

Human Rights Council
Ukraine UPR Review
14th session

Contribution from Reporters Without Borders (a non-governmental organisation with special consultative status) about press freedom in UKRAINE

Introduction: Overview of press freedom situation

In the aftermath of the Orange Revolution, Ukraine made significant progress in defending and protecting fundamental rights, including freedom of information and press. During its first examination in 2008, it strongly committed to ensure the security of journalists by fighting impunity. Ukraine then accepted to implement Recommendation 27 of the Human Rights Council, which warmly invited it to “ensure that all acts of violence against journalists be investigated and that appropriate punishment be meted out”.

Yet, Ukraine has been marked by a gradual decline of this democratic line since the election of Viktor Yanukovich in February 2010. The situation of press freedom has been continuously deteriorating over the past two years. Journalists are not provided with a serene environment to investigate all kind of cases and fear for their physical integrity. They are still at great risk when exercising their profession and many of them are subject to regular threats and pressures. Alarming legislative initiatives have raised concern that journalists and bloggers may be impeded from performing their duty. Besides, local authorities have demonstrated their will to gain a stronger influence on broadcast media.

Reporters Without Borders would like to warn the delegations and the Human Rights Council against biased interpretations of its 2011/2012 Worldwide Press Freedom Index, where Ukraine gained several points up to rank 116 out of 179 countries (after dropping 42 ranks in the previous Index). Unlike a simple score, which would only reflect the internal situation, a ranking necessarily implies a comparison with other countries. It is crucial to note that year 2011 was marked by widespread repression in many countries over the world. Crackdown on street protests has not only characterised the Arabian countries, but also Belarus, Uganda, Chile, Azerbaijan, and many others. So many countries have competed towards the bottom of the Index that the states where the press freedom situation has not massively worsened were automatically and quite artificially pushed up. This was the case for Ukraine, as for instance for Uzbekistan and France.

1. Violence and impunity

The authorities have clearly not delivered on their 2008 pledge to put an end to violence and impunity. With at least 35 cases in the sole year 2011, Ukraine has the second highest number of assaulted journalists among the CIS countries, far behind Russia but before Belarus and Kazakhstan. More importantly, journalists are often hit by representatives of the law enforcement agencies. The police

forces generally lack awareness of the rights and duties of press representatives covering demonstrations and public gatherings. The authorities have acknowledged this issue and demonstrated some efforts to address it, holding talks and roundtables with media rights organisations including Reporters Without Borders. But so far, the situation has not reversed.

The vast majority of these attacks remain unpunished. It creates a chilling effect, which is further reinforced by the inability of the judiciary to solve high-profile cases such as the 2000 murder of editor Gongadze. A politically committed journalist who edited the online newspaper *Ukrainskaya Pravda* and a prominent critic of then President Leonid Kuchma, Georgiy Gongadze was kidnapped on 16 September 2000 in Kiev. His headless body was found two months later. Although some executors of this crime have been sentenced, deep flaws have been observed throughout the whole process. General Oleksiy Pukach, who confessed he had murdered the journalist, is still being tried behind closed doors. All efforts to bring the crime masterminds to justice have been impeded, leaving all the guilt on former Interior ministry Kravchenko, who was found dead in 2005. In December 2011, the Constitutional court took an irrevocable decision to not allow the use of illegally recorded conversations, which appear to be the main evidence against top officials of the previous regime. As a consequence, all charges against former President Kuchma were lifted.

No progress has been made in investigating the mysterious disappearance of Vasyl Klymentyev. The editor of Kharkiv-based regional investigative newspaper *Novyy Styl*, he has been missing since 11 August, 2010. The police declared it was working on the theory that the journalist had been the victim of a “premeditated murder” linked to his professional activities. Shortly before his disappearance, Mr. Klymentyev was investigating a case of alleged abuse of authority involving several local officials, and he was planning to publish a story on this topic in the next issue of his newspaper.

The murder of Vitaly Rozvadovsky is also being investigated. A photographer for the weekly periodical *2000*, he was stabbed to death on 29 November, 2011 in Kyiv.

An investigative reporter for the local newspaper *Nashe Misto*, Oleksander Vlaschenko was shot in the head by unidentified attackers while returning to his home in the southern city of Mykolayiv on the night of 16 October, 2011. To date, he remains paralysed and the bullet in his brain cannot be taken out. His attackers have not been identified yet.

No progress has been made either in investigating the arson on the home of Oleksiy Matsuka, a well-known investigative journalist based in the eastern city of Donetsk, on 31 July, 2011. The arsonists had barricaded the door to Matsuka’s apartment before starting the fire so that, if he had been inside, he would not have been able to get out. They also left no doubt about their intentions by leaving a wreath with the message: “To Oleksiy, from grieving friends.”

2. Threats on independent media

Reporters Without Borders fact-finding mission in Ukraine in July 2010 showed that most local mass media are owned by influential businessmen such as Igor Kolomoisky, Viktor Pinchuk and Rinat Akhmetov, often linked with the authorities, who would rather use the media sphere to defend their interests than to provide proper information to citizens.

At the local level, independent broadcast media remain under high pressure and they often face artificial obstacles to keep their licences. The allocation of digital frequencies by the National Council for TV and Radio Broadcasting, in August 2011, was clearly biased in favour of the government. Recognized regional TV stations with a long-standing presence in their respective regions and many viewers, such as

9 Kanal, Chornomorska TV, ZIK, 3 Studia, Mist TV and Rivne-1, have been denied digital frequencies. At the same time, five stations – Partner TV Ltd, Vybir TV Ltd, Novy Format TV Ltd, Ariadna TV Ltd and Lider TV Ltd – were awarded an overwhelming majority of frequencies in all the regions although they were created just before the bidding and are all based in Kyiv.

In August 2011, the activities of a local broadcaster (ATN) and both independent TV channels operating in Kharkiv city (*Fora* and *A/TVK*) were abruptly interrupted. No clear reason was given to explain the breach of their contract. These channels were the only ones to carry out sensitive investigations and to air criticism against the local authorities. As a result, the citizens of Kharkiv have been deprived of media pluralism for months. Independent *Krug TV* has faced similar difficulties in Odessa.

Several independent print media editors have been fired (for instance Brian Bonner of the English-language *Kyiv Post*, Serhiy Tyhy of *Gazeta po-Kievski*), raising suspicions about possible political interference. Strong protests sometimes managed to reinstate them.

3. Legislative framework

The right to be informed on matters of public interest is not considered enough by the judiciary practice. Officials and businessmen are quick to refer to “private life” and the right to protect personal data to sue the journalists who investigate sensitive topics such as corruption, power abuse, etc.

Although Internet remains generally free in Ukraine, concerns were raised by the adoption of amendments to the Protection of Public Decency Law by the Parliament, in October 2011. The bill aims to ban pornography and the use of words or images of an “obscene, vulgar and brutal” nature in all media and on the Internet. It also aims to penalize extremist and offensive content and the defence of violence. But the very vague definition of banned content, the possibility of blocking websites without a court order and the failure to take account of the public’s right to information pose a great danger to freedom of information in Ukraine.

By default, the National Commission for Protecting Public Decency is granted excessive powers. There is no provision for supervising the committee and no mechanism for appealing against its decisions. It alone has the power to determine the degree to which any content comes under a banned category. It will be able to require Internet Service Providers to “restrict free access” to content deemed to be indecent within 24 hours and without need for a court order. Since not only content creators but also editors and hosting companies could be held responsible, overblocking will be likely, threatening the free flow of information. The government needs to clarify these amendments, which could be used to target independent media and critical bloggers.

Recommendations

Reporters Without Borders urgently calls upon the authorities and judiciary to:

- Fully implement the Recommendation 27 of the Human Rights Council Ukraine endorsed in 2008.

This implies two main steps:

- Ensure fully transparent and impartial investigations and prosecutions in murder and disappearance cases. In particular, the trial of General Oleksiy Pukach should be open to the public, and all evidences should be considered in the investigation on Georgiy Gongadze murder case. All efforts should be made to bring the truth about Vasyl Klymentyev’s disappearance, the

murder of Vitaly Rozvadovsky, the murder attempts on Oleksiy Matsuka and Oleksander Vlaschenko, and all similar cases.

- Mainstream the efforts to protect media professionals covering demonstrations and public events by increasing the awareness and skills of the law enforcement bodies in this regard, and punishing abuses and violent behaviour.

- Ensure equal access of all media outlets to broadcasting licences and public information. Ban discriminatory practices with regards to the implementation of the mass media law.
- Ensure full application of the public's right to information about subjects of general interest, in line with article 10 of the European Convention on Human Rights and article 11 of the Universal Declaration of Human Rights.
- Review the recently adopted amendments the Protection of Public Decency Law in order to ensure supervision of the National Commission for Protecting Public Decency and to avoid any drifts against independent and critical media.