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INTERNATIONAL

**FREEDOM OF EXPRESSION  
IN POST-EUROMAIDAN UKRAINE  
EXTERNAL AGGRESSION,  
INTERNAL CHALLENGES**





Senior Researchers: Iryna Solonenko  
and Anastasiia Grynko

Contributors: Simona Škrabec, Salil Tripathi,  
Mykola Riabchuk

Editors: Sarah Clarke, Aurelia Dondo, Ann Harrison,  
Laurens Hueting

Design: Brett Evans Biedscheid

With thanks to: Romana Cacchioli, Sahar Halaimzai,  
Sam Levy, Katie Morris, Iain Overton and Carles Torner

**PEN International**  
**Unit A - Koops Mill Mews**  
**162-164 Abbey Street**  
**London SE1 2AN**  
**United Kingdom**

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# FOREWORD

*Salil Tripathi – Chair of the Writers in Prison Committee of PEN International*

Certain axioms get repeated so often that they become clichés. But axioms have their uses, because they encompass a complex reality in a succinct way. That the first casualty of war is truth, is one such.

In the fog of war, information gets distorted and misrepresented; lies are presented as truth, and assertions are made as facts. The one who controls the air-waves, controls the discourse. Information becomes a valuable commodity, part of psychological warfare, deployed as weapon, with the aim of undermining the spirit and will of the Other.

An armed conflict is not the natural state of affairs – it is an extra-ordinary event in any nation’s history. And governments say that extra-ordinary situations require extra-ordinary powers. To be sure, governments have the obligation to protect lives and their territorial integrity. They also have to protect rights. During armed conflict, the language of national security prevails, and governments cite the threat to suspend the realization of certain rights.

Human rights law recognizes that certain rights can be derogated for a limited time for a specific purpose during extra-ordinary situations, such as a national emergency. The right to seek, receive, and impart information is a fundamental right, but international law recognizes that in exceptional circumstances governments may invoke special powers to limit the application of the right. But such measures have to be based on law, for a specific purpose, proportionate to the threat, and time-bound. And the circumstances must be exceptional, and hence, temporary.

Since the disintegration of the Soviet Union, Ukraine has had a tumultuous history. During that time, its writers, artists, and journalists have bravely defended freedoms, and the civil society and many politicians have championed liberties. Ukraine has made great

strides in protecting freedom of expression and opinion in recent years. But Ukraine is in the midst of an armed conflict. The conflict is not only violent; it is also complex, involving historical claims over territory and it has impacts on the linguistic rights of minorities. The battle is also being fought in the realm of ideas and on the Internet.

In response, the Ukrainian Government has banned access to books, publications, films, and websites that are hostile to the nation. Untrammelled access to such information, the government believes, undermines national security. Many admit that it is a bad situation, but they insist that it is certainly not worse than what the country has lived through in the past. The effect, however, is on freedoms.

At a polarized time when “fake news,” “alt-truth,” and “post-truth” narratives are being presented as reality, and histories are being rewritten and geographies remapped, even to agree about what has happened becomes a formidable challenge. And when it is difficult to agree on what has happened, it is even harder to agree if what has happened is good or not, right or not, just or not. And yet, wars are fought over big ideas – what is right, what is true, what is just; and governments want to rally their citizens around their idea of the truth. And therefore, to shape opinion, it becomes important for the state to control the means of communications.

Governments do that by establishing sophisticated information dissemination departments (which its opponents call propaganda) and they react by banning books and films, by censoring content in newspapers and other broadcast media, and, given the breadth and speed of the Internet, by shutting out entire segments of it. In the past, printing presses were locked up and airwaves of broadcasters jammed; now access to the internet is getting restricted. This narrows people’s access to information. It also means that decisions get made which are sometimes based on insufficient information, and such decisions are inevitably distorted.

In many countries, if someone publishes a map of the borders of a country in a way which is not to the government's liking, the publication gets banned, its pages are torn off or the illustration is blacked out, or, as in some countries, a large message in smudgy ink is rubber-stamped in every copy of the magazine, saying that the depiction of the borders in the map is not accurate. Editors and writers may get prosecuted, even jailed.

Borderlines quickly turn into battlefields. There are many instances of countries with disputed borders with their neighbours, giving different names for the same place. Japan calls Senkaku what China calls Diaoyu; India calls "Pakistan-Occupied Kashmir" what Pakistan calls "Azad Kashmir;" Greece doesn't like Macedonia calling itself Macedonia; in many maps the Republic of China – or Taiwan – simply doesn't appear; and nor does Israel (or Palestine), on many other maps. These absences become grievances; the grievances fester. National identities get shaped and seeds of future conflict are sown.

Freedom of expression and national security are often posed in a binary form - the Scylla and Charybdis – if you have more of one, then the threat rises for the other. But that is a false choice. Fundamental questions must be asked: is it necessary to clamp down on access to information so that morale and security are not undermined? Elevating national security to a status that cannot be debated imposes conformity, which stifles dissent.

Information that is banned finds other ways of reaching people, and because it is banned it acquires an aura: if it is suppressed, maybe it is right? People who have lived under censorship often say – when you don't believe the printed word, you believe the spoken word. It gives rumours extra currency – if the state bans something, maybe there is some truth to it, people think. Rumours get spread at the speed of instant messages on cell phones, reaching a vast audience.

In war, it becomes difficult to sift between truth and falsehood, between facts and propaganda. But with rising levels of education and greater sophistication in the use of technology, denying access to information can often become counter-productive. Lies hurt. Propaganda can mislead and some propaganda may be shocking and horrifying, and deeply upsetting. Alternative versions of history may be entirely fictional, but if suppressed, they may become attractive. The strongest bulwark for democracy and sovereignty is an informed citizenry. They should have the right to access even offensive speech and material. Depriving people the right to seek, receive, or impart information may provide temporary safety and comfort, but undermines liberty. And liberty is one of the strongest building blocks of security.

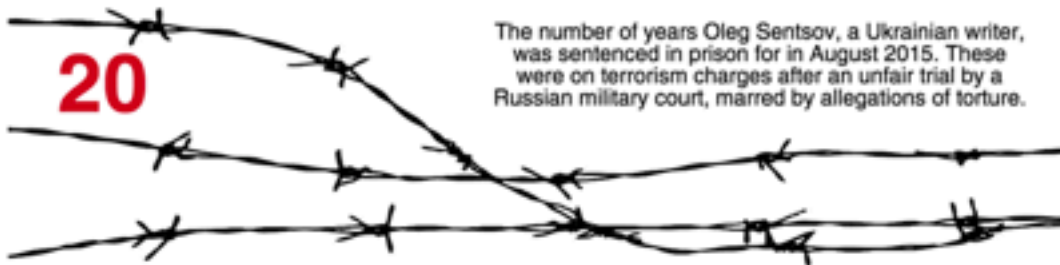
# UKRAINE'S FREEDOM OF EXPRESSION IN 9 HARD NUMBERS



The number of journalists (at least) who joined the Stop Censorship campaign in 2010, to counteract government suppression of freedom of speech.



The number of Ukrainians who signed an electronic petition to President Poroshenko, demanding he revoke the ban on social networks (May 2017).



The number of years Oleg Sentsov, a Ukrainian writer, was sentenced in prison for in August 2015. These were on terrorism charges after an unfair trial by a Russian military court, marred by allegations of torture.



The number of perceived violent attacks on the media in Ukraine between November 2013 and May 2014, according to the OSCE.



The number of significant abuses committed against journalists in Ukraine in 2016, according to the Institute of Mass Information (IMI).



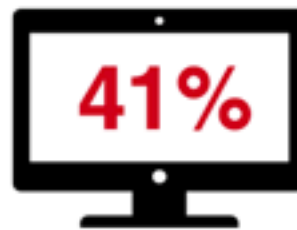
The number of journalists murdered in Ukraine between 2014 and 2016, according to the Institute of Mass Information (IMI).

The percentage of Ukrainian citizens



who consider Russian to be their mother tongue.

The percentage of Ukrainian citizens



who access their news online.



1%

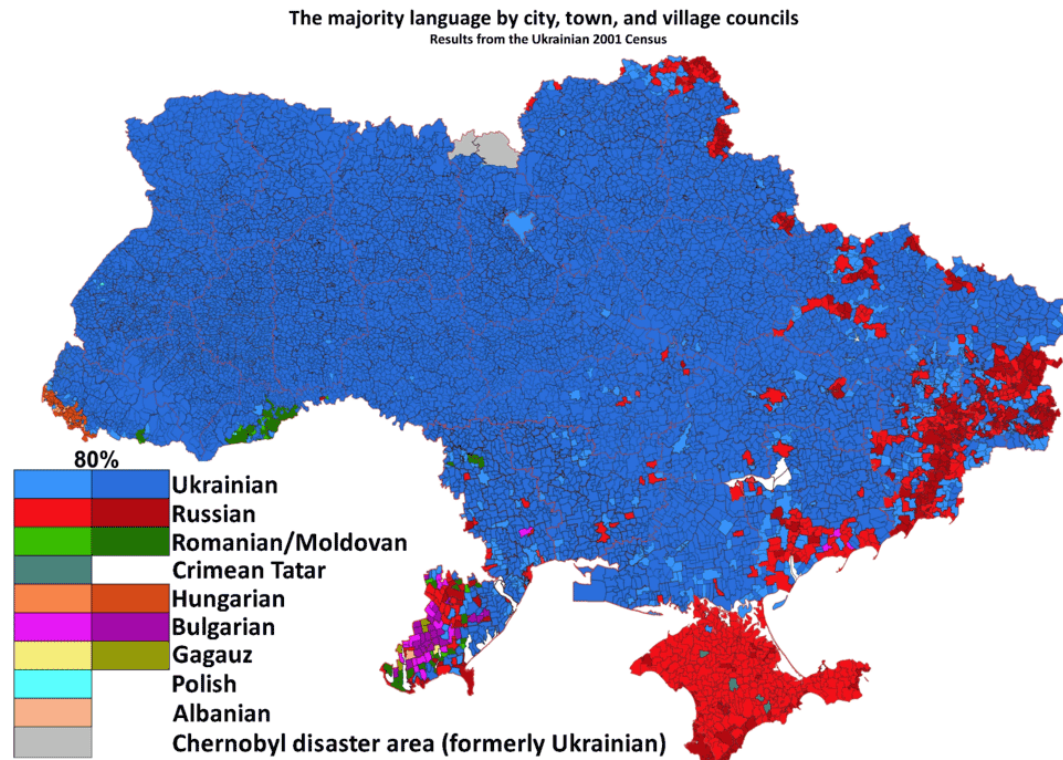
The percentage of pupils studying in Ukrainian in Crimea.

Map of Ukraine showing occupied Crimea and territories controlled by pro-Russia armed groups



Source: Ukraine under Attack (Ukrainian information resource)<sup>207</sup>

Languages spoken in Ukraine, based on 2001 census



Source: WikiMedia Commons<sup>208</sup>

207 <http://ukraineunderattack.org/en/16245-ukraine-s-territories-occupied-by-russia-and-pro-russian-militants-2.html>

208 <https://commons.wikimedia.org/wiki/File:UkraineNativeLanguagesCensus2001detailed-en.png>



# EXECUTIVE SUMMARY

Over the past 25 years since its independence from the Soviet Union, Ukraine has experienced both periods of authoritarianism, marked by the curtailing of civil and political rights, and more liberal periods. Despite significant improvements, democracy in Ukraine remains a ‘work-in-progress’ and, among other things, severe challenges to the enjoyment of the right to free expression remain. These include the use of the media to foster political interests and agendas; delays in reforming state-owned media; and intimidation and attacks on journalists followed by impunity for the perpetrators. On the other hand, public criticism is growing, albeit slowly, including demands for more transparent and unbiased journalism.

Since Ukraine’s 2014 Euromaidan revolution, also known as the ‘Revolution of Dignity’ in the country — which started initially to force former Ukrainian president Viktor Yanukovich to sign an Association Agreement with the European Union (EU), but developed into a long-lasting protest movement aimed at overhauling the entire oligopolistic system of governance — some progress has been made with regard to upholding the right to freedom of expression. Professional conditions for journalists have improved and systematic state censorship has diminished, while steps have been taken to transform state-owned media into independent public service providers and to increase transparency of private media ownership. The journalistic community has become more confident in promoting investigative journalism and demanding access to information.

However, it is not yet clear whether these recent tentative improvements are sustainable, with new challenges emerging since 2014 related to the ongoing conflict, including sophisticated information warfare alongside military aggression and occupation of part of the Ukrainian territory by Russia. As a result, citing national security concerns, the authorities have taken many steps that have unduly infringed upon the freedom of expression. In addition, it has proven difficult for the Ukrainian authorities, journalists, domestic and international media and human rights non-governmental organisations, and international governmental organisations to ensure safe access to and to document, respectively, the brutal human rights violations in occupied Crimea and the self-proclaimed independent ‘republics’ in Donbas under the *de facto* control of pro-Russian armed groups.

Furthermore, there is a tension between the policy of ‘decommunisation’ — including the dismantling of communist monuments and renaming of cities, towns and streets — and the diversity of Ukrainian society, in which strong anti-communist sentiment exists side-by-side with loyal attitudes towards the Soviet Union and its legacy. In this context, also linguistic rights in a multi-ethnic Ukrainian society with its two dominant languages — Ukrainian and Russian — have taken on a new dimension. A new Ukrainian political identity, which has emerged in part due to external aggression, calls for the enhanced use of Ukrainian as the state language. Although this would not necessarily limit the use of other languages, it has provoked concerns inside and outside of Ukraine.

Meanwhile, pre-existing challenges to the freedom of expression remain, related to the resilience of the old, corrupted system of governance — underpinned by vested interests — that is resistant to the changes called for by the Euromaidan protesters. Actors representing the old system, some of whom are part of or close to the authorities, wish to preserve their monopolies, influence and privileged access to resources, and continue to resist positive change, in particular calls for transparent decision-making and public accountability.

Overall, Ukraine’s transformation towards becoming a genuinely free society remains fragile in light of both external influences and the legacies of the old system. A key challenge in this regard will be to maintain its obligations to respect, protect and promote the freedom of expression and the linguistic rights of its diverse communities.



# INTRODUCTION

Freedom of expression is a cornerstone of any free and just society and is enshrined in international universal and regional instruments. While State parties have an obligation to respect, protect, and fulfil the right, in many countries freedom of expression cannot be taken for granted or must even be fought for.

This has been very much the story of Ukraine which, since its independence from the Soviet Union in 1991, has been coping with multiple challenges related to building a new state and a society based on democratic values.

For most of the 20<sup>th</sup> century, as part of the Soviet Union and with no experience of statehood (apart from the short period between 1918–1920) Ukraine and its society were affected by centralised planning under the Communist Party, who imposed their official ideology on everyone in the society – even scholars in the natural sciences. They created an ‘official’ interpretation of history, which led to many historical facts being hidden. Alternative thinking and expression of contrarian or unsanctioned opinion was punished by various means, including by incarceration in mental hospitals and labour camps.<sup>1</sup> A policy of Russification was part of the system, whereby Ukrainian–language instruction in schools and public space was gradually curtailed. The Russian language was promoted as superior to the Ukrainian language, which was associated with lower social status.

The complex linguistic diversity in Ukraine has to do with its history (see Map 2 in the Annex for the languages spoken in Ukraine). Before World War I, the current territory of Ukraine was divided between Russian and Austro–Hungarian Empires. In the period between the two World Wars, the part of Ukraine that belonged to the Russian Empire became a part of the newly established Soviet Union, while the portions of Western Ukraine formerly belonging to the Austro–Hungarian Empire were ruled by Poland, Romania and Czechoslovakia. In 1939–40, those parts of Ukraine were occupied by the Soviet army and so, after World War II (WWII), Ukraine emerged with its current borders as one of the republics of the Soviet Union. The Crimean peninsula was an exception: the province of Crimea was transferred from the Russian Soviet Republic to the Ukrainian Soviet Republic in 1954 for economic reasons, as it had much better connections with Ukrainian territory through its land links.

1 See, for instance, Plokhyy, S. (2015), *The Gates of Europe: A History of Ukraine*. Basic Books.

2 The Orange Revolution was a series of protests that took place in Ukraine from late November to December 2004, in the immediate aftermath of the run-off vote of the 2004 presidential election, which was believed to be fraudulent. The nationwide protests succeeded when Ukraine’s Supreme Court annulled the results of the original run-off and ordered a revote for 26 December 2004. International and domestic observers declared the re-vote to be ‘free and fair’ and Viktor Yushchenko (who initially ‘lost’ to his contender Viktor Yanukovich, the latter close to outgoing President Kuchma) was declared the official winner and was inaugurated as the president of Ukraine in January 2005.

It is also necessary to distinguish between minority languages in Ukraine that originated because of the shift of the state borders and the languages of indigenous people that are only spoken in Ukraine. The latter group includes Crimean–Tatar, Krymchak, Karaim and Urum, spoken predominantly in the Crimean Peninsula. Crimean Tatars constituted the majority of the population of Crimea from the 15<sup>th</sup> to 18<sup>th</sup> centuries as Crimea and adjacent territories were united in the Crimean Khanate, an independent state at that time. Under Russian control, Russification of Crimea occurred, especially during the Soviet Union times, particularly after the forced deportation of Crimean Tatars by Stalin in 1944 to Central Asia. Although Crimean Tatars constituted 35% of the population of Crimea in 1897, by the end of WWII practically all Crimean Tatars had been forcibly expelled from Ukrainian territory. Before the unrecognised ‘annexation’ of Crimea by Russia in March 2014, Crimean Tatars constituted 12% of the population of the peninsula, since many of them had returned from Central Asia after the fall of the Soviet Union.

Now 25 years after independence from the Soviet Union, Ukraine still finds itself in transition towards genuine democracy. After independence, Ukraine evolved as a country with an oligopolistic system of governance where a small, powerful elite engaged in rent-seeking behaviour and restricted competition and access to resources for the rest of society. This became especially evident during the second term of President Leonid Kuchma between 1999 and 2005, during which political freedoms were curtailed, corruption flourished and the judiciary lacked independence. The missed opportunity for reform after the Orange Revolution in 2004<sup>2</sup> – due to infighting between political authorities – brought profound disillusionment and led to the election of the authoritarian President Viktor Yanukovich in February 2010 who once again monopolised power and public space. During those years, the state intervened heavily to restrict freedom of expression through legal constraints on the media, state censorship, slowing down public broadcasting reform, and persecuting journalists. Apart from state-controlled media, private media ownership was heavily concentrated into the hands of a few rich individuals, further undermining freedom of expression and pluralism of opinion, as the media was used primarily to bolster the political and other interests of their owners.

Under these conditions many in Ukraine viewed the expected Association Agreement between the EU and Ukraine as the best hope for the future. Under negotiation since 2007, the Agreement comprised a set of economic, judicial, and financial reforms, which would harmonise Ukrainian policies and legislation with those of the European Union. President Yanukovich's refusal to sign the Association Agreement in November 2013 brought large numbers of protestors, predominantly young people, out onto the streets. The Euromaidan Revolution, which started initially to force then President Viktor Yanukovich to sign the Association Agreement with the EU, developed into a long-lasting protest movement aimed at overhauling the entire oligopolistic system of governance. The protests ended in late February 2014 when Yanukovich fled the country to Russia; the protests left over 100 people dead, mostly protesters shot by snipers in the last days of the revolution.

The 2014 Revolution offered Ukraine a unique opportunity to interrupt the vicious circle of stalled reforms and create a new social contract in which freedom of expression would be fully respected. A large appetite for change among the Ukrainian electorate led to the first-round election of President Petro Poroshenko on a reform platform in May 2014.

However, subsequent events illustrate the difficulties entailed by the post-revolution reform process. First, they reflect the struggle between civil society, the media community and reformers and defenders of the old system. Furthermore, Ukraine's neighbour has refused to respect the revolution's outcomes.

Immediately after the transition of power in February 2014, Russia occupied and – in violation of key principles of international law – subsequently 'annexed' Crimea, a move that has not been recognised by the

international community.<sup>3</sup> Russia has also played a key role in supporting unrest in Donbas that led to pro-Russia armed groups taking *de facto* control of the territories of the self-proclaimed 'Donetsk People's Republic' and 'Luhansk People's Republic'. Russia has also sustained the conflict with Ukraine by supplying military, political and economic support to these entities (see map in Annexe 1). Thousands of people in Ukraine have paid with their lives and freedom for simply exercising and protecting Ukrainian sovereignty, mostly in Crimea and parts of Donbas. An unknown number of Russian citizens, including military personnel have also died in the conflict.<sup>4</sup> Human rights violations in these areas have not gone unchallenged. Activists in Russia have helped Ukrainians by collecting information about human rights violations in Crimea and Donbas, and Russian lawyers have defended Ukrainian citizens and Russian citizens who dared to speak out in Russian courts.<sup>5</sup>

Further, there has been large-scale financial assistance as well as numerous technical assistance projects providing support to civil society initiatives, including in support of investigative journalism, independent media outlets, media literacy and regular monitoring of freedom of expression in Ukraine. The international community has also applied pressure through numerous resolutions, decisions and appeals by the UN,<sup>6</sup> the International Court of Justice,<sup>7</sup> the Organization for the Security and Co-operation in Europe (OSCE),<sup>8</sup> the Council of Europe<sup>9</sup> as well as reports by human rights groups since 2014. Second, international donors have made use of conditionality (assistance conditional upon fulfilment of reforms)<sup>10</sup> in dealing with the Ukrainian authorities. The most successful reforms that have been implemented since 2014, which have increased transparency and access to information, and improved conditions for journalists, have been possible due

3 In December 2016, the the UN General Assembly adopted Resolution 71/205, which refers to Crimea being under the 'temporary occupation' of the Russian Federation, reaffirms the non-recognition of its 'annexation', affirms the applicability of the Geneva Conventions, and refers to Russian Federation 'as an occupying power'. UN General Assembly (2016), Resolution on the situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), 16 December 2016, [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/71/205](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/205)

4 The number of Russian deaths is unknown, as Russia has never acknowledged its role in the conflict.

5 Ассоциация «Свободное слово» (2017), «Россия, 2016–2017. Нарушения и государственные ограничения свободы слова, свободы печати, свободы художественного творчества» (Association 'Free Word' (2017), 'Russia in 2016–2017: Violations and State Restrictions to Free Expression, Press, and Creative Activity'), 16 May 2017, <http://svobodnoeslovo.org/2017/05/16/rossiya-2016-2017-narusheniya/>.

6 UN General Assembly (2016), Resolution 71/205, Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), 16 December 2016, [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/71/205](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/205)

7 In April 2017 the International Court of Justice (ICJ) at The Hague in its ruling called on Russia to 'refrain from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the Mejlis and ensure the availability of education in the Ukrainian language'. ICJ, The Court finds that Russia must refrain from imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the Mejlis, and ensure the availability of education in the Ukrainian language, 19 April 2017, <http://www.icj-cij.org/files/case-related/166/19412.pdf>

8 OSCE (2014), Report by the OSCE Representative on Freedom of the Media 'Media Freedom under siege in Ukraine' 23 May, <http://www.osce.org/fom/118990>

9 In May 2017, the Committee of Ministers of the Council of Europe further urged the Russian Federation to take measures necessary 'to bring an immediate end to all violations of human rights, including the denial of freedom of expression, freedom of peaceful assembly, freedom of religion and belief, discriminatory measures and practices, arbitrary detentions, torture and other cruel, inhumane or degrading treatment, and the repression against persons belonging to minorities, including the Crimean Tatars, as well as Ukrainians and persons belonging to other ethnic and religious groups': Committee of Ministers of the Council of Europe, Decision CM/Del/Dec(2017)1285/2.1bisb, 3 May 2017, [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016807Dec02](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016807Dec02)

10 Some examples include Memorandums of the International Monetary Fund (IMF) with Ukraine and the EU-Ukraine Action Plan on Visa Liberalisation – both having included strong conditionality to set up anti-corruption institutions and rules after consultations with the Ukrainian civil society. Authors' interviews with activists in Ukraine, as well as representatives of the EU Delegation to Ukraine and the IMF on different occasions in 2015–2016.

to the ‘sandwich effect’ of combined pressure from Ukrainian civil society and international donors.

These joint efforts by various actors inside and outside Ukraine, have succeeded in making the Ukrainian authorities take steps to transform state-owned television and radio stations into independent public service broadcasters, to promote transparency of media ownership and to enhance access to information. Reforms are still underway and there is no guarantee that these developments are sustainable or irreversible. Constant attention and pressure from active parts of Ukrainian society and from outside will be necessary to sustain progress towards a truly free media. The situations in Crimea and Donbas remain extremely challenging and the international community should, among other things, continue to pay attention and seek new forms of intervention to improve freedom of expression in both.

The challenge for the Ukrainian Government, in the face of the conflict and a growing Ukrainian national sentiment, is to respect, protect and promote the right to free expression at home while confronting external propaganda aimed at swaying the minds of Ukrainians, as well as the wider international community. While the danger and negative impact stemming from the Kremlin’s dissemination of skewed facts, half-truths, misinformation, rumours and straight-out lies must be recognised, it should also be noted that the Ukrainian government’s efforts to counter the Russian ‘information warfare’ have at times unduly restricted freedom of expression.<sup>11</sup> Russian media and social networks have been banned, outlets perceived as pro-Russian or pro-separatist have faced harassment, including threats of closure or physical violence, while a number of Russian media executives and journalists have been barred from entering Ukraine.<sup>12</sup>

It is imperative for Ukrainian authorities to adhere to the principle of free expression, and to only impose restrictions that have a legitimate aim, that are defined in law, and that are necessary and proportionate to the aims of such restrictions – generally only in instances where dangerous speech threatens to imminently incite violence.<sup>13</sup> Although there are legitimate exceptions to the principle, the choice in particular between freedom of expression and national security is often a false one as curbing alternative points of view does not necessarily enhance stability or security. Sweeping restrictions are counter-productive, undermine the democratic architecture Ukraine is trying to build and run counter to the spirit and letter of the laws and international obligations it has adopted or ratified.

Furthermore, the government must ensure that its policy of ‘decommunisation’ does not lead to censorship of the diverse historical memories and narratives in different parts of Ukraine. The authorities also face the additional challenge of shaping a language policy that would give proper recognition to Ukrainian as state language, while providing for uninhibited use of other languages. How Ukraine negotiates these challenges at a time when it faces external aggression remains to be seen.

11 Ukraine: Secretary General Jagland voices concern over blocking social networks and websites, 17 May 2017: [www.coe.int/en/web/secretary-general/-/secretary-general-voices-concern-over-blocking-social-networks-websites-in-ukraine](http://www.coe.int/en/web/secretary-general/-/secretary-general-voices-concern-over-blocking-social-networks-websites-in-ukraine)

12 Disagreement with editorial line cannot result in violence against media; safety of journalists in Ukraine must be ensured, says OSCE Representative, 5 September 2016: [www.osce.org/fom/262536](http://www.osce.org/fom/262536)

13 Permissible restrictions to freedom of expression are laid out in Article 19(3) of the International Covenant on Civil and Political Rights and Article 10 of the European Convention on Human Rights.



# 1. FREEDOM OF EXPRESSION IN UKRAINE – OVERVIEW

## 1.1 FREEDOM OF EXPRESSION BEFORE 2014

Since 1991, Ukraine faced a changing political environment, which has included a struggle for power, including power over information resources. As a newly independent country, Ukraine entered an era of recovery from a centralized and ideology-based system where information was strongly censored and controlled by the state. The country has had to develop its own national, independent media that can work in new market conditions, learn to sustain political and economic pressures and meet the information needs of people living in a young developing democracy.

In the course of the initial privatization process in the early 1990s, which was marred by corruption, a few oligarchs accumulated large amounts of capital by gaining control of the key industries of the country. As a result, the main media outlets came into the hands of business elites who had privileged relations with authorities.<sup>14</sup> While state-run television was heavily censored, many ostensibly independent media outlets were in fact controlled by oligarchs and their political agendas. Serious restrictions on freedom of speech emerged in the late 1990s and early 2000s and are associated with ‘temnyky’ – secret, centralised government instructions to the media about what they should and should not cover that were disseminated during Leonid Kuchma’s second

presidency between 1999 and 2005.<sup>15</sup> Another way to manipulate the media was the so-called ‘jeansa’ – direct cash payments from politicians to journalists in return for positive news.<sup>16</sup> Beside government harassment, physical attacks on journalists led to growing fear and self-censorship. Georgy Gongadze, editor of the news website *Ukrainska Pravda*, which featured critical articles about President Leonid Kuchma and other officials, was kidnapped and murdered in Kyiv in 2000.<sup>17</sup> In response to such brutal attacks, in 2001 media activists set up several self-regulation organisations in order to fight against state interference with the media<sup>18</sup> and adopted the first version of the Ukrainian Journalists Ethics Code in 2002.<sup>19</sup>

Following the Orange Revolution in 2004, the situation improved slightly. However, systematic state censorship and attacks were replaced by indirect influences,<sup>20</sup> with media owners and advertisers intervening in editorial decisions to defend their business and political interests – a phenomenon IREX has called ‘wholesale journalism’.<sup>21</sup> Media outlets served the interests of the owners or advertisers, leaving journalists with less freedom for independent choices and an increase of self-censorship. The few independent online media and investigative journalism projects that had started to appear in Ukraine in early 2000s could not compete with the oligarch-run mainstream media and television.

14 Dyczok, M. (2009), ‘Do the Media Matter? Focus on Ukraine’, in Marta Dyczok and Oxana Gaman-Golutvina (ed.), *Media, Democracy and Freedom. The Post Communist Experience*. Bern: Peter Lang

15 Askold Krushelnicky, Radio Free Europe, Ukraine: Parliamentary Hearings Discuss Media-Censorship Issues, 6 December 2002, <https://www.rferl.org/a/1101604.html>

16 Ivan Verstyuk, Columbia Journalism Review (2013), Ukraine’s deep-rooted media problem, 6 December 2013, [http://archives.cjr.org/behind\\_the\\_news/ukraines\\_deep-rooted\\_media\\_pro.php](http://archives.cjr.org/behind_the_news/ukraines_deep-rooted_media_pro.php)

17 Committee to Protect Journalists, ‘Georgiy Gongadze’, <https://cpj.org/killed/2000/georgiy-gongadze.php>

18 The Journalists’ initiative ‘For Clean Elections’ (2002), (Журналістська ініціатива ‘За чисті вибори’), <http://textbooks.net.ua/content/view/7097/125/>,

19 Detector Media (2016), ‘Комісія з журналістської етики має бути політично й ідеологічно незалежним органом – Володимир Мостовий’ (Journalist Ethics Commission must be politically and ideologically independent), 1 December <http://detector.media/community/article/121065/2016-12-01-komisiya-z-zhurnaliststskoi-etiki-mae-but-i-politichno-i-ideologichno-nezalezhnim-organom-volodimir-mostovii/>

20 Grynko, A. (2013), Journalists’ ethics and roles in turbulent times: Contemporary Controversies in Ukraine. *Media Transformations*, Vol. 9, Fall 2014 [https://eltpykla.vdu.lt/bitstream/handle/1/31461/ISSN2029-8668\\_2013\\_V\\_9.PG\\_52-79.pdf?sequence=3&isAllowed=y](https://eltpykla.vdu.lt/bitstream/handle/1/31461/ISSN2029-8668_2013_V_9.PG_52-79.pdf?sequence=3&isAllowed=y)

21 IREX, Media Sustainability Index, Ukraine, 2010,

After the financial crisis of 2008-2009, a new wave of government pressure started under President Yanukovich,<sup>22</sup> and journalists became strongly politicized and faced numerous violent attacks.<sup>23</sup> In response to restrictive policies under Yanukovich, media and civil society actors started organizing around platforms aimed at protecting freedom of expression. One of the most prominent examples was the Stop Censorship campaign of 2010,<sup>24</sup> which united more than 500 national and regional journalists to counteract government suppression.<sup>25</sup>

Concentration of the media in the hands of an oligarchic elite has not been the only obstacle to free expression in Ukraine. Legislation guaranteeing freedom of expression has also faced numerous challenges in implementation.

Ukrainian legislation adopted since 1991 is relatively advanced among the countries of the former Soviet Union. It is also in line with international obligations, in particular, commitments under the Helsinki Final Act of 1975, the Copenhagen Document of 1990 and other relevant documents.<sup>26</sup> Article 34 of the Ukrainian Constitution, adopted in 1996,<sup>27</sup> guarantees freedom of speech and expression as well as the right to collect, retain, exploit, and disseminate information, while Article 15 prohibits censorship. Ukraine is a state party to the International Covenant on Civil and Political Rights and the European Convention on Human Rights, and in 2006 the jurisprudence of the European Court of Human Rights was integrated into Ukraine's domestic law. In addition, among other protections, Article 10 of the Law on Printed Mass Media adopted in 1992 prohibits monopolisation of the media sector.<sup>28</sup>

Since 1998, the Parliament of Ukraine has appointed the Commissioner for Human Rights whose responsibilities includes the implementation of the right to information.<sup>29</sup> State policy on television, radio broadcasting, information and publishing is implemented by the State Committee for Television and Radio-Broadcasting of Ukraine and the

National Television and Radio Broadcasting Council of Ukraine. The latter is responsible for issuing licenses and ensuring that licensed operators comply with the law.<sup>30</sup>

Yet, in many cases those in power, working through corrupted institutions, stalled the implementation of progressive laws and even violated them or turned a blind eye to violations. The institutions meant to function as independent arbiters fell victim to political whims. For example, the courts – weakened by legal reforms under Yanukovich – tended to rule in favour of pro-governmental media. They also stripped Channel 5 and TVi (two of the few Ukrainian TV channels offering independent news reporting at that time) of their broadcast frequencies.<sup>31</sup> Also, in September 2011 the National Council on Television and Radio Broadcasting issued an official warning to TVi for minor administrative violations. During 2011, politicians, the courts, and media regulators closed at least six private broadcasters in an effort to reduce independent news reporting ahead of the October 2012 parliamentary elections.<sup>32</sup> Moreover, state intervention in and state control of media were exacerbated by weak public demand for independent media, as exemplified by the popularity of private oligarch-run TV channels (see chapter on media freedom). Vibrant civil society, including activists and organisations in the field of media and human rights,<sup>33</sup> remained the only force that was still striving for development of free media and speech in Ukraine.

## 1.2 FREEDOM OF EXPRESSION SINCE THE 2014 REVOLUTION

In 2013-2014, the curtailing of political freedoms and the brutality of some law enforcement officials against peaceful protesters led to a new wave of public indignation and ultimately to the 2014 Revolution. Protests which began in November 2013 intensified significantly in reaction to the adoption of the so-called 'dictatorship laws'<sup>34</sup> on 16 January 2014 that would have limited freedom of expression and association and media

22 Reporters Without Borders (2010), 'Press Freedom in Ukraine: Temptation to Control', August 2010, [https://rsf.org/sites/default/files/\\_rapport\\_ukraine\\_anglais.pdf](https://rsf.org/sites/default/files/_rapport_ukraine_anglais.pdf)

23 Freedom House (2011), Freedom Of The Press Country Report, Ukraine

24 Stop Censorship' Movement, 21 May 2010, <https://stopcensorship.wordpress.com/about/>

25 Pulitzer Center (2010), 'Ukraine: Journalists Face Uncertain Future', 28 October 2010, <http://pulitzercenter.org/reporting/ukraine-journalists-face-uncertain-future>

26 The additional commitments and policies relating to freedom of expression include the Concluding Document of the Vienna meeting (1989), Document of Moscow meeting on human dimension (1991), the OSCE Strategy document for the economic and environmental dimension, and Decision No. 4/03 'Tolerance and Non-Discrimination' (2003).

27 Constitution of Ukraine, [http://www.coe.int/t/dghl/cooperation/ccpe/profiles/ukraineConstitution\\_en.asp](http://www.coe.int/t/dghl/cooperation/ccpe/profiles/ukraineConstitution_en.asp)

28 Закон України „Продуктивні засоби масової інформації в Україні” (the Law of Ukraine 'On Printed Mass Media in Ukraine'), 16 November 1992. [http://www.wipo.int/wipolex/ru/text.jsp?file\\_id=181700](http://www.wipo.int/wipolex/ru/text.jsp?file_id=181700)

29 The Commissioner for Human Rights, <http://www.ombudsman.gov.ua/en/page/informright/>

30 National Television and Radio Broadcasting Council of Ukraine, <https://www.nrada.gov.ua>

31 Radio Free Europe (2010), Two Ukrainian Opposition TV Channels Stripped of Frequencies, 8 June, [https://www.rferl.org/a/Two\\_Ukrainian\\_Opposition\\_TV\\_Channels\\_Stripped\\_Of\\_Frequencies/2065742.html](https://www.rferl.org/a/Two_Ukrainian_Opposition_TV_Channels_Stripped_Of_Frequencies/2065742.html)

32 Freedom House (2012), Freedom of The Press Country Report, Ukraine <https://freedomhouse.org/report/freedom-press/2012/ukraine>

33 Solonenko, I. (2015), 'Ukrainian civil society from the orange revolution to Euromaidan: Striving for a new social contract'. In OSCE Yearbook 2014, 219–236. Nomos Verlagsgesellschaft mbH & Co. KG, 2015. doi: 10.5771/9783845260945-219 ; Freedom House (2017), Nations in Transition, Country Report: Ukraine, [https://freedomhouse.org/sites/default/files/NIT2017\\_Ukraine\\_0.pdf](https://freedomhouse.org/sites/default/files/NIT2017_Ukraine_0.pdf)

34 Civic Solidarity (2014), 'Ukraine: Brief legal analysis of 'Dictatorship Law'', 21 January,

freedom. Journalists and civil society activists were a driving force behind the Revolution. Many were assaulted and even kidnapped while reporting on the protests and the brutality of law enforcement officials.<sup>35</sup> Because of the numerous violations of freedom of expression, in 2014 the Freedom House downgraded Ukraine's media situation from 'partly free' (as it had been since 2005) to 'not free'.<sup>36</sup>

In the spring of 2014, new challenges appeared following unrest in Crimea and Donbas, turning Ukraine into one of the most dangerous places for journalists in the world. A May 2014 report from the OSCE found approximately 300 instances of perceived violent attacks on the media in the country since November 2013.<sup>37</sup> Seventy eight journalists were abducted and illegally detained by various groups in 2014, 20 of them in Donetsk in April 2014.

Following the transition of power<sup>38</sup> after President Yanukovich fled to Russia in February 2014; freedom of expression in Ukraine has improved significantly. Access to public information has been enhanced, public service broadcasting has been launched and its development is well underway,<sup>39</sup> while state-owned press and local community-based print media are undergoing reforms with a view to becoming more independent. A law on Media Ownership Transparency was adopted in 2015,<sup>40</sup> although more needs to be done to loosen the oligarchs' grip on the media and encourage editorial independence. The National Expert Commission for Moral Protection, which was established back in 2004 to ensure compliance of the work of mass media, film industry and literature with Ukrainian morality laws, was finally dissolved in February 2016.<sup>41</sup> The Institute of Mass Information (IMI) in Ukraine<sup>42</sup> reported a decline in the number of abuses against journalists, from 995 cases in 2014 to 264 in 2016

(mostly due to the Euromaidan events and developments in Crimea and Donbas).<sup>43</sup> International organisations, such as Reporters without Borders and Freedom House also reported improvements.<sup>44</sup> Moreover, after the 2014 Revolution some of the most active journalists and civil society activists, who became members of parliament across different political parties, joined the government as a part of a renewal of political institutions<sup>45</sup> and could therefore directly influence decision-making.

This, however, does not apply to Crimea, which Russia 'annexed' in March 2014 in violation of international law, nor in the territories of the self-proclaimed 'Donetsk and Luhansk Peoples Republics'. Freedom of expression in these areas has deteriorated significantly, while the overall human rights situation also continues to worsen. A large number of journalists have been kidnapped, held in incommunicado detention, subjected to torture and other ill-treatment, and even killed.<sup>46</sup> According to a European Parliament resolution adopted in March 2017, by that time at least 62 Ukrainian citizens had been illegally prosecuted for political reasons by Russian law enforcement agencies, 49 of whom were residents of Crimea; at least 17 citizens of Ukraine were still illegally detained in the Russian Federation and 15 in the occupied Crimea and at least 100 Ukrainians were being kept hostage in appalling conditions in the Donetsk and Luhansk regions.<sup>47</sup>

<http://www.civicsolidarity.org/article/880/ukraine-brief-legal-analysis-dictatorship-law>

35 More than 50 journalists were assaulted by riot police while reporting the protests on 1 December 2013 alone <https://freedomhouse.org/blog/journalists-covering-protests-face-growing-violence>; IFEX (2014), Infographics document injuries, attacks on journalists in Ukraine, 10 February, [https://www.ifex.org/ukraine/2014/02/10/injured\\_reporters/](https://www.ifex.org/ukraine/2014/02/10/injured_reporters/)

36 Freedom House (2014), Freedom Of The Press Country Report, Ukraine, <https://freedomhouse.org/report/freedom-press/2014/ukraine>

37 OSCE (2014), Report by the OSCE Representative on Freedom of the Media 'Media Freedom under siege in Ukraine' 23 May, <http://www.osce.org/fom/118990>

38 The initial temporary government was followed by an early presidential election in May 2014 and parliamentary elections in October–November 2014

39 Attempts to start these reforms had begun after the Orange Revolution in 2004 but had not succeeded due to lack of political will.

40 The law 'On Amendments to Several Laws of Ukraine on Ensuring the Transparency of Media Ownership and Implementing the Principles of State Policy in the Sphere of Television and Radio Broadcasting' came into force on 1 October 2015 <http://www.president.gov.ua/en/news/prezident-pidpisav-zakon-pro-rozkrittya-informaciyi-shodo-ki-35950>

41 'On Amendments to the Law of Ukraine On Protection of Public Morality', 10 February, 2015, Law No. 173–VIII, <http://www.moral.gov.ua/news/1126/>; Resolution of the Cabinet of Ministers of Ukraine, Decree No. 333 'On the Elimination of the National Expert Commission on the Protection of Public Morality' 27 May 2015, <http://www.moral.gov.ua/announcements/111/>

42 Institute of Mass Information (IMI) is a Kiev-based non-governmental organisation whose objective is to defend journalists' rights, to upgrade their professional skills and to consolidate press freedom in Ukraine. IMI publishes regular news about violations of press freedom in Ukraine, as well as extensive reports and analyses of press freedom in the country. <http://imi.org.ua/>

43 Institute of Mass Information, 'Freedom of Speech Chronicle 2016', <https://www.internews.org/resource/imis-freedom-speech-chronicle-2016>

44 Reporters Without Borders (2017), World Free Press Index 2017, <https://rsf.org/en/ranking> ; Freedom House (2017), Freedom Of The Press Country Report, Ukraine, <https://freedomhouse.org/report/freedom-press/2017/ukraine>

45 IREX, Media Sustainability Index, Ukraine, 2016, <https://www.irex.org/sites/default/files/pdf/media-sustainability-index-europe-urasia-2016-ukraine.pdf>

46 Amnesty International and Human Rights Watch (2016), 'You Don't Exist': Arbitrary Detentions, Enforced Disappearances, and Torture in Eastern Ukraine, <https://www.amnesty.org/en/documents/eur50/4455/2016/en/>

47 See European Parliament resolution on Ukrainian political prisoners in Russia and situation in Crimea (2017/2596(RSP)), 16 March 2017, <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2017-0087&language=EN&ring=B8-2017-0221>.



# 2. CONDITIONS FOR JOURNALISTS AND MEDIA WORKERS

## 2.1 RIGHTS OF JOURNALISTS, MEDIA WORKERS AND OTHER WRITERS

Since the 2014 Revolution, several reforms that enhance the rights of journalists have been implemented.

First, permissible activities for journalists during court hearings have been expanded. According to a law adopted in April 2015,<sup>48</sup> journalists and media workers are allowed to use portable video and audio equipment during court hearings without requiring special permission of the court.<sup>49</sup>

Second, legal amendments were adopted to enhance the safety of journalists. For example, in May 2015, the Ukrainian Parliament adopted the law 'On Amending Legal Acts on Strengthening Guarantees for Professional Activities of Journalists'.<sup>50</sup> The law amended the Criminal Code to ensure better protection for journalists in Ukraine by criminalizing certain violations such as intimidation or violence against a journalist, damage of a journalist's property, an attack on the life of a journalists, or taking a journalist as a hostage. If a journalist dies as a result of violence, the family receives financial compensation. The law also made it easier to bring those accused of 'impeding the activity of journalists'<sup>51</sup> to justice and expanded the provision to include also Internet journalists and cameramen, which was not the

case before.<sup>52</sup> However, these protections while welcome need to be strengthened further strengthened since at present, they are only afforded to journalists affiliated with a journalists' union or an accredited media outlet, meaning that protections often do not include photographers or camera operators, and are not usually extended to unaffiliated journalists, in particular bloggers and online journalists, who make up an important part of Ukraine's media environment.

Third, legislative changes have also provided journalists with more autonomy from the state. As noted above, in February 2015, Parliament voted to close down the National Expert Commission on the Protection of Public Morality, an advisory state body that controlled the content of media, literature and other works of art.<sup>53</sup> The Commission had been widely criticised for violating media freedom, including by attempting to control the blogosphere and for institutionalising state censorship.<sup>54</sup>

On the other hand, in April 2015, the Ukrainian Parliament adopted a law 'On condemnation of the Communist and Nazi totalitarian regimes in Ukraine and banning of propaganda of their symbols.' The law criminalises public denial of the activities of these regimes and bans all related symbols, except for restricted educational or scientific purposes. Violation

48 The Law of Ukraine 'On the Right to a Fair Trial', came into force on 28 March 2015, English text available at [http://www.vru.gov.ua/content/docs/zakon\\_zabspravsud\\_en.pdf](http://www.vru.gov.ua/content/docs/zakon_zabspravsud_en.pdf)

49 See Ukrainian Helsinki Human Rights Union (2016), Human Rights in Ukraine 2015, March, <https://helsinki.org.ua/8550-2/>

50 Закон України «Про внесення змін до деяких законодавчих актів України щодо посилення гарантій законної професійної діяльності журналістів» (The Law of Ukraine 'On Amending Legal Acts on Strengthening Guarantees for Professional Activities of Journalists', 14 May 2015, <http://zakon5.rada.gov.ua/laws/show/421-19>).

51 Criminal Code of Ukraine, Article 171, <http://www.legislationline.org/documents/section/criminal-codes/country/52>

52 Telekritika (2015), 'Сюмар і Червакова розяснили норми закону про посилення відповідальності за перешкоджання журналістам' (Siumar and Chervakova explained the provisions of the law on strengthening responsibility for impeding journalists'), May 2015, <http://ru.telekritika.ua/pravo/2015-05-14/107090>

53 Unian (2015), 'Порошенко одобрив ліквідацію Нацкомиссії по захисті моралі' (Poroshenko approved liquidation of the National Commission on the Protection of Public Morality), 3 March, <https://www.unian.net/society/1051106-poroshenko-odobril-likvidatsiyu-natskomissii-po-zaschite-morali.html>

54 Ukrainian Helsinki Human Rights Union (2009), Ukraine. Restrictions of freedom of expression of views in protection of public morality, 2 October, <http://www.osce.org/odihr/39149?download=true>

of the law carries a penalty of potential termination of media activities as well as a possible five to ten-year prison sentence.<sup>55</sup> While recognising that protecting the interests of national security and territorial integrity is a legitimate aim, human rights groups and bodies have criticised the law for being too broad in scope, and setting disproportionate penalties that could give rise to undue restrictions on views and opinions.<sup>56</sup>

In March 2017, the Ukrainian Parliament adopted an amendment to the 2014 law “On preventing corruption.”<sup>57</sup> The amendment compels activists and journalists working with independent organisations involved in anti-corruption work, as well as members of public councils, to publicly declare their personal assets – even though they do not receive public funding – in the same manner as state officials. Failing to file asset declarations could lead to criminal charges and up to two years in prison, the same penalties faced by government officials.<sup>58</sup> These amendments generated a wave of indignation both inside and outside Ukraine, with critics arguing that apart from violating the right to privacy, it would give leverage to politicians unhappy with public scrutiny to impose criminal charges on journalists involved in anti-corruption investigations.<sup>59</sup> President Poroshenko promised to facilitate the creation of a working group to amend the law to exclude the new measure against activists,<sup>60</sup> however this could take time and has had a chilling effect on activists and journalists.

## 2.2 VIOLENCE AGAINST JOURNALISTS AND INVESTIGATIONS BY LAW ENFORCEMENT OFFICIALS

Despite significant improvements, journalists continue to face intimidation, assaults, restricted access to information and censorship. Some have been killed.<sup>61</sup> IMI has documented the following:

55 OSCE Representative on Freedom of Media, 18 May 2015. <http://www.osce.org/fom/158581>

56 See Ukrainian Helsinki Human Rights Union. Human Rights in Ukraine 2015, March 2016, <https://helsinki.org.ua/8550-2/>; Venice Commission (2015), ‘Joint Interim Opinion on the Law of Ukraine on the condemnation of the communist and national socialist (Nazi) regimes and prohibition of propaganda of their symbols’, CDL-AD(2015)041-e, 04.12.2015, [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2015\)041-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)041-e)

57 Law No. 6172 on Amending Article 3 of the Law of Ukraine “On Prevention of Corruption», <http://radaprogram.org/en/content/president-signed-controversial-bill-6172-amending-article-3-law-ukraine-prevention>

58 Закон України «Про внесення змін до деяких законів України щодо особливостей фінансового контролю окремих категорій посадових осіб» (the Law of Ukraine ‘On amending some laws on peculiarities of financial control over certain categories of authorities’, 23.03.2017, <http://zakon2.rada.gov.ua/laws/show/1975-19>

59 Freedom House (2017), Ukraine: New Restrictions on Anti-Corruption Groups, 27 March, <https://freedomhouse.org/article/ukraine-new-restrictions-anti-corruption-groups>

60 Censor.Net (2017) ‘We set up a working group to discuss changes to e-declaration law,’ – Poroshenko met with public activists, 27 March, [https://en.censor.net.ua/news/433692/we\\_set\\_up\\_a\\_working\\_group\\_to\\_discuss\\_changes\\_to\\_edeclaration\\_law\\_poroshenko\\_met\\_with\\_public\\_activists?utm\\_source=dlvr.it&utm\\_medium=twitter](https://en.censor.net.ua/news/433692/we_set_up_a_working_group_to_discuss_changes_to_edeclaration_law_poroshenko_met_with_public_activists?utm_source=dlvr.it&utm_medium=twitter)

61 Information collected from the Institute of Mass Information annual reports ‘Freedom of Speech Chronicle’ available at <http://imi.org.ua/library/>.

Year–Total	Impeding journalist activities	Intimidation	Assaults	Restricted information	Censorship	Murders	Detention/ arrest
2016 – 264	108	43	30	30	7	1	1
2015 – 310	105	39	58	33	12	2	1
2014 – 995	148	98 + 39 +69 (internet pressure)	286 + 63 (attacking media offices)	14	138	7+79 (kidnapping)	25
2013 – 496	130	35	97	13	62	0	–

Based on the IMI report, private individuals, law enforcement officials and local authorities are mostly responsible for these violations. Interestingly, whereas in 2013 and 2014 the main aggressors were law enforcement agencies and local officials, the majority of assaults against journalists in 2015 and 2016 were committed by private individuals.<sup>62</sup>

A worrying trend is that the number of intimidations increased in 2016 compared to 2015, and was greater even than the number in 2013. Similarly, instances of restricted access to information in 2015–2016 are more numerous than in previous years. The latter, however, might have to do with journalists demanding access to information more often than before.

In 2016, the Center for Research of Signs of Crimes against the National Security of Ukraine ‘Myrotvorets’ (meaning ‘peacemaker’) published over 4,000 pieces of personal data on its website, including the contact information of journalists who were obtaining so-called ‘accreditation’

from the *de facto* authorities of territories of Donetsk and Luhansk.<sup>63</sup> IMI considered this step to constitute political pressure, and others have noted the alleged affiliation of this website with several Ukrainian officials.<sup>64</sup> Because of this publication, at least one journalist did face intimidation by email.<sup>65</sup> In July 2017 police launched a criminal investigation against ‘Myrotvorets’ and invited journalists to serve as witnesses.<sup>66</sup> It remains to be seen how the investigation of this case proceeds.

Further, 2016 also saw an arson attack on the office of the TV station Inter, which is linked to the political party ‘Oppositional Bloc’, the post-Euromaidan reincarnation of the Party of Regions of former President Yanukovich. The TV channel’s headquarters had already been the target of three violent protests that year for its pro-Russian sympathies. Ukraine’s Minister of the Interior had publicly accused the channel of being ‘anti-Ukrainian’ and transmitting Russian ‘propaganda’.<sup>67</sup> President Poroshenko condemned the attack.<sup>68</sup>

62 Institute of Mass Information, ‘Freedom of Speech Chronicle 2016’,

63 Global Voices (2016), Ukrainian Activists Leak Personal Information of Thousands of War Reporters in the Donbas, 26 May, <https://advox.globalvoices.org/2016/05/11/ukrainian-activists-leak-personal-information-of-thousands-of-war-reporters-in-the-donbas/>

64 Radio Free Europe, In Ukraine, Attacks On Journalists Chill Media Landscape, 16 August 2016, <https://www.rferl.org/a/ukraine-attacks-on-journalists-media-landscape-press-freedom/27923284.html>

65 Institute of Mass Information, ‘Freedom of Speech Chronicle 2016’, p. 67,

66 Ukrainska Pravda (2017), ‘Проти «Миротворця» ведуть справу, журналістів кличуть у свідки» (Criminal investigation is launched against ‘Myrotvorets’ and journalists are invited to witness’, 7 July 2017, <http://www.pravda.com.ua/news/2017/07/7/7149027/>

67 Article 19 (2017), ‘Ukraine: Joint submission to the Universal Periodic Review’, 30 March p.3, <https://www.article19.org/data/files/medialibrary/38695/Final-Ukraine-UPR-.pdf>

68 Reporters Without Borders (2016), Arson attack – latest escalation against Inter TV, 6 September, <https://rsf.org/en/news/arson-attack-latest-escalation-against-inter-tv>



Investigations into attacks against journalists are often ineffective. According to IMI, in many cases journalists themselves do not file complaints with law enforcement authorities (in about half of all cases),<sup>69</sup> which could be due in part to the lack of confidence in the judicial system. Indeed, there is a problem concerning weakness of state institutions in Ukraine in general and a lack of impartiality of the judiciary in particular. According to ARTICLE 19, statistics for 2016 from the Prosecutor General's office show that although 141 cases of alleged crimes against journalists were reported to the police, there were court proceedings in only 31 cases, which includes also case relating to alleged crimes registered with law enforcement in previous years.<sup>70</sup>

One of the most prominent cases is that of journalist Pavel Sheremet, who died in a car explosion in July 2016. Investigators are probing four theories behind the murder: professional activity, hostile private relations or personal motives, Russia's involvement (destabilization in Ukraine), or an attempt on the life of *Ukrainska Pravda* founding editor Olena Prytula, whose car the journalist used to drive. Despite the proclaimed commitment of law enforcement authorities and even of President Poroshenko himself to fully investigate the case, a recent documentary produced by the independent online TV Hromadske showed that law enforcement authorities are not doing enough to trace those who might be involved in the murder.<sup>71</sup> In particular, the journalists found that a former agent of Ukraine's Security Service was seen on security camera footage outside Sheremet's apartment building on the night two unidentified assassins planted explosives under the journalist's car, but discovered that he had never been questioned in connection with the killing.<sup>72</sup> The Committee to Protect Journalists in its special report on the case recommended that President Poroshenko consider 'inviting an independent international inquiry in Pavel Sheremet's killing' and hold 'public officials accountable for encouraging, or failing to investigate, anti-press actions'.<sup>73</sup>

The investigation into the killing of a well-known pro-Russia journalist and writer Oles Buzyna, shot dead near his house by two masked gunmen in 2015, has also proceeded slowly. It was only in June 2017 that the Prosecution of Kyiv announced that it had finalised its pre-trial investigation and that two suspects from the far-right fringe arrested in 2015 would be referred to court on charges of murder and illegal storage of weapons.<sup>74</sup>

The progress of investigations into cases of brutal violence against journalists during the Euromaidan protests is also not satisfactory, and the Ukrainian authorities have failed to adequately investigate these cases or compensate victims.<sup>75</sup> For example, the investigation into the murder of journalist Viacheslav Veremii, who died from injuries sustained during an attack by a gang of unknown assailants in February 2014, has stalled.<sup>76</sup>

Additionally, impunity for murders of journalists perpetrated under previous governments prevails. An emblematic case is that of Georgiy Gongadze, an investigate journalist who was kidnapped and murdered in September 2000. Although four men directly involved in the murder were convicted, no one has been brought to justice for ordering the killing.<sup>77</sup>

69 The Institute of Mass Information files complaints about those cases with the Ministry of Interior.

70 Article 19 (2017), 'Ukraine: Joint submission to the Universal Periodic Review', 30 March, <https://www.article19.org/data/files/medialibrary/38695/Final-Ukraine-UPR-.pdf>

71 See the documentary 'Вбивство Павла': розслідування загибелі журналіста Шеремета` (Murder of Pavlo: Investigation of Death of Sheremeta), 10 May 2017, <https://hromadske.ua/posts/vbyvstvo-pavla-rozsliduvannia-zahybeli-zhurnalista-sheremeta>

72 'Вбивство Павла': розслідування загибелі журналіста Шеремета` (Murder of Pavlo: Investigation of Death of Sheremeta), 10 May 2017, <https://hromadske.ua/posts/vbyvstvo-pavla-rozsliduvannia-zahybeli-zhurnalista-sheremeta>

73 The Committee to Protect Journalists (2017), 'Justice Denied: Ukraine comes up empty in probe of Pavel Sheremet's murder', 12 July, <https://cpi.org/reports/2017/07/justice-denied-ukraine-pavel-sheremet-murder-probe-journalist-recommendations.php>

74 *Ukrainska Pravda* (2017), 'Проєуратура завершила розслідування вбивства Бузини' (Prosecution finalised the investigation of the murder of Buzyna), 27 June, <http://www.pravda.com.ua/news/2017/06/27/7148066/>

75 Halya Coynash (2017), 'New Laws in Ukraine Obstruct Prosecution for Crimes against Maidan Activists', Kharkiv Human Rights Protection Group, 21 February, <http://khpq.org/en/index.php?id=1487620600>

76 Detector Media (2017), 'Справу про вбивство Вячеслава Веремія свідомо розвалюють – адвокатка родини журналіста` (The case of Murder of Vyacheslav Veremiya is being intentionally blocked – says the lawyer of the journalist's family), 13 April, <http://detector.media/community/article/125111/2017-04-13-spravu-pro-vbivstvo-vyacheslava-veremiya-svidomo-rozvalyuyut-advokatka-rodini-zhurnalista/>

77 Radio Free Europe (2015), 'OSCE Urges Full Probe 15 Years After Gongadze's Disappearance', September 16, <https://www.rferl.org/a/ukraine-osce-gongadze-full-probe/27252229.html>

# 3. MEDIA FREEDOM

## 3.1 TRANSPARENCY OF MEDIA OWNERSHIP AND PLURALISM OF OPINION

Although pluralism of opinion and criticism of the government are present in the media, editorial policies continue to be aligned with the interests of media owners. The Ukrainian media landscape has barely changed in recent years<sup>78</sup> and is still divided among the biggest media groups (owners' names in brackets):<sup>79</sup>

- **InterMediaGroup** (Dmytro Firtash, Valeriy Khoroshkovsky);
- **«1+1 media»** (Ihor Kolomoisky, Ihor Surkis);
- **«Media Group Ukraina»** (Rinat Akhmetov);
- **StarLightMedia** (TV channels STB, ICTV, Novyi, Viktor Pinchuk, Olena Pinchuk);
- **UMH Group** (includes the mainstream printed media and radio channels, Serhiy Kurchenko);
- **Channel 5** (belongs to President Petro Poroshenko);
- **Channel 112 Ukraine** (whose current owner has not yet been officially revealed).<sup>80</sup>

Thus, the mainstream mass media continue to belong to a small number of oligarchs who possess monopolies over entire sectors of the economy and seek to protect those through political influence. Media outlets are mostly non-profitable because of a weak advertising market,<sup>81</sup> so wealthy owners subsidize the media and use them as a tool to defend their wealth and promote their own commercial and political interests, which may change depending on circumstances. Overall, this situation raises concerns about 'media capture',<sup>82</sup> which prevents genuine media pluralism.

A recent report<sup>83</sup> based on the monitoring of national TV news in 2014–2017 conducted by NGO Detector Media<sup>84</sup> uncovered numerous ethical violations, such as biased and unbalanced coverage, as the TV stations are often used to advance the political and business agendas of their owners. The highest number of violations has been found in two channels (Inter and Ukraina) owned by businessmen linked to the former President Yanukovich, while President Poroshenko continues to own Channel 5. Journalists have set up some independent online media, such as Ukrainska Pravda, Hromadske TV, Hromadske Radio and Novoye Vremia. Although they are still not strong enough to compete with the oligarch-subsidized mainstream media, this market has potential: the number of Internet users has been growing steadily in Ukraine

78 Detector Media (2017), '1+1' змінив структуру власності перед націоналізацією «Приватбанку», а «Інтер» більшеналежить Світлані Плузніковій' ('1+1' Changed the Structure of Its Owners Before Nationalization Of The PrivatBank, And 'Inter' Does Not Belong to Svitlana Pluzhnikova Any More), 3 April, <http://detector.media/rinok/article/124768/2017-04-03-11-zminiv-strukturu-vlasnosti-pered-natsionalizatsieyu-privatbanku-a-inter-bilshe-ne-nalezhit-svitlani-pluzhnikovij/>

79 Actual information as of June 2017

80 Detector Media (2017), 'Змін медіавласності інформканалів – 2016: «112 Україна» невідкрив кінцевого бенефіціара, а ZIK показав Петра Димінського' (Changes in Media Ownership Of Information Channels–2016: '112 Ukrayina' Has Not Revealed Its Final Beneficiary, And ZIK Showed Petro Dymynskiy), 4 April, <http://detector.media/rinok/article/124812/2017-04-04-zmini-mediavlasnosti-informkanaliv-2016-112-ukraina-ne-vidkriv-kintsevogo-benefitsiara-a-zik-pokazav-petra-diminskogo-dopovнено/>

81 Novoye Vremya (2015), 'Рынок рекламы в Украине рухнул до самого низкого показателя за последнее десятилетие' (The advertising market in Ukraine collapsed to the lowest level in the last decade), 6 July, <http://nv.ua/publications/kak-internet-vytesnyaet-iz-ukrainskogo-mediarynka-tv-reklamu-i-kogda-on-oboydet-pechatnuyu-pressu-56887.html>

82 Ryabinska, N. (2014), 'Media Capture in Post-Communist Ukraine. Actors, Methods, and Conditions', Problems of Post-Communism, March/April 2014.

83 Dutsyk, D. (2017), 'Як політика форматує новини: тенденції 2014–2017' ('How Politics Frames News: Trends of 2014–2017'), Media Sapiens, 30 June, <http://www.osvita.mediasapiens.ua/trends/1411978127/yak-politika-formatue-novini-tendentsii-20142017-rr/>

84 The Monitoring was conducted by the NGO Detector Media with the support of USAID and Internews Network. The details on methodology can be found here: <http://osvita.mediasapiens.ua/methodology/kriterii-monitoringu-ukrainskikh-telenovin/>

and reached 65% in April 2017, up 12% compared to April 2013.<sup>85</sup> According to a survey by Detector Media, although 87.1 % of Ukrainians continue to choose television as one of their main sources of information, 40.7 % also like to search for news online.<sup>86</sup> Another survey conducted by GfK shows that the majority of Ukrainian citizens (71%) are aware of the fact that media are owned by the oligarchs and believe that this puts at risk the quality of journalism.<sup>87</sup> Ukrainians also state that mainstream media does not provide enough information on certain topics of public interest, specifically, information about the casualties of Ukrainian servicemen (39.6%), death toll of civilians (35.6%), actions of local authorities (23.9%), the government's plans to restore the areas close to the conflict zone (18.2%), and reforms in the country (16.2%).<sup>88</sup>

In October 2015, the Ukrainian Parliament adopted the Law on Media Transparency, which requires broadcast companies to publish information about their ownership structure and ultimate beneficiaries on their own websites. Human rights groups welcomed the law for fostering diversity and editorial independence of media outlets.<sup>89</sup> Ukrainian civil society immediately grasped the opportunity to raise public awareness of media ownership, with Media Ownership Monitor Ukraine listing and providing details of media owners.<sup>90</sup> However, the law does not include any provisions on financial transparency, undermining its effectiveness,<sup>91</sup> nor does it cover print and online media.

### 3.2 REFORM OF THE STATE-OWNED MEDIA AND THE LAUNCH OF PUBLIC BROADCASTING

In April 2014, the Ukrainian Parliament adopted a Law on Public Service Broadcasting, with the aim of transforming state-owned television and radio stations into independent public service broadcasters. In January 2017, the public stock company National Public Television and Radio Company of Ukraine was registered and in April 2017 Zurab Alasania, journalist and former head of the National Television Company of Ukraine, became its Director General. According to Ukrainian media experts, it is important to secure funds and guarantee editorial independence of the new TV company in order for it to succeed.<sup>92</sup>

In December 2015, the Ukrainian Parliament adopted a law on the reform of state-owned and communal print media.<sup>93</sup> The process has been slow, although by June 2017 more than 680 state and communal printed media outlets had been privatized.<sup>94</sup> According to Ukrainian media experts, although the law constitutes a welcome step, it does not fully protect media from local government interference.<sup>95</sup> One of the reasons is that local authorities and business interests are often intertwined, while the latter are in the position to buy media outlets.

85 Ukrainian Internet Association (2017), Internet Penetration in Ukraine, March, [http://inau.ua/sites/default/files/file/1704/i\\_kvartal\\_2017.pptx](http://inau.ua/sites/default/files/file/1704/i_kvartal_2017.pptx)

86 MediaSapiens (2017), Survey of Russian Propaganda Influence on Public Opinion in Ukraine Findings, 13 February, [http://osvita.mediasapiens.ua/detector\\_media\\_en/reports\\_eng/survey\\_of\\_russian\\_propaganda\\_influence\\_on\\_public\\_opinion\\_in\\_ukraine\\_findings/](http://osvita.mediasapiens.ua/detector_media_en/reports_eng/survey_of_russian_propaganda_influence_on_public_opinion_in_ukraine_findings/)

87 GfK Ukraine (2015), 'Ставлення до ЗМІ серед населення України' (Attitude to Media of Ukrainian Population, Survey Report), October, [https://www.gfk.com/fileadmin/user\\_upload/dyna\\_content/UA/Omnibus\\_report\\_ukr\\_n.pdf](https://www.gfk.com/fileadmin/user_upload/dyna_content/UA/Omnibus_report_ukr_n.pdf)

88 MediaSapiens (2017), Survey of Russian Propaganda Influence on Public Opinion in Ukraine Findings, 13 February, [http://osvita.mediasapiens.ua/detector\\_media\\_en/reports\\_eng/survey\\_of\\_russian\\_propaganda\\_influence\\_on\\_public\\_opinion\\_in\\_ukraine\\_findings/](http://osvita.mediasapiens.ua/detector_media_en/reports_eng/survey_of_russian_propaganda_influence_on_public_opinion_in_ukraine_findings/)

89 OSCE (2015), 'OSCE Representative welcomes law on transparency of media ownership in Ukraine as it comes into force', 1 October, <http://www.osce.org/om/187956>

90 Media Ownership Monitor, Ukraine, <http://ukraine.mom-rsf.org/en/ukraine/>

91 Media Sapiens (2015), 'Законпрозорістьмедіавласності: чидізнаємося, «хтокомуРабінович» (The Law on Transparency of Media Ownership: 'Who and For Whom Is Rabinovich'), 10 September, [http://osvita.mediasapiens.ua/media\\_law/law/zakon\\_pro\\_prozorist\\_mediavlasnosti\\_chi\\_diznaemosya\\_khto\\_komu\\_rabinovich/](http://osvita.mediasapiens.ua/media_law/law/zakon_pro_prozorist_mediavlasnosti_chi_diznaemosya_khto_komu_rabinovich/)

92 Ukrainska Pravda (2017), 'Активісти вимагають від Ради повне фінансування суспільного мовлення' (Activists Demand From Rada Provide Full Financing of Public Broadcasting), 13 July, <http://www.pravda.com.ua/news/2017/07/13/7149472/>

93 Centre for Democracy and Rule of Law, Law on Reforming of State and Municipal Print Media is Adopted, 24 December 2015, <http://cedem.org.ua/en/news/law-on-reforming-of-state-and-municipal-print-media-is-adopted/>

94 Centre Of Democracy And Rule of Law (2017), 'Динамікареформуванняпреси (оновлюєтьсящомісяця)' (Dynamics of Press Reform, updated monthly), June, <http://cedem.org.ua/analytics/14784/>

95 IREX, Media Sustainability Index, Ukraine, 2017,



# 4. ACCESS TO PUBLIC INFORMATION AND INVESTIGATIVE JOURNALISM

Access to public information allows journalists to play a key role in holding the authorities accountable. The situation significantly improved through legal amendments adopted in 2015<sup>96</sup> following sustained campaigns by civil society and the media. One of the amendments<sup>97</sup> required the creation of a single state web portal of open data; it is also stated that the information disclosed on this portal is public and can be freely used and disseminated. Another law<sup>98</sup> obligated state bodies to publish budget requests, quarterly and annual reports on the implementation of the State Budget of Ukraine and other information on local budgets. The amendments to the Law of Ukraine 'Appeals of Citizens'<sup>99</sup> introduced the mechanism of individual and collective electronic petitions.

The number of state records available online has dramatically increased and 17,809 data sets are currently available on the Unified State Web Portal of Open Data.<sup>100</sup> In cooperation with businesses and civil society, the Ukrainian government launched the online public procurement system ProZorro, which provides details

online on all public procurement operations in Ukraine in a transparent manner.<sup>101</sup> As a result of these reforms, Ukraine's ranking in the UN E-Government Survey<sup>102</sup> and in the Global Open Data Index<sup>103</sup> has improved.

New legislation has also encouraged investigative journalism in Ukraine, with an increasing number of journalists reporting on corruption at both local and national levels. New investigative media teams have appeared across the country, such as the network NashiGroshi<sup>104</sup> that includes media outlets in 24 provinces of Ukraine, the agency Svidomo<sup>105</sup>, and programmes Slidstvo.Info<sup>106</sup> and Skhemy (Schemes, which investigates corruption on Radio Svoboda (Radio Liberty's Ukrainian service) .<sup>107</sup> Training is being provided for journalists wishing to increase their investigative skills.<sup>108</sup> In addition, the National Anti-Corruption Bureau of Ukraine (NABU), established in 2015 to tackle high-level corruption, has been relying on investigative journalism findings in its work.<sup>109</sup> As of May 2017, the Bureau was investigating 333 cases, while 68 cases had been referred to the courts.<sup>110</sup>

96 Ukrainian Helsinki Human Rights Union (2016), 'Право на доступ до публічної інформації' (Right of access to public information), 19 March, [https://helsinki.org.ua/pravo-na-dostup-do-publichnoji-informatsiji/#\\_ftn16](https://helsinki.org.ua/pravo-na-dostup-do-publichnoji-informatsiji/#_ftn16)

97 Law of Ukraine 'On Amendments to Some Laws of Ukraine on Access to Public Information in the Form of Open Data', <http://www.rada.gov.ua/news/Novyny/107164.html>

98 Law of Ukraine 'On Amendments to Article 28 of the Budget Code of Ukraine on Access to Information on Budget Indicators in the Form of Open Data', <http://rada.gov.ua/en/news/News/107409.html>

99 Law of Ukraine 'On Amendments to the Law of Ukraine' On Appeals of Citizens 'on Electronic Appeal and Electronic Petition'

100 <http://data.gov.ua/>, Statistics as of July 2017.

101 ProZorro, <https://prozorro.gov.ua>

102 UN E-Government Knowledge DataBase, UN E-Government Survey 2016, <https://publicadministration.un.org/egovkb/en-us/Reports/UN-E-Government-Survey-2016>

103 Censor.Net (2017), Ukraine moves from 54th to 24th place in Global Open Data Index, – PM Hroisman, 3 May, <https://en.censor.net.ua/p438684>

104 NashiGroshi, <http://nashigroshi.org/>

105 Svidomo, <http://www.svidomo.org/>

106 Slidstvo.Info, <https://hromadske.ua/programs/>

107 Schemes: Corruption in Detail, <https://www.radiosvoboda.org/p/5660.html>

108 MediaSapiens (2016), 'ГО «ДетекторМедіа» презентувала результати дослідження потреб журналістів-розслідувачів' (NGO 'Detector Media' Presented The Research Findings On The Needs Of Investigative Journalists), 20 November, <http://osvita.mediasapiens.ua/mediaprosvita/research/go-detektor-media-prezentovala-rezultati-doslidzhennya-potreb-zhurnalistiv-rozsliduvachiv/>

109 Gurt (2017), 'Учасники Центру публічних розслідувань зустрілися з представником НАБУ' (The Members Of The Public Investigations Center Had Meeting With The Representative From NABU), 24 April, <http://gurt.org.ua/news/informator/38123/>

110 National Anti-Corruption Bureau of Ukraine, <https://nabu.gov.ua/>

However, media and civil society activists are concerned that increased court fees for filing lawsuits against authorities who are unwilling to provide access to information limit journalists' right to information and have called for a reduction of financial barriers.<sup>111</sup> Overall, the number of cases when journalists' access to public information has been restricted remains high: in 2016 the total number of reported violations reached 30; in 2015 the figure was 33.<sup>112</sup> Another problem is that in too many cases, the findings of journalists' investigations do not result in a proper response or action by Ukrainian officials.

#### 4.1 RESTRICTIONS ON THE GROUNDS OF NATIONAL SECURITY

Reacting to the Kremlin's information attacks that increased after 2014,<sup>113</sup> the Ukrainian government has limited the presence of Russian media, journalists and Internet companies in Ukraine through a sanctions regime<sup>114</sup> on the grounds that they present threats to national security or broadcast Russian propaganda. Over 400 individuals, including journalists and bloggers, have been banned from Ukraine, although 29 (mainly international journalists) have subsequently had their bans lifted.<sup>115</sup> International human rights organisations<sup>116</sup> have criticised the sanctions as an unjustifiable attempt 'to control public discourse in Ukraine'.<sup>117</sup>

The restrictions also concerned television. According to the National Radio and TV Council, since 2014 sanctions have been imposed on 78 Russian channels on the grounds that they violated the Convention on Transfrontier Television and Ukrainian law.<sup>118</sup> The most controversial order was to stop broadcasts of the Russian oppositional Dozhd TV in January 2017. The ban was issued because Dozhd had violated Ukraine's advertising regulations and Ukraine's territorial integrity by showing maps drawn with Crimea as a part of Russia.<sup>119</sup> International organizations, such as Freedom House, Human Rights Watch, the Committee to Protect Journalists and Reporters without Borders widely criticised the decisions of the President for being 'neither necessary nor proportionate' and thus violating media freedom standards.<sup>120</sup> The criticism emphasized the independent position of Dozhd with regards to the Kremlin and urged the authorities to reverse the ban. Although Dozhd is no longer broadcast via satellite and cable TV services in Ukraine, it is still available online to subscribers.

Further, on 15 May 2017 the President imposed sanctions on a total of 1,228 individuals and 468 companies linked to Russia, including some of the largest Russian-owned Internet companies and social networks: Yandex, Mail.ru, Vkontakte and Odnoklassniki. Ukrainian Internet service providers are required to block access to these sites for a period of three years.<sup>121</sup>

International organisations have condemned the most recent Presidential decree for being 'anti-democratic'

111 Regional Press Development Institute (2017), 'Громадські організації об'єднали зусилля для зняття фінансових бар'єрів при поданні суду виходом у справах про доступ до публічної інформації' (Civil society organizations have joined efforts to reduce financial barriers when filing lawsuits on access to public information), 10 April, <https://irrp.org.ua/gromadski-organizatsiyi-ob-yednaly-zusylyla-dlya-znyzhennya-finansovyyh-bar-yeriv-pry-podanni-sudovyyh-pozoviv-u-spravah-pro-dostup-do-publichnoyi-informatsiyi/>

112 Institute of Mass Information, 'Freedom of Speech Chronicles 2016',

113 European Parliament Think Tank (2017), 'Fake news' and the EU's response', At a Glance, April, [http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS\\_ATA\(2017\)599384](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_ATA(2017)599384).

See also Peter Pomerantsev and Michael Weiss (2014), 'The Menace of Unreality: How the Kremlin Weaponizes Information, Culture, and Money'. The Institute of Modern Russia, <https://imrussia.org/en/research>.

See also Sanovich, S. (2017), 'Computational Propaganda in Russia: The Origins of Digital Misinformation', Working Paper, Oxford, UK: Project on Computational Propaganda, <http://comprop.oii.ox.ac.uk/wp-content/uploads/sites/89/2017/06/Comprop-Russia.pdf>

See also BBC (2015), Russia in 'information war' with West to win hearts and minds, 16 September, <http://www.bbc.com/news/world-europe-34248178>

114 The sanctions were issued under the Decree No. 549. All presidential decrees mentioned here enforce the decisions of the National Security and Defence Council of Ukraine, a collegial body composed of officials including the Prime Minister, several Ministers, the Head of National Bank of Ukraine, and the Head of the National Security Service among others. The text of the Decree in Ukrainian can be found here: <http://www.president.gov.ua/documents/5492015-19437>.

115 The list of the sanctioned individuals can be found here: [http://www.president.gov.ua/storage/j-files-storage/00/10/80/2d4767fb72f7b288e15059d6867f9a3c\\_1442423766.pdf](http://www.president.gov.ua/storage/j-files-storage/00/10/80/2d4767fb72f7b288e15059d6867f9a3c_1442423766.pdf); Unian (2016), Poroshenko lifts sanctions from 29 foreign journalists, 27 May, <https://www.unian.info/politics/1358557-poroshenko-lifts-sanctions-from-29-foreign-journalists.html>; Decree № 224/2016, 27 May 2016, text in Ukrainian, <http://www.president.gov.ua/documents/2242016-20107>; Decree 133, 28 April 2017, text in Ukrainian: <http://www.president.gov.ua/documents/1332017-21850>

116 Among the international organizations that criticized the sanctions are Human Rights Watch, <https://www.hrw.org/news/2016/06/01/ukraine-17-russian-journalists-banned>, Committee to Protect Journalists, <https://cpj.org/2015/09/ukraine-bans-41-international-journalists-and-blog.php>

117 Tanya Cooper, Human Rights Watch, 1 June 2016, <https://www.hrw.org/news/2016/06/01/ukraine-17-russian-journalists-banned>

118 Information of the National Radio and TV Council: <https://www.nrada.gov.ua/rosijski-telekanaly-rozpovsyudzhennya-yakyh-obmezhen-na-terytoriyi-ukrayiny-u-2014-2016-rr/>

119 The council consisted of the representatives of the media NGOs, such as Telekrytyka, Institute of Media Law and independent online media, such as Hromadske.TV in Ukraine. The full composition of the Council can be found here – <https://www.nrada.gov.ua/vysnovok-nezalezhnoyi-medijnoyi-rady-shhodo-pravomirnosti-obmezheniya-retranslyatsiyi-telekanalu-dozhd-v-ukrayini>; Conclusion of the Independent Media Council No 13, 02.02.2017, <https://www.nrada.gov.ua/vysnovok-nezalezhnoyi-medijnoyi-rady-shhodo-pravomirnosti-obmezheniya-retranslyatsiyi-telekanalu-dozhd-v-ukrayini>

120 Reporters Without Borders (2017), 'Ukraine bans independent Russian TV channel Dozhd', 13 January, <https://rsf.org/en/news/ukraine-bans-independent-russian-tv-channel-dozhd>

121 Decree No. 133/2017, <http://www.president.gov.ua/documents/1332017-21850>

and 'interfering with Ukrainian citizens' right to receive information and opinions from a range of sources'.<sup>122</sup> On the other hand, Ukrainian experts have expressed doubts regarding implementation of the decree and note that the law does not specify penalties for violations.<sup>123</sup> They also note that in fact users can find other ways to circumvent the state-imposed blocks of social networks. They point out that the blockage of Russian websites is an instrument of economic pressure against Russian companies rather than political censorship, as users are free to criticise the government on other websites. Moreover, Copyright International has noted the violation of international property rights by the social network Vkontakte through distribution of pirated content.<sup>124</sup> In a recent opinion poll of 40 Ukrainian experts,<sup>125</sup> 31 supported the sanctions imposed on the Internet companies on the grounds that the banned websites were utilised as an instrument of the hybrid war of Russia against Ukraine. They also argued that restrictions would help to limit Russian propaganda in Ukraine. The other nine experts disagreed with the imposed restrictions, mainly emphasizing the lack of clear communication by officials to explain to the public the goals and outcomes of the sanctions. They were also concerned that the bans would lead to social tension and the deterioration of the international image of the country.<sup>126</sup>

In May 2017 more than 25,000 Ukrainians sent an electronic petition to President Poroshenko demanding that he revoke the ban on social networks.<sup>127</sup> The President refused to reverse the sanctions, stating that the banned internet companies are used for Russian information operations against Ukraine and Ukrainian citizens.<sup>128</sup> On 17 July 2017 Ukraine responded to international criticism, saying that 'Russian search engines and social media were used to gather restricted access information – namely, personal data of Ukrainian citizens stored on servers located in the territory of the Russian Federation'. The authorities also stated that the restrictive measures were taken 'exclusively for the purpose of protecting

national interests, national security, sovereignty and territorial integrity of Ukraine, countering terrorist attacks as well as preventing violation and restoring violated rights, freedoms and lawful interests of Ukrainian citizens, society and the state'.<sup>129</sup>

According to recent research by the Oxford Internet Institute, social media platforms are being used to support campaigns of political misinformation across the globe, and in Ukraine its influences are especially evident.<sup>130</sup> The study indicates a significant amount of Russian propaganda spread through fake accounts and automated bots, and discusses the Ukrainian government's response and the 'toxic influence of paid commentators from fake accounts on public discourse' in general.

122 <https://cpj.org/2017/05/ukraine-bans-russian-media-outlets-websites.php>

123 Komarova, O. (2017), 'Радітичиплакати: до чого веде заборона «ВКонтакте», «Однокласники» та «Яндекс»? (To Laugh Or To Cry: What Are The Outcomes of Closure of Vkontakte, Odnoklasnyky and Yandex?)', Radio Free Europe Radio Liberty, 16 May, <https://www.radiosvoboda.org/a/28491916.html>

124 Copyright International (2015), 'A Glimmer of Hope in a Bleak Russian Music Market', February 19, <http://copyright-international.com/a-glimmer-of-hope-in-a-bleak-russian-music-market/>; <https://www.facebook.com/indrih/posts/1522287331117143>; Hromadske Radio (2017), 'Відмова розблокувати ВКонтакте — закономірність чи наступ насвободу слова?' Віталій Мороз (Refuse To Unbloc Vkontakte – Normal Or Violation of Free Speech? Vitaliy Moroz), 1 July, <https://hromadskeradio.org/programs/rankova-hvylya/vidmova-rozblokovaty-vkontakte-zakonimirnist-chy-nastup-na-svobodu-slova>; Hromadske Radio (2017), 'Відмова розблокувати ВКонтакте — закономірність чи наступ насвободу слова?' Віталій Мороз (Refuse To Unbloc Vkontakte – Normal Or Violation of Free Speech? Vitaliy Moroz), 1 July, <https://hromadskeradio.org/programs/rankova-hvylya/vidmova-rozblokovaty-vkontakte-zakonimirnist-chy-nastup-na-svobodu-slova>

125 The expert poll was conducted in May 2017 by the Ilko Kucheriv Democratic Initiatives Foundation and involved 40 experts working in the field of civil society, media and research. The list of the experts and key findings (in Ukrainian) are available here: <http://dif.org.ua/article/blokvannya-rosiyskikh-sotsialnikh-merezh-ta-servisiv-za-chi-proti-dumka-ekspertiv>

126 Democratic Initiatives Foundation (2017), 'Блокування російських соціальних мереж та сервісів – за чи проти: думка експертів' (Blockage of Russian Social Networks and Services – Pros or Contras: Expert Survey), 25 May, <http://dif.org.ua/article/blokvannya-rosiyskikh-sotsialnikh-merezh-ta-servisiv-za-chi-proti-dumka-ekspertiv>

127 Public petition on Restoring Access to Vkontakte, 16 May, <https://petition.president.gov.ua/petition/36543>

128 President's Poroshenko Response to Petition, 29 June 2017, <https://petition.president.gov.ua/petition/36543>

129 Council of Europe Platform to promote the protection of journalism and the safety of journalists, 17 July 2017, <https://www.coe.int/en/web/media-freedom/all-alerts/-/soj/alert/26019491>

130 Zhdanova M. and Orlova D. (2017), 'Computational Propaganda in Ukraine: Between External Threats And Internal Challenges', Oxford, UK, Project on Computational Propaganda, <http://comprop.oi.ox.ac.uk/2017/06/19/computational-propaganda-in-ukraine-caught-between-external-threats-and-internal-challenges/>

# 5. FREEDOM OF EXPRESSION IN CRIMEA AND TERRITORIES CONTROLLED BY ARMED GROUPS

## 5.1. FREEDOM OF EXPRESSION IN CRIMEA

Since the occupation and unrecognized 'annexation' of Crimea by Russia in March 2014, freedom of expression in the peninsula has deteriorated significantly.<sup>131</sup> Journalists and bloggers critical of the occupation and 'annexation' of Crimea have faced prosecution and prison sentences while harassment of independent media, opposition politicians and activists has intensified.<sup>132</sup>

The *de facto* authorities requested all media outlets to re-register under Russian law by 1 April 2015. Of the over 3,000 media outlets registered in Crimea before the 'annexation', only 250 outlets remain. Of those, 231 are re-registered Ukrainian media and 19 are Russian media that have subsequently started working in the peninsula. They include 18 TV channels, 36 radio stations, 184 print media and 12 information agencies.<sup>133</sup> Ukrainian channels that previously broadcasted in Crimea were blocked, but experts assume that some 46% of households in Crimea have access to Ukrainian channels via satellite.<sup>134</sup> According to the Ministry of Information Policy of Ukraine in 2016, some 60 Ukrainian and Crimean Tatar online media sites had been blocked in Crimea.<sup>135</sup>

Of 11 Crimean-Tatar media outlets before the annexation only one newspaper, 'The Voice of Crimea', received a new license. Another smaller newspaper funded exclusively by members of the Mejlis, a Crimean-Tatar elected representative body, was deprived of its office in June 2016.<sup>136</sup> There are a few smaller Crimean-Tatar outlets, such as 'YanyDunya', 'Kyrym' and a children's magazine 'Armanchuk'.<sup>137</sup> After the previously existing Crimean-Tatar Channel ATR was pushed out of Crimea,<sup>138</sup> the Russian authorities established a new Crimean-Tatar channel 'Millet' (the people) which, however, half of the time broadcasts in Russian and presents mostly the official Russian view.<sup>139</sup>

The persecution and harassment of Crimean Tatars, who constituted over 12% of the population of Crimea before the occupation, has intensified. According to CrimeaSOS, an organization that opposes the occupation of Crimea and provides assistance to internally displaced persons, 43 people expressing dissent – primarily Crimean Tatars – were subjected to enforced disappearances between March 2014 and December 2016. Analysis conducted by CrimeaSOS alleges that in most of these cases law enforcement authorities of the Russia Federation were involved.<sup>140</sup> In April 2016, the Supreme Court of Crimea banned the Mejlis on the grounds that it was

131 This is reported by many observers, as shown in the paper. Moreover, the situation with the freedom of expression in Russia is dire, as reported by international organisations.

132 UN High Commissioner for Human Rights, Press briefing notes on Crimean Tatars, 17 May 2016: [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19970&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19970&LangID=E)

133 Tyshchenko, Y. (2016) (ed), 'Крим після анексії. Державна політика, виклики, рішення та дії. Біла книга» (Crimea After Annexation. State Policy, Challenges, Solutions and Actions. The White Book), p. 119.

134 Tyshchenko, Y. (2016) (ed), 'Крим після анексії. Державна політика, виклики, рішення та дії. Біла книга» (Crimea After Annexation. State Policy, Challenges, Solutions and Actions. The White Book), p. 119.

135 Ministry of Informational Policy of Ukraine, MIP: Ukraine presented the issues of violations of freedom of speech in Crimea and the Eastern Ukraine at the OSCE meeting in Warsaw, 23 September 2016, <http://mip.gov.ua/en/news/1459.html>

136 Tyshchenko, Y. (2016) (ed), 'Крим після анексії. Державна політика, виклики, рішення та дії. Біла книга» (Crimea After Annexation. State Policy, Challenges, Solutions and Actions. The White Book), p. 120.

137 Information provided by Gulnara Bekirova, PEN Centre Ukraine

138 It moved to Kyiv and is available in Crimea via satellite

139 Vesyolova, V. (2017), 'Миллет» и Ко: сколько стоят новые рупоры власти в Крыму' ('Millet' and Co: How Much The New Speakers Of Power Cost in Crimea), Radio Free Europe Radio Liberty, 16 February, <https://ru.krymr.com/a/28313125.html>

140 CrimeaSOS (2017), 'Насильницькі зниснення в Криму за період анексії Російською Федерацією 2014–2016' (Forced Disappearance in Crimea During Annexation by the Russian Federation), May, <http://krymsos.com/files/enforced%20report.pdf> Of those people 17 were let free, 18 were not found



an 'extremist organisation'. The Russian Supreme Court upheld the decision in September 2016.<sup>141</sup> Members of the Mejlis have been subject to violence, assault and threats and many are now in exile.

In May 2016, Ilmi Umerov, deputy head of the Mejlis, was charged with 'threatening the territorial integrity of the Russian Federation' under Article 208.1(2) of the Russian Criminal Code. He was forcibly placed in a psychiatric ward in August 2016 for three weeks<sup>142</sup> and added to a list of 'terrorists' by the Russian authorities in December that year. The court case against him is ongoing and he faces up to five years in prison if convicted.<sup>143</sup> Another deputy head of the Mejlis, Ahtem Chygoz, has been held in pre-trial detention since January 2015. He is accused under Article 212 of the Criminal Code of Russia of organizing 'mass disturbances' on 26 February 2014 in Simferopol in relation to a largely peaceful rally on the eve of the Russian occupation during which some clashes occurred. He faces up to 15 years in prison if convicted.<sup>144</sup>

Other prominent cases<sup>145</sup> include that of Oleg Sentsov, a Ukrainian writer and filmmaker, who was sentenced to 20 years in prison in August 2015 on terrorism charges after an unfair trial by a Russian military court, marred by allegations of torture. PEN International fears that Oleg Sentsov was imprisoned for his opposition to Russia's annexation of Crimea and continues to call on the Russian authorities to release him immediately. Should there be grounds for prosecution on charges of terrorism, these should be heard by a civil court under Ukrainian law.<sup>146</sup>

The *de facto* authorities in Crimea have also harassed human rights lawyers. On 25 January 2017 Nikolay Polozov, the lawyer of Ilmi Umerov, was detained by security services for 2.5 hours. He had just returned from

the Parliamentary Assembly of the Council of Europe in Strasbourg, where he had given a presentation on human rights violations in Crimea. In January 2017 Emil Kurbedinov, the lawyer of journalist Nikolay Semena (a Crimean journalist who faces up to five years in prison on charges of making 'calls to action aimed at violating the territorial integrity of the Russian Federation,' in connection with an article he wrote in 2015) was detained by representatives of Crimea's Centre for Counteracting Extremism. The same day he was accused of extremism and sentenced to 10 days of administrative detention.<sup>147</sup>

These violations have not gone unchallenged. On 19 December 2016, the UN General Assembly adopted resolution 71/205 on the 'situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol'.<sup>148</sup> The resolution refers to Crimea being under the 'temporary occupation' of the Russian Federation, reaffirms the non-recognition of its 'annexation', and affirms the applicability of the Geneva Conventions. It further calls on the Russian Federation 'as an occupying power' to bring an immediate end to 'all the abuses against residents of Crimea,' and to ensure proper and unimpeded access to the peninsula.

The Committee of Ministers of the Council of Europe, in its decision of May 2017 urged the Russian Federation to take measures necessary 'to bring an immediate end to all violations of human rights, including the denial of freedom of expression, freedom of peaceful assembly, freedom of religion and belief, discriminatory measures and practices, arbitrary detentions, torture and other cruel, inhumane or degrading treatment, and the repression against persons belonging to minorities, including the Crimean Tatars, as well as Ukrainians and persons belonging to other ethnic and religious groups'.<sup>149</sup>

until now, 6 were found dead and 2 were found in detention and were convicted.

141 Human Rights Watch (2016), 'Crimean Tatar Elected Body Banned in Russia', 29 September, <https://www.hrw.org/news/2016/09/29/crimean-tatar-elected-body-banned-russia>

142 Human Rights Watch (2016), 'Human Rights Council: Maintain scrutiny of situation in Ukraine', 12 December <https://www.hrw.org/news/2016/12/12/human-rights-council-maintain-scrutiny-situation-ukraine>

143 See Amnesty International (2017). 'Крим: Різке погіршення ситуації з правами людини на території, закритій від міжнародного спостереження' (Crimea: Sharp Deterioration Of Human Rights In The Territory Closed From International Observation), 17 March, <http://amnesty.org.ua/nws/rizke-pogirshennya-situatsiyi/>

144 Amnesty International (2017). 'Крим: Різке погіршення ситуації з правами людини на території, закритій від міжнародного спостереження' (Crimea: Sharp Deterioration Of Human Rights In The Territory Closed From International Observation), 17 March, <http://amnesty.org.ua/nws/rizke-pogirshennya-situatsiyi/>

145 These cases are well described in several reports, including: 1) Amnesty International. Crimea in the Dark, December 2017: <https://www.amnesty.org/en/latest/news/2016/12/crimea-in-the-dark-the-silencing-of-dissent/>, 2) Ассоциация «Свободное слово» (2017), «Россия, 2016–2017. Нарушения и государственные ограничения свободы слова, свободы печати, свободы художественного творчества» (Association 'Free Word' (2017), «Russia in 2016–2017: Violations and State Restrictions to Free Expression, Press, and Creative Activity»), 16.05.2017, <http://svobodnoeslovo.org/2017/05/16/rossiya-2016-2017-narusheniya/>; 3) Monthly reports by Krym SOS: <http://krymsos.com/reports/analitichni-zviti-po-krimu/>.

146 Pen International (2017), Call to action – Russia: Free Oleg Sentsov, 10 May: <http://www.pen-international.org/newsitems/call-to-action-russia-free-oleg-sentsov/>; See more at Osavolyuk, A. (2015), Report: The case of 'Crimean terrorists', Open Dialog Foundation, 11 September, <http://en.odfoundation.eu/a/6867-report-the-case-of-crimean-terrorists>

147 Article 19 (2017), 'Ukraine: Joint submission to the Universal Periodic Review', March 30, <https://www.article19.org/data/files/medialibrary/38695/Final-Ukraine-UPR-.pdf>

148 UN General Assembly (2016), Resolution 71/205, Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), 16 December 2016, [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/71/205](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/205)

149 Committee of Ministers of the Council of Europe, Decision CM/Del/Dec(2017)1285/2.1bisb, 3 May 2017, [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=090000168070ec02](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168070ec02)

In April 2017 the International Court of Justice (ICJ)<sup>150</sup>, ruling on a case lodged by Ukraine against Russia in January 2017, called on Russia to 'refrain from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the Mejlis' and to 'ensure the availability of education in the Ukrainian language'.<sup>151</sup>

## 5.2. FREEDOM OF EXPRESSION IN THE SELF-PROCLAIMED 'DONETSK PEOPLE'S REPUBLIC' AND SELF-PROCLAIMED 'LUHANSK PEOPLE'S REPUBLIC'

The situation of freedom of expression in the territories controlled by the armed groups calling themselves the 'People's Republic of Donetsk' (DNR) and the 'People's Republic of Luhansk' (LNR) remains particularly difficult. Human rights groups have denounced the absence of investigative journalists and foreign observers in the territories<sup>152</sup> and the tight control of the *de facto* authorities over the media.<sup>153</sup> Since 2014, scores of Ukrainian media outlets have been closed or have had to relocate from the separatist-controlled area. Due to lack of access to the DNR and LNR territories, human rights organisations have not been in a position to document many cases of human rights violations. IMI documented 17 violations in 2015<sup>154</sup> and 12 violations of freedom of speech in 2016<sup>155</sup> that included blocks on Ukrainian and international media, censorship, and cases of harassment and physical and psychological attacks against journalists and bloggers.

The DNR and LNR-controlled territories have been cut off from Ukrainian media and other information sources. More than 100 Ukrainian online media channels have been blocked, and access to all Ukrainian TV channels

has been closed.<sup>156</sup> Only local pro-government channels and Russian channels are available,<sup>157</sup> which are watched by an estimated 82% of people, based on a survey conducted by GfK Ukraine and IMI.<sup>158</sup> Meanwhile, 88% of people living in the Ukrainian government-controlled territory of Donbas watch television of which only 16% choose Russian channels.<sup>159</sup> Ukrainian experts who conducted a survey in Donbas are concerned about the long-term effects of information isolation of people living on the separatist controlled territories and the destructive influence of propaganda.<sup>160</sup>

Journalists who attempt to report on the situation in the separatist-controlled territories face serious challenges. According to the Ukrainian NGO Telekritika, the lives of those reporting on the armed conflict are under threat and Ukrainian media outlets do not prioritise the security of their reporters, even when they are working in conflict zones.<sup>161</sup> The Committee to Protect Journalists says that at least five journalists and two media workers have been killed in Eastern Ukraine since 2014<sup>162</sup>. Around 3200 people have been captured since the beginning of the conflict in Donbas by the *de facto* authorities of DNR and LNR; 117 remained imprisoned in February 2017.<sup>163</sup> At the same time, Human Rights Watch and Amnesty International documented cases in which Russia-backed separatists have held civilians in prolonged, arbitrary, and incommunicado detention, and subjected them to beatings and other physical abuse.<sup>164</sup> In some cases, individuals were subjected to enforced disappearance.<sup>165</sup>

150 International Court of Justice, Press Release No 2017/15, 19 April 2017, <http://www.icj-cij.org/files/case-related/166/19412.pdf>

151 Sydorenko, S. (2017), 'What Ukraine Won And Lost At The International Court Of Justice', EuroMaidan Press, 21 April, <http://euromaidanpress.com/2017/04/21/what-ukraine-won-and-lost-at-the-international-court-of-justice/>

152 Reporters Without Borders, Ukraine (2017), 'At The Crossroads. Ukraine', <https://rsf.org/en/ukraine?nl=ok>

153 Freedom House, Freedom in The World 2016. Ukraine, <https://freedomhouse.org/report/freedom-world/2016/ukraine>

154 Institute of Mass Information, 'KhronikaSvobodiSlova 2015' (Freedom of Speech Chronicle 2015)

155 Institute of Mass Information, 'KhronikaSvobodiSlova 2016' (Freedom of Speech Chronicle 2016)

156 Reporters Without Borders (2016), Summary of attacks on Media. Ukraine, <https://rsf.org/en/news/summary-attacks-media>

157 Kolodyazhna, D. (2017), 'Телевидение «ДНР»: естльичто-то, кромепропаганды?' (Television In DNR: Is There Anything Other Than Propaganda?), Detector Media, 25 June, <http://detector.media/infospace/article/127298/2017-06-25-televidenie-dnr-est-li-chto-to-krome-propagandy/>

158 GfK/IMI, Ukraine Media Consumption Survey: A Focus On The East, based on fieldwork in November–December 2015, [https://www.gfk.com/fileadmin/user\\_upload/dyna\\_content/UA/2\\_news-2016/InfographicUCBIMediaConsumptionSurvey.pdf](https://www.gfk.com/fileadmin/user_upload/dyna_content/UA/2_news-2016/InfographicUCBIMediaConsumptionSurvey.pdf)

159 Zakusilo, M. (2016), 'Медіа ландшафт на українських та окупованих територіях Донбасу: дослідження GfK та IMI' (Media landscape of Ukrainian and Occupied Territories of Donbas: Research of GfK and IMI), DetectorMedia, 10 March, <http://detector.media/infospace/article/113435/2016-03-10-medialandshaft-na-ukrainskikh-ta-okupovanih-teritoriyakh-donbasu-doslidzhennya-gfk-ta-imi/>

160 DetectorMedia (2016), 'Інформаційна ізоляція окупованого Донбасу призведе за кілька років до незворотних наслідків – дослідження' (The information isolation of the occupied Donbas will lead to irreversible consequences in a few years: Research), 17 July, <http://detector.media/infospace/article/116907/2016-07-17-informatsiina-izolovanist-okupovanogo-donbasu-prizvede-za-kilka-rokiv-do-nezvorotnikh-naslidkiv-doslidzhennya/>

161 IREX, Media Sustainability Index, Ukraine, 2016

162 Committee to Protect Journalists (2017), 'Journalist missing in eastern Ukraine', 16 June, <https://cpj.org/2017/06/journalist-missing-in-eastern-ukraine.php>

163 Ukrainian Helsinki Human Rights Union (2017), 'Ситуация с правами человека на Донбассе (рос.)' (Situation With Human Rights Situation in Donbas), 18 April, <https://helsinki.org.ua/publications/sytuatsiya-s-pravamy-cheloveka-na-donbasse-ros/>

164 The report also documented violations by Ukrainian government authorities and pro-government paramilitary groups.

165 Amnesty International and Human Rights Watch (2016), 'You Don't Exist'. Arbitrary Detentions, Enforced Disappearances, and Torture in Eastern Ukraine, <https://www.amnesty.org/en/documents/eur50/4455/2016/en/>

Among those affected:

- In 2014, Serhiy Sakhadinsky, editor of Politika 2.0 news website was held for five months in the basement of the University of Luhansk.
- In 2015, Pavel Kanygin, correspondent for Novaya Gazeta, was detained and beaten by the DNR authorities; he was later released and expelled from the DNR-controlled territory.
- In 2015, Agence France-Press correspondent Alexander Gayuk was injured in the knee by shrapnel from a shell while Donetsk was being bombarded.<sup>166</sup>
- Roman Cheremski, a journalist with the Ukraynski Prostir news website and member of the Union of Ukrainian Youth, spent 135 days in detention in LNR-controlled territory. He said he was interrogated for five days and was beaten after his arrest in August 2014.
- Luhansk-based freelance journalist who assisted foreign correspondents in the area, Maria Varfolomeyeva, was abducted in January 2015 and held by her captors until early March 2016, when she was freed as part of a prisoner exchange.<sup>167</sup>
- The blogger Eduard Nedelyaev, who frequently criticised separatist authorities in LNR-controlled territory, was detained in November 2016 and remains held.<sup>168</sup>
- On 6 June 2017 the journalist Stanislav Aseyev who, under the pseudonym Stanyslav Vasin, contributed to Radio Free Europe and independent online media Ukrainska Pravda, among other Ukrainian outlets, disappeared in DNR-controlled territory. His detention and prosecution were confirmed in a letter from the secretary of the Union of journalists of Russia, Timur Shafir, to the head of the National Association of Journalists of Ukraine in late July.<sup>169</sup>

<sup>166</sup> Reporters Without Borders (2016), Summary of attacks on Media. Ukraine, <https://rsf.org/en/news/summary-attacks-media>

<sup>167</sup> Shamanska, A. (2016), Ukrainian Journalist Details Her 419 Days In Separatist Captivity', Radio Free Europe Radio Liberty, March 7, <https://www.rferl.org/a/ukraine-journalist-talks-419-days-separatist-captivity/27595944.html>

<sup>168</sup> Detector Media (2016), 'У Луганську бойовики затримали місцевого проукраїнського блогера' (The Local Pro-Ukrainian Blogger Was Detained By Militants), 29 November, <http://detector.media/community/article/121001/2016-11-29-u-lugansku-boioviki-zatrimali-mistsevogo-proukrainskogo-blogera/>

<sup>169</sup> IMI, Arrest of Stanislav Aseyev in Donetsk confirmed from Russia, 28 July 2017, <http://imi.org.ua/en/news/arrest-of-stanislav-aseyev-in-donetsk-confirmed-from-russia/>

# 6. LINGUISTIC RIGHTS

## 6.1 LANGUAGE USE IN UKRAINE

Ukraine has a very diverse linguistic landscape, linked to its complex history. Ukrainian and Russian predominate, but other languages are also used widely in certain parts of the country (see the map in the Annexe 2).

The last census, conducted in 2001, revealed that ethnic and linguistic identities do not necessarily coincide: 14.8% of those who consider themselves as ethnic Ukrainians identify Russian as their mother tongue. The same goes for representatives of other identities: for instance, among those only 0.1% of Crimean Tatars considered Ukrainian as their mother tongue, compared to 71% of Polish. The span of minorities considering Russian as their mother tongue ranges from 1% of Hungarians to 88.5% of Greeks.

Opinion polls and various studies conducted since then reveal interesting trends. First, the majority of citizens of Ukraine consider the Ukrainian language as their mother tongue throughout Ukraine except for Donbas, where a relative majority (40%) of respondents consider Russian their first language; 34% identify both Ukrainian and Russian; and 20% identify Ukrainian.

Second, there is a growing number of people who consider both Ukrainian and Russian (simultaneously) to be their native language. According to a poll conducted by Razumkov Centre in December 2015,<sup>171</sup> 60% of Ukrainian citizens call Ukrainian their native language; 15% say Russian; and 22% reported that Ukrainian and Russian are equally native for them; 2% of respondents reported having another native language. In the East and South of Ukraine, the number of people who consider both languages as native is almost the same or slightly exceeds the number of those who identified only Ukrainian.

People who said they are Ukrainians	Ukrainian as their mother tongue	People who said they are Russians	Russian as their mother tongue	People who said they belong to other ethnicities	Other languages as their mother tongue
77.8%	67.5%	17.3%	29.6%	4.9%	2.9%

### Information from the All-Ukrainian Population Census 2001<sup>170</sup>

<sup>170</sup> About number and composition population of Ukraine by All-Ukrainian population census 2001 data, <http://2001.ukrcensus.gov.ua/eng/results/general/language/>

<sup>171</sup> National Security and Defense Journal of Razumkov Centre, (2016), 'Ukrainian Identity: Changes, Trends, Regional Aspects', [http://old.razumkov.org.ua/eng/files/category\\_journal/NSD\\_161-162\\_eng.pdf](http://old.razumkov.org.ua/eng/files/category_journal/NSD_161-162_eng.pdf)



Third, more people speak Ukrainian at home than outside the home (at work, at school etc.), where they switch to Russian. This points to the phenomenon of diglossia<sup>172</sup> all over Ukraine apart from the West (where 92% of people speak Ukrainian both at home and outside home): in the Centre, 63% speak Ukrainian at home against 57% outside home, in the South – 20% against 16%, and in the East – 27% against 24%. According to Mykola Riabchuk, a Ukrainian public intellectual and political analyst, this situation proves that people have strong attachment to the Ukrainian language, but use it less outside home because of its (and its speakers') perceived low social status, which is the legacy of the colonial status of Ukraine as a part of the Russian Empire and later the Soviet Union, where speaking Russian in public and not speaking Ukrainian (out of fear of being potentially ridiculed as a village bumpkin or an obsessed 'nationalist') was a normality.<sup>173</sup>

Fourth (and this concerns language policy), a growing number of people (including Russian speakers) want the state to promote the use of the Ukrainian language. According to a poll conducted by the Kyiv International Institute of Sociology, 64% of respondents support state policies that encourage the use of Ukrainian. The share of those who support encouragement of Ukrainian grew by 11 % since 2014, whereas the share of those who support encouragement of Russian fell by 9%.<sup>174</sup> The latter has to do with the context where, although Ukrainian has become a dominant language in education, the Russian language continues to dominate in the media and book markets (even without taking into account imported books), as well as in services (in cafes, restaurants, etc.).<sup>175</sup>

## 6.2. USE OF LANGUAGES IN EDUCATION

The Ukrainian language dominates in education. This is the case in primary and secondary education and even more so at university. However, there are no by-laws to enforce any language regime and there are no reliable reports about the actual use of languages in schools.

Officially, the Ukrainian language dominates in secondary education in Ukraine and this has been the case for many years. The language of instruction in the 2016/2017 academic year is as follows<sup>176</sup>: Ukrainian – 89.59%, Russian – 9.39%, other languages – 1.03%.<sup>177</sup> However, in four regions of Ukraine (Donetsk, Luhansk, Odessa, Kharkiv) less than two thirds of pupils study in Ukrainian.<sup>178</sup> In the Transcarpatia and Chernivtsi regions, which neighbour Hungary, Slovakia, and Romania, the share of pupils who study in languages other than Ukrainian is much higher – 11.97% and 13.77% respectively, indicating the compact settlement of minorities.

According to the Ministry of Education and Science of Ukraine, almost 800 schools provide instruction in six languages of 'national minorities': Bulgarian, Polish, Romanian, Slovak, Hungarian, and Crimean-Tatar.<sup>179</sup> Many graduates of these schools do not speak Ukrainian.

In universities, official information indicates that Ukrainian is the language of instruction 99% of the time although there is no reliable information on actual practice. Following the Russian occupation of Crimea, the Kyiv National Taras Shevchenko University opened the department of Crimean-Tatar language and literature, recognizing the need to support and promote development and use of Crimean-Tatar language under the current circumstances.

## 6.3. LANGUAGES IN THE MEDIA AND PUBLISHING

The language situation outside of education differs significantly as Russian still dominates the media space in Ukraine. According to civil society monitoring<sup>180</sup> of the seven most popular TV channels conducted in 2016, the share of Russian language exceeded that of Ukrainian and the share of bilingual broadcasting increased compared to previous years.

172 Diglossia occurs when two languages (or two varieties of the same language) are used under different conditions within a community, often by the same speakers.

173 Riabchuk expressed this opinion in a comment to the researchers of the paper on which this report is based.

174 See Facebook post by Volodymyr Kulyk dated June 9, 2017 – <https://www.facebook.com/volodymyr.kulyk/posts/1503495949682327>. The poll was funded by the University of Alberta, Canada within the project Research Initiative on Democratic Reforms in Ukraine.

175 See VoxUkraine, Has Ukraine Managed To Leave the Post-Imperial Cultural Space in 25 Years of Its Independence, 26 August 2016, <https://voxukraine.org/2016/08/26/25-years-of-independence-en/> and Space of Freedom: Становище української мови (The state of the Ukrainian language), 8 July 2015, <http://dobrovol.org/project/10/>. The latter conducts analysis of the situation with Ukrainian language annually since 2011; all reports are available online.

176 Language Policy Portal (2017), 'Мова навчання в українських школах та вивчення російської мови в них' (Language of Instruction in Ukrainian Schools and Teaching of Russian There), 10 April, <http://language-policy.info/2017/04/mova-navchannya-v-ukrajinskyh-shkolah-ta-vyvchennya-rosijskoi-movy-v-nyh/#more-4103>

177 Other languages include: English, Bulgarian, Crimean-Tatar, Moldovan, German, Polish, Romanian, Slovak, Hungarian.

178 Civil Society Initiative Dobrovol.org (2016), 'Російська мова домінує в медіа та сфері послуг, українська – в освіті й кінопрокаті' (Russian Language Dominates in Media, Services, Ukrainian – in Education and Film Industry), 8 November, <http://dobrovol.org/article/347/>

179 Ukrinform (2017), 'В Україні діють 800 загальноосвітніх навчальних закладів, які надають загальну середню освіту мовами національних меншин' (More Than 800 Schools In Ukraine Provide Instructions In Languages Of National Minorities), 17 July, <https://www.ukrinform.ua/rubric-society/1980651-v-ukraini-800-skil-nadaut-osvitu-movami-nacionalnih-mensin.html>

180 Monitoring was conducted by a civil society initiative dobrovol.org, 480 minutes of broadcasting time of 7 top channels during prime time, <http://dobrovol.org/article/347/>

Channel	Popularity (share of audience) <sup>1</sup>	Share of Ukrainian language + bilingual	Share of Russian
<b>Ukraina TRC</b>	13.7	6% + 22%	72%
<b>Inter</b>	10.6	25% + 25%	50%
<b>1+1</b>	9.0	31.2% + 65%	4.2%
<b>ICTV</b>	8.3	83.3% + 2.1%	14.6%
<b>STB</b>	7.3	6% + 94%	0%
<b>New Channel</b>	4.6	50% + 25%	25%
<b>NTN</b>	4.6	12.5% + 12.5%	75%
<b>Total</b>		<b>30.6% + 35%</b>	<b>34.4%</b>

Similar monitoring of the six top radio channels revealed that 10% of prime air-time was devoted to Ukrainian songs, whereas 37.4% was devoted to songs in Russian – the rest of the air-time (52.5%) was in other languages, mostly English. This marks an increase of the use of the Ukrainian language compared to previous years, in line with a law adopted in June 2016<sup>181</sup> requiring radio stations to increase the share of broadcasting in Ukrainian to 25% (by autumn 2019 this share should by law become 35%).<sup>182</sup> In February 2017, the National Council of Radio and TV conducted monitoring and fined eight channels for violations of the quota regulations.

With regard to newspapers, the share of copies in Ukrainian in overall circulation reached 34% in 2016, compared to 62% in Russian language. The share of Ukrainian language publications in the overall circulation of other periodical publications reached 24.4% in 2016, an increase compared to 17.7% in 2015, but still far below the share of publications in Russian. In the book-publishing sector, the situation is somewhat different: in 2016 the share of Ukrainian copies in the overall circulation of books published in Ukraine reached 64.9%.<sup>183</sup>

Two aspects are important to mention in order to better understand the context. First, the relative share of Ukrainian publications in the overall circulation has grown compared to previous years. This, however, has to do with the drastic reduction in absolute numbers of publications in Ukraine due to economic factors. Russian language publications were more affected than Ukrainian language publications, since they appeared to be less sustainable

commercially. Second, a large number of newspapers, journals and books available in the Ukrainian market (kiosks, bookstores, book markets, online stores etc.) come from abroad, mostly from Russia. Therefore, the share of publications in Ukrainian compared to those in Russian available on the market in Ukraine (given that the publishing business in Russia is much bigger than that in Ukraine) remains much smaller.

#### 6.4 LANGUAGE POLICY

According to some Ukrainian experts and scholars, language policy in Ukraine has so far been rather liberal towards Russian language and languages of other minorities, often at the expense of Ukrainian language. Volodymyr Kulyk, a prominent scholar and expert of national identity in Ukraine, concluded recently that: *'While the post-Euromaidan leadership rhetorically supports the national language, it has almost entirely refrained from implementing any measures that can promote its use, likely out of fear of alienating Russian speakers. This attitude is shortsighted and bound to exacerbate the disadvantaged position of Ukrainian vis-à-vis Russian, provoking discontent among a large part of society that considers such an outcome unacceptable for a post-Euromaidan Ukraine fighting against a neoimperialist Russia.'*<sup>184</sup> The Head of the Institute of Ukrainian language of the National Academy of Sciences Pavlo Grytsenko has criticised the policy of enhancing minority languages especially in Transcarpathia and Odesa regions, where it is often supported by neighbouring states where the languages concerned are state languages. The absence

<sup>181</sup> The Law of Ukraine 'On introducing amendments to laws of Ukraine on share of songs in state language in radio programmes', 16 May 2016. See Center for Democracy and Rule of Law, The Verkhovna Rada Approves the Revised Draft Law on "Ukrainian Quotas" on the Radio, <http://cedem.org.ua/en/news/the-revised-draft-law-on-ukrainian-quotas-on-the-radio/>

<sup>182</sup> This law is specifically targeted at reducing Russian language air-time, since those channels that put on air over 60% of songs in official EU languages, can keep the level of Ukrainian songs at 25%. Moreover, according to the law the quota applies specifically to prime time broadcasts. The language of programme moderators should be at least 50% in Ukrainian with an increase to 60% by autumn 2019 (the rest is, by default, Russian).

<sup>183</sup> Civil Society Initiative Dobrovol.org (2016), 'Становище української мови в Україні у 2016 році Аналітичний огляд' (State of Ukrainian Language in Ukraine in 2016. Analytical Report), 8 November 2016, p.25, <http://dobrovol.org/article/347/>

<sup>184</sup> Kulyk, V. (2015), 'One Nation, Two Languages? National Identity and Language Policy in Post-Euromaidan Ukraine', Policy Memos, PONARS Eurasia, September 2015, <http://www.ponarseurasia.org/memo/one-nation-two-languages-national-identity-and-language-policy-post-euromaidan-ukraine>

of a counter-policy by the Ukrainian state, he believes, could eventually endanger the Ukrainian language.<sup>185</sup>

The controversial law on the Principles of the State Language Policy adopted in 2012, known as ‘Kivalov–Kolisnichenko law’ after the names of two MPs close to the former president of Ukraine Viktor Yanukovich who co-authored it, is still in place. The law envisages that in all communities where at least 10% of the population regarded a minority language as their native language, that language would automatically become a second official language (along with Ukrainian as state language). In theory the Russian language (which was widely used by the authorities anyway) as well as Hungarian, Romanian and Crimean Tatar would benefit from the law, while other minority language communities would not.<sup>186</sup> The law provoked numerous protests and was the subject of fierce disagreement between those who wanted to upgrade the status of Russian as a second official language and those who advocated the primacy of Ukrainian.<sup>187</sup> It was widely criticised for violating provisions of the Constitution of Ukraine concerning state language and many believed that it was aimed at eliminating the use of Ukrainian language. International criticism from the Venice Commission of the Council of Europe<sup>188</sup> and the OSCE High Commissioner on National Minorities<sup>189</sup> saw the law as overly focused on the promotion of the status of the Russian language, potentially at the expense of Ukrainian, and social cohesion.

Immediately after the 2014 Revolution, the parliament of Ukraine voted to repeal the law, but the acting president at that time, who took over after Yanukovich fled to Russia, decided to veto the parliament’s decision. Unrest in Crimea had started and Russian TV was lamenting that Russian-speakers in Ukraine were persecuted. In this context, the acting president decided that preserving the *status quo* was probably the best option.

In November 2016, the Constitutional Court of Ukraine started considering an appeal submitted by 57 members of the parliament in 2012 to declare the law unconstitutional.<sup>190</sup> At the same time, the parliament has attempted to improve the status of Ukrainian through a number of issue-specific laws. For instance, the 2015 law ‘On Civil Service’ obliges all civil servants to use the state language (Ukrainian) in exercising their professional duties.<sup>191</sup> In June 2016, a law ‘On introducing amendments to laws of Ukraine on share of songs in state language in radio programmes’<sup>192</sup> was adopted, aimed at increasing the use of Ukrainian language in radio broadcasting. In September 2016, the parliament adopted a law ‘On State Support to Cinematography’, which envisages state support to production of films in Ukrainian or Crimean-Tatar. A draft law on education is under discussion, which envisages a special focus in the educational process to be ‘placed on the study of the national language’.<sup>193</sup> Further, in May 2017 the parliament adopted the above-mentioned law that obliges TV channels to show 75% of films and programmes on national and regional TV channels, 60% on local TV channels and 75% of news programmes in the state language.<sup>194</sup>

Several more bills aimed at encouraging the use of Ukrainian language were introduced in parliament in 2016–2017. Bill 5760 ‘On State Language in Ukraine’ registered in January 2017<sup>195</sup> has been discussed the most. According to proponents of the bill, who point to it having been developed in cooperation with civil society experts, it is in line with international standards and provides for the use of Ukrainian language, which corresponds to its status as the state language.<sup>196</sup> Opponents of the law argue that it denies the fact that Ukraine is a *de facto* bilingual country, in which Russian speakers should continue to be able to enjoy their rights.<sup>197</sup> Opinion polls,

185 Pavlo Grytsenko (2017), ‘Russification in Times of Ukrainization’, Zbruc, 11 May, <https://zbruc.eu/node/65839>

186 See Michael Moser (2013), ‘Language Policy and Discourse on Languages in Ukraine under President Viktor Yanukovich’. IbidemVerlag, p. 416.

187 UN General Assembly (2015), Report of the Special Rapporteur on minority issues, Rita Izsák. A/HRC/28/64/Add.1, 25 January, [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A\\_HRC\\_28\\_64\\_Add\\_1\\_en.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_64_Add_1_en.doc)

188 Council of Europe (2011), Opinion on the draft law on Languages in Ukraine, Strasbourg, 30 March, [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2011\)008](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)008)

189 OSCE (2012), ‘OSCE High Commissioner on National Minorities urges dialogue and compromise on ‘divisive’ language law in Ukraine’, 26 July, <http://www.osce.org/hcnm/92418>

190 Ukrop News 24, The constitutional court scheduled a hearing on the language law of Kivalov–Kolesnichenko on November 17, 5 November 2016, <http://ukropnews24.com/the-constitutional-court-scheduled-a-hearing-on-the-language-law-of-kivalov-kolesnichenko-on-november-17/>

191 The Law of Ukraine ‘On Civil Service’, 21 December 2016, <http://www.center.gov.ua/en/press-center/item/2002-law-of-ukraine-on-civil-service>

192 The Law of Ukraine ‘On introducing amendments to laws of Ukraine on share of songs in state language in radio programmes’. See: Rada introduced 75% Ukrainian language quota on television, 23 May 2017, [https://en.lb.ua/news/2017/05/23/3807\\_rada\\_introduced\\_75\\_ukrainian.html](https://en.lb.ua/news/2017/05/23/3807_rada_introduced_75_ukrainian.html)

193 If passed, the law would open the way for the implementation of the concept of the ‘New Ukrainian School’. See Ministry Of Education And Science Of Ukraine, 2016, The New Ukrainian School Conceptual: Principles Of Secondary School Reform, <http://mon.gov.ua/%D0%9D%D0%BE%D0%B2%D0%B8%D0%BD%D0%B8%202017/02/17/book-final-eng-cs-upd-16.01.2017.pdf>

194 The Law of Ukraine ‘On Introducing Amendments in the laws of Ukraine on languages of audio-visual (electronic) mass media’, 23 May 2017, <http://rada.gov.ua/en/news/News/page/en/news/News/144884.html>

195 [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=60953](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=60953)

196 Language Policy Portal (2017), ‘9 фактів про законопроект 5670 ‘Про державну мову’ (9 Facts About the 5760 ‘On State Language in Ukraine’), 24 January, <http://language-policy.info/2017/01/9-faktiv-pro-zakonoproekt-5670-pro-derzhavnu-movu/>

197 Sensor.net (2017), ‘Закон Про Державну мову: посилення української загрози правам особистості?’ (The Law ‘On State Language’: Strengthening Of Ukraine Or Threat To Individual Rights), 6 February, [https://ua.censor.net.ua/resonance/425963/zakon\\_pro\\_derzhavnu\\_movu\\_posylennya\\_ukrayiny\\_chy\\_zagroza\\_pravam\\_osobystosti](https://ua.censor.net.ua/resonance/425963/zakon_pro_derzhavnu_movu_posylennya_ukrayiny_chy_zagroza_pravam_osobystosti)

however, indicate that while people largely support the unrestricted use of Russian, most citizens also want the state to promote Ukrainian<sup>198</sup> on the grounds that while Russian is spoken widely across several countries, Ukraine is the only state that can provide due support to the Ukrainian and Crimean-Tatar languages (along with languages of the Karaims, Krimchaks and Urums). Other minority languages in Ukraine are spoken widely in other countries and receive support from those states directly and through cultural institutions (Bulgarian, Romanian, Hungarian and Polish are the most prominent examples).<sup>199</sup> Many in Ukraine therefore believe that the state has a special responsibility to protect the Ukrainian language.

Since the occupation of Crimea, state institutions and experts in Ukraine have become sensitive to the need to protect the indigenous population in Ukraine. Thus, on 20 March 2014, the Ukrainian Parliament voted to recognise Crimean Tatars as indigenous people of Ukraine and obliged the Cabinet of Ministers to put forward bills that would ensure enhancement of their rights as an indigenous population.<sup>200</sup> In April 2017, parliament registered the Bill 'On the Status of Crimean-Tatar People in Ukraine' developed by a group of MPs, including Mustafa Dzemilev, a prominent Crimean-Tatar leader and Plenipotentiary of the President of Ukraine on matters of the Crimean-Tatar People and Refat Chubarov, Head of the Mejlis, with the participation of civil society experts<sup>201</sup>. It remains under discussion.

In practice then, Article 10 of the Constitution of Ukraine, which stipulates the functioning of Ukrainian language 'all over the territory of Ukraine in all spheres of public life', remains largely unimplemented. In any case, official support for Ukrainian must not endanger the use of languages of other minorities, in line with Ukraine's obligations under international human rights law. As stressed by the United Nations Special Rapporteur on Minority Issues in January 2015 following his mission to Ukraine, 'the use of minority languages was highly

important and emotive for many communities and an essential aspect of individual and community identity'.<sup>202</sup>

## 6.5. LANGUAGE RIGHTS IN CRIMEA AND OCCUPIED TERRITORIES OF DONETSK AND LUHANSK REGIONS

Although Russian, Ukrainian and Crimean-Tatar are the three official languages in Crimea, the peninsula has seen a drastic Russification in the past years. Whereas before the occupation, there were seven schools teaching in Ukrainian, currently not a single school instructs in Ukrainian, with the exception of one class in a school gymnasium in Simferopol.<sup>203</sup> Thus, although in 2013/14 8.2% of pupils studied in Ukrainian, in 2014/15 their share fell to 1%. Ukrainian has likewise all but disappeared from TV, radio and printed media.<sup>204</sup> Similarly with Crimean-Tatar: before the occupation there were 15 schools with Crimean-Tatar as the language of instruction and 66 mixed schools that included the use of Crimean-Tatar. In total, 13% of all schools used Crimean-Tatar to some degree, which was more or less proportionate to the share of the Crimean-Tatar population in Crimea. Today there are only seven and 45 such schools respectively, which makes 9% of schools and only 4% of pupils who receive some instruction in Crimean-Tatar.<sup>205</sup>

As for the situation in the self-proclaimed 'Donetsk People's Republic' (DPR) and the self-proclaimed 'Luhansk People's Republic' (LPR), there are no reliable statistics. Different research results indicate that during the 2014/15 academic year a high degree of Russification took place and currently almost no schools teach in Ukrainian.<sup>206</sup>

Ukrainian and Crimean-Tatar language media encountered difficulties after the Russian occupation (see below) of Crimea and have been pushed out from these territories.

See also Milakovskiy, B. (2017), 'Ukraine's Explosive Language Question', Fair Observer, 23 February, <https://www.fairobserver.com/region/europe/eastern-ukraine-russia-conflict-language-culture-news-10099/>

198 See Kulyk, V. (2015), 'One Nation, Two Languages? National Identity and Language Policy in Post-Euromaidan Ukraine', Policy Memos, PONARS Eurasia, September 2015, <http://www.ponarseurasia.org/memo/one-nation-two-languages-national-identity-and-language-policy-post-euromaidan-ukraine>

199 Detailed information about relevant activities can be requested at the Congress of Ethnic Communities of Ukraine – <http://www.kngu.org/>

200 Halya Coynash, 2017, Ukraine's Law on the Status of the Crimean Tatar People should seriously worry Russia, Kharkiv Human Rights Protection Group, 22 May 2017, <http://khhpg.org/en/index.php?id=1494800095>

201 Проект Закону України «Про статус кримськотатарського народу в Україні», (Draft Law on the Status of the Crimean Tatar People in Ukraine), 07 April 2017, [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=61537](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61537)

202 UN General Assembly (2015), Report of the Special Rapporteur on minority issues, Rita Izsák. A/HRC/28/64/Add.1, 25 January, [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A\\_HRC\\_28\\_64\\_Add\\_1\\_en.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_64_Add_1_en.doc)

203 MediaSapiens (2015), 'Аналітичний огляд «Становище української мови в 2014–2015 роках»' (Analytical Review On State of Ukrainian Language in 2014–2015), 10 July, [http://osvita.mediasapiens.ua/mediaprosvita/research/analitichny\\_oglyad\\_stanovishe\\_ukrainskoi\\_movi\\_v\\_20142015\\_rokakh/](http://osvita.mediasapiens.ua/mediaprosvita/research/analitichny_oglyad_stanovishe_ukrainskoi_movi_v_20142015_rokakh/)

204 Civil Society Initiative Dobrovol.org (2016), 'Російська мова домінує в медіа та сфері послуг, українська – в освіті й кінопрокаті' (Russian Language Dominates in Media, Services, Ukrainian – in Education and Film Industry), 8 November, <http://dobrovol.org/article/347/>

205 Interview with a Crimean blogger Ali Tatar Zade, Gaseta.ua, 6 July 2016, <https://gazeta.ua/articles/mova-zavtra/krim-otrimaye-shiroku-avtonomiyu-abo-krimaska-mova-bude-oficijna-po-vsij-ukrayini-ali-tatarzade/708780>

206 MediaSapiens (2015), 'Аналітичний огляд «Становище української мови в 2014–2015 роках»' (Analytical Review On State of Ukrainian Language in 2014–2015), 10 July, [http://osvita.mediasapiens.ua/mediaprosvita/research/analitichny\\_oglyad\\_stanovishe\\_ukrainskoi\\_movi\\_v\\_20142015\\_rokakh/](http://osvita.mediasapiens.ua/mediaprosvita/research/analitichny_oglyad_stanovishe_ukrainskoi_movi_v_20142015_rokakh/)



# 7. CONCLUSIONS

## 7.1 ONGOING REFORMS TOWARDS FREE AND TRANSPARENT MEDIA AND ACCESS TO INFORMATION

Following the 2014 Euromaidan revolution, Ukraine has taken important steps to uphold the right to freedom of expression and the freedom of the press:

- The Criminal Code was amended to ensure better protections for journalists;
- Progress was made to end state ownership of the media, by transforming state-owned television and radio stations into independent public service broadcasters;
- A new law on media transparency was adopted with a view to shedding light on media concentration and ownership;
- Public officials are now compelled to publish their records and assets in a bid to fight against corruption; and,
- Increased access to public information is helping to foster investigative journalism.

However, these reforms remain fragile and much more needs to be done to guarantee their implementation and resilience in the long term.

## 7.2 PLURALISM OF OPINION AND CRITICISM OF THE AUTHORITIES

Mainstream media outlets remain in the hands of a small number of wealthy oligarchs who continue to use them to promote and safeguard their own business and political interests. As a result, what appears to be pluralism of opinion in mainstream media in reality is often merely a reflection of the competing interests of their owners.

Nevertheless, since 2014 the Ukrainian media landscape has become more diverse, with several new independent online media outlets launched by media activists. With the rapid growth of Internet use in Ukraine, there is potential

for such media outlets to become more influential in the public debate. Internet access is also granting Ukrainians more options to discuss freely and to openly express opinions critical of the authorities.

This careful optimism, however, does not apply to Crimea and the Donbas, where systematic violations of the right to freedom of expression continue. Access to Ukrainian and independent media has been blocked and criticism of the *de facto* authorities is not tolerated.

## 7.3 ABUSES AGAINST JOURNALISTS

Despite improvements to ensure better protection, journalists and media outlets continue to face physical assault and other forms of harassment. Investigations by law enforcement agencies into attacks on journalists are often ineffective and impunity for murders perpetrated under the previous and current government continues.

Moreover, in Crimea and separatist-controlled areas a large number of journalists have been killed, kidnapped or disappeared, held in incommunicado detention, and subjected to torture and other ill-treatment.

## 7.4 LEGISLATION THAT INFRINGES ON FREE EXPRESSION

While recognising that protecting the interests of national security and territorial integrity is a legitimate aim, the law 'On condemnation of the Communist and Nazi totalitarian regimes in Ukraine and banning of propaganda of their symbols' is too broad in scope and could lead to undue restrictions on views and opinions. The law on preventing corruption may be used to target anti-corruption journalists and activists, while concerns over increased court fees have been raised, as they impact the right to information.

These laws should be reviewed with a view to ensuring that they do not violate Ukraine's obligations to protect, promote and respect the freedom of expression.

### 7.5 TENSIONS BETWEEN NATIONAL SECURITY AND FREE EXPRESSION

The Ukrainian government's restrictions on Russian media and Internet companies on the grounds of national security are a form of censorship that limits the rights to freedom of expression and to receive information and opinion from various sources.

Although the Ukrainian authorities and some experts argue that the restrictions were necessary considering the ongoing information war with Russia, and in light of the unlimited access of Russian intelligence to personal data of Ukrainian users through these websites and violations of intellectual property rights, infringing upon the rights to impart and to receive information and opinion in such broad strokes does not enhance stability, security or the protection of the right to privacy or intellectual property. Sweeping restrictions are counter-productive, undermine the democratic architecture Ukraine is trying to build and run counter to the spirit and letter of domestic and international laws and standards on the freedom of expression and opinion.

Under the International Covenant on Civil and Political Rights and the European Convention on Human Rights, states may resort to restricting freedom of expression where this is provided for by law, serves a legitimate interest (including national security) and is necessary in a democratic society. Although certain interferences may be permissible, it is of critical importance that the Ukrainian authorities remain true to these principles in their application.

### 7.6 LINGUISTIC RIGHTS

Linguistic rights in Ukraine - a multi-ethnic society - are largely respected. Linguistic minorities can receive education in their community language. Due to historical legacies, Russian is widely spoken in Ukraine; however, there are concerns that Ukrainian as a state language does not receive enough support. These concerns are being addressed by several bills presented before the Ukrainian parliament.

The linguistic rights of people in Crimea and those under the *de facto* authorities of the self-proclaimed 'Republics of Donetsk and Luhansk' are severely restricted. International organisations have called on Russia to ensure that the rights of minorities in Crimea are fully respected. The authorities in all these areas should ensure that linguistic minorities are able to fully enjoy their right, in concert with the other members of their group, to enjoy their own culture, and language.

# 8. RECOMMENDATIONS

## PEN INTERNATIONAL CALLS ON THE AUTHORITIES OF UKRAINE:

1. To improve the protection of journalists and media workers against violence and threats, by:
  - a) Ending impunity in cases involving violence against and intimidation of journalists and media workers, in particular that of Pavel Sheremet, by conducting impartial, prompt, thorough, independent and effective investigations into such crimes and bringing to justice the suspected perpetrators, including through making available the necessary resources for such investigations and prosecutions;
  - b) Expanding the definition of 'journalist' in the Criminal Code and other legislation, with a view to extending the protection offered to anyone involved in gathering and transmitting information to the public, removing limitations requiring membership of a professional organisation or employment with accredited media;
  - c) Publicly, unequivocally and systematically condemning all violence and attacks against all journalists and media workers; and,
  - d) Preventing future incidents of violence and threats against journalists and media workers, including through conducting capacity building and awareness-raising among law enforcement and military personnel regarding the country's obligations concerning the safety of journalists under international human rights and humanitarian law.
2. To better respect, protect and fulfil the right to freedom of expression, by:
  - a) Reviewing Law no. 317-VIII "On condemnation of the communist and national-socialist regimes and prohibition of propaganda of their symbols," with a view to ensuring that it is not misused to stifle free debate;
  - b) Reviewing Law 1700-VII "On preventing corruption," with a view to avoiding abusive application against journalists;
  - c) Guaranteeing that legislation aimed at countering Russian propaganda is not misused to unduly restrict the right to freedom of expression;
  - d) Ensuring that decisions to deny entry to the country to journalists and media workers are based on an individualised assessment, and are strictly necessary and proportionate to achieve a legitimate aim such as the protection of national security, in compliance with Ukraine's obligations under international law; and,
  - e) Ensuring that internet content is blocked only pursuant to the enforcement of a judicial decision taken in line with the requirements of necessity and proportionality.

3. To continue and solidify on-going reforms that aim to ensure free and transparent media and access to information, by:
  - a) Ensuring that the reforms concerning public service media are implemented in line with international law and standards, with a view to guaranteeing that the Ukrainian population has access to independent public service print and broadcast media; and,
  - b) Ensuring the effective implementation of the Law on media ownership, with a view to ensuring pluralism in practice as well as in law.
4. To respect, protect and fulfil the right of all those who speak minority languages to express themselves in the language of their choice and to have their literature promoted and distributed, ensuring in this context in particular that any new language legislation aimed at promoting the use of Ukrainian does not adversely affect the linguistic rights of the speakers of minority languages.

#### **PEN INTERNATIONAL CALLS ON ALL PARTIES TO THE CONFLICT IN UKRAINE:**

1. To ensure a peaceful resolution to the conflict through dialogue;
2. To conduct impartial, prompt, thorough, independent and effective investigations into unlawful killings, enforced disappearances and attacks on journalists and media workers and to ensure that the perpetrators are brought to justice;
3. To ensure the release of all writers, journalists and media workers held for their legitimate work;
4. To halt the use and dissemination of propaganda; and,
5. To respect and protect the freedom of expression and linguistic rights in areas under their control, in line with their obligations under international human rights and humanitarian law.

#### **PEN INTERNATIONAL CALLS ON THE AUTHORITIES OF THE RUSSIAN FEDERATION TO:**

1. Comply fully and immediately with the order of the International Court of Justice No. 2017/15 of 19 April 2017 that demands to duly respect the rights of Ukrainian and Tatar minorities in the Crimea, to stop political repression on the peninsula, and to end covert financial, military and political support to the militants in Donbas.
2. Immediately release Ukrainian citizens who were unlawfully detained and judged without regard for elementary standards of justice, as well as those transferred across internationally recognized borders from Crimea to the Russian Federation; To address the issue of impunity and ensure that those found to be responsible for abuses are held accountable before an independent judiciary;
3. Create and maintain a safe and enabling environment for journalists and human rights defenders to perform their work independently and without undue interference in Crimea;
4. Permit the reopening of cultural and religious institutions;
5. Revoke immediately the decision declaring the Mejlis of the Crimean Tatar People an extremist organization and banning its activities, and repeal the decision banning leaders of the Mejlis from entering Crimea;
6. Cooperate fully and immediately with the Office of the United Nations High Commissioner for Human Rights, the Organization for Security and Cooperation



# ANNEXE

## **Stockholm, 11th June 2014 PEN International conference on the Russian/Ukrainian situation hosted by Swedish PEN**

### **Russian and Ukrainian PEN affirm their unity against the waves of propaganda destroying the language of public discussion**

At a gathering of writers held in Stockholm by PEN International and Swedish PEN, **Ludmila Ulitskaya, vice-president of Russian PEN**, spoke of *“the lies poisoning minds which have no other sources of information”* and **Aleksandra Hnatiuk, from Ukrainian PEN**, of *“propaganda designed to create enemies.”*

PEN International has been organizing meetings of writers across Europe bringing together Russians and Ukrainians with their colleagues from around the world. In times of actual and threatened violence PEN believes that channels of public discussion must be kept open. **PEN International President, John Ralston Saul**, said, *“Peace and stability is not about deals done behind closed doors, but the ability of people to talk to each other in public.”*

For three months there have been incessant acts of aggression towards Ukraine from the side of the Russian Federation. There has been the illegal annexation of Crimea, which makes us deeply worried about the rights of the Tatar population, and following it armed groups have created violent disorder in the eastern parts of Ukraine with the goal of destabilizing the country. Ukrainian PEN has talked about journalists and citizens being shot, murdered, kidnapped and tortured. Russian PEN points out that such violence is dependant upon the co-opting of language: “Words are the only means we have to construct meaning and express reality. The Russian authorities are currently using words to destroy meaning. It goes without saying that this is a crime against culture.”

PEN is particularly concerned about the tsunami of anti-free expression laws emerging in Russia, which include treating international NGO's as foreign agents; anti-gay laws; a law permitting the blocking of websites without a court order; laws against discussing Russian history; a Religious Defamation law. In the name of security, human rights are being dangerously undermined.

People wonder if we are faced by a war of interests or a war of values, or both. In either case, the only real security lies in opening channels of free expression. Those on the

front lines of this situation are often the journalists, in whatever country. We admire their courage and appeal to those under pressure to remember, in Lev Rubinstein's words, that “propaganda is the collapse of language.”

This statement has been written after a series of meetings of Russian and Ukrainians writers, including **Alexei Simonov, Lev Rubinstein, Andrey Kurkov, Myroslav Marynovych, Mykola Riabchuk, Leonid Finberg**, and foreign colleagues. The meetings took place in the cities of Kiev, Bled and Warsaw. The participants in the Stockholm meeting were PEN Centres of Sweden, Norway, Finland, Estonia, Slovenia and Germany.

### **The statement has been signed by:**

[John Ralston Saul, President of PEN International](#)

[Tone Peršak, Chair of the Writers for Peace Committee of PEN international](#)

[Takeaki Hori, International Secretary of PEN International](#)

[Jarkko Tontti, International Treasurer of PEN International](#)

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