



PRESS FREEDOM IN UKRAINE :

# TEMPTATION TO CONTROL

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**REPORTERS  
WITHOUT BORDERS**  
FOR PRESS FREEDOM



Natalia Negrey / public action at Mykhayivska Square in Kiev in November of 2009

Many journalists, free speech organisations and opposition parliamentarians are concerned to see the government becoming more and more remote and impenetrable. During a public meeting on 20 July between Reporters Without Borders and members of the Ukrainian parliament's Committee of Enquiry into Freedom of Expression, parliamentarian Andrei Shevchenko deplored not only the increase in press freedom violations but also, and above all, the disturbing and challenging lack of reaction from the government. The data gathered by the organisation in the course of its monitoring of Ukraine confirms that there has been a significant increase in reports of press freedom violations since Viktor Yanukovych's election as president in February.

## LEGISLATIVE ISSUES

The government's desire to control journalists is reflected in the legislative domain.

The Commission for Establishing Freedom of Expression, which was attached to the president's office, was dissolved without explanation on 2 April by a decree posted on the president's website on 9 April.

The Ukrainian constitution guarantees free expression and press freedom. Defamation was decriminalised when a new criminal code was adopted in September 2001. It eliminated the previous article 125's provision for sentences of up to three years in prison. But journalists and media are still under the threat of having to pay substantial damages, for which there is no ceiling. This is a significant risk, given the readiness of politicians and influential figures to bring abusive

Reporters Without Borders visited Ukraine from 19 to 21 July in order to accomplish the first part of an evaluation of the press freedom situation.

It met national and local media representatives, members of press freedom NGOs (Stop Censorship, Telekritika, SNUJ and IMI), ruling party and opposition parliamentarians and representatives of the prosecutor-general's office.

At the end of this initial visit, Reporters Without Borders gave a news conference in Kiev on 21 July at which it announced its provisional findings and its recommendations to the authorities.

Reporters Without Borders will return to Ukraine in response to an invitation to meet with President Viktor Yanukovych and Anna German, the deputy chief of the presidential administration, and in order to meet with other representatives of the state media.

This report summarizes the information that Reporters Without Borders used to reach its initial conclusions.

lawsuits. Journalists can also still be the target of criminal prosecutions for violation of privacy. A law protecting personal information, signed by President Yanukovych on 26 June and due to take effect in January 2011, will significantly complicate the work of journalists and expose them to the possibility of criminal prosecution. Under this law, journalists will have to ask a person's permission before publishing virtually any information about them aside from their name and surname. Volodymyr Yavorskyy, the head of RFE/RL's Ukrainian service, told the Institute of Mass Information (IMI): *"It would be impossible to report that a parliamentarian is suffering from a*

## « It would be impossible to report that a parliamentarian is suffering from a mental illness without their agreement »

*mental illness without their agreement"* (IMI release, 12 July).

Draft law No. 6603, which has been submitted to the Verkhovna Rada (parliament) following approval by the cabinet on 30 June, would require news agencies to register with the state every year. Disseminating news without being registered (or re-registered) would be punishable by a fine of up to 120 times the minimum salary or 300 times the minimum salary for repeat offenders. The bill has been criticised by Telekritika and other free speech organisations as an attempt to bring

Internet media under political control by treating them as news agencies. Some see it as a clumsy government attempt to regulate the Internet.

The third thorny legislative issue is the right of access to information. Parliament refused to add draft law No. 2763, on access to public information, to its legislative agenda on 9 July despite a significant campaign in support of the bill and reassuring statements from both ruling party and opposition politicians.

At least 45 journalists and 152 organisations urged parliamentarians of all parties to pass the bill and President Yanukovych promised to sign it into law. Parliamentary speaker Vladimir Litvin also expressed support for its adoption and even the Security Service of Ukraine (SBU) let it be known it would not oppose it. Nonetheless, although essential for regulating relations between society and officialdom and for democracy itself, the draft law has been sent to the directorate for juridical affairs for an expert evaluation and will not be submitted to parliament until the next session, in the autumn. The efforts to bring access to information into line with international standards has a long history. There were several proposals before the bill, drafted by BYuT parliamentarian Andrei Shevchenko, was approved on first reading by 323 parliamentarians of all parties in June 2009.

Complementing provisions of the 1996 constitution and the 1992 law on information, the proposed law on access to information would:

- require officials to respond to requests for information within five days (instead of 30)

## Serial abuses

- Journalist Serhi Andrushko of television station STB was hit by one of the president's bodyguards at the Agro-2010 exhibition in Kiev on 15 June. The complaint he tried to file at the Holosiivskiy district prosecutor's office was rejected. He submitted an appeal against the Holosiivskiy district's decision to the city of Kiev prosecutor's office on 28 July.

Stop Censorship, a movement created on 21 May, called for the bodyguard's dismissal and for the judicial authorities to investigate him for "obstructing a journalist's activities." On 16 June, 30 journalists urged presidential administration chief Sergei Lyovochkin to conduct an investigation into the incident and publish its findings.

- Andrushko had previously had a run-in with Volodymyr Storozhenko, the head of the city of Kiev's main housing department on 8 April. When he tried to ask a question, Storozhenko grabbed his microphone and threw it in a garbage can.

- **Serhi Kutrakov** of the Novyi Kanal TV station went to the House of Ukraine in Kiev on 8 April to cover the inauguration of an exhibition but was summarily expelled by members of a "Berkut" police special forces unit when he filmed an argument between a Svoboda reporter and the organisers. On 12 July, a Kiev court rejected the complaint he had brought against the members of the Berkut unit and their commander, Vladimir Alexandrov, in

which he accused them of abuse of authority (under article 365 of the criminal code) and obstructing a journalist's activities (article 171). Alexandrov responded by calling for Kutrakov to be prosecuted on five charges including hooliganism. Kutrakov commented: "By taking this decision, the court has given all the members of the security forces an example of how to work with journalists." He appealed against the court's decision on 19 July.

- **Boris Braginskyi**, a journalist who works for 9 Telekanal in the eastern city of Dnipropetrovsk, was attacked by an unidentified man near the TV station's building at around 7:30 p.m. on 12 April. He was hit in the face, thrown to the ground and kicked repeatedly. The assailant, who appeared to have been waiting for Braginskyi, made off after the attack without taking anything from him. Braginskyi was convinced that the assault was linked to his work. *"I don't look for trouble but my programme is often tough and analyses events, and that clearly does not please everyone"*, he said. At its final news conference and at its 21 July meeting with representatives of the prosecutor's office, Reporters Without Borders said these cases should be taken seriously, not ignored or treated with contempt, and it urged Ukraine's leaders to implement the existing legislation. Ukrainian has a provision for responding to press freedom violations. It is article 171 of the criminal code, which punishes obstructing journalists in the course of their work.

## Humanitarian Council

The president created the Humanitarian Council (*Obchestvennyi Gumanitarnyi Soviet*) on 2 April with the job of giving him advice. Officially, its purpose is “*to take account of society’s significant interests in the resolution of issues that are central for society’s development and to draft proposals for fulfilling the duties of defending human and citizen rights and freedoms.*” It has 29 members.

NGOs criticise the fact none of the council’s members are journalists, that it is chaired by President Yanukovych and that its executive secretary is Anna German, the deputy chief of the presidential administration, an unrelenting promoter of the draft law, which she masterminded. In other words, there are serious doubts about the council’s independence.

- allow requests to be submitted by fax or email as well as by letter
- require state agencies to make information available to the public when requested
- require government bodies to post information about their activities on their websites
- hold government employees responsible if they fail to provide information classified as “open.”

The draft law has received favourable evaluations from the Council of Europe, the Organisation for Security and Cooperation in Europe and other international bodies. If it had been put on the parliamentary agenda, it could have been adopted on 29 June.

### CREATION OF A PUBLIC SERVICE BROADCASTER: AN IDEAL TOO FAR ?

The creation of a public service broadcasting group to replace the existing state radio and TV broadcasters NTUC and NRCU has often been mooted but has yet to materialise. Prodded by the international community, including such European institutions as the Council of Europe<sup>1</sup>, the Ukrainian authorities have announced several proposals for a public service broadcaster over the years.

The first legislative proposal was drafted and published in 1997. Several others were aborted or buried. After the Orange Revolution, no fewer than five proposals were announced from 2005 to 2008, but none of them was the subject of public debate.

A proposal drafted jointly by several NGOs, including the Institute of Mass Information, and Andrei Shevchenko, a parliamentarian and former journalist, was rejected by parliament in June 2009. Despite the rebuff, they are working on a new version which they eventually hope to submit.

But President Yanukovych meanwhile proposed on 29 June of this year that his newly-created Humanitarian Council should publicly examine a bill drafted by his government for the creation of a public radio and TV broadcaster. Several NGOs including *Stop Censorship* had previously requested that they be allowed to participate in the examination of the newly-announced bill as they had already worked a great deal on this issue. It is unfortunate that their request was ignored, especially as the Humanitarian Council is much criticised.

The presidential administration has made no secret of its confidence in its ability to get the bill approved. Speaking on the *TVi (TBi)* programme Black and White on 28 June, Anna German said:

*“Inasmuch as we have a coalition that has more votes than we need, we will vote for and create a public television service in Ukraine.”*

### ASPECTS OF THE PRESIDENT’S BILL

- It envisages using the national TV station *UT-1* as the core around which to build the public broadcaster. The head of *UT-1*, Egor Benkendorf, who spent most of his career working for Inter, another TV station, has already told the press that he is preparing the transformation, although the bill has not yet been adopted.
- The “new” public broadcaster is to be funded in part from the government budget (with the amount being set annually by the cabinet), and in part from advertising and from the sale of its productions. This suggests that it will be unable to shed its heritage as a government broadcaster and establish its independence. The same concern applies to the external broadcasting service, which will get all its funding from the government.

The NGO Novomedia recommends limiting state funding to the network of transmitters. Other media experts suggest that the public broadcaster should get its funding from advertising (which is low-volume but high-tariff), sponsors and (for the most part) subscriptions.

Andrei Shevchenko, one of the authors of the draft law that was rejected by parliament in June 2009, is not in favour of a model in which funding would be initially based on subscriptions. He recommends initially following the such models as those of Georgia and Estonia. And he insists on three fundamental points for a public broadcasting service. He says society must own it, fund it and control its programming.

Another stumbling block is the “*presidential*” nature of the president’s proposed broadcaster. Its board of governors would consist of representatives from each of the following: the president’s office, each party represented in parliament, the government and several national NGOs. Several experts recommend

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that representatives of public institutions should also be on the board and that there should be only one government representative, one who is also be a member of the National Broadcasting Council. This is a key point as the board of governors would appoint the public broadcaster’s executives, approve

1. Parliamentary Assembly of the Council of Europe, January 2004, Recommendation 1641, “Public service broadcasting.”

its budget and supervise its editorial policies.

There is a clear consensus among the civil society and media representatives that Reporters Without Borders met that the best way to proceed would be to adopt an amended version of the 1997 bill. But many fear that the political will to create a radio and TV broadcasting service capable of satisfying society's expectations is lacking and that there will be no more than cosmetic changes that prevent the emergence of a real public broadcaster rather than a governmental one.

These fears were fuelled by an incident a week after Reporters Without Borders left. Anna German gave a news conference on 30 June at which she announced that she had invited a foreign expert, Jean Martin, to advise the government on the creation of a national broadcaster. She described Martin as a Reporters Without Borders media specialist. The announcement did not go down well with the Ukrainian NGOs and experts who have tried without success to be included in the process. Martin is in reality a Reporters Without Borders lawyer.

facing the possibility of losing the terrestrial broadcast frequencies they were assigned at the start of the year. The beneficiary would be Inter Media Group, a company owned by Valeriy Khoroshkovsky, who happens to be the head of the SBU, Ukraine's main security agency.

*TVi* and *5 Kanal* have an extremely powerful adversary in Khoroshkovsky, who is using the courts to dispute the 59 analogue frequencies (33 for *TVi* and 26 for *5 Kanal*) which the National Broadcasting Council allocated them on 27 January. Seventeen other TV stations were allocated frequencies on 27 January, including Inter Media stations, which received 20 frequencies.

The National Broadcasting Council, whose composition has since changed, has disowned the 27 January allocation on the grounds that it did not have quorum. It also insists that the existence of the two stations would not be threatened if the frequencies were withdrawn. Meanwhile suspicions about political pressure are mounting.

*TVi* and *5 Kanal* are the only two stations whose frequencies are being challenged and they also happen to be the two stations that are most critical of the government. The National Broadcasting Council's decision and the circumstances of the initial court hearing that ended with a ruling in favour of withdrawing the frequencies suggest political motives.

*TVi* executive director Mykola Kniazhytsky told Reporters Without Borders: "The authorities are portraying this as a commercial dispute but in my view it is political. The authorities do not like our station."

On 7 June, the National Broadcasting Council accepted Inter Media's petition and agreed to the principle of cancelling the 27 January allocation, which had been issued in response to the bids submitted by the various TV stations. The next day, a Kiev administrative court issued a ruling cancelling the allocation. *TVi* and *5 Kanal* have appealed.

The conduct of the 8 June hearing has raised many questions and suspicions. Held behind closed doors, it was presided over by a judge selected by superiors in the judicial hierarchy rather than by means of random computer selection. According to article 27, paragraph 5 of the code of administrative procedure, the judge should have recused himself.

The TV stations say they were not told about the hearing and as a result, several parties to the dispute did not attend, yet the court did not comply with a requirement under article 27 to postpone it. The court refused to take testimony from members of the National Broadcasting Council who had participated in the 27 January decision. The hearing

### ALLOCATION OF BROADCASTING LICENCES AS A MEANS OF CENSORSHIP

There have been many cases of censorship and harassment of TV stations in the past few months. Two of these cases, involving the privately-owned stations *TVi* and *5 Kanal*, illustrate the close and, indeed, overlapping links between the media and politics. Both of these stations are

## Valeriy Khoroshkovsky

Appointed head of the Security Service of Ukraine (SBU) on 11 March of this year, Khoroshkovsky has also been a member of the national bank's board of governors since 19 April and is a member of the Judiciary Supreme Council, which appoints and dismisses judges.

After acquiring a controlling interest in Inter TV in 2005, he turned into the Inter Media Group in 2007 by buying other TV stations from businessmen Dmitry Firtash, who decided to pull out of the media business. Jointly owned by Khoroshkovsky (61 per cent), the Russian broadcaster ORT (29 per cent) and Svetlana Pluzhnikova (10 per cent), Inter Media is now Ukraine's biggest broadcasting group and covers 96 per cent of the country. The Ukrainian Anti-Monopoly Commission cautioned the National Broadcasting Council on 16 December 2009 against assigning more broadcasting frequencies to Inter Media because of its already dominant position.

was conducted in a single 11-hour session that ended when the court issued its ruling at 1:00 a.m. One of *5 Kanal's* lawyers, Tetyana Malashenkova, fainted during the hearing and had to be rushed to hospital.

Although the outcome of the appeal by the two stations is still pending, National Broadcasting Council chairman Volodymyr Mandzhosov wrote a letter demanding the suspension of *TVi*'s broadcasting. The station's director general and its news editor, Vitaly Portnikov, responded with an open letter to the president objecting to this harassment.

During its Kiev news conference on 21 July, Reporters Without Borders called on the authorities to ensure that the appeal hearing in the dispute between the two TV stations and Inter Media was open to the press and public as a way to lift part of the veil obscuring the case. Reporters Without Borders also urged the authorities to issue profiles of the National Broadcasting Council's members together with details of any links they may have with parties to the dispute or to leading political or business figures.

**« The authorities are portraying this as a commercial dispute but in my view it is political. The authorities do not like our station. »**

## 5 KANAL FIGHTS BACK

*5 Kanal* has also been busy, writing an open letter to the president and contacting NGOs and international organisations. Launched by independent journalists and at the forefront of coverage of the Orange Revolution, *5 Kanal* fears that the withdrawal of frequencies is just a first step in a process by which the state will recover control of the independent TV stations, similar to what happened in Russia in 2002-2003, when *NTV*, *ORT* and *TB 6* were stripped of their frequencies before being turned into government stations.

*5 Kanal* news editor Volodymyr Mzhelskyi handed an appeal to Reporters Without Borders secretary-general Jean-François Julliard on 21 July. As well as voicing these concerns it also accuses Valeriy Khoroshkovsky of a conflict of interest

*TVi* news editor Vitaly Portnikov took a similar view. “*We already saw this dynamic at work in Russia, when the commission issued licences only to TV stations owned by businessmen who supported the government,*” he said. “*At that time, I was campaigning for the economic independence of the media and for their owners to be foreigners (...) The authorities are portraying this as a commercial dispute but in my view it is a political issue. The current government does not like our station (...) The government's aim is to have media that say nothing, that are incapable of reacting and opposing it.*”

## CENSORED REPORTS

Many TV news reporters say they have been censored. Either their reports have been suppressed outright, or they have been changed substantially, always in such a way as to favour people of influence. They cite new formats or editorial directives that interfere in their reporting.

It was journalists with *TSN*, the new service of one of the country's most popular TV stations, *1+1*, who were the first to raise this issue in an open letter on 6 May, in which they said that “*reports critical of the authorities are not broadcast for political reasons*” and that they receive “*instructions not to cover certain events and these decisions are taken not by the head the news service or even by the station's news editor but by the director-general.*” In another statement, they again singled out the director-general, Oleksander Tkachenko, and cited a dozen concrete examples:

- July 2009: Journalists refused to broadcast a “*doctored*” report about a dispute between former President Leonid Kuchma's son-in-law and other members of the family.

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The courts are not the only means used to harass Ukraine's TV stations. The head of *TVi*, Mykola Kniazhitskyi, announced on 14 June that the station's journalists had been the target of illegal surveillance and had filed a complaint. Kniazhitskyi himself was followed by a vehicle with a false number plate for at least a week. In footage filmed by *TVi* journalist Roman Skrypin, which can be viewed on the station's website ([www.tvi.ua](http://www.tvi.ua)), the surveillance vehicle's occupants can be seen hiding their faces before the vehicle drives off at great speed. No action had been taken in response to Kniazhitskyi's complaint by 23 July.

Kniazhitskyi said he received a letter from interior ministry spokesman Dmytro Andreyev taking note of his complaint and assuring him that the police had not been responsible for the surveillance. SBU deputy director Oleh Fareniy also denied that the SBU was involved. The Ukraine prosecutor-general's office is reportedly conducting an investigation at the request of the parliamentarian Roman Zvarych.

- August 2009: A report by journalist Margaryta Sytnyk about a sugar price increase was not broadcast on the grounds that it would have displeased the authorities.
- November 2009: At the director-general's request, comments by participants in a political rally saying they had been paid to attend were withdrawn from a report by Boris Ivanov. The same month, a report about presidential candidate Vassyl Protysikh was edited in a way favourable to him.
- February 2010: A proposal to do a report on the new president's wife was rejected without explanation.
- March 2010: Critical content was cut from a report by Hryhoriy Zhygalov about the new government. Another report about the cars of the new ministers led to TSN editor-in-chief Maksim Shylenko's suspension and, shortly thereafter, his dismissal.
- April 2010: A report about problems with the printing of passports was delayed for a day, until passages critical of the interior ministry had been edited out. A report about the Kharkiv accords between Russia and Ukraine was not broadcast on the grounds that "*the job of the staff is not to analyse the accords but to highlight their positive aspects.*"
- May 2010: An "*editorial*" by Yaroslav Petrivskiy, a person unknown to the staff, was broadcast during the news programme, apparently on outside orders. It consisted of an especially one-sided account of recent parliamentary debates. Myroslav Otkovych was refused permission to do an analysis of President Yanukovych's comments to the Parliamentary Assembly of the Council of Europe about Ukraine's 1932-33 Great Famine.

### STB ADDS ITS VOICE TO THE PROTESTS

On 7 May, journalists working for the programme "Vikna" on the national TV station STB followed the example set by 1+1's journalists, reporting that the subjects censored since Viktor Yanukovych became president had included education minister Dmytro Tabachnyk, the Ukrainian Insurgent Army (UPA) and the 1932-33 famine. They also revealed that there was a new reporting policy that included handling stories in straightforward manner, without irony, avoiding investigative reporting or covering poverty or the lifestyle of politicians. The editorial change dated back to the start of the presidential election campaign in the winter of 2009, they said.

Some of the many examples of censorship they gave dated back to even before that. Throughout 2009, there was a ban on doing reports about the homes senior officials owned in the villages of Pushcha-Vodytsa and Koncha-

Zaspa. A report about then Prime Minister Yulia Timoshenko's birthday party was banned from being broadcast. Critical reporting about the Kiev city hall and mayor Leonid Chernovetskyi in particular was forbidden. A report that participants were paid to attend an electoral rally organised by President Yanukovych's party was also banned from being broadcast.

In an interview for the magazine *Telekritika*, STB deputy director-general Oleksiy Mustafin recognised that his station had a "*new reporting policy*" and had changed the format of its reports but denied that there was any kind of censorship and attributed the changes to a desire to improve the station. He refused to comment on any of the specific allegations in the open letter.

Despite the statements by the journalists, and despite the support of many colleagues and protests by several international human rights organisations, other reports about the president have subsequently been doctored or banned from being broadcast.

### REGIONAL MEDIA ON THE FRONTLINE AS POLITICAL CLIMATE DETERIORATES

*Avtor TV*, an independent local station based in the eastern city of Dniprozherzhynsk, had to stop broadcasting at the start of April after a company operated by the municipal authorities rescinded the rental contract for its premises. After 10 years of broadcasting, *Avtor TV* director Lyudmyla Kachanova regards the rental contract's early termination as a violation of media freedom. The station had been regarded as a critic of the municipal administration ever since a new mayor was elected in March 2008. *Avtor TV* has said it will file a legal appeal. In the meantime, Kachanova is waiting for the municipal government to issue a new invitation to bid for the local station licence.

The signal of *Hlas*, a local TV station based in Ilichivsk, a town in the southwestern province of Odessa, was suddenly dropped by local TV cable operator Klen in April. According to Liana Fateyeva, a journalist who produces

« They (journalists) also revealed that there was a new reporting policy that included handling stories in straightforward manner, without irony, avoiding investigative reporting or covering poverty or the lifestyle of politicians. »

During a visit by Russian President Dmitry Medvedev on 17 May that sealed a dramatic rapprochement between the two countries, video footage of the Russian and Ukrainian presidents visiting the monument to the unknown soldier in Kiev were edited at the request of the Ukrainian presidential administration. Because of the bad weather, a wreath fell on President Yanukovych as he bowed before the monument. Presidential press service chief Aleksei Koshelev told journalists not to broadcast footage of the incident. The first national TV channel, *ICTV* and *Inter TV* complied, although the video was readily available on YouTube and other websites. The journalist who prepared the report on the visit for *1+1* said it was the station's director-general who gave the order for the offending sequence not to be broadcast. The station broadcast selected photos instead.

*STB* journalist Serhi Andrushko reported that the report he prepared on President Yanukovych's first 100 days in office on 4 June was edited by the station's director-general to make it more favourable to Yanukovych.

the *Hlas* programme "Illichivsk News," the municipal authorities put pressure on the cable operator because of criticism expressed on the air. In an interview for the magazine *Telekritika*, she also reported that her attempts to get press accreditation for the station's new employees had been ignored. She had submitted all the required documents and received no reply.

Fateyeva told *Telekritika* she regarded the suspension of the station's signal as a political measure. "We went to a municipal council session and when we tried to get a comment from the mayor, Valeriy Khmelniuk, he replied that he did not talk to journalists from the station that he was 'going to close soon'". The deputy director of the cable operator, Klen, said he suspended *Hlas'* signal because the local authorities told him that, as a local rather than a regional station, it could not broadcast outside Odessa. He added that he was ready to restore the signal as soon as *Hlas* resolved this issue. The local authorities refused to comment. *Hlas'* lawyer said he intended to refer the matter to the National Broadcasting Council.

There is often not enough awareness of the degree to which local authorities of all political tendencies obstruct the work of the media. It is a structural problem that has grown in recent months, according to regional journalists Reporters Without Borders met during a round-table in Kiev.

Local newspaper editor Vasyl Demyaniv was hospitalised with severe head injuries and a broken leg after being assaulted by unidentified assailants as he was returning home in the western city of Kolomyia on the evening of 23 March. The National Union of Journalists believed the assault was linked to his work as his weekly, *Kolomiyskiy Visnyk*, is outspoken in its criticism of the local government. Demyaniv had not received any personal threats but the newspaper has long been harassed by the local authorities. The police were not convinced that the assault was linked to his work and treated the case one of "hooliganism" under article 296 of the criminal code and "grievous injury" under article 121.

Online journalist and blogger Olena Bilozerka (<http://bilozerska.livejournal.com/>) and photographer Oleksiy Furman of the Photolenta agency ([www.phl.ua](http://www.phl.ua)) were questioned by police in Kiev in March about the demonstrations by opposition activists they covered the previous month. Their apartments and computers were searched on 27 March and equipment was seized. Bilozerka's lawyer, Sydir Kyzin, said the confiscation of journalistic material violated article 17 of Ukraine's media law, which says: "Journalists

*may not be arrested or detained because of their professional activity, nor may their material be confiscated*". Bilozerka was questioned again and accused of complicity with a radical group called Autonomous Resistance. Reporters Without Borders wrote to interior minister Anatoliy Mohylyov voicing concern that such intimidation attempts could become "standard practice".

What with media polarisation, pressure from local authorities for positive coverage and the difficulty of asserting editorial independence vis-à-vis advertisers in a situation of near-monopoly, local

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journalists face many difficulties and have little room for manoeuvre. Those who want to combat these problems in the provinces often find they have little support. Furthermore, the blighted labour market for journalists means the cost of rebelling can be high. The situation is like to get even worse in the run-up to local elections scheduled for 31 October.

The Ukrainian media industry is characterised by the presence of influential businessmen. Three of the country's richest "oligarchs" – Igor Kolomoysky, Viktor Pinchuk and Rinat Akhmetov – own media groups. Like the politicians with whom they are often linked, they have a distinct tendency to see the media as tools in the service of their ambitions. Both politicians and businessmen exploit the media, enrolling them in public relations campaigns that serve their respective interests, to the detriment of the public's need for information.

Television is by far the most important media in terms of audience and advertising revenue. According to National Broadcasting Council date, there are more than 800 registered TV stations but most are closed or do not broadcast and most of the others are local or regional. The state has 28 TV stations. As regards radio, only the state-owned radio broadcaster UNRC covers 100 per cent of the country's territory.

The first national TV channel, *UT-1* (owned by state broadcaster NTCU), is the only really national TV station, covering nearly 99 per cent of the country. *1+1*, *Inter TV*, *Novyi Kanal*, *STB* and *ICTV* are the other stations that cover a significant part of the country and are regarded as having a "national audience."

## UKRAINE'S TV STATIONS

| MAIN TERRESTRIAL/ANALOGUE STATIONS   | CABLE AND SATELLITE STATIONS   |
|--|--|
| <ul style="list-style-type: none"> <li>- UT-1 (main government station)</li> <li>- Rada-TV</li> <li>- Kanal 5</li> <li>- 1+1</li> <li>- I CTV</li> <li>- Inter</li> <li>- Novyi Kanal</li> <li>- T RK Ukraina</li> <li>- STB</li> <li>- TVi</li> </ul> | <ul style="list-style-type: none"> <li>- UTR (government station, targeted at Ukrainian speakers abroad)</li> <li>- Megasport</li> <li>- MTV Ukraine</li> <li>- Kino</li> <li>- People</li> <li>- UBR</li> <li>- UBC</li> <li>- K2</li> <li>- Humour TV / Babay TV</li> <li>- Music Box Ukraine</li> <li>- QTV</li> <li>- Malyatko TV</li> </ul> |

### WHO ARE BEHIND THE MAIN TV STATIONS ?

#### UT-1 (Ukrayinske Telebachennia – 1 / Перший національний),

*UT-1*, The leading state TV station, it was created in 1965. Journalists and politicians have been discussing its possible transformation into a public broadcaster since the late 1990s. Since 17 March 2010, it has been run by Egor Benkendorf, the former head of *Inter TV*, which he joined in 1997. His deputy, Walid Harfouch, gave the news agency Unian an interview in which he said, referring to UT-1, that he thought that “*the station should be pro-government*” (<http://unian.net/rus/news/news-388966.html>).

<http://www.1tv.com.ua>

2. A businessmen with Russian and Israeli dual citizenship, Vladimir Gusinsky used to head Russia's biggest media group, Media-Most, and founded its first independent TV station, *NTV*. He was the symbol of free speech on Russian television until his media empire was broken up and he fell into disgrace. He fled the country in 2001.

#### INTER TV

The country's most popular TV station, it is one of nine stations owned by UA Inter Media Group. The others include *Kanal 1*, *HTH*, *Slujba Informatsii*, *Inter Muzyk* and *Inter Kino*. Currently in a legal fight over frequencies with *TBi* and *5 Kanal*, the group is run by Olena Khoroshkovsky, the wife of Valeriy Khoroshkovsky, who has been its majority

shareholder since 2005.

One of the country's richest businessman, one with a dominant position in the media world, Khoroshkovsky also holds many influential political posts. He has headed the country's main security service, the SBU, since 11 March. He joined the national bank's board of governors on 19 April. And he is member of the Judiciary Supreme Council, which appoints and dismisses judges. He used to be economy minister and, from 2004 to 2006, he was deputy chairman of the steel giant Evraz.

After acquiring a controlling interest in *Inter TV* in 2005, he turned into the Inter Media Group in 2007 by buying other TV stations from businessman Dmitry Firtash, who decided to pull out of the media business. Jointly owned by Khoroshkovsky (61 per cent), the Russian broadcaster ORT (29 per cent) and Svetlana Pluzhnikova (10 per cent), Inter Media is now Ukraine's biggest broadcasting group and covers 96 per cent of the country.

#### TVI

Founded in 2007 by Konstantin Kagalovsky and Vladimir Gusinsky<sup>2</sup>, it began broadcasting in March 2008. It is now owned solely by Kagalovsky, who has been a Russian representative to the IMF, an adviser to the late Russian economist and minister Yegor Gaidar, a deputy chairman of the Yukos petroleum group and member of the board of the Menatep bank. Kagalovsky now lives abroad and has obtained British nationality.

*TVi*'s director-general is Mykola Kniazhytskyi and

its news editor is Vitaly Portnikov, a well-known Russian journalist. It is currently accessible mainly by cable. Eighty-nine per cent of cable TV subscribers can get it. *TVi* has around 1 per cent of the national TV audience.

## **5 KANAL (CHANNEL FIVE)**

Launched in 2003 on the initiative of Andrei Shevchenko, a journalist who was one of the most outspoken critics of censorship during Leonid Kuchma's presidency, it billed itself as the "*TV station of honest news*" / « Канал чесних новин ». It was initially run by Shevchenko (now a parliamentary representative of the Block of Yulia Tymoshenko) and fellow journalist Roman Skrypin who, like Shevchenko, was a leading campaigner against censorship and who now works for *TVi* and other media.

*5 Kanal* came to prominence thanks to its extensive coverage of the Orange Revolution, which it broadcast from beginning to end and was the only station to do so.

It is owned by Petro Poroshenko, a businessman who went into politics after making a fortune from cacao beans and chocolate. In 2001, he became one of the leading sponsors and campaign chief of Viktor Yushchenko's Our Ukraine. He joined the government after the Orange Revolution and was foreign minister from October 2009 to March 2010.

In the spring of this year, former Prime Minister Yulia Tymoshenko accused Poroshenko of being ready to sell the station to a pro-government oligarch in exchange for a deputy ministerial post in the new government. He denied this.

*5 Kanal* is now headed by Ivan Adamchuk, while Volodymyr Mzhelskyi is its news editor.

## **1+1**

Ukraine's second most popular TV station, it is owned by Igor Kolomoysky, a businessman whose holding company Privat Group has its own bank (Privatbank) and has interests in the oil, metallurgical and food industries in Ukraine, Russia, Romania and the United States. He also owns *Privat TV*, a regional station based in the eastern city of Dnipropetrovsk. He was one of Viktor Yushchenko's leading supporters and, although she denies it, he is regarded as an ally of Yulia Tymoshenko. While prime minister, Tymoshenko is said to have defended his business interests against those of a rival, Viktor Pinchuk.

## **LES CHAÎNES STB, ICTV ET NOVYI KANAL**

These three stations are owned by former President Leonid Kuchma's son-in-law, Viktor Pinchuk, the founder and CEO of Interpipe Group, which originally specialised in manufacturing steel tubes but then diversified into many other areas of the economy. Like his business rival, Igor Kolomoysky, he is from the eastern city of Dnipropetrovsk.

Pinchuk's media holdings also include the region station Channel 11, the music station M1, the tabloid newspaper *Fakty i Kommentarii*, the weekly *InvestGazeta* and the daily *Delo*. He is also involved in many philanthropic activities, including combating HIV/AIDS. <http://www.lefigaro.fr/international/2009/10/27/01003-20091027ARTFIG00353-victor-pinchuk-oligarque-philianthrope-.php>

## **UKRAÏNA (TRK)**

This popular station is owned by Rinat Akhmetov, a businessman from the eastern city of Donetsk and rival of Igor Kolomoysky. Although only in his early 40s, he runs Ukraine's leading holding company, System Capital Management (SCM), and is the country's richest man. His business interests include steel, coal, electricity, food and banking. Like many other oligarchs, Akhmetov went into politics, supporting Viktor Yanukovich's Party of Regions, and was elected as one of its parliamentary representatives in 2006. Political scientist Arnaud Dubien, the editor of *Ukraine Intelligence*<sup>3</sup>, said in 2007: "Akhmetov is the main source of funding for Party of Regions, of which more than half of the parliamentarians are linked to his companies." As well as *Ukraina*, his media holdings include the publishing house and newspaper *Sehodnia*

3. Now the editor of the fortnightly newsletter *Eurasia Intelligence Report* [www.eurint.ch](http://www.eurint.ch)

# GEORGIY GONGADZE MURDER

## A TRIAL MAYBE THIS AUTUMN

Reporters Without Borders could not go to Ukraine without meeting with judicial officials to discuss the investigation into the murder of Georgiy Gongadze, the young editor of the online newspaper Ukrainskaya Pravda who was kidnapped on 16 September 2000 in Kiev and was strangled by Gen. Oleksiy Pukach, the then head of the interior ministry's intelligence service, according to Pukach's own reported confession.

**D**espite Gen. Pukach's arrest and confession, and the professed desire of government officials – especially Viktor Yushchenko when becoming president in January 2005 – to solve the case, the investigation has yet to reach a conclusion and little information has emerged about developments in the case. On 21 May, which would have been Gongadze's 41st birthday, his widow, Myroslava Gongadze, told RFE/RL she had never been shown the case file, did not know who was being interrogated and had no idea what the investigators were planning.

One of the rare official statements about the case was made by prosecutor-general Oleksander Medvedko on 17 June, when he announced that expert analysis of the skull found with Gen. Pukach's help had confirmed that it was Gongadze's. He also said he expected the investigation into the murder to be completed in July or August. On 21 June, President Yanukovych received Gongadze's mother, Lesya Gongadze, who also complained of being kept in the dark about progress in the investigation.

Since Gen. Pukach's arrest on 21 July 2009, the only information to be released was that he had confessed. Nothing has been said about the identity of those who ordered Gongadze's abduction and murder. Gen. Pukach continues to be held in pre-trial detention but he has not been brought to trial. The only persons to have been tried are three policemen under his command – Mykola Protasov, Oleksandr Popovich and Valeri Kostenko – were convicted on 15 March 2008 of being accomplices to the murder. Protasov was sentenced to 13 years in prison. The other two got 12 years.

One of the key pieces of evidence are the recordings that former President Kuchma's bodyguard, Mykola Melnichenko, is said to have secretly made in the president's office. After months of debate and expert analyses regarding their authenticity, the Kiev supreme court ruled on 12 July 2009 that they could be used in the trial. But no one yet knows what they reveal.

Reporters Without Borders met several members of the prosecutor-general's office on 21 July, including Oleksandr Kharchenko, the inspector in charge of the investigation, Ivan Babenko, the head of the department of criminal investigations, and Irena Syhydyn, a prosecutor with the international cooperation section. It emerged during this meeting that a new expert analysis of the recordings has been ordered with the aim of identifying one of the voices. It was said this would be completed within three weeks, but that seems extremely optimistic given that the first one took months.

Kharchenko said the investigation should be completed in August and that a trial could be expected by the end of the year. However, Kuchma's former bodyguard, Melnichenko, has warned that Ukraine's 10-year statute of limitations could be applied to the case from September. Myroslava Gongadze's lawyer, Valentyna Telychenko, also voiced concern that, if the identity of those who ordered the murder continues to be kept secret, they could end up never being brought to trial.

Reporters Without Borders shares the concern, which is reinforced by the fact that the trial of Pukach (and any instigators) would almost certainly be held behind closed doors on the grounds that Pukach, who is facing a possible life sentence on charges of kidnapping and murdering Gongadze, was a senior intelligence officer.

# CONCLUSIONS AND RECOMMENDATIONS

In the past six months, there has been a marked increase in attempts to directly obstruct the work of the media, including physical attacks on journalists. They are indicative of a disturbing level of hostility toward journalists on the part of the authorities.

When prosecutors refuse to recognise a journalist's complaint but register the complaint filed by his aggressor, it sends a clear message. It shows that that government officials feel no responsibility towards civil society and the citizens who voted them into power. Worse still, the Ukrainian laws that exist to protect media freedom and the ability of journalists to work are not being used to punish even the most flagrant violations.

Acts of censorship that favour the new government have been growing steadily in the strategic broadcasting sector. In most cases, it has been the management itself that told staff not to broadcast certain stories or to eliminate passages critical of the government. None of the people Reporters Without Borders talked to on this trip said the situation was comparable to that prevailing under President Kuchma, or that there was anything resembling a return of the notorious "*temniki*" (detailed government directives about story subjects and how they were to be handled and edited).

But broadcast media pluralism has been seriously eroded and there is every reason to think that, if the trend continues, the freedoms acquired in recent years could be swept away and that the advances that are needed to improve civil liberties, including freedom of expression and the right to information, will not after all take place.

To what degree is the government capable of creating a truly public broadcasting service, one that is independent of the government and really serves the population? Is it ready and able to reach a national consensus on this issue by working with civil society and media representatives? All this remains to be seen.

It is hard to be optimistic at the moment, although President Yanukovych has publicly called for press freedom violations to be properly investigated and for the investigations to be pursued to the end<sup>4</sup>.

Several recently adopted laws restrict the work of the media and expose them to intolerable prosecutions on the grounds of protecting privacy. Websites are also subject to increased surveillance, one that shows that the authorities are become

aware of the growing influence of the Internet and new media in shaping public opinion.

Attacks on journalists and cases of obstruction of their work are continuing. Many of them are taking place in the provinces, where harassment of the media is more intense and, at the same time, less well known.

The 31 October local elections, which Reporters Without Borders will monitor with particular attention, will test the government's will to normalise relations with the media.

The authorities still have a chance to give the Ukrainian population and the international community evidence of a desire to abandon these practices. For his first trip abroad as president in March 2010, Yanukovych chose to go to Brussels and "*set himself the objective of concluding within a year, by the first quarter of 2011, the negotiations under way with a view to reaching an association accord<sup>5</sup>*".

The performance indicators in the European Neighbourhood and Partnership Instrument for Ukraine include "*fully sustained levels of freedom of expression and media freedom demonstrated by independent assessments, NGO reports etc.*" At the same time, the European Commission has included respect for human rights and fundamental freedoms in its list for priorities for the 2010 EU-Ukraine association agenda<sup>6</sup>.

Only the demonstration of a clear political will to do what is necessary will restore confidence in the authorities. Developments in the coming months will be crucial for determining whether the trend of the past two quarters is temporary or destined to continue.

An appeal hearing on 16 August, for example, is to decide the outcome of the dispute over frequencies between independent TV stations *TVi* and *5 Kanal*, on the one hand, and Inter Media Group and its owner, Valeriy Khoroshkovsky, on the other. The conflict of interests between Khoroshkovsky's various senior positions in the state apparatus and his media holdings lend this dispute a special importance.

Is Khoroshkovsky—who heads Ukraine's main intelligence agency and sits on the board of the national bank and the National Judiciary Council as well as owning the country's most important media group—trying to rein in two TV stations that criticise the government and hobble two of his personal business rivals all at the same time? It is a fair question. It is very hard to accept the government's view that this is just business dispute.

4. Russian news agency *Ria Novosti* dispatch of 27/07/2010, 15:53  
<http://www.rian.ru/wolrd/20100727/258950671.html>

5. Report to the French Senate No. 448 (2009-2010) of 12 May 2010 by Simon SUTOUR and Gérard CÉSAR on behalf of the European Affairs Commission: "*Is Ukraine becoming a reliable partner for the European Union again?*"  
[http://www.senat.fr/rap/r09-4488.html](http://www.senat.fr/rap/r09-448/r09-4488.html)

6. List of the EU-Ukraine Association Agenda priorities for 2010, [eu/ukraine/docs/2010\\_association\\_agenda\\_priorities\\_en.pdf](http://eeas.europa.eu/ukraine/docs/2010_association_agenda_priorities_en.pdf)

Finally, the investigation into journalist Georgiy Gongadze's abduction and murder in 2000 is supposed to be on the verge of completion, which should open the way for a new trial in this case. This gives the authorities a new chance to end the lack of judicial transparency by allowing the public and the press to attend the trial.

Ukraine has achieved significant progress in media freedom and the right to information in the past five years. If this is to continue, the country's leading political figures must help to ensure that press freedom violations are dealt with quickly, instead of being ignored, that the judicial system is able to operate in an independent manner, that legislation compatible with international standards is adopted, and that the influence of the country's wealthiest businessmen over its political life and media is curtailed.

## RECOMMENDATIONS:

- Deal with flagrant violations of media freedom with all the necessary thoroughness and rigour and above all ensure that those responsible for physical attacks on journalists are prosecuted.
- Ensure that the police and judicial authorities apply the legal provisions regarding press freedom, especially article 171 of the criminal code.
- Involve civil society representatives in the drafting of the law that creates a public broadcaster to help ensure that it is independent of the government.
- Make the system of allocating broadcast frequencies more transparent and, in the legal dispute over the frequencies of *TVi et 5 Kanal*, ensure that the next hearing is open to the public and press.
- Ensure the independence of the entities that regulate broadcasting by taking particular care with their composition and the selection of their members.
- Ensure free and rapid access to public information, both for journalists and ordinary citizens.
- Guarantee the transparency of the investigation into journalist Georgiy Gongadze's murder and the open nature of the coming trial.

Reporters Without Borders reiterates its readiness to meet with the Ukrainian authorities in the near future in order to continue the dialogue it began with them at the start of the year.

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