appropriate limits on general restrictions on freedom of expression. In particular, there is no requirement that restrictions be provided by law or necessary to protect the legitimate interests listed.

¹⁵⁷ See Section 2.1.1.

¹⁵⁸ This followed the suspension of *Belarusskaya Delovaya Gazeta*, *Predprinimatelskaya Gazeta* and *Echo*. 'Vatslav Stankevich: CoE Displeased with Situation Development in Belarus', Charter 97, 2 July 2003, <http://www.charter97.org/eng/news/2003/07/02/pace>

¹⁵⁹ This includes 'assist[ing] the Belarusian Government in further promoting institution-building, in further consolidating the Rule of Law and in developing relations with civil society, in accordance with OSCE principles and commitments'. The new OSCE office is also meant to help the Belarusian government in developing economic and environmental activities.

¹⁶⁰ 'OSCE PA Passes Resolution on Belarus', Charter 97, 7 July 2003, <http://www.charter97.org/eng/news/2003/07/07/osce>.

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Also of concern are the provisions on criticism of the State and sedition. Criticism of the government or of the institutions of the State is at the very core of the concept of freedom of expression in a democratic society and is therefore given the greatest protection under international law. It may be restricted only in the most pressing circumstances, involving the direct instigation to lawless action or violence, as this is political expression *par excellence*.

Similarly, instigation to sedition, a vague term usually meaning disaffection with the government, is generally to be regarded as political expression which could not be legitimately restricted except in the most urgent, pressing and potentially violent situation. Great care should be taken when interpreting these provisions, therefore, to ensure that their scope is restricted as required by international law. The term 'territorial separatism' could be used to prohibit the expression of support for Transnistrian independence, among other things, although it is not invoked in practice.

Article 34 of the Constitution of Moldova also guarantees the right of access to information, as follows:

1. Everybody has the right to access any information of public interest and this right may not be curtailed.
2. Public authorities shall, in accordance with their established levels of competence, ensure that citizens are correctly informed both on public affairs and on matters of personal interest.
3. The right of access to information may not prejudice measures taken to protect the citizens or prejudice national security.
4. ...
5. The public media shall not be subject to censorship.¹⁶¹

Article 7 of the Constitution renders it supreme and provides that legal acts which are inconsistent with the Constitution automatically lack legitimacy.

In a 2002 assessment on the media situation in Moldova by the Council of Europe, it was noted that it gave rise to 'very serious concern', and that the President and his staff '[did] not seem to be sensitive enough to the protection of freedom of expression and information'.¹⁶² The Council of Europe has been involved in Moldova in the adoption of laws on public service broadcasting, and a number of specific resolutions have been issued with recommendations for the successful completion of this process.¹⁶³

Moldova took up the Chairmanship of the Committee of Ministers of the Council of Europe on 15 May 2003 for the following six months.

3.11.3 Ukraine

As noted above, the Ukrainian Constitution proclaims at Article 9 that international treaties entered into by Ukraine are part of Ukrainian law, yet it does not state that they prevail over domestic legislation.¹⁶⁴

Article 34 of the Constitution of Ukraine protects the right to freedom of expression and information in the following terms:

¹⁶¹ See Section 9.1.2 for more on access to information in Moldova.

¹⁶² 'Compliance with Member States' Commitments, Freedom of Expression and Information: experts' report on the situation of Moldova, following their visit to the country from 22 to 24 January 2002', CM/Monitor(2002)7, 25 March 2002.

¹⁶³ See Section 7.3.3.

¹⁶⁴ However, it has been interpreted consistently as giving precedence of international law over domestic law.

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1. Everyone is guaranteed the right to freedom of thought and speech, and to the free expression of his or her views and beliefs.
2. Everyone has the right to freely collect, store, use and disseminate information by oral, written or other means of his or her choice.
3. The exercise of these rights may be restricted by law in the interests of national security, territorial integrity or public order, with the purpose of preventing disturbances or crimes, protecting the health of the population, the reputation or rights of others, preventing the publication of confidential information, or supporting the authority and impartiality of the judiciary.

Article 15 also states that ‘censorship is prohibited’.

As for Belarus and Moldova, the scope of the restrictions is excessively wide, while it is not specified that limitations to the right to free expression are legitimate only when ‘necessary in a democratic society’, as established by the ECHR.

There have been a number of Council of Europe resolutions on Ukraine. For example, in Recommendation 1589 on ‘Freedom of expression in the media in Europe’ (PACE Recommendation 1589),¹⁶⁵ the state of freedom of expression in Ukraine was criticised by PACE. Recommendation 1589 notes that in Ukraine violence is used to intimidate journalists and that no substantial progress has been made in the investigation of crimes against journalists. It further states that various forms of legal harassment are being used against journalists, and that pressure is placed on them from the Presidential Administration to cover political events in a manner that favours the pro-presidential groupings.

The Council of Europe has also been critical of Ukraine in an experts’ report produced in December 1999. The report notes that ‘Ukraine gives rise to very serious concern in terms of freedom of expression and information’, and recommends a ‘full, firm and determined dedication to eliminating infringements on freedom of expression.’¹⁶⁶

3.11.4 Steps Towards the Implementation of International Guarantees

Initial steps have been taken for the use of international mechanisms for the protection of human rights, including that of freedom of expression. Some freedom of expression-related cases have been submitted to the European Court of Human Rights by citizens of Moldova and Ukraine. These include the cases of Radio Kontinent, UTAR, the newspaper *Myelitopolskie Vyedomosti*, ‘disappeared’ journalist Georgiy Gongadze,¹⁶⁷ and journalist Oleh Liashko in Ukraine. In Moldova three cases were submitted: *Busuiok v. Moldova*, *The Strike Committee of the Employees of the State Company Tele-Radio Moldova v. Moldova*, and *Amihalachioaie v. Moldova*. The only one to have been found admissible by mid-2003 was *Amihalachioaie v. Moldova*.¹⁶⁸ Although Belarus cannot take cases to the European Court of Human Rights, like Moldova and Ukraine it may submit cases to the UN Human Rights Committee, which

¹⁶⁵ Adopted at the Parliamentary Assembly of the Council of Europe (PACE) debate of 28 January 2003. <http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/Documents/AdoptedText/ta03/EREC1589.htm>.

¹⁶⁶ ‘Compliance with Member States’ Commitments, Freedom of Expression and Information: experts’ report on the situation in Ukraine, following their visit to the country from 18 to 20 November 2002’, CM/Monitor(2002)24, 19 December 2002.

¹⁶⁷ See Section 6.3.1 on Gongadze. The case was taken by Gongadze’s widow, Myroslava Gongadze, and submitted on 16 September 2002, on the second anniversary of Gongadze’s death. The European Court notified the Ukrainian government of the case on 12 July 2002. Ukraine is expected to reply to the European Court by 1 October 2003. The case was not taken under Article 10, but under Articles 2, 3 and 13 of the ECHR.

¹⁶⁸ The case was found partially admissible on 23 April 2003. *Amihalachioaie v. Moldova* (Admissibility Decision), Application Number 60115/00 (European Court of Human Rights).

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monitors the implementation of the ICCPR. The Committee has, for example, examined a Belarusian freedom of expression case, *Laptsevich v Belarus*.¹⁶⁹

In Moldova some steps have been taken to harmonise domestic legislation with international law, and particularly the ECHR. For example, in a ruling of the Supreme Court of 19 June 2000, it was held that the ECHR's Article 10 must be applied by all Moldovan courts. It also reiterated a provision already enshrined in the Constitution, establishing that international law has precedence over domestic law. Provisions mirroring Article 10 were also incorporated in Article 4 of the Press Law in 1999.¹⁷⁰ However, the effects of the ECHR are mostly not felt in Transnistria. When ratifying the ECHR¹⁷¹, Moldova made a reservation providing that the State could not guarantee its implementation in the region until the end of the conflict. Yet the European Court of Human Rights does not recognise the reservation and can receive cases from Transnistria.

Some lawyers from the countries under consideration have been trained in the submission of applications to Strasbourg, while there are some organisations (such as the Ukrainian NGO Institute of Mass Information and the international media organisation IREX ProMedia) assisting journalists and media outlets in preparing applications. Judges have also received training on Article 10 of the ECHR in Ukraine and Moldova, some conducted by the Council of Europe itself, and have examined the technicalities of directly applying the principles arising from Article 10 in their countries.

Among recent international documents relating to the three countries is PACE Recommendation 1589 mentioned above. In it PACE stresses the need for the Council of Europe to monitor the state of freedom of expression in Europe and asks the Committee of Ministers to make public the results of its monitoring; it further requests the Committee of Ministers to urge all European states to respect the right to free expression and to 'revise their media legislation according to Council of Europe standards and recommendations and to ensure its proper implementation'. Specific hindrances to media freedom in Belarus, Moldova and Ukraine are also listed.

Recommendations

- Restrictions on the right to freedom of expression, as recognised in the constitutions of the three countries, should be harmonised with international guarantees so that they are permitted only when:
 - they are provided for by law;
 - they serve one of the legitimate aims recognised under international law; and
 - they are necessary to protect one of the legitimate interests listed.
- In Ukraine, Article 9 of the Constitution should be amended to provide that, in case of conflict, international law prevails over domestic law.

¹⁶⁹ 20 March 2000, Communication No. 780/1997 (UN Human Rights Committee). The Committee ruled that the requirement to register a publication with a print run of as low of 200 copies (in this case a leaflet devoted to the anniversary of the proclamation of Belarus' independence) constituted a restriction on the right to free expression.

¹⁷⁰ By-Law No. 564-XIV.

¹⁷¹ By-Decision No. 1298-XIII of 27 July 1997.

4 MEDIA LANDSCAPE

In the three countries there is still a sharp divide between media outlets (excluding web-based media) wholly or partly subsidised by the government or Parliament and those which receive their funding from other sources (including opposition politicians, businessmen and international donors). The former tend to cover news in a pro-government light and largely ignore or denigrate opposition events; the latter, when they are funded by oligarchs or businessmen, present the funders' views and political alignment. The non-State media is often entirely or partially funded by international donors. Governments do not normally provide financial support to the non-State media.

Hence, financial problems are a serious concern, and they affect media outlets' ability to engage in high-quality journalism, as well as making them vulnerable to financial pressure from the authorities. The general lack of funding is aggravated by the fact that there are no fair and transparent rules for business and that corruption is rife. The advertising market also has limited scope and newspapers in Moldova and Belarus have had to close due to financial difficulties.

Funding of media outlets by political parties is frequent in Moldova and Ukraine, but less so in Belarus, where the underdevelopment of its market means that there are no individuals or parties in a position to finance non-State media outlets.

A large number of media outlets are still owned by the State, as privatisation processes are slow, while attempts to introduce genuine public service broadcasting have been half-hearted in Moldova and Ukraine and non-existent in Belarus.

The polarisation between State and non-State media also means that the former enjoys special, particularly financial, benefits of which the latter is deprived. The legislation in the three countries also allows the State to suspend and close non-State media outlets, a feature that has been particularly abused in Belarus. Yet intense pressure has also been placed on the State media by the authorities: in Moldova several State journalists have been fired, in Ukraine numerous cases of direct pressure in the State media have been exposed, and in Belarus the authorities have used the State media to disseminate 'official' ideology.

Among other pressing problems is a lack of tolerance of criticism by the authorities, which punish dissenting voices with defamation suits, tax inspections and other direct or indirect methods. News, to a greater or lesser extent, is filtered by the authorities: information of clear public interest might be omitted, or presented in overly negative or positive terms. The latter is true for the authorities, which enjoy extensive coverage. Clearly this is not conducive to the population developing a complete and objective picture of the political life of the country, or to equipping them to participate in decision-making processes. The information system is highly centralised, conveying what has been defined as 'virtual reality'.¹⁷²

The quality of journalism is also low for reasons other than direct or self-censorship. Opportunities for training in journalism are few, and many journalists learn on the job. This is despite the fact that faculties of journalism have greatly increased in number: in Ukraine at the beginning of the 1990s there were only two, in Kyiv and Lviv, while today there are 20 across the country.¹⁷³ The level of

¹⁷² With reference to Ukraine. Razumkov Centre, 'Political Censorship in Ukraine: the State of Imposition and Mechanisms of Implementation', *National Security and Defence* No 11 (35) 2002, 3–17, 8.

¹⁷³ Gabor, N, and Skoropadenko, Z, 'Ukrainian Media Landscape', the European Journalism Centre, October 2002, <http://ejc.nl/jr/emland/Ukraine.html>.

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training is not of the highest: the system of education is old-fashioned and Soviet-style, with little emphasis on practical training. In addition, many people get into journalism from other fields, such as economics or politics, and some do not show much interest in further training, such as of the type offered by NGOs and international organisations. As a result, investigative journalism is rare, as is in-depth analysis of issues of major importance. Despite the high number of journalists, there are very few high-level professionals.¹⁷⁴

However, a positive development has been the opening of a new journalism faculty at the Free International University of Moldova, which broke the monopoly of Moldova State University.¹⁷⁵ In Kyiv the Kyiv-Mohyla Academy provides high-quality training for journalists, including on media law. Even the State University is partially modernising: through a project of the Chişinău-based Independent Journalism Center, lectures on media law and international standards have been included in the curriculum of Moldova State University. Training opportunities are also provided by local and international organisations. However, lack of funding severely impairs the development of high-quality training on a larger scale.

In addition, few of today's practising journalists in the region have been exposed to principles of journalistic ethics. This is not only a problem of training: in Belarus, for example, many journalists deem 'Western' rules of fairness to be inapplicable in their context, as the State media is not observing them and, in their opinion, the non-State media has to respond by using the same techniques.¹⁷⁶ Furthermore, independent 'radical' journalists are portrayed by the State, and can be perceived by the public, as contemptible for being excessively and needlessly provocative, or for working for foreign governments.¹⁷⁷ However, some newspapers, also with the assistance of training programmes by international organisations, attempt to engage in balanced reporting. Examples in Belarus are *Belarusskaya Delovaya Gazeta (BDG)*, *Belarusski Rynok*, *Intex-Press*, *Gazeta Slonimskaya*, *Brestski Kurier*, *Vitebski Kurier*, *Brestskaya Gazeta* and *Novaya Gazeta Smorgoni*. While Belarusian journalists might tend to refrain from reporting on controversial issues so as not to invite retaliation, when journalists have engaged in this form of reporting in a professional manner there have not always been negative consequences.¹⁷⁸

There is also a shortage of senior managers for media outlets. Managerial skills were not cultivated during the Soviet Union, and new managers have had to acquire them since 1991. For this reason, in Ukraine, for example, many media outlets had to close in the second part of the first decade of independence. There are a number of projects implemented by international organisations to address this issue.

The lack of solidarity of members of the journalistic profession has been described as a problem by local NGOs, as many outlets are divided on the lines of the political or financial groups to which they are affiliated or on which they depend financially. This is also a hindrance to the observance of principles of journalistic ethics.

¹⁷⁴ Razumkov Centre 'Factors Leading to the Escalation of Threats to Ukraine's Information Security', *National Security and Defence* No. 1 (13) 2001, 29–48, 36.

¹⁷⁵ IREX, note 19 above, at 123.

¹⁷⁶ The newspaper *Narodnaya Volya* is often overtly partisan, using techniques to degrade its 'enemies' similar to those used by the State media, only with a different target. *Ibid.*, at 108.

¹⁷⁷ *Ibid.*, at 104.

¹⁷⁸ *Ibid.*, at 106. This enabled Belarusian journalists to cover, in 2001, taboo subjects such as the 'disappearance' of political figures and demonstrations calling for the President's ousting.

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The three countries also have unstable political situations, many of which have had an adverse impact on the media. In Belarus media freedom has deteriorated due to the draconian measures adopted by Lukashenka. In Moldova the media situation had showed an improvement only up to 2001, when the new Communist government reversed many of the policies that had served to increase freedom of expression.

A first look at Ukraine might be deceptive: it has a large number of print and electronic media outlets, the majority of which belong to individuals or commercial entities. In addition, State television is less popular than the non-State media. However, private media outlets are mostly owned by oligarchs close to governmental structures, so that there is little variety of opinions and views. Yet there are signs of an initial diversification of media, which operates in an increasingly market-oriented economy.

This has happened in tandem with the media's progressive decentralisation and the development of regional media. This process has also occurred to a lesser extent in Moldova and Belarus, although local and regional media outlets struggle to operate independently from central authorities. In the three countries, rural areas still respect the Soviet tradition of newspapers following guidelines provided by the local administration.

In short, some positive changes towards the creation of a free media can be observed in all three countries, yet the situation is still critical. According to the 2002 Press Freedom Index of Reporters Without Borders, Ukraine ranked 112 out of 139 countries, and Belarus 124 (after Iran and Zimbabwe).¹⁷⁹

4.1 The Print Media

There are several non-State newspapers in the three countries, some of which are distributed nationally. Severe problems affecting the regional media relate to printing and distribution,¹⁸⁰ hindrances to registration (in Belarus and at times in Moldova) and financial constraints.

4.1.1 Belarus

State-subsidised outlets dominate the print media in Belarus. The Presidential Administration newspaper *Sovetskaya Belorussiya* alone has a print-run¹⁸¹ greater than that of all the non-State media put together. The other national State newspapers – *Zvyazda* (in Belarusian), *Respublika* and *Narodnaya Gazeta* – all have larger print-runs than any non-State paper.¹⁸² The print-runs of the major national non-State newspapers such as *BGD*, *Belarusskaya Gazeta*, *Belarusski Rynok*, *Svobodnyje Novosti* and *Narodnaya Volya* oscillate between 8–30,000 copies.¹⁸³ Other non-State newspapers operating at the local level are *Intex Press* (Baranovichi), *Vitebski Kurier* (Vitebsk), *Bresty Kurier* (Brest) and *Birzha Informatsij* (Grodno).

¹⁷⁹ Reporters Without Borders, 'Press Freedom Index', 2002, http://www.rsf.org/article.php3?id_article=4116. Moldova was not surveyed.

¹⁸⁰ See Section 11.2.2.

¹⁸¹ 264,606 (331,864 for the Saturday edition). The figures quoted in this section are from 2003. However, conclusive information on circulation figures is not available, as newspapers are likely to exaggerate their data to attract advertisers. *Sovetskaya Belorussiya* started in 1927 and under the Soviet Union the circulation was very high (around 500,000 copies). As in the case of *Pravda*, subscriptions were obligatory.

¹⁸² Circulation figures are: 41,295 for *Zvyazda*, 57,201 for *Respublika* and 50,000 for *Narodnaya Gazeta*.

¹⁸³ 14,735 for *Belarusskaya Delovaya Gazeta*, 16,735 for *Belarusskaya Gazeta*, 13,000 for *Belarusski Rynok*, 8,100 for *Svobodnyje Novosti* and 29,100 for *Narodnaya Volya*.

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Some Russian newspapers (or their Belarusian editions) are available in Belarus. These include *Komsomolskaya Pravda v Belarusii*¹⁸⁴ and *Izvestiya*.

More sources of information are available in Minsk, while in some rural areas and collective farms there is very limited independent news.¹⁸⁵ There are some minority-language media, such as Polish-language newspapers in the Western part of the country. An example is *Głos znad Niemną*, published in Hrodna, near the Polish border.¹⁸⁶

Journalists of the State media are under great pressure from the authorities, which can manifest itself in a direct or indirect manner. An example of direct pressure is the use of a 'certification commission' in Vitebsk, which, in early December 2002, started an assessment of the 'professional skills' of the journalists working for the Vitebsk-based State newspaper *Vicbichy*, to verify whether they had duly complied with their responsibilities. The 'certification commission' is composed of the chairman of the City Council of Deputies, the Head of the Information Department of the City Executive Committee, a deputy of the City Council and the newspaper's editor-in-chief. Such assessments are carried out every two years, and are relics of Soviet times.¹⁸⁷

There are two main news agencies in Belarus, the State-owned Belta and the non-State agency Belapan. Another agency is the (mostly pro-governmental) agency Interfax. The non-State Radio Racyja, which stopped broadcasting in March 2002, also effectively served as a news agency. Like other media outlets, news agencies can receive warnings and be closed down by the authorities.¹⁸⁸

The Director of Belta is appointed by the Presidential Administration, next to which the agency's premises are located.¹⁸⁹ The agency has 220 subscribers, including the majority of the main media outlets in Belarus, as well as embassies and international news agencies such as Reuters. Belta was established in 1921 and, in 1991, the State released, to some extent, its grip on the agency. Belta now has a self-declared policy of covering a wide range of information, with politics only amounting to approximately 30 per cent of its news items, the rest being divided among economics, social issues and science. Still, its staff estimate that the information obtained from governmental sources amounts to 45 per cent of all news items.¹⁹⁰

Non-State media outlets are dependent on Belta for information and photographs, given the generalised difficulties with access to information and accreditation.¹⁹¹ At the moment of subscription, media outlets have to agree with the condition that Belta's data are to be reproduced by them *ad verbatim*, and together with Belta's logo.¹⁹²

There is very little investigative journalism, but some analysis and political reporting does appear in newspapers such as *Belarusskaya Gazeta*, *BDG* and *Belarusski Rynok*.¹⁹³ *Narodnaya Volya* is probably the most oppositional non-State newspaper. In addition to limits on the free flow of information imposed

¹⁸⁴ This newspaper enjoys circulation figures similar to those of State newspapers: 38,000 copies, with an amazing 330,000 copies for the Friday edition.

¹⁸⁵ IREX, note 19 above, at 107.

¹⁸⁶ Established by the Union of Poles in Belarus and funded by the Polish Parliament.

¹⁸⁷ Mikhail Kuzmich, Head of the Information Department, said that these procedures should be revived in order to 'advise journalists on what they should change in their work and, if required, how to improve their professional skills'. Belarusian Association of Journalists, 9 December 2002, <http://baj.ru/2002/Dec/0912nav.asp>.

¹⁸⁸ See Section 7.2.1 on warnings.

¹⁸⁹ Belta is officially called the 'unitary enterprise of the Presidential Administration'.

¹⁹⁰ ARTICLE 19 interview with Belta, April 2003.

¹⁹¹ See Sections 9.1.1 and 9.2.1.

¹⁹² State media outlets do not have to enter into an agreement with Belta, but receive its information automatically.

¹⁹³ IREX, note 19 above, at 107.

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by the authorities, cultural factors also hinder the development of the practice of investigative journalism. Belarusian society is very much ‘well-mannered’: it is therefore considered impolite to question politicians in an aggressive manner, even when journalists are aware of the politicians’ corruption or maladministration.¹⁹⁴

Economic Conditions and the Print Media

Given the dire economic conditions,¹⁹⁵ there are, unsurprisingly, very few financial conglomerates, none of which have major investments in the media.

The smaller circulation of the non-State media is primarily due to the advantageous market conditions enjoyed by the State-owned newspapers, resulting in unfair competition. The State newspapers receive State subsidies, have much cheaper rental agreements, and have priority and reduced rates for the use of the State’s printing and distribution facilities. As a result, many readers buy State newspapers because they are cheaper and have more pages. For example, in 2003 the cost of *Sovetskaya Belorussiya* was 180 Belarusian roubles,¹⁹⁶ while non-State *Narodnaya Volya* costs 250 roubles, despite having fewer pages.

In addition, every year the State provides funding to ‘socially important entities’, which State newspapers are invariably found to be.¹⁹⁷ Reportedly, overall, the media was allocated 38.2 billion Belarusian roubles (US\$24.2 million) from the 2002 national budget and 30 billion roubles from the following year’s budget.¹⁹⁸ To this have to be added contributions from budgets of local administrations.¹⁹⁹

Of the estimated 20 newspapers that had to close in 2002 and 2003,²⁰⁰ many had to shut down because of financial difficulties. Funding from a number of international organisations, including USAID and the EU, dried up in 2002–2003: Belarus was excluded from the list of focus countries for EU project funding, despite the fact that, further to EU enlargement, Belarus will share a border with the EU. Moreover, the Belarusian diaspora is weak compared to that of other countries in the region, so there is little influx of funds from relatives working abroad.

Media outlets receive a small amount of funding from political parties. There may be loose arrangements by which funding results in the shaping of articles or newscasts so as to please sponsors, but also direct ‘sale’ of positive coverage. Some news is in fact political advertising in disguise.²⁰¹ The funding from international donors also in some cases creates a relationship of dependency, by which the beneficiaries attempt to please their donors when they write.²⁰² Newspapers such as *Belarusskaya Gazeta* receive funding from Russia,²⁰³ and others (such as *BDG*) are rumoured to do so.

The financial situation is particularly difficult in the regions, where journalists receive lower salaries. This often results in an influx to the capital of the few good journalists working for the regional media, thus lowering the general standards of journalism outside Minsk.

¹⁹⁴ Ibid. at 103.

¹⁹⁵ See Section 2.2.

¹⁹⁶ *Respublika* is even cheaper: only 120 Belarusian roubles.

¹⁹⁷ Interview with the BAJ Centre for Media Protection, April 2003.

¹⁹⁸ Belarusian Association of Journalists, *Media in Belarus 2002*, Minsk: 2003, 199–200.

¹⁹⁹ 2.7 billion Belarusian roubles (US\$1.7 million) in Minsk alone. *Media in Belarus 2002*, ibid. at 200.

²⁰⁰ See Section 7.2.1.

²⁰¹ IREX, note 19 above, at 105.

²⁰² Ibid, at 109.

²⁰³ From the Russian company *Profmedia*.

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Many media outlets cannot afford technology. In some newspapers there are very few computers, causing journalists to have to write their articles by hand, which are later typed by a typist at the main office computer. Digital cameras and recorders as well as Internet access and laptops are extremely rare.²⁰⁴

The economic situation of the readership also indirectly affects the non-State media. While during the Soviet Union era people could afford to buy several newspapers, now they can usually buy only one, and subscription sales are declining.²⁰⁵

Despite these problems, the advertising market is slowly growing, and an increasing number of media outlets have become financially viable through advertising.²⁰⁶

4.1.2 Moldova

The situation of the media in Moldova (with the exception of Transdnistria) saw a marked overall improvement between 1991 and 2001. Several measures were adopted, led by civil society, to amend legislation and ensure greater harmonisation with European norms. The number of libel suits against the media decreased, as did the percentage of suits resulting in verdicts against the media.

However, with the victory of the Communist Party in the 2001 parliamentary elections, pressure by the authorities on the non-State media intensified, in tandem with the support of State-owned publications. The extent of government control manifested itself shortly after the election, when the newly appointed government replaced the directors of Tele-Radio Moldova, State television and radio stations.²⁰⁷

The media scene is sharply divided along political and language lines. *Nezavisimaya Moldova* (in Russian) and *Moldova Suverană* (in Romanian) are the main government newspapers (with circulations of 10,500 and 10,000 copies respectively).²⁰⁸ The newspapers have a clear pro-government stance and dedicate most of their space to the authorities. Two of the main parties, the Communist Party and the opposition PPDC, have their own newspapers: the former owns *Comunistul* (with a print-run of 26,000 copies),²⁰⁹ and the latter *Flux*, one of the highest-circulation non-State newspapers (39,700 copies).²¹⁰ Of the publications with national circulation 69 are in Romanian and 30 in Russian, although in relation to the number of copies sold the split is nearly 50-50.²¹¹

Other established non-State newspapers are: *Jurnal de Chişinău*, *Timpul*, and *Săptămîna*, with print-runs ranging from 10,000 to 30,000 copies.²¹² Examples of the Russian-language print media are the daily *Komsomolskaya Pravda*, and the weeklies *Argumenty i Fakty*, *Trud* and *Novoe Vremya*. With the

²⁰⁴ IREX, note 19 above, at 106.

²⁰⁵ Ibid, at 107–110.

²⁰⁶ Ibid, at 109.

²⁰⁷ US Department of State, *Country Report on Human Rights Practices: Moldova, 2001*, 4 March 2002, <http://www.state.gov/g/drl/rls/hrrpt/2001/eur/8304.htm>.

²⁰⁸ *Media Guide of the Republic of Moldova 2002*, Independent Journalism Center (Chişinău: 2002).

²⁰⁹ 19,000 for the Russian-language edition and 7,000 for the Romanian-language edition.

²¹⁰ Until the beginning of 2003 the PPDC also had three-weekly *Țara*, which had a circulation of 7,000 copies. *Țara* had to close due to lack of funding.

²¹¹ IREX, note 19 above at 120. There are also some newspapers in Ukrainian, and for the Gagauz, Bulgarian and Jewish communities. For Gagauz media see the next section. Circulation figures in this section are from *Media Guide of the Republic of Moldova 2002*, note 208 above.

²¹² 20,000 copies for *Timpul*, 10,000 for *Jurnal de Chişinău* and 17,300 for *Săptămîna*. *Media Guide of the Republic of Moldova 2002*, note 208 above.

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exception of *Novoe Vremya*,²¹³ these are Russian newspapers with Moldovan supplements produced by local journalists. It is difficult to know the real circulation figures, as data are often inflated by media outlets to impress advertisers.²¹⁴

The majority of print media outlets are financed directly or indirectly from various political party sources and act as mouthpieces for particular sectional interests.²¹⁵ The average purchasing power of the population is very low, so newspapers are sold at lower prices than the production costs. The inevitable deficit has to be covered by subsidies from the State, political parties or other sponsors, or through foreign donors.

A number of local newspapers, as well as local radio and television stations, are funded by the local authorities.²¹⁶ These exercise extensive control over these media, virtually deciding on the appointment of managing boards and dismissing journalists who do not faithfully reflect the views of the establishment. The dismissal of employees of State-owned media has reportedly increased since the Communists came to power.²¹⁷

Breaking the pattern of dependence on the authorities can be difficult. In October 1994, when State newspaper *Moldova Suverană* attempted to become independent of the State, the government forced its journalists to leave the premises, confiscated all equipment and vehicles, and ordered the Universal publishing house not to print the newspaper. *Moldova Suverană* gave up its attempt at independence within three days.²¹⁸

Only 11 per cent of the population read a newspaper on a daily basis while approximately 30 per cent read a newspaper a few times a week. Overall, circulation figures are very low for a population of four million and reportedly only 39,000 copies are distributed in Moldova daily.²¹⁹

The oldest news agency in Moldova is State-owned Moldpres, founded in 1934. However, over the past 10 years approximately 10 new agencies have opened, which has affected the previous monopoly by Moldpres.²²⁰ The most influential of the newly established agencies are BASA Press and Infotag. Other agencies are Infoprim, Flux, Interlic and Deca-press. The subscribers of Moldpres are mainly State organisations, State media, embassies and some non-State media outlets. In addition to the wire service, it also publishes *Monitorul Oficial*, the Official Gazette. About one third of news items relate to coverage of governmental activities, although this might increase at certain times such as during elections.²²¹ BASA Press was founded in 1992 as the first non-State Moldovan news agency. It has a strong economic focus, but also covers political and social issues.

²¹³ A local newspaper in Russian.

²¹⁴ IREX, note 19 above, at 122. According to estimates, circulation figures are: *Komsomolskaya Pravda* – 51,190, *Argumenty i Fakty* – 15,000, *Trud* – 15,600, *Novoe Vremya* – 10,000.

²¹⁵ About 20 per cent of the national newspapers are partially funded by the State, while political parties publish about 15 per cent and the remaining is private. IREX, note 19 above, at 119.

²¹⁶ In 2002, of the 180 newspapers and magazines published in Moldova, approximately 100 were national and 80 were local. IREX, note 19 above, at 119.

²¹⁷ For example, on 26 June 2003 it was reported that the Moldpres Director Ion Coretchi had been dismissed, a few weeks after the dismissal of the Director of the News Department Cornelia Cozonac. Cozonac stated that President Voronin had placed pressure on the agency to disseminate pro-government propaganda. IJC, *Moldova Media News*, 'Authorities Sack Top Managers of State News Agency', 26 June 2003, Vol.3, No. 6, 2 July 2003. <http://ijc.iatp.md/en/mmnews/2003/nr47.html>.

²¹⁸ See *Moldova. Media in Transition*, London: ARTICLE 19, June 1999.

²¹⁹ Negru, N, 'The Circulation of the Printed Press', Independent Journalism Center, http://ijc.md/cgi-bin/print/print_e.pl.

²²⁰ IREX, note 19 above, at 120.

²²¹ ARTICLE 19 interview with Moldpres, April 2003.

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Information in the rural areas, where 50 per cent of the Moldovan population lives, is limited. In some villages there are no kiosks and newspapers are delivered with delays of up to a week, causing people to be deprived of the most basic information.²²² In the regions radio is the main source of information and the few newspapers available are usually State ones. In addition to logistic and financial difficulties, few people buy newspapers because of a general lack of interest in politics and disillusionment with life after the Soviet Union.

Economic Conditions and the Print Media

The Russian-language media receives a disproportionate share of advertising revenue in comparison to the Romanian-language press. Hence, Russian-language newspapers, unlike the Romanian-language media, can be financially self-sufficient.

There are three main reasons for this. First, Romanian-language newspapers have a smaller readership. This is primarily due to the policy of Russification undertaken during the Soviet Union, which meant that the Romanian language lost much of its prestige: the legacy of this is still present today, despite efforts to promote Moldovan culture and the Romanian language.²²³ Moreover, under the Soviet Union Romanian-language newspapers were poorer in quality: this reputation persists, so that even Romanian-speaking Moldovans may have a preference for Russian newspapers, television and radio.²²⁴

Second, the majority of businesspeople are Russian-speakers, and they tend to place advertising with Russian-language newspapers, regardless of their circulation. The Russian-language newspaper *Ofis*, for example, has a smaller circulation than *Jurnal de Chişinău* but it has six times more advertising.²²⁵

Third, Russian is the language that is understood by the whole population. The maximum reach of Romanian-language advertising is 67 per cent of the population, while Russian-language advertising can potentially reach 100 per cent. It is therefore financially advantageous to advertise in Russian, unless targeting a special group that is represented by Romanian-speakers.

Consequently, the Romanian-language newspaper *Jurnal de Chişinău*, for example, has faced severe problems in finding advertising, facing closure a number of times, and surviving only thanks to the support of international donors.²²⁶ The same is true for a Romanian-language business magazine that was formerly published by BASA Press.²²⁷ Similarly, *Timpul*, after exhausting initial capital provided by contacts from abroad, started experiencing financial difficulties which forced it to reduce the number of its pages.²²⁸

Non-State media, both Russian- and Romanian-language, also have to compete with the State press, which benefits from its own advertising market. Romanian-language State newspaper *Moldova*

²²² IREX, note 19 above, at 119.

²²³ Under the Soviet Union there was also a policy of presenting the Romanian language as separate from the language spoken in Romania. Although Romanian and Moldovan are effectively the same language, in the Soviet Union the Romanian spoken in Moldova was officially referred to as 'Moldovan' (as it is still the case in Transnistria). This was part of a policy to sever links between Romania and Moldova, and to discourage the latter from gravitating towards non-Soviet Romania, despite the obvious historical and cultural commonalities. See note 26 above.

²²⁴ *Observator Economic*, published by BASA Press from 1998 to February 2002. ARTICLE 19 interview with BASA Press, April 2003.

²²⁵ ARTICLE 19 interview with *Jurnal de Chişinău*, April 2003.

²²⁶ *Ibid.*

²²⁷ ARTICLE 19 interview with BASA Press. At the time of establishing the magazine, BASA Press was strongly advised against publishing in Romanian.

²²⁸ ARTICLE 19 interview with *Jurnal de Chişinău*, April 2003.

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Suverană carries more advertising than *Jurnal de Chişinău* despite the fact that it has a smaller circulation.²²⁹ The advantages enjoyed by the State media also include free or reduced rental of premises and electricity.

The situation of the non-State media was aggravated by a June 2001 amendment to the Press Law, limiting the funding of media outlets by foreign governments, with the exception of cultural publications.²³⁰ A number of media outlets were adversely affected by the new provision.

The Moldovan print media is also dependent on imported newsprint and ink, so that all printing costs are established in US dollars, and are therefore subject to market fluctuations. As noted above, the population's purchasing power is also very low. A household can afford to buy or subscribe only to one newspaper, if at all.²³¹

Such financial constraints mean that the journalistic profession is precarious. Many young journalists leave journalism, primarily because of low salaries. In 2003 journalists' salaries ranged between US\$50 and 100 monthly.²³² The income of a newspaper is often supplemented by 'services' to political parties during elections, mainly involving paid positive coverage. Often journalists are hired by media outlets for a trial period of one to three months. During this time journalists are in a very vulnerable position and therefore eager to please the employer; this is not always beneficial as they might not be formally employed at the end of the trial period, and let go without payment for the work carried out.²³³ For this reason, when journalists are hired by a media outlet, they do all that is possible to preserve their steady – albeit low – income.

The generalised lack of transparency and free flow of information in Moldovan society means that there are obstacles to business research to assess the real size of the advertising market.²³⁴ Yet, although the media in Moldova are mostly unprofitable, some media ventures have managed to become self-supporting after initial financial aid from the West. These include the news agencies Basa-Press and Infotag, the business newspaper *Ekonomicheskoe Obozrenie* and several local newspapers.²³⁵

Transdnistria and Gagauzia

Non-State media outlets in Transdnistria are few and subject to sustained pressure from the authorities, often resulting in severe self-censorship on the part of journalists. Since 1991 there has been plentiful propaganda by the authorities, and the media have been manipulated to create an image of the enemy, identified with the Chişinău authorities.²³⁶ Tensions in 1991 and 1992 created a polarisation of the media on the two sides of the river Dniestr. During the following years both sides jammed each other's

²²⁹ Ibid.

²³⁰ See Section 7.3.1.

²³¹ IREX, note 19 above, at 119.

²³² For both the State and non-State media.

²³³ Ibid, at 118.

²³⁴ Ibid, at 121.

²³⁵ Ibid.

²³⁶ Moldovan Helsinki Committee, *Report on the Compliance of the Republic of Moldova with the Council of Europe Obligations on Freedom of Expression and Information*, January 2002, 10. This happened particularly in the coverage of the 1991-1992 armed conflict.

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broadcasts and virtually banned each other's newspapers. The situation improved in May 2001, when Presidents Voronin and Smirnov concluded an agreement for the free circulation of newspapers.²³⁷

In November 2002 there were 63 registered media outlets in Transdnestria.²³⁸ The main print media in Transdnestria are government-controlled, including both main newspapers, *Pridnestrovie* and *Dnestrovskaya Pravda*, of which the former is controlled by the Transdnestrian government and the latter by the Tiraspol city government. There are a total of 23 newspapers, of which the main are: *Profsoiuznie Vyesti*, *Dnestrovskaya Pravda*, *Novaya Gazeta* and *Dobri Den*'. The total circulation of all newspapers in Transdnestria is 25,000 copies, and nearly all newspapers are weekly.²³⁹ The only Moldovan-language newspaper is State-funded two-weekly *Adevarul Nistram*, while the (also State-owned) weekly *Adevarul Nistream* publishes in Ukrainian.²⁴⁰

There are two main non-State newspapers, *Novaya Gazeta* (from Bender) and *Dobri Den*' (from Rybnitsa), which survive despite pressure from the authorities. An opposition newspaper, *Glas Naroda*, had to close in 2003.²⁴¹ However, a new weekly featuring the social and political developments in Transdnestria, *Chelovek i Ego Prava* (Man and his Rights), was launched in August 2003 and is produced by the Foundation for the Defence of Human Rights and Efficient Politics.²⁴² Another non-State newspaper is the above-mentioned *Profsoiuznie Vyesti*.

Novaya Gazeta, despite the struggle to survive in the current economic conditions, has been able to acquire some advertising revenue, and in February 2003 it had nearly 1,000 subscribers. It reached its point of highest circulation in January 1999 (7,000 copies).²⁴³

Profsoiuznie Vyesti, the newspaper of the Transdnestrian Journalists' Union,²⁴⁴ has also been financially self-reliant since 2001, when its founder discontinued funding due to financial difficulties. The subscription costs had to increase to cover the resulting losses, causing a drop in sales from 2,000 to 1,000 copies.²⁴⁵

The 1993 Law on Press and Other Mass Media established at Article 3 that citizens have the right to access information in their native language, yet the vast majority of media outlets publish or broadcast in Russian language. Newspapers from Russia are also available, and Russian programmes are routinely re-broadcast.²⁴⁶

²³⁷ Angheli, N, in *Freedom and Responsibility. Media in Multilingual Society*, Vienna: OSCE, 2003.

http://216.239.59.104/search?q=cache:pYvaqBL051wJ:www.osce.org/documents/rfm/2003/08/544_en.pdf+transdnestria+licence+osce+media+angheli&hl=en&ie=UTF-8.

²³⁸ Ibid.

²³⁹ ARTICLE 19 interview with Transdnestrian journalists, February 2003.

²⁴⁰ Angheli, note 237 above.

²⁴¹ The newspaper was published by left-wing political organisations, including Partiya Narodovlastia, The Lenin Communist Union of Young People, and the national patriotic movement Vlast Narodu! Za Sotsialnyu Spravedlivost! Its closure occurred for two reasons: the Transdnestrian authorities put pressure on printing houses not to print the newspaper, and a court order banned the movement Vlast Narodu! Za Sotsialnyu Spravedlivost! This caused the newspaper not to publish for over two months, the period of time provided by the legislation for the liquidation of the media outlet's founder. 'Bulletins of the Center for Journalism in Extreme Situations. A High-risk Job.' Issue No. 31(81), July 29–August 3, 2003. http://www.cjes.ru/bulletin/?bulletin_id=551&lang=eng&country=SNG.

²⁴² Headed by Alexander Radenco, former *Glas Naroda* publisher. IJC, *Moldova Media News*, 'New Opposition Paper Launched in Transdnestria', 7 August 2003, Vol. 3, No. 8, 25 August 2003, <http://ijc.iatp.md/en/mmnews/2003/nr49.html>.

²⁴³ ARTICLE 19 interview with *Novaya Gazeta*, February 2003.

²⁴⁴ The main journalists' union, largely controlled by the authorities.

²⁴⁵ ARTICLE 19 interview with *Profsoiuznie Vyesti*, February 2003.

²⁴⁶ Angheli, note 237 above. See Section 7.3.5 for the new Media Law of Transdnestria.

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The extremely low purchasing power of the Transnistrian readership deeply affects the newspapers' finances. State newspapers receive subsidies from the authorities and can therefore sell at lower prices, yet even for these 'privileged' media outlets funding is scarce.

In Gagauzia, despite the political pressure on the non-State media by the Popular Assembly of Gagauzia, there are several publications and television stations in Gagauz. Eleven newspapers and magazines are published in the region, of which four are Gagauz-language.²⁴⁷ Among the State newspapers are *Vyesti Gagauzii*, published by the Popular Assembly of Gagauzia (with a print-run of 5,000); *Znamea*, also published by the Gagauz authorities (5,000); and *Panorama*, by the town administration (500). Non-State newspapers include *Gagauz Ieri* (1,000), *Gagauz Sesi* (1,000), *Acik Gez* (500) and *Ana Seziu* (1,000). *Vyesti Gagauzii* is the official newspaper, mainly dedicated to politics and economics, and *Znamea* has some news but also pages with advertising and classified sections. Other newspapers, such as *Gagauz Sesi*, have as their aim the promotion of Gagauz culture.²⁴⁸ *Gagauz Ieri* is an opposition newspaper, vocal in its criticism of the local authorities, while *Gagauz Halki* shows clear support for Transnistria. *Acik Gez* is of liberal tendencies and attempts to include information on controversial issues. Some newspapers, such as *Ana Seziu*, are supported by Turkish sponsors, while some newspapers sold in Gagauzia are printed in Turkey (such as *Sabaa Iyldyzy*) and are Turkish-language.²⁴⁹

4.1.3 Ukraine

Although the State interferes with the right of freedom of expression, for example through direct intimidation of journalists, a variety of media outlets and opinions are available. On 1 January 2002 there were 15,683 print media outlets and 831 television stations registered in Ukraine.²⁵⁰ According to the State Committee on Statistics, since 1990 the number of magazines and periodicals in Ukraine has increased by nine times and the number of newspapers twice over.²⁵¹ Yet, despite this, the Ukrainian informational space is shrinking, given Ukrainians' low purchasing power versus the relatively high price of publications. Hence, between 1985 and 1999, while the number of publications rose, the total annual circulation fell considerably.²⁵²

The development of the Ukrainian media can be divided into two stages. The print media prospered between 1991 and 1995, when the fetters imposed by the Soviet Union were removed and journalists enjoyed unprecedented levels of freedom. A number of newspapers and magazines were created, although many quickly disappeared due to lack of funding, political pressure and/or their staff's lack of expertise in management and journalism.²⁵³

The period 1995–1999 saw the creation of a number of other new periodicals. However, this period also coincided with the formation of the oligarchic market, in which an apparent pluralism masked

²⁴⁷ The rest being in Russian (primarily) and Turkish.

²⁴⁸ Topal, note 100 above, at 29–31.

²⁴⁹ Ibid.

²⁵⁰ Paliy, O, et. al., *Political Censorship in Ukraine. Facts, Trends, Comments*. Kyiv: Ukrainian Democratic Ring, 2002, 15. However, many newspapers are only printed sporadically, and many have registered without actually having started printing.

²⁵¹ Smirnov, A 'Spirals of the Mass Media Development', *Korrespondent*, 29 April 2003, No. 16, 36–37.

²⁵² Razumkov Centre, 'Ukraine's Information Space', *National Security and Defence* No. 1 (13) 2001, 3–15, 4.

²⁵³ Gabor, note 173 above.

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a *de facto* convergence of messages, with the concentration of media into the hands of few.²⁵⁴ In particular, the President became the focal point in this process. Any negative coverage of the President was effectively excluded from public exposure.²⁵⁵ The media was given a short breathing space after Kuchma's re-election in 1999, yet it worsened again during 'sensitive' periods: during the 2000 referendum, after Gongadze's 'disappearance' and during the 2002 parliamentary electoral campaign. This reveals a pattern of manipulation by the authorities when they are most vulnerable (for example, to shield themselves from criticism for the Gongadze case) and when they most need public support (during elections).

The highest-circulation newspapers are the non-State *Fakty i Kommentarii* (with a print-run of 1,019,000) and *Silski Visti* (476,000). The main State newspapers are the Verkhovna Rada's *Holos Ukrainy* (180,000), *Uryadovi Kuryer* (of the Cabinet of Ministers, 122,000) and *Robitnycha Gazeta* (95,000). *Zerkalo Nyedyeli* (48,000) is renowned for its objective reporting. Other (non-State) newspapers are *Syegodnia* (123,000), *Ukraina Moloda* (109,000), *Kievskie Vedomosti* (76,000) and the (pro-presidential) daily *Den'* (40,000).²⁵⁶ There are also some news magazines such as *PIK* and *Korrespondent*, which offer some analysis of political issues; however, they have a low circulation and relatively high price.

The Russian-language media dominates the market in some geographical areas, and with regard to certain genres (primarily tabloids, which are the most popular form of print media). The circulation of Russian-language newspapers is nearly 25 million against 16 million for Ukrainian-language publications. This is despite the fact that 37.6 per cent of newspapers are registered as Ukrainian-language newspapers and only 21.8 per cent as Russian-language. Twenty per cent of newspapers are bilingual, while 16.7 per cent have separate editions for each of the two languages.²⁵⁷ Newspapers such as *Den'* and *Zerkalo Nyedyeli* also have English digests. Many Moscow newspapers from Russia publish Ukrainian editions, with some Ukrainian news but mainly comprising reprints of articles on Russia.²⁵⁸

The east-west language divide is reflected in the sales of newspapers: Ukrainian-language editions are popular in the Western part of the country, while Russian-language newspapers are sold relatively densely in the Eastern part of Ukraine and Crimea. However, some Ukrainian media are available in these areas, both State and non-State. There is also substantial Russian investment in the television channels *Noviy Kanal* and *STB*.²⁵⁹

Given the predominance of Russian-language media in some areas, some have argued that positive discrimination and robust initiatives for the promotion of Ukrainian language and culture are needed to counter the effects of many years of Russification. The authorities have made some half-hearted attempts to encourage the flourishing of the Ukrainian language, such as the inclusion in the draft Concept of the National Information Policy of a loose commitment to 'design a system of measures aimed at the development of Ukrainian-language mass media'.²⁶⁰

²⁵⁴ Razumkov Centre, 'Political Censorship in Ukraine: the State of Imposition and Mechanisms of Implementation', note 172 above, at 3.

²⁵⁵ *Ibid.*, at 3. See Section 5.3.

²⁵⁶ Gabor, note 173 above, and Razumkov Centre 'Ukraine's Information Space', note 252 above, at 6. As for Belarus and Moldova, these figures are likely to be inflated by the newspapers' owners.

²⁵⁷ Razumkov Centre, 'Ukraine's Information Space', note 252 above, at 4.

²⁵⁸ IREX, note 19 above, at 149.

²⁵⁹ Human Rights Watch, note 44 above, at 9.

²⁶⁰ Medvedyev O, 'A Thorny Path to Freedom of Speech in Ukraine', in Razumkov Centre, note 172 above at 3. For legislation on minority media, see Section 7.4.4.

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There are some minority-language newspapers and television and radio programmes for Bulgarians, Romanians, Germans, Jews and Crimean Tatars.²⁶¹ The Republic of Crimea, in particular, has its own regional print media, including in Crimean–Tatar language. Crimean publications include *Krymskaya Gazeta*, *Krymskoe Vremya* and *Golos Kryma*. There are over 600 registered print media outlets in the republic, although only 300 are actually publishing.²⁶² Russian newspapers, such as *Izvestia*, are the most popular in the peninsula, followed by Russian editions of Ukrainian newspapers. Print media in the Crimean–Tatar language include *Arket*, *Kyrym*, *Iyldyz* and *Qirim Sedasi*. These publications frequently contain different opinions on Crimean issues to those in newspapers produced and read by non-Tatar Crimeans. However, the resources of minority-language media are scarce, particularly for minorities that are numerically small or dispersed across the country.²⁶³

Most media outlets in Ukraine are not profitable businesses, and therefore are heavily dependent on the State or other political and financial forces. Although figures indicate that the majority of founders of print media outlets (55.3 per cent) are individuals or commercial structures,²⁶⁴ for both media outlets and news agencies there is often a lack of transparency of ownership, particularly with regard to national and Kyiv-based media.²⁶⁵ According to estimates, of a total of 15,653 print media outlets, 14,558 (87.6 per cent) are non-State-owned, 260 (or 3.4 per cent) are State-owned, and 835 (or 9 per cent) are partially owned by the State.²⁶⁶ Yet the overall impact of the State on the print media is not reflected by these figures, as élites close to the authorities control the highest-circulation national publications.

The two main political forces controlling the media are the SDPU(u) and the political party and parliamentary faction Labour Ukraine. The latter includes the media holdings of Viktor Pinchuk, the President's son-in-law, himself an MP for Labour Ukraine and, according to estimates, Ukraine's second wealthiest man.²⁶⁷ The two groups influence the main national channels and own print and Internet media. Other media groups are owned by businesspeople/politicians Vadim Rabinovich and Andriy Derkach.²⁶⁸ In addition, the Ukrainian Media Group is under Russian influence and the newly established television and radio company Ukraina, from Donetsk, represents the 'Donetsk clan' views.²⁶⁹ Pinchuk also has investments in Noviy Kanal, STB, ICTV and Dnipropetrovsk's Channel 11.²⁷⁰ He also owns *Fakty i Komentarii*, one of the largest-circulation dailies, and the Ukrainian News news-service. SDPU(u) partially controls Studio 1+1 and partially funds *Den'* and *Kievskie Vedomosti* and former SDPU(u) leader,

²⁶¹ IREX, note 19 above at 150.

²⁶² Gabor, note 173 above.

²⁶³ See Country Opinion of the Advisory Committee on the Council of Europe Framework Convention on National Minorities, adopted on 1 March 2002 (comments on Article 9). See Section 7.4.4. The Framework Convention on National Minorities was ratified by Ukraine in January 2001. It was also ratified by Moldova in November 1996 but not by Belarus.

²⁶⁴ Razumkov Centre 'Ukraine's Information Space', note 252 above, at 5.

²⁶⁵ IREX, note 19 above, at 150.

²⁶⁶ Paliy., note 250 above, at 34.

²⁶⁷ With his US\$1.3 billion, he is also one of the richest men in Eastern Europe, as well as being known as the 'Ukrainian Berlusconi.'

²⁶⁸ Smirnov, note 251 above. Rabinovich and Derkach (son of the former head of the Security Services) are members of Labour Ukraine and close to Kuchma's entourage.

²⁶⁹ The political group from Donetsk. See note 47 above.

²⁷⁰ The European Institute for the Media, 'Ukrainian Media Bulletin', January 2002.

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Oleksandr Zinchenko, co-owns Inter.²⁷¹ Another SDPU(u) leader, Hryhoriy Surkis, MP and owner of the successful Ukrainian football team 'Dynamo', owns TET, a station covering Kyiv and the surrounding area.²⁷² Medvedchuk also has investments and/or influence on these stations and UT-1.²⁷³ ICTV is funded by Olena Kuchma, the President's daughter.²⁷⁴ *Vlada i Polytika* is unofficially owned by the President, while Yulia Tymoshenko, former vice Prime Minister, MP and head of the opposition party 'Yulia Tymoshenko' bloc, funds *Vyechernie Vyesti*.²⁷⁵

In addition, 224 institutions of the Executive and 348 of the State Administration are founders of national print media, while 788 local councils, 518 State institutions and 246 State enterprises are founders of regional and local publications.²⁷⁶ The local authorities usually operate in close harmony with the central ones.

There have been cases of corruption involving public officials managing State-owned media. In many cases the authorities are complacent, apparently as long as the loyalty of the outlet is ensured. In a case from Simferopol, the authorities acted against one such government official, who had been enriching himself at the State's expense for years, only when the outlet's coverage became unsatisfactory to the authorities.²⁷⁷

The main news agency is the government-owned State Information Agency of Ukraine (DINAU). It is the only source of international news for many media outlets, given that, particularly in provincial areas, few outlets can afford access to the Internet and foreign media.²⁷⁸ Non-State news agencies are Interfax-Ukraine and UNIAN: they call themselves independent agencies, but in reality they have links with Kuchma.²⁷⁹ There are also 32 minor news agencies.²⁸⁰

Unbalanced reporting is frequent. In the Parliament, those factions that are in opposition to presidential forces do not receive adequate coverage and there has been no direct transmission of parliamentary meetings.²⁸¹ In-depth information on the opposition can only be found in some Internet publications, the very few independent newspapers (such as *Zerkalo Nyedyeli*) and party-owned publications, such as *Tovarysh*, *Komunist*, *Slovo Batkivshchyny*, *Ukrayina Moloda* and *Vyechernie Vyesti* are also close to the opposition.²⁸² Similarly, the activities of civil society are rarely or incompletely reported.²⁸³

²⁷¹ Human Rights Watch, note 44 above at 9 and Gabor, note 173 above. However, Zinchenko was forced to resign from his post in SDPU(u) in early summer 2003, due to a conflict with Medvedchuk and Surkis. It is unclear whether he still (and who else) co-owns Inter. In Ukraine there is little transparency concerning ownership.

²⁷² Human Rights Watch, note 44 above, at 9.

²⁷³ Ibid.

²⁷⁴ Gabor, note 173 above.

²⁷⁵ Ibid.

²⁷⁶ Data of the State Committee for Information Policy, cited in Medvedyev O, note 260 above at 57.

²⁷⁷ IREX, note 19 above, at 151.

²⁷⁸ There is also a language barrier in accessing foreign media, given that many journalists are not fluent in English or other foreign languages. Ibid, at 145.

²⁷⁹ IREX, note 19 above, at 150.

²⁸⁰ Razumkov Centre 'Ukraine's Information Space', note 252 above, at 8.

²⁸¹ Razumkov Centre, 'Political Censorship in Ukraine: the State of Imposition and Mechanisms of Implementation', note 172 above, at 7. However, in 2003 there were some developments on this issue. See Section 7.4.4.

²⁸² Ibid, at 8.

²⁸³ Ibid. However, many NGOs have their own websites, enabling them to disseminate information about themselves. They also distribute general information, including analysis of current issues. Some NGOs are owned by political parties, and thereby distribute information of a political nature.

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The opposition media is also highly partisan. Its main messages include calls for President Kuchma's resignation, and for his government to be replaced by the opposition.²⁸⁴ The government regularly alleges that interference in the work of individual journalists is carried out by editors on the orders of those in opposition political circles.²⁸⁵

In the regions the media is heavily influenced by the local authorities. The latter directly appoint editors-in-chief in State-owned media.²⁸⁶ Pressure is also placed on the non-State media. The power of the local authorities over the media seems to be encouraged by the central authorities.²⁸⁷ For example, the government has sent letters to the heads of the local administration requesting that they 'analyse the content of critical remarks in the local media and make conclusions accordingly'.²⁸⁸ This appears to be a prompt to exercise direct interference in the work of the local media. Journalists in the regions are particularly vulnerable as employment opportunities are few. The only publications that are independent of the authorities in rural areas are those set up by local political parties, or rare successful business ventures.²⁸⁹

As for Belarus and Ukraine, fewer sources of information are available in rural areas, particularly newspapers, and there is an inadequate coverage of local news.²⁹⁰ The main source of information in rural areas is State-owned radio stations. In some areas the only source available is the State television channel UT-1, while near the country borders foreign channels are more easily received than Ukrainian ones.²⁹¹

Economic Conditions and the Print Media

As in the other two countries, financial difficulties severely impair the development of media outlets. Low living standards mean that people have limited access to the media. According to 2000 data, the financial means to purchase newspapers for a person with an average salary has fallen by eight to 10 times compared to the Soviet period, and for a pensioner by nearly 25 times.²⁹²

Among the reasons for the economic dependence of media on political and financial élites are the high price of paper,²⁹³ high taxes,²⁹⁴ the State quasi-monopoly on printing and distribution,²⁹⁵ and the restricted advertising market. For example, it is much cheaper to publish a newspaper in Slovakia or Russia and to transport it rather than printing it in Ukraine.²⁹⁶ The print media market is also affected by

²⁸⁴ Razumkov Centre, 'Political Censorship in Ukraine: the State of Imposition and Mechanisms of Implementation', note 172 above, at 8.

²⁸⁵ UNIAN, 25 November 2002, cited in Razumkov Centre, 'Political Censorship in Ukraine: the State of Imposition and Mechanisms of Implementation', note 172 above at 8.

²⁸⁶ IREX, note 19 above, at 144.

²⁸⁷ See also Section 5.3.

²⁸⁸ Paliy, note 250 above, at 14.

²⁸⁹ *Ibid.*, at 20.

²⁹⁰ IREX, note 19 above, at 149.

²⁹¹ *Ibid.*

²⁹² Razumkov Centre 'Factors Leading to the Escalation of Threats to Ukraine's Information Security', note 174 above, at 39.

²⁹³ Prices have gone up substantially in the past few years. In addition, Ukraine produces only 25 per cent of the annual demand for paper, and domestic paper is of low quality. Hence, paper is primarily imported from Russia. *Ibid.*, at 34.

²⁹⁴ In addition, paper and printing services are sold with value-added taxes. Income taxes are set at 30 per cent, and there are high value-added taxes for income from foreign donors.

²⁹⁵ See Section 11.2.

²⁹⁶ Gabor, note 173 above.

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the black economy: it has been estimated that one million copies of foreign periodicals, primarily Russian and Polish, are smuggled across the border daily.²⁹⁷

In addition, as in Belarus and Moldova, State newspapers are privileged: paper is sold to the State-owned press by the State at a price 30 per cent cheaper than the average market price.²⁹⁸ State newspapers also have favourable rates for renting State-owned offices and benefit from preferential taxes. Most State media are funded directly from the budget of the body that founded them. Moreover, State media executives have special benefits: they receive bonuses, higher-quality medical care and higher pensions.²⁹⁹ All this is crystallised in the legislation, such as the Law ‘On State support of the Mass Media’, whose Article 7 directly provides for subsidies to the State media. Article 6 establishes financial advantages for the payment of rent, telephone lines and post office services.³⁰⁰

The main revenue for media outlets is advertising, yet the Ukrainian advertising market is limited.³⁰¹ In 2002 it amounted to the equivalent of US\$260,000, of which US\$100,000 was spent on television advertising. In the case of the print media, the majority of advertising revenues went to the national media, while regional outlets made hardly any profit. Media outlets in the regions have greater difficulties in attracting advertisers, given the low circulation figures and impoverished readership, representing a poor investment for advertisers.³⁰² It has been estimated that only newspapers with a circulation of 100,000 copies can be profitable, while the majority have a circulation of 3–4,000.³⁰³ The high number of media outlets has a counterproductive effect on media sustainability, as by spreading the available advertising revenues thinly, it leaves many media outlets cash-starved. This is particularly problematic as the multitude of media outlets do not reflect a plurality of views. The absence of real economic freedom and unfair competition also hinders the process of privatisation of media outlets.

Advertisers often get positive coverage from the media outlets with which they do business, as these are inclined to self-censor to please advertisers.³⁰⁴

The official salary of journalists is very low, and it is supplemented by undocumented additional (under-the-table) funding based on ‘performance’, often translating as the ability to please the authorities and/or donors.³⁰⁵ By keeping salaries low, owners of media outlets also maintain their influence over journalists, who may easily be deprived of their ‘unofficial’ income.

In addition to the lack of a decent income, journalists have few chances of job mobility.³⁰⁶ Corruption and the complex tax and accounting regulations make the falsification of records for businesses a very common (and at times necessary) practice.³⁰⁷

²⁹⁷ Ibid.

²⁹⁸ Import duties are excluded in these transactions. Razumkov Centre ‘Factors Leading to the Escalation of Threats to Ukraine’s Information Security’, note 174 above, at 35–36.

²⁹⁹ Razumkov Centre ‘Ukraine’s Information Space’, note 252 above, at 5.

³⁰⁰ See Section 7.4.4.

³⁰¹ However, the market is growing. It is estimated that from 2001 to 2002 there was a growth of 50 per cent. IREX, note 19 above, at 152.

³⁰² IREX, note 19 above, at 152.

³⁰³ Razumkov Centre ‘Factors Leading to the Escalation of Threats to Ukraine’s Information Security’, note 174 above, at 34.

³⁰⁴ IREX, note 19 above, at 152.

³⁰⁵ Institute for Mass Information, ‘Mykola Tomenko: Independence of Ukrainian Media: Fight for Freedom’, cited in Human Rights Watch, note 44 above, at 11.

³⁰⁶ Human Rights Watch, note 44 above, at 12.

³⁰⁷ Ibid.

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The pressure that the authorities exercise on businesses also includes pressure on media owners, who have to demonstrate personal loyalty to those in power, particularly the President and his entourage.³⁰⁸ Given that media as a business is commonly unprofitable, loyalty is necessary to keep the venture afloat and prevent retaliatory action.³⁰⁹ Tax inspections, economic sanctions and refusal of licences are common means used by the authorities to coerce media owners into obedience.³¹⁰

Media owners with financial interests have their own media outlets to serve their interests. Although data suggest that the advertising market is expanding,³¹¹ regional media and financially weak national media outlets struggle to survive alongside the larger media conglomerates.³¹² The near-monopoly by the oligarchs means that there are hardly any influential alternative, independent voices.

Yet there are some (albeit infrequent) cases in which non-State independent outlets manage to be profitable, aided by initial grants from the West and skilful managers. They are able to pay higher salaries and consequently attract professional journalists.³¹³ This is a welcome development, which partially breaks the pattern of journalists moving to State-owned media to benefit from a more secure income.³¹⁴

Recommendations

- The State is under a positive obligation to create an environment, including economic and other conditions, in which an independent, pluralistic media can flourish, including in the rural areas.
- The government should divest itself of print media outlets or, at the very minimum, ensure that any State media are fully independent of the government and political interference. This implies that any State newspapers and State news agencies, as well as those that receive State subsidies, have a structure that protects their editorial and institutional independence from the State, as reflected in an independent board, with an appropriate appointments procedure.
- The practice of favouring the State print media economically through both direct and indirect subsidies, resulting in unfair competition, should be discontinued.
- Greater opportunities for the study of advanced journalism should be created.
- The authorities should refrain from interfering with the nascent practice of investigative journalism.
- The authorities should cease all forms of direct harassment of independent newspapers and should refrain from putting political pressure on the independent media, including at the local level.
- Measures should be introduced to ensure that media ownership is transparent. Rules on undue concentration of media ownership, including through oligarchies and family relationships, should also be adopted.

³⁰⁸ Paliy, note 250 above, at 10.

³⁰⁹ Razumkov Centre, 'Political Censorship in Ukraine: the State of Imposition and Mechanisms of Implementation', note 172 above, at 8.

³¹⁰ See Section 11.1.1.

³¹¹ The NCTR estimated that it will expand by US\$50 million to 100 million in the next year. Smirnov, note 251 above.

³¹² Smirnov, note 251 above.

³¹³ IREX, note 19 above, at 146.

³¹⁴ *Ibid.*

4.2 The Broadcast Media

The broadcast media is the most important means of communication, as it is relied upon by the vast majority of the population in the three countries. For example, in Moldova, according to a survey carried out in December 2001, 66 per cent of the population indicated that television was their primary source of information, followed by radio at 25 per cent and the print media at 8 per cent.³¹⁵ Governments realise the importance of the medium, and take measures to maintain control over the main broadcasters.

There are no national non-State television stations in Moldova and Belarus. In Ukraine some non-State television stations reach the majority of the population.

Russian programmes, whether re-broadcasts or transmitted directly by Russian channels, are common in the three countries, due to the limited possibilities of local production and the predominance of the Russian language.

4.2.1 Belarus

The main television channels broadcasting in Belarus are Belarusian Television (BTV-1), ONT and STV. All these are completely or largely owned by the government.³¹⁶ Non-State stations are the Russian Pervy Kanal,³¹⁷ RTR and NTV. There is also a network of 21 non-State channels, which produce regional news.³¹⁸ In some areas it is possible to view Polish and Lithuanian channels. In the capital many have access to cable television, while far fewer people do in the regions.³¹⁹

BTV-1 takes a slavishly pro-presidential line and criticises or ignores the opposition and Western institutions. By Presidential Order No.101 of 15 February 2002, a second national TV channel, ONT, was set up in response to criticism of BTV-1's biases. However, 51 per cent of ONT is owned by the State.

BTV-1 covers the entire country, as do Pervy Kanal and RTR, while NTV covers the main cities.³²⁰ The Russian channels have a much higher audience rating, particularly Pervy Kanal. BTV-1 regularly has only about a 10 per cent share of the audience.³²¹ Since Russian television covers very little Belarusian news, those who prefer it to BTV-1 are exposed to very little information on local issues.³²²

The State has recently invested resources in the development of State television. A slightly greater plurality of views has been gained through the establishment of ONT, which is marginally more professional than BTV-1. In addition, BTV-1 has become technically more advanced and has improved

³¹⁵ One per cent of people answered 'none.' 'How Are We Receiving Our Information?', Independent Journalism Centre, http://ijc.iatp.md/cgi-bin/print/print_pl.

³¹⁶ The State controls the National Broadcasting Company, which includes BTV-1 and a large network of local radio and television stations in the main towns (examples for Minsk are Radio 1, Radio Kultura, Radio Belarus, Radio Stalitsa and Radio SFM).

³¹⁷ Formerly called ORT. Pervy Kanal, RTR and NTV are wholly or partially owned by the Russian government.

³¹⁸ IREX, note 19 above, at 108. According to IREX, the number of stations and the quality of their news is increasing.

³¹⁹ *Ibid.*, at 107.

³²⁰ *Ibid.*

³²¹ *Ibid.*, at 104.

³²² *Ibid.*, at 107.

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the planning and scheduling of programmes. It now broadcasts both international and local news.³²³ ONT broadcasts several news programmes, yet these fail to address complex political or social subjects.

Efforts to improve State television have been undertaken with a view to limiting the influence of the Russian channels in Belarus.³²⁴ Lukashenka has been critical of Russian television: on 18 November 2002, for example, at a meeting with the Russian State Duma Speaker Gennadi Seleznev, Lukashenka strongly criticised the Russian media for distorting Belarusian issues. Lukashenka added that the Belarusian channels would be disseminating information on true Belarusian policies, to both Belarusians and Russians.

Non-State regional television channels include Skif-TV (in Vitebsk, Borisov, Orsha and Polotsk), Channel 8 (Minsk), Channel 2 (Mogilev), Nirea (Gomel), BUG-TV (Brest), MPKAT-TV (Kobrin), Variag (Pinsk), Svetlogorsk (Ranak) and Kvant (Novopolotsk). The total audience for all these channels is 4.5 million people.³²⁵ All of these re-broadcast Russian television, in addition to some locally produced programmes.³²⁶ Non-State radio stations include Radio Roks,³²⁷ Alfa Radio and (until 2002) Radio Racyja. Radio Racyja previously broadcast from Poland with a Polish licence but had to cease due to lack of funding. It provided balanced reporting, thanks to the location, which enabled it to shield itself from retaliatory action by the Belarusian authorities. However, it had a mere one per cent audience share, as it could not obtain an FM licence.

Some non-State local and radio television stations may be *de facto* controlled by city governments, which own the outlets via subsidiaries. In such cases the real identity of the owner is unknown.³²⁸

There are also three non-State associations of broadcasters: BANT (Belarusian Association of Independent Television), BETA (Belarusian Television Association) and TVS. In early 2003 BANT comprised 117 journalists working for non-State television companies, as well as 20 terrestrial and 25 cable broadcasters. The organisation started in 1993 and after this date it was required to re-register twice, in accordance with presidential decrees. BETA consists of a network including 80 per cent of Belarus' cable operators, while TVS comprises 16 terrestrial broadcasters.

Economic Conditions and the Broadcast Media

Financial problems affecting the print media³²⁹ clearly also concern the broadcast media: these include shrinking financial support from international donors and an advertising market with limited scope.

Among the stations seriously hit by limited international support is Radio Racyja, which relied heavily on foreign funding and which has received no funding since October 2002. Even before this date the station was suffering from serious financial difficulties, which forced it to stop broadcasting on 31

³²³ Previously television mainly provided information on national and international news, while newspapers primarily covered local news. In 2003 television started providing news on both spheres, causing newspapers' circulation to consequently drop by 12 per cent.

³²⁴ ARTICLE 19 interview with Belarusian journalists, March 2003.

³²⁵ These figures are mere estimates as there are currently no independent means of assessing viewership. IREX, note 19 above, at 110.

³²⁶ Even locally produced programmes, such as news and talk-shows, are often based on Russian television programmes.

³²⁷ The biggest non-State radio, covering several towns outside Minsk, and broadcasting mainly music but also some news.

³²⁸ IREX, note 19 above, at 108.

³²⁹ See Section 4.1.1.

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March 2002. Since then its staff have only managed to maintain the online edition. By mid-2003 the station was bankrupt.

Channel 8 has also experienced economic problems, which led it to shorten its broadcasting time.³³⁰ It now survives on advertising and through the sale of documentaries, for example to Russia.³³¹ BANT sustains itself by producing and selling a package of social³³² and commercial advertising, some of which is commissioned by the State.³³³

Many stations also supplement their income through paid private messages such as birthday greetings, which are the primary source of funding for several regional stations.³³⁴

Clearly a lack of finances also affects the broadcast media's quality of equipment, as well as the end-product. Moreover, although the majority of outlets have access to the Internet, many have to restrict its use to a few hours per day. Subscriptions to foreign media are also only available at unaffordable prices.³³⁵

By contrast, State television is the recipient of State funding. Some State-owned stations supplement their funding with advertising, but others, such as STV, have the State as their only source of income.

4.2.2 Moldova

The national State broadcaster Tele-Radio Moldova, broadcasts both in Romanian and Russian, with dedicated time for minority programming. It is financed both by advertising and by State funds and has an audience share of less than 20 per cent.³³⁶ A number of regional centres, including the Gagauz autonomous area, operate local State television and radio stations.

There are approximately 115 private local radio and television stations. State television and radio broadcast nationally, but there is no non-State national television channel and only a few radio stations cover about 70 per cent of the Moldovan territory.³³⁷ Examples are Antena C, the popular radio of the Chişinău municipality, and the non-State stations HitFM, Russkoe Radio, Pro-FM and Radio Contact. The Russian television station Pervy Kanal covers almost the entire country. The Romanian channel Romania 1 broadcasts sporadically.

Most of the non-State media merely re-broadcast programmes from Russia and Romania. Local content is very low, and mainly consists in entertainment programmes.³³⁸ In particular, newscasts are very limited. Exceptions include some programming by ProTV Chişinău, TVC 21, Antena C, Radio Nova, Radio Contact, BBC and Radio Free Europe.³³⁹

³³⁰ In April 2003 it broadcast only from 5.30 p.m. until 1 a.m. on weekdays, and between 3 p.m. and 1 a.m. at weekends.

³³¹ ARTICLE 19 interview with Channel 8, April 2003.

³³² On issues such as AIDS, alcoholism and the environment.

³³³ ARTICLE 19 interview with BANT, April 2003.

³³⁴ IREX, note 19 above, at 109.

³³⁵ *Ibid.*, at 104.

³³⁶ *Moldova. Media in Transition*, note 218 above.

³³⁷ IREX, note 19 above, at 119.

³³⁸ IREX, note 19 above, at 120.

³³⁹ *Ibid.*

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Media ownership is not always transparent. For example, the owners of Pervy Kanal-Moldova and Vedomosti TV are unknown.³⁴⁰ Financial backing is often provided to media outlets by individuals from political circles.

In rural areas far fewer stations are available than in Chişinău, with 40 per cent of the non-State media being concentrated in two areas: Chişinău and Balti.³⁴¹ Often only two television stations are received in the regions, and radio stations broadcast only intermittently. Power cuts are frequent.³⁴²

Economic Conditions and the Broadcast Media

In Moldova there are similar concerns as in Belarus. In particular, the State has a monopoly on the network of ground transmission of radio signals, and therefore dictates prices.³⁴³

The technical equipment of many radio and television stations is old and unreliable, yet very few can afford an upgrade.³⁴⁴

Transdnistria

There are no independent stations in Transdnistria. The Supreme Soviet of the Transdnistrian Moldovan Republic passed Decree No. 212 on 2 December 1993, which officially bans all private television broadcasting.³⁴⁵ Some private television companies do exist, yet they are controlled by Sheriff, a financial group run by Viktor Gushen, a former police officer close to President Smirnov's family. The group controls not only telecommunications,³⁴⁶ but also owns petrol stations, a supermarket chain and a football stadium.³⁴⁷

On State television there are only a few hours per day of programming, which are for the most part official news.³⁴⁸ Both State television and radio broadcast mainly in Russian but State television has some news, children's and entertainment programmes in Romanian and Ukrainian, while State radio has daily newscasts in these languages. The authorities have justified the predominance of the Russian language by referring to the 'linguistic preferences' of people living in Transdnistria.³⁴⁹ There are also a

³⁴⁰ Ibid.

³⁴¹ Ibid.

³⁴² Ibid, at 119.

³⁴³ Ibid, at 121.

³⁴⁴ Ibid, at 119.

³⁴⁵ It states that:

in connection with the development of media institutions, and in order to provide television broadcasts in Transdnistria, the Supreme Soviet of the Transdnistrian Republic of Moldova decrees that while this media system is being developed, the State committee for electronic media temporarily stop registration and licensing of television broadcasting frequencies both by air and by cable.

³⁴⁶ Including several cable television stations, the only telephone communications company in the region, and the weekly newspaper *Delo*. Lynch, D, *Managing Separatist States: A Eurasian Case Study*. November 2001, <http://www.iss-eu.org/occasion/occ32e.html>.

³⁴⁷ Kemp, W, *Profiting from Insecurity: Crime, Corruption in Inter-ethnic Conflict*, http://216.239.51.104/search?q=cache:eKcqb1Ku9KgJ:www.isn.ethz.ch/5isf/5/Papers/Kemp_paper_III.4.pdf+sheriff+transdnistria&hl=en&ie=UTF-8#6.

³⁴⁸ Moldovan Helsinki Committee, *Report on the Compliance of the Republic of Moldova with the Council of Europe Obligations on Freedom of Expression and Information*, note 236 above.

³⁴⁹ Angheli, note 237 above.

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number of small private local stations. For technical reasons few people in Transdnistria have access to Moldovan State television and radio.³⁵⁰

4.2.3 Ukraine

As in Belarus and Moldova, television is the most popular medium, although radio and television stations only make up slightly more than 11 per cent of the total number of media outlets.³⁵¹

The State broadcasting stations are the National TV Company UT (consisting of the First and Second National TV Channels, UT-1 and UT-2), the National Radio Company (UR-1, Promin and UR-3), the State Television and Radio Company Krim (Crimea), and 25 oblast television and radio companies.³⁵² The State media 'empire' also includes the Ukrtefilm studio,³⁵³ while the State enjoys a near-monopoly of the radio network.³⁵⁴

Major non-State channels are 1+1, Inter, ICTV, STB and Noviy Kanal. UT-1 can be watched by 95 per cent of Ukrainians, compared to 90 per cent for 1+1, 70 per cent for Inter, 28 per cent for STB, 25 per cent for ICTV and 23 per cent for Noviy Kanal.³⁵⁵ In practice the audience of the non-State media is higher than that of UT-1.³⁵⁶ Inter takes up 26.2 per cent of the audience against UT-1's 4.7 per cent.³⁵⁷

Of the total number of television stations (831), 503 (63.1 per cent) are non-State, 28 (1.7 per cent) are State-owned, and 300 (35.2 per cent) are partially State-owned.³⁵⁸ However, the influence of the State on the viewership is much more substantial than these figures may suggest, as many private television stations are effectively not functioning or are not influential. In addition, the main television channels are all owned or under the influence of pro-presidential forces.³⁵⁹ The head of UT is also appointed by the President.

There are also 417 radio companies, as well as 44 mixed television/radio companies.³⁶⁰ Radio Lux, Dovira and Niko are networks of local radio stations, which operate simultaneously in certain areas of the country.³⁶¹

Foreign television and radio companies, especially Russian-language, also operate in Ukraine. Programmes of the Russian channels Pervy Kanal, RTR, NTV and TV-6 are received either directly from Russia (for the Eastern part of Ukraine) or via satellite re-broadcasting.³⁶² Russian radio stations such as Russkoe Radio are also popular, and, in the Lviv region, programmes of Radio Warszawy, Radio Free Europe, Radio Vatican and Radio Canada.³⁶³ Public radio, Radio Liberty and Deutsche Welle attract 2–5

³⁵⁰ Ibid.

³⁵¹ Razumkov Centre 'Ukraine's Information Space', note 252 above at 6.

³⁵² Paliy, note 250 above, at 31.

³⁵³ Razumkov Centre 'Ukraine's Information Space', note 252 above at 6.

³⁵⁴ Particularly with the network of Ukrtelecom, which broadcasts on three channels and includes 10 million radio points across the country, reaching out to many rural areas. Ibid.

³⁵⁵ UT-2 covers 62 per cent of the territory. Razumkov Centre 'Ukraine's Information Space', note 252 above, at 7.

³⁵⁶ Paliy, note 250 above, at 34.

³⁵⁷ 1+1 gets 21.7 per cent, Novyi Canal 7.2 per cent, STB 5.1 per cent and ICTV 2.9 per cent. The other channels have the remaining 32.2 per cent of the audience. Data compiled by AGB company, cited in Gabor, note 173 above.

³⁵⁸ Paliy, note 250 above, at 34.

³⁵⁹ See Section 4.1.3.

³⁶⁰ Razumkov Centre, 'Ukraine's Information Space', note 252 above, at 7.

³⁶¹ Gabor, note 173 above.

³⁶² Razumkov Centre 'Ukraine's Information Space', note 252 above, at 6.

³⁶³ Ibid, at 7.

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per cent of listeners.³⁶⁴ There is also broadcasting in the language of national minorities, such as in the Crimean-Tatar language.³⁶⁵

There are 59 licensed cable companies, providing services to 500,000 subscribers, although unofficial sources estimate that the correct number is approximately two million.³⁶⁶ Indeed, the majority of cable companies currently operating are still in the process of obtaining licences.

Many soap operas and films are broadcast in Ukraine. Although approximately 20 per cent of broadcasts on Studio 1+1 and STB are news,³⁶⁷ the overall amount of news is decreasing, and it has become a rare commodity, particularly for radio broadcasts.³⁶⁸

Economic Constraints and the Broadcast Media

Inter, Studio 1+1 and UT-1 and, to a much lesser extent, Noviy Kanal, STB and ICTV, together receive 90 per cent of advertising profits.³⁶⁹ The other stations share the remaining 10 per cent.³⁷⁰ Inter, 1+1 and Noviy Kanal were the only channels that made a profit in 2002. Similarly, national radio stations and print media outlets receive the lion's share of their advertising market, while regional and local radio and newspapers are left with minimal revenues. Yet even the large media outlets have limited profitability and can barely cover their expenses.³⁷¹

The technical facilities of broadcast media outlets have improved and they are in some cases excellent, yet many media outlets, especially in the provinces, cannot afford adequate equipment.³⁷²

Economic constraints affect access to a plurality of sources in different ways. For example, on 23 December 2000 the three State national channels could not transmit in Lviv due to their electricity debts.³⁷³ Other cases involve power cuts and inability by media outlets to pay for the rental of transmitters. In addition, many people are not connected to the electrical system and therefore cannot watch television.³⁷⁴

Recommendations

- Steps should be taken to create an environment in which independent broadcasting, including private broadcasting, can flourish, leading to a greater diversity of views and opinions on the airwaves.
- Measures should be introduced to promote local content in broadcasting.

³⁶⁴ Smirnov, note 251 above.

³⁶⁵ However, the time allocated for broadcasting in this language on the State Television and Radio Krim has been decreasing. Its reception is also technically impossible in some parts of Ukraine, including in areas where there is a concentration of Crimean Tatars. Country Opinion of the Advisory Committee on the Framework Convention on National Minorities, note 263 above.

³⁶⁶ Hir, H, 'Ukraine's Cable Television. Spontaneity or System?', *Viche*, 2000, No. 8, 134, cited in Razumkov Centre 'Ukraine's Information Space', note 252, at 7.

³⁶⁷ Human Rights Watch, note 44 above, at 10.

³⁶⁸ IREX, note 19 above, at 148.

³⁶⁹ Inter and Studio 1+1 receive 70 per cent of the available advertising funds, while Novyi Kanal, STB and ICTV get 20 per cent.

³⁷⁰ Gabor, note 173 above.

³⁷¹ Smirnov, note 251 above, at 36–37.

³⁷² IREX, note 19 above, at 148. Foreign donors provide some technologically advanced equipment to certain stations, yet this usually benefits the professional media, while the small and less professional outlets are marginalised.

³⁷³ Razumkov Centre, 'Ukraine's Information Space', note 252, at 7.

4.3 Public Service Broadcasting

Of the three countries, the only one that has, at least on paper, established public service broadcasting (PSB) is Moldova, and this as a result of sustained pressure from the Council of Europe. In Ukraine a PSB law was passed in 1997, but additional provisions regarding the functioning of PSB also need to be adopted for the existing law to be implemented. The executive authorities have still to show the political will to do this. In Belarus there are no current moves for the introduction of PSB.

Overall, there is still little understanding of the need, functions, and benefits of PSB.³⁷⁵ The Soviet experience has not left people with a taste for a public media outlet existing exclusively to serve the interests of the audience. The three governments have undoubtedly dragged their feet in the transformation of State television into PSB, while employees of the State broadcaster are firmly within the State's sphere of influence.

4.3.1 Belarus

Not only is PSB absent in Belarus but State television is under the complete control of the authorities, with a clear role in disseminating State messages. President Lukashenka spelt this out in December 2002, by announcing that the presentation of official information on Belarusian State Television should be improved in order to promote State interests. This is to be done by the State company in its capacity as the 'only significant State-owned channel for distributing information among the broadcast media...'.³⁷⁶

To counter this tendency, in 2003 civil society began activities aimed at raising public awareness of the importance of PSB. For example, recent events were organised in co-operation with the Council of Europe and international organisations.³⁷⁷

4.3.2 Moldova

A Law 'On a Public National Broadcasting Institution' was passed in July 2002, and an amended version was adopted in March 2003.³⁷⁸ However, the establishment of public service broadcasting did not guarantee fair and balanced reporting during the election campaign for the 25 May 2003 local elections.³⁷⁹ The consolidation of a genuine PSB structure will depend on the ability and will of the authorities to fully implement the newly adopted provisions, as well as on the success of civil society's campaigning efforts.

The issue of PSB is still not discussed in Transdniestria.

4.3.3 Ukraine

A law 'On the System of Public Television and Radio Broadcasting in Ukraine' was adopted in 1997 and provides for the creation of PSB. However, this law has remained in a limbo, as additional regulations

³⁷⁴ Gabor, note 173 above.

³⁷⁵ See Section 3.8.

³⁷⁶ This was said in a meeting with Yahor Rybakov, the head of Belarusian Television and Radio Company, on 24 December 2002.

³⁷⁷ A seminar organised by the Belarusian Association of Journalists and ARTICLE 19, under the auspices of the Council of Europe, was held in Minsk on 18–19 June 2003.

³⁷⁸ See Section 7.3.3 for details on the law's adoption.

³⁷⁹ IJC, *Moldova Media News*, 'Pre-election Coverage Favours Communists, Monitoring Results Show', 27 May 2003, Vol. 3, No. 5, 27 May 2003, <http://ijc.iatp.md/en/mmnews/2003/nr46.html>.

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need to be adopted for the setting up of PSB.³⁸⁰ A draft law to this effect was also passed by Parliament in 1997, but was subsequently vetoed by the President. During the period 1998–2003 there were no concrete attempts to set up PSB, while discussions in 2001 and 2002 centred on the appointment of directors of national television and radio.³⁸¹ Initiatives to introduce PSB have originated from MPs and some members of the National Council for Television and Radio (NCTR), as well as civil society, while the government and the President have distanced themselves from this process, wishing to perpetuate the status quo.

A resolution adopted in January 2003 included a provision that the Parliament should consider a draft law for the establishment of PSB and reportedly the NCTR has been compiling an initial draft. PACE also offered to assist Ukraine in drafting a PSB law and the Parliamentary Committee on Freedom of Speech and Information (FOS Committee) stated that they would be collaborating with the Council of Europe on this endeavour.

Recommendations

- Steps should be taken urgently to transform all State broadcasters into independent public service broadcasters with a mandate to serve the public rather than act as a mouthpiece of government. All forms of interference in the activities of State broadcasters should cease immediately and their editorial independence should be guaranteed both in law and in practice.

Belarus

- The government should make a commitment to refrain from interfering with State broadcasters.

Moldova

- Immediate steps should be taken to fully implement the Law ‘On a Public National Broadcasting Institution’.

Transnistria

- The government should make a commitment to refrain from interfering with State broadcasters.

Ukraine

- A regulation implementing the Law ‘On the System of Public Television and Radio Broadcasting in Ukraine’ should be adopted as soon as possible.

³⁸⁰ Article 2 of the law states that the ‘Parliament creates Public Service Broadcasting as provided by law’: as there is no specific law on this, one has to be adopted.

³⁸¹ See Section 7.4.3.

4.4 The Internet

Access to the Internet in all three countries remains very low, at around one–two per cent of the population.³⁸² Despite this, it has become an important medium for journalists who use it to publish information which they are not willing or able to publish in conventional media. Good examples of this are Radio Liberty and Radio Racyja (for Belarus), and *Ukrainska Pravda* and *Telekrytyka* (in Ukraine). *Ukrainska Pravda*, founded by Georgiy Gongadze,³⁸³ was also the focal point of the discussion following his murder. The number of its visitors went up to one million in a few months.³⁸⁴ The Internet is also a quick and cheap way for the local media to receive international news. Unlike the traditional media, Internet publications are usually not owned or controlled by political parties or financial forces. However, they are often non-sustainable and therefore heavily depend on funding from foreign donors.

In Moldova, the use of the Internet is not restricted by law but, due to limited financial resources, very few people have access to it and its development has been limited.³⁸⁵ Moldova has about 60,000 Internet users or 1.37 per cent of the population.³⁸⁶ Similarly, according to a 2001 poll, in Belarus less than 10 per cent of the population has even used the Internet.³⁸⁷ In 2001–2002 Belarus had 422,000 Internet users.³⁸⁸

In Ukraine the Internet sector is also one from which only a small élite can benefit. However, it is also consistently expanding, and the sector has boomed since the year 2000 in particular. By the end of 2000 Ukraine counted almost 370,000 Internet users³⁸⁹ although polls conducted in the same year showed that the majority of Ukrainians still did not know exactly what the Internet was.³⁹⁰ In 2002 the number of Internet users was up to nearly 2.18 million.³⁹¹ In addition to Internet-only publications (such as *Ukrainska Pravda*, *Telekrytyka*, *ProUa*, *UaToday*, *PartOrg*, *Expert-centre*, *Korrespondent.net*) there are electronic versions of newspapers such as *Den*, *Zerkalo Nyedyeli*, *Syegodnia*, *Fakty i Kommentarii*. Use of the Internet is much less common in rural areas due to poor telephone lines and lack of equipment.³⁹² In October 2000 in Ukraine there were one million websites, although many of them were virtually copies of Russian ones, with professional websites amounting to approximately 4,000.³⁹³

Recommendation

- Measures should be taken to facilitate wider access to the Internet. For example, Internet linked computers could be put in public places, such as schools and libraries.

³⁸² CIA, World Fact Book: Belarus; CIA, World Fact Book: Moldova; CIA, World Fact Book: Ukraine; notes 9, 21 and 43 above.

³⁸³ 'Disappeared' in September 2000. See Section 6.3.1.

³⁸⁴ Razumkov Centre, 'Ukraine's Information Space', note 252, at 14.

³⁸⁵ Chiperi, V, 'The Online in Moldova', Independent Journalism Center, http://ijc.md/cgi-bin/print/print_e.pl.

³⁸⁶ IREX, note 19 above, at 124.

³⁸⁷ Ibid. at 107.

³⁸⁸ CIA, The World Factbook, Belarus, note 9 above.

³⁸⁹ Gabor, note 173 above.

³⁹⁰ Razumkov Centre, 'Ukraine's Information Space', note 252, at 13.

³⁹¹ Data of the State Committee of Communication, cited in Gabor, note 173 above.

³⁹² IREX, note 19 above, at 149.

³⁹³ Razumkov Centre, 'Ukraine's Information Space', note 252, at 12.

5 DIRECT STATE INTERFERENCE AND POLITICAL CENSORSHIP

While censorship was formally abolished after the collapse of the Soviet Union, the authorities in the three countries still intervene directly in the work of the media to influence their output. A high degree of dependency and vulnerability to orders from above is present, in particular, in the State media, yet the non-State media also struggle to resist government pressure. The crackdown on the non-State media has been particularly harsh in Belarus, although the media in Moldova and Ukraine have also been subjected to great pressure, particularly in the provinces.

Many people are aware of the lack of freedom of the media, which causes general public distrust. Yet there is no general awareness of the significance of the right of freedom of expression and the essential role of the media in a democratic society.³⁹⁴ For example, there has been no wide public outrage in Belarus following an intensification of measures intended to undermine the non-State media which coincided with the 2001 presidential election campaign.³⁹⁵

However, many journalists have been rebelling against continuous direct interference in their work. This has occurred particularly in Moldova and Ukraine, where some parallels can be traced in large protests of the journalistic community against threats to their editorial independence. In both countries journalists' initiatives, involving demonstrations and the establishment of strike committees to defend journalists' rights, has led to significant victories. These include the adoption of a law on the establishment of public service broadcasting in Moldova, and on a parliamentary hearing to combat political censorship and partial legal reform in the media sphere in Ukraine. However, both Presidents Voronin and Kuchma have attempted to play down the accusations of interference in the media's editorial freedom, so the extent to which new positive provisions will be effectively implemented remains to be seen.

5.1 Belarus³⁹⁶

Ideological Meetings and the Imposition of State Ideology

On 27 March 2003 President Lukashenka held an 'Ongoing Seminar for the Leaders of the Republican and the Local Public Bodies.' The gathering examined the foundations of the Belarusian State ideology, and the media's role in presenting it to the public. Lukashenka stated that 'ideology for the State is the same as the immune system for the living organism', and noted that the (old Soviet) ideological apparatus should be revived.³⁹⁷ State television was given the official status of 'main ideological mouthpiece in the media sphere'.

The State newspaper *Sovetskaya Belarussiya* reported that, according to the gathering's participants, 'each Belarusian family lives according to the State ideology, and the media is the most effective means to disseminate it'; it added that the work of the media, both State and private, 'should

³⁹⁴ See Bychenko, A, 'Freedom of Speech in Ukraine According to Ukrainian Citizens', *National Security and Defence* No. 11 (35) 2002, 38–41, 41 for Ukraine; and IREX, note 19 above, at 143, for Belarus.

³⁹⁵ IREX, note 19 above, at 103.

³⁹⁶ Many forms of direct interference in the work of the media originate from restrictions included in the legislation. For this, see Chapter 7.

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consolidate Belarusian society'.³⁹⁸ The seminar was described as 'ongoing', as periodic events are to follow to implement the issues addressed.

Among the measures already adopted are the holding of 'ideological meetings', during which State journalists are, in effect, lectured on what and how to write. In the context of ideological indoctrination, State television stations ONT and BTV-1 are required to broadcast the speeches of the President and various documentaries commissioned by its administration.³⁹⁹ Although this is aimed mainly at the State media, the non-State media has also received signals that it ought to act in compliance with these unwritten rules. Furthermore, the Ministry of Information carries out regular monitoring of newspaper articles.⁴⁰⁰

Similar meetings were held in 2003 for programme editors of radio stations, referred to as the 'campaign to streamline FM stations'. They were held every Monday morning at 9.30 and lasted approximately an hour and a half. Representatives of non-State radio stations were not obliged to attend, but there was pressure on them to do so.⁴⁰¹ In the first half of 2003, broadcasters were in a vulnerable position, given the obligation to re-apply for their licences by 1 June 2003.⁴⁰² Reportedly, during the meetings the (former) Minister of Information Padhainy addressed ideological issues, and recommended that journalists do not stir emotions or disseminate opinions that can have a negative impact on the country's ideology. The non-State news agency Belapan was discredited and State-owned Belta praised. Reportedly Padhainy, during one such meeting, also 'recommended' that editors and directors of radio stations use Belta exclusively.

Another effect of the March 2003 gathering was the issuing, at the beginning of July 2003, of a decree to introduce, as of 1 September 2003, lectures in all universities on the 'Fundamentals of Belarusian State ideology'.⁴⁰³ Professional ideologists will be trained personally by the deputy head of the Presidential Administration Oleg Proleskovsky. Political lectures on State ideology will also be held for companies.⁴⁰⁴

Hindrances to the Work of Journalists

NTV

On 28 June 2003 Russian journalist Pavel Selin of the Russian company NTV was stripped of his accreditation to operate in Belarus and deported by the Belarusian authorities. The reason was a report of the burial of Belarus' national writer Vasil Bykau, which, according to the authorities, contained 'deceitful and provocative information'. Selin denied the accusations.⁴⁰⁵

³⁹⁷ 'For Motherland! For Lukashenka', *Nezavisimaya Gazeta*, Charter 97, 8 July 2003, <http://www.charter97.org/eng/news/2003/07/07/luka>.

³⁹⁸ *Sovetskaya Belarussiya*, 'A Strong and Prosperous Belarus should have a Solid Ideological Foundation', 28 March 2003.

³⁹⁹ 'For Motherland! For Lukashenka', *Nezavisimaya Gazeta*, Charter 97, 8 July 2003, note 397 above.

⁴⁰⁰ ARTICLE 19 interview with Belarusian journalists, February 2003.

⁴⁰¹ ARTICLE 19 interview with Belarusian broadcast journalists, April 2003.

⁴⁰² See Section 7.2.2.

⁴⁰³ 'For Motherland! For Lukashenka', *Nezavisimaya Gazeta*, Charter 97, 8 July 2003, <http://www.charter97.org/eng/news/2003/07/07/luka>.

⁴⁰⁴ 'For Motherland! For Lukashenka', *Nezavisimaya Gazeta*, Charter 97, 8 July 2003, <http://www.charter97.org/eng/news/2003/07/07/luka>.

⁴⁰⁵ 'NTV Office in Belarus Goes Shut', Charter 97, 8 July 2003, <http://www.charter97.org/eng/news/2003/07/08/ntv>. The NTV office was closed on 7 July 2003. See Section 7.2.1.

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Pahonia

On 5 November 2002 two *Pahonia* Internet journalists, Yulia Doroshevich and Andrei Pochobut, were summoned by the police to answer questions on the Internet version of the *Pahonia* newspaper.⁴⁰⁶ Furthermore, on 12 November 2002 the Hrodna police resumed an investigation into the publication, which had been ended the previous week due to lack of evidence of any crime.

Belarusski Chas

In late December 2002 at least seven prominent journalists were fired from *Belarusski Chas*, the newspaper of the Belarusian Trade Union Federation.⁴⁰⁷ The reason given was financial constraints, yet the journalists in question believe that it was part of a pattern to punish critical journalists. The dismissed journalists protested against the decision on 14 January 2003.

Restrictions on the Broadcast Media

The authorities have at times interfered with the broadcasting of foreign channels. For example, on 8 May 2001 Belarusian State Television started broadcasting on the frequencies normally used by Russian channels Pervy Kanal, RTR and NTV without their permission, reportedly on the orders of the Presidential Administration. They broadcast a half-hour speech by Lukashenka and then a concert as part of the Victory Day celebrations. This 'takeover' continued on the morning of 9 May,⁴⁰⁸ when the parade in Moscow is traditionally broadcast; during Russian President Vladimir Putin's speech, a cartoon was shown on all four channels (including BTV-1).

There were various explanations for this by the authorities. The Deputy Head of the Presidential Administration, Vladimir Zametalin, commented: 'It was the realisation of the sovereignty of the Republic of Belarus – real sovereignty. For a few hours ... it means we showed our country's strength'.⁴⁰⁹ According to Lukashenka, the broadcast of his speech and the concert had to be watched by all Belarusian citizens, even those who normally tune into Russian channels. This appears to be part of a policy to reduce the influence of Russian television in Belarus.⁴¹⁰

Internet

The Belarusian government has blocked off access to opposition or other websites at politically sensitive times. On 9 September 2001, the day of the presidential elections, several key news websites covering election news in real time became inaccessible. Sites affected included www.article19.by, www.bdg.by, www.domash.by, www.irex.minsk.by, and www.nsys.by, which were excluded from the DNS server.⁴¹¹ Other websites - www.charter97.org, www.svaboda.org, www.Racyja.pl, www.goncharik.org and

⁴⁰⁶ The original *Pahonia* was shut down in 2001.

⁴⁰⁷ The former editor-in-chief Iryna Germanovich had filed her resignation on 10 December, following pressure from the Trade Union Federation; reportedly the Federation had accused her of abusing her authority. Following this, the staff were told that as of 11 January 2003 they would have suffered severe pay-cuts. The situation came to a head when the new editor-in-chief, Sviatlana Balashova, announced the dismissal of several journalists (including Germanovich). Belarusian Association of Journalists, www.baj.unibel.by/Zajav/z150103e.htm.

⁴⁰⁸ 9 May is *Den' Pobyeda* ('Victory Day').

⁴⁰⁹ NTV, 9 May 2001.

⁴¹⁰ See Section 2.2 for Belarus–Russia relations.

⁴¹¹ The DNS server maintains the .by domain zone.

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www.vybor.org - were also inaccessible. These latter may have been blocked by Belpak, the State-owned monopoly for external Internet access.

5.2 Moldova

Protests against Direct Interference

In February 2002 the staff of Tele-Radio Moldova started protests against the growing direct interference by the authorities in their editorial decisions. Among other things, they referred to pressure by the authorities to completely exclude from news items mentions of Romania and crimes (such as deportations) committed during the Soviet period.⁴¹² They also denounced the fact that, although Article 7 of the Law on Audiovisual establishes that the company is a public one, it remained under the control of the authorities, with cases of direct censorship in the State radio.

Demonstrations were held in Chişinău central square, and coincided with the start of a strike by over 380 employees of Tele-Radio Moldova.⁴¹³ On 27 February 2002 a Strike Committee was established. Journalists subsequently compiled a file with evidence of censorship under the title 'Citizens versus the Republic of Moldova', which was sent to the European Court of Human Rights. On the same day President Voronin visited Tele-Radio Moldova and dismissed the accusations of interference with journalists' editorial independence. Long periods of negotiations followed and a parliamentary committee was set up and tasked with the development of a 'concept for the company's improvement'.⁴¹⁴ However, most journalists did not accept the final product, as it was compiled without collaboration and input from the protesters. The authorities also attempted to openly discredit the protesters, and later to intimidate them by summoning members of the Strike Committee to investigative bodies.⁴¹⁵ Despite the authorities' counter-actions, the protests attracted wide international attention and prompted the intervention of the Council of Europe, with the adoption of PACE Resolutions 1280 (2002) and 1303 (2002) on the functioning of democratic institutions, containing recommendations on the establishment of public service broadcasting in Moldova.⁴¹⁶

Re-broadcasting

There have been a number of incidents concerning the right of stations to transmit 'regardless of frontiers'. The most prominent is the suspension of Romanian television channel Romania 1. The broadcasts were suspended on 10 August 2002, an event widely seen as being politically motivated. The Ministry of Telecommunications and Transport declared that the agreement on broadcasting for the Romanian channel's programmes had run out, as had the funds for covering the expense of the broadcasts. The Ministry said it 'received too late' an addendum to the expired agreement that was recently approved by the Romanian government.

⁴¹² Arama, A, 'The TV Strike: Euphoria and Reality', *Mass Media in Moldova*, Chişinău: Independent Journalism Center', December 2002, http://ijc.iatp.md/en/bulletin/offline/buletin_dec_eng_2002.pdf. The Director of State television is appointed by the Communist-dominated Parliament, which intensifies the Communist influence on Tele-Radio Moldova.

⁴¹³ Arama, note 412 above, at 4.

⁴¹⁴ *Ibid*, at 5.

⁴¹⁵ *Ibid*.

⁴¹⁶ See Section 7.3.3 for details on the adoption of the law.

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In October 2002 the Cabinet approved a draft law on the ratification of a Memorandum of Understanding with Romania, making possible the resumption of the broadcasts in Moldova. The Moldovan government also made public commitments to re-allow re-broadcasting in November 2002 and on 15 January 2003 (the latter amidst accusations of anti-Romanian attitudes), yet it repeatedly failed to fulfil these promises. As of the end of February 2003, broadcasting had still not resumed, while the Ministry of Telecommunications and Transport was unable to schedule a date for it. Instead, they stated that an additional protocol had to be signed between Moldova and Romania.⁴¹⁷

Romania 1 finally re-started broadcasting on 21 March 2003, only two days before the holding of a demonstration on this issue.⁴¹⁸ The demonstration still took place and participants issued a declaration welcoming the resumption of broadcasts but calling it a 'delayed gesture of justice.' Some 1,000 protesters also urged the authorities to discontinue what they defined as anti-national and anti-Romanian policies.⁴¹⁹

Similarly, in February 2003, re-broadcasting of the Russian station Pervy Kanal was suspended for several days, allegedly due to delays in payments for the use of re-transmission facilities. The programmes were suspended without advance notice, in the middle of a local evening newscast. Many believe that the programmes were suspended for political reasons.⁴²⁰

In the past, the authorities have also suspended the re-broadcasting of the Moscow Radio Ekho Moskv, under the pretext of financial reasons, but allegedly due to the outlet's programmes critical of the Russian authorities.⁴²¹

Furthermore, in 2002 the head of the Parliamentary Committee on National Security and a Communist MP accused the Romanian channel ProTV and its Chişinău office of 'advertising violence and sex'.⁴²² He also threatened the station with possible closure. Solicited by BASA-Press, the head of the Co-ordinating Council for the Audiovisual (CCA)⁴²³ declared that ProTV had been operating in compliance with international norms, yet the next day issued a declaration 'against the culture of violence in television programmes.'⁴²⁴ Political considerations seem to have dictated his change of mind.

Other

The CCA, which declares itself independent, has been accused of political bias favouring the Communist élite. Some believe that consequently Russian stations have special privileges. Indeed, a number of Romanian-language stations have received warnings (e.g. ProTV) or have been closed (Vocea Basarabiei).

In some cases the most basic rights of journalists have not been respected. For example, on 5 August 2002, as he was addressing a group of people about educational opportunities for Moldovan students in Romania, Education Minister Gheorghe Sima grabbed *Flux* journalist Natalia Florea's tape

⁴¹⁷IJC, *Moldova Media News*, 'Romanian TV Channel Off Air. Authorities Attempt to Suspend Russian ORT', 14 February 2003, Vol. 3, No. 2, 26 February 2003. <http://ijc.iatp.md/en/mmnews/2003/nr43.html>.

⁴¹⁸'Authorities Resume Re-broadcasts of Romanian TV Channel Ahead of Street Protests', 24 March 2003, *Moldova Media News*, Vol. 3, No. 3, 27 March 2003, <http://ijc.iatp.md/en/mmnews/2003/nr44.html>.

⁴¹⁹ Ibid.

⁴²⁰ IJC, *Moldova Media News*, 'Romanian TV Channel Off Air. Authorities Attempt to Suspend Russian ORT', 14 February 2003, 26 February 2003, note 417 above.

⁴²¹ IREX, note 19 above, at 117.

⁴²² Ibid.

⁴²³ The regulatory body for broadcasting.

⁴²⁴ Ibid.

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recorder and gave it to his bodyguard. Ignoring her protests, the bodyguard took out the tape, put it in his pocket and gave the tape recorder back. *Flux* editor Vitali Calugareanu was told by the head of the Minister's bodyguard service that the Minister would be keeping the tape.

BASA Press and Jurnal de Chişinău

BASA Press reported in early 2003 that it had received 'unofficial' written comments from the authorities, accusing them of 'biases.'⁴²⁵ This is because they regularly place on their wire service many items on the right-wing opposition PPCD. *Jurnal de Chişinău* similarly reported having received threatening telephone calls.⁴²⁶

In addition, the Transdniestrian issue remains a politically sensitive one in Moldova. For example, in October 2001, the Prosecutor General asked a Chişinău district court to close the weekly *Kommersant Moldovy* for allegedly supporting the separatist movement of the breakaway region of Transdnistria. The periodical was banned. It only resumed its activities in December 2001, under the name of *Kommersant Plus*.⁴²⁷

Transdnistria

Reports suggest that pressure on the media has intensified in recent times and, in some cases, the authorities have imposed prior censorship on newspapers.⁴²⁸ In particular, the Ministry of Information requires to see articles by the State newspapers before they are printed, when they include sensitive information concerning the authorities. The media outlets' interpretation of facts is then checked. Other Ministries may also request that the same process is followed when information about themselves is about to be disseminated.⁴²⁹ This is an extra-legal and unofficial measure, which was initiated in mid-2002, during talks between President Voronin and Transdnistrian leader Smirnov on the issue of federalisation,⁴³⁰ when the grip on the media was tightened. In some cases, the authorities have asked the State media to prepare certain types of articles; for example, reports suggest that they 'commissioned' articles on relations between Transdnistria and Russia, as well as other countries.⁴³¹

Novaya Gazeta

In January 1999 six print-runs of *Novaya Gazeta* were confiscated by the security forces. The newspaper later received an 'explanatory note' from the authorities stating that *Novaya Gazeta* was free from accusations of violations of the law, but failing to provide a satisfactory explanation for the confiscation. The case went to court in April 1999 and dragged on until January 2000, during which courts at all levels considered it. Finally *Novaya Gazeta* was awarded the equivalent of US\$2,400 in compensation for the

⁴²⁵ ARTICLE 19 interview with BASA Press, April 2003.

⁴²⁶ ARTICLE 19 interview with *Jurnal de Chişinău*, April 2003.

⁴²⁷ Committee for the Protection of Journalists, *Europe and Central Asia 2001: Moldova*, <http://www.cpj.org/attacks01/europe01/moldova.html>

⁴²⁸ Safonov, A 'Transdnistria: Press Freedom Under Threat', *Moldova Azi*, <http://www.azi.md/comment?ID=17403>.

⁴²⁹ Newspapers might also volunteer to submit an article for approval prior to publication. By contrast, in one case *Novaya Vremya*, Bender's official newspaper, refused to allow the local authorities to check its articles. However, the newspaper could benefit from the protection of its founder, which is the city council itself.

⁴³⁰ See International Crisis Group, note 27 above, at 8–20.

⁴³¹ ARTICLE 19 interview with *Novaya Gazeta*, April 2003.

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confiscation of two of the print-runs.⁴³² However, the funds were not paid for a prolonged period of time, causing inflation to dramatically reduce the real value of the compensation (to approximately the equivalent of US\$600 in Transnistrian roubles).⁴³³

Another example of prior censorship is an action by the authorities in November 2001 to prevent the circulation of a report on corruption, smuggling and arms trafficking which implicated the President. The report was prepared by the Russian television network RTR, which the Transnistrian authorities sued for defamation. RTR was also banned from operating in the region and the Ministry of Information declared that it would not accredit RTR journalists until it had received an official apology.⁴³⁴

5.3 Ukraine

Political Censorship – Temnyky

On 3 September 2002 a copy of government guidelines to the State media on how to cover the news, known as *temnyky*,⁴³⁵ was leaked to FOS Committee Head Mykola Tomenko.⁴³⁶ Tomenko, the first to expose the existence of *temnyky*, said that he received samples from one of the directors of a television channel, who allegedly indicated that electronic as well as print media regularly receive them from the Information Policy Department of the Presidential Administration. The head of this department, Serhiy Vasiliev, has since refuted this allegation. Yet reportedly, the Presidential Administration, executive bodies, and other related political and financial structures are among the main originators of *temnyky*.

Temnyky include recommendations on the content of news programmes on key national television and radio stations, both State and non-State. While they are mainly directed at the broadcast media, there are also reports of the print media following such regulations.⁴³⁷ They may ‘instruct’ the media to:

- be silent on or provide unbalanced coverage of certain facts;
- give a twist to a story by providing value-judgements;
- present facts out of context.⁴³⁸

Failure to comply with *temnyky* may result in harassment in the form of tax inspections, lawsuits with the sole purpose of intimidating the media, licence revocation and other measures. Reportedly *temnyky* first appeared in the autumn of 2001, during the March 2002 parliamentary electoral campaign, and initially

⁴³² *Novaya Gazeta* staff believe that they won the case because an OSCE representative was present at the trial.

ARTICLE 19 interview with *Novaya Gazeta*, February 2003.

⁴³³ *Ibid.*

⁴³⁴ Committee for the Protection of Journalists, protest letter of 25 November 2001, <http://www.cpj.org/attacks01/europe01/moldova.html>.

⁴³⁵ From the Russian *Temy Nedeli*, ‘themes of the week’. Even before the appearance of *temnyky* there were cases of interference in the work of the media. Most national television channels had points of contact in the Presidential Administration, with whom to discuss the most important political events and recommended forms of coverage. However, the old system did not represent as systematic, centralised and concerted an effort as the *temnyky* regime. Razumkov Centre, ‘Political Censorship in Ukraine: the State of Imposition and Mechanisms of Implementation’, note 172 above, at 14–15.

⁴³⁶ Mykola Tomenko, a well-known Ukrainian political scientist, was nominated Head of the Parliamentary Committee for Free Speech and Mass Media on 7 June 2002. He is a member of the Our Ukraine coalition.

⁴³⁷ Razumkov Centre, ‘Concrete Manifestations of Political Censorship and the Methods of its Imposition’, 18–26, 19.

⁴³⁸ Paliy, note 250 above, at 11.

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were sent to very few media outlets. They increased in number to include all stations in August 2002, in tandem with an intensification of measures to ensure compliance, such as through frequent telephone calls and intimidation from the Presidential Administration.⁴³⁹ Instructions which were originally sent confidentially to editors-in-chief and managers, were in 2002 to be found directly in newsrooms.⁴⁴⁰ This period coincided with the appointment of Viktor Medvedchuk as head of the Presidential Administration.

Temnyky are normally sent by fax on blank papers.⁴⁴¹ They consist of eight to ten pages in Russian containing instructions on the week's political news.⁴⁴² These will specify that news items containing information which may negatively affect the President's reputation be omitted, or, if there is 'permission' to disseminate negative information, there will be instructions to distance Kuchma from it.⁴⁴³

A former UT-1 journalist reported that 'when a journalist goes to an important political event, he is summoned by the boss and told what to write, in what manner, whom to interview...'.⁴⁴⁴ According to a newsmaker, *temnyky* appeared to 'depend on the mood of the President'.⁴⁴⁵ Some topics and people are completely banned from the news. This is also true of the work of NGOs. For example, a *temnyk* recommended that journalists refrain from reporting on the comments the Razumkov Centre made during a roundtable, which questioned the effectiveness of the President's plans for political reform.

Examples of *temnyky* are:⁴⁴⁶

The first stage of the general congress of the People's Rukh of Ukraine 'for Unity' and other participants of the newly created 'People's Rukh of Ukraine' will take place. Interpretation: to be broadcast. A full-fledged party is fighting for victory. Drop in a line – 'who will be first on the list?' Maybe Konev? Or Ponamarchuk? Hereby we separate the PRU brand from Boyko's name. Just Rukh.⁴⁴⁷

A press conference of the 'People's Rukh of Ukraine' Electoral bloc will take place. Hotel Natsionalny. Interpretation: extensive coverage. Important. This is the real Rukh.⁴⁴⁸

The above *temnyky* told journalists what to cover and how to do so. Others specify what *not* to cover with instructions such as 'please ignore' or 'not to be publicised'. For example:

Kyiv Local Pechersk Court will consider a suit by Yulia Tymoshenko in which she appeals against the reasoning of her removal from the position of Deputy Prime Minister. Interpretation: PLEASE IGNORE.⁴⁴⁹

A congress of Young Ukraine Party will take place. PLEASE IGNORE.⁴⁵⁰

⁴³⁹ Human Rights Watch, note 44 above, at 13–14.

⁴⁴⁰ Ibid, at 14–15.

⁴⁴¹ Ibid, at 15.

⁴⁴² Ibid, at 16

⁴⁴³ Ibid.

⁴⁴⁴ Razumkov Centre, 'Political Censorship in Ukraine: the State of Imposition and Mechanisms of Implementation', note 172 above, at 16.

⁴⁴⁵ Human Rights Watch, note 44 above, at 14–15.

⁴⁴⁶ These examples are from the end of 2001.

⁴⁴⁷ Kipiani, V, 'The Prince of Darkness and Temnyks', *National Security and Defence* No. 11 (35) 2002, 45–48, 46. The right-wing Rukh Party is split into three (mostly pro-presidential) factions, one of which is the 'People's Rukh of Ukraine'. Konev and Ponamarchuk are different candidates for leadership of this faction, while Boyko is the leader of another splinter group. With this *temnyk* the Presidential Administration is apparently attempting to consolidate the party fragmentation, thereby weakening the right-wing coalition.

⁴⁴⁸ As opposed to the other two factions. Kipiani V, 'The Prince of Darkness and Temnyks', *ibid.* at 46.

⁴⁴⁹ Kipiani, note 447 above. See note 44 on Yulia Tymoshenko.

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The effects of *temnyky* are also felt in the regions. In early 2003 in Crimea there was a conflict in the '12 Minutes of News' programme, broadcast by the State Television and Radio Company Krym, due to attempts by the authorities to impose instructions on coverage.⁴⁵¹

On 13 September 2002 the Parliament demanded that the Security Services investigate the issue of *temnyky*. Tomenko drafted a parliamentary document on the issue: he stated that he held evidence of censorship and would initiate a court case on the matter. On 16 September 2002 Andriy Shevchenko and Ivanna Naida, of the 'Reporter' news programme of Noviy Kanal refused to present the news while Ihor Kulyas resigned as news editor. Shevchenko later also resigned. Sources attribute this to unprecedented censorship of news coverage by the authorities.⁴⁵² Kulyas himself stated that the authorities 'became so arrogant' as to blatantly fax the instructions directly to the newsroom.⁴⁵³

On 1 October 2002 UNIAN Trade Union journalists accused its new executive director, Vasyly Yurchko, of censoring their work and refusing to run any reports that could be construed as portraying Kuchma unfavourably. There were reports of threats of dismissal.⁴⁵⁴ Following this, UNIAN published a statement saying the agency's leadership and journalists had reached a 'compromise', in which both sides declared that censorship was inadmissible.⁴⁵⁵ By 25 November 2002, 453 journalists had signed it.⁴⁵⁶ The statement's complete text was only published on the Internet publications *Telekrytyka* and *Ukrainska Pravda*, while only Inter and ICTV of the national channels reported some news of the event.⁴⁵⁷

A 'Manifesto of Ukrainian Journalists Against Political Censorship' (the Manifesto) was adopted by over 300 journalists on 3 October 2002. In it journalists and NGOs denounced the existence of political censorship⁴⁵⁸ in Ukraine, and declared their intention to 'reveal and resist' it. This would be done

⁴⁵⁰ Ibid, at 47.

⁴⁵¹ The European Institute for the Media, 'Ukrainian Media Bulletin', February 2003.

⁴⁵² In the autumn of 2002 journalists also resigned from UT-1, STB and *Siohodni* newspaper. Paliy, note 250 above, at 14.

⁴⁵³ Paliy, note 250 above, at 15.

⁴⁵⁴ Razumkov Centre, 'Political Censorship in Ukraine: the State of Imposition and Mechanisms of Implementation', note 172 above at 3–17, 8.

⁴⁵⁵ The statement reads: 'Both sides declare that political censorship in UNIAN is inadmissible. We are unanimous in the opinion that major changes in materials released by UNIAN may be made only by the journalists who wrote them.' The statement was reported in Razumkov Centre, 'Political Censorship in Ukraine: the State of Imposition and Mechanisms of Implementation', note 172, above at 10 and <http://telekritika.kiev.ua>.

⁴⁵⁶ Razumkov Centre, 'Political Censorship in Ukraine: the State of Imposition and Mechanisms of Implementation', note 172 above, at 10.

⁴⁵⁷ Ibid, at 8.

⁴⁵⁸ This is defined in the Appendix of the declaration as:

- a requirement of preliminary agreement of information, materials, and prohibition of publication of information and materials with official bodies, enterprises, organisations, or associations of citizens (political parties), except for cases when an official is the author of information being published or the interviewee;
- a prohibition by aforementioned subjects and owners or founders of mass media of coverage of certain political and economical themes and activity of certain political and public figures that violates people's right to receive unbiased and objective information from mass media;
- Pressure on owners, founders, editors of mass media by aforementioned subjects ...;
- Psychological pressure ... on journalists ...;
- Attempts ... to monopolise the informational space by economical, political, and power methods...;

Hence, this is a very wide definition of what is normally understood as 'censorship', which goes much further than the *temnyky* to include all forms of interference in the work of the media. However, the Manifesto also states that the FOS Committee should define the concept of political censorship.

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through the creation of an Independent Trade Union of Mass Media Employees (ITUMME) to protect the rights of journalists, the creation of a Strike Committee to conduct negotiations with the authorities and the organisation of actions of civil protest by journalists. The Manifesto requested that Verkhovna Rada hold within one month hearings on the problem of political censorship and the General Prosecutor to initiate criminal cases for the obstruction of the professional activity of journalists.⁴⁵⁹

The Manifesto also noted that there was a sharp distinction between editorial policy and censorship, implicitly denouncing the cases in which the former is used as an excuse to effectively censor media outlets.

President Kuchma remained unconvinced. In October 2002 he stated: '[I do not rule out that] there is some pressure somewhere. However, according to the constitution, censorship is not permitted. Someone is exaggerating somewhat here'. Similarly, Ivan Chyzh, Head of the State Committee for Television and Radio Broadcasting noted that censorship exists but 'it is not in the State directive'.⁴⁶⁰ Overall, where the authorities admit the existence of political censorship, they maintain that media owners and editors are responsible for it.⁴⁶¹ The authorities have denied that *temnyky* originate from them.⁴⁶²

Nevertheless, the authorities pledged to investigate cases of alleged censorship.⁴⁶³ On 4 June 2002 President Kuchma stated that: '... I am not indifferent to the reports about cases of administrative interference into mass media activity, and persecution of journalists for criticism. In such cases, effective conclusions are drawn and adequate measures are taken...'.⁴⁶⁴ Monitoring later carried out by the Department of Informational Policy in the Presidential Administration stated that, between 2 and 8 November 2002, critical materials on the President and his Administration were disseminated by nine central and 28 local print outlets, three local TV stations, three central and four local radio stations, and three Internet publications. However, the document admitted that none of the main television stations had engaged in similar criticism.⁴⁶⁵

Ivan Chyzh also stated his willingness to review concrete cases of political censorship if journalists could provide concrete examples.⁴⁶⁶ However, there was something of a challenge in this invitation, with non-State journalists facing clear obstacles, such as the anonymity of *temnyky* and the fact that many journalists fear the possible consequences of bringing forward such examples.⁴⁶⁷ Yet there

Censorship is prohibited under Ukrainian law at Article 15 of the Ukrainian Constitution and Article 6 of the Ukrainian Law on Television and Radio Broadcasting. Moreover, Article 2 of the Law on Press states that 'it is not allowed to demand preliminary approval of messages and materials ...'.

⁴⁵⁹ Pursuant to Article 171 of the Criminal Code.

⁴⁶⁰ Interfax Ukraine, 15 November 2002, cited in Razumkov Centre, 'Political Censorship in Ukraine: the State of Imposition and Mechanisms of Implementation', note 172 above, at 12.

⁴⁶¹ Razumkov Centre, 'Political Censorship in Ukraine: the State of Imposition and Mechanisms of Implementation,' note 172 above, at 11.

⁴⁶² Human Rights Watch, note 44 above, at 13–15.

⁴⁶³ Similar pledges were also made in the past. For example, on 9 December 2000 a presidential decree was passed establishing 'the inadmissibility of interference with the creative work of journalists, including in the form of preliminary co-ordination of reports and materials, and the control of the ideological content of information spread by the mass media.' Razumkov Centre, 'Political Censorship in Ukraine: the State of Imposition and Mechanisms of Implementation', note 172 above, at 12.

⁴⁶⁴ <http://www.president.gov.ua/activity>, also in Razumkov Centre, 'Political Censorship in Ukraine: the State of Imposition and Mechanisms of Implementation', note 172 above, at 13.

⁴⁶⁵ Paliy, note 250 above, at 15.

⁴⁶⁶ Interfax-Ukraine 8 October 2002, cited in Razumkov Centre, 'Political Censorship in Ukraine: the State of Imposition and Mechanisms of Implementation', note 172 above, at 13.

⁴⁶⁷ 64.7 per cent of journalists believe that censorship definitely exists in Ukraine, and the vast majority of these have had direct experience of it. However, only 41.5 per cent said that they had resisted censorship, 37.5 per cent

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are remarkable similarities between the *temnyky* gathered by civil society and media professionals and the final texts of news items included in newspapers or television and radio programmes; even more strikingly, the news items transmitted by the national television channels are nearly identical.⁴⁶⁸ For example, a study conducted by the Razumkov Centre shows that in numerous cases UT-1, 1+1, Inter, ICTV, Noviy Kanal and STB complied with 100 per cent of the *temnyky* they received.⁴⁶⁹

On 26 November 2002 public hearings were held in preparation for parliamentary hearings on political censorship.⁴⁷⁰ During the public hearings, NGOs and media outlets presented a draft Resolution compiled by civil society, on 'Society, mass media, the authorities: freedom of speech and censorship in Ukraine', as well as proposed amendments to media legislation. A parliamentary hearing on political censorship was also held on 4 December, opening the way for the resolution to be adopted on 16 January 2003 and the media law amendments on 28 April 2003.⁴⁷¹

The majority of Ukrainians believe that political censorship occurs in Ukraine. According to a poll published at the end of 2002, 46.4 per cent of Ukrainian citizens are convinced that cases of political censorship occur in Ukraine, and another 27.2 per cent tend to believe in its existence. Only 4.2 per cent believe that it does not exist.⁴⁷² The number of people who are sure of the existence of political censorship, while remaining unchanged between October 2000 and October 2002, rose by 10 per cent between May 2002 and October 2002.⁴⁷³ Polls also showed that Ukrainians trust non-State television stations Inter and Studio 1+1 much more than UT-1.⁴⁷⁴

Interference in the work of the media in Ukraine is also recognised at the international level. In Recommendation 1589,⁴⁷⁵ PACE acknowledges the fact that, according to Ukrainian journalists, the 'Presidential Administration provides instructions to the media on the coverage of main political events'.

stated that they would participate in a possible media strike (34.1 per cent were undecided and 28.4 per cent against), and only 33 per cent said that they would testify against political censorship in a court of law (32.9 per cent were undecided and 34.1 per cent against it). Zhdanov, I, 'The Problems of Freedom of Speech and Political Censorship According to Ukrainian Journalists', *National Security and Defence* No. 11 (35) 2002, 33–35.

⁴⁶⁸ See for example Razumkov Centre, 'Concrete Manifestations of Political Censorship and the Methods of its Imposition', note 437 above, at 19.

⁴⁶⁹ For example, the *temnyk* of the week between 2 and 8 September 2002, on the 'reaction of society and politicians to the address of President Kuchma to the Ukrainian people on 24 August 2002', recommended that there not be 'emphasis on the initiatives of some politicians on the referendum about the transition to the parliamentary-presidential political system.' The Razumkov Centre noted that, during the time of monitoring, of 22 *temnyky*, 15 were followed by 'complete duplication' of the authorities' 'advice', five presented 'some differences' and only two 'substantial differences'. Razumkov Centre, 'Concrete Manifestations of Political Censorship and the Methods of its Imposition', note 437 above, at 20–22.

⁴⁷⁰ 295 MPs voted in favour of holding the hearing, showing the Parliament's support for the journalists' initiative. The Chairman of the Verkhovna Rada, Volodymyr Lytvyn stated: 'It would be hypocritical if I denied the existence of this problem [of political censorship] in Ukraine'. UNIAN, 15 October 2002, cited in Razumkov Centre, 'Political Censorship in Ukraine: the State of Imposition and Mechanisms of Implementation', note 172 above, at 11.

⁴⁷¹ The Law 'On the Insertion of Changes to Certain Laws of Ukraine as a Result of the Parliamentary Hearing 'Society, Mass Media, Authorities: Freedom of Expression and Censorship in Ukraine''. See Section 7.4.1.

⁴⁷² Of those remaining, 6.1 per cent believe that 'it most likely does not exist' and 16.1 per cent are uncertain. Razumkov Centre, 'Political Censorship in Ukraine: the State of Imposition and Mechanisms of Implementation', note 172 above, at 11.

⁴⁷³ *Ibid.*

⁴⁷⁴ Razumkov Centre, 'Ukraine's Information Space', note 252 above, at 8.

⁴⁷⁵ See note 165 above.

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Henne Severinsen, Rapporteur of the PACE monitoring committee, stated that PACE had received many complaints, on the basis of which it could be concluded that political censorship is practised in Ukraine.⁴⁷⁶

Other Forms of Interference

It has been noted that the local media has been used as 'press service of the local authorities.'⁴⁷⁷ Similar tendencies are present in the larger State media outlets, with or without the use of *temnyky*. As a former journalist of a State television channel has observed, there is a list of people who might not be shown on television, including members of the opposition but also even representatives of cultural life. This is because 'one party should be presented as a consolidating force, and not only in politics, but also in social life and culture.'⁴⁷⁸

An example of using the State broadcaster as government mouthpiece is in the politically charged coverage of the Gongadze case, in which UT-1 provided biased and tendentious information. The (former) Head of the PACE Mass Media Subcommittee, Tytti Isohookana-Asunmaa, has said that 10 regional and local newspapers were not allowed to disseminate information on the Gongadze case.⁴⁷⁹

Furthermore, according to a recent poll, many journalists believe that negative consequences can ensue if they criticise powerful individuals or institutions, such as criminal clans (voted as 'dangerous' by 77.1 per cent of journalists), the President (71.1 per cent), the local authorities (69.4 per cent) and the Presidential Administration (68.4 per cent).⁴⁸⁰ Among the expected consequences are psychological pressure, economic sanctions and physical attacks.⁴⁸¹

Texts can also be heavily edited by superiors. There were, for examples, numerous reports of this practice in UT-1.⁴⁸² The problem is particularly acute in channels in which computer systems allow editors to have direct access to journalists' files to check and amend texts.⁴⁸³ Changes may be made at the last minute, without previous agreement with the reporter.

Part of the manipulation of information is also the widespread practice of articles especially 'commissioned' to discredit certain individuals and officials, through the dissemination of false or private information. This is frequently done through the Internet, a low-cost means to disseminate information

⁴⁷⁶ Referring to the PACE Resolution, Tomenko said: 'I hoped that the situation was about to improve after [it], but editors of television companies handed to me another list of coverage instructions'. He reported that instructions were not limited to the coverage of the opposition, but they included all MPs. The European Institute for the Media, note 451 above.

⁴⁷⁷ Paliy, note 250 above, at 34.

⁴⁷⁸ Oleksandr Piddubnyi in an interview with *Dzerkalo Tyzhnya*, Institute of Mass Information, cited in Paliy, note 250 above, at 35.

⁴⁷⁹ Interfax-Ukraine, 14 December 2000, cited in Razumkov Centre, 'Factors Leading to the Escalation of Threats to Ukraine's Information Security', note 174 above, at 30.

⁴⁸⁰ Zhdanov, I, 'The Problems of Freedom of Speech and Political Censorship According to Ukrainian Journalists', note 467 above, 32–37, 34.

⁴⁸¹ Ibid.

⁴⁸² Materials from the roundtable 'Political Censorship in the Ukrainian Media', Kyiv, 3 October 2002, cited in Razumkov Centre, 'Political Censorship in Ukraine: the State of Imposition and Mechanisms of Implementation', note 172 above, at 16.

⁴⁸³ Ibid.

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quickly and effectively.⁴⁸⁴ UT-1 has also disseminated information discrediting the Verkhovna Rada and certain MPs.⁴⁸⁵

Another form of interference in the work of journalists occurs through the direct supply of materials for broadcasting from the authorities. For example, on 29 August 2002, on the occasion of a meeting of the Cabinet of Ministers for discussion of political reform, journalists were denied admittance to the meeting and were instead provided with a videotape of the event prepared by the Presidential Administration.⁴⁸⁶

The authorities have also affected media content through the use of targeted 'maintenance'. For example, on 16 September 2002, the day of mass protests against the Kuchma government 'Arise, Ukraine!', all Ukrainian television stations and many radio stations went off air for scheduled maintenance (*profilaktyka*) until 4 pm. *Profilaktyka* is routine maintenance that is usually scheduled in advance – some stations had in fact scheduled maintenance for 16 September, but others did not. Transmission towers also underwent maintenance on the same day.

Internet

There have been several incidents involving websites. For example, the Internet newspaper *Obkom* was forced to close in February 2002 after State officials entered the premises without proper warrants and seized computers. This happened after *Obkom* placed on its pages a series of critical articles on the State Tax Administration (STA) of Ukraine and its director Mykola Azarov. Serhy Sukhobok, the editor of the Internet newspaper, published an account of the case on the site, and stated that this should be taken as an official appeal to the General Prosecutor to open a criminal case against the judges who had ruled on the closing of *Obkom*. The Internet newspaper only resumed its activities nearly a year later, on 8 January 2003, under the new address of *obkom.net.ua*.

In November 2002 the Lviv Oblast branch of the Interior Ministry advised a journalist on the Ministry's Internet site, *Antyterror*, to remove information he had placed on the site, on the initiation of a criminal case against President Kuchma. On 26 October the site's editor, Irena Tershak, had received an order dated 16 October stating that she had been fired from her job. Two days later, unidentified individuals searched the publication's editorial offices and seized all computer hardware.

The Ukrainian authorities also planned to mirror measures adopted in Russia in 2000 for introducing investigation systems allowing control of e-mail and e-commerce. Fortunately, in the same year the Verkhovna Rada rejected the proposals.⁴⁸⁷ This was followed by other unsuccessful attempts.

⁴⁸⁴ Demysenko, L, 'Saima-2: Was There Anything of the Kind in Reality?', cited in Razumkov Centre, 'Factors Leading to the Escalation of Threats to Ukraine's Information Security', note 174 above, at 37.

⁴⁸⁵ Bychenko A., 'UCEPS Opinion Poll: Nation, Power, Referendum', *National Security and Defence*, No. 11, 38–41, 41.

⁴⁸⁶ Razumkov Centre, 'Political Censorship in Ukraine: the State of Imposition and Mechanisms of Implementation', note 172 above, at 15.

⁴⁸⁷ Razumkov Centre, 'Factors Leading to the Escalation of Threats to Ukraine's Information Security', note 174 above, at 32.

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Recommendations

- The authorities should refrain from engaging in any form of interference in or harassment of the private media, including through interrogations, unfair dismissals, tax investigations and accreditation procedures.
- The public media should be guaranteed full editorial independence from the authorities.
- The practice of confiscating equipment and/or seizing print runs from private media outlets (including the web-based media) should be discontinued.
- Access to Internet sites should never be blocked except where a court has held that this is necessary to prevent a breach of the law.
- All harassment of foreign media outlets, including by suspending them for periods of time or blocking accreditation of their journalists, should cease.

Belarus

- Rental of transmitters should be done on a purely commercial basis and in a non-discriminatory manner.
- The practice of treating the media as a means to disseminate information on State ideology should cease immediately. Urgent steps should be taken to:
 - (1) Suspend the obligation on BTV-1 and ONT to broadcast materials produced by the Presidential Administration.
 - (2) Discontinue the ideological meetings for journalists, including the 'campaign to streamline FM stations'.
 - (3) Discontinue any form of pressure on non-State media to disseminate messages consistent with the State ideology.

Moldova

- The authorities should refrain from interfering with the right of freedom of expression 'regardless of frontiers'.
- Wide public debate should be allowed on the Transdniestrian issue.
- The editorial freedom of the public media should be respected by the authorities.

Transnistria

- The practice of imposing prior censorship on State newspapers should be abandoned immediately.
- The practice of 'commissioning' articles for the State media should be discontinued.

Ukraine

- Immediate steps should be taken to ensure that the practice of issuing *temnyky* is eradicated.
- Indirect interference with the media, for example through targeted maintenance procedures,

6 PHYSICAL HARRASSMENT, ‘DISAPPEARANCES’, MURDER

Cases of physical harassment and, sometimes, ‘disappearances’ and murder, have, unfortunately, occurred in all three countries. This represents an extreme form of interference in the work of the media, which creates a very powerful ‘chilling effect’ in the journalistic community as a whole. What has aggravated the problem is the fact that, although investigations are normally initiated, they are usually not thorough or impartial, and they have failed for the most part to shed light on what happened to victims. In such cases impunity is the rule.

Physical attacks against journalists warrant thorough and impartial investigations. They are not only violations of the right to freedom of expression, but also of the right not to be subjected to ill-treatment, protected at Article 3 of the ECHR and Article 7 of the ICCPR, and the right of security of person, protected at Article 5 of the ECHR and Article 9 of the ICCPR. The States party to these international agreements have a positive responsibility to ensure the enjoyment of the rights enshrined therein, including through protection, investigations and prosecution of those responsible for violations. States also have a positive obligation to conduct investigations into murders, with a view to bringing those responsible to justice.

Furthermore, when public officials are implicated, they have direct responsibility for the violations. The 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) also applies in these cases.⁴⁸⁸ Article 12 of CAT states that each State party is obliged to carry out a prompt and impartial investigation in cases of infliction of severe pain or suffering, whether physical or mental, for reasons including that of punishing a person for an act s/he has committed.

6.1 Belarus

6.1.1 ‘Disappearances’

Dmitri Zavadski

On 27 July 2000 Dmitri Zavadski, a cameraman for the Russian channel Pervy Kanal,⁴⁸⁹ ‘disappeared’ after setting off for Minsk-2 airport to collect his colleague Pavel Sheremet.⁴⁹⁰ The police later found his car, apparently wiped clean of fingerprints, in the airport car park.

Sheremet and Zavadski had been sentenced to suspended jail terms in early 1998 for ‘illegal crossing of the border’ while filming a news item on the Belarus–Lithuania border that demonstrated, in stark contrast to official pronouncements, that there were no border controls in force. Before working for Pervy Kanal, Zavadski had worked as a cameraman for Belarusian television, acting as Lukashenka’s personal cameraman.

In October 2001 four men, Valeri Ignatovich, Maxim Malik (both former officers of the Almaz Special Police Force), Aleksei Guz (former student of the Police Academy) and Serhiy Savushkin (a

⁴⁸⁸ CAT was ratified by Belarus and Ukraine but not by Moldova.

⁴⁸⁹ Then known as ORT.

⁴⁹⁰ This was but the latest in a long line of mysterious ‘disappearances’ of Belarusian opposition figures. In 1999, Yuriy Zakharenko, a former Minister of the Interior, Viktor Gonchar, a deputy of the 13th Supreme Soviet, and Anatoli Krasovski, a businessman, also ‘disappeared’. See ARTICLE 19, *The Mechanics of Repression: Obstacles to Free and Fair Elections in Belarus*, note 9 above.

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former convict), went on trial charged with the kidnapping (but not murder) of Zavadski and other crimes. The trial was held behind closed doors amid tough security operations.

Investigators reportedly identified Zavadski's blood in Ignatovich's car and alleged he carried out the kidnapping to cover up his involvement in Russia's war against Chechen separatists on the rebel side. The General Prosecutor asked for the death sentence for the four men, under Article 139 of the Criminal Code. On 14 March 2002 Ignatovich and Malik were found guilty of kidnapping Zavadski and sentenced to life imprisonment. The two others were sentenced to 25 and 12 years' imprisonment.

Relatives of Zavadski subsequently stated that they were unsatisfied with the outcome, as the trial did not shed light on what happened to Zavadski. They claimed that Ignatovich was made a scapegoat to cover up for the real perpetrators of the crime. In a statement to the media, Zavadski's mother's lawyer, Igor Aksionchyk, said that the Prosecutor General Viktor Sheiman should be the main suspect in the Zavadski case and that it was Lukashenka who ordered the investigation of this case to be halted. Aksionchyk was himself sued for making these allegations.⁴⁹¹ In July 2002 the Supreme Court upheld the lower court's decision and rejected the relatives' request to continue the investigation

The Zavadski case has attracted international attention and it was denounced in PACE Recommendation 1589.⁴⁹²

6.1.2 Physical Attacks

A number of journalists have been physically attacked in Belarus. In 2002 these included Henadz Kesner of Radio Racyja, Yuriy Humianiuk of *Pahonia* and Stas Pachobut of *Navinki*.⁴⁹³

Physical harassment also extends to NGOs. For example, the Belarusian Helsinki Committee (BHC) was harassed in 1998 when it tried to hold a conference with judges, and the police attempted to arrest some of its members during demonstrations. Violence escalated during the 1999 presidential elections, during which a number of human rights activists were detained and/or beaten.⁴⁹⁴

There were also reports of arbitrary arrests in the regions for distributing non-State newspapers.⁴⁹⁵

6.2 Moldova

The Association of Electronic Media (APEL) issued a declaration on 10 February 2003, stating that since the beginning of 2003 threats to the media had intensified, including direct and indirect pressure on Moldovan journalists. The declaration called on the Co-ordinating Council on the Audiovisual to be more active in defending the rights of journalists, and on Moldovan broadcasters and international organisations to be vigilant in monitoring such abuses.

6.2.1 Physical Attacks

Ungheni

In March 2002 two journalists were detained by the police in Ungheni (Western Moldova) for having interviewed people who were planning to join demonstrations in Chişinău protesting against, *inter alia*,

⁴⁹¹ See Section 8.1.1.

⁴⁹² See note 165 above.

⁴⁹³ Viasna, note 1 above, at 7.

⁴⁹⁴ ARTICLE 19 interview with the Belarusian Helsinki Committee, March 2003.

⁴⁹⁵ Viasna, note 1 above, at 6.

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the newly elected Communist Party's repression of media freedom. They were interrogated and physically threatened.⁴⁹⁶

Kommunist

On 10 April 2002 a bomb exploded outside the offices of the Communist Party newspaper, *Kommunist*, in Chişinău. The bomb damaged the building, although no-one suffered serious injuries. An investigation was opened but the Communist Party blamed the incident on 'extremist elements'.⁴⁹⁷

Sens

On 4 September 2002 Valeriu Renita, editor-in-chief of the weekly *Sens* demanded that the authorities put an end to 'aggressive trends in the activities of the oppositionist PPCD'. Two bodyguards of the party's leader Iurie Rosca had assaulted the newspaper's marketing agent Ion Posticu who was distributing the newspaper in the streets and forced him to throw 40 copies of the newspaper into a dustbin and set them on fire. The bodyguards also warned him against 'selling this filth again.'

Other

Some journalists have also been arbitrarily detained. In October 2001, the Chişinău police detained for several hours a television crew from *Olvia Press*, Transdnistria's official news agency. The journalists were interrogated on their position on the question of Moldova's territorial integrity and their videotapes were confiscated.⁴⁹⁸

6.3 Ukraine

6.3.1 Murder and 'disappearances'

In Recommendation 1589, PACE noted that in Ukraine violence has continued to be used to intimidate investigative journalists. According to the data publicised by the Institute for Mass Information (IMI), three journalists died or 'disappeared' between January and March 2003. The number had gone up to seven by the autumn.⁴⁹⁹ Although law-enforcement agencies normally stated that the deaths were not due to the journalists' professional activities, in a 2002 poll 48.3 per cent of journalists reported to have been threatened because of their jobs.⁵⁰⁰

Georgiy Gongadze

Georgiy Gongadze, editor of *Ukrainska Pravda*, 'disappeared' on 16 September 2000. On the night of 2–3 November 2000, a decapitated corpse was found outside the town of Tarashcha and, although the

⁴⁹⁶ IJC, *Moldova Media News*, 'Participants in Mass Rally Address Media Issues, Authorities Detain Journalists', 31 March 2002, Vol. 2, No. 7, 9 April 2002, <http://ijc.iatp.md/en/mmnews/2002>.

⁴⁹⁷ International Federation of Journalists, cited in 'Offices of Communist Newspaper Bombed', note 24 above.

⁴⁹⁸ In retaliation, the Transdnistrian authorities revoked the accreditation of some journalists from Chişinău, which was returned only after the Chişinău authorities made an official apology. Committee for the Protection of Journalists, protest letter of 25 November 2001, <http://www.cpj.org/attacks01/europe01/moldova.html>

⁴⁹⁹ Freedom of Speech Barometer, <http://imi.org.ua/barometr/>. The number of deaths or 'disappearances' was five for 2001 and two for 2002. Overall data of the Institute of Mass Information show that between 1991 and 2002, 25 journalists died in Ukraine, 13 were arrested or detained and 122 were beaten or threatened with physical violence.

⁵⁰⁰ Zhdanov, I. 'The Problems of Freedom of Speech and Political Censorship According to Ukrainian Journalists', note 467 above, at 34.

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headless corpse was soon formally identified as that of Gongadze, authorities delayed conducting a full autopsy. The missing head has never been recovered and the time and cause of Gongadze's death have never been formally determined.

The Melnychenko tapes⁵⁰¹ were released shortly after, purporting to show President Kuchma, his chief of staff, Volodymyr Lytvyn, and Interior Minister Yuriy Kravchenko discussing ways of getting rid of Gongadze. Since then the investigation into the Gongadze case has made little progress.

On 14 September 2002 the General Prosecutor Sviatoslav Piskun confirmed for the first time officially that Gongadze's murder was politically motivated. 'This was not an ordinary murder, this was a very complex murder ... It was a contract political killing'. Piskun announced that a team of American experts would arrive in Ukraine to help investigate the case. He also said that the General Prosecutor's Office would conduct an examination, with the participation of international experts, of the Melnychenko tapes. Piskun added that Ukrainian investigators had evidence that some of the Melnychenko's tapes were doctored.

In February 2000 former Ukrainian MP Oleksandr Yelyashkevych, who was involved in the investigation of the Gongadze case, was attacked by unknown assailants and suffered a concussion. He later maintained that the attack was ordered by President Kuchma. On 9 October 2002 he announced that he had obtained political asylum in the United States.⁵⁰²

On 3 September 2002 the *ad hoc* Parliamentary Committee on the Gongadze, Aleksandrov and Yelyashkevych cases (the *ad hoc* Committee)⁵⁰³ decided to address a request to the General Prosecutor's Office to instigate criminal proceedings against Kuchma and other current and former top officials over the kidnapping of the journalist.⁵⁰⁴ The case was initiated on 5 October 2002 by Kyiv Court of Appeals Judge Yuriy Vasylenko.⁵⁰⁵ However, in December 2002 the Supreme Court stopped the investigation and instead recommended that the Verkhovna Rada dismiss Vasylenko, maintaining that the judge had violated the Constitution by initiating a criminal case against the President.⁵⁰⁶

During a press conference on 14 July 2003 Piskun announced that a criminal group known as the 'gang of werewolves' was suspected of murdering journalist Georgiy Gongadze.⁵⁰⁷ Piskun added that the investigation into the case was nearing completion – something that he had been reiterating over the summer. These statements, and attempts to deflect responsibility from Kuchma himself, may very well be a strategic move to improve the much discredited image of Kuchma as a political leader.⁵⁰⁸

The 'gang' comprises ex-militiamen, one of whom, Ihor Honcharov, was arrested in the summer of 2003. He allegedly underwent interrogations and beatings while in detention. He died on 1 August 2003, reportedly as a result of the ill-treatment. Shortly before his death his lawyer gave a letter to a representative of the Institute of Mass Information (IMI), in which Honcharov provided details of

⁵⁰¹ See Section 2.1.3.

⁵⁰² Yelyashkevych reportedly said that he had been granted political asylum because his life was in danger.

⁵⁰³ A resolution was passed by the Verkhovna Rada on 12 July 2002 'On the Creation of a Parliamentary *ad hoc* Committee on the Gongadze, Aleksandrov, Yelyashkevych Cases and on Violation of the Laws and Constitution of Ukraine by State officials'. See below on Aleksandrov and Yelyashkevych.

⁵⁰⁴ It stated: 'There is sufficient evidence indicating that Kuchma, Verkhovna Rada head Volodymyr Lytvyn, former Interior Minister Yuriy Kravchenko and lawmaker Leonid Derkach were collaborators in crime as organizers of the kidnapping of Gongadze'.

⁵⁰⁵ Vasylenko stated that he decided to initiate the case on the basis of an appeal by MPs, documents from the *ad hoc* Committee and evidence included in the secret Melnychenko tapes.

⁵⁰⁶ Human Rights Watch, note 44 above, at 7–8.

⁵⁰⁷ The 'gang' was also suspected of kidnapping and killing 14 other people.

⁵⁰⁸ See Kuzio, note 44 above.

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Gongadze's kidnapping and killing. At the beginning of September 2003 the authorities were still attempting to verify the letter's authenticity and conclusive information on its content was still to be disclosed to the public. However, Hryhoriy Omelchenko, MP and Head of the *ad hoc* Committee, was reported as believing that this could be part of an attempt to use the 'gang' as a scapegoat.

PACE Recommendation 1589 specifically refers to this case where it states that 'it is unacceptable that no substantial progress has been made in the investigation of crimes ... such as the murder of Georgiy Gongadze ...'.⁵⁰⁹

Ihor Aleksandrov

On 3 July 2000 Ihor Aleksandrov, director of the non-State regional TV company TOR in Slavyansk (Donetsk region), was attacked by unknown assailants with baseball bats as he entered his office. He was rushed to the local city hospital where he underwent surgery, but never regained consciousness and died from head injuries four days later. Aleksandrov produced a television programme, 'Bez Retushi' ('Uncensored'), which featured investigative coverage of government corruption and organised crime. The programme often criticised the local authorities.

Yuriy Veredyuk, a homeless person, was accused of Aleksandrov's murder. On 17 May 2002 the Donetsk Court of Appeal ruled that there was not sufficient evidence to establish Veredyuk's guilt and instructed officials to reopen the murder investigation. Judge Ivan Korchistiy also added that Veredyuk's life could be in danger as he was 'a carrier of information'. On 20 May 2002 the Donetsk Prosecutor's Office appealed to the Supreme Court against the decision of the Donetsk Court of Appeal.

On 19 July 2002 Veredyuk died of a heart attack, according to doctors. However, some have speculated that Veredyuk was used as a scapegoat, and that the sustained pressure put on him throughout the trials contributed to his death.

Volodymyr Yefremov

On 14 July 2003 a journalist from Dnipropetrovsk and member of IMI, Volodymyr Yefremov, was killed in a car crash, in a collision with a truck on the border of Dnipropetrovsk and Korovohrad oblasts. Yefremov's family is reported to believe that this was no accident but murder. Some time before the car crash Yefremov had agreed to testify in a case involving the Ukrainian former Prime Minister, Pavlo Lazarenko, which might have revealed widespread corruption among high-ranking officials. He had also monitored press freedom violations. Following this case, IMI received two anonymous videotapes showing the accident.

Mykhailo Kolomiets

On 18 November 2002 the body of Mykhailo Kolomiets, head of the news agency *Ukrainski Novyny*, was found hanging from a tree in Molodechno, Belarus. An official of the Ukrainian Ministry, Volodymyr Yevdokimov, told the media that it was clearly a case of suicide unconnected to the journalist's work.

Kolomiets 'disappeared' on 21 October 2002 and his news agency reported him missing on the 28th, noting that it could be linked to his journalistic work and the agency's occasional criticism of the authorities. The police said Kolomiets had left Ukraine for Belarus on 22 October and made phone calls on the 28th to his staff, his family and a friend. Allegedly Kolomiets stated in his telephone calls that he had left the country with the intention of killing himself.

⁵⁰⁹ See note 165 above, Guideline III.

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Andriy Feshchenko

On 31 May 2002 Ukrainian National TV Company Deputy Head Andriy Feshchenko was found dead inside his jeep in Kyiv. Police found a hunting rifle and a suicide note from Feshchenko in the car. The prosecutors said that they would be looking for suspects who might have forced Feshchenko to commit suicide.

Yuliy Mazur

In 2000 Yuliy Mazur of the Odessa daily *Yug*, was found dead on the street in Odessa. An official autopsy concluded that the cause of death was ethyl alcohol intoxication. His colleagues, however, insisted that he never drank alcohol and he had received threatening phone calls prior to his death. *Yug* had shortly before run a series of articles implicating a local police chief in corruption.

6.3.2 Physical Attacks

Andriy Ivanets

On 1 July 2003 three unknown persons mugged Andriy Ivanets, deputy editor-in-chief of the Simferopol weekly *Krymskie Novosti*. Although Ivanets was not certain that this accident was related to his professional activities, a few days before the mugging *Krymskie Novosti* journalists and its editor-in-chief had declared that they would leave the newspaper due to the pressure exercised on them by the newspaper's owners to provide biased coverage of political events.

Iryna Chornobay

Iryna Chornobay, a journalist from the newspaper *Trety Sektor* in the Luhansk region, was attacked in her flat by unknown individuals on 30 December 2002. The previous day Chornobay had published an article that criticised the local mayor, yet the police reportedly believed that the incident did not occur because of Chornobay's professional activities. On 13 January 2003 Oleksandr Yefremov, Governor of Luhansk stated in an interview that he would personally follow the investigation on the attack. At the end of January 2003 the Severodonetsk city police (also in the Luhansk region) detained two suspects.

Valeri Vorotnik

In July 2002 Valeri Vorotnik, editor-in-chief of *Antena*, a non-State newspaper in Cherkasy, was beaten up by three strangers. He was knifed in the hand and stomach.

Volodymyr Boyko

At the end of June 2002 Volodymyr Boyko, a journalist of the Donetsk newspaper *Salon* was arrested by the tax police for alleged tax evasion and detained for a week in deplorable prison conditions. Boyko himself links his arrest with his critical articles on the work of the Donetsk region tax police. He was released on bail on 5 July.

On 24 February 2003 Volodymyr Boyko sued the Prosecutor's Office of the Donetsk region and asked 1,000 hryvnias (US\$188) in moral damages for his arbitrary arrest and treatment while in detention. However, the case was closed at the end of March under Article 6(2) of the Ukrainian Criminal Code (absence of the *corpus delicti*).⁵¹⁰

⁵¹⁰ Institute for Mass Information, 25 February 2003, <http://imi.org.ua/?id=read&n=453&cy=2003>.

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Recommendations

- Adequate measures should be taken to end the climate of impunity, including by devoting sufficient resources and attention to preventing attacks on journalists and others exercising their right to freedom of expression, thoroughly and impartially investigating such attacks when they do occur, bringing those responsible to justice and compensating victims.
- Particular efforts should be made to ensure that officials do not engage in this form of harassment and that those who do are brought to justice.

7 DOMESTIC LEGISLATION AND ITS IMPACT ON THE MEDIA⁵¹¹

7.1 Comparison

There remains a large gap between law and practice in many areas of life in the region. Selective implementation of the law, as well as abuse of provisions to suit the authorities' needs, is also common.

In Belarus there are still many draconian provisions, which makes it near-impossible for the media to function in compliance with the law, and without experiencing reprisals of a legal nature from the authorities.

Ukraine seems to have made a special attempt to impress its citizens and the international community by initiating measures towards democracy-building with the passing of presidential decrees and new laws promising substantial changes.⁵¹² However, most such legal texts have remained largely ineffective and practice does not reflect the positive principles enshrined in the legislation. Similarly, in Moldova the adoption of the Law on Public Service Broadcasting and the Law on Access to Information has put the country in a position to set high standards in these areas vis-à-vis Belarus and Ukraine; yet, once again, the practical effects of the adoption of these provisions are still to become tangible.

Many features are present in all countries in question, as outlined below.

7.1.1 Presence of Press Laws

Legislation in the three countries provides for the regulation of the press. ARTICLE 19 generally views press laws with caution as they can be a tool for governments to abuse rather than protect the right to freedom of expression and information. At the same time, ARTICLE 19 understands that governments' motivation in passing press laws may derive from a desire to improve general standards of journalism and to provide guidance to media owners and editors. However, in the three countries the regulation of the press is excessively prescriptive and does not succeed in furthering these goals.

7.1.2 Registration Requirements

Belarus, Moldova and Ukraine have legislation containing provisions for the registration of print media outlets. Particularly stringent requirements are present in Belarus, where the location of newspaper offices has to be approved in order to make registration possible.⁵¹³ Such approval has become increasingly difficult to obtain.

⁵¹¹ For legislation relating to freedom of information and defamation, see Chapters 9 and 8 respectively.

⁵¹² For example, Presidential Decree 'On Additional Measures to Ensure Transparency in the Working of Government Bodies' of August 2002 (see Section 9.1.3); Presidential Decree 'On the Decision of Ukraine's National Security and Defence Council of 17 June 1997 'On Immediate Measures at Regulating the System of Pursuance of the State Information Policy and Perfection of the State Regimentation of Information Relations'' of July 1997; and the law 'On the Insertion of Changes to Certain Laws of Ukraine which Guarantee Unimpeded Use of the Human Right of Freedom of Speech' of April 2003.

⁵¹³ See Section 7.2.1.

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Under international law, licensing requirements for the print media⁵¹⁴ cannot be justified as a legitimate restriction on freedom of expression since they significantly interfere with a free flow of information; they do not pursue any legitimate aim recognised under international law; and there is no practical rationale for them, unlike for broadcasting where limited frequency availability justifies licensing.

On the other hand, technical registration requirements do not, *per se*, breach the guarantee of freedom of expression as long as they meet the following conditions:

- there is no discretion to refuse registration, once the requisite information has been provided;
- the system does not impose substantive conditions upon the print media;
- the system is not excessively onerous; and
- the system is administered by a body which is independent of government.

However, registration of the print media is unnecessary and may be abused, and, as a result, is not required in many countries.⁵¹⁵ ARTICLE 19 therefore recommends that the print media not be required to register. As the UN Human Rights Committee has noted: 'Effective measures are necessary to prevent such control of the media as would interfere with the right of everyone to freedom of expression.'⁵¹⁶

7.1.3 Bureaucracy

In the three countries registration proceedings, as well as licensing ones, are complex and lengthy. At least in part, the problem originated in the Soviet period, notorious for its red tape, which still persists in most spheres of life in post-Soviet countries. Current governments have not taken positive action to facilitate the unfettered functioning of non-State media outlets.

In addition to creating numerous possibilities for abuse, bureaucracy creates an excessively cumbersome system for the media, detracting from its ability to fulfil its role in a democratic society – that of disseminating information in the public interest in a timely fashion.

7.1.4 Lack of Independence of Regulatory Bodies

In the sphere of the broadcast media, the countries in question have provisions that do not allow for the sufficient independence of the regulatory bodies responsible for allocating licences. State bodies are involved in decisions concerning licence allocation, either by electing the members of the regulatory bodies, or through other forms of interference. In Belarus this problem is particularly acute.⁵¹⁷

Instead, State bodies must not be involved in decision-making concerning licensing. All public bodies that exercise powers in the areas of broadcast and/or telecommunications regulation should be protected against interference, particularly of a political or commercial nature.⁵¹⁸ Their institutional autonomy and independence should be guaranteed and protected by law, including in the following ways:

⁵¹⁴ Involving a discretion by the authorities to deny registration. Registration of print media outlets is normally not denied in Moldova and Ukraine upon submission of the relevant paperwork, yet there is potential scope for the authorities to hamper registration.

⁵¹⁵ For example, in Australia, Canada, Germany, the Netherlands, Norway and the United States of America.

⁵¹⁶ General Comment 10(1) in Report of the Human Rights Committee (1983) 38 GAOR, Supp. No. 40, UN Doc. A/38/40.

⁵¹⁷ See Section 7.2.2.

⁵¹⁸ See also Section 3.4.

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- specifically and explicitly in the legislation which establishes the body and, if possible, also in the constitution;
- by a clear legislative statement of overall broadcast policy, as well as of the powers and responsibilities of the regulatory body;
- through the rules relating to membership (in particular, members should be appointed in a manner which minimises the risk of political or commercial interference);
- by formal accountability to the public through a multi-party body; and
- in funding arrangements.

7.1.5 Closure of a Media Outlet

All three countries provide for the possibility of closing a media outlet in case of violation of media laws. The closure of a print media outlet is a disproportionate response to any violation and would have an intimidating effect on all media. In ARTICLE 19's view, no abuse, no matter how egregious, justifies closure of an operating print media outlet, and closure should only ever be an absolute last resort for broadcasters.⁵¹⁹

7.1.6 Extremism Laws

Extremism laws were adopted in all three countries between 2002 and 2003.⁵²⁰ Although restrictions on the grounds of national security and public order are permissible under international law, PACE Recommendation 1589 warns that recent terrorist attacks can 'provide a pretext for introducing new restrictions to freedom of information.'⁵²¹

The ARTICLE 19 *Johannesburg Principles* state that:

A restriction sought to be justified on the ground of national security is not legitimate unless its genuine purpose and demonstrable effect is to protect a country's existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government.⁵²²

As the Supreme Court of India, for example, held: 'the anticipated danger should not be remote, conjectural or far fetched. It should have a proximate and direct nexus with the expression. The expression should be intrinsically dangerous to the public interest.'⁵²³ The State should also prove in such cases that the restriction imposed is the least restrictive means possible for protecting the interest threatened.

7.1.7 Tendency to Incorporate Ethics in the Legislation

Provisions on ethics are a matter of self-regulation for the journalistic profession, yet these have been crystallised in the legislation of the three countries. An example is the Moldovan Press Law, whose Article 1 establishes the right of every person to receive information, with an emphasis on the requirement that the press publish *true* information. This is even included in the Constitution of

⁵¹⁹ Broadcasters are treated differently in this context for a combination of factors: broadcasters use a public resource; they have to respect licence conditions; and broadcasting is more invasive than the press.

⁵²⁰ In Belarus at the beginning of 2002, and in Moldova and Ukraine in April 2003.

⁵²¹ See note 165 above, Guideline XIV.

⁵²² *The Johannesburg Principles on National Security, Freedom of Expression and Access to Information*, London: ARTICLE 19, 1996, Principle 2, <http://www.article19.org/docimages/511.htm>.

⁵²³ *S Rangarajan v. P J Ram* [1989](2) SCR 204, 226.

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Moldova.⁵²⁴ In addition, Article 20(4) of the Moldovan Press Law refers to journalistic ethics where it states that ‘the duties of a journalist ensue from the legislation in force, from the present law and professional ethics.’ Article 26 of the Ukrainian Press Law similarly concerns journalistic ethics and the publication of truthful information. Analogous provisions are found in Belarusian legislation.⁵²⁵

The rationale for the inclusion of these provisions in the legislation is that of ensuring more efficiency in the functioning of media outlets and better coverage of events, also by urging journalists not to disregard their responsibilities. However, the harm done by these provisions is likely to outweigh the benefits, due to the significant ‘chilling effect’ they are likely to exert on the work of the media. Although journalists should strive to be professional at all times, it is simply not possible to ensure the veracity of all information published, as even the very best journalists make mistakes. The incorporation of ethical principles in the legislation creates a rigid framework for the solving of ethical issues in the media, as well as creating additional opportunities for abuse by the authorities. Furthermore, experience in many countries has shown that the professional embarrassment caused by ethical bodies is very effective in deterring deliberate negative practices.

Recommendations

- Regulatory obligations for the media, to the extent that they are legitimate, should be designed to place as little burden on the media as possible. Excessively onerous rules should, in particular, be avoided.

Press Laws

- Consideration should be given to repealing all press laws.
- If press laws are retained, steps should be taken to ensure that they do not impose excessively onerous obligations on the media and that they do not unduly restrict the right to freedom of expression.

Registration of Print Media Outlets

- Print media outlets should not be required to register.
- If registration is retained, at a minimum it should conform to the following:
 - a) the system must be overseen by an independent body;
 - b) there must be no discretion to refuse registration, once the requisite information has been provided;
 - c) the system must not impose substantive conditions upon the print media; and
 - d) the system must not be excessively onerous.

⁵²⁴ Its Article 34(4) that journalists must provide correct information.

⁵²⁵ For example, Article 40 of the Law on Press and Other Mass Media states that journalists are under an obligation to publish ‘objective’ information.

Regulatory Bodies

- All public bodies which exercise powers in the areas of broadcast and/or telecommunications regulation should be protected against interference, particularly of a political or commercial nature. Their institutional autonomy and independence should be guaranteed and protected by law, including in the following ways:
 - a) specifically and explicitly in the legislation which establishes the body and, if possible, also in the Constitution;
 - b) by a clear legislative statement of overall broadcast policy, as well as of the powers and responsibilities of the regulatory body;
 - c) through the rules relating to membership;
 - d) by formal accountability to the public through a multi-party body; and
 - e) in funding arrangements.

Closure of Media Outlets

- All provisions allowing for the closure of print media outlets should be repealed.
- Where permitted, the closure of broadcast media outlets should by law be allowed to be imposed only as an absolute last resort where less draconian measures have been applied and have failed to correct the problem.

Extremism Laws

- Restrictions on free expression to prevent the dissemination of materials of an ‘extremist nature’ should be imposed only when:
 - a) the information in question poses a direct and imminent risk of hindering the legitimate interest of national security and public order;
 - b) the risk of such harm is substantial;
 - c) the harm threatened is serious;
 - d) the restriction imposed is the least restrictive means possible for protecting that interest; and
 - e) the restriction is likely to be effective in avoiding the threatened risk.

Provisions on Ethics

- Journalistic ethics should only be upheld as a matter of professionalism and through self-regulatory systems. Any legal requirements to abide by ethical rules should be repealed.

7.2 Belarus

Among the most worrisome aspects of Belarusian media law, in addition to it being complex and media-unfriendly, is the fact that presidential decrees are routinely adopted, apparently on an *ad hoc* basis. While there are generally few opportunities for prior public consultation in the development of new legislation, this is completely absent in the case of presidential decrees, which simply appear without warning. Reportedly the President issues more than 200 decrees a year and they have immediate effect.⁵²⁶

Of concern in Belarus are also the issues of registration and re-registration. Not only are registration proceedings problematic, but, in several instances, the registration of media outlets (and

⁵²⁶ These are by law temporary decrees for which Parliament approval is not required. However, they soon become *de facto* permanent.

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NGOs) have later been declared invalid for dubious reasons.⁵²⁷ In these cases, a media outlet has to go through the registration process once again.

Another worrisome feature is the facility with which the authorities may close a media outlet. Many newspapers resort to self-censorship, or they employ lawyers to ensure that expressions used in articles do not give rise to possible lawsuits, as this might lead to closure.

7.2.1 *The Law on Press and Other Mass Media*

The Law on Press and Other Mass Media (the Press Law) was adopted in January 1995 and amended in June 1996, January 1998, and July and December 1999. It is the main legal instrument in the media field, and regulates both the print and broadcast media. However, the authorities have also issued a barrage of presidential decrees, resolutions and by-laws, as well as amendments to the criminal code⁵²⁸ that have had an adverse effect on the right to free expression.

There are some positive provisions in the Press Law, including the right to receive and impart information, the right to freedom of expression, the prohibition of censorship, and the statement that the media is at the basis of the enjoyment of citizens' constitutional rights. However, other draconian provisions virtually nullify these positive elements.

In particular, stringent requirements on registration were introduced in 1999, creating an obligation for all newspapers to register and to have their legal address approved by the authorities. The powers of the State Committee of the Press were also increased, giving it a formal role, and enabling it to make decisions on infringements of the law. Furthermore, the role of courts was limited: it was established that decisions of the authorities to suspend media outlets no longer had to be reviewed by a court. Limits on the distribution of foreign periodicals were also included, along with the prohibition of importing or exporting materials which do not meet the requirements of Article 5.⁵²⁹

Article 5, Warning and Lawsuits

Article 5 of the Press Law provides a list of instances in which the media is not allowed to disseminate information.

These include appeals for the seizure of power; forcible change of the constitutional order; violation of the State's territorial integrity; and stirring up national, social, racial, religious enmity or discord: all provisions that can be very easily abused. They also include dissemination of information defaming the honour and dignity of the President and other high-ranking public officials,⁵³⁰ and information on 'unfinished materials on interrogations, preliminary investigations and court cases.' The latter can only be made public with 'written permission of the respective person conducting the interrogation, the investigator or the judge.'

Article 5 also includes a prohibition of dissemination of information on 'behalf of political parties, trade unions or other NGOs which have failed to be officially registered (re-registered) [by the State] following established procedure'. Journalists' scope of action is severely impaired by this

⁵²⁷ Such as for the change of address by a media outlet, or modification of broadcasting legislation. NGOs can also be required to re-register.

⁵²⁸ With regard to defamation. See 8.2.1.

⁵²⁹ See below.

⁵³⁰ See also Section 8.2.1.

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provision, as the authorities have the ultimate decision as to whether to register political parties and organisations.

Moreover, the cost of infringement of Article 5, through the accumulation of two or more warnings,⁵³¹ is extreme: it may lead to the closure of a media outlet. Article 5 should be read in conjunction with Article 16(5), stating that:

Basis to *terminate by court the activities of a mass medium shall be multiple violations during one year* by the editorial board of requirements of Article 5 of the present Law, when written warnings have been made... [italics added].

Warnings are routinely imposed for violation of the legislation, whether real or alleged. It has become common practice to impose two warnings at the beginning of the year. A media outlet usually faces closure if three warnings are accumulated within one year: consequently the imposition of two warnings constitutes a very powerful ‘chilling effect’, causing newspapers to err on the side of caution during the rest of the year to avoid facing closure.⁵³² A media outlet has the right to appeal against a warning.

Lawsuits against the media even more frequent than warnings. After the launch of a lawsuit, the authorities may confiscate the equipment of media outlets. In 2002 this happened, for example, to *BGD*, *Nasha Niva*, *Shklovskiy Naviny* and *Kutseina*.⁵³³ Media outlets’ bank accounts may also be frozen by the authorities. For example, in 2002 the account of *Narodnaya Volya* was frozen for 15 days, during which the newspaper barely managed to continue publishing.⁵³⁴

A newspaper that has been at the receiving end of a considerable number of lawsuits and warnings, eventually leading to its suspension in May 2003, is *BDG*. In one extreme case, *BDG* received three warnings in one day, one month before the 2001 presidential elections. The fact that the warnings were imposed for trivial reasons seems to indicate that the aim was to intimidate the newspaper prior to the elections.⁵³⁵

In addition, *BDG* and its supplement *Dlya Sluzhebnoho Polzovaniya*⁵³⁶ received three warnings between 20 and 22 May 2003.⁵³⁷ *BDG* promptly appealed against the warnings at the Supreme Economic Court yet an order to suspend the outlet was issued prior to the decision of the court, through proceedings that have been defined as extra-legal.⁵³⁸ On 8 July 2003 the Supreme Economic Court of Belarus partially annulled the warning imposed on *Dlya Sluzhebnoho Polzovaniya*,⁵³⁹ yet this did not modify the effects of the ruling on suspension.⁵⁴⁰

⁵³¹ Warnings can be issued by the Ministry of Information and Prosecutors.

⁵³² ARTICLE 19 interview with Belarusian journalists, February 2003.

⁵³³ Viasna, note 1 above, at 6.

⁵³⁴ ARTICLE 19 interview with *Narodnaya Volya*, April 2003.

⁵³⁵ The warnings were lifted following *BDG*’s appeal. ARTICLE 19 interview with *BDG*, February 2003.

⁵³⁶ ‘For Official Use’.

⁵³⁷ For 1) violation of the honour of dignity of the president; 2) dissemination of information on court proceedings without the judge’s authorisation; and 3) for justifying the unlawful actions of a public official.

⁵³⁸ For example by the organisation Charter 97, 29 May 2003.

⁵³⁹ ‘BDG Partially Justified’, Charter 97, 8 July 2003, <http://www.charter97.org/eng/news/2003/07/08/bdg>.

⁵⁴⁰ At the end of the three-month suspension, on 3 September 2003, *BDG* resumed activities, yet as a bi-weekly rather than a four-weekly. Reportedly as early as April 2003 the Ministry of Information received presidential orders to close the newspaper. This followed an article on the Second World War, advancing the view that Belarusian partisans co-operated with German and Russian forces. President Lukashenka subsequently declared that this type of publication offended the memory of their grandfathers.

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The newspapers *Narodnaya Volya*, *Vecherniy Stolin* and *Navinki* also accumulated warnings in 2003.⁵⁴¹ Five such warnings were imposed between 20 and 23 May 2003. Warnings can also ‘get personal’. Following the suspension of *BDG*, the General Prosecutor officially warned Petr Martsev, founder of the company that issues *BDG*, and the newspaper’s editor-in-chief Svetlana Kalinkina, for continuing to publish the newspaper under a different name despite the suspension orders.⁵⁴² Individuals were also summoned to the office of the General Prosecutor for ‘educational talks’: these included Pauliuk Kanavalchyk and Aliaksandr Silich, respectively editor-in-chief and deputy editor-in-chief of *Navinki*, and Maryna Koktysh, journalist at *Narodnaya Volya*.⁵⁴³

At the same time, there is wide impunity for abuses by the State media. In 2002, on a number of occasions, the State media published false and degrading information against Protestants, a religious minority in Belarus, which went unpunished. Furthermore, the State newspaper *Sovietskaya Belarussija* accused a youth activist, Aleksei Shydlovski, of engaging in illegal activities. Shydlovski sued the newspaper and, despite the fact that the allegations made against him were false, the court did not satisfy his claim.⁵⁴⁴

Cases on Termination of Activities

Termination of activities is a method of silencing independent voices increasingly employed by the authorities. This pattern commenced at the end of 2001, with the closure of the Hrodna newspaper *Pahonia*, followed by other newspapers including *Rabochiy*, *Nasha Svaboda*, *Svobodnyje Novosti*, *Mestnoye Vremya*, *Volny Horad* and *Belarusskaya Delovaya Gazeta*.⁵⁴⁵ *BDG*, *Predprinimatelskaya Gazeta* and *Ekho* have been suspended. Throughout 2002 and 2003, approximately 20 newspapers ceased publishing.⁵⁴⁶

For example, *Svobodnyje Novosti* was closed at the end of August 2002 by the Ministry of Information. Its reincarnation, *Svobodnyje Novosti Plus* subsequently appeared, yet the State-owned Belarusian Printing House refused to print its editions, while the distribution company Belpochta (also State-owned) refused to distribute it to subscribers.⁵⁴⁷

Some radio and television stations have also been shut down. For example, on 7 July 2003 the Cabinet of Ministers passed a ruling to close down the Minsk office of Russian television company NTV, for the publication of untruthful information pending discussions by the Belarusian legislature on the issue of foreign media operating in Belarus. The authorities noted that the ‘discussion period’ would last a minimum of six months, during which virtually no public debate would be allowed on this issue.⁵⁴⁸ The

⁵⁴¹ Respectively, for reporting court proceedings without the judges’ approval; for defaming the President though satire; and for defaming local officials in *Stolin*.

⁵⁴² However, under Belarusian law, a newspaper with a different name is considered a different newspaper, even if it is produced by the same staff and in the same premises. ‘Reprimands Becoming Personal, *BDG*’, 10 July 2003, <http://www.charter97.org/eng/news/2003/07/10/bdg>

⁵⁴³ Statement of the Belarusian Association of Journalists on the Increase of Pressure against the Independent Media and Journalists, 27 May 2003.

⁵⁴⁴ *Viasna*, note 1 above, at 6.

⁵⁴⁵ *Ibid*, at 4.

⁵⁴⁶ This number includes both media outlets that were closed directly by the authorities and those that were forced to close for financial reasons. The number is an estimate as it is ever-changing: some newspapers are suspended and later resume publication while others, which are temporarily unable to print due to financial reasons, publish extremely sporadically so as not to lose their licence.

⁵⁴⁷ ARTICLE 19 interview with *Svobodnyje Novosti Plus*, March 2003.

⁵⁴⁸ ‘NTV Office in Belarus Goes Shut’, Charter 97, 8 July 2003, <http://www.charter97.org/eng/news/2003/07/08/ntv>.

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Russian Press Ministry called these actions typical of ‘totalitarian States’.⁵⁴⁹ The measure might also be part of the Belarusian government’s conflict with NTV’s owner, the gas company Gazprom, which is aiming to control Belarus’s gas transport system, while Belarus is only willing to sell 49 per cent and at a high price.⁵⁵⁰

Despite all this, Lukashenka has attempted to construct a façade of democracy by stating that there are more operating non-State newspapers in Belarus than State-owned ones.⁵⁵¹ However, this clearly conveys a skewed perception of the real situation, since the majority of non-State media outlets have a small circulation. Similarly, no broadcast media outlet covers an area that comes even close to that of State television and radio.

Registration Proceedings and Location

Article 9 and 10 of the Press Law establish that newspapers are to be registered by the Information Ministry after approval of their location by the ‘respective local authorities and administrative bodies’.

Hence, media outlets are not only required to register but must also obtain the authorities’ approval of their location in order to start operating.⁵⁵² This effectively creates a two-tier system of registration, by which permission to commence activities is made possible only through approval by *two* State bodies. In addition, State regulations establish that the legal address cannot be in a block of flats, but it has to be in an office building. Such buildings belong nearly exclusively to the State and are significantly more expensive than simple flats.⁵⁵³

The procedure for registration is also long and complex: a large number of documents have to be prepared, and a media outlet often has to wait about two months for a decision. One applicant, Mikola Markevich, made several attempts to register, and was repeatedly denied authorisation.⁵⁵⁴ Among the newspapers that were not refused registration in 2002 were *Maladziovy Vesnik* (Kobryn), *Liusterka* (Pinsk), *Novy Vek* (Hrodna) and *Kalozha* (Hrodna).⁵⁵⁵ Registration can be denied for trivial reasons, for example if an aspiring founder does not have a degree in journalism.⁵⁵⁶

The issue of location has undermined media activities in many ways. For example, on 26 November 2002, after the publication of only two issues of the Minsk-based newspaper *Mestnoye Vremya*, the Belarusian Information Ministry invalidated its licence. This was in response to its publishing company’s change of address.⁵⁵⁷ *Mestnoye Vremya* promptly found another location in Minsk

⁵⁴⁹ Russica Izvestia, 9 July 2003.

⁵⁵⁰ Ibid.

⁵⁵¹ ARTICLE 19 interview with *Narodnaya Volya*, April 2003.

⁵⁵² See also Registration in *Belarus: the Mechanics of Repression*, note 8 above. The Belarusian authorities have eliminated the need for private enterprises to register their legal address, but this does not apply to NGOs and media outlets.

⁵⁵³ Interview with Belarusian journalists, February 2003.

⁵⁵⁴ See Section 8.1.1 for Mikola Markevich. Markevich personally filed three applications for the newspapers *Gazeta Pahonia*, *Muzhyskaya Pravda* and *Holas*. He then asked institutions to submit applications on his behalf (two applications were filed by the Hrodna Section of the Belarusian Language Association and one by the Hrodna Association of Democratic Veterans). These applications were also rejected. Private communication with the Belarusian Association of Journalists, August 2003.

⁵⁵⁵ Viasna, note 1 above, at 4.

⁵⁵⁶ For example, this has happened in Hrodna. In 2002 the Hrodna authorities refused to approve the legal address of newspaper *Rasam!* as the applicant was still a student. *Media in Belarus 2002*, note 198 above, at 179.

⁵⁵⁷ *Mestnoye Vremya* Ltd. The newspaper had been forced to move after a decision of 6 November 2002 by the Minsk district Executive Committee, which annulled a previous decision to approve the newspaper premises’ rental.

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and notified the Minsk Regional Executive Committee of their intention to amend their statute to reflect the change of address.⁵⁵⁸ On 21 November, while in the process of preparing the relevant documentation, the Minsk Regional Executive Committee undercut the process by revoking the publisher's registration. The justification was that the paperwork had not been submitted within the stipulated timeframe, despite the fact that the deadline was 6 December.

Mestnoye Vremya responded by filing a lawsuit against the Minsk Regional Executive Committee. However, on 12 February 2003 the Minsk Regional Economic Court suspended the proceedings on the grounds that the plaintiff, the publishing company, was no longer a legal entity with the right to sue and be sued following its licence revocation. The founders of *Mestnoye Vremya* (individuals rather than the organisation) appealed against the decision, and, on 16 April 2003, the Minsk Economic Court overturned the February ruling. However, even after this decision *Mestnoye Vremya* could not print, due to appeals against the ruling by the Minsk Regional Executive Committee.⁵⁵⁹ Another trial was scheduled for 22 September 2003, causing *Mestnoye Vremya's* 'suspension' to be, once again, extended.

In another case, the Smargon Executive Committee prevented Romuald Ulan, the founder of *Novaya Gazeta Smargoni*, from expanding his business by refusing to approve the location of two newspapers he was intending to open, *Novaya Gazeta Astrautsa* and *Novaya Gazeta Ashmyan*. Despite the fact that in hearings in December 2001 and May 2002 the Hrodna Regional Commercial Court found these refusals unjustified, Ulan was still unable to start the newspapers.⁵⁶⁰ Indeed, there are no guarantees that positive court decisions will be enforced. In a similar case, on 11 November 2002 the Hrodna Regional Economic Court recognised *Novy Vek's* right to have its legal address approved, after the local authorities had refused to do so on four different occasions. The local authorities ignored the court ruling.⁵⁶¹

Some media outlets and media organisations have been able, so far, to avoid problems related to location. For example, BANT's legal address is BANT's President's domicile address (in a block of flats rather than in an office building). This was possible as it was registered in 1999, when there was still no requirement to be located in an office building. If the organisation were requested to re-register, the situation would be different.

Provisions on the location of media outlets constitute undue interference with the right to free expression. There is a wide range of regulations guiding the establishment and function of print media outlets in Belarus, and these are further complicated by the tendency of the Belarusian authorities to create obstacles for media outlets relating to their physical location. Moreover, the bodies responsible for the approval of location and registration of media outlets are State bodies, and therefore lack independence. There is also no reason for preventing media outlets from being located in apartment blocks.

⁵⁵⁸ Under Belarus Presidential Decree No. 22, dated 16 November 2000, which amended Belarus Presidential Decree No. 11 of 16 March 1999, legal entities are required to inform the local authorities (in this case, the Minsk Regional Executive Committee) within the period of one month about a change of legal address.

⁵⁵⁹ The case was also considered on 26 May 2003 by the Court of Cassation. The Minsk Regional Executive Committee lost the case again, and subsequently re-appealed.

⁵⁶⁰ At the beginning of 2003, Ulan made a third attempt to initiate registration proceedings, to which the authorities responded with a legal action to close his existing outlet, *Novaya Gazeta Smargoni*.

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Media outlets are also obliged to modify their registration certificates if there are changes in their editorial approach and issues covered,⁵⁶² which is another undue interference in the work of the media. This situation is exemplified by the case of regional non-State newspaper *Vecherniy Stolin*. On 26 February 2003, (former) Minister of Information Mikhail Padhainy suspended the publication of the newspaper for three months. The reason for the suspension was reportedly changes in the topics dealt with by the newspaper: *Vecherniy Stolin* started covering politics without the required amendment to the newspaper's registration certificate.⁵⁶³

The suspension order for *Vecherniy Stolin* was issued following two consecutive warnings by the Ministry of Information, on 24 and 25 February, for the publication of articles allegedly 'fostering social intolerance and infringing the honour and dignity of citizens'. These warnings referred to two articles published, respectively, on 1 and 8 February, in which the newspaper drew parallels between the Stolin local authorities and the mafia.⁵⁶⁴

Proposed Amendments to the Press Law

A new version of the draft Law for the amendment of the Press Law, which was to be made public in March 2003 to be discussed during the parliamentary session of 2 April, was only released in the autumn of 2003. The delay occurred despite the fact that on 8 January 2003 President Lukashenka issued a decree 'On Approving a Plan for Preparing draft Laws in 2003', which contained provisions 'On Making Changes and Amendments to the Belarusian Law 'On Press and Other Mass Media''. The Belarusian authorities have been discussing the draft law since September 2001, when a special working group was established. Despite efforts by civil society to learn about developments in the compiling of the draft law, the authorities for several months refrained from releasing conclusive information on the subject.

In January 2002, during a meeting in Strasbourg of a PACE committee to examine issues relating to Belarus, the (former) Minister of Information Mikhail Padhainy had stated that the Belarusian authorities would forward the draft to the Council of Europe for an analysis after its completion. The intervention of the Council of Europe may contribute in addressing some of the faults in the existing legislation.

7.2.2 Licensing and re-registration

Until 1999 the Ministry of Communications was also the head of the Committee on Frequencies; other members were the Presidential Administration, the KGB and other State bodies. Media outlets entered into 'agreements' with the Committee on Frequency in order to operate. Subsequently the Committee was abolished, and licences have been allocated jointly by the Ministry of Information and the Ministry of

⁵⁶¹ *Media in Belarus 2002*, note 198 above, at 179.

⁵⁶² This is also true for the broadcast media. Permission also needs to be sought in order to expand the geographical area covered by a broadcaster.

⁵⁶³ Viasna, 'Issue of *Vecherniy Stolin* is Suspended for Three Months', 4 March 2003, <http://www.spring96.org/English/>.

⁵⁶⁴ Uladzimir Pashkevich, Chairman of Stolin District Executive Committee, also filed a suit against the articles of 1 and 8 February, claiming that they constituted an offence to his honour and dignity. He demanded that the newspaper refute the information and pay him four million Belarusian roubles (US\$2,535) in moral damages. Viasna, note 562 above.

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Communications. There were additional amendments to the system, introduced between the end of 2002 and mid-2003.⁵⁶⁵

To start a broadcast media outlet, the aspiring licence-holder has to produce a programming 'concept', including information on the aims of the station. It is reportedly problematic to obtain a licence if the 'concept' does not include the aim of presenting the State structure in a positive light.

Obtaining and renewing licences and frequencies can be difficult, as has been the case for Channel 8. In January 2001 Channel 8's frequency was re-allocated to the newly established State channel STV, forcing Channel 8 to obtain another frequency from the Ministry of Communications. Channel 8's current licence is only valid until 2005, after which a tendering process will be launched. The media outlet fears that prohibitive fees might be imposed for the mere participation in the tendering process.⁵⁶⁶ It further fears that its frequency might simply be re-allocated to a State channel.⁵⁶⁷

Resolutions No. 1826 on Re-registration, Resolution No. 1 on the Establishment of a National Commission on Television and Radio Broadcasting, and Resolution No. 885 on Granting the Right to Broadcast

On 30 December 2002 the Belarusian Prime Minister Genadz Navitsky signed Resolution No. 1826 of the Council of Ministers of the Republic of Belarus 'On Electronic and Network Mass Media' (Resolution 1826).⁵⁶⁸ Resolution 1826 was passed after Lukashenka stated, in early December 2002, that a number of broadcast media outlets were not 'properly registered' and instructed the (former) Ministry of Information Mikhail Padhainy to introduce an 'ideal order'.⁵⁶⁹

Resolution 1826 provides for the Ministry of Information to set up the National Commission on Television and Radio Broadcasting (the TV and Radio Commission), and to 'develop and approve [its] provisions'. The Ministry of Information was also declared to be responsible for re-registering all Belarusian television and radio stations by 1 June 2003.

Details for the setting up of the TV and Radio Commission are included in Resolution No. 1 of the Ministry of Information 'On the Ratification of the Decision about the Establishment of a Commission of Television and Radio Broadcasting' (Resolution 1). Following its adoption on 15 January 2003, the TV and Radio Commission was established by the Ministry of Information.

According to Resolution 1, the TV and Radio Commission comprises nine members, of whom the Chairman is the Minister of Information. In addition to chairing sessions, the Chairman has the casting vote in decision-making. The TV and Radio Commission's main task is the allocation of licences.⁵⁷⁰

⁵⁶⁵ Resolution No. 1826 'On Electronic and Network Mass Media', Resolution No. 1 'On the Ratification of the Decision about the Establishment of a Commission of Television and Radio Broadcasting' and Resolution No. 885 'On Granting the Right to Broadcast'. See below.

⁵⁶⁶ This has recently happened in tendering processes for telephone companies.

⁵⁶⁷ ARTICLE 19 interview with Channel 8.

⁵⁶⁸ See <http://www.article19.by/laws/resolution1826e.html> for the Resolution in English; see <http://www.article19.by/laws/resolution1826.html> for the Resolution in Russian.

⁵⁶⁹ European Institute for the Media, 'CIS Media Newsletter', December 2002.

⁵⁷⁰ The tasks are described in Resolution 1 as:

- To implement the State policy on the development of TV and radio broadcasting in the Republic of Belarus;
- To create the conditions for the development and the broadcasting of programmes of social significance;
- To facilitate the implementation of the citizens' constitutional right to receive and impart information through broadcasting;
- To facilitate the most effective use of TV and Radio frequencies; and

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Resolution No.885 of the Council of Ministers 'On Granting the Right to Broadcast', passed on 30 June 2003, clarifies the role of the TV and Radio Commission in approving and holding tenders. Among the conditions for succeeding in a tender is the preparation of a satisfactory 'creative plan' for the licensee, and the demonstration of capacity to broadcast, including by providing proof of the financial means to do so.

There are several problems with these provisions. First, decisions concerning licensing are taken by State bodies. In addition to the Ministry of Information and the Ministry of Communications, the resolutions establish the setting up directly by the Ministry of Information of the TV and Radio Commission. The TV and Radio Commission has virtually no independence of government in making decisions, its operations being controlled by the Ministry of Information. There are also no clear regulations as to the appointment of its members. In the first part of 2003 it was problematic even obtaining information as to whether the Commission members had been appointed, while their identity was virtually unknown.⁵⁷¹

Second, it is unreasonable to request media outlets to re-register merely because the regulatory bodies (the registering agency) have changed. It causes the media to be subjected to a number of unnecessary bureaucratic procedures, which multiply the possibilities of interference in their work.

Moreover, for months after the adoption of Resolution 1826, the Belarusian authorities left the concerned media outlets' owners and employees with little information as to the new regulations for re-registration, despite repeated requests. Stations were also kept in the dark for months as to the costs of re-registration, which many feared could be prohibitive for certain stations.⁵⁷²

Despite this, the TV and Radio Commission in August 2003 told the Belarusian Association of Journalists that all stations had been successfully re-registered, with the exception of those which owned a licence but in reality did not broadcast.⁵⁷³

7.2.3 Law on the Fight against Terrorism

A Law on the Fight against Terrorism was passed in January 2002.⁵⁷⁴ The law contains a number of provisions that go beyond what is necessary to combat terrorism and which are therefore an unjustifiable restriction on the right to freedom of expression. For example, Article 13(1)(e) grants State authorities a number of powers to interfere with this right during the fight against terrorism, such as 'to use for official purposes means of communication belonging to citizens, State agencies and organisations regardless of their form of ownership'. This effectively confers open-ended power on State authorities to assume control over the media with provisions that are extremely broad and hence potentially subject to abuse.

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- To examine the applications of participants in tenders for licences, and to make decisions on the competitions' winners.

⁵⁷¹ Information on the identity of the members was provided to ARTICLE 19 in the summer of 2003, yet the names were never widely publicised. The reasons and procedures for the appointment of the members are also unknown.

⁵⁷² ARTICLE 19 interview with BANT, April 2003.

⁵⁷³ Private communication with the Belarusian Association of Journalists, August 2003. The process of re-registration was far from publicised. There were no public announcements of the beginning and conclusion of re-registration proceedings. Very few news items were available on this subject. The only two seem to be a report by Interfax on 21 May 2003 (<http://baj.ru/smismi/210503smi.asp>) stating that the first electronic media outlet had successfully re-registered, and another one by the State newspaper *Zvyazda* (<http://baj.ru/smismi/310503smi.asp>), reporting on 31 May that 40 per cent of electronic media outlets had been re-registered.

⁵⁷⁴ ARTICLE 19 sent a letter to President Lukashenka on 21 February 2002 urging the Belarusian government to amend the law.

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The law also impairs the free circulation of information. Article 15 prohibits the dissemination of any information which ‘serves as propaganda for or justification of terrorism’ (Paragraph 2(c)), or that ‘contains information about’ staff involved in anti-terrorist actions (Paragraph 2(d)). This, however, can inhibit public debate on matters of great public interest, such as the motives behind a terrorist attack. These provisions might also open the way to abuse on political grounds, and potentially be used by the authorities to silence political opponents.

7.2.4 Local Content

The Belarusian authorities in mid-2003 were discussing the introduction of local content rules, following a plan presented in a presidential speech in January 2003. There were fears that new provisions might be introduced prescribing the broadcasting of 40–60 per cent of locally produced programmes.⁵⁷⁵ Many stations, such as Ruskoe Radio and Europa Plus, have 100 per cent foreign programmes, while local television stations usually broadcast at least some Russian programmes: the proposed changes would greatly undermine these media outlets. Reportedly the authorities also ‘recommended’ in early 2003 that music programmes should include in their output at least 85 per cent local music.

7.3 Moldova

Among the most pressing problems affecting Moldovan media legislation is the fact that many pieces of legislation are adopted very swiftly, with insufficient input from civil society and the general public. In addition, many positive provisions remain ineffective due to inadequate implementation. Provisions relating to the regulation of the print and broadcast media (for example, with regard to registration provisions) are also excessively rigid.

The Council of Europe has also judged the legal and judicial systems for the protection of freedom of expression unsatisfactory. In 2002 it noted that:

Laws guaranteeing freedom of expression and information in Moldova are not respected. Either they are not implemented or they are used in a way contrary to their spirit and aim (i.e. protection of freedom of expression). Journalists and civil society activists who wish to complain about concrete violations of such laws do not trust courts: most presidents of the courts were dismissed in 2001 and new ones are allegedly appointed strictly on the basis of their political loyalty. Moreover, judges seem to generally ignore the [European Court of Human Rights] case-law...⁵⁷⁶

7.3.1 The Press Law

The print media is at present governed by the 1994 Press Law.⁵⁷⁷ Moves to amend this law were rejected by Parliament in 2001, yet in 2003 the Press Law was once again under revision.

Several organisations, including the Independent Journalism Center and the Union of Journalists, have campaigned for the abolition of the Press Law, which many view as imposing additional and unnecessary restrictions on the work of the media.⁵⁷⁸

⁵⁷⁵ ARTICLE 19 interview with BANT.

⁵⁷⁶ Compliance with Member States’ Commitments, Freedom of Expression and Information: experts’ report on the situation of Moldova, following their visit to the country from 22 to 24 January 2002, note 162 above.

⁵⁷⁷ No. 243-XII of 26 October 1994.

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Positive features include Article 4, which is based on Article 10 of the ECHR;⁵⁷⁹ the prohibition of various forms of harassment of journalists by public officials (Article 26); and the provision that international treaties take precedence over the Press Law (Article 28). Journalists are also free of liability for the distribution of information that is contained in an official document or reproduced *ad verbatim* from public speeches (Article 27).

However, there are several problems with the law, such as the inclusion of ethical norms. For example, Article 1 establishes the right of ‘every person ... to receive truthful information.’⁵⁸⁰ Similarly, Article 34(4) of the Constitution places an obligation on the media to disseminate correct information.⁵⁸¹ This is a form of ‘false news’ provision, which fails to take into account problems in defining what is correct and the fact that even the best journalists make mistakes.⁵⁸²

There is also a requirement for the print media to register with the Minister of Justice (Article 6). This system imposes substantial restrictions on registration, which are not justified.⁵⁸³ There are also a number of instances where the law is excessively prescriptive, particularly in relation to the organisation of periodicals. Article 8 sets out detailed rules regarding the structure of the outlet and the role of founders and editors while Articles 9 to 11 regulate relations between founders and staff. Although these are probably intended to protect editorial independence and the rights of journalists, they may also be abused for political reasons.

Article 12(4), as amended by Law No. 313-XV of 28 June 2001, prohibits periodicals from obtaining funding from foreign governments ‘except when provided for by bilateral inter-State agreements’. A number of print media outlets have reportedly experienced financial difficulties following the imposition of this provision.⁵⁸⁴ Some critics have presumed that the amendment was due to Romania’s support of *Țara*, the PPCD’s newspaper.⁵⁸⁵ However, the provision also applies generally to grants from international donors. Although there may be some legitimate concerns about foreign funding of periodicals, extreme measures such as these cannot be justified.

The Draft Press Law

A new draft Press Law was made public in early 2003.⁵⁸⁶ Unfortunately, the draft could not be regarded as an improvement on the 1994 Press Law. With its harsh sanctions, including the possibility of terminating a media outlet’s activities, and the prohibition of strong public criticism of the government, the draft law failed to comply with international standards of freedom of expression and information.

In particular, the main thrust of the draft law seemed to be the tight regulation of the journalistic profession, rather than the guarantee and protection of the exercise of the right to freedom of expression.

⁵⁷⁸ The PPCD also stated that the Press Law should be abolished. ARTICLE 19 interview with PPCD, February 2003.

⁵⁷⁹ The new version of Article 4 was introduced by Law No. 564-XIV of 29 July 1999.

⁵⁸⁰ A false news provision in Article 4 was repealed in July 1999 but the clause above in Article 1 was left in place.

⁵⁸¹ It states that ‘the State and private media are obliged to ensure that correct information reaches public opinion’.

⁵⁸² Other areas of concern include Article 20(4) (see 7.1.1). Article 18 prevents journalists from revealing their sources. The latter is also a matter of professional ethics: the law should instead protect journalists against being required to reveal their sources.

⁵⁸³ For example, there is no reason why those who are not citizens or Moldova and/or under 18 should not establish newspapers, as stipulated by Article 5(1).

⁵⁸⁴ US Department of State, Moldova, 2001, note 207 above.

⁵⁸⁵ Closed in 2003.

⁵⁸⁶ See ARTICLE 19 analysis of the draft Press Law, <http://www.article19.org/docimages/1551.doc>.

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For example, it took nearly half the articles in the draft law to outline the detailed and onerous registration requirements, while a considerable number of its other provisions were concerned with such issues as the regulation of the internal organisation of media outlets and the laying down of rules on accountability for contraventions of the law. Moreover, the draft law's scope extended to all publications, from national newspapers to small-scale newsletters and pamphlets. This excessively regulatory approach is at odds with the ongoing process of bringing Moldovan legislation into line with the ECHR.

7.3.2 The Law on Television and Radio

The Law on Television and Radio, also referred to as the Law on Audiovisual, was adopted on 3 October 1995 and promulgated in December of the same year. Among other things, the Law sets up a Coordinating Council on the Audiovisual (the CCA).⁵⁸⁷

This law was modelled on the Romanian Law on Audiovisual, itself inspired by a French law. The CCA has told ARTICLE 19 that, because the provisions were 'transplanted' to Moldova from France via Romania, it fails to meet Moldova's needs, causing only half of the law's provisions to be effectively implemented.⁵⁸⁸

Although the law re-states the basic constitutional provisions on freedom of expression as they relate to the broadcast media (Article 2), it also provides that this freedom must operate within the strict parameters of the Constitution and cannot be used to the detriment of other peoples' honour, dignity, privacy or right to hold their own views (Article 3). A positive feature is the declared precedence of international agreements and conventions ratified by Moldova over this law (Article 47(2)).

Provisions for the appointment of members to the CCA, the main broadcast regulator, are a matter of some concern. Article 14 provides that the CCA should be an 'independent body' but, pursuant to Article 31, the CCA comprises nine members, three of whom are appointed by the Parliament, three by the President and three by the government. In practice, this means that members are effectively appointed by the Communist Party, which holds two-thirds of the parliamentary seats and runs the government, as well as being the President's party. All members are appointed at the same time, every five years, through a non-transparent process. The last appointments were made in 2001. Following this, however, three members were dismissed, allegedly because the authorities were not satisfied with their performance.⁵⁸⁹

The law states that licences should be issued on the basis of 'the plurality of opinions, equality in the treatment of participants, the quality and diversity of programming, free competition, domestic broadcast productions, and the independence and impartiality of broadcast programmes'. A CCA by-law also states that: 'the council will take into account the following: a) the interests of listeners and viewers; b) the need to protect national interests, promote cultural values, provide programming relating to different social groups...'.⁵⁹⁰ Yet these criteria have, at least in part, remained only on paper: there is a lack of transparency of decision-making processes, as well as of fairness in the distribution of licences, while a coherent plan for the development of Moldovan broadcasting is still to be produced. There is also a selective implementation of the law, by which the CCA has failed to intervene when certain stations have not respected the terms of the agreements stipulated upon receipt of the licence. The CCA admitted

⁵⁸⁷ This became operational in April 1997, through Decision No. 4 of 8 April 1997.

⁵⁸⁸ ARTICLE 19 interview with CCA, February 2003

⁵⁸⁹ These were a media expert, the ex Minister of Culture and a young lawyer.

⁵⁹⁰ IREX, note 19 above, at 116.

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that 'the criteria were good; problems appeared after the licenses were issued',⁵⁹¹ yet the institution often refrained from taking action. By contrast, in some cases it directly stepped in to revoke licences, as in the case of Vocea Basarabiei.⁵⁹² Many believe that decisions of the CCA are primarily based on their loyalty to the Communist Party.

In addition to the lack of independence of the CCA, the Law on Television and Radio grants extensive direct powers over broadcasting to the Ministry of Information. Functions relating to technical matters, including relating to cable operators, are carried out by a 'central specialised body', effectively an established unit within the Ministry.

Those wishing to undertake broadcasting activities need to go through a cumbersome and lengthy decision-making process. First, they must obtain a 'preliminary technical specification', issued by the 'central specialised body' (Article 15(2)). Second, they need to apply for a broadcasting licence, a process which involves the CCA and the 'central specialised body' (Article 16(1)). Finally, they need to apply for a 'technical licence' from the National Agency for the Regulation of Communications (Article 18) within a month from the granting of the broadcasting licence.

Subsequently the licensee has to apply again from the CCA for an authorisation to commence broadcasting. From the time this is granted, the licensee has a year to build his/her station, after which s/he informs the CCA of his/her readiness to begin the 'test' period. During this period the CCA monitors the broadcasting itself as well as the opinions of the viewers, and only after this process the licence is granted.⁵⁹³ If a candidate is not successful, the refusal can be challenged in court (Article 19(6)).

There has been some tension in the area of Romanian-language broadcasting. Article 13(3) requires both public and private broadcasters to ensure that at least 65 per cent of their total airtime is broadcast in the official language, Romanian.⁵⁹⁴ This provision has caused some friction within the broadcasting community, particularly after the CCA issued warnings and initiated proceedings for licence revocation against Russkoe Radio, Radio Nostalgie, Radio D'or and Serebreanii Dojdi for failure to comply with Article 13(3).⁵⁹⁵ Parliament defused the tension by amending the law so that the 65 per cent requirement now applies only to locally produced programmes.⁵⁹⁶

Yet Article 13(4), providing that at least 50 per cent of programmes of a public broadcast media outlet should be produced in Moldova, has also been contentious. In April 2002 the CCA refused to grant the Chişinău municipal station, TV Chişinău, a licence as it would have failed to comply with the 50 per cent rule (it planned to re-broadcast programmes of TV Romania 2). However, the previous March the CCA had granted a licence for round-the-clock broadcasting by the Russian-language RTR channel. The apparent application of double-standards was criticised by journalists' organisations.⁵⁹⁷ Furthermore, Articles 4(3) and 47(4) of the Law on Television and Radio stipulate that the consent of the CCA is required when making agreements for airing programmes of broadcasting institutions of foreign States. This is excessively intrusive and opens up the possibility of interference with these broadcasts.

⁵⁹¹ For example, some stations largely limit themselves to re-broadcasting of Russian programmes, despite a former commitment to more varied broadcasting. IREX, note 19 above, at 116.

⁵⁹² See below (Cases on Licensing).

⁵⁹³ ARTICLE 19 interview with CCA, February 2003.

⁵⁹⁴ This does not apply to satellite and cable, foreign stations and stations that broadcast in minority areas.

⁵⁹⁵ Moldovan Helsinki Committee, note 236 above, at 9.

⁵⁹⁶ Law No. 1257-XIV of 29 September 2000, 'On the Interpretation of Article 13 para 3 of the Audio-Visual Law'.

⁵⁹⁷ IJC, *Moldova Media News*, 'Broadcast Council Refuses to Grant Licence to Romanian TV Channel', 13 April 2002, note 24 above.

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Draft broadcasting laws have been compiled in the first part of 2003. An official version was prepared by the authorities and an alternative one by APEL, although the latter is unlikely to be considered by the authorities. The CCA agrees that there is a need to reform the broadcasting environment, as it has developed without due planning since 1995, when the first private station was established. The new law, when adopted, is likely not to include the requirement to apply for a 'technical licence', which would make the system less bureaucratic and more in line with international standards. The new law is also expected to establish that a broadcaster would need to re-apply for its licence after expiry only if it received complaints from the CCA during its operations.⁵⁹⁸

The main problem with licensing proceedings is that they are not sufficiently transparent. With the exception of announcements of tenders once or twice a year it is virtually impossible to know what and how many frequencies are available. There have also been cases in which frequencies were announced but were later not allocated without explanation, even when there was only one applicant.⁵⁹⁹

Cases on Licensing

There have been several worrying incidents relating to licensing. Vocea Basarabiei, a Romanian-language radio station in Ungheni county, for example, was forced to close on 11 December 2002 due to its inability to renew its licence.⁶⁰⁰ One of the station's founders claimed that the CCA had received an order from the Communist Party to terminate the station's activities, in order to repress the non-State media and, in this manner, facilitate its victory in the spring 2003 municipal elections. He also linked the closure to discrimination against Romanian-language stations, and the fact that re-broadcasting of Voice of America, Radio Liberty and the BBC amounted to 12 per cent of the media outlet's programmes.⁶⁰¹ The CCA, in turn, has stated that the media outlet's closure is due to its failure to comply with the law.⁶⁰²

Other stations have had their licence revoked. For example, this happened to the national television channel Stil TV,⁶⁰³ and to Catalan-TV. The latter had its licence revoked in February 2002 due to arrears in the payment of its licence fee.

Moreover, in June 2003 the CCA threatened to revoke the licence of Antena C for its programme 'Hyde Park', a call-in show in which people openly discuss various current issues. The Moldovan authorities characterised some remarks on the show as 'inciting the population to violence' and calling on 'the violent overthrow of the existing regime.'⁶⁰⁴ The station had also in the past been called to account for comments made by those who speak on the show by calling in. Antena C was forced to take the show off the air. On 10 July 2003 approximately 100 fans of the show held a demonstration in central Chişinău, carrying slogans saying 'We want a free press and a free society' and 'Down with censorship.'

⁵⁹⁸ ARTICLE 19 interview with CCA, February 2003.

⁵⁹⁹ ARTICLE 19 interview with APEL, February 2003.

⁶⁰⁰ On 26 October 2002 Vocea Basarabiei's licence expired and the station was required to apply for renewal. In the phase of application for a 'technical licence', a number of delays occurred due to unforeseen circumstances. The CCA instructed the 'central specialised body' not to issue a 'technical licence', having allegedly identified some 'technical problems' with the media outlet. As Vocea Basarabiei was unable to obtain a 'technical licence', the station was closed. Reportedly other broadcast media outlets had been in the same situation but they had still been allowed to operate.

⁶⁰¹ ARTICLE 19 interview with Vocea Basarabiei, February 2003.

⁶⁰² ARTICLE 19 interview with CCA, February 2003.

⁶⁰³ IREX, note 19 above, at 116.

⁶⁰⁴ IJC, *Moldova Media News*, 'Radio Station Suspends Popular Talk Show', 19 June 2003, Vol.3, No. 6, 2 July 2003, <http://ijc.iatp.md/en/mmnews/2003/nr47.html>

7.3.3 Public Service Broadcasting

According to Article 7(1) of the Law on Television and Radio the State broadcaster, Tele-Radio Moldova, is formally a public company, whose President is to be appointed and may be dismissed by Parliament.⁶⁰⁵ In practice there has been serious interference with Tele-Radio Moldova's independence, which came to a head in February 2001, when attempts by the authorities to control editorial policy led to 500 employees launching 'work-to-rule' protests, including strikes.⁶⁰⁶ An *ad hoc* Committee was set up by the authorities in March 2001 to address the crisis in Tele-Radio Moldova and to examine new draft laws providing for the re-organisation of the State broadcaster. The non-governmental organisation APEL, the PPCD and the Communist Party all submitted proposals to the Committee.⁶⁰⁷ The most controversial issue was the public institution's management structure.⁶⁰⁸

In April 2002 PACE made recommendations to the Moldovan government that it end censorship over State television and radio, that it allow access to the media by the opposition and that it transform the State broadcaster into a genuine public service broadcaster, the latter to be completed by 31 July 2002.⁶⁰⁹

The Moldovan Parliament passed the Law 'On a Public National Broadcasting Institution' shortly before this deadline. Parliamentarians voted for President Voronin's draft despite the fact that the Council of Europe had publicly backed an alternative version drafted by APEL. In contrast to APEL's draft, which was deemed to meet international PSB standards, the President's draft kept editorial policy under control. APEL declared it viewed the rejection of their draft as evidence that the government did not understand the concept of transforming a State broadcaster into a PSB, and alleged that the government wanted to gain control of State television.⁶¹⁰

A second PACE resolution⁶¹¹ was issued on 26 September 2002, urging Moldova to amend the law so that the 'provisions on the composition, appointment and powers of the observers' council [the regulatory body] be the subject of the widest possible consultation'. It also recommended the genuine involvement of 'civil society, associations representing the media and the political opposition' in the revision of the law. The deadline for amendments was set as 1 December 2002, which the Moldovan authorities failed to meet.

Two draft laws to modify the PSB law were produced, one of which was drafted by a group of Communist MPs and the other by the Braghiş Alliance. The Council of Europe also provided comments on these drafts. However, the Parliament's leaders did not place this issue on the agenda promptly: in November 2002, Parliament Speaker Eugenia Ostapciuc was quoted as saying that there was 'no urgency' about this matter.

The new PSB law was finally enacted on 25 March 2003, to modify the July 2002 law. According to the new law, the Observers' Council is to consist of 15 people, of whom two are appointed by Parliament, two by the government and two by the President. The remaining members are nominated by

⁶⁰⁵ Article 7(2), as amended by Law No. 238-XV, 7 June 2001.

⁶⁰⁶ See also Section 5.2.

⁶⁰⁷ IJC, *Moldova Media News*, 'Commission Suggests Increasing State Allocations to Teleradio Moldova', 3 May 2003, note 379 above.

⁶⁰⁸ ARTICLE 19 interview with a Braghiş Alliance representative, and drafter of the law's amendments, April 2003.

⁶⁰⁹ Resolution 1280 (2002) on *Functioning of Democratic Institutions in Moldova*, <http://assembly.coe.int/Documents/AdoptedText/ta02/ERES1280.htm>.

⁶¹⁰ ARTICLE 19 interview with APEL, September 2002.

⁶¹¹ Resolution 1303 (2002) *Functioning of Democratic Institutions in Moldova* <http://assembly.coe.int/Documents/AdoptedText/ta02/ERES1303.htm>

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the Superior Magistrates' Council, the staff of TeleRadio Moldova, trade unions, media development organisations and representatives of cultural and minorities' groups, as well as veterans.

Hence, the new law reduces, overall, the possibility of interference by the authorities in the work of the public broadcaster, and increases the level of involvement by the public, including civil society. There is also no longer an obligation on the public broadcaster to disseminate State communiqués, which was present in the July 2002 law.

However, many maintain that the new law is not as democratic as it might seem at first sight. NGOs and minorities are responsible for the appointment of one member of the Observers' Council each; yet many pseudo-NGOs are virtually controlled by the Communist Party, and minorities (for the most part Russian-speaking Moldovans) are primarily pro-Communists; the same can be said of veterans. Consequently, in practice the majority of Observers' Council members are extremely likely to be loyal followers of the Communist Party.⁶¹² These groups are also likely to be susceptible to external influence in the appointment of members, due to the widespread poverty and dependence on government funding for certain disadvantaged groups (such as minorities and veterans).

7.3.4 Law on Combating Extremism

On 28 March 2003 the Moldovan Law on Combating Extremism was enacted. The law is likely to have a detrimental impact on the free flow of information. It defines 'extremist materials' documents, signed or anonymous, that incite or justify actions related to war crimes or the full or partial elimination of an ethnic, social, racial, national or religious group. It further defines 'extremist organisations' associations, parties or media outlets that have been banned from operating through a final court verdict, due to their involvement in extremist activities.

A double warning is placed on the media at Article 7, on 'Responsibility of a mass media outlet for the dissemination of materials of an extremist nature' and Article 8, on the 'Inadmissibility to use public telecommunications networks for conducting extremist activities'. Article 9 repeats, once again, that 'publishing or dissemination of printed, audio-visual or other materials of extremist nature is prohibited in the Republic of Moldova'.

Pursuant to the law's provisions, before being charged with extremist activities, a media outlet is warned by the authorities and has to take corrective measures within one month. The warning may be subject to appeal. If it is determined that a media outlet is engaging in extremist activities within one year of the initial warning, it may be either banned or suspended.

Some believe that the Law on Combating Extremism may be employed to shield the Communist Party from criticism.

7.3.5 Transdnistria

Media Law

A new Media Law was passed in Transdnistria on 22 January 2003, to replace the 1993 Law on Press and other Mass Media. The President of Transdnistria, Igor Smirnov, had previously vetoed the law, for two reasons. First, the previous version of the law did not include the requirement to register for all newspapers that print less than 1,000 copies per month, which is the vast majority of non-State

⁶¹² ARTICLE 19 interview with Moldovan NGOs, February and April 2003.

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newspapers in the break-away region. Second, it contained provisions for airtime to be given to opposition candidates.⁶¹³ However, the President's veto was overruled by the Parliament.⁶¹⁴

Initially two drafts were presented, one of which contained draconian provisions and envisaged the re-introduction of censorship, and a second, more liberal, proposed by the radical left movement. Although the President supported the first draft, fortunately during discussions in the working group some draft provisions were modified so as to become less stringent.⁶¹⁵

However, discussions on the draft law did not involve the journalistic community or civil society. The Association of Independent Journalists, which was formed to counteract their exclusion from the process of compiling a new media law, on 26 December 2002 sent an appeal to the authorities asking them for the possibility to participate in the discussions. This request was rejected by the Speaker of the Parliament. The reason given was reportedly the association's failure to apply within the stipulated timeframe (three days prior to discussions). The Association of Independent Journalists replied by saying that they had in fact submitted a request 27 days in advance, but they obtained no answer.⁶¹⁶

7.4 Ukraine⁶¹⁷

In 1992 and 1993 Ukraine adopted some media laws that were quite progressive for their time, yet there have been obstacles to their correct and effective implementation. In some cases there are contradictions between different pieces of legislation and the authorities have used these loopholes to their advantage.⁶¹⁸ In a 2002 assessment by the Council of Europe, it was noted that the review and amendment of media legislation was needed as 'much of it lags behind European standards...'.⁶¹⁹

The pressure to ameliorate the media situation started in the year 2000. Following international pressure, on 9 December 2000 President Kuchma issued a decree 'On Additional Measures Regarding the Unimpeded Mass Media Activity, further Strengthening of Freedom of Speech in Ukraine'. However, the decree has been described as ineffectual,⁶²⁰ with many believing that it was prompted as a lame response to the Gongadze case and Kuchmagate.⁶²¹

However, as in Moldova, mass protests by journalists have led to positive media reform. Several pieces of legislation were being re-considered in 2003, or had recently been adopted. At the same time, some State institutions have pursued their own objectives. In 2002 Ivan Chyzh stated that the body he headed, the State Committee for Television and Radio Broadcasting, would develop a National Information Policy Concept, to introduce legal norms for the promotion of freedom of expression and to

⁶¹³ One of the law's drafters was the leader of a non-presidential party (the radical left).

⁶¹⁴ ARTICLE 19 interview with *Novaya Gazeta*, February 2003.

⁶¹⁵ For example, in the initial draft there were provisions stating that as soon as a lawsuit was started against a newspaper, its publication was to be suspended. Another article stated that when an investigation was started against a newspaper, its print-run had to be confiscated. *Ibid.*

⁶¹⁶ *Ibid.*

⁶¹⁷ The 1992 Law on Information is not discussed here but in Chapter 9, as it contains numerous provisions on freedom of information.

⁶¹⁸ As illustrated in Section 7.4.3.

⁶¹⁹ Compliance with Member States' Commitments, Freedom of Expression and Information: experts' report on the situation in Ukraine, following their visit to the country from 18 to 20 November 2002, note 166 above.

⁶²⁰ US Department of State, Ukraine, 2001, note 53 above.

⁶²¹ Razumkov Centre 'Factors Leading to the Escalation of Threats to Ukraine's Information Security', note 174 above, at 32.

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guarantee information security.⁶²² Subsequently, he said, the body intended to develop an Information Code, a goal that it had been pursuing for some time. This would involve making all laws concerning the media converge in a single legal text that covers all spheres of the Ukrainian media.

7.4.1 Media Law Amendments

Proposed amendments to media legislation compiled by civil society were presented during a parliamentary hearing on 4 December 2002.⁶²³ The proposed amendments aimed at: a) incorporating into media legislation a clear definition of censorship; b) modifying fines in defamation cases; c) facilitating the implementation of provisions in the Criminal Code criminalising interference in the work of journalists;⁶²⁴ d) providing additional protection to journalists in defamation cases; e) restricting the ability of State bodies to take defamation suits; and f) enhancing the freedom of information regime.⁶²⁵

On 28 April 2003 Kuchma signed the proposed amendments into the Law 'On the Insertion of Changes to Certain Laws of Ukraine which Guarantee Unimpeded Use of the Human Right of Freedom of Speech'. Although between the first and second reading MPs made a number of significant changes to the draft initially submitted by civil society, the latter managed to reverse some of the changes.

The law introduced several positive provisions, such as Article 47(1) of the Law on Information, on 'Exemptions from Liability', stating that 'Nobody should be sued for the expression of value-judgements' and that 'value-judgements shall not be proven'.⁶²⁶

Following this, in the summer of 2003, the FOS Committee proposed the introduction of an institution of Ombudsperson for the Protection of Freedom of Speech. The FOS Committee's head, Mykola Tomenko, was reported to believe that this move would be a logical result of the Resolution on Parliamentary Hearings 'Society, Mass Media, Authorities: Freedom of Speech and Censorship in Ukraine'.⁶²⁷

7.4.2 Law on Printed Mass Media⁶²⁸

The 1992 law on Printed Mass Media (the Press Law) regulates the work of the print media, and establishes regulations for the registration of print media outlets. Although it does offer some guarantees for the protection of journalists,⁶²⁹ in others it clearly runs counter to international standards of freedom of expression.

The Press Law states that all media outlets need to register (Article 11(2)), and, to this effect, they are required to submit detailed documentation, such as 'documents confirming the [outlet's] civil legal capacity', bank details of the founder and information on the media outlet's 'sphere of distribution',

⁶²² Razumkov Centre, 'Freedom of Speech and Political Censorship in Ukraine: the Positions of Representatives of State and Public Structures', *National Security and Defence* No. 11 (35) 2002, 30–31, 30.

⁶²³ See also Section 5.3.

⁶²⁴ These were included in the Criminal Code in 2001. An addendum to the Law on Information reiterates that interference in the work of journalists is to be punished in accordance with the Criminal Code. There were also discussions about the possibility of reformulating the relevant provisions for greater clarity. Some blamed journalists for the lack of implementation of the 2001 Criminal Code, referring to the fact that allegedly journalists did not denounce the violation of their rights.

⁶²⁵ See Section 9.1.3 for freedom of information.

⁶²⁶ Value-judgements are defined as 'expressions which do not contain factual data', but 'with the exception of offence and libel', which severely limits the scope of the definition.

⁶²⁷ In 2003 Ukraine had only one general Human Rights Ombudsperson, Nina Karpachova.

⁶²⁸ No. 2782-XII, 1992.

⁶²⁹ For example, in Articles 2, 6(3) and 43.

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‘orientation’ and ‘purpose’. A ‘registration body’ will then decide on the granting of State registration (Article 13), which may be refused if the ‘name, purpose (main principles) or orientation of the printed mass medium contradict Articles 3 and 4.’ These articles establish wide-ranging restrictions relating to the abuse of freedom of expression and the use of languages in the media.⁶³⁰ Article 20 also requires media outlets to re-register where there has been a change of ‘founder (or co-founders), name, language or sphere of distribution.’

Of concern is the fact that the law provides for the termination of activities of a media outlet by court order in case of a violation of the law.⁶³¹ Finally, the law includes ethical norms, such as the obligation to provide truthful and objective information, and penalties are envisaged where a journalist ‘neglects [his/her] obligations’ (Article 16(2) and 17).

7.4.3 Broadcasting Provisions

Law on Television and Radio Broadcasting

The Law ‘On Television and Radio Broadcasting’ was adopted in December 1993 to provide a legal framework for the Ukrainian electronic media. It sets out the principles of broadcasting in Ukraine, identified with those of ‘objectivity, truthfulness of information, competence, the guarantee for citizens of a right of access to information, of free expression of their views and thoughts, securing of ideological and political pluralism and observance of professional ethics and universal morals’ (Article 2). Some broadcasting regulations are also contained in the Constitution, which states at Article 85(20) that half the members of the NCTR are appointed by the President, and the other half by the Parliament.⁶³²

Substantial modifications were introduced with a series of amendments in June 1995, with the law ‘On Amending the Law of Ukraine on Television and Radio Broadcasting’, which, *inter alia*, re-defines the status of the State bodies affecting the media and the NCTR, as well as introducing anti-monopoly restrictions and provisions on advertising. Despite claims of impartiality and independence by

⁶³⁰ Article 3, on the Prohibition of Abuse of Freedom of Printed Mass Media, states:

Printed mass media in Ukraine shall not be used to: Disseminate information the disclosure of which is prohibited in Article 46 of Law of Ukraine On Information (2657-12); call for seizing power or changing Ukraine’s constitutional system or territorial integrity by forcible means; advocate war, violence or cruelty; stir up race, national or religious enmity; distribute pornography or commit other criminal acts. It shall be prohibited to use printed mass media with the purpose of: interfering in the private life or infringing the honour or dignity of citizens; disclosing any information that may result in the identification of a juvenile offender without the consent of such offender and a representative thereof.

Article 4, on the Language of Printed Mass Media, states:

Printed mass media in Ukraine shall be published in the official language and other languages. The style and vocabulary of printed mass media must be in keeping with generally acknowledged ethical and moral norms. The use of swearwords and rude words shall be prohibited.

⁶³¹ Such as in the case of advocacy of war, hate speech, the use of inappropriate language, and other restrictions to free expression pursuant to Article 3. Breach of rules relating to, for example, advocacy of war and hate speech should be dealt with through the criminal law, as applied to those individuals who are responsible, rather than being included in a media-specific law.

⁶³² Because of its inclusion in the Constitution, changing this provision would be problematic. In addition, there have been some tensions within the NCTR. On 14 July 2002 the Verkhovna Rada also passed a vote of no confidence against the Council’s Chairman, Borys Kholod. However, President Kuchma refused to dismiss him. In theory both the Parliament and the President should pass a vote of no confidence to legitimise dismissal, although some (such as Tomenko) argued that the Parliament’s action was sufficient to replace Kholod. However, Kholod effectively enjoys the personal protection of the President. His term is due to expire at the end of the summer of 2003.

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the authorities in the activities of the NCTR, it remains *de facto* dependent on the Presidential Administration.⁶³³

In order to get a licence, a broadcaster has to register as a legal entity. The licensee is then required to apply for a licence, by submitting documentation to the NCTR comprising copies of registration documents and basic information on the founder, broadcast plans, location, languages, area of broadcasting, expected audience, amount of broadcasting time, and characteristics of the transmitter (Article 14). Documentation should also include proof of financial viability and the company's tentative staff structure. The NCTR is obliged to make a decision within a month as to the granting of a licence, on the basis of criteria including interests of the audience and the needs of various social groups in Ukraine (also Article 14). Those who are refused a licence have the right to appeal the decision in court within three months from the denial (Article 16). After this process, licensees need to obtain a licence from the State Committee for Television and Radio Broadcasting.⁶³⁴

Draft Laws Relating to Broadcasting

The FOS Committee and the NCTR have compiled a new draft Broadcasting Law, in co-operation with the NGO Independent Association of Broadcasters. The draft Law was initially presented during a public discussion on 24 March 2003 and a second version was registered in June 2003. The draft law has been criticised for introducing harsher sanctions and additional registration requirements. The draft law may be passed in its first reading in the autumn of 2003.

In July 2003 the Verkhovna Rada approved in its first reading another draft law relating to broadcasting, 'On Amending the Law of Ukraine 'On the National Council for Television and Radio''. The draft law defines more clearly the responsibilities, as well as the supervisory and regulatory powers of the NCTR. It also clarifies the rules on the appointment of the NCTR's members as well as the body's accountability.

Cases on Licensing and Closure of Media Outlets

Decisions made by the NCTR are not always fair and transparent, and there have been cases in which stations loyal to the authorities have been favoured. For example, some decisions have been taken in support of the television station Inter and for the expansion of the coverage of ICTV.⁶³⁵

Instead, there have been several attempts to shut down the television station Studio 1+1 through the use of licensing legislation. On 6 November 2002 the Supreme Court of Ukraine found the broadcasting licence of Studio 1+1 valid, thereby nullifying the decision of the Kyiv Economic Court of 1 February 2002 and a further decision by the Court of Appeal on the withdrawal of the station's broadcasting licence, following a lawsuit by television company TRC AITI. The Supreme Court stated that the judgments of the lower courts were made without a thorough investigation into the case.

Radio Kontinent was less fortunate. In December 2001 its licence was revoked by the NCTR. The radio station had relayed various Western broadcasts and critical assessments of the authorities. The station sued the NCTR, and the case was considered by courts at different levels, until, in the summer of

⁶³³ See for example IREX, note 19 above, at 143.

⁶³⁴ In addition to the legislation, there are logistic problems affecting broadcasters' ability to start a media outlet, such as the high licensing costs. IREX, note 19 above, at 143.

⁶³⁵ Razumkov Centre, 'Concrete Manifestations of Political Censorship and the Methods of its Imposition', note 437 above, at 26.

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2003, it was sent, as a last instance, to the Supreme Court.⁶³⁶ On 27 June 2002 Serhiy Sholokh, its owner, lodged a complaint against Ukraine at the European Court of Human Rights regarding an alleged breach of licensing laws by the NCTR.⁶³⁷

In another case, on 17 April 2002 the NCTR, following a tendering process, re-allocated the frequency normally used by Kyiv-based television station UTAR TV to Televisiana Sluzhba Informatsii Ltd. UTAR TV had been operating with a policy of presenting a plurality of views.⁶³⁸

Re-Broadcasting

There have been attempts to introduce legal measures intended to restrict re-broadcasting of foreign programmes. On 30 October 2002 the NCTR passed Decision No. 923, obliging Ukrainian radio broadcasting companies which re-transmit foreign companies' programmes to obtain an *ad hoc* licence for this activity by 1 January 2003. Failure to obtain a special licence would make re-broadcasting illegal, the NCTR warned. The decision was never implemented.

The reason for Decision No.923 was allegedly in order for the NCTR to get a complete picture of which stations re-transmit foreign programmes, in what quantities and on what legal basis.

Director of Radio Kontinent Serhiy Sholokh linked the decision to a desire by the NCTR to limit the amount of uncensored information reaching the Ukrainian public.⁶³⁹

A proposed provision envisaging the requirement to obtain a special licence for the re-broadcasting of foreign programmes has also been included in the above-mentioned draft broadcasting law registered in June 2003.

In addition, the right to re-broadcast foreign programmes was discussed during a case concerning the radio station Dovira, which was issued a warning from the NCTR for re-broadcasting Radio Free Europe, Radio Liberty and other foreign programmes.

Two provisions in the Ukrainian Broadcasting Law were relevant in this case: Articles 49 and 13. Article 49 states:

Relations between TV and Radio companies and foreign partners shall be based on international agreements ratified by Ukraine or on *direct agreements*. If an international agreement to which Ukraine is a party establishes norms inconsistent with this Law, the norms of the international agreement shall apply [italics added].

It is not entirely clear, even to Ukrainian lawyers, what a 'direct agreement' means in this context, but presumably it refers to private agreements between Ukrainian and foreign broadcasters.⁶⁴⁰ Article 13(6) of the same law states:

Broadcasts by foreign TV and Radio Companies in Ukraine using broadcasting channels of Ukraine shall be carried out on the basis of intergovernmental or international agreements.

⁶³⁶ The progression being: first instance court, second instance, third instance, first instance, second instance, third instance, supreme court. The case was still pending in August 2003. In the meantime Radio Kontinent is operating without a licence. In August 2002 the company Public Radio started broadcasting from the same frequency. The European Institute for the Media, 'Ukrainian Media Bulletin', August 2002.

⁶³⁷ In the application to the European Court of Human Rights, Radio Kontinent complained of a lack of effective remedies in Ukraine.

⁶³⁸ Institute of Mass Information, cited in Paliy, note 250 above at 24.

⁶³⁹ The European Institute for the Media, 'Ukrainian Media Bulletin', November 2002.

⁶⁴⁰ Indeed, the Article refers separately to international agreements.

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This provision was apparently applied by the NCTR as the basis for the warning against Dovira. This interpretation means that broadcasters can only re-broadcast programmes where this is permitted by a specific intergovernmental or international agreement.

7.4.4 Other

Internet Regulations

On 2 July 2003 the Verkhovna Rada considered a draft law 'On the Activities in the Sphere of Communications', which aimed at introducing legal provisions for the regulation of the Internet. The draft law was originally registered on 30 January 2003, following various attempts to regulate the Internet due to the increasing number of Internet users. Many Ukrainian officials reportedly hold the view that a lack of Internet regulation would ultimately pose a threat to Ukraine's national security, as well as allowing for widespread violations of the right to privacy.

To counter the law's adoption, several journalists organised a conference in Kyiv entitled 'The Internet in Ukraine is Threatened with Control and Censorship'. The conference organisers reportedly believed that the draft law does not comply with Ukrainian legislation, and particularly media laws. They also noted that the new law would hurt the interests not only of the Internet media but also that of the traditional media which makes use of websites.

Resolutions on Coverage of Parliamentary Sessions

On 3 July 2003 the Verkhovna Rada voted in favour of the adoption of a resolution on the coverage of its following session through live programmes on the State channel UT-1. The resolution establishes that representatives of all parliamentary factions must have an opportunity to express themselves during live broadcasting. The resolution also provides for the establishment of a satellite-cable parliamentary television channel.

Another resolution of the Verkhovna Rada of 20 February 2003⁶⁴¹ obliged UT-1 to broadcast parliamentary sessions six times a week. These resolutions were denounced by the President of the National Television Company Olexandr Savenko for violating Article 6 of the Law on Television and Radio Broadcasting, prohibiting interference in the activity of broadcasters.

Although public broadcasters should not be subjected to regulations that are unrealistic or impair their editorial independence, they also have the responsibility of disseminating information in the public interest, which clearly includes accurate coverage of the discussions carried out by the State's legislative body.

Overall, since live broadcasting of parliamentary sessions was discontinued in 1999, its coverage has been sporadic, and has often not faithfully reflected MPs' debates and initiatives.

Law on the Fight Against Terrorism

On 20 March 2003 the Parliament approved in its second reading the Law on the Fight Against Terrorism. Article 17, on informing the public on a terrorist act, states that:

⁶⁴¹ 'On Amending the Resolution of the Verkhovna Rada 'On the Order of Coverage of the Work of the Third Session of the Verkhovna Rada of the Fourth Convocation''.

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Information on a terrorist act shall be provided to the public by the head of the operational headquarters or a person who is empowered by him for PR purposes.

It is forbidden to disseminate through mass media or through other means information which:

- a) Discloses special technical methods and tactics of anti-terrorist operations;
- b) May hinder anti-terrorist operations and/or threaten the life and health of hostages and other people who are located in the region where the operation is taking place or out of its boundaries;
- c) Is aimed at propaganda and justification of terrorism, contains speeches of persons who resist or call for resistance to anti-terrorist operation;
- d) Contains data on articles and substances, which may be used for the purpose of committing of technological acts of terrorism;
- e) Discloses data on personnel of special units and members of operational headquarters that participate in anti-terrorist operation, as well as persons who assist in anti-terrorist operations (without their consent).

This Article is problematic insofar as it excessively limits the flow of information to the public concerning terrorist activities, therefore impairing public discussion on the subject. It also places a double warning on the media.

Law on State Support for Mass Media

The Law 'On State Support for Mass Media and Social Protection of Journalists' provides the legal, economic and institutional principles underlying the basis of State support for the State media and the protection of journalists. This law, however, is a double-edge sword, creating the possibility of putting pressure on journalists. Advantages (such as better pension schemes)⁶⁴² are available only to journalists of the State media who complete the last few years of their working life in a State media outlet. In addition, the privileges are lost in the case of dismissal: this causes journalists to avoid criticism so as not to jeopardise their privileges together with their job.

Decree for the Protection of Morality

In February 2003 Kuchma signed a decree 'On Serious Flaws in Taking Measures to Reinforce Morality and to Promote a Healthy Lifestyle', to address the failure to implement another decree, signed in March 2002, 'On Urgent Measures to Reinforce Morality and a Healthy Lifestyle.' Subsequent to the issuing of the decree, the government and local authorities were instructed to prevent the dissemination of information undermining public morality via the media, including violence, cruelty, lack of spirituality and pornography.⁶⁴³

Language Issues and the Law

The 1992 Law on National Minorities provides for the possibility of producing minorities' newspapers in the language of minorities. Relevant provisions are also contained in the Law on Television and Radio Broadcasting, stipulating at Article 6 that broadcast media outlets must broadcast in the official language but that 'programmes beamed on certain regions may be in the language of the numerically prevalent local ethnic minority in the regions where national minorities live compactly'. However, the Advisory

⁶⁴² Salaries, however, are not higher in the State media, and often they are lower than in the private media.

⁶⁴³ The European Institute for the Media, note 451 above.

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Committee for the Council of Europe Framework Convention on National Minorities (the Advisory Committee) has stated in a Country Opinion on Ukraine that an overall exclusion of the use of minority languages from national State and private broadcasters is incompatible with Article 9 of the Framework Convention on National Minorities.⁶⁴⁴ It also denounced the fact that the term 'compactly' is not defined in the Law on Television and Radio Broadcasting and is therefore left to the discretion of the NCTR, which is also responsible for the imposition of quotas for minority-language broadcasting. It further regretted that, although minority-language broadcasting is widely tolerated, it is not encouraged by the Ukrainian authorities. It particularly recommended facilitating access to the media for Crimean Tatars.⁶⁴⁵

In 2003 there were some moves to facilitate access to the media by minorities. On 6 February 2003 the Parliament adopted a Resolution on State Support of Newspapers in the Language of National Minorities, which is due to come into effect in 2004.⁶⁴⁶ Moreover, on 7 February the Parliament considered a draft law on the implementation of the European Charter for Regional or Minority Languages, which Ukraine ratified in June 2003. This would involve, *inter alia*, making education available in languages including Belarusian, Polish, Romanian and Bulgarian. A suggestion was also made during the parliamentary session to implement provisions of the Charter which relate to the media, particularly through additional State support for minority media.⁶⁴⁷

⁶⁴⁴ Article 9(1) states:

The Parties undertake to recognise that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers. The Parties shall ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media.

The Advisory Committee therefore recommended that Ukraine use greater flexibility in the interpretation of Article 6 of the Law on Television and Radio Broadcasting. Country Opinion of the Advisory Committee on the Framework Convention on National Minorities, note 263 above.

⁶⁴⁵ *Ibid.*

⁶⁴⁶ The European Institute for the Media, note 451 above.

⁶⁴⁷ *Ibid.*

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Recommendations

- Any legislation affecting the media should be adopted only after an adequate opportunity for wide public consultation has been provided.
- The processes for obtaining licences should be fair and transparent.
- The processes for obtaining licences (and frequencies) should be streamlined; ideally, applicants should only have to submit one application to be able to operate; where a licence is obtained, a frequency appropriate to that licence should be provided automatically.

Belarus

- The practice of adopting presidential decrees on the media without consultation should be discontinued.

Press Law

- Article 16(5), providing for the banning of media outlets after more than two warnings, should be repealed.
- Provisions in Article 5(1), providing protection of public officials and prohibiting the dissemination of information on unregistered institutions, should be repealed.
- Provisions relating to the location of media outlets in Articles 9 and 10 should be repealed.
- The law should be amended to ensure that changes in data concerning a newspaper do not oblige a media outlet to re-register but merely to file the updated information with the registration body.
- The practice of confiscating equipment from print media outlets should be discontinued.

Resolution No. 1826 (re-registration)

- The independence of the TV and Radio Commission should be guaranteed by law, as reflected in the appointment of its members, which should minimise the risk of political or other interference.

Law on the Fight against Terrorism

- Articles 13(1)(e), 15(2)(c) and 15(2)(d) should be repealed.

Local Content

- Local content rules should be realistic, taking into account the development of the sector, and should not excessively burden the media.

Moldova

Press Law

- The prescriptive clauses on the internal organisation of periodicals should be reconsidered in favour of a system which leaves media free to decide on these matters themselves.
- The law should not regulate ethical matters.
- The obligation to report on court cases in Article 17 should be repealed.
- Article 12(4), restricting funding by foreign governments, should be repealed.

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Law on Television and Radio

- Steps should be taken to enhance the independence of the Co-ordinating Council for the Audiovisual from the Ministry of Information, which should play no direct role in the regulation of broadcasting.
- Articles 47(3) and 47(4), requiring prior permission before being allowed to broadcast foreign programmes, should be repealed.
- Article 13(2), requiring broadcasters to carry certain information, should be repealed.
- Article 13(4), requiring broadcasters to carry 50 per cent Moldovan-produced material should be reconsidered in favour of a lower limit. In any case, this rule should be applied fairly, across the board.

Law on Combating Extremism

- The media-specific provisions in Articles 7, 8 and 9 should be repealed.

Public Service Broadcasting

- Practical steps should be taken to implement the Law ‘On a Public National Broadcasting Institution’ so as to transform the State broadcaster into a genuine public service broadcaster, protected against government interference and providing programming in the public interest.

Ukraine

Press Law

- The provisions on the closure of print media outlets should be repealed. If they are retained, at a minimum Article 18 should be amended so that Article 3(1) is no longer a ground for closure.
- The law should not seek to impose respect of journalistic ethics as a legal obligation.

Broadcasting

- Article 85(20) of the Constitution should be modified so that all members of the NCTR are appointed by a multi-party body.
- The process of obtaining a licence should be streamlined.

Other

- Any law on the Internet should not unduly restrict this important communication medium and should be in full compliance with international standards in this area (see Section 3.10). It should be adopted only after wide-ranging public consultation.
- The public broadcaster should provide its audience with comprehensive information on matters of public interest, which includes fair and balanced coverage of Parliament and other decision-making bodies. At the same time, guidelines on parliamentary coverage should not be excessively onerous or rigid.
- The media-specific provisions at Article 17 of the Law on the Fight against Terrorism should be repealed.
- Any restrictions on the right of freedom of expression for the protection of morality should only be applied as necessary in a democratic society.

8 DEFAMATION

Belarus and Moldova both have provisions for criminal defamation, whereas these have been abolished in Ukraine.⁶⁴⁸ Ukraine acknowledges at Article 3 of its Constitution a person's honour and dignity as one of the main social values. Similar provisions can also be found in the Constitutions of Belarus and Moldova.⁶⁴⁹

However, in all three countries defamation lawsuits have been widely used to shield the authorities from criticism. There is also a general failure to differentiate between fact and opinion, resulting in journalists being sued for publishing commentaries of events. Another problem is a tendency across the region to use defamation law when covering up matters of public concern. These instances occur in spite of the case-law of the European Court of Human Rights and other international agreements which are binding on Belarus, Moldova and Ukraine.⁶⁵⁰

The abuse of defamation provisions by the State or powerful individuals is particularly acute in Belarus, given the potentially harsh sanctions envisaged by the legislation, which include long periods of imprisonment, limitation of freedom and forced labour. These are often applied in cases involving the President, who is afforded special protection under the law. In Moldova the provisions for the special protection of public officials are not as blatant.⁶⁵¹ In April 2003 Ukraine introduced provisions preventing public bodies (but not public officials) from claiming moral damages in defamation cases.⁶⁵²

Civil society and media groups in both Moldova and Belarus are campaigning to decriminalise defamation. Although criminal defamation cases are rare in Moldova, recent amendments of the criminal code made imprisonment (for up to five years) the sole penalty in these cases, thereby abolishing the chance of settling the matter with a fine.

It should also be acknowledged, however, that given the poor standard of journalism in much of the media and the limited specialised training facilities available to journalists, defamatory statements do abound in the region. There is a consequently marked need to educate journalists in journalistic ethics and media responsibility, to set up self-regulatory mechanisms for the respect of ethical norms, and for journalists to corroborate information prior to its dissemination.⁶⁵³

An issue that has been widely discussed in Moldova and Ukraine is whether there should be a ceiling for fines imposed in defamation cases. Moldova abolished its ceiling in 2003, despite protests by journalists and the immediate calls for its re-introduction. Ukraine has, instead, attempted to introduce a ceiling: the issue has been on the agenda for several years, with the compiling of a series of draft amendments to this effect, although none has been adopted.⁶⁵⁴ Ukraine has had a large number of cases in

⁶⁴⁸ ARTICLE 19 believes that criminal defamation should be abolished as contrary to freedom of expression. See Section 3.6.

⁶⁴⁹ Articles 28 and 61(2) for Belarus and 32(2) for Moldova.

⁶⁵⁰ As noted above, the ECHR is not binding on Belarus but the ICCPR is. Belarus should still comply with the principles arising from the ECHR as an applicant for membership to the Council of Europe.

⁶⁵¹ However, there are some. See Section 8.1.2.

⁶⁵² See Section 8.1.3.

⁶⁵³ For example, according to a November 2002 survey, 26 per cent of Moldovan journalists were insufficiently familiar with the principles of professional ethics, and 76 per cent did not sufficiently follow a Code of Professional Ethics adopted by Moldovan journalists in May 2000.

⁶⁵⁴ There were also discussions about including a relevant amendment in the law 'On Amendments to Some Ukrainian Laws by Results of Parliamentary hearings 'Society, Media, Power: Free Speech and Censorship in Ukraine'', adopted on 28 April 2003.

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which the amounts set for compensation were ridiculously high. In such cases it is unrealistic to expect a media outlet to be able to pay such astronomical fines, which could ultimately result in its bankruptcy. After establishing the need to introduce a ceiling, Ukrainians held detailed discussions on *how* to do so,⁶⁵⁵ given that there are few such examples in the world. There was a widespread fear that once a ceiling on fines was set the courts might routinely push for the maximum amount envisaged by the legislation.

Although setting a ceiling can be vital in limiting the fines to a more realistic amount, what is even more essential in defamation cases is that sentences are handed down only when there is clear liability: that is, when the person who disseminated the impugned expression is responsible for lowering somebody's reputation. It is also important that the genuine purpose and demonstrable effect of a defamation law is to protect somebody's reputation, and not, for example, to protect public figures from embarrassment.⁶⁵⁶ The proportionality rule should also be strictly applied: the penalties imposed should always be proportional to the damage caused, as the imposition of disproportionately high fines or prison sentences will have an adverse impact on the free flow of information. In particular, when handing down sentences on defamation, courts should take into consideration the 'chilling effect' that the penalties are likely to have on the work of the media.

A complicating factor in the countries in question is the lack of impartiality of the judiciary. Journalists and NGOs consequently do not trust judges to ensure fair trials. The judges' lack of training in international standards compounds the problem, and explains the motivation behind measures that limit the judges' discretion, such as attempts to set an upper limit for fines.

Defamation suits are not the only cases resulting in the instigation of legal proceedings against media outlets. For example, in Moldova there has been a disturbing rise of cases in which journalists have been charged with taking bribes. The *Accente* case, reported below, is one example. These phenomena can be seen as an extension of a pattern already consolidated in the use of legal norms to silence independent voices.

8.1 Criminal Defamation

8.1.1 Belarus

Although civil defamation is used more often than criminal proceedings,⁶⁵⁷ Belarus retains criminal defamation provisions in its Criminal Code at Article 188 (defamation), Article 189 (insult), Article 367 (defamation of President), 368 (insult of President) and 369 (insult of public official). Defamation of the President can result in up to five years in prison.⁶⁵⁸ Defamation and insult of ordinary citizens (as per Articles 188 and 189) can lead to imprisonment for up to two years.

Article 188 prohibits knowingly spreading false information discrediting another person, with greater penalties if the information is disseminated through the media. The main problem with this provision is that it does not provide a defence for reasonable publication. Article 188(1) applies only in the context of a second case of defamation within one year; the first case should instead be prosecuted under the Administrative Code. In practice first-time offenders are often prosecuted directly under the Criminal Code.

⁶⁵⁵ The last such discussions were at the end of 2002/beginning of 2003.

⁶⁵⁶ See Section 3.6.

⁶⁵⁷ IREX, note 19 above, at 104.

⁶⁵⁸ Special protection for the President and public officials are also provided in civil cases. See Section 8.2.1.

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Article 189 prohibits the ‘deliberate degradation of the honour and dignity of an individual expressed in an indecent manner.’ This definition is overly broad, and, as for Article 188, there are no defences to this charge.

Articles 367 and 368 were introduced in January 2001, in preparation for the (then) upcoming presidential elections.⁶⁵⁹ However, they still continue to be widely used: in 2002 these provisions were applied with increasing regularity against those who accused the government of corruption and illegal arms trading.⁶⁶⁰ These cases are initiated *ex officio*: despite the numerous cases of defamation and insult of the President, Lukashenka himself has never brought a defamation case.⁶⁶¹ Other high-ranking public officials are also afforded special protection under Article 369.

Articles 367, 368 and 369 are clearly contrary to international standards of freedom of expression, according to which public figures should tolerate a *higher* degree of criticism than ordinary citizens.⁶⁶²

In early 2003 the Belarusian Association of Journalists launched a campaign for the review of Articles 367, 368 and 369. On 16 March 2003 participants in the All-Belarusian Congress of Intellectuals offered their support to the initiative, and urged the authorities to free all journalists who had been sentenced for defamation of the President. On 30 June 2003 the Belarusian Association of Journalists submitted to the Constitutional Court an appeal to review the three articles, with approximately 7,000 signatures.⁶⁶³

There were earlier (unsuccessful) attempts to amend these articles. On 23 November 2002 the House of Representatives turned down a proposal for the abrogation of the articles. While presenting the proposal, MP Valery Frolov emphasised that the abrogation of the relevant articles was necessary to bring the Criminal Code in line with the Belarusian Constitution, which states, at Article 22, that ‘all are equal under the law and have a right to equal defence of their rights and legal interests without any discrimination.’

Cases under Articles 367 and 368

Pavel Mazheika and Mikola Markevich

On 24 June 2002 the Leninsky District Court in Hrodna sentenced two *Pahonia* journalists, Pavel Mazheika and Mikola Markevich to, respectively, two and two-and-a-half years of ‘restricted freedom’⁶⁶⁴ under Article 367(2) of the Criminal Code. They were officially charged with ‘fabrications known to be false [and] defamatory, offending the honour and dignity of Lukashenka, together with accusations of crimes of a particularly serious nature – murder, genocide and the creation or membership of a criminal organisation –’ for articles printed in issue No. 36 of *Pahonia*, dated 4 September 2001. These articles concerned the 2001 presidential elections and questioned whether Lukashenka could run for re-election while being widely suspected of involvement (with the use of death squads) in the ‘disappearances’ of people opposed to his regime.⁶⁶⁵ On 15 August 2002 the Hrodna Regional Court rejected an appeal against the sentence brought by the two journalists, but reduced the sentence of both journalists by one

⁶⁵⁹ Viasna, note 1 above, at 7.

⁶⁶⁰ As in the Ivashkevich and Lebedzko cases (see below).

⁶⁶¹ Viasna, note 1 above, at 7.

⁶⁶² See Section 6.3.

⁶⁶³ Private communication with the Belarusian Association of Journalists, 30 June 2003.

⁶⁶⁴ ‘Restricted freedom’ means forced labour under police supervision.

⁶⁶⁵ See Section 6.1.1.

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year, according to the Law on Amnesty.⁶⁶⁶ Mazheika was freed on 1 September 2003, although he was forbidden to travel abroad until the end of the two-year term. Referring to this case, PACE Recommendation 1589 describes the imprisonment of journalists for their work as ‘unacceptable in a democracy.’⁶⁶⁷

Victor Ivashkevich

On 16 September 2002 the Pershamaiski District Court in Minsk sentenced Viktor Ivashkevich, editor of *Rabochy*, to two years of ‘restricted freedom’ under Article 367(2), for an article titled ‘The Thief Must Go To Prison’, printed on the eve of the 2001 presidential elections. The article contained allegations regarding high-level corruption (Lukashenka and his entourage), also involving trading in weapons. The article never reached its readers, as the special police confiscated all copies of the newspaper.

In 2002 Ivashkevich benefited from a general amnesty, which reduced his sentence by one year. However, the prosecutors rejected his request to serve his term in Minsk rather than in Baranovichy. As in the cases of Mazheika and Markevich, Ivashkevich was prevented from working as a journalist, and has therefore been working as courier for the non-State Baranovichy newspaper *Intex-Press*.

Aksana Novikava

On 4 April 2003 the Minsk Central Court sentenced Aksana Novikava to two years’ imprisonment with a two-year suspended prison sentence.

Novikava was initially detained on 17 October 2002 for distributing home-made leaflets accusing the President of committing a number of crimes, including unconstitutionally prolonging his term of office, abduction and complicity in the murder of two or more individuals and abuse of power. A criminal case was initiated against her under Article 367.

During the court proceedings, Novikava’s lawyer had to attempt to prove that the information contained in the leaflets was true. After the case he said that Novikava would appeal against the sentence. The decision of the Minsk Central Court was upheld on 26 May 2003. Following a second appeal, a new trial was scheduled for 22 September 2003.

Anatoly Lebedzko

On 12 July 2002 Anatoly Lebedzko, head of the opposition United Civic Party, stated that he faced a charge of defaming Lukashenka under Article 367(1) of the Criminal Code. The charge was for an article published in *Narodnaya Volya* entitled ‘Are Bandits Financing the Belarusian Regime?’,⁶⁶⁸ accusing the government of selling arms to countries which sponsor terrorism. Lebedzko was summoned to the Prosecutor’s Office and reportedly intimidated, although no charges were laid against him.

⁶⁶⁶ In addition, on 5 March 2003, Markevich was allowed to transfer from the facility in Gomel, Eastern Belarus, where he was being held, to his hometown, Hrodna. The sentence was reportedly revised due to Markevich’s poor health. The revised sentence also established that 15 per cent of his income in Hrodna would be deducted from his salary and paid to the State.

⁶⁶⁷ See note 165 above, Guideline IV.

⁶⁶⁸ *Narodnaya Volya*, 2 November 2001.

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Zubr

In March 2002 three members of the Shklov branch of the opposition youth movement ‘Zubr’ were fined the equivalent of 100 times the Belarusian minimum monthly wage, for insult of the President under Article 368(1). Two other members were fined the equivalent of 20 times the Belarusian minimum monthly wage. During the 2001 presidential election campaign the defendants had dressed up as Lukashenka and performed a public spoof of his pre-election campaign promises.

Cases under Article 188

Yuriy Aksyonchik

On 11 October 2002 Yuriy Aksyonchik, the lawyer who represented Zavadski’s family at the trial for his ‘disappearance’,⁶⁶⁹ was convicted of distributing via the mass media ‘knowingly false and slanderous fabrications about General Prosecutor of Belarus Viktor Sheiman’ in a trial held behind closed doors.⁶⁷⁰ He received an 18-month suspended sentence under Article 188(2) of the Criminal Code. On 13 February 2002, during the Zavadski trial, he had said in a statement to the media that, in his opinion, the Prosecutor General Sheiman should be investigated as the main suspect with regard to the cameraman’s ‘disappearance.’

Irina Kalip

On 20 September 2002 Irina Kalip, a *BDG* journalist, was summoned to the Minsk Prosecutor’s Office to be informed that she was facing a libel action under Article 188(2) of the Criminal Code for her article ‘Afgan Hounds.’ In the article the journalist alleged that the General Prosecutor had received a bribe for the equivalent of US\$250,000 for dismissing a case involving suspicions of corruption in a State-run enterprise. The General Prosecutor’s Office also issued a warning to *BDG*’s monthly supplement *Dlya Sluzhebnoy Polzovaniya*, in which the article was printed.

8.1.2 Moldova

New Criminal Code

New Civil and Criminal Codes entered into force on 12 June 2003. Significant changes have been made to the Criminal Code, which may have a serious impact on the right to free expression. The new code establishes at Article 170 that criminal defamation is to be punished with imprisonment for up to five years, imprisonment being the only penalty applicable in these cases.⁶⁷¹ In the old Criminal Code, instead, such cases led to the imposition of fines or to imprisonment for up to two years.

By amending the legislation to include substantially longer prison terms in criminal defamation cases, and by dropping the possibility of using fines as an alternative to deprivation of liberty, Moldova has taken a retrogressive step. Although cases of criminal defamation are very rare in Moldova, the new provisions open up new possibilities for the imposition of disproportionate sentences.

⁶⁶⁹ See Section 6.1.1.

⁶⁷⁰ Charter 97, ‘Zavadsky’s Attorney Sentenced to 1,5 Years of Jail’, 14 October 2002, <http://www.charter97.org/eng/news/2002/10/14>.

⁶⁷¹ The type of defamation that attracts criminal liability is ‘the purposeful dissemination of lies that defame another person, accompanied by allegations of an extremely serious or exceptionally serious offence or an offence with severe consequences’.

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Criticism for the new, harsher provisions has also come from within the Moldovan government itself. The Minister of Justice Ion Morei, during a seminar held in November 2002 and organised by the NGO Acces-Info, added his voice to those maintaining that the new defamation provisions are excessively severe. An aggravating factor, he noted, is the fact that Moldovan legislation does not properly define defamation, leaving it open to interpretation.⁶⁷²

Furthermore, Article 304 of the new Criminal Code is on 'libel of judges, criminal investigators and enforcers of justice'. Article 347 prohibits the 'profanation of national and State symbols', while Article 366 is to punish those who are involved in the military for the offence of 'insulting a military person' by a subordinate.

However, a positive feature of the new Criminal Code is that the number of instances in which one can be found guilty of criminal defamation has been reduced when compared to Article 117 of the 1961 Criminal Code.⁶⁷³ In addition, the new Criminal Code did not re-introduce insult after its abolition from the old Criminal Code in 1994,⁶⁷⁴ despite the fact that a draft Criminal Code from 1999⁶⁷⁵ had proposed re-criminalising insult.⁶⁷⁶

Cases

At the beginning of 2003 there were two criminal cases against the media in Moldova, and both involve the non-State weekly *Accente*.⁶⁷⁷ The newspaper has published a number of articles critical of the authorities, such as reports of corruption and maladministration.

Elena Vrabie Rusu

Although this case ended with reconciliation between the two conflicting parties, the threat of conviction to creating an atmosphere of intimidation within the non-State media and particularly in *Accente*. The case started on 26 September 2002, when journalist Elena Vrabie Rusu published an article in *Accente* containing allegations of corruption against six judges, one of whom later brought a defamation suit against her. On 30 January 2003 Rusu's lawyer wrote to the Central Court in Chişinău requesting that the case go directly to the Supreme Court, as the defendant did not believe that she could get a fair trial in the lower courts. Ultimately, in the spring of 2003, an out-of-court settlement was reached.⁶⁷⁸ If found guilty, Elena Vrabie Rusu would have faced imprisonment for up to five years.

Sergiu Afanasiu

This case is not on defamation *per se*, but appears to have arisen due to *Accente*'s critical articles.

⁶⁷² IJC, *Moldova Media News*, 'Moldova Justice Minister Criticises Libel Provisions of Penal Code', 2 December 2002, Vol. 2, No. 19, 24 December 2002, <http://ijc.iatp.md/en/mmnews/2002/nr41.html>.

⁶⁷³ Article 117 of the Criminal Code was applied when defamatory statements were disseminated through the media, or when the defamatory statement caused 'serious consequences connected with an accusation in committing a serious crime or crime against the State.'

⁶⁷⁴ Law No. 316-XIII of 9 December 1994, MO No. 9 of 2 September 1995.

⁶⁷⁵ Criminal Code draft, Chişinău, Garuda-art 1999.

⁶⁷⁶ Pirtac, O, 'The New Civil and Criminal Codes of Moldova: The Freedom of Expression Perspective', *Mass Media in Moldova*, note 412 above. However, a provision on 'violation of privacy' is still included in the Criminal Code, at Article 177.

⁶⁷⁷ A newspaper founded in 2001, it has quickly earned a reputation for controversy. The newspaper has taken up some taboo subjects, such as women trafficking.

⁶⁷⁸ ARTICLE 19 was unable to establish the details of the negotiations towards the friendly settlement.

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On 9 October 2002 *Accente* journalists Sergiu Afanasiu and Valeriu Manea were arrested for bribery, for allegedly taking US\$1,500 from a businessman to refrain from publishing an exposé of his malpractices. The police authorities confiscated computers and archives from *Accente* (which were only returned several weeks later), together with the US\$1,500 in cash and materials prepared for the weekly's upcoming issue. The police neglected their responsibility to provide the newspaper with an official document listing the confiscated items.⁶⁷⁹

On 14 October the *Accente* staff began a 24-hour hunger strike to protest against Afanasiu's arrest. Afanasiu and Manea were released after the Moldovan Journalists' Union, human rights groups and political parties submitted 'guarantee' letters to the General Prosecutor's Office. Afanasiu, who has a heart condition, was released on medical grounds, but the two reporters were ordered not to leave town.

The reporters maintained that they had been the victims of a police set-up to prevent them from publishing compromising materials allegedly concerning State Security Service Director Ion Ursu, Interior Minister George Papuc, and Moldovan Ambassador to Russia Vladimir Turcanu. Afanasiu's lawyer stated that the three public officials had warned Afanasiu to stop publishing such materials. *Accente* staff members allege that the police acted on the orders of the highest echelons of Moldovan leadership.

Afanasiu did not deny having taken the US\$1,500, but stated that it was not to be regarded as a bribe, but as a payment taken from the businessman in exchange for information about who had wished to publish defamatory information against him. While Afanasiu may be accused of breaking principles of professional ethics, this does not warrant arrest, confiscation of materials and the instigation of criminal proceedings. Moreover, Valeriu Manea reportedly was not involved in the case, but merely happened to be at the scene when Afanasiu was arrested.

The trial for bribery, scheduled for the middle of January 2003, had to be postponed as Afanasiu was attacked by unknown assailants shortly before the trial's commencement. The new date was set for 4 March 2003, yet the trial was postponed again on several occasions for a number of reasons. The first instance court's hearing was eventually scheduled to take place on September 2003. The two journalists face charges that could result in prison terms of up to five years.

Other cases of alleged bribe taking are that of Tudor Rusu, editor-in-chief of the weekly *Faalia* and Grigore Teslaru, head of public relations of the (Transnistrian town of) Bender County Council. They were arrested on 7 December 2001 and detained for 15 and 30 days respectively.⁶⁸⁰

8.1.3 Ukraine

Ukraine does not have criminal defamation provisions: fortunately, they were not included in the existing Criminal Code, which came into force on 1 September 2001. Instead, Article 125 of the old Criminal Code prescribed imprisonment of up to three years for defamation. The STA could freeze accounts of a media outlet to enforce payment, a situation that was prolonged until all appeals were completed. The potential loss of earnings was so substantial that they crippled the non-State media.⁶⁸¹

⁶⁷⁹ ARTICLE 19 interview with Afanasiu's lawyer, February 2003.

⁶⁸⁰ IREX, note 19 above, at 116.

⁶⁸¹ US Department of State, 2001, Ukraine, note 53 above. Not everybody is pleased with the abolition of criminal defamation. On 28 February 2003 it was reported that the General Prosecutor, Svyatoslav Piskun, intended to lobby for the re-introduction of defamation provisions in the Criminal Code. He is reported to have said that criminal defamation is vital to prevent the dissemination of defamatory statements in Ukraine, and to make those responsible for them accountable for their actions.

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Even though criminal defamation laws have been eliminated, other criminal charges can still be laid against the media, thereby inhibiting critical journalism. A high-profile case and a dangerous precedent is criminal case No. 49-1120. This was initiated at the beginning of April 2003 by the General Prosecutor's Office and concerned the publication of materials critical of Kuchma, supposedly preventing the President from carrying out his professional duties. The case was taken under Article 334(1) of the Criminal Code.⁶⁸²

Tamara Prossyanyk, editor-in-chief of the newspaper *Informatsiyny Buletyn* (from Kremenchuk, Poltava region, Central Ukraine), was interrogated for her article 'One Million Dollars for Georgiy Gongadze's Head.' Other journalists were questioned as witnesses. Other newspapers involved in the legal action were *Cherkaska Pravda* (Cherkasy), *Antena* (Cherkasy), *Rivnenskiy Dialoh* (Rivne), *Volyn* (Rivne) and *Pozytsiya* (Sumy).⁶⁸³ On 24 April 2003 it was reported that, during a press conference, Kuchma stated that he would ask the General Prosecutor to discontinue the ongoing legal proceedings.⁶⁸⁴ The case was finally closed in May 2003, after FOS Committee Head Mykola Tomenko submitted to the General Prosecutor's Office a request to drop the case. On 14 May the request had won the support of 172 MPs. In his answer to the appeal, the deputy head of the General Prosecutor's Office stated that the actions of the journalists in question could not be classified as crimes according to the Ukrainian Criminal Code. Tomenko later stated that this victory was achieved thanks to civil society's campaigning efforts and solidarity.

In another case, a small non-State newspaper from Yevpatoriya (Crimea) published articles about law violations by officers of a unit combating organised crime. Subsequently, the author of the articles was arrested for allegedly contracting a murder, and was released after several days following vigorous protests by the journalistic community and civil society.⁶⁸⁵ The case was pending in August 2003.

⁶⁸² Interference in the activity of a statesperson.

⁶⁸³ Institute for Mass Information, 15 April 2003, <http://imi.org.ua/?id=read&n=992&cy=2003>.

⁶⁸⁴ Institute for Mass Information, 24 April 2003, <http://imi.org.ua/?id=read&n=1131&cy=2003>.

⁶⁸⁵ IREX, note 19 above, at 144.

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In addition to defamation, privacy laws are used by politicians as a form of intimidation of the non-State media.⁶⁸⁶ The right to privacy is protected at Article 32 of the Constitution and it is a criminal offence pursuant to the criminal code.⁶⁸⁷

Recommendations

- All criminal defamation laws should be repealed and replaced, where necessary, with civil defamation laws conforming to the standards set out in the recommendations for the following section, on civil defamation.

Belarus and Moldova

- At a minimum, immediate steps should be taken to ensure that:
 - prison sentences, disproportionate fines and harsh criminal provisions are never imposed in defamation cases;
 - nobody is found guilty of criminal defamation unless the plaintiff has proven beyond reasonable doubt the presence of all elements of the offence;
 - the offence of criminal defamation is not established unless it has been proven that the relevant statements are false, that they were made with actual knowledge of falsity, or recklessness as to whether or not they were false, and that they were made with a specific intention to cause harm to the party claiming to be defamed; and
 - public authorities, including police and public prosecutors, take no part in the initiation or prosecution of criminal defamation cases, regardless of the status of the party claiming to have been defamed, even if he or she is a senior public official (see also Section 3.6).

Belarus

- All provisions giving special protection to the President and other government officials against defamation and/or insult, including Articles 367, 368 and 369 of the Criminal Code, should be repealed.

Moldova

- Articles 170, 304, 347 and 366 of the Criminal Code should be repealed.

* See Section 3.6 for more detailed recommendations.

8.2 Civil Defamation

8.2.1 Belarus

As noted above, civil cases are much more frequent than criminal ones.⁶⁸⁸ The reason is likely to be that

⁶⁸⁶ IREX, note 19 above, at 145.

⁶⁸⁷ However, the criminal code is seldom applied in privacy cases.

⁶⁸⁸ ARTICLE 19 interviews with Belarusian journalists, April 2003,

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in civil cases there is no need for the prosecution to prove malicious intent⁶⁸⁹ in the dissemination of the impugned expression, or its falsity.⁶⁹⁰ Privacy laws can also be abused to curb the dissemination of nearly any information concerning public officials.⁶⁹¹

Following the 1999 amendments of the Press Law, Article 5 prohibits the publication of information damaging the honour or dignity of the President, as well as high-ranking officials, and can lead to the closure of a media outlet following the accumulation of two or more warnings.⁶⁹² The prohibition of insult of the President can also be found in Article 79 of the Belarusian Constitution, while Article 9 of Presidential Decree No. 5 renders unlawful the insult of State bodies' executive officials. Moreover, Article 47 of the Electoral Code contains a prohibition on 'insulting or defaming the honour and dignity of official persons, presidential and parliamentary candidates.'

All defamation provisions allow for the imposition of disproportionate penalties, fail to establish adequate defences (such as the defence of reasonable publication) and are excessively vague. In particular, although the Constitution establishes an independent judiciary, the judicial system often bends to political pressure. There is widespread political interference and corruption as courts are financially dependent on the Ministry of Justice.⁶⁹³ The judiciary is also often ineffective as it is poorly funded and staffed, causing it to be overburdened and suffer long delays in trials.⁶⁹⁴

An additional problem is that there are no time limits for the instigation of court proceedings: a lawsuit can be brought several years after the information has been published.⁶⁹⁵ ARTICLE 19 usually recommended that lawsuits be brought within one year from the time an offence was committed, as a later date will make it impractical to gather the necessary information to prepare a proper defence.⁶⁹⁶

Lawsuits against media outlets are extremely frequent. In addition to the 'chilling effect' on the media, they make the already ruinous financial situation of most media outlets even more precarious. They can also cause media outlets to go bankrupt through the imposition of disproportionate fines. *Narodnaya Volya* had to pay the equivalent of US\$15,000 in fines in one year alone, while BDG normally includes in its budget a separate line for fines, as they regularly expect to receive them.⁶⁹⁷

In order to circumvent the problem of the routine use of defamation suits to silence the non-State media, a number of media outlets have hired lawyers to monitor articles that can potentially attract liability in defamation cases. There are two problems with this: first, many media outlets cannot afford to pay lawyers; second, even this measure is usually not enough as nearly anything can attract liability in Belarus, causing self-censorship to be a widespread practice. The Press Law states at Article 40 that journalists must 'verify the truthfulness of the data received' and 'provide objective information for publication'. Normally the only guarantee against a lawsuit is the use of information from an official news agency and official meetings, reproduced word for word. Indeed, the Press Law establishes that if

⁶⁸⁹ See for example Article 188 and 189 of the Criminal Code, referring, respectively, to 'false information *known* to be false' and '*deliberate* degradation of honour and dignity' [italics added].

⁶⁹⁰ IREX, note 19 above, at 104.

⁶⁹¹ *Ibid.*

⁶⁹² Article 5 prohibits the 'dissemination of information defaming the honour and dignity of the President of the Republic of Belarus and heads of State bodies whose status is established by the Constitution of the Republic of Belarus.'

⁶⁹³ US Department of State, *Country Reports on Human Rights Practices: Belarus, 2001*, 4 March 2002, <http://www.state.gov/g/drl/rls/hrrpt/2001/eur/8226.htm>.

⁶⁹⁴ *Ibid.*

⁶⁹⁵ For example, *BDG* has been negatively affect by this situation. ARTICLE 19 interview with *BDG*, March 2003.

⁶⁹⁶ *Defining Defamation*, note 128 above, Principle 5.

⁶⁹⁷ ARTICLE 19 interviews with *BDG* and *Narodnaya Volya*, March and April 2003.

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information is from a different source and reproduced *ad verbatim* from official documents or other identifiable mass media, a media outlet should not be found responsible for its dissemination.⁶⁹⁸ However, even this offers limited guarantees as this provision is applied selectively. In practice, even if the information is reproduced word for word but it is later found to be false, the media outlet will have to appear before a court of law as co-defendant with the originator of the impugned expression.

In cases against the print media, judges normally consider all information contained in a newspaper as information that has to be 'objective', and whose truthfulness must be verified, even if it is presented as a commentary. Readers' letters published in a newspaper or information by interviewees also have to pass the 'objectivity' test. Another reported complication is the absence of a clear definition of 'objective' information. Furthermore, in some cases a number of newspapers published the same information but only some were singled out and sued.⁶⁹⁹

When facing trying circumstances such as large fines, most newspapers try to stay solvent by borrowing money. However difficult it is to pay off such debts, it is even harder to have to start a new outlet after closure, given the difficulties in registration.⁷⁰⁰

Civil Cases

BDG

Lawsuits against *BDG* are frequent. For example, on 29 May 2003 the Ministry of Information suspended the newspaper for three months following the imposition of three warnings. The first warning was imposed for violating the honour and dignity of the President, for the article 'Patron's Image'.⁷⁰¹

In another case, on 21 October 2002 Pavel Dzik, a staff member of the Belarusian Cooperative Union's Bank sued *BDG* and journalist Siarhiey Satsuk for 100 million Belarusian roubles (then US\$47,000) for damaging his honour, dignity and business reputation. Satsuk had written an article⁷⁰² entitled 'The investigation Keeps the Bank'⁷⁰³ which alleged that Dzik had transferred US\$14.7 million of the bank's money to an offshore account without authorisation.

In a third case, also from October 2002, an investigator from the Minsk Prosecutor's Office, Vyacheslav Terekhovitch, filed a lawsuit in the Minsk Oktyabrsky District Court against *BDG*'s special correspondent in Gomel, Irina Makovetskaya. Terekhovitch argued that Makovetskaya had spread false and defamatory reports about his work as head of a team investigating bribe-taking at Gomel Medical Institute (which resulted in former Director Professor Yuriy Bandazhevsky being sentenced to seven years' imprisonment in 2001).⁷⁰⁴

⁶⁹⁸ Article 47 states that: 'An editorial board, an editor (editor-in-chief), a journalist shall bear no responsibility for dissemination of data not corresponding to reality' [when this] 'is a word for word reproduction of fragments of presentations of Deputies at sessions, delegates of congresses, conferences, plenums of social action organisations, as well as of official presentations of official persons from governmental bodies, organisations and social action organisations...', or when it 'is a word for word reproduction of reports and materials or fragments thereof disseminated by another mass medium that can be identified.'

⁶⁹⁹ ARTICLE 19 interview with *BDG*, March 2003.

⁷⁰⁰ ARTICLE 19 interview with *Narodnaya Volya*, April 2003.

⁷⁰¹ The article alleged that Miss Russia had spent a day with President Lukashenka at his residence, and that he had insisted the woman not leave at the end of the visit. See also Section 7.2.1.

⁷⁰² *BDG* No. 1207, 14 August 2002.

⁷⁰³ 'Sledstvie bankuyet.'

⁷⁰⁴ ARTICLE 19 interview with Belarusian journalists, April 2003.

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Nasha Svaboda

The publication of *Nasha Svaboda* ceased operating on 2 August 2002, when Minsk's Moskovsky District Court ruled in favour of State Control Commission Chairman Anatoly Tozik in his lawsuit against the newspaper and its journalist Mikhail Podolyak, for having offended his honour and dignity. The newspaper had published information revealing corruption involving Lukashenka and his entourage in an article of 16 July 2002. The court awarded the plaintiff 105 million Belarusian roubles⁷⁰⁵ (then US\$50,000), a verdict that was later upheld by the City Court. The case was considered exceptionally speedily: the decision of the court was reached within five days, after only a total of nine hours of deliberations. The media outlet's bank account was frozen and its equipment confiscated, which led its editor-in-chief Pavel Zhuk to announce on 27 August that *Nasha Svaboda* was being forced to close. Two previous editions of *Nasha Svaboda* had similarly been terminated.⁷⁰⁶

8.2.2 Moldova

New Civil Code

As noted above, a new Civil Code entered into force on 12 June 2003. The only significant difference between the new and old (1964) Civil Codes is that civil defamation provisions no longer provide a ceiling or floor for pecuniary damages.⁷⁰⁷ Many are worried about the imposition of high fines, and this results in cases of self-censorship caused by journalists' fear of being bankrupted. The abolition of a floor, however, is to be welcomed, since the law should not provide for the payment of a fine when there is no defamation. In addition, non-pecuniary measures may well be sufficient in many cases to restore the *status quo ante*.

Article 16 of the new Civil Code⁷⁰⁸ stipulates that defamation occurs in case of dissemination of false and harmful information. The burden of proof is placed on the defendant (paragraph 2), and there is no defence of reasonable publication.

⁷⁰⁵ 100 million Belarusian roubles to be paid by the newspaper and five million by Podolyak.

⁷⁰⁶ Viasna, note 1 above, at 4.

⁷⁰⁷ According to Article 7(1) of the 1964 Civil Code, penalties could not exceed 3,600 Moldovan lei (US\$270).

⁷⁰⁸ It states:

- (1) Any individual has the right to have his/her professional honour, dignity and reputation respected.
- (2) Any person has the right to request a retraction of the information that has harmed his/her professional honour, dignity or reputation unless the person who has disseminated such information proves its truth.
- (3) Upon request of interested persons it is possible to defend a person's professional honour and dignity after his/her death too.
- (4) If the information that harms one's professional honour, dignity or reputation has been disseminated through a mass medium, the court shall oblige it to publish a retraction under the same section, on the same page, in the same programme or series of programmes within 15 days from the ruling.
- (5) If a document published by an organisation contains information harming one's professional honour, dignity or reputation, the court shall oblige the organisation to replace the document.
- (6) In cases other than those provided for in paragraphs (4) and (5) the procedure for retracting the information harming one's professional honour, dignity or reputation shall be established by the court.
- (7) The person whose rights and interests, protected by law, have been harmed by materials published in a mass medium, has the right to publish his/her reply in the same mass medium at the medium's cost.
- (8) Any person whose professional honour, dignity or reputation has been harmed by disseminated information has the right to claim, besides a retraction, compensation for materials and moral damages thus caused.

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Article 16 also provides for the right of reply in defamation cases at paragraph 7, which was absent in the old Civil Code. A number of freedom of expression advocates have welcomed its introduction, hoping that this will reduce the number of defamation suits taken against the media. However, the provisions may also be applied so as to require both a retraction/reply from the medium *and* the payment of a fine. In order to make clear in what manner the right of reply should be applied, additional clarifications may be provided, such as in the form of explanatory resolutions by the Supreme Court of Justice or through an interpretative law.⁷⁰⁹ In any case, it is essential that provisions on the right of reply be applied only when the information disseminated is false and lowers one's reputation, not only when it simply amounts to information which one does not like.

Allowing one to take a case on behalf of a deceased person (paragraph 3) is not in line with international standards of freedom of expression. Reputation is something personal and it cannot be passed on from generation to generation. Such provisions could also be used to restrict the freedom to engage in debates about historical figures.⁷¹⁰

The new Civil Code also establishes at Article 1424 a term of limitation of three years for claiming compensation for damages (including moral ones). In the 1964 Civil Code the legislation was usually interpreted as not providing any time limit for claiming moral damages.⁷¹¹ Although the overall situation has improved, three years is still an excessively long period of time. In addition, although after three years it is not possible to claim compensation, one can still be sued.

Overall, it is still early to assess whether the changes to the Civil Code will bring positive or negative consequences. Much will depend on practice. The presence of a ceiling for fines is unnecessary if a court fully respects the proportionality principle, yet there are no such guarantees in Moldova. Additional problems are the frequent failure by courts to discriminate between fact and opinion and to take into consideration *bona fide* mistakes.

In addition to the Civil Code, Article 3 of the Law on Television and Radio prohibits expressions that can damage another's honour, dignity and private life. However, this duplicates general provisions on defamation and is therefore both unnecessary and serves as a double warning to broadcasters.

A positive development was the ruling of the Supreme Court of 19 June 2000, when the Court provided explanations on the enforcement of defamation legislation.⁷¹² The Court held that principles of international law (in this case the ECHR's Article 10) have to be applied directly by all courts. The ruling also acknowledged that domestic law with regard to defamation contradicts the Constitution as well as some international norms.

Cases

Between 1994 and 2001 there were 800 lawsuits against the media, taken under the Press Law and the Civil Code.⁷¹³ In particular, there have been numerous lawsuits against non-State political newspapers

(9) If it is impossible to identify the person who has disseminated information harming another person's professional honour, dignity or reputation, the latter has the right to request from a court that the disseminated information be declared untrue.

⁷⁰⁹ Pirtac, note 676 above.

⁷¹⁰ See ARTICLE 19, note 128 above, Principle 2.

⁷¹¹ See page 18 of the Supreme Court of Justice Resolution of 27/3/1997, 'On Applying Legislation concerning the Protection of Professional Honour, Dignity or Reputation of Citizens and Organisations', SCJ Bulletin no 11–12, 2000. Also see Pirtac, note 676 above, on the old and new civil codes.

⁷¹² Then Article 7 of the 1964 Civil Code.

⁷¹³ ARTICLE 19 interview with the Union of Journalists, February 2003.

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such as *Flux*, *Accente* and *Jurnal de Chişinău*. The news agency BASA Press faces lawsuits every year.⁷¹⁴ *Timpul* noted that that it avoids making statements unless it has proof that will allow it to defend itself during potential trials.⁷¹⁵

Defamation suits can also lead to raids and confiscation of equipment. For example, on 24 April 2003 *Flux* was sued by the former honorary consul of Lebanon, and son-in-law of the former Speaker of the Parliament, for publishing a report alleging links between the consul and Islamic terrorist groups. After the suit, judicial authorities authorised a raid on 13 May, during which the police seized computers and files on the report.⁷¹⁶

Some believe that lawsuits may increase in number in an attempt to reduce criticism of government policies in the context of an increasingly deteriorating economy.⁷¹⁷

Transnistria

Defamation suits are also common in Transnistria. The media has, for the most part, refrained from criticising the authorities, while the authorities have become accustomed to being shielded from criticism. In 2003 any dissenting behaviour was harshly punished. For example, the non-State newspaper *Profsoiuznie Vvesti* has been sued repeatedly for violation of honour and dignity provisions. In 2002 the newspaper was sued for publishing a joke, and its bank account was frozen for a month.⁷¹⁸

Novaya Gazeta

On 15 November 2001 Moscow-based Professor Vadim Barabin sued the non-State newspaper *Novaya Gazeta* in Bender. Barabin had become involved in Transnistrian politics and accused the opposition of preparing a *coup d'état*. *Novaya Gazeta* journalists believe that Barabin's political activities contributed to the opposition's defeat during elections. In the article headlined 'Operation Barabin-2', *Novaya Gazeta* suggested that Barabin was paid for his political work in Transnistria.⁷¹⁹

As well as a refutation, the plaintiff requested the equivalent of US\$500,000 in compensation. He also requested that the court seize the assets of the newspaper. Barabin, who never appeared in court in person, claimed that, following the article, his reputation suffered in Moscow, despite the fact that *Novaya Gazeta* is published only in Moldova.⁷²⁰

On 23 May 2003 the Bender Court awarded Barabin 35,000 Transnistrian roubles (US\$5,000).⁷²¹ Although this is a much smaller sum than that claimed by Barabin, it is a significant amount for Transnistria. Barabin is rumoured to have close connections with Transnistria's executive authorities, and to be a friend of the Minister of Defence.

⁷¹⁴ Interview with BASA Press, April 2003.

⁷¹⁵ ARTICLE 19 interview with *Timpul*, February 2003.

⁷¹⁶ IJC, *Moldova Media News*, 'Police Raid Newspaper Offices, International Watchdogs Protest', 20 May 2003, note 379 above.

⁷¹⁷ Interview with *Jurnal de Chişinău*, April 2003.

⁷¹⁸ Interview with *Profsoiuznie Vvesti*, February 2003.

⁷¹⁹ ARTICLE 19 interview with *Novaya Gazeta*, April 2003.

⁷²⁰ Ibid.

⁷²¹ Center for Journalism in Extreme Situations, *A High Risk Job*, Issue No. 22 (72), May 26 - June 1, 2003, http://www.cjes.ru/bulletin/?bulletin_id=464&lang=eng&country=SNG.

8.2.3 Ukraine

In 1999 there were 2,258 suits against the media, for more than 90 billion hryvnyas,⁷²² of which approximately 55 per cent were brought by public officials. Reportedly 70 per cent of these cases were bogus and brought to influence the media's output.⁷²³ In 2001 it was reported that *Den*' newspaper had been sued 45 times for a total of 3.5 million hryvnyas. The situation was not dissimilar in 2002. Some lower courts still order that newspapers' accounts be frozen pending a trial in civil defamation cases,⁷²⁴ and newspapers' assets may well be confiscated to coerce the media into paying fines.

On 13 March 2003 it was reported that Ukrainian courts were examining eight defamation lawsuits against the media. Reportedly, the overall amount claimed by plaintiffs in damages exceeded the country's budget for 2003. Ihor Lubchenko, the Head of the National Union of Journalists of Ukraine, has accused courts of being biased in making decisions against the media in cases brought by powerful individuals such as public officials and successful businessmen.⁷²⁵ Indeed, the judiciary is not always impartial. There were reports of cases in which State bodies sent letters to or phoned the judicial authorities to influence court proceedings.⁷²⁶ These facts show that, although defamation is no longer a criminal offence, it is still a serious concern in Ukraine.

Consequently, many journalists publish anonymously, using a pseudonym to avoid being personally targeted when addressing politically sensitive issues.⁷²⁷ In particular, journalists feel that, although criticism of the Verkhovna Rada and the Cabinet of Ministers is relatively safe, the opposite is true for criticism of the President.⁷²⁸

Article 8(3)⁷²⁹ of the Civil Code legislates on defamation in the following terms:

A citizen or organisation about which has been distributed information which does not correspond to reality and harms their interests, honour, dignity or business reputation, has the right to demand material and non-material compensation.

The article also states that a suit must be brought within one year. In addition, the definition of defamation contains the double requirement that a statement be false and harm one's reputation in order to be regarded as defamatory, in compliance with international standards on defamation. However, it also includes protection against harm to other 'interests', which is too vague and therefore open to interpretation and possible abuse: other interests, such as privacy, should be protected through specific provisions, while the exact scope of a defamation law needs to be clearly and narrowly defined.

Moreover, Article 37 of the Press Law states that refutation in defamation cases can be claimed if a statement is false *or* lowers one's reputation:

⁷²² UNIAN, 4 May 2000, in Razumkov Centre 'Factors Leading to the Escalation of Threats to Ukraine's Information Security', note 174 above, at 32–33.

⁷²³ The Glasnost Foundation, cited in Razumkov Centre 'Factors Leading to the Escalation of Threats to Ukraine's Information Security', note 174 above, at 33.

⁷²⁴ US Department of State, Ukraine, 2001, note 53 above.

⁷²⁵ Institute for Mass Information, 13 March 2003, <http://imi.org.ua/?id=read&n=565&cy=2003>.

⁷²⁶ Razumkov Centre 'Factors Leading to the Escalation of Threats to Ukraine's Information Security', note 174 above at 32, and interviews with Ukrainian NGOs, February–April 2003.

⁷²⁷ Razumkov Centre 'Factors Leading to the Escalation of Threats to Ukraine's Information Security', note 174 above, at 36.

⁷²⁸ *Ibid.*

⁷²⁹ Introduced on 6 May 1993, Law on Amendment of the Civil Code No. 3188-XII.

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Citizens, legal entities and State bodies and legal representatives thereof shall have the right to demand that a printed mass medium publish a refutation of information previously published therein that is untruthful or abasing of their honour and dignity.

Similar provisions are also contained in Article 43 of the Law on Television and Radio and at Article 7 (1) and (2) of the Civil Code.⁷³⁰

Instead, in order to exercise the right of reply in a defamation case, the information has to be false *and* harm one's reputation.

Article 440(1), on compensation of moral damage⁷³¹, states that:

Moral damage caused to citizens or organisations by another person who violated their legal rights is paid by the person who caused the damage if this person cannot prove that moral damage was not his/her fault. Moral damage is compensated in pecuniary or other material form according to the ruling of the court irrespective of compensation of property damage.

The provision places the burden of proof on the person who disseminates the information.

A positive development has been the passing of the Law 'On the Insertion of Changes to Certain Laws of Ukraine which Guarantee Unimpeded Use of the Human Right of Freedom of Speech'⁷³², stating that public bodies which take defamation suits can only claim refutation of false information but not compensation.⁷³³ The same law introduced a provision 'on State Support of Mass Media', stating that, in cases taken by public officials against the media, moral damages may be imposed only when malicious intent by a journalist is proven, and that non-pecuniary remedies, such as refutation, should have priority over pecuniary ones.⁷³⁴ It is clearly stated that journalists should benefit from a defence of reasonable publication.

Journalists have been receiving better legal representation in court and have therefore been able to win more cases, also thanks to the legal training received from international organisations.⁷³⁵

New Civil Code

Article 277 of the new Civil Code of Ukraine, which is due to come into force on 1 January 2004, establishes that 'negative information disseminated about a person shall be considered false'. 'Negative information' is to be understood as any form of criticism or description of a person in a negative light.

This provision is not only a breach of the right to freedom of expression but turns reality on its head to the extent that something that is true but negative will be considered false. It cannot possibly be

⁷³⁰ Article 7(1) states that:

Citizens or organisations have a right to demand in the court refutation of the information which is not true or is presented in a misleading way and which denigrates their honour, dignity or business reputation, or harms their interests, if a person that has disseminated such information can not prove that such information is true.

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Article 7(2) states that:

If information mentioned in the first paragraph of this article was disseminated via mass media (printed or audio-visual), it should be refuted in the same printed medium, radio or TV broadcast or in another proper way. If information, which is not true, harms interests, honour, dignity or business reputation of citizens or organisations contains a document issued by the organisation, such a document should be alternated or called back. The order of refutation in other cases is established by the court.

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⁷³¹ This article was also introduced in 1993.

⁷³² See Section 7.4.1.

⁷³³ New Article 49 of the Law on Information. NGOs had attempted in the original draft to prevent State bodies from taking defamation cases against the media altogether.

⁷³⁴ Article 17.

⁷³⁵ IREX, note 19 above, at 143.

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justified as necessary, since it will often be a matter of great public interest to disseminate negative facts, as well as opinions, about people. The exposure of corruption, for example, may well require both.⁷³⁶

Cases

The following are examples of cases in which disproportionate sentences were imposed for the protection of public officials.

Ukraina-center

In December 2002 the Leninsky City Court imposed upon the Kirovohrad newspaper *Ukraina-center* and a journalist of the regional television station, Yuriy Mykhailovych, fines of, respectively, 100,000 and 20,000 hryvnyas (US\$18,760 and 3,750). The fines were imposed as compensation for moral damage caused to a former candidate for the position of mayor of Kirovohrad, Volodymyr Yaroshenko.

The lawsuit brought by Yaroshenko concerned a statement made by Mykhailovych in a summer conference in Kyiv, when he claimed that Yaroshenko had ordered his murder because of his critical reporting during the election campaign. The statement was also published in *Ukraina-center*.

Yaroshenko had originally demanded 500,000 hryvnyas from the newspaper and one million hryvnyas from the journalist.

Yevpatoriyskaya Nedelia

On 14 February 2003 the Court of Yevpatoria (Crimea) sentenced the local newspaper *Yevpatoriyskaya Nedelia* and its editor-in-chief, Volodymyr Lutiev, respectively, to pay MP Mykola Kotliarevsky 500,000 and 250,000 hryvnyas (US\$93,800 and 46,900). Kotliarevsky had brought an action against *Yevpatoriyskaya Nedelia* for harm to his dignity and reputation.

Other

In December 2002 the opposition newspaper *Vecherniye Viesti* faced 15 defamation suits for charges amounting to the equivalent of US\$15 million.⁷³⁷ *Mirgorodskaya Pravda* was sentenced to a fine of the equivalent of US\$80,000, to be paid to a former Presidential Cabinet representative.

In 1998 *Vseukrainskie Vyedomosti* was closed after it was fined five million hryvnyas (US\$93,800) in moral damages, payable to the Dynamo-Kyiv football team.⁷³⁸ The newspaper went bankrupt. *Kievskie Vyedomosti* similarly had to temporarily close until the decision to award Minister of the Interior Yuriy Kravchenko the equivalent of US\$2.5 million in damages was overturned by the Supreme Court.⁷³⁹

⁷³⁶ Amendments to the new Civil Code, including its Article 277 and its problematic defamation provisions, have been proposed by the FOS Committee.

⁷³⁷ Footnote 56, Human Rights Watch, note 44 above, at 11.

⁷³⁸ The newspaper wrote that the football club was to sell its best player, Andriy Shevchenko, to the Italian team AC Milan. *Vseukrainskie Vyedomosti* had obtained this information from a news agency but lost the case as it could not prove the truth of its report. Shevchenko was later sold to AC Milan.

⁷³⁹ Human Rights Watch, note 44 above, at 11.

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Recommendations

- The State should take measures to limit the instigation of cases in which civil proceedings are brought with the sole purpose of deterring the practice of investigative and/or critical journalism, for example by providing for prosecution for malicious plaintiffs.
- Law and practice should only have defamation claims succeed where their genuine purpose and demonstrable effect is to address the harm caused to one's reputation through the dissemination of false facts.
- Public bodies should not have a right to bring a suit for defamation or insult.
- In all defamation cases, the penalty imposed should be proportional to the damage caused.
- When providing remedies for defamation, courts should take into account the potential 'chilling effect' these will have on journalists and freedom of expression.
- Non-pecuniary remedies should be prioritised over pecuniary ones.
- Judges should be provided with training to enable them to differentiate between fact and opinion and (in Moldova and Ukraine) to correctly apply Article 10 of the ECHR.
- In defamation and insult cases, judges should apply the principle that public officials should tolerate a higher degree of criticism than ordinary citizens.
- Legislation should not contain provisions for the protection of national and State symbols against defamation and insult. State symbols are not natural or legal persons and therefore do not have a reputation.
- Everyone should benefit from the defences of reasonable publication and proof of truth in defamation cases.
- No one should be punished for the mere expression of an opinion. If liability for opinions is retained, it should apply only in cases where the expression was highly derogatory and disseminated with malicious intent to cause harm to one's reputation.
- The establishment of self-regulatory mechanisms to deal with harmful expression in a manner that has the smallest possible impact on freedom of expression should be encouraged.
- Training opportunities for journalists should be enhanced, with a view to addressing the problem of defamatory statements.

Belarus

- Article 5 of the Press Law, Article 79 of the Constitution, Article 9 of Presidential Decree No. 5 and Article 47 of the Electoral Code, providing special protection to public officials, including the President, should be repealed.
- The obligation to verify the truthfulness and objectivity of all information, found at Article 40 of the Press Law, should be repealed.
- A finding of liability for defamation should not lead to the confiscation of media equipment.

Moldova

- Article 16(7) of the Civil Code should be amended so that pecuniary measures are imposed only when a retraction/reply is an insufficient remedy.
- Article 16(3) of the Civil Code should be repealed.

Belarus and Moldova

- Plaintiffs should be restricted to bringing defamation cases within one year of the dissemination of the impugned expression.

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Ukraine

- Article 8(3) of the Civil Code should be amended to remove the phrase ‘other interests.’
- Article 37 of the Press Law should be amended by replacing ‘false *or* lowers one’s reputation’ with ‘false *and* lowers one’s reputation.’
- Article 440(1) of the Civil Code, on the payment of moral damages, should be limited in its application to genuine defamation cases, where non-pecuniary means are insufficient to address the harm done.
- The provision on ‘negative information’ in Article 277 of the new Civil Code should be abolished.

9 FREEDOM OF INFORMATION

Despite some improvements in relation to freedom of information since the notoriously secretive practices used in the Soviet Union, most State institutions remain closed, particularly with regard to the military and law-enforcement structures.

Of the countries under consideration, Moldova is the only one that has a freedom of information (FOI) law, adopted in May 2000. Ukraine does not have a *lex specialis*, but the 1992 Law on Information contains numerous provisions dealing with the right to access information. In Belarus, a general right of access to information is enshrined in the Constitution.

In all three countries the FOI provisions in place are generally not implemented. Since the adoption of its FOI law, Moldova has not become more transparent, nor have some progressive provisions contained in the Ukrainian Law of Information been implemented effectively. Despite what is provided *de jure*, in the region there is still a culture of secrecy, at least in part inherited from its Soviet past.

Reportedly, Moldova has become more secretive since the Communists came to power in 2001. It has also become more difficult to access information about the preparation of draft laws by the Parliament, which means that there has been little opportunity for civil society to provide significant input into new drafts.

The right of freedom of information has also been undermined by the recent adoption of Laws on Extremism in all three countries, which are likely to have a negative impact on the free flow of information on (often highly questionable) national security grounds.⁷⁴⁰ In Belarus, there have also been attempts to introduce an extremely repressive Law on Information Security.

Overall, there is limited awareness among the general public of the importance of freedom of information, and its impact on the democratisation process. Another obstacle to the enjoyment of the people's right to know is the limited investigative reporting. In Ukraine, for example, journalists rarely seek information beyond press releases and comments provided by press officers of State institutions.⁷⁴¹ This may be due to lack of training, but also to a perceived need by the journalists to be cautious in their reporting, as well as the often insurmountable difficulties in getting their hands on information they need.

9.1 Access to Official Information

9.1.1 Belarus

Belarus does not have a specific FOI law and freedom of information continues to be very low on Belarus' list of priorities. The legislation in this area is therefore severely underdeveloped.

The right to freedom of information is enshrined in the Constitution, at Article 34, which states that citizens have the right to obtain, store and disseminate full, reliable and timely information about, among other things, the activities of the State authorities and political life. However, the provision is limited to accessing materials affecting citizens' rights and legitimate interests,⁷⁴² while there is no general constitutional guarantee of access to information. The right was further restricted in 1996, when constitutional amendments added a proviso to this article, stating that 'the use of information may be

⁷⁴⁰ See Chapter 7.

⁷⁴¹ IREX, note 19 above, at 145.

⁷⁴² Paragraph 2.

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restricted by law with the aim of protecting the honour, dignity, private or family life of citizens and the full implementation of their rights.⁷⁴³

Even the restricted guarantees provided in the Constitution are routinely ignored. For example, during the 2001 presidential elections, the Belarusian Helsinki Committee (BHC) made a request to the Central Election Commission to disclose information about the percentage of people who had voted up to that stage. The authorities, as well as denying the information, accused the BHC of attempts to undermine the work of the Commission.⁷⁴⁴

Some provisions directly limit the right to freedom of information. In particular, Article 5 of the Press Law places a double warning on the media, by establishing that the media cannot be used for disclosure of State and confidential information.⁷⁴⁵ Breaches of this rule can lead to the closure of a media outlet. Article 5 also prohibits the dissemination of ‘materials obtained as the result of operating and searching activities.’

Moreover, a secret directive of March 1998, headed ‘On Strengthening Counter-Measures against Articles in the Opposition Press’, marked ‘For Official Use Only’ and signed by a senior adviser in the Department of Social and Cultural Policy of the Council of Ministers, was leaked to the press.⁷⁴⁶ The directive revealed that government officials were banned from giving information to the non-State media. Contrary to official reassurance by the Belarusian government that the directive had been rescinded,⁷⁴⁷ this ban was continuing to be enforced in 2003. In many cases government officials have refused to provide information or interviews to journalists from the non-State media by referring to orders from the governor’s office or the mayor’s office.⁷⁴⁸ It is also widely documented that when journalists attempt to obtain information from the authorities, employees of State bodies effectively screen journalists, by asking where they are from. If the information is requested by a journalist from the non-State media and it concerns a sensitive subject, public officials commonly reply that they have not been authorised to release information to the requesting media outlet, and journalists are advised to call the Presidential Administration directly.⁷⁴⁹ There is therefore a selective implementation of what should be a constitutional guarantee applying to all citizens.

As a result, journalists rely on information either obtained from unofficial channels,⁷⁵⁰ or from the State news agency.⁷⁵¹ Low levels of professionalism also mean that some journalists do not know how to seek information, and because of fear or lack of expertise are unable to challenge public officials in court.⁷⁵² The reluctance of the authorities to disclose statistics which do not show them in a positive light also hinders the journalists’ ability to cover many issues, including social ones.

⁷⁴³ (New) Paragraph 3.

⁷⁴⁴ ARTICLE 19 interview with the Belarusian Helsinki Committee, March 2003.

⁷⁴⁵ It states that the use of the media is prohibited for ‘disclosure of data comprising State or any other secrets specifically protected by law’. Also see ARTICLE 19, *One More Mirror has been Broken*, London: ARTICLE 19, September 1997, 27.

⁷⁴⁶ See also Section 11.1.2 and *The Noose Tightens. Increasing Control on the Press*. London: ARTICLE 19, May 1998, <http://www.article19.org/docimages/268.htm>, at 4.

⁷⁴⁷ In its May 1998 response to ARTICLE 19’s publication *The Noose Tightens*, note 743 above.

⁷⁴⁸ IREX, note 19 above, at 104.

⁷⁴⁹ ARTICLE 19 interview with various Belarusian journalists, March and April 2003.

⁷⁵⁰ Some independent newspapers have contacts in the government or Parliament.

⁷⁵¹ ARTICLE 19 interview with *BDG* and other journalists, April 2003.

⁷⁵² IREX, note 19 above, at 104.

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Furthermore, in 2001 there were moves afoot to adopt an Information Security Doctrine, modelled on the Russian one from 2000, which, if adopted, would have seriously curtailed the information flow. In an analysis of the draft law, ARTICLE 19 noted:

[The Information Security Doctrine] would constitute a further direct attack on freedom of expression and information by severely limiting the activities of the media and placing totally unacceptable restrictions on the public's right to know. Its all-encompassing scope appears to originate from a desire to control information circulating in all spheres of life and verges on the paranoid. Some provisions purport to uphold constitutional guarantees of freedom of expression and information; however, everything else in the text stands diametrically opposed to such standards. Such a document should be dropped wholesale from consideration.⁷⁵³

Encouragingly, on 22 May 2002 the House of Representatives rejected the draft.

Cases

In an incident with disturbing overtones of Chernobyl, in October 2002 Mogilev officials withheld information about a fatal accident at a local State-owned factory for five days. On 16 October, there was a 'technological' accident at the Dnyaprovski factory – two workers were killed and several others received burns. However, regional State television only informed the local population of this incident on 21 October. Its correspondent emphasised the fact that neither the local representative of the Ministry for Emergency Situations nor the head of Mogilev regional authorities would meet with journalists to comment on the situation despite the exaggerated rumours circulating in the region.⁷⁵⁴

9.1.2 Moldova

Moldova has a specific law regulating its freedom of information regime. A general right of freedom of information is also contained in the Constitution. Its Article 34(1) establishes everybody's right of access to information in 'the public interest', and a corresponding obligation on the authorities to provide this information. However, the same article states that the exercise of one's right to know should not 'prejudice measures taken to protect the citizens or prejudice national security.' This restriction is reflected in laws on secrecy and some other laws.

Instead, it is vital that the term 'of public interest' is not interpreted so as to unduly restrict access to official information. One consequence of a properly understood access to information regime is that all official information is 'of public interest' and may only be withheld if it falls within one of the narrowly defined, legitimate exceptions to the general rule of availability.

The Law on Access to Information

Law on Access to Information No. 982-XIV, adopted on 11 May 2000, was deemed by the Council of Europe to meet international standards in this field.⁷⁵⁵

⁷⁵³ Also see *Instruments of Control: A Collection of Legal Analyses of Freedom of Expression Legislation*, London: ARTICLE 19, April 2002, <http://www.article19.by/publications/instrumentscontrol/>, 35.

⁷⁵⁴ Monitoring Service, Belarusian Association of Journalists, October 2002.

⁷⁵⁵ It incorporated many of the recommendations made by ARTICLE 19 when the law was still at the draft stage. There are also provisions on access to information in the Press Law and the Law on Television and Radio. Article 3 of the former requires public officials to provide information to journalists, while its Article 20(1)(e) guarantees

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The law has a number of positive features. First, it grants to everyone the right to seek, obtain and disseminate official information (Article 4). Although Article 7 provides a long list of instances where access to information might be denied, Article 7(4) stipulates that no restrictions are legitimate unless the restriction is ‘codified in law and necessary in a democratic society.’ Article 11 places obligations on information providers, to ‘actively provide accurate and timely information to citizens on issues of public and personal interest’ and to ‘publish at least once every year guides with a list of ordinances, resolutions, and other official documents issued by the corresponding institution, as well as of the areas in which it can provide information’. Any refusal to provide information must be accompanied by reasons (Article 19) and may be challenged through an administrative procedure and subsequently in court (Articles 21 to 23). Article 24 provides for sanctions for public officials who fail to provide information upon request.

Less positive is the fact that Article 9(2) establishes that the law is subject to secrecy laws. It also fails to provide protection for whistleblowers or for open meetings of public bodies.

Amendments to the Law on Access to Information with regard to access to environmental information were adopted in the first reading on 7 March 2003.⁷⁵⁶ However, the discussion of the amendments was, fortunately, later abandoned.

The proposed amendments would have added ‘protection of the environment’ to the grounds for restrictions of the general right to receive information.⁷⁵⁷ It would also have added a new paragraph to Article 7(2), detailing the specific cases in which restrictions to the right to receive environmental information must be applied.⁷⁵⁸

In practice, the main hindrance to the free flow of information in Moldova is ignorance and bad practice. Very few people know about the Law on Access to Information and even fewer have made use of it, while government officials have admitted that they do not have the resources to process information requests effectively.⁷⁵⁹ In May 2001 it was reported that, a year after the adoption of the law, the Moldovan authorities had not become more transparent, nor had the people become more informed.⁷⁶⁰ The NGO Acces-Info in 2003 noted that the level of awareness of the law had partially increased thanks to awareness-raising efforts of civil society,⁷⁶¹ yet the authorities remain inscrutable.

Hardly any initiatives have been undertaken by the authorities to ensure the proper implementation of the law, despite the fact that the majority of Moldovans believe that State institutions

journalists’ right to access areas of natural calamities, attend meetings, demonstrations and other public gatherings. Similarly, ^{Article 29} of the Law on Television and Radio guarantees the right to obtain information.

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⁷⁵⁶ Legislative Initiative No. 4050 of 12 November 2002, amending Law No. 982-XIV of 11 May 2000. The ARTICLE 19 concerns were outlined in an open letter from ARTICLE 19 to the Moldovan authorities, sent on 14 March 2003.

⁷⁵⁷ According to the Law on Access to Information the grounds for such restrictions are: ‘(a) respect for other’s rights and reputation; (b) protection of national security or public order; (c) public health and morals; (d) State secrets; (e) commercial information; (f) personal data; (g) information related to an investigation if disclosure might affect the course of the investigation; (h) information that represents the final or preliminary results of scientific and technical research, the disclosure of which may deprive the researchers of their priority right of publication.’

⁷⁵⁸ This included:

[...] if announcing that information may negatively influence the environment to which that information is related (as would be, for example, the places where the rare species breed and nest) or that may be erroneously interpreted by the public not familiar with the issue and may cause panic or other actions that can hinder taking measures to liquidate the consequences of human activities (evacuating wastes into environment, industrial emergencies etc.)

⁷⁵⁹ US Department of State, 2001, Moldova, note 207 above.

⁷⁶⁰ Iascenco, T, ‘Access to Information: Unrealised Possibilities and Necessities’, Independent Journalism Center, http://icj.md/cgi-bin/print/print_e.pl.

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⁷⁶¹ Interview with Acces-Info, February 2003.

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are not sufficiently transparent.⁷⁶² Some believe that there has even been retrogression, and that the institutions are becoming increasingly opaque.⁷⁶³ Given the risks of providing information, even the few public officials who know about the law refrain from applying it for fear of the reaction by the State – and this fear has deepened under the current government.⁷⁶⁴ Therefore, many define the Law on Access to Information as a ‘dead law’.

Among the few measures adopted to address the culture of secrecy was the amendment in 2001 of the Administrative Code to impose fines for illegitimate refusals by a public official to provide information.⁷⁶⁵ This can lead to criminal prosecution and imprisonment for up to three years if the information relates to healthcare, public security or environmental protection, and if the failure to disclose information causes considerable damage to the legal rights and interests of the person requesting it.⁷⁶⁶ However, these provisions have hardly been implemented.⁷⁶⁷ The new (2003) Criminal Code criminalises ‘the premeditated violation of legislation on access to information’ (Article 188) and ‘concealing or deliberately providing unauthentic data regarding pollution and the environment’ (Article 225). These provisions are important and timely steps in the right direction, yet it remains to be seen whether they will be implemented.

The fact that new legislation is frequently adopted swiftly and without adequate consultation with civil society contributes to perpetuate the general lack of transparency of the institutions, undercutting people’s ability to participate in the political life of the country.⁷⁶⁸

The Law on State Secrets

State secrets are covered by a law of 17 May 1994, whose Article 2 defines a State secret as information which is:

... protected by the State in the field of its military activity, external policy, counter-information and operative investigations, the distribution, disclosure, loss, misappropriation or destruction of which may infringe the security of the Republic of Moldova.

This is an extremely broad definition, a problem which is compounded by the wide range of bodies empowered to classify information as ‘secret’, including the Parliament, the President, the government, State and local administrative bodies and judicial bodies (Article 4). However, Article 28 grants control

⁷⁶² In a 2001 opinion poll 81.5 per cent of people said that the actions of the President of Moldova were not sufficiently transparent. There were similar results for the Parliament (73 per cent), the Supreme Court of Justice (80.8 per cent) the General Prosecutor’s Office (93 per cent), the Ministry of Justice (82.1 per cent), the Ministry of the Interior (77.4 per cent) and the Ministry of Defence (74 per cent). ‘How Are We Receiving Our Information?’, note 315 above.

⁷⁶³ ARTICLE 19 interview with BASA Press and API, April 2003.

⁷⁶⁴ ARTICLE 19 interview with API, April 2003.

⁷⁶⁵ Article 199(7) of the Administrative Code, introduced by Law No. 312-XV of 28 June 2001. The fines are 10 to 150 times the minimum monthly wage.

⁷⁶⁶ Article 140(4) of the Criminal Code, introduced by Law No. 312-XV of 28 June 2001.

⁷⁶⁷ Moldovan Helsinki Committee, note 236 above, paragraph 525.

⁷⁶⁸ For example this happened with the Law on Combating Extremism, and with the adoption in the first reading of the above-mentioned amendments of the Law on Access to Information with regard to environmental information. In the latter case, the legislative initiative was originally presented by MP Stingaci on 12 November 2002, yet the draft amendments were not made public for months. Public discussion only commenced two weeks before the draft was adopted in its first reading, on 7 March 2003. By contrast, there was more time and opportunity for consultation in the adoption of the Law on Public Service Broadcasting.

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and supervision of the legislation to permanent parliamentary commissions, to whom State administration bodies 'are obliged to provide all necessary information'.

The law also details categories of information that should not be classified, including information on violations of human rights and freedoms, on emergencies and accidents that threaten security and health, in the spheres of education, health, ecology, agriculture, trade and justice.

Among the information that receives the highest protection are commercial secrets. Provisions on State secrets are included in Article 344 of the Criminal Code, on 'Disclosure of State Secrets', whose punishment can involve imprisonment for up to ten years.

FOI and the Media

More than 60 per cent of journalists believe that the level of transparency of the institutions is unsatisfactory.⁷⁶⁹

Very few individuals and organisations, including media, have been making use of the Law on Access to Information. *Jurnal de Chişinău* reported that it does not even attempt to request information from the State bodies, aware of the fact that it will not be provided. Instead, its staff use contacts in the Ministries to obtain information, while refraining from quoting sources in their articles, to prevent risks for State employees.⁷⁷⁰ Many other non-State newspapers, such as *Timpul*, do the same. For non-State newspapers such as *Flux*, which, however, are owned by a political party, much information can be obtained directly from MPs and their contacts.

The non-State news agency BASA Press also reported that one of the main problems they face is receiving information from the State, although its staff also noted that some bodies are more open than others. Often whether or not information is released depends on the personal relationship between the heads of media outlets and the State institutions. For example, the news agency has good relations with the government's Department of Statistics, from which it receives some information. BASA Press also admitted of mostly using their own contacts for information, rather than submitting requests through the Law on Access to Information.⁷⁷¹

Not only is it difficult to receive official information, but it is often also problematic to obtain interviews and commentaries from politicians and public officials. BASA Press experienced problems in obtaining declarations/commentaries from certain ministries, such as the Ministry of Finance, in part because it has no press office.⁷⁷² In addition, some State institutions, such as the National Bank, do not hold press conferences and consequently journalists never have the opportunity to ask direct questions.⁷⁷³

To complicate matters, in 2001 the President gave an order to ministers not to provide information to the media directly. Since then media outlets have to compile time-consuming written requests and subsequently wait for a written response.⁷⁷⁴

The Association of Independent Press (API), an NGO involved in the promotion of investigative journalism, started a project on corruption in September 2002. The programme showed not only that high-

⁷⁶⁹ December 2002 IMAS Survey, IREX, note 19 above, at 118.

⁷⁷⁰ ARTICLE 19 interview with *Jurnal de Chişinău*, April 2003.

⁷⁷¹ ARTICLE 19 interview with BASA Press, April 2003.

⁷⁷² *Ibid.* According to recent surveys, the Ministry of Finance is becoming increasingly inaccessible. Instead, BASA Press said that they are easily able to obtain commentaries from the Parliament and President, also via their press offices.

⁷⁷³ *Ibid.*

⁷⁷⁴ ARTICLE 19 interview with *Timpul*, February 2003.

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level officials are involved in corruption, but that exposure of wrongdoing can lead to penalties for the whistleblower, rather than for those guilty of maladministration and illegal practices.⁷⁷⁵

In one case, the General Prosecutor's (former) Press Officer, Jacob Guja, was dismissed in February 2003 for providing information to API. The information revealed that the Deputy Speaker of the Parliament had written a letter to the General Prosecutor asking him to put pressure on a group of investigators working on a criminal case so as to influence the course of the investigation. A document signed by the General Prosecutor was leaked to the press and published in the newspapers that are partners in API's project. Although the sources were kept confidential, Guja admitted that he was responsible for disclosing the information when some of his colleagues were accused of it and unfairly dismissed. He was then dismissed himself, after which he sued the General Prosecutor's Office, requesting reinstatement.⁷⁷⁶ In another case, the press officer of the Ministry of the Interior resigned because he had been asked by his superiors to release distorted information.⁷⁷⁷

API has attempted to obtain information through the official channels by using the Law on Access to Information. However, requests are routinely followed by denials.

It is not only sensitive information that is not released. In one case API requested information on chemicals that are forbidden in Moldova for an article in their agricultural supplement. The organisation had to make several telephone calls to get authorisation from a high official to allow an official at a lower level to provide the requested information. Low-ranking officials normally refrain from using their own initiative in providing information, and do so only if they are certain that they can count on approval from above.⁷⁷⁸

Negative precedents have also bred fear in the media. For example, at the end of 2001, the newspaper *Kommersant Moldova* was closed by the General Prosecutor's Office because it 'published articles which could endanger the security of the State.'⁷⁷⁹

There have been reports of direct intimidation of the media. When journalists have not reported an event as the authorities wished public officials have contacted journalists, threatening to withhold information from them in the future unless they modified their behaviour. It is necessary for journalists to remain on good terms with public officials in order to be able to have access to fresh information.⁷⁸⁰

On 21 July 2002 Prime Minister Vasily Tarlev urged heads of governmental departments to cooperate more efficiently with the media, but also said that they could select the outlets they wanted to work with. Speaking at a later Cabinet meeting, Tarlev said that many media professionals have criticised government institutions for lack of transparency in their activity. He suggested that departments should hold monthly press conferences in order to 'advertise the work they have done.' However, he added that discretion should be used because some journalists disseminate 'false information' about government activities, and harshly criticise the authorities.

⁷⁷⁵ ARTICLE 19 interview with API, April 2003. See also Section 12.2 on API's activities.

⁷⁷⁶ In the meantime, Guja has been working as an investigative reporter in API. Moreover, *Jurnal de Chişinău* sued the General Prosecutor's Office because it did not take the necessary measures after the relevant information was disseminated to punish those guilty of corruption. The case started on 14 March and the newspaper lost in the summer of 2003. The verdict reflected the opinion that the newspaper did not have the right to take a lawsuit against the General Prosecutor's Office. Following this, the newspaper reportedly considered taking the case to the European Court of Human Rights.

⁷⁷⁷ ARTICLE 19 interview with API, April 2003.

⁷⁷⁸ Ibid.

⁷⁷⁹ IREX, note 19 above, at 116.

⁷⁸⁰ ARTICLE 19 interview with *Timpul*, February 2003.

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There is no FOI law in Transdnistria and obtaining official information is no easy task.

9.1.3 Ukraine

Ukrainian citizens have no access to comprehensive data on the activities of State institutions. In addition, opinion polls show that there is a very low public awareness of important issues such as those relating to the armed forces, administrative reform and international relations.⁷⁸¹ Transparency is not a high priority, despite the authorities' paying lip service to it. In addition to the 2002 Presidential Decree 'On Additional Measures to Ensure Transparency in the Working of Government Bodies',⁷⁸² in his 2003 New Year's message Kuchma stated that, given the formation of a parliamentary majority by Ukraine's newly appointed Prime Minister, Viktor Yanukovich, Ukraine had finally acquired a 'transparent power system that is comprehensible to everybody'.⁷⁸³

However, law-enforcement bodies often go so far as to give incomplete, false or distorted information about criminal investigations to the Parliament.⁷⁸⁴ State institutions also frequently fail to provide information to citizens. Requests are either ignored or fulfilled only partially.

Of the 21,000 requests for information submitted to the Minister of Internal Affairs in 1999, only 3,559 (16.9 per cent) were satisfied.⁷⁸⁵ According to a recent poll, on a scale of 1 (complete lack of access to information by the public) to 5 (unlimited access to information), nearly half (46.6 per cent) rated the situation in Ukraine a '3', and, more negatively, 19.4 per cent rated it a '2' and 8.3 per cent a '1'. Only 5 per cent stated that there was full access to information.⁷⁸⁶

The Law on Information

Although Ukraine does not have an FOI law, many relevant provisions are contained in the 1992 Law on Information. Progressive for its time, it is now ineffective in ensuring everybody's right to information: although the law was enacted over a decade ago, its provisions have for the most part not been applied. There have been calls for its amendment, as the law was passed prior to the adoption of the 1996 Constitution, which creates some inconsistencies. The Constitution guarantees at Article 20 specifically the right to access information about the environment.⁷⁸⁷

⁷⁸¹ Razumkov Centre 'Factors Leading to the Escalation of Threats to Ukraine's Information Security', note 174 above, at 40.

⁷⁸² Presidential Decree No. 683 'On Additional Measures to Ensure Transparency in the Working of Government Bodies' of 1 August 2002.

⁷⁸³ Radio Free Europe, 'Ukrainian President says Country finally has Transparent Government', 2003, <http://www.infoukes.com/rfe-ukraine/2003/0103.html>.

⁷⁸⁴ Razumkov Centre 'Ukraine's Information Space', note 252 above.

⁷⁸⁵ First Human Rights report of the Verkhovna Rada's Human Rights Commissioner, cited in Razumkov Centre, 'Factors Leading to the Escalation of Threats to Ukraine's Information Security', note 174 above at 40. However, these data show that Ukrainians do submit a large number of requests, and that the system is somehow working.

⁷⁸⁶ 18.2 per cent rated the situation '4' and 2.3 per cent were uncertain. Zhdanov, I. 'The Problems of Freedom of Speech and Political Censorship According to Ukrainian Journalists', note 467 above, at 32.

⁷⁸⁷ It states that

Everyone is guaranteed the right of free access to information about the environmental situation, the quality of food and consumer goods, and also the right to disseminate such information. No one shall make such information secret.

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There are a number of positive features in the Law on Information. It guarantees the right to obtain information,⁷⁸⁸ and it establishes an obligation for State institutions to provide information upon request (Article 32(5)). In addition, it contains provisions for an appeal system (Article 35). It also provides for the monitoring of compliance with the legislation, and the imposition of sanctions on those who violate the law. The law does not envisage that the FOI regime should be supervised by an *ad hoc* body, such as an Ombudsperson, but by the Verkhovna Rada (Article 28).

Among the clearly negative elements in the law is the fact that there are several repetitions, which renders it confusing. It also refers to 'other laws',⁷⁸⁹ while instead there should be a provision establishing the precedence of the Law on Information over all laws containing access to information provisions. This omission can severely undermine an FOI law. Detailed provisions on public interest override and whistleblower protection are also missing. This was partially addressed through amendments inserted in April 2003,⁷⁹⁰ which incorporated in Article 30 of the Law on Information the provision that 'information with limited access can be disseminated without the agreement of its owner if this information is of public interest' and 'if the right of the public to know outweighs the right of the owner to protect it'. As the Criminal Code establishes that the dissemination of State secrets is a criminal offence, this article acts to protect whistleblowers when information in the public interest is disclosed.⁷⁹¹ Other provisions on access to information are contained in election laws.⁷⁹²

The reality is that there are no clear guidelines in use for the disclosure of government-held information. Information is therefore not stored in a systematic manner in government agencies. The periodic reports to be circulated by the various State bodies on their activities, as prescribed by the Law on Information, have simply not been produced. Furthermore, ARTICLE 19 is not aware of a single case in which sanctions have been imposed on public officials for failing to abide by their responsibilities under the Law on Information, despite the fact that, according to local monitors, such cases have been frequent. The same is to be said about the provisions for training on freedom of information, including public education, which have remained only *de jure*.

The opacity of the institutions is also due to public officials' fear of the potential consequences of their actions if they allow compromising information to reach the public domain. Journalists are forced to bargain to be granted information, and are usually successful when they have demonstrated a loyal stance vis-à-vis the authorities.⁷⁹³

⁷⁸⁸ For citizens of Ukraine, State bodies, organisations and associations of citizens (Article 32(4)). The State body must inform the applicant within 10 days as to whether it will satisfy the information request. The State body will then have a month to fulfil its task (Article 33).

⁷⁸⁹ At Article 39.

⁷⁹⁰ 'On the Insertion of Changes to Certain Laws of Ukraine as a Result of the Parliamentary Hearing 'Society, Mass Media, Authorities: Freedom of Expression and Censorship in Ukraine'', adopted in April 2003. See Section 7.4.1.

⁷⁹¹ However, a draft law proposing to abolish this provision was registered in the Verkhovna Rada on 18 June 2003 and submitted by MPs Serhiy Pravdenko and Yuriy Pavlenko (the draft Law 'On Amending some Legal Acts of Ukraine which Regulate the Procedure of Moral Compensation Payments for the Dissemination of False Information by the Media').

⁷⁹² See also Section 12.3. The 1998 Law 'On Election of Members of Local Councils' provides at Article 36(7) for the unlimited access to events for representatives, as well as an obligation for the authorities to provide information on elections. The 1999 Law 'On Election of the President' and the 2002 amendments to the Law 'On the Election of People's Deputies' include obligations of openness and transparency of election campaigns.

⁷⁹³ IREX, note 19 above, at 145.

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To counter the problem of lack of implementation, the Law 'On the Insertion of Changes to Certain Laws of Ukraine which Guarantee Unimpeded Use of the Human Right of Freedom of Speech'⁷⁹⁴ added a provision to the Code of Administrative Offence, outlawing the illegitimate refusal to provide information, the late or incomplete provision of information or the provision of false information by public officials. These offences are made punishable by a fine.

Practical Access to Information

The Kharkiv Group for Human Rights Protection (KHPG)⁷⁹⁵ has noted that most access to information legislation⁷⁹⁶ has been undermined by government officials withholding information from the public by using stamps such as 'not-for-publication', 'not-for-printing' and 'for-official-use-only', expressions which are not defined by law. It is impossible to find out exactly what type of information is being withheld. FOS Committee Head Mykola Tomenko, at a hearing on access to information in June 2003, maintained that the use of these stamps is widespread. According to 2002 data, 8,000 State documents were classified in this manner. Among these were documents issued by the Cabinet of Ministers of Ukraine (2,672), the President of Ukraine (1,479), the State Customs Service (1,003), the State Tax Administration (514), the Ministry of Education (410) and the Ministry of Economics (297).

The practice of using secret stamps is not only contrary to Ukrainian legislation, but also to international standards of freedom of information. Exemptions to the general right to freedom of information are legitimate only when they fulfil a strict three-part test.⁷⁹⁷ Furthermore, the public should be able to challenge the classification of documents in court. This right is simply denied in the case of secret stamps, which dictate an irreversible exclusion from public scrutiny.

In particular, in 2002 the KHPG carried out a survey to assess the authorities' use of 'not-for-publishing' stamps. The KHPG reported that the number of documents classified through these extra-legal procedures was higher in 2002 than in previous years. The organisation also noted that parallels could be traced between the practice of classification and specific political events.⁷⁹⁸ For example, a sharp increase in classification was recorded during the 2001 presidential electoral campaign and after the appointment of Viktor Medvedchuk as Head of the Presidential Administration in May 2002. The fastest growth of classification through stamps was observed exactly around the time of the preparation and adoption of Presidential Decree No. 683 'On Additional Measures for Guaranteeing the Transparency of the Activities of the Organs of State power' of 1 August 2002.⁷⁹⁹

The KHPG further tested the law by sending out information requests to all central and local government bodies.⁸⁰⁰ In the vast majority of cases, these requests were not acknowledged within 10 days (as stipulated by Article 33 of the Law on Information). When the KHPG did receive an answer (either late or through repeated requests), the organisation was often denied the information on the basis that it was 'government property', 'for official use' or 'confidential', or they were referred to another

⁷⁹⁴ See Section 7.4.1.

⁷⁹⁵ The KHPG is a Ukrainian NGO that has been particularly active in researching the effectiveness of access to information legislation.

⁷⁹⁶ This includes the Law on Information and the Law on State Secrets.

⁷⁹⁷ See Section 3.7.

⁷⁹⁸ *Freedom of Expression and Privacy*, Kharkiv Group for Human Rights Protection, No. 1, 2003.

⁷⁹⁹ See below.

⁸⁰⁰ The information requests were on the death rate, suicides, pensions, unemployment, education, prison conditions etc. *Freedom of Expression and Privacy*, note 798 above.

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government body. KHPG concluded that 'the attitude of government bodies to the implementation of the Law on Information, which makes it obligatory to give all interested parties information about [the body's] work, is openly contemptuous.'⁸⁰¹

The difficulties in obtaining information are not only problems faced by Ukrainians. A team of American and British experts visited Kyiv in 2002 for talks with government officials in order to verify the truth of allegations that Ukraine had been selling Kolchuga early warning systems to Iraq in violation of United Nations sanctions. The foreign experts concluded that it was impossible to fulfil their mission because the Ukrainian government would not assist them, failing to disclose any relevant information.⁸⁰²

In addition, despite some talks on the benefits of e-governance, the State has not sufficiently made use of the Internet to make its institutions more transparent. In October 2000 only 2 per cent of Ukraine's Internet sector contained information about the activities of State bodies.⁸⁰³ In 2001 only 40 per cent of the main State bodies had their own websites, and these contained limited and often out-of-date information.⁸⁰⁴

The Decree on Transparency

On 27 June 2002 Viktor Medvedchuk, the Head of the Presidential Administration, was appointed by the President to head a working group intended to draw up proposals for ensuring openness of government bodies.⁸⁰⁵

On 1 August 2002 the President signed Presidential Decree No. 683 'On Additional Measures to Ensure Transparency in the Working of Government Bodies'.⁸⁰⁶ This edict tasked the Cabinet of Ministers with assessing the implementation of the Law on Information and preparing proposals to improve the current legislation and the general freedom of information regime. It also instructed the central and local executive bodies to make use of the Internet to place relevant information about themselves (with regular updates) on their websites.

As a result of the decree, in January 2003 the Ukrainian authorities released a report on the implementation of the Law on Information and other pieces of legislation relating to access to information. The report claimed that transparency of the institutions had increased, that governmental bodies had publicised information regarding their activities, and that information requests had been processed efficiently. The report did, however, also note that there were still some obstacles in the implementation of provisions on freedom of information, and that 'PR departments do not always fulfil their functions properly'. According to the report, there have also been problems of 'poor co-ordination' and 'poor monitoring of the coverage of the activity of the central and local executive bodies within the period of 2000–2002'. The report also provided recommendations for the introduction of more systematic working methods.

⁸⁰¹ Ibid.

⁸⁰² A senior United States official said Ukraine's denials were unconvincing and the greatest resistance to their inquiry came from the highest levels of government. 'The people who weren't cooperative were Kuchma's people,' the official said. *New York Times*, 15 November 2002.

⁸⁰³ Razumkov Centre 'Ukraine's Information Space', note 252 above, at 13.

⁸⁰⁴ Ibid. This is despite Presidential Decree No. 928 of 31 July 2000 for the development and access to the Internet, which provided that the main State institutions had to set up websites before the end of the year 2000.

⁸⁰⁵ See Section 2.1.3 and particularly note 44 on Medvedchuk.

⁸⁰⁶ See text on <http://www.article19.org.ua/laws/transparencye.html>.

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Although these initiatives were very positive, many promises have not been fulfilled. Among other things, the above-mentioned report conveyed an excessively rosy overall picture of the existing situation.

Law 'On the Amendment of Some Legal Acts of Ukraine'

On 9 July 2003 the Verkhovna Rada adopted in its final reading the controversial draft law 'On the Amendment of Some Legal Acts of Ukraine', to modify, *inter alia*, provisions of the Law of State Secrets and the Press Law. Fortunately, on 11 August the law was vetoed by the President and was sent back to Parliament. Although the presidential veto is to be welcomed, the attempt to enact this law show a concerning tendency by the authorities to control and further restrict the free flow of information about the State.⁸⁰⁷

If enacted, the law will modify the freedom of information regime by providing an extra layer of protection of State secrets. In particular, it will establish that the right to seek, receive and impart information only applies to 'open' information, to be distinguished from information 'with limited access',⁸⁰⁸ intended as State secret or other confidential information.⁸⁰⁹ This provision might, in practice, only remain on paper, as it contradicts the Constitution, establishing the right to seek and impart *all* information. However, if passed the law will represent a dangerous precedent and a retrogressive step for Ukraine.

Other

There have been some positive developments in relation to the coverage of activities of the Supreme Court. On 20 February 2003 the newly elected presidium of the Supreme Court abolished the Resolution 'On Informational Activity of the Supreme Court', which for years imposed limits on accessing information about its activities. The reason for the abolition was reportedly the fact that the Resolution had an adverse impact on the free flow of information about the Supreme Court's activities.⁸¹⁰

⁸⁰⁷ The OSCE also criticised the Verkhovna Rada's decision to adopt the law. The OSCE Media Representative Freimut Duve stated in a letter to the Ukrainian government: 'It is ominous that your country, where the media situation has been steadily deteriorating for the past five years, should decide at this point to approve a highly restrictive law that would have a chilling effect on the work of journalists, especially those investigating corruption.' OSCE, 'The OSCE Media Representative concerned over Ukraine adopting additional restrictive legislation against journalists', 15 July 2003, <http://www.hrea.org/lists/hr-media/markup/msg00132.html>.

⁸⁰⁸ According to Ukrainian law, 'information' can be classified as 'open' and 'with limited access'.

⁸⁰⁹ Article 2(1) of the Press Law states:

Freedom and free expression of opinion in print are guaranteed in the Constitution of Ukraine and in this Law shall mean the right of every citizen to freely and independently search for, receive, record, store, use and distribute *any* information using printed mass media [italics added].

The proposed amendments, if passed, would have replaced 'any' with 'open according to the access regime'.

⁸¹⁰ The European Institute for the Media, note 451 above.

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Cases

KHPG

Court cases against the failure by the authorities to provide information upon request are still rare in Ukraine.⁸¹¹ However, some cases have been taken by the KHPG, although the reaction by the judicial authorities has not been positive in such instances.

In one case, on 18 February 2003, Yevheniy Zakharov, Director of KHPG, appeared in court in a trial against the General Prosecutor's office, following the denial by the General Prosecutor of information on abuse of power by law-enforcement officials. This was the fourth trial since the beginning of the case, in April 2002.

Zakharov had sent requests for information to 27 prosecutors' offices in Ukraine. He received only seven answers containing relevant information, while the rest were refusals for one of the following reasons: 1) the information is confidential; 2) the information should be requested directly from the Office of the Prosecutor General or from the State Statistics Committee; 3) the information is not held by the requested body. Two of the offices, in Ternopil and Kyiv, did not reply at all. A representative of the Kyiv Prosecutor's office was present at the trial as a defendant.

Among the legal difficulties in this case was the fact that the original request for information was submitted in the name of the KHPG's Human Rights Bulletin, while Zakharov had complained of being refused the information as a natural person. Zakharov was therefore required to prove that he had a right to receive the requested information as a natural person, rather than as a representative of a legal entity (the Human Rights Bulletin).

The judge dismissed the case for two reasons. First, in some of the information requests the KHPG had mistakenly addressed some questions to the wrong person; nobody had noticed the error until this stage. Secondly, the judge stated that information requests had to be submitted on a special form rather than on an ordinary piece of paper. However, the Law on Information merely states that the request has to be made in writing and that 'each request shall contain the questioner's name in full, the document or written or oral information required, and the forwarding address.'⁸¹²

Polityka

The violation of secrecy provisions can lead to catastrophic consequences for a media outlet. Between March and June 1999, the newspaper *Polityka* had to change printing houses seven times, and had to close four times in 13 months, pending litigation on allegations of violations of secrecy regulations.⁸¹³

⁸¹¹ They are virtually absent in Belarus and Moldova.

⁸¹² Article 32.

⁸¹³ US Department of State, *Country Reports on Human Rights Practices: Ukraine, 1999*, 23 February 2000, <http://www.state.gov/g/drl/rls/hrrpt/1999/367.htm>.

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Recommendations

- Measures to increase the flow of information from the State institutions to the public should be enhanced and the culture of secrecy which still prevails should be actively addressed.
- Laws on freedom of information should be adopted in all three countries. These laws should be based on the principle that *all* information is presumed to be openly accessible, subject to a limited regime of exceptions, which permits information to be withheld only in accordance with the above-mentioned three-part test (see Section 3.7). Whistleblower protection should be provided by law in all three countries.

Belarus

- The necessary steps to adopt a FOI law should be taken urgently.
- Article 5 of the Press Law should be repealed.
- The Directive ‘On Strengthening Counter-Measures against Articles in the Opposition Press’ of March 1998 should be repealed and no longer applied.
- There should be no discrimination between journalists from State and non-State media in the provision of information by State bodies.

Moldova

- More active measures should be taken to promote the implementation of the Access to Information Law, including training of officials and publicity campaigns.
- The Access to Information Law should be amended so that in case of conflict it takes precedence over all other laws.
- Measures for the application of the progressive provisions contained in Article 7(4) should be introduced immediately.
- The Law on State Secrets should be amended to provide a far narrower and more precise definition of what may be classified as a secret.
- In addition to the list of exceptions to State secrets, the law should provide for a general public interest override for secrecy provisions.

Transnistria

- A freedom of information regime, ensuring as much transparency as possible, should be put in place as soon as practical.
- There should be no discrimination between different media outlets in the dissemination of information.

Ukraine

- Immediate steps should be taken to ensure correct implementation of the Law on Information (including the training of public officials) and to enact a detailed *lex specialis* on access to official information.
- The commitment made in the Presidential Decree No. 683 ‘On Additional Measures to Ensure Transparency in the Working of Government Bodies’ should be fully implemented to ensure openness of government bodies.
- Steps should be taken to ensure that the practice of using secrecy stamps is eradicated.

9.2 Accreditation/Access to Meetings

9.2.1 Belarus

Journalists representing the non-State media have been denied admission to certain events.⁸¹⁴ Reportedly there is a list of media outlets whose representatives may be allowed into State buildings, including the State media and news agency Belta, while the non-State media are usually excluded.⁸¹⁵ This creates a dependency of non-State newspapers on Belta for photographs of meetings of State bodies, as it is logistically impossible for their journalists to take their own pictures.⁸¹⁶

In addition, according to a resolution of the Council of Ministers of 29 August 2002,⁸¹⁷ accreditation with the Committee for Public Opinion Polls of the National Academy of Sciences is necessary in order to carry out research and publication of opinion poll results relating to politically sensitive subjects.

Cases

Yana Kamienskaya

There have been several incidents concerning accreditation. Yana Kamienskaya, a journalist for the non-State radio Unistar, in 2002 announced on the radio that a Unistar correspondent had not been admitted into the building of the Belarusian Patriotic Youth Union, a pro-Lukashenka youth organisation. She was later dismissed allegedly, due to pressure from the authorities.⁸¹⁸

Narodnaya Volya

On 16 January 2001 Minister of the Interior Vladimir Naumov gave a press conference to which only State journalists were admitted. Valery Shchukin, a *Narodnaya Volya* freelance journalist, was denied accreditation under the pretexts that the Ministry's Press Office did not consider him a journalist and that a press card issued by the Belarusian Association of Journalists was not sufficient. When Shchukin tried to enter the Ministry he was detained by guards. In the ensuing struggle, two glass entrance doors were smashed, badly cutting his leg and narrowly missing an artery. In March 2001 he was sentenced to three months' imprisonment for 'disorderly conduct'.⁸¹⁹

NTV

NTV has also experienced difficulties with accreditation. On 8 January 2002 Pavel Selin, NTV's representative in Belarus, was summoned to the Foreign Ministry for an official complaint regarding NTV's supposedly sarcastic and irreverent commentary on the arrest of the Minsk Tractor Plant director Mikhail Leonov. A spokesman for the Foreign Ministry said that: 'We believe that the comments that he [Selin] made in his report on the arrest of ... Leonov were insulting to the Republic of Belarus and

⁸¹⁴ IREX, note 19 above, at 105.

⁸¹⁵ ARTICLE 19 interview with Alfa Radio, April 2003.

⁸¹⁶ Tension between *BDG* and Belta in 2003 has meant that Belta has refused to sell photographs to *BDG* Interview with *BDG*, March 2003. Some newspapers also received photographs from the NGO IREX ProMedia, until it was closed in 2003.

⁸¹⁷ No. 1174.

⁸¹⁸ Viasna, note 1 above, at 6–7.

⁸¹⁹ Under Article 299 (1) of the Criminal Code.

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distorted the real picture and situation in the fight against abuses in the economic sphere'.⁸²⁰ The Ministry demanded that NTV immediately apologise for this 'insult to the Belarusian nation and President' and threatened to strip Selin of his journalist's accreditation.

On 24 April 2002 the Foreign Ministry officially warned Selin 'for showing on NTV biased reports on the social and political situation [in Belarus]' and threatened him with loss of his accreditation if he continued what the Ministry called 'false and insulting' reports.⁸²¹

The following day, an NTV crew led by correspondent Aleksandr Kolpakov, arrived in Minsk to cover President Lukashenka's annual visit to areas most affected by the Chernobyl disaster. They were refused accreditation with the Foreign Ministry.⁸²²

Radio Free Europe/Radio Liberty (RFE/RL)

On 1 August 2002 the RFE/RL's Prague office received a letter from the Belarusian Foreign Ministry which threatened the revocation of the official accreditation of all RFE/RL correspondents operating in Belarus if the Belarusian Service 'used the professional services of non-accredited correspondents and other individuals on the territory of the Republic of Belarus'. Later, RFE/RL Belarusian Service Director Aleksandr Lukashuk reported that the Belarusian Foreign Ministry had refused to meet him to discuss the issue.

9.2.2 Moldova

There have been a number of obstacles to accreditation, which in practice is granted at the authorities' discretion. For example, on 24 January 2003, at a meeting of the Centre for Combating Economic Crimes and Corruption, President Voronin ordered media professionals to leave. He maintained that the discussion themes were mere 'working issues', which would not be of interest to journalists. The agenda included discussions on the Centre's activities for the preceding six months, as well as plans for the future.⁸²³

The opposition media, in particular, have great difficulty in obtaining accreditation for the Parliament's sessions. The accreditation process is lengthy and cumbersome and there is no transparency regarding the process.⁸²⁴ The authorities have stated on some occasions that they were displeased with certain media's coverage of parliamentary debates, and claimed that they would no longer grant them accreditation for future sessions.⁸²⁵ In order to be accredited, a journalist has to be affiliated to a media outlet; hence the accreditation system does not allow for freelancing.⁸²⁶

In Gagauzia, the Popular Assembly of Gagauzia has also prevented undesired journalists from attending its sessions.⁸²⁷

⁸²⁰ Radio Racyja, 9 January 2002.

⁸²¹ Charter 97, 'Belarusian FM Reprimands NTV Reporter Pavel Selin,' 25 April 2002, <http://www.charter97.org/eng/news/2002/04/25>.

⁸²² For 2003 events involving Selin and NTV, see Section 5.1.

⁸²³ IJC, *Moldova Media News*, 'President Bans Media Access to Meeting on Corruption', 24 January 2003, Vol. 3, No. 1, 27 January 2003, <http://ijc.iatp.md/en/mmnews/2003/nr42.html>.

⁸²⁴ Moldovan Helsinki Committee, note 236 above, paragraphs 514 and 515.

⁸²⁵ *Ibid.*

⁸²⁶ IREX, note 19 above, at 117.

⁸²⁷ Topal, I, note 100 above, at 30.

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Transnistria

In Transnistria accreditation is also a serious impediment to journalists' ability to do their job. For example, on 15 August 2002, at the request of Oleg Astahov, the Russian representative in the Joint Control Commission (CUC),⁸²⁸ journalists were prevented from attending its latest meeting in Transnistria. Astahov accused media representatives of providing 'biased' coverage of CUC activities. The Russian representative lashed out vehemently against reporters from the Moldovan State broadcaster accusing them of broadcasting inaccurate reports. Astahov noted that journalists will be allowed in only to take photographs, otherwise they would have to refer to official press releases.

This is not the first attempt to tighten control over information on the institution and its activities. In late 2001 CUC adopted a decision to reduce access to information about its activities claiming that journalists did nothing but 'heighten the tension' in the region.

9.2.3 Ukraine

In Ukraine there are several obstacles to accreditation. These have caused many journalists difficulties in entering State buildings.⁸²⁹ In particular, journalists are frequently prevented from gaining access to important events with various officials. At the higher level, the list of journalists accompanying the President on trips (including abroad) is compiled using loyalty as one of the main factors. Journalist Andriy Schevchenko was removed from the list after addressing embarrassing questions to the President. At times the local authorities outside the main cities have denied accreditation to non-State media outlets because they preferred to rely on newspapers they owned.⁸³⁰

Article 27 of the Press Law regulates accreditation, by stating that if a journalist abuses his/her rights and 'neglects his obligations', the body that issued it may revoke his/her accreditation.⁸³¹ These are extremely general grounds for denying accreditation, which may easily be abused. Accreditation should be overseen by a body that is protected against political and other interference. Furthermore, the rules and conditions for accreditation should be unambiguous and fair.⁸³²

Of more relevance than the Press Law is Article 3 of the 1997 Law 'On the Coverage of Activities of State Bodies', which, on paper, removes the threat of non-accreditation. It establishes that accreditation is automatic upon submission of an application by a journalist who can produce a university certificate of journalism in his/her name, or a letter from a media association. This can be invoked by freelance journalists or those working for Internet magazines. Yet there is clearly a contradiction between this and Article 2 of the Press Law. Local human rights activists have advocated that the more recent (the 1997 Law 'On Coverage') be considered to prevail over the older provisions in the Press Law. Yet the Law 'On the Coverage of Activities of State Bodies' is not always implemented.

On 3 January 2003 the General Prosecutor's Office introduced new regulations for accreditation of media outlets and information agencies for the Office's events. According to the new regulations,

⁸²⁸ The tripartite commission charged with monitoring the situation in the security zone along the Dniester river. CUC was created shortly after joint Russian, Moldovan and Transnistrian peacekeepers were deployed in the region to stop fighting between Moldovan government troops and those of the self-proclaimed Transnistrian republic.

⁸²⁹ *The State of Observance and Protection of Human Rights and Freedoms in Ukraine*, 216, cited in Razumkov Centre 'Factors Leading to the Escalation of Threats to Ukraine's Information Security', note 174 above, at 30.

⁸³⁰ IREX, note 19 above, at 144.

⁸³¹ State bodies and managerial bodies of associations of citizens.

⁸³² See, for example, *Gauthier v. Canada*, 7 April 1999, Communication No. 633/1995 (UN Human Rights Committee).

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media outlets are required to submit an application providing information such as the newspaper's founder, its publisher, its circulation and a copy of the certificate of State registration (for the print media). There are additional requirements for foreign mass media. The General Prosecutor's Office stated that it would have the discretion to refuse accreditation when it believed that the data submitted were incorrect or insufficient. The decision would be taken within a month upon receipt of the application. There were widespread complaints, as allegedly the regulation was adopted to exclude journalists of new media from events in the General Prosecutor's Office. One of the presumed targets was Internet newspaper *Ukrainska Pravda*, which was denied accreditation to attend briefings by the General Prosecutor.⁸³³ Following pressure from NGOs and the FOS Committee, the General Prosecutor amended the regulations to allow individual journalists to get accreditation regardless of the media for which they worked. This was done to ensure compliance with Article 3 of the Law on the Coverage of the Activities of State Bodies.

In general, despite the development of positive legal provisions, journalists working for web publications have experienced problems in obtaining accreditation. Representatives of *Telekrytyka*, an Internet magazine supported by Internews-Ukraine, have noted that, although they have less duties and responsibilities than journalists in traditional media, they also have fewer rights.⁸³⁴

Cases

Dilovi Novyny

The Executive Committee of Novokakhovsk City Council of Kherson Region, wrote a letter to the director of the business newspaper *Dilovi Novyny*, which read:

Answering your letter of 21.05.2002 No.32, I inform you that Executive Committee of Novokakhovsk City Council will agree to grant accreditation to a correspondent of the newspaper 'Dilovi Novyny' only when you send another correspondent as Maxime Mykoliovykh Birovash violates the norms of journalistic ethics and covers the work of City Council, its executive bodies and events which take place in the city with prejudice.⁸³⁵

Alubika

On 27 December 2002 the editor of the newspaper *Alubika*, Ragim Gumbatov, won a case against the mayor of Alupka (South Crimea), Valeriy Andyk. The ongoing conflict between the journalist and the mayor is reportedly due to the exposure by the newspaper of cases of alleged corruption implicating the municipal authorities. On one occasion the mayor is said to have verbally attacked Gumbatov in public.

However, it took nine months to overturn the decision over refusal of accreditation, during which no information was released by the local government to the newspaper.⁸³⁶ The December 2002 decision finally established that Andyk must accredit the journalist in the City Council and provide Gumbator with the information necessary for his work. However, the mayor has failed to comply with the court's decision, and *Alubika*'s editor has been prevented from entering the City Council premises.⁸³⁷

⁸³³ IREX, note 19 above, at 145.

⁸³⁴ ARTICLE 19 interview with *Telekrytyka*, January 2003. This is, to some extent, acceptable, as website publications have a number of advantages as they are not subject to the same regulations as the traditional media.

⁸³⁵ Paliy, note 250 above, at 9.

⁸³⁶ IREX, note 19 above, at 145.

⁸³⁷ The City Council had introduced a system of mandatory accreditation, allegedly to shield itself from criticism; Gumbatov was refused accreditation for allegedly having completed his application form incorrectly.

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Lviv Newspapers

On 24 June the Court of Appeal of the Lviv Oblast found that the actions of the city mayor Leonid Bunyak had been illegal when, on 7 August 2002, he ordered journalists of *Express* and *Vysokiy Zamok* to leave the room during a conference dedicated to the tragedy at Sknyliv airport.⁸³⁸ The journalists were ordered to leave as ‘they were not invited to the conference.’ Following this the journalists sued the mayor for moral damage and requested 5,000 hryvnias as compensation. The journalists had written articles in which they had accused the mayor of being responsible for the tragedy.

The journalists’ claim was only partially met, as the ruling did not include compensation for the newspaper. The journalists still declared themselves satisfied at having created a positive precedent.

Recommendations:

- Accreditation should be required only for legitimate reasons (restricted space and security).
- Accreditation should be granted by bodies independent of government, so that political considerations do not have an impact on the relevant proceedings.
- The accreditation procedure must be politically impartial and fair, and not unduly onerous.

⁸³⁸ The incident had taken place on 27 July 2002, when approximately 50 people lost their lives when one of the planes crashed into the crowd at an airshow.

10 ELECTIONS

A fully functioning regime for fair and balanced reporting during election periods is absent in Belarus, Moldova and Ukraine. Not only do the authorities fail to provide direct access to opposition candidates, but there are also aggressive media campaigns against them. Journalists also often disregard the most basic principles of journalistic ethics during these politically charged times. This seriously impairs people's ability to make an informed and unfettered choice in the selection of their representatives.⁸³⁹

10.1 Belarus

Belarus has a long history of media repression preceding elections.⁸⁴⁰ Prior to the 2001 presidential elections, on 4 September, Lukashenka allegedly openly threatened the media during a public meeting, by stating that 'in case we shut down [some newspapers] ... They are asking for it. We will call them to account after the elections.'⁸⁴¹ Similarly, in February 2003, prior to the 2 March local elections, the pressure of the authorities on the non-State regional press intensified.⁸⁴² For example, the licence of *Novaya Gazeta Smargoni's* founder was revoked on 3 February 2003, which seems to be linked to its independent reporting on the eve of the elections.

Elections in Belarus are regulated by the Electoral Code of 1999. Before 1999 Regulation 14 was used, whose Point 13, 'On Using the Mass Media during an Election Campaign', prescribed balanced reporting. Yet the resolution was not implemented, due to the fact that, for a period of time, information relating to Regulation 14 was classified or unclear, meaning that media outlets had little idea how to operate during election periods. This created an absurd situation by which media outlets were not even aware of what their obligations were during election periods, although they were still expected to behave according to them.⁸⁴³

The 1999 Electoral Code stipulates that each candidate has three minutes during a two-week campaign period to present his/her political platform in the local media as well as a small budget (approximately the equivalent of US\$50) for producing leaflets and posters. However, the recorded messages of candidates were broadcast by unpopular media. This was the case for all candidates, including those favoured by the authorities, yet the incumbent had several other opportunities to publicise his/her messages.⁸⁴⁴

The law is also often not clear. In 1999 the Central Election Commission (CEC) provided a list of clarifications on the interpretation of the Electoral Code. However, the explanations at times contradicted the legislation, causing the statements by CEC to often seem an exercise in speculation.⁸⁴⁵

Because of these drawbacks, the Parliamentary Group Respublica has launched a campaign for the amendment of the Electoral Code, although it seems to have little chance of succeeding. International organisations have also criticised Belarus for the inadequacy of election legislation. In a resolution of the

⁸³⁹ For international standards on election coverage, see Section 3.9.

⁸⁴⁰ See *The Mechanics of Repression: Presidential Election Update*, note 9 above, <http://www.article19.by/publications/repressionupdate/>.

⁸⁴¹ Republic of Belarus, Presidential Elections, 9 September 2001, OSCE/ODIHR, Final Report, 4 October 2001, http://www.osce.org/odihr/documents/reports/election_reports/by/bel_sep2001_ehr.php3

⁸⁴² Viasna, note 1 above, at 4.

⁸⁴³ ARTICLE 19 interview with the BAJ Centre for Media Protection, April 2003.

⁸⁴⁴ *Ibid.*

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OSCE Parliamentary Assembly of 9 July 2003, the organisation 'urge[d] the government of Belarus to reconsider the Electoral Code in order to provide good conditions for holding free, fair and transparent elections.'⁸⁴⁶ However, Belarus has so far failed to do so, which is worrying as the next parliamentary elections are due to take place in the autumn of 2004.

During the campaign leading to the 2001 presidential elections, the incumbent was clearly advantaged. The State broadcaster showed a series of presidential activities including field trips to regions and visits to factories on a daily basis. On 4 September State-owned Radio 1 broadcast three hours of Lukashenka's main campaign rally.⁸⁴⁷ In addition, on 5 September *Sovetskaya Belorussiya* nearly doubled its print-run when it published Lukashenka's political platform.⁸⁴⁸

The results of the March 2003 local elections show that 73 per cent of the population voted, although some believe there was vote rigging. In fact, information gathered by NGOs such as Viasna does not correspond to the official figures.⁸⁴⁹ Other bodies that monitored the elections also noted a lack of transparency in the electoral process. The State media was overtly biased. For example, during the campaign the State-owned newspaper *Minskiy Kurjer* published a series of interviews with the candidates favoured by the authorities, describing them as successful individuals.

10.2 Moldova

In the Election Law,⁸⁵⁰ there are a number of articles on the media, of which Article 47 is the most relevant. It states that parties and candidates are free to discuss their electoral programmes (paragraph 1) and that the public broadcaster must grant airtime free of charge to all candidates during a campaign (paragraph 2).⁸⁵¹ There are also some regulations for private broadcasters, stating that if they wish to organise round-table discussions with candidates, all candidates should be invited, and equal time should be provided to each candidate (paragraph 3). Paid advertisement is permitted, and it has to be provided impartially (paragraph 6), while it also established that 'no election candidate shall have an advantage because of the post he holds' (paragraph 4).

The Central Election Commission (CEC) and the CCA developed additional regulations on election coverage for the May 2003 local elections, published, respectively, on 28 March and 4 April 2003. These included the right of everybody to equal access to the media, with details on exact time slots, and a limitation to the purchase of political advertising to 75 minutes per candidate.⁸⁵² The CCA's main role during election campaigns is that of supervisory body, while the CEC receives and considers complaints.

⁸⁴⁵ Ibid.

⁸⁴⁶ See note 160 above.

⁸⁴⁷ Ibid.

⁸⁴⁸ This was published on two occasions, in violation of the Electoral Code. Republic of Belarus, Presidential Elections, OSCE/ODIHR, note 841 above.

⁸⁴⁹ ARTICLE 19 interview with Viasna, March 2003.

⁸⁵⁰ Last amended in February 2003.

⁸⁵¹ This should 'not be more than two hours during the whole election campaign and not more than two minutes per day on every television and radio station.' Most candidates prefer to use most of this time around the end of the electoral campaign. Time needs to be booked seven days in advance, and the State broadcaster will allocate the slots on a first-come first-served basis. ARTICLE 19 interview with CEC, April 2003.

⁸⁵² Republic of Moldova, Local Elections 25 May and 8 June 2003, OSCE/ODHIR, Final Report, 14 August 2003, http://www.osce.org/documents/odihr/2003/08/560_en.pdf.

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The May 2003 local elections were criticised by many local and international observers for violations of electoral principles, including in the coverage of candidates.⁸⁵³ The media was deeply polarised: it supported either the Communist Party (as in the case of Moldova 1, Radio Moldova, NIT and Pervy Kanal) or non-Communist forces (as in the case of Antena C and Euro TV).⁸⁵⁴ Most of the local broadcasters, however, sided with the Communists, and overall the coverage overwhelmingly favoured the Communist Party.⁸⁵⁵ Not only did Moldova 1 and Radio Moldova support the Communist Party, but they also attacked the non-Communist mayoral candidate for Chişinău and marginalised all the others. The main State newspapers also sided with the Communist Party.⁸⁵⁶ Furthermore, open debates between candidates were not held, in violation of the Election Law.⁸⁵⁷

Hence, in contrast with the 2001 parliamentary elections, during which the OSCE noted that the State broadcaster had 'provided voters with unbiased information on political contestants',⁸⁵⁸ the 2003 local elections were characterised by heavy biases in favour of the authorities. The President received 45 per cent of news coverage and the government 43 per cent – nearly all of it positive.⁸⁵⁹

Representatives of the opposition acknowledge that there are some progressive provisions in the Election Law, and that additional airtime can be purchased at an affordable price. However, they claim that there is still *de facto* inequality as the incumbent has additional opportunities to promote him/herself on State television, providing the party in power with a disproportionate share of the political advertising space.⁸⁶⁰ In some cases, politicians have their own media outlets and, despite Article 47(4) quoted above, the incumbent often benefits from his/her position throughout the 60 days of the election campaign.⁸⁶¹ Many stories cover self-propagandising visits of high-ranking public officials to factories and villages.⁸⁶² Opposition representatives also stated that the time available for the opposition in the 2001 parliamentary elections was, instead, insufficient to adequately promote their messages.⁸⁶³

The respect for journalistic ethics is generally rare and quickly deteriorates during election periods, so that only very few non-State media outlets abide by ethical norms. The print media is often

⁸⁵³ Among the international organisations that voiced concern on the election coverage were the Council of Europe and the OSCE. IJC, *Moldova Media News*, 'Local Election Coverage Remains Biased, Reports Say', 26 June 2003, Vol.3, No. 6, 2 July 2003. <http://ijc.iatp.md/en/mmnews/2003/nr47.html>.

⁸⁵⁴ *Ibid.* For example, the Chişinău Municipality's Euro TV favoured the mayor of Chişinău by giving him 73 per cent of political coverage, while other candidates were allocated less than two per cent. Republic of Moldova, Local Elections 25 May and 8 June 2003, OSCE/ODIHR, note 851 above.

⁸⁵⁵ IJC, *Moldova Media News*, 'Pre-election Coverage Favours Communists, Monitoring Results Show', 27 May 2003, note 379 above.

⁸⁵⁶ *Nezevisimaya Moldova* and *Moldovan Suverană* allocated more than 70 per cent of their political news space to cover the President and government in an extremely positive light. Countervailing biases were present in *Flux*, *Accente*, *Timpul* and *Moldavskie Vedomosti*. Republic of Moldova, Local Elections 25 May and 8 June 2003, OSCE/ODIHR, note 851 above.

⁸⁵⁷ IJC, *Moldova Media News*, 'Pre-election Coverage Favours Communists, Monitoring Results Show', note 379 above.

⁸⁵⁸ Republic of Moldova, Parliamentary Elections 25 February 2001, OSCE/ODIHR Final Report, 3 April 2001, http://www.osce.org/odihr/documents/reports/election_reports/md/mol01_25feb_pe.pdf.

⁸⁵⁹ Republic of Moldova, Local Elections 25 May and 8 June 2003, OSCE/ODIHR, note 852 above.

⁸⁶⁰ ARTICLE 19 interview with PPCD, February 2003. It should be noted that this situation is unavoidable and it is a feature of pre-election periods in all countries. Yet it is particularly acute in countries where the media can be heavily manipulated for political purposes, as in the countries under consideration.

⁸⁶¹ ARTICLE 19 interview with CEC, April 2003.

⁸⁶² Vasilica V, 'The Printed Press During Elections', *Mass Media in Moldova*, note 412 above.

⁸⁶³ ARTICLE 19 interview with PPCD, February 2003.

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extremely biased,⁸⁶⁴ and there have been reports of cases in which political parties ‘purchased’ favourable articles in popular newspapers.⁸⁶⁵ The more a party represents a threat to the party favoured by the publication, the more vehemently it is attacked.⁸⁶⁶

In some cases, journalists might be punished for not co-operating with the authorities in their propaganda efforts. For example, in May 2001 Valentina Ushakova, editor of the Moldovan edition of *Argumenti i Fakti*, was dismissed, allegedly for refusing to publish pro-Communist propaganda during the parliamentary election campaign. A number of other journalists from the same newspaper resigned in protest.⁸⁶⁷

The CCA did not intervene to end biased reporting and partisanship preceding the May 2003 local elections, stating, among other things, that it had not received sufficient funding to carry out adequate monitoring. The CEC told ARTICLE 19 that some advantages for the incumbent during election periods are normal, so that it did not plan to initiate measures to limit their occurrence.⁸⁶⁸

It is not only during elections that the opposition is marginalised by the media. The PPCD noted that they are rarely invited onto State television to express their opinions.⁸⁶⁹

Gagauzia and Transdnistria

Biases can also be observed in the Gagauz autonomous region in support of certain candidates. For example, on 21 October 2002 members of the League for the Defence of Human Rights in Moldova (LADOM) criticised the Gagauz authorities for using the local media to promote a Communist candidate in the election campaign for governor. According to a LADOM statement, the editor-in-chief of the weekly *Znamea*, from Ceadir Lunga, was dismissed, while staff members were threatened with dismissal, in a move to ensure pre-election coverage favouring Gheorghii Tabunschik, member of the majority Communist faction in the Moldovan Parliament. LADOM called the move a flagrant violation of Moldovan legislation and a dangerous precedent. The newspaper staff had organised a strike to protest against the pressure of the authorities, but to no avail. Tabunschik was elected as the region’s governor on 20 October.⁸⁷⁰

Media biases during election periods also persist in Transdnistria. When Smirnov was running for Presidency for the third time in December 2001, some newspapers experienced unprecedented pressure.⁸⁷¹

10.3 Ukraine

There are three distinct pieces of legislation on elections: for the election of Members of Parliament, the President of the Republic, and local council representatives.⁸⁷²

⁸⁶⁴ Particularly State newspapers *Nezavisimaya Moldova* and *Moldova Suverană*.

⁸⁶⁵ IREX, note 19 above, at 115.

⁸⁶⁶ Vasilica V, note 862 above.

⁸⁶⁷ Committee for the Protection of Journalists, protest letter of 12 May 2001.

<http://www.cpj.org/attacks01/europe01/moldova.html>.

⁸⁶⁸ ARTICLE 19 interview with CEC, April 2003.

⁸⁶⁹ ARTICLE 19 interview with PPCD, February 2003.

⁸⁷⁰ Topal I, note 100 above, at 29.

⁸⁷¹ ARTICLE 19 interview with the OSCE Mission to Moldova, February 2003.

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The 2001 Law ‘On Election of Members of Parliament’ contains provisions for equal direct access to the media for candidates in Articles 51(4) and 53(1). Paid advertising is allowed and there is an obligation to publicise the fees for these services. There is also an ambiguous provision establishing that advertising should be provided indiscriminately.⁸⁷³ In practice many media, particularly the main television channels, refuse to sell advertising time to political rivals. The law was amended in 2002, to incorporate provisions on the openness and transparency of election campaigns (Article 12).

A similar provision is contained in the 1999 Law ‘On Election of the President of Ukraine’, on ‘Openness and Transparency of the Elections’ (Article 7), including rules on fair coverage of election campaigns. The 1998 Law ‘On Election of Members of the Local Councils’ also incorporates a general guarantee of equal opportunities for candidates, including in the media at Article 53(1) and specifically with regard to the State-owned media at Article 37(6).

Despite the above legal guarantees, during the 1998 parliamentary election campaign the opposition candidates received mainly negative coverage in the media, and the situation worsened with the 1999 presidential elections, during which virtually no opposition voices reached the population.⁸⁷⁴ The media was once again used as a propaganda tool to shape public opinion during the 2000 referendum and during the 2002 parliamentary elections.

Yet, overall, compared with election coverage in the 1998 and 1999 elections, news on candidates was more diverse in the 2002 parliamentary elections campaign. This was mainly thanks to the increased number of media outlets rather than to fair reporting. Despite this media outlets still failed to provide a sufficiently accurate overall picture of political platforms.⁸⁷⁵

Encouragingly, the STA in early 2002 announced that it would suspend its investigations on media outlets until after the 2002 parliamentary elections, so as not to inhibit the media’s performance. However, the transmissions of some broadcasters were suspended for expired licences, despite the fact that many broadcasters regularly function in Ukraine without a valid licence, and that the licences in some cases had expired years earlier. Some stations have reported experiencing pressure from the local administration for their portrayal of election matters.⁸⁷⁶

Although UT-1 provided free airtime to all political contestants as established by the legislation, it clearly favoured the ‘For a United Ukraine’ coalition, in the 2002 parliamentary elections campaign. Forty per cent of its prime time news was dedicated to the (mostly positive) coverage of For a United Ukraine in February, and 21 per cent during early March 2002. In contrast, the Yulia Tymoshenko Bloc received only 3.3 per cent. UT-1 was also partisan in its analytical programmes.⁸⁷⁷

⁸⁷² A new Election Law was discussed in the middle of 2001 ‘On Mandatory Holding of Pre-Election Debates during Pre-Election Campaigning for Presidential and Parliamentary Elections in Ukraine’. This draft law was adopted in Parliament within one day, yet it was vetoed by the President.

⁸⁷³ The provision is unclear. Some interpret it as establishing the indiscriminate provision of advertising; others believe that there is only a need to have set prices for advertising, while it is allowed to refuse to sell time to certain parties.

⁸⁷⁴ Razumkov Centre, ‘Political Censorship in Ukraine: the State of Imposition and Mechanisms of Implementation’, note 172 above, at 3. Several international observers, including the OSCE and the European Institute for the Media, unanimously denounced the inadequate access to the media by political candidates. See also Chekmyshev, O, *Mass Media is the Achilles Heel of Ukrainian Democracy*, <http://europexxi.kiev.ua/english/book/001/003.html>.

⁸⁷⁵ Republic of Ukraine, Parliamentary Elections, 31 March 2002, OSCE/ODIHR, Final Report, 27 May 2002, http://www.osce.org/odihr/documents/reports/election_reports/ua/ua_pe_march2002_epr.php3.

⁸⁷⁶ Ibid.

⁸⁷⁷ Ibid.

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Non-State broadcasters, like the non-State print media, provided a broader range of political views than the State media, although most private broadcasters favoured particular political groups. Non-State television channels Inter and Studio 1+1 displayed biases in favour of SPDU(u). The most balanced coverage was on STB, Noviy Kanal and UTAR. STB and Noviy Kanal broadcast criticism of For a United Ukraine, and UTAR openly supported the Yulia Tymoshenko Bloc.⁸⁷⁸

Pro-presidential parties also benefited from additional access to the media through free-of-charge ‘social programmes’, which are programmes of a political nature in disguise.

There have also been reported cases of spreading untrue information during elections via the media with the aim of discrediting certain candidates or to present the incumbent in a favourable light, so as to influence the course of the elections. A frequent medium for this is the Internet.⁸⁷⁹

Recommendations:

- Election laws should provide for fair and balanced coverage by the broadcast media of election campaigns, so that people are exposed to the whole spectrum of political views.
- Specific guidelines should be established to require the public broadcaster and private broadcasters to provide fair and balanced coverage of different parties and political candidates. Special efforts should be made to ensure that the public broadcaster is not partisan during election periods.
- Where it is possible to purchase political advertising, the media should be required to offer such advertising on a non-discriminatory basis to all parties and candidates.
- All forms of harassment of the private media with a view to affecting their coverage of political candidates should cease.
- The media should not allow the party in power, or the incumbent, to unduly exploit their advantaged position vis-à-vis other candidates to get extra exposure.

Belarus

- Review the Electoral Code so as to provide the necessary conditions for fair and balanced coverage of elections campaigns.
- Ensure the transparency of the electoral processes.

Moldova

- The progressive provisions in Article 47 of the Election Law (particularly paragraph 4) should be implemented fully.
- The newly established public service broadcaster should fulfil its function of serving the interests of the public by providing it with a complete, fair and balanced picture of all candidates.

Ukraine

- Ensure that the provisions for equal access to the media contained in the Law ‘On Election of Members of Parliament’, the Law ‘On Election of the President’, and the Law ‘On Election of Members of the Local Councils’ are effectively implemented.
- Steps should be introduced to counter the practice of disseminating untrue information concerning certain candidates with the sole purpose of discrediting them.

⁸⁷⁸ Ibid.

⁸⁷⁹ Razumkov Centre, ‘Concrete Manifestations of Political Censorship and the Methods of its Imposition’, note 437 above, 22–23.

11 INDIRECT PRESSURE

In the three countries a number of measures are routinely adopted to interfere with the work of the non-State media. These measures, whether financial or other (including tax inspections and obstacles to advertising revenues), are effective in forcing the media to shape their coverage of events to suit the needs of the authorities.

Of all the means available to the authorities to disrupt, curtail and thwart the activities of the non-State media, the use of tax inspection is one of the most far-reaching. Allegations of malfeasance are hard to rebut out of hand and tax inspectors can freeze bank accounts at the beginning of the inspection and then, literally, occupy the offices of a publication for weeks, physically and psychologically disrupting the work of a newspaper. Although the fine ultimately levied for any financial irregularity may not be very high, the damage in terms of disruption is usually substantial.

ARTICLE 19's conversations with editors and lawyers in all three countries confirm that generally media outlets' (particularly newspapers') income from advertising is low.⁸⁸⁰ This is partly due to the limited advertising market, yet there is also considerable evidence of government intimidation of companies to deter them from placing adverts in the non-State media. This comes in the form of arbitrary tax inspections and bureaucratic harassment for those companies which do not bend to pressure from the authorities with regard to where to advertise.⁸⁸¹

In all three countries newspapers frequently depend on State printing and distribution facilities and services. The three governments have often exploited this dependency and vulnerability of non-State media outlets to create obstacles in the dissemination of independent messages. Moreover, non-State broadcast media outlets frequently depend on the State for the rental of transmitters.

11.1 Financial Pressure

11.1.1 Tax Inspections

Belarus

In Belarus tax inspections have been widely used, not only to interfere with the work of the media, but also with that of human rights NGOs. For example, the BHC has had tax inspections, after which the Belarusian authorities attempted to impose fines for alleged tax evasions.⁸⁸² IREX ProMedia has also had to face tax inspections.⁸⁸³

Alleged failure to comply with tax legislation has given rise to lawsuits, which may effectively lead to the closure of media outlets. For example, on 3 February 2003, the Hrodna Regional Commercial Court suspended the licence of Romuald Ulan, the founder of the Smargoni-based newspaper *Novaya Gazeta Smargoni*, causing the newspaper to face closure. The lawsuit was launched by the town

⁸⁸⁰ ARTICLE 19 interviews with Belarusian journalists, September 2000 and March 2002, and Moldova journalists, September 2002. See also Chapter 4. For statistics on Belarus, see *Mechanics of Repression: Obstacles to Free and Fair Elections*, note 9 above, at 55–57.

⁸⁸¹ It is, however, difficult to document concrete instances of this form of intimidation.

⁸⁸² However, the authorities recognised that, due to an agreement between Belarus and the EU (which funded BHC's projects), BHC was eligible for tax deductions, in compliance with Presidential Decree No.8.

⁸⁸³ See Section 12.1.

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authorities in light of alleged violations of tax laws in 2000 and 2002, and the alleged breach of labour laws and fire safety requirements in 2002.

The frequency with which the Belarusian authorities indirectly interfere with the work of the media by, for example, initiating inspections and lawsuits, appears to indicate that this and similar actions have motives other than ensuring the correct enforcement of tax and labour legislation or fire safety standards.

Moldova

Tax inspections of non-State media outlets have also been frequent in Moldova (including Transdnistria). For example, in Transdnistria the non-State newspaper *Novaya Gazeta* has undergone repeated inspections, despite the failure by the authorities to identify any irregularities. Compliance with stringent fiscal regulations has also a serious impact on media outlets' finances. For example, non-State newspapers are required to receive advertising revenues via bank transfer, in order to be able to produce the necessary documentation to tax authorities upon request. In this case, however, 20 per cent of revenues are taken away in State taxes and another 20 per cent in bank taxes.⁸⁸⁴ New taxes can be introduced at the authorities' will.

Ukraine

There are numerous examples of abuse of fiscal policies by the authorities. In October 2000 the opposition newspaper *Silski Visti* was suspended and fined two million hryvnias by the State Tax Administration (STA). Reportedly the authorities also gave instructions not to print the newspaper or to sell newsprint to it. The ban was lifted at the end of October, after its staff publicly stated they would commence a hunger strike in protest.⁸⁸⁵

In January 1998 the publication of the newspaper *Pravda Ukrayiny* was suspended. This followed actions not only by STA, but also, reportedly, the Customs Service, newspaper distributor Ukrposhta, the Control and Audit Department, the Finance Ministry, the Ministry of Justice and the General Prosecutor's Office and the local State administration, in a concerted effort to undermine the publication.⁸⁸⁶

Again, in 1998 *Komsomolskaya Pravda* was inspected by STA, but also by commissions of the health institutions, the fire department, the Control and Audit Department and Ukraine's Security Services.⁸⁸⁷ Similar cases have involved other publications, such as *Tovarysh* and *Svoboda*. The Head of the National Union of Journalists of Ukraine Ihor Lubchenko on 4 May 2000 estimated that each day a court considered five or six of this type of cases.⁸⁸⁸

However, after 2000 this form of pressure on the non-State media decreased to some extent. Shortly before this, in 1999, the Parliament adopted a resolution on the media, which called for investigations of complaints of harassment by STA.⁸⁸⁹ At the beginning of 2001, the Head of STA announced that a list of the media outlets to be inspected would be published at the beginning of each year. In October 2002 he further declared that he had received no complaints from the media over tax

⁸⁸⁴ Interview with *Novaya Gazeta*, February 2003.

⁸⁸⁵ Razumkov Centre, 'Concrete Manifestations of Political Censorship and the Methods of its Imposition', note 437 above, at 23.

⁸⁸⁶ *Ibid.*

⁸⁸⁷ *Ibid.*

⁸⁸⁸ *Ibid.*, at 24.

⁸⁸⁹ However, this remained ineffectual. US Department of State, Ukraine, 2001, note 53 above.

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inspections for two years.⁸⁹⁰ On 26 December 2002 STA and IMI signed a Memorandum for the participation of IMI representatives in tax inspections for 2003, so as to contribute to the transparency of STA's activities.⁸⁹¹ A similar agreement was concluded with the National Union of Journalists of Ukraine.⁸⁹²

Despite these positive developments, the situation is still far from rosy. In 2002 an unscheduled inspection of the non-State radio Kontinent took place. Moreover, inspections of the non-State Internet publication *Obkom.net* and of the publishing house Taki Spraviy⁸⁹³ led to the suspension of the publication and substantial financial loss for the publishing house.⁸⁹⁴ Hence, the most reliable way to ease pressure through inspections is through loyalty to the authorities.⁸⁹⁵

Recommendation

- Immediately cease using tax inspections as a form of intimidation of the non-State media.

11.1.2 Advertising

Belarus

Belarusian enterprises are forbidden from spending more than 2 per cent of their income on advertising.⁸⁹⁶ Yet the authorities can also interfere with the advertisement market in more drastic ways. The 1998 internal circular 'On Strengthening Counter-Measures against Articles in the Opposition Press' included a prohibition for State institutions and enterprises to place advertisements in the opposition press.⁸⁹⁷

Moreover, in February 2002 the Deputy Head of Brest local authorities described any advertising on the city's public transport by local paper *Brestski Kurier* as 'undesirable' despite the fact that the newspaper had an advertising contract with the city trolleybus firm. This probably happened because some adverts contained political cartoons. In the same month, the State television company refused to broadcast pre-paid adverts for *BDG* on BTV-1 or Russian television.⁸⁹⁸

⁸⁹⁰ Razumkov Centre, 'Concrete Manifestations of Political Censorship and the Methods of its Imposition', note 437 above, at 24.

⁸⁹¹ Institute for Mass Information, 3 October 2002, <http://imi.org.ua/?id=read&n=609&cy=2002>.

⁸⁹² Razumkov Centre, 'Concrete Manifestations of Political Censorship and the Methods of its Imposition', note 437 above, at 24.

⁸⁹³ Between March and November 2002 the publishing house Taki Spraviy had approximately 30 tax raids by the tax authorities, following publication of a biography of Yulia Tymoshenko. Byrne P 'A Taxing Ordeal', 27 June 2002, Kyiv Post, cited in Human Rights Watch, note 44 above at 13.

⁸⁹⁴ Razumkov Centre, 'Concrete Manifestations of Political Censorship and the Methods of its Imposition', note 437 above, at 24.

⁸⁹⁵ IREX, note 19 above, at 143.

⁸⁹⁶ Ibid, at 109. In general, there is a high degree of detrimental State interference in all businesses.

⁸⁹⁷ See Section 9.1.1.

⁸⁹⁸ The Belarusian government controls the advertising of Russian television in Belarus. In an informal conversation with *BDG* staff, BTV's Director of Advertising, Aleksandr Ganush, is reported to have said: 'In the course of the past couple of years your newspaper has repeatedly, and in a very distorted and insulting form, covered the activities of Belarusian Television... the journalists and the editorial board have paid little attention to producing accurate information. In connection with this, our company would prefer not to have your newspaper among our clients. I believe this is normal ... practice for any business.'

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In another case from the beginning of 2003, Alfa Radio broadcast an advertisement for Radio Liberty's programmes. Subsequently Alfa Radio reportedly received threatening telephone calls and tax inspections, after which the outlet had to pay the equivalent of US\$5,000 in fines.⁸⁹⁹

Moldova

Since the Communists came to power, there has been a substantial decrease in the advertising volume of the opposition media.⁹⁰⁰ The authorities have used pressure against businesses placing advertising in media outlets that are unpalatable to the authorities, and some business people have admitted to being wary of doing business with the non-State media. When they have done so, they have received 'recommendations' urging them to refer to the State-owned media for their advertising needs.⁹⁰¹ Tax inspections of their businesses have also ensued in these cases.

For example, in the beginning of 2003 businesses reportedly received unofficial orders from the authorities not to place advertising with the non-State newspaper *Timpul*. As a result, in early 2003 *Timpul* had no sponsors and only survived through subscriptions and donations.⁹⁰²

An aggravating factor is the difficulty in conducting market research, due to a general lack of transparency of the institutions. This reduces the effectiveness of advertisement, as well as impairing the overall development of the entire advertising market through solid marketing strategies. Widespread corruption and fraudulent transactions between the media and advertisers complete this unfortunate picture.⁹⁰³

Ukraine

As in Belarus and Moldova, businesses close to the authorities are usually 'recommended' to place their advertising with State publications.⁹⁰⁴ However, this problem does not seem to be as acute in Ukraine as it is in the other two countries.

Recommendations:

- The authorities should not attempt to use advertising as a means of influencing editorial content in the media.
- Advertising by public bodies should be allocated on a non-discriminatory basis, taking into account only relevant considerations such as distribution and cost.

Belarus

- The government should take effective steps to reverse any remaining impact of the 1998 circular 'On Strengthening Counter-measures against Articles in the Opposition Press'.

⁸⁹⁹ Interview with Alfa Radio, February 2003.

⁹⁰⁰ IREX, note 19 above, at 121.

⁹⁰¹ *Ibid.*

⁹⁰² ARTICLE 19 interview with Moldovan journalists, February 2003.

⁹⁰³ IREX, note 19 above, at 122–123.

⁹⁰⁴ Medvedyev O, 'A Thorny Path to Freedom of Speech in Ukraine', note 260 above, at 57.

11.2 Printing and Distribution

11.2.1 Printing

Belarus

The main printing house is the State-owned Belarusian Printing House, which charges inflated rates to non-State newspapers. In some cases, the printing house has refused to print non-State newspapers such as *Svobodnyje Novosti Plus*, *BDG* and *Narodnaya Volya*.

There are some smaller non-State printing house, such as *Magic*⁹⁰⁵ and *Plutos*, yet their capacity is limited and they have poor quality printing facilities. For this reason, the newspapers rejected by the Belarusian Printing House rely on smaller State printing houses, which also offer lower-quality printout than the main State printing house. For example, *Narodnaya Volya*, which uses one such smaller printing houses, reported that the final version of the newspaper has to be submitted early in the afternoon as the printer is small and very slow, while distribution has to start at 9 p.m.⁹⁰⁶ Consequently, the news from the second part of the day cannot be included in the newspaper.

From December 1995 to April 1996, and from late 1996 to the beginning of 1998, *Narodnaya Volya* had to publish in Vilnius as State-owned printing houses refused to print it. Following international pressure, the newspaper was allowed to resume publication in Minsk.⁹⁰⁷ Similarly, after the three-month suspension of *BDG* in the summer of 2003,⁹⁰⁸ Belarusian printing houses refused to print the newspaper, forcing it to print in Russia.

Moldova

Printing is usually done through a State company. Although the State printer is cheaper than private ones, the printing costs often seriously affect a newspaper's budget. In order to save money, non-State newspapers such as *Jurnal de Chişinău* buy paper separately.⁹⁰⁹ Despite the high prices, the quality of printing is quite low.

Transdnistria

Non-State newspapers in Transdnistria have also experienced problems with State printing houses. For example, allegedly the Transdnistrian authorities in 1999 gave orders not to print the newspaper *Novaya Gazeta*, threatening to revoke the registration of printing houses if they refused to comply with these orders.⁹¹⁰ The newspaper had to print in Chişinău, which adversely affected its finances, due to transportation costs and the fact that printing in Chişinău is more expensive than in Transdnistria. For a time the newspaper also published under the name of *Samaya Novaya Gazeta*, pretending to be a different publication so that printing houses would not refuse their services.⁹¹¹ *Novaya Gazeta* also has to rely on

⁹⁰⁵ The printing press was donated to *Magic* by the Soros Foundation. Incidentally, *Magic* faced serious tensions with the authorities in 2000. See *The Mechanics of Repression*, note 9 above, at 17.

⁹⁰⁶ ARTICLE 19 interview with *Narodnaya Volya*, April 2003.

⁹⁰⁷ *Ibid.*

⁹⁰⁸ See Section 7.2.1.

⁹⁰⁹ ARTICLE 19 interview with *Jurnal de Chişinău*, April 2003.

⁹¹⁰ At this time printing houses were required to be registered with the authorities. This requirement is no longer in place.

⁹¹¹ ARTICLE 19 interview with *Novaya Gazeta*, February 2003.

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printing houses for newsprint and paper, as fees for importing paper from outside Transdnistria are prohibitively high.⁹¹²

In a similar case, on 22 November 2002 the staff of *Glas Naroda*, an opposition newspaper from Tiraspol, complained at attempts by the local authorities to deny them access to local printing presses. In a declaration made public the same month, the staff claimed that both the State-owned and private printing houses had received orders not to print the newspaper. Reportedly, in October 2001 the Transdnistrian Minister of Justice had also sent memos to all the local printing houses advising them not to offer their services to *Glas Naroda*. At that time, the newspaper's editor-in-chief, Aleksander Radcenco, was running against the incumbent Igor Smirnov in the 2001 presidential elections.⁹¹³ The newspaper had to close in the summer of 2003.⁹¹⁴

The costs for using State printing houses are high. Moreover, in January 2003 newspapers using the State printing facilities were informed that printing costs would go up by 30 per cent.

Ukraine

Presa Ukrainy, an institution dependent on Ukrposhta, has a virtual monopoly on the printing market. There are some printing houses that are 20–25 per cent cheaper than Presa Ukrainy, but they do not have the same networks for distribution of newspapers throughout the country.⁹¹⁵ Some private newspapers have managed to buy their own printing houses.

There have been tensions between printing houses and newspapers. Reportedly all publishers refused to print the opposition weekly *Litsa* before the mass demonstrations of 16 September 2002 because of its writings on the upcoming protests.⁹¹⁶

Moreover, in July 2002 the opposition newspaper *Informatsiyny Buletyn* in Kremenchuk was reported to have had continuous printing and distribution problems over the preceding three years. According to the editor-in-chief, the head of the oblast State administration, Yevhen Tomin, issued an order to the oblast's publishing houses requesting them not to print the newspaper.⁹¹⁷

Similarly, in February and March 2002, during the parliamentary elections period, Kyiv printing houses refused to publish the opposition newspapers *Slovo Batkivshchyny* and *Vecherniye Vvesti*, forcing the media outlets to print in Western Ukraine.⁹¹⁸

⁹¹² They were 20 per cent on imports of paper in February 2003. Interview with *Novaya Gazeta*, *ibid*.

⁹¹³ The newspaper carried the platform of Aleksander Radcenco. IJC, *Moldova Media News*, 'Transdnistrian journalists call for more Freedom in Access to Information', 16 November 2001, Vol. 1, No. 21, 26 November 2001, <http://ijc.iatp.md/en/mmnews/2001/nr21.html>.

⁹¹⁴ See Section 11.2.1.

⁹¹⁵ Razumkov Centre 'Factors Leading to the Escalation of Threats to Ukraine's Information Security', note 174 above at 35.

⁹¹⁶ Institute for Mass Information, in Paliy, note 250 above at 21. See Section 2.1.3 on the 16 September 2002 demonstration.

⁹¹⁷ *Ibid*, at 23.

⁹¹⁸ The European Institute for the Media, 'Ukrainian Media Bulletin', March 2002.

11.2.2 Distribution

Belarus

The prices for printing are high but are usually not unaffordable. Distribution is a different matter: prices are enormously inflated by the authorities and can cripple a newspaper's finances. The newspaper *Komsomolskaya Pravda* reported that 70 per cent of expenditure for each issue is allocated to distribution costs.⁹¹⁹ Over 2002 the high costs have caused the disappearance from the market of *Den'* and *Belarusskaya Maladziiozhnaya*. Non-State newspapers estimate that they pay three times as much as State-owned newspapers, and advance the opinion that their inflated charges subsidise the distribution of State-owned newspapers.⁹²⁰

The main distribution company is State-owned Belpochta. In 2002 Belpochta raised prices by 38 per cent. *Narodnaya Volya* stated that all the funds the newspaper had raised that year through subscriptions had to be paid to Belpochta, after which the media outlet was still left with a 20 million Belarusian roubles debt (then US\$9,525) to the distribution company.⁹²¹

Due to the long tradition of distributing newspapers directly to subscribers, consolidated during the Soviet period, media outlets have no choice but to invest in this service. Dependency on State facilities is caused by the fact that there are nearly no distribution services alongside the State ones.⁹²²

Given the high prices, many newspapers cannot afford to distribute to a wide area and concentrate on the main cities, which means that fewer sources of information are available in rural areas.⁹²³

Belpochta has also refused to distribute certain newspapers to subscribers, for example *Svobodnyje Novosti Plus*. In the periods when *Narodnaya Volya* printed in Vilnius,⁹²⁴ it was also forced to do its own distribution. This was clearly a struggle, causing the newspaper to come out only once a week.⁹²⁵

Newspapers are also sent to kiosks by the local post. The fact that kiosks are State-owned can be used to interfere with the work of the non-State media, by refraining from selling certain newspapers.

Moldova

There is a double monopoly over the distribution of newspapers, by Posta Moldovei (in the case of subscriptions), and Moldpresa (in the case of news-stand sales). The fees of the two distribution companies represent 30 to 60 per cent of the subscription price.⁹²⁶ *Jurnal de Chişinău* reported that, for a copy received through subscription, readers pay 1.40 lei, of which *Jurnal de Chişinău* gets 0.80 and Posta Moldovei 0.60.⁹²⁷

⁹¹⁹ Private communication with *Komsomolskaya Pravda*, April 2003.

⁹²⁰ IREX, note 19 above, at 109.

⁹²¹ ARTICLE 19 interview with *Narodnaya Volya*, April 2003.

⁹²² However, newspapers like *Brestski Kurier* have managed to establish their mini-distribution systems. IREX, note 19 above, at 109.

⁹²³ *Ibid*, at 107.

⁹²⁴ See Section 11.2.1.

⁹²⁵ ARTICLE 19 interview with *Narodnaya Volya*, April 2003.

⁹²⁶ Negru, N, 'The Circulation of the Printed Press', note 219 above.

⁹²⁷ ARTICLE 19 interview with *Jurnal de Chişinău*, April 2003.

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The monopoly of Post a Moldovei particularly affects the regional press.⁹²⁸ There are now some private distribution networks, such as Omnia Press, which covers Chişinău, yet Posta Moldovei is the only national distribution company.

There is also a monopoly over kiosks in Chişinău, which are all State-owned.⁹²⁹ Some print media outlets have complained that their newspapers were positioned in kiosks in such a way that they were difficult to spot or even hidden.⁹³⁰

It is cheaper to receive newspapers through subscriptions, so most of the readers prefer this option. In the case of *Jurnal de Chişinău*, a copy bought from a news-stand costs 3.50 lei, against the 1.40 paid per copy by a subscriber.⁹³¹

There have been several disturbing incidents involving distribution. For example, *Sens*' editor Valeriu Renita stated that on 31 August 2002 two bodyguards of PPCD's President assaulted a *Sens* newspaper employee who was distributing the publication on the streets. Renita said the bodyguards ordered the man to throw all copies of the publication in a rubbish bin and set them on fire. They also warned him against 'selling this filth again' and threatened to beat him if he did.

On 16 June 2003 Ion Rangu was dismissed from his position of Director of Posta Moldovei, allegedly for having disregarded a number of orders from the authorities prior to the 2003 local elections with regard to newspaper distribution, and for supporting the non-Communist candidate for the position of mayor of Chişinău.⁹³²

Ukraine

Ukrposhta has a monopoly on distribution services. As in Belarus and Moldova, prices are set extremely high: 40 per cent of media outlets' core costs in large cities, and 40 to 60 per cent in the regions.⁹³³

Ukrposhta can disrupt the distribution of certain newspapers via orders from above. For example, on 23 August 2000 the Cabinet of Ministers reportedly decided on the delivery of 106 publications through Ukrposhta on preferential terms.⁹³⁴

Furthermore, a period of time elapses between the collection by the post of advance payment for subscriptions and the forwarding of these funds to the newspapers. In one case, a delay of six months caused a newspaper in Chernihiv to go bankrupt.⁹³⁵ Many newspapers have also complained of having been cheated, which is, however, difficult to prove as the list of subscribers, like Ukrposhta's profits, are not available for public scrutiny.⁹³⁶ Lack of information on subscribers also renders it impossible for newspapers to know what their readership is and to conduct market research for advertisers.

There are some non-State distribution agencies but their impact is not significant. The post has at times prevented private delivery companies from inserting newspapers into mailboxes, as these were

⁹²⁸ IREX, note 19 above, at 123–4.

⁹²⁹ Ibid, at 124.

⁹³⁰ Ibid, at 120.

⁹³¹ Of the 3.50 *Jurnal de Chişinău* gets only 2.50. The rest goes to pay for distribution services. Interview with *Jurnal de Chişinău*, April 2003.

⁹³² IJC, 'Communist Appointee to Head Major Press Distribution Facility', *Moldova Media News*, 16 June 2003, note 217 above.

⁹³³ Razumkov Centre 'Factors Leading to the Escalation of Threats to Ukraine's Information Security', note 174 above, at 35.

⁹³⁴ Ibid.

⁹³⁵ IREX, note 19 above, at 151.

⁹³⁶ Ibid.

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reserved for post office deliveries.⁹³⁷ To counteract these obstacles, some newspapers distribute their product through a private network of kiosks or sell them in bulk at discounted prices to individuals who then re-sell them in the street.⁹³⁸

The situation has partially eased in recent years, with the establishment of another distribution company, Amir Kievskie Vedomosti, which offers cheaper prices than other private companies. In the case of news-stands, in many regions there is still a monopoly of the formerly State-owned network of news-stands 'Soyuzdruk', although this sector is also improving as State dependency is being reduced.⁹³⁹

There has been a marked decrease in subscriptions, given that fewer people can afford to buy newspapers. Between 1995 and 2000, the circulation of periodicals through subscription and distribution fell from 1,594.4 million to 765.5 million.⁹⁴⁰ In 2000 the majority of Ukrainians (62.4 per cent) did not subscribe to any publication.⁹⁴¹ Therefore, despite the very high number of newspapers and periodicals available, very few people have access to a wide range of publications: figures suggest that even the highest-circulation periodicals are far from being nation-wide publications.⁹⁴²

Recommendations:

- Printing and distribution services should be offered to all media at equitable rates based only on market considerations; there should be no discrimination based on the content or ownership of the media, particularly by public printing and distribution services.

11.3 Access to Transmitters

As for the print media with distribution services, broadcast media outlets are often dependent on the State for the use of transmitters, which effectively means that the authorities can suspend rental agreements at any time. This problem has been particularly acute in Belarus. In addition to reducing the dependency and resulting vulnerability, in the long-term it is cheaper for stations to use their own transmitters rather than renting. However, a sizeable initial capital is needed, which very few have.⁹⁴³

The case of Channel 8 exemplifies the situation. The channel broadcasts in the Minsk area, including 75–80 km out of the capital.⁹⁴⁴ The station was founded in 1993 and has been going through turbulent times since, including difficulties in renewing its licence.⁹⁴⁵ In 1995 the cost of its transmitter, which it rented from the State, rose ten-fold. Struggling to face these costs, Channel 8 had to discontinue

⁹³⁷ Ibid.

⁹³⁸ Ibid.

⁹³⁹ Razumkov Centre, 'Factors Leading to the Escalation of Threats to Ukraine's Information Security', note 174 above, at 35.

⁹⁴⁰ Interfax Ukraine, cited in Razumkov Centre, 'Ukraine's Information Space', note 252 above at 5.

⁹⁴¹ UCEPS Poll. Ibid.

⁹⁴² Ibid.

⁹⁴³ Examples of stations that have purchased their own transmitters in Belarus are Channel 8 and Alfa Radio. However, transmitters are extremely expensive, with relatively small-scale kilowatt operations costing as much as the equivalent of US\$100,000. In Ukraine the situation is at times reversed, with State channels using powerful transmitters of private channels. The transmitter used by UT-2 is owned by Studio 1+1, and that used by UT-3 is owned by the television company Inter. Gabor, note 173 above.

⁹⁴⁴ However, in 2003 there were technical difficulties which prevented most households in Minsk from receiving its signal.

⁹⁴⁵ See Section 7.2.1.

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broadcasting between 1 January and 1 October 1996. The problem was solved only in 2002, when the station started broadcasting from its own transmitter.⁹⁴⁶

Recommendation

- Rental of transmitters should be done on a purely commercial basis and in a non-discriminatory manner.

⁹⁴⁶ ARTICLE 19 interview with Channel 8, April 2003.

12 CIVIL SOCIETY EFFORTS

After the demise of the Soviet Union NGOs mushroomed in the region. It is undeniable that many of them were attracted to the sudden and seemingly inexhaustible supply of Western funds for all kinds of democracy-building projects, yet others were inspired by a genuine desire to bring about change.⁹⁴⁷ The latter groups have pursued their objectives with great courage and determination, and managed to achieve measurable change, despite the many hindrances to their work.

In the 12 years since independence many NGOs have greatly increased their levels of professionalism. Some specialised NGOs are also assisting younger organisations in developing the necessary expertise to induce societal change. For example, in Moldova the NGO Credo works to develop the management capacity of new NGOs. It has started a one-year Master's course in NGO Administration at the Academy of Public Administration in Chişinău, as well as providing shorter and targeted training opportunities.⁹⁴⁸

However, many other NGOs lack professionalism and are non-sustainable. The large number of NGOs can actually be a hindrance to effective civil society development and the furthering of their objectives, given low levels of professionalism for many of them, and an unwillingness to co-operate with other local organisations, due to a need to compete to attract foreign funding.

There are two types of NGOs working on freedom of expression: specialised media and freedom of expression organisations (such as non-State journalists' associations and centres) and general human rights organisations which, however, consider freedom of expression an integral part of their activities.⁹⁴⁹ Activities of civil society in the freedom of expression sphere include media law reform and promotion of international standards; training of journalists; activities to promote access to information and transparency of the institutions; protections of journalists' rights and others.

In furthering these goals, NGOs in the three countries have established productive working relationships with international organisations. International and local organisations have worked in close co-operation, for example in devising and organising campaigning and training activities. International organisations have also assisted the local organisations in making their concerns heard at international fora.

Civil society in the countries under consideration made efforts to co-operate with public officials to more effectively further freedom of expression, in a way that is mutually beneficial for State and NGO representatives. Co-operation is usually with MPs, while the executive tends to be off-limits. For example, this is the case for Belarus, where civil society has only managed to establish links with the MPs of the 'Respublica' Parliamentary Group. Even this is a positive and recent development, as many NGOs had, until 2002, refused to co-operate with MPs or any representatives of the establishment, whom they viewed as illegitimate since the 1996 referendum orchestrated by Lukashenka.

In Ukraine most forms of co-operation have also been with a Parliamentary Committee, the FOS Committee, which comprises mainly opposition MPs from the Our Ukraine bloc. The Ministry of Justice has also been involved in human rights training in co-operation with the Council of Europe, and civil

⁹⁴⁷ For example, in Ukraine in 2003, 30,000 NGOs were officially registered, of which 200 were dedicated to human rights; of these only approximately 20 were generally considered to engage in constructive activities.

⁹⁴⁸ Credo works primarily with legally oriented NGOs, while another NGO, Contact, acts as a resource centre for other Moldovan organisations.

⁹⁴⁹ However, some NGOs have very broad mandates so as to increase their chances of receiving funding.

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society has made contact with the NCRT. The equivalent in Moldova, the CCA, is, in comparison, relatively closed, although one of its members is in the Group for Implementation of the Stability Pact.⁹⁵⁰ Moldovan NGOs have intensified moves towards the establishment of a closer relationship between civil society and the authorities. However, collaboration is not always an option, and NGOs have faced some difficulties in their attempts to forge closer relations. Peaceful protests and awareness-raising activities through demonstrations are not always tolerated and can make the authorities suspicious or even hostile vis-à-vis civil society.

In addition, many NGOs are politicised and do not have the promotion of human rights and international standards as their highest aims. Some NGOs are under the umbrella of State institutions, and are dependent on State funding.

12.1 Belarus

There are a number of organisations working on human rights in Belarus, such as Viasna and the Belarusian Helsinki Committee (BHC). Among the organisations working in the media sphere are the Belarusian Association of Journalists, Belarusian PEN, and, until the summer of 2003, the international organisations IREX ProMedia and Internews. However, the authorities are rarely susceptible to internal pressure, and the work of local NGOs is often confined to notifying international organisations of abuses in Belarus, and to providing support, assistance and training to Belarusian journalists. The international organisations' vocal protests against egregious human rights abuses committed by the State are also often ignored by the Belarusian government, given its isolationist policies.

According to the 1997 Law on Civil Society, all NGOs have to be registered with the Ministry of Justice. However, the actual decisions are made by a Commission within the Presidential Administration. Since the body is not established by law but through loose internal extra-legal processes, there is no possibility of appealing against its decisions in court.⁹⁵¹ As a result, human rights organisations have experienced problems in registering. Like media outlets, they have to go through a bureaucratic process, which involves the approval of their location.

Journalists' associations, particularly the Belarusian Association of Journalists, have been leading a vigorous campaign for the decriminalisation of defamation and for wider legal reform. They have also actively protested against 'restricted freedom' sentences in criminal defamation cases and the 'disappearance' and inconclusive investigation into the fate of journalist Dmitri Zavadski.

The authorities have at times directly impeded the activities of civil society. For example, in 1998 Valentin Sukalov, the Head of the Supreme Court, prevented some judges from attending a seminar organised by the BHC. In more extreme cases, human rights activists participating in demonstrations have been arrested and detained arbitrarily.⁹⁵²

A number of local NGOs have also been shut down. For example, on 9 July 2003 the Brest Regional Court ruled in favour of the closure of the Baranavichy-based development NGO Varuta. This followed a lawsuit by the Brest Region Executive Committee for alleged violation of NGO-related legislation.⁹⁵³

⁹⁵⁰ See Section 12.2.

⁹⁵¹ ARTICLE 19 interview with the BHC, March 2003.

⁹⁵² Ibid. See Section 12.4 for arbitrary arrests and detention following demonstrations.

⁹⁵³ Belapan, 9 July 2003.

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Another measure that has deeply affected civil society has been the adoption of Presidential Decree No. 8 in March 2001. The decree makes registration of foreign grants by the Department of Humanitarian Aid of the Presidential Administration compulsory, according to proceedings established by the department itself. Registration is followed by the issuing of a certificate, prior to which the use of the relevant funds is prohibited. Possible tax privileges with regard to grants may be provided at the discretion of the President. The decree also states that foreign grants may not be used for the 'preparation and holding of elections ... for holding gatherings, rallies ... for production and dissemination of propaganda materials ...'. State control over the use of grants is exercised by a number of institutions, including the Committee for State Control, the Ministry of Internal Affairs, the State Customs Committee and the State Committee for Financial Investigations. Both the EU and the US government have been forced to conclude 'special agreements' with the Belarusian government so that their grantees could lawfully receive funds.

This is not always enough. IREX ProMedia, an international organisation with an office in Minsk, was forced to close in August 2003. This move was justified by reference to 'numerous law violations.'⁹⁵⁴ Similarly, the accreditation of the Internews network, active in Belarus since 2001, was not renewed in July 2003.⁹⁵⁵

12.2 Moldova

There are several NGOs devoted to human rights. Among the ones that work on freedom of expression are the Independent Journalism Centre (IJC), Acces-Info, the Committee for Press Freedom (CPF) and the Association of Independent Press (API).⁹⁵⁶ These organisations work towards the harmonisation of media legislation with international standards of freedom of expression, and the improvement of journalists' working conditions, as well as achieving higher levels of journalistic standards. In addition, the Association of Electronic Media (APEL) has been active in developing draft laws as alternatives to those of the State, and in campaigning for legal reform in the area of broadcasting. There are now approximately 30 NGOs working in the media field, although only one third of these actively support the non-State media.⁹⁵⁷

In April 2002 the Group for Implementation of the Stability Pact was established under the auspices of the State Pact Task Force of the Stability Pact for South Eastern Europe. The team comprises 15 members from NGOs and media organisations (including, for example, the IJC and the Union of Journalists), as well as some representatives of the authorities,⁹⁵⁸ whom NGOs have attempted to engage, with only partially satisfactory results. In June 2003 the Group for Implementation of the Stability Pact proposed initiating regular meetings between media workers and government representatives to further

⁹⁵⁴IREX Denied Re-registration by Belarusian FM, Charter 97, 8 July 2003, <http://www.charter97.org/eng/news/2003/07/08/irex>. Among the reasons listed seem to be the fact that IREX had donated equipment to media outlets without notifying the authorities.

⁹⁵⁵ Government Strips of Accreditation Another US-Based Humanitarian Organisation, Charter 97, 10 July 2003, <http://www.charter97.org/eng/news/2003/07/10/vlast>.

⁹⁵⁶ See also Section 9.1.2 for API.

⁹⁵⁷ IREX, note 19 above, at 123.

⁹⁵⁸ Two people from the government, one from the CCA and one from the Parliamentary Committee on Media (out of a total of 16 members).

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freedom of expression in Moldova and improve media legislation. Efforts have also been made for the establishment of closer ties between Moldovan and Transdnestrian journalists.⁹⁵⁹

Acces-Info and CPF have been particularly active in promoting the right of access to information.⁹⁶⁰ Acces-Info is led by Vasily Spinei, a former MP who was at the forefront of the campaign for the adoption of the 2000 Law on Access to Information, as well as one of its drafters. For years Spinei has worked to raise the general awareness of the need for transparency, and has made contact with public officials willing to support his activities. The organisation has developed a university course on freedom of information and in 2003 it approached the Ministry of Education with a view to making these courses available at all universities.⁹⁶¹

API is trying to address the virtual absence of investigative journalism in Moldova. In a project on corruption, the organisation established a team to produce articles on this issue, which were subsequently published in 15 non-State newspapers. The newspapers that benefited from API's information-gathering efforts for their articles have also indirectly been made aware of the scope and significance of investigative journalism.⁹⁶²

However, an obstacle to input by civil society in legal developments is the fact that laws can be passed very swiftly, at times within days.⁹⁶³ For example, civil society was unable to obtain the drafts sufficiently early to participate in the discussion on the 2003 Law on Extremism.

The work of NGOs has also been undermined by the authorities through anti-NGO campaigns. For example, in February 2003 *Comunistul*, the Communist Party's weekly, published an article stating that Moldovan NGOs promote the interests of opposition parties and distort the truth about the authorities. The article criticised in a particularly harsh manner the IJC and the Association for Participatory Democracy (ADEPT). ADEPT had published several critiques of draft laws supported by the Communist Party, highlighting their deficiencies.

There have also been reports of NGOs created and sustained financially by the authorities, effectively to serve the interests of the State beneath a façade of democracy-building.

In Transdnestria efforts by civil society are curbed by the autocracy of the system, and its scope of action is severely limited. For example, at the end of 2002 the Association of Independent Journalists was denied participation in discussions on the adoption of a new Media Law.⁹⁶⁴

12.3 Ukraine

Overall, there is a large (and growing) network of NGOs supporting freedom of expression in Ukraine.⁹⁶⁵

As the media legislation can often be abused with negative effects for media outlets, many NGOs, such as Internews-Ukraine, IREX ProMedia, the Independent Association of Broadcasters and IMI provide legal assistance to media outlets. These organisations, and particularly IREX ProMedia, have also trained lawyers and judges in Ukrainian media legislation and international standards of freedom of

⁹⁵⁹ Overall, a number of the Chişinău-based NGOs attempt to involve journalists and NGOs from Transdnestria and Gagauzia in their activities.

⁹⁶⁰ The former is mainly involved in training activities and the latter in monitoring the application of the law on access to information.

⁹⁶¹ ARTICLE 19 interview with Acces-Info, February 2003

⁹⁶² ARTICLE 19 interview with API, April 2003. See also Section 9.1.2 on API's activities.

⁹⁶³ ARTICLE 19 interview with APEL, February 2003.

⁹⁶⁴ See Section 7.3.5.

⁹⁶⁵ IREX, note 19 above, at 153.

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expression, so that more lawyers are now better equipped to provide journalists with a proper defence in court. Other organisations working on freedom of expression are the Academy for Ukrainian Press, the Newspaper Publishers Association, the Kharkiv Group for Human Rights Protection and the Committee of Voters of Ukraine.⁹⁶⁶ Most such organisations have organised campaigns involving training seminars for journalists, lawyers and judges on freedom of expression issues, as well as campaigning to reduce State interference in the work of the media. The Razumkov Centre, the Civil Society Institute and the Centre for Independent Political Research also provide valuable research into current political and social issues, including human rights and freedom of expression.

Although the main organisations working on the strengthening of media freedom are based in the capital, there are also some smaller associations in the regions, where many of the human rights abuses occur. In Crimea, for example, organisations include the Crimean Association of Free Journalists and the Crimean Centre of Independent Political Researchers and Journalists. At the local level, a number of journalists' unions have also been established, providing support to journalists and campaigning for better working conditions and pay.⁹⁶⁷

12.4 NGOs and the Right to Freedom of Assembly

Freedom of expression and freedom of assembly are closely related: the European Court of Human Rights has held that the latter must be considered in light of the former.⁹⁶⁸

Some restrictions to the right to freedom of assembly were recorded in Moldova and Ukraine, yet this problem is particularly pronounced in Belarus, despite the fact that both the 1994 and 1996 Constitutions establish the right to freedom of assembly. Unsanctioned and sanctioned demonstrations often result in detention and beatings by the police, as well as attempts by arresting police authorities to force false confessions to supposed crimes from demonstrators.⁹⁶⁹

In Belarus organisers must apply for authorisation from the local authorities to hold a demonstration at least 15 days prior to the event. The reply is provided within five days before the event, and denials are frequent. Since the 2001 presidential elections permission has been rarely given, or else granted provided that demonstrations were held in the outskirts of cities.⁹⁷⁰

In addition, a 1997 presidential decree restricts the range of locations where demonstrations may take place, as well as the number of participants. The decree also prohibits the displaying of unregistered flags and symbols, or the dissemination of messages perceived to be threatening to the State or public order.⁹⁷¹ Sentences for violations of these rules include extremely high fines or imprisonment for up to 15 days. Where fines cannot be paid, the authorities threaten to confiscate the participants' property.⁹⁷² Decree No. 11 of 14 May 2001 further restricts the right to peaceful assembly: unregistered organisations are prevented from organising demonstrations.⁹⁷³ Amendments approved in May 2003 to the Law on

⁹⁶⁶ See Chapter 9.

⁹⁶⁷ IREX, note 19 above, at 153.

⁹⁶⁸ *Yazar, Karatas, Aksoy and People's Labour Party v. Turkey*, 9 April 2002, Application Nos. 22723/93, 22724/93 and 22725, para. 46.

⁹⁶⁹ US Department of State, Belarus, 2001, note 692 above.

⁹⁷⁰ *Ibid.*

⁹⁷¹ *Ibid.*

⁹⁷² *Ibid.*

⁹⁷³ *Ibid.*

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Civil Society establish that NGOs may be closed if they violate provisions on the holding of demonstrations.

The authorities also create obstacles to the meetings of opposition groups. For example, on 3 February 2002, Leakadzia Vlasuk, director of the NGO 'Fellowship for the Deaf' in the Brest region, granted Semyon Domash, one of the potential opposition presidential candidates, the opportunity to have a town meeting in the organisation's premises. After the event Vlasuk was interrogated by the police and dismissed from her job.⁹⁷⁴

Cases

12 March 2003 Demonstration

On 12 March 2003 the demonstration 'For a Better Life' was held in support of human rights and political freedom, and in protest against the country's widespread poverty. The demonstration was followed by cases of arrests and detentions of the participants and organisers.⁹⁷⁵

On 13 March Former Deputy Foreign Minister Andrei Sannikov, human rights activists Ludmila Hraznova and Dzmitry Bandarenka from the human rights organisation Charter 97, as well as small business leader Leonid Malakhov, were sentenced to 15 days in prison for organising the demonstration, under Article 167(1) of the Code of Administrative Offences.⁹⁷⁶ Furthermore, Belarusian Popular Front Party leader Vintsuk Viachorka and Evgeny Afnagel from the youth organisation 'Zubr' were sentenced to 10 and 5 days respectively.⁹⁷⁷

The authorities also attempted to prevent a second demonstration scheduled for 23 March.⁹⁷⁸

A similar demonstration, called 'We Can't Live Like This', took place in April 2002, during which the participants also protested against poverty, lack of political freedom and respect for human rights. The April 2002 demonstration ended with the detention of at least 85 participants.⁹⁷⁹

23 March 2003 Demonstration

On 23 March, the 85th anniversary of the first Republic of Belarus, a demonstration took place to protest against governmental policies. The City Executive Committee had allowed a gathering in Kulman Square, and a procession in Banhalor Square, outside the main city centre;⁹⁸⁰ however, approximately 1,000 people gathered at 12 o'clock near the central postal office. The police intervened to stop the demonstration, while special police forces, armed with truncheons, also gathered around the participants. A number of the demonstrators were dragged on to special buses and taken to the police station.⁹⁸¹

⁹⁷⁴ Ibid.

⁹⁷⁵ Viasna, 'Human Rights Center 'Viasna' Protests against Arrests and Detentions of Organisers and Participants of People's March 'For a Better Life!''', 17 March 2003, <http://www.spring96.org/English/>.

⁹⁷⁶ Violation of the procedure for the organisation and holding of an unauthorised demonstration.

⁹⁷⁷ Viasna, note 974 above.

⁹⁷⁸ See below on the 23 March demonstration.

⁹⁷⁹ Amnesty International, 'Trodden Underfoot: Peaceful Protest in Belarus', 10 May 2002, <http://web.amnesty.org/library/Index/ENGEUR490082002?open&of=ENG-BLR>.

⁹⁸⁰ This area is not far from the centre, but it is poorly connected to it and it has few shops or offices; a demonstration held in this area is likely to attract little attention.

⁹⁸¹ Viasna, 'Mass Detentions at Freedom Day Manifestations, 23 March 2003, <http://www.spring96.org/English/>

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Over 50 peaceful demonstrators were detained and it was reported that some were beaten by the police while in detention.⁹⁸² Among the detainees were members of political parties and non-governmental organisations, including Pavel Znavets, former member of the Belarusian Parliament, Vyacheslav Sivchik, Deputy Chairman of the Belarusian Popular Front, and Pavel Severinets, youth leader.⁹⁸³ Journalists were also among those arrested, including Belapan correspondent Aliaksey Shein and a journalist of the newspaper *Zhoda*, Natalia Valakida. Both were released after showing their ID cards.

Although the majority of the detainees were released on the same day, 14 people were reported to have been detained overnight. On 24 March a number of prison sentences were handed down to demonstrators by the Leninsky District Court: 11 demonstrators were sentenced to imprisonment for periods of between 3 and 15 days. Fines for the equivalent of 20 minimum monthly salaries were imposed on 6 demonstrators, while 7 received official warnings.⁹⁸⁴

Demonstrations were also held across Belarus on 14 February 2003 to mark Saint Valentine's Day. The marches were organised by the unregistered organisation Young Front. After the gathering dispersed, the police followed a number of participants and arrested six of them, as well as *Belarusskaya Gazeta* journalist Vadim Dovnar.⁹⁸⁵

Along with undue restrictions to the right to freedom of assembly, the participants in these demonstrations were denied their right to express themselves through marches. The rallies, a means of expressing political discontent, were met by official repression.

Recommendations:

- No one should be arbitrarily arrested and detained for exercising his/her right to peaceful assembly.
- The Belarusian 1997 Law on Civil Society should be amended so that there is no special requirement for NGOs to register. If registration is retained, at a minimum such provisions should not be excessively onerous, they should be supervised by an independent body and there should be no discretion to refuse registration.
- Belarus' Presidential Decree No. 8 should be abolished and local NGOs should not be required to seek permission from the authorities to receive funding from international organisations.
- In Belarus, the regulations for holding peaceful demonstrations should be significantly relaxed and the right to assembly should be respected.

⁹⁸² Ibid. and Amnesty International, 'Belarus: 'People's March' must not result in violations of people's rights', 10 March 2003, <http://web.amnesty.org/library/index/ENGEUR490012003>.

⁹⁸³ Amnesty International, note 981 above.

⁹⁸⁴ Viasna, 'Trials over Participants of Freedom Day Celebration of March 23', 24 March 2003, <http://www.spring96.org/English/>.

⁹⁸⁵ Viasna, 'Review of Human Rights Violations for February', 4 March 2003, <http://www.spring96.org/English/>.

13 CONCLUSIONS

In Belarus, Moldova and Ukraine the media are weak and dependent, lack diversity and professionalism, and are largely unable to nurture pluralistic and informed debate within society at large.

An important obstacle to the development of strong and credible media in these countries are the difficult economic conditions that arose in a fraught transition from State to market economies. Advertising markets are weak and poverty is widespread, so that ordinary people cannot afford to buy newspapers on a regular basis. Where private broadcasting exists, it faces the same challenges to economic viability as the print media. This vulnerability makes media outlets – electronic as well as print – dependent on ‘sponsors’, resulting in a situation where outlets often work to advance their sponsors’ political agendas instead of serving the public’s right to quality information.

In the Soviet Union, the media were used to shape public opinion in a way that secured public loyalty to the leadership and its political line. The same methods of sustaining media as a mouthpiece and instrument of power continues to abound in countries of the former Soviet Union after the collapse of State Socialism. The main difference is that it is no longer government alone that utilises media in this way, but political parties and wealthy oligarchs, risen to power in the last decade’s uneven and unaccountable privatisation processes, do the same. This observation applies to former Soviet countries well beyond Belarus, Moldova and Ukraine.

Lack of education, professional training and awareness leads to journalistic practices that fall short of professional standards, and to the general disempowerment of journalists.

In the three countries the authorities do not control the information space fully, as they used to in Soviet times. Today governments are increasingly confronted with inconvenient criticism. Abuses of State power to ‘discipline’ media outlets as a reaction to criticism has become commonplace, resulting in a barrage of forms of harassment, which the authorities employ vis-à-vis the media, such as excessive tax inspections, lawsuits, intimidation and even physical attacks. Of the three, Belarus experiences the greatest number of such incidents, and its government is the most systematic in its approach to suppression of the free flow of information. The lack of an independent judiciary lessens the chances of judicial redress in all three countries.

The main trend emerging from this study is of a formidable interference in the work of the State and private media by governments, and the exploitation of the media for political purposes. This manifests itself in a lack of genuine public service broadcasting and the authorities’ routine meddling with the work of the media, particularly State-owned. This impairs the development of a pluralistic media.

Limits imposed on the free flow of information is perpetuating a culture of secrecy. Interference by the State, and journalists’ low levels of professionalism, including their inability to challenge politicians to extract information from them, have created a situation in Belarus, Moldova and Ukraine where – notwithstanding shades of difference – people in each country are ill-informed. The general public is largely excluded from political life, unable to make an unfettered choice during elections or to generally participate in political processes. This makes them uninformed of their rights, or unable to hold their estranged representatives to account.

International standards still seem, for the most part, remote. Although both local and international organisations operating in the region call for the respect of individuals’ rights under international law, the effects of their lobbying are limited. Even recommendations by the Council of Europe carry limited weight. Part of the problem is a lack of enforcement mechanisms for the respect of international human

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rights norms, even when these are legally binding on States. There are few perceived advantages in full compliance with international obligations. Although the States in question are not completely dismissive of the negative publicity ensuing from disregard of international norms, the pressure from foreign States and international institutions in recent years has induced only little change. In some cases, isolationist policies have been pursued, as in Belarus.

International standards may also create 'technical' problems for judges, who are faced with two different systems of legislation, domestic and international. Judges are often unaware of how to apply decisions of superior international judicial bodies to the Belarusian, Moldovan and Ukrainian situations, in particular as the three countries' systems of justice are based on civil law traditions, while the international human rights mechanisms require them to apply 'case law', a feature of common law. An additional obstacle for the active application of the European Court case law in domestic jurisprudence is that the European Court does not yet provide official Russian translations of its judgements, despite the fact that many legal practitioners from the former Soviet Union do not know English or French.

However, there has been some improvement. Judges in Ukraine, for example, have been reported to refer to the European Court's case law in some of their decisions. Potentially useful precedents will become available when more Article 10 cases are submitted to the European Court of Human Rights by applicants in Moldova and Ukraine. Although unable to use the ECHR, Belarusian human rights activists have obtained some success in the United Nations Human Rights Committee.

An institution that is likely to have a greater role in the region in coming years is the EU. EU involvement in the region is presently limited, yet the three countries are destined to share their borders with an enlarged EU. In March 2003 the European Commission set out in its 'Wider Europe' Communication a framework for the EU's future relations with its Eastern and Southern neighbours, based on the idea of friendly neighbourliness. The initiative suggests that in return for concrete progress involving the effective implementation of political, economic and institutional reforms, all the neighbouring countries should be offered the prospect of a stake in the EU's internal market accompanied by increased integration and freedom of movement.⁹⁸⁶ Thus, although EU human rights policies are of limited scope, there is potential for effective leverage in Belarus, Moldova and Ukraine.

While the Belarusian, Moldovan and Ukrainian public is not generally aware of human rights issues, including freedom of expression, some NGOs have developed into effective human rights defenders, able to operate in trying circumstances. For example, the Belarusian Association of Journalists has been able to form a very large network of journalists, counting approximately 960 members, while simultaneously establishing relations as a credible and effective organisation at international fora. This can give it protection even against repressive measures initiated by President Lukashenka, which have instead led to the closure of other reputable NGOs in 2003.

There is, however, a need to provide further training to local human rights activists on how to use available international human rights mechanisms, engage in national and international campaigning which may have an impact on policy development, and lead NGO professionals to acquire more effective management and fund-raising skills. These organisations have the potential to provide practical and moral support to journalists in both claiming their rights and acquiring higher levels of professionalism. In the achievement of these objectives, co-operation with international organisations is often fruitful: local organisations provide the understanding of the local situation and political dynamics, while international

⁹⁸⁶ See http://europa.eu.int/comm/external_relations/we/intro/.

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organisations bring knowledge on comparative international experience, standards and mechanisms, to more effectively bring about change.

A trend that has emerged among NGOs in the three countries is an attempt to establish new forms of co-operation with the authorities. Local civil society, as well as several international NGOs and IGOs, have become increasingly aware of the fact that confrontation is not always the most effective way to achieve change, while co-operation with politicians may be mutually beneficial. Despite ideological and political differences, co-operation with the authorities occasionally allows the media and civil society to achieve concrete successes, while politicians can gain wider public trust and international support when engaging in a process of constructive dialogue with civil society. Examples of co-operation are legal frameworks for freedom of expression, which have been improved in Moldova and Ukraine in joint work by civil society and the legislators. The implementation of the reformed legislation, however, remains a challenge.

Transnistria constitutes a special case. To date, the political conflict remains unresolved and, as long as Transnistria is *de facto* independent without international recognition, international human rights mechanisms and conventions will hardly apply - a situation that makes it even more difficult to work towards democratisation, greater transparency, accountability of authorities and respect for human rights. The region's isolation benefits the undemocratic rule in Transnistria and harms the development of the independent media or civil society. Supporting good quality journalism and civic initiatives will be crucial in the process of developing solutions to these problems.

The media could also have a positive role in empowering minorities in the three countries. A greater effort needs to be made by the respective governments to promote minority media and minorities' access to mainstream media. Proper access to information is also key to ensuring that minorities are conscious of their rights.

To conclude, the situation remains critical in the three countries. Belarus, Moldova and Ukraine have achieved some progress towards media freedom, yet journalists face immense challenges on a daily basis, which can make engaging in professional journalism a dangerous endeavour. Coalitions and solidarity among members of the journalistic profession, media groups and civil society, with the support of international institutions, are vital in strengthening the democratic processes and for the creation of an environment in which the media can flourish. Cross-border regional initiatives can be instrumental in this context, by facilitating the transfer of experience and know-how, so as to mutually strengthen democratisation movements.

ARTICLE 19

ARTICLE 19, the Global Campaign for Freedom of Expression, takes its name from the corresponding article of the Universal Declaration of Human Rights, which guarantees the right to freedom of expression and to seek, receive and impart information and ideas. ARTICLE 19 promotes, worldwide, freedom of expression and access to information.

Freedom of expression is not a luxury but a basic human right. When people are denied freedom of speech or access to information, they are denied the right to make choices about their lives. Freedom of expression is the cornerstone of all human rights. Torture, for example, cannot be challenged if we don't know where and when it is being committed. A crackdown on journalists can be an early warning sign of conflict. ARTICLE 19 monitors threats to freedom of expression in different regions of the world and develops long-term strategies to combat them.

Freedom of expression and access to information are essential for the achievement of equality for women and minorities, in responding to the challenge presented by HIV and AIDS, for the promotion of equitable development, for the fight against corruption and for the protection of children's rights.

ARTICLE 19 carries out advocacy and training programmes in partnership with local NGOs to enable individuals to exercise their social and economic rights. ARTICLE 19 works most effectively where there is a domestic constituency for change and where the application of international standards is seen as a powerful tool for transitional democracies. Much of our best work has resulted from bringing together members of civil society with government and public officials to promote reform. Our overriding concern is to achieve practical change that improves freedom of expression and access to information.

We develop international standards on all aspects of freedom of expression and undertake strategic litigation where important constitutional principles are at stake. We translate our publications into local languages whenever possible. We have offices in London and Johannesburg and regional programmes in Asia, Africa, Europe, Latin America and the Middle East.

For more information please contact us at:

ARTICLE 19, the Global Campaign for Free Expression
Lancaster House
33 Islington High Street
London N1 9LH
Tel: +44-20-7278 9292
Fax: +44-20-7713 1356
Europe@article19.org
Web: www.article19.org