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MEDIA FREEDOM IN UKRAINE: WAR CHALLENGES AND MORE

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Abstract. Ukraine has always had problems with media freedom. But due to the full-scale invasion of Russia, Ukraine faced a new challenge – how to provide information security and preserve the European principles of freedom of speech. The article describes the problems that have arisen in Ukraine due to the war and proposes ways to solve them. Also, there is a brief analysis of the newly adopted Law of Ukraine "On Media", which is important on Ukraine's path to EU membership. Special attention is paid to the telethon "United news", which, in the author's opinion, should be terminated.

Key words: media freedom, media outlets, martial law, media legislation, the telethon.

Introduction. Ukraine declared independence in 1991. Although 30 years is a large span, it is not sufficient to transform from a totalitarian country, which the USSR indeed was, to a strong European democracy, which Ukraine is striving to become. In terms of the freedom of speech as one of the major values and features of democracy, Ukraine has shifted from the communist model allowing no private property and censored state media of the 90s, and through the Ukrainian President who was among the greatest enemies of the press in 1999 (Gorchinskaya, 1999) to reach 2006–2008 when Ukraine was recognized as the most liberal country on the post-soviet territory (U.S. Department of State, 2007) excluding the Baltic countries. These days it is classified as a partly free country involved in warfare, and its journalists have collectively won the Pulitzer Prize because “despite bombardment, abductions, occupation and even deaths in their ranks, they have persisted in their effort to provide an accurate picture of a terrible reality, doing honor to Ukraine and to journalists around the Word” (The Pulitzer Prize, 2022).

Main material. Before considering the issues related to the freedom of speech, they should be divided into two categories. The first one includes the violations committed by the Russian Federation. Among them are 59 journalist murder cases on the battlefield, journalist abductions in the territories occupied by Russia (even in Crimea, which has been under occupation for 9 years, at least 15 journalists have vanished over the last year), seizing and shutting down of at least 10 Ukrainian media headquarters, shelling of TV towers, jamming the signal of Ukrainian broadcasters and cyberattacks at their websites, bribing the journalists and censoring their activity etc. (Institute of Mass Information, 2023). All in all, 233 media outlets have shut down in Ukraine over the last year. Unfortunately, until these territories are reclaimed neither Ukraine, nor international community can stop that, having no influence on Russia.

However, in this article I would like to focus on the other category of violations arising on the territory controlled by Ukraine, inasmuch the situation here can and must be redeemed.

Of course, Ukraine had media freedom problems before the Russian invasion. The major underlying reason was that most media outlets were loss-making and were owned by oligarchs, who used their resources to one end – to affect the authorities and society.

Some kind of balance and access to different opinions were partly ensured by the fact that far from all oligarchs supported the existing authorities, so their channels could be overtly oppositional

(nowadays, for example, it is “Channel 5” belonging to previous President of Ukraine Petro Poroshenko), situationally oppositional or neutral which dictated their own policy (such as “Ukraine” channel, belonging to the richest person in Ukraine Renat Akhmetov).

Partly, it has to be resolved by the launching of public broadcasting (“Suspilne” television and radio) after the Revolution of Dignity in 2013. It was a beautiful story when a state channel was turned to a public one. The position of the general director was awarded to a really respected and experienced and most importantly independent journalist. However, violating the law, the government kept underfunding the channel, which led to the latter not being able to create any content, incurring huge debt and having no funds to pay the journalists’ salary. Had the channel been more loyal to the government, obviously it would have obtained more ample financial support. Nevertheless, the broadcaster lives up to its reputation and maintains independence. It adheres to high quality standards and journalistic ethics. Weekly monitoring reports on adhering to journalistic standards always rank it the highest among all news channels, its journalists making the smallest number of mistakes (Kulias, 2023). Nowadays, it is the only broadcaster in the Ukrainian telecommunication medium which under martial law features the people’s deputies representing opposition forces (Kulias, 2023). Even though Ukraine has now the fourth government and second president since that time, the channel remains underfinanced. There was even an appalling incident in 2020 when due to anti-Covid restrictions on the number of people present, the Suspilne journalists were not accredited for the Ukrainian President’s press-conference while a pro-Russian channel’s journalists were. Therefore, the channel cannot develop, does not have super-popular programmes and has a rather low rating compared to bright private broadcasters. That is why some officials keep insisting that the channel is redundant and should be shut down.

The development of the Internet and social networks also enhances the media freedom. Ukrainian journalists are proactive in self-organization and setting up own small media. While it has always been rather hard to get on TV as a politician or activist had to either pay the channel or have personal contact with the channel’s owner, independent media make it much easier.

In 2017 Ukraine’s freedom of speech rating was considerably reduced due to the ban of Russian TV channels, social networks and software. With the view to information security, a special list was created including the Russians who were banned from entering Ukraine and whose content was not allowed to be broadcasted in Ukraine (mostly politicians and actors who supported the annexation of Crimea and travelled there with Russian pro-governmental events). This was condemned by some organizations, such as Reporters Without Borders claiming it to be a restriction of the freedom of speech. That, however, turned out to be a well-grounded decision, inasmuch now the EU countries are also starting to ban these channels and sanctioning certain persons. In addition, in 2021 a ban was placed on some Ukrainian channels with a pro-Russian policy, which was also criticized by the UN as a violation of the freedom of speech. By the way, the owner of these channels was arrested in 2022, charged with state treason and eventually exchanged. He was handed over to Russia and was traded for 200 Ukrainian prisoners of war (Walker, 2022).

But, in my opinion, what crucially undermined the freedom of speech in Ukraine was the full-scale Russian invasion of Ukraine in 2022 and the introduction by the government of the all-Ukrainian informational telethon “United News”. It is a blend of a few largest information channels into one, where each studio takes turns and has its allotted time. By an odd coincidence, none of the three largest opposition channels made it to the telethon project although they are profoundly pro-Ukrainian and there are no reasons to suppose that they could harm the national security. They ended up in an ambiguous situation because despite not being banned, they do not have access to digital broadcasting. The Minister of Culture and Information Policy announced that he saw no need of reviving the talks on the channels’ participation in the telethon as “there is variety on television” (Radio svoboda, 2022), even though some other recently founded channels with obscure owners have been

allowed in (Dankova, 2022). This issue is currently being resolved in court. However, the Ukrainians cannot trust any decision of the unreformed judicial system.

It should be noted that at the very start of the full-scale invasion, this telethon as a Ukrainian innovation was really useful. In the times of insecurity and chaos when the Russians thrust fakes into the Ukrainian informational field about Zelenskyy having been killed and Russian tanks moving on to the governmental quarter of Kyiv and resistance not making sense, the unification of key channels facilitated their work and helped avoid panic in the society. The telethon voiced only verified information, promptly broadcasted statements of the President and other Ukrainian authorities, who brought across important information to the people. All the news was coordinated with the Office of the President of Ukraine because journalists indeed did not know what could be revealed on air and what could harm the course of military operations.

Nevertheless, the situation has been stabilized already, obviously there is no need for a telethon. Nowadays, journalists closely cooperate with the military having learned how to report the events without harming the military operations. If the military command deems some information classified or forbids to reveal it (for example, when and where the Ukrainian counteroffensive is going to start or non-disclosure of the Ukrainian military casualties), such limitations are treated by the journalists and society with understanding. Inevitably, there are arguments about not letting the journalists access certain events, but in that case nobody, not even the journalists of the United Telethon are allowed.

Clearly, far from all events happening in Ukraine are related to the war. The necessity to coordinate the reporting with the Minister of Culture and Information Policy or the Office of the President seems at odds with democracy. As of today, the telethon activity is raising increasingly more concerns among media experts. The telethon features only a limited circle of experts and officials who are loyal to the authorities or pro-government politicians. It remains unclear why some events are not revealed in the United Telethon at all, for example, the fact that G7 ambassadors reminded Ukraine of the necessity to adopt the anticorruption program (Kulias, 2023) or some other issues are presented only after they have publicly resonated on the internet, take the case of procurement-related corruption in the Ministry of Defense (Loh, 2023).

It should be mentioned that being funded at the cost of the state budget of Ukraine, the United Telethon is quite a substantial burden on it. It is a way to compensate for the war-related losses sustained by the channels chosen by the government. The 2023 budget allocates UAH 1, 94 billion to be distributed among all the channels involved in the united informational telethon. They include state-owned and private channels as well as public television. Still, "Suspilne" television remains underfunded. This year, UAH 1, 504 million is allocated to this broadcaster, while the Law of Ukraine "On Public Television and Radio Broadcasting" stipulates UAH 4, 419 million (Dankova, 2022).

Several times European Union has urged the Ukrainian authorities to close down the telethon and resume digital broadcasting of opposition channels (Bukvy, 2022). This problem was also emphasized in the US Department of State's report (Bureau of Democracy, Human Rights, and Labor, 2023). Yet President Zelenskyy insists on its necessity till the end of the war, even though the telethon appears to be considered not so much a key to Ukraine's victory over Russia in the information war but rather an instrument for the pro-government powers to win in the election, which is due as soon as the war is over. Even if the authorities declare that all politics should be "suspended" in reality the telethon continuously demonstrates political promotion, and the Office of the President keeps commissioning sociological surveys to monitor the rating of politicians and political parties.

One more problem caused by the telethon is that the state parliamentary channel "Rada", which is meant to illuminate the Ukrainian parliamentary activity and ensure public discussion of draft laws, is currently operating within the United Telethon. Because of war the parliamentary sessions are not aired inasmuch they are taking place behind closed doors. Certainly, there cannot possibly be a need

to make the sessions confidential. It affects the idea of parliamentarism and transparency of the political process in general.

Withal the main criteria indicating the redundancy of the telethon is its steadily decreasing rating, which currently stands at 13–15% of the entire TV viewing. Recent research showed that every second Ukrainian believes that broadcasting a single official point of view is not acceptable, even in wartime (Skliarevska, 2023). The most recent surveys suggest that Ukrainians prefer to seek information on the Internet.

Another controversial fact is that even though Ukraine officially gave up on state channels, in 2023 a license was granted to a new state channel of the Ministry of Defense of Ukraine “Ukrainian military TV”. The society is indeed closely watching and deeply concerned with the warfare, but Ukraine has enough state channels, which can serve as a platform for the military to bring across all necessary messages. Therefore, spending otherwise limited resources on one more state channel is absolutely inappropriate and has not been supported.

Despite the outlined challenges faced by the media, it should be indicated that according to the index of Reporters Without Borders, Ukraine has improved its ranking in 2023 rising from 106th to 79th place (Reporters Without Borders, 2023). The organization primarily remarks the overall enhancement of socio-political and economic state of the journalists because since the full-scale invasion the situation in the country has stabilized and journalists have resumed their activity with due regard to the major war challenges. The organization has also welcomed the Law of Ukraine “On the Media”, adopted at the end of 2022, (Law of Ukraine “On Media”, 2022) as the one complying with the EU legislation. Apropos, synchronization of the media legislation was one of the 7 conditions required from Ukraine to attain the status of the EU membership candidate. The adopted Law is proudly referred to by the Ukrainian authorities as an achievement, emphasizing its compliance with the EU Audiovisual Media Services Directive and claiming that it accounts even for the provisions of European Media Freedom Act.

The adopted Law, however, has given rise to controversial feedback. The National Union of Journalists of Ukraine has objected to this Law and expressed concern with the political engagement of the National Council on Television and Radio Broadcasting and its authority to regulate printed and online media. This position has been supported by the International Federation of Journalists arguing that excessive authority of the national regulator poses a threat to pluralism and freedom of speech in Ukraine (International Federation of Journalists, 2023). The same concerns have been voiced by the Committee to Protect Journalists and European Federation of Journalists who have called for revision of the adopted Law (Committee to Protect Journalists, 2022).

In fact, a detailed analysis of the adopted Law leads to the conclusion that the National Council on Television and Radio Broadcasting is authorized to register and issue licenses to media entities, to supervise and control the activity of all media entities and, most importantly, it is up to the Council itself to develop the regulatory acts governing its activity. The National Council on Television and Radio Broadcasting must adopt its own Strategy and devise a Plan of the strategy implementation, develop a form and procedure of applying for participation in a license and registration competition, independently determine the inspection procedure at media entities and carry out such inspections. Moreover, the Law does not stipulate any responsibility of the its members for non-performance or improper performance of obligations. Nevertheless, there are abundant cases when various bodies in Ukraine have been impeding or delaying decision making or taking unjustified or politically-biased decisions.

A positive aspect of the adopted Law “On the Media” is the introduction of a co-regulation body. According to the Law, each category of media entities must be represented by a joint regulatory body which will cooperate with the National Council on Television and Radio Broadcasting to adopt, for example the criteria of qualifying entities as online media, the criteria of qualifying linear media as

thematic and amount of the national product for such media, as well as other demands applicable to certain media categories. Their activity must be regulated by corresponding co-regulatory codes. There are concerns, which always arise in such situations, related to the Law implementation, namely, how these bodies will be established and in whose interests their representatives will act, because as of today journalists are reluctant to join the National Union of Journalists of Ukraine, explaining that it is useless.

It should also be indicated that the adopted Law stipulates denationalization of the media, reaffirms the journalist rights, clearly defines the media-related violations and prosecution, allows channel shut-down exclusively upon the court decision and determines the procedure of disclosing media's ultimate beneficiaries. Media entities approve of the introduction of an online cabinet, through which the registration and communication with the controlling body is performed. It simplifies the procedure and reduces bureaucracy and corruption.

Conclusions. The Law of Ukraine "On the Media" is to come into effect gradually. Its implementation requires amendments to the laws on elections, advertising and more than 30 regulatory acts, upon which all this legislation will have to be considered holistically. Still, already now we may conclude that the National Council on Television and Radio Broadcasting has excessive authority especially in legislative area, which should be delegated to another body. The number of the Council members is also unreasonable (4 members appointed by the President and 4 members elected by the Parliament) and should be reduced at the cost of the President's quota as Ukraine is a parliamentary-presidential republic. The legislators argue that the President's quota is stipulated in the Constitution of Ukraine and cannot be altered under martial law and asked to wait until the war end.

Therefore, media entities, as well as the entire civil society are looking forward to the end of the war not only to put an end to deaths and suffering among the Ukrainians but also to unfold a full-fledged domestic frontline, a struggle for the reforms in Ukraine. The power of the Ukrainian society lies in its openness and pluralism. Despite the chaos, it gives us power to resist all sorts of autocracy and dictatorship. The role of media in such circumstances can hardly be overestimated. It was with their assistance that the Ukrainian people have been capable of self-organization, held two successful revolutions, are demanding reforms, which are painful for the authorities, and are fighting the largest country in the world.

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