

UKRAINE

One of the main pillars of democratisation achieved during the Orange Revolution was freedom of the media. This freedom was consolidated during the political crisis in 2007, when the press gave balanced coverage of all main protagonists. However, there are severe deficiencies with the mass media: the low wages of journalists, inadequacies in their training and the dependence of the mass media on various financial and political groups result in major corruption problems with press coverage. Ultimately, the independence and trustworthiness of the mass media suffer and socially relevant topics are not sufficiently covered.

1. GENERAL INFORMATION ON MEDIA AND MEDIA USE

The deficiencies of the mass media are certainly not a result of poor literacy levels: the literacy rate in the Ukraine exceeds 99 per cent, which corresponds to the rates of the most developed countries. This is a result of Ukraine's highly developed educational system.

Literacy and education

Due to the increasing importance of television and the internet, the share of newspapers and magazines in the mass media is falling, but the total quantity of newspapers still seems impressive: according to official data, 22,794 periodicals are registered in Ukraine (with 9,948 being distributed nationwide, regionally and internationally, including 3,809 newspapers and 4,626 magazines, and 12,846 being published locally, including 10,740 newspapers and 2,106 journals and magazines). However, according to expert evaluation only about 8,000 periodicals are actually being published, of which the most important are the newspaper Fakty (2.65 million readers), the newspaper Segodnya (1.33 million readers), Komsomolskaya Pravda v Ukraine (1.08 Mio readers), and Ekspres (almost 800,000 readers).

Media landscape

As for radio and TV stations the total number of currently registered companies is 1,377 (858 broadcasters, 43 production studios, 13 distributors, 463 programme service providers). There are 15 nationwide television networks, 4 regional television networks, 15 nationwide radio networks and 8 regional radio networks.

Internet publications have increased considerably in recent years. Many printed periodicals publish electronic copies of their papers online, but there are also e-publications which have no printed analogues, for instance, proUa, Ekspert-Centr, Ukrayinska Pravda, Korrespondent.net etc. However, according to a survey conducted by the Institute of Sociology of the National Academy of Sciences of Ukraine as part of a European comparative study, 92.8 per cent of the respondents stated that they had no internet access and had never used it, while only one per cent of the population used it on a daily basis. The latter is one of the worst indicators among European countries (Golovaha/Gorbachyk/Panina 2006)

Internet media

To evaluate the extent of the media's influence on public opinion, citizens' access to media and their media consuming behaviour has to be considered. According to the report of the World Bank, access to the main communication sources in Ukraine breaks down as follows: households with television: 97 per cent, population covered by mobile telephony: 96 per cent, internet users: 97 per 1,000 people, personal computers: 38 per 1,000 people, mobile subscribers : 366 per 1,000 people.

General media access

Media consumption According to the research by Golovaha, Gorbachyk, and Panina (2006), low internet penetration is compensated for by increased TV consumption. Almost 45 per cent of the population watches TV for more than two and a half hours on a working day. Radio listening rates are considerably lower. The overwhelming majority of the population either do not read newspapers on workdays (26.7 per cent) or spend less than one hour doing so (55.6 per cent). The frequency of use of the different media sources is as follows: TV: very often (according to the research by Golovaha, Gorbachyk, and Panina (2006), Ukraine has the highest rate in Europe); radio and press: often; internet: low penetration, but those with internet access use it very often.

Media influence on political opinion It can be concluded that the media have a significant influence on the formation of political opinion in the Ukraine. Ukrainians often refer to the media items which cover political events, but the political views and allegiance of most Ukrainian media are generally known and most citizens spend considerable time turning to political news provided by the mass media of various political persuasions.

The level of confidence in the mass media remains relatively high. According to surveys, conducted in June 2007 by the Ukrainian Institute of Social Research and the Social Monitoring Centre, 58 per cent of the population trust television, 50 per cent trust radio, and 46 per cent trust newspapers. To compare, only 51 per cent have confidence in the armed forces, for the police it is 27 per cent, for cabinet ministers only 31 per cent, for the public prosecutor's office 30 per cent, for courts in general 25 per cent, and for political parties 22 per cent.

State-owned media Most of the political parties have secured an influence over TV channels, radio stations and newspapers, either through tycoons owning newspapers (e.g. the MPs R. Akhmetov and A. Derkach of the Party of Regions, 'Our Ukraine'-member A. Tretyakov) or by direct influence of the parties. Additionally, regional elites control local and regional TV channels and radio stations. Due to their poor advertising income, this also holds true for many provincial newspapers, which are under the strong influence of local administrations. The newspapers and radio companies representing business interests, which oppose local power, continually suffer intense pressure. As a result, deputies of the Ukrainian parliament declared a moratorium on mass-media inspections during the election period.

To give some examples, the municipal channel Kyiv is under the control of the city mayor, L. Chernovetskyi, and the news channel '24' is controlled by the mayor of Lviv, A. Sadovyi (Leshchenko 2006). Chernovetskyi has also succeeded in consolidating such newspapers as Hreshchatik, Vechirni Kyiv, Ukrayinska stolytsia, and the weekly newspaper Zakon i biznes. Sadovyi has also secured influence over the private newspaper Postup (ibid.).

The state should naturally be considered among the protagonists who have an influence over the media as in total it owns about 4 per cent of the TV and radio sphere and 5 per cent of the newspapers. Among state publications the following are worth mentioning: Uriadovii Kurier, a publication of the cabinet of ministers with a circulation of some 87,000 copies, and Golos Ukrainy, a publication of the Verkhovna Rada with some 160,000 copies.

Apart from this, the state owns the National Television Company and the National Radio Company (both broadcast nationwide), Ukrainian TV film studio Ukrtelevfilm, the television and radio companies Kultura, Vsesvitnia Sluzhba, Ukrainske Telebachennia i Radiomovlennia and others. There also are about 815 municipal television and radio companies, controlled by local authorities. There is no difference in allegiance to the executive power among the different kinds of state media.

State-owned media and published opinion In all these cases the relevant authorities entirely control the personnel and editing policies of the mass media, which means that the state-controlled media have a very friendly attitude towards the government. However, the private media remain dominant and the state-owned media hold almost no share of published opinion.

The government, as well as other centres of authority, regularly holds press conferences. Access to these press conferences is open to representatives of all kinds of mass media. Since 2005, there have been no limitations based on political preferences. Access is only limited by the physical space where the press conferences are held. Thus prior accreditation of the journalists is necessary. Private TV channels are often bound by the same rules as state channels.

Government press conferences

2. LEGAL ENVIRONMENT

Generally, the legal environment for issues concerning freedom of speech, mass media and collection as well as distribution of information consists of the fundamental rights stated in the Ukrainian constitution and three laws regulating those rights in more detail: the laws 'On Information', adopted in October 1992, and 'On Television and Radio Broadcasting', adopted in December 1993, and 'On Printed Mass Media (Press) in Ukraine', adopted in November 1996.

Freedom of expression

The legal fundament of freedom of opinion and speech is secured in Article 34 of the constitution of the Ukraine, which was adopted in June 1996. The article deals with freedom of speech and opinion. It states that '[e]veryone is guaranteed the right to freedom of thought and speech, and to the free expression of his or her views and beliefs. Everyone has the right to freely collect, store, use and disseminate information by oral, written or other means of his or her choice. The exercise of these rights may be restricted by law in the interests of national security, territorial indivisibility or public order, with the purpose of preventing disturbances or crimes, protecting the health of the population, the reputation or rights of other persons, preventing the publication of information received confidentially, or supporting the authority and impartiality of justice'.

Free media coverage

The Law On Printed Mass Media regulates the mass media sphere, the legal setup of the media's activities, the registration of newspapers and magazines, journalists' rights and duties, how to file complaints, the international cooperation of the printed media, and the sanctions for breaching this law.

Article 34 consists of three parts. The first and the second guarantee freedom of speech and determine how this fundamental right can be exercised while the third part regulates cases restricting freedom of speech. The European Convention on Human Rights (which the Ukraine joined on 17 July 1997) states that restrictions of the freedom of speech should be 'specified by the law and are necessary in democratic society'. The Ukrainian constitution does not do this, but all other provisions are generally the same.

Regulation of media coverage

Article 32 of the constitution considers the issues of privacy protection: 'The collection, storage, use and dissemination of confidential information about a person without his or her consent shall not be permitted, except in cases determined by law, and only in the interests of national security, economic welfare and human rights'.

The restrictions on freedom of speech and privacy protection are regulated in more detail by the Law on Information, Articles 28–37. This law is fundamental in character and considers the main principles of media relations, defines the trends, principles and kinds of information activity, spheres, nature and sources of information, and access modes. The form of the information request, circumstances in which cases can be denied and postponed, as well as appeals against denied requests, payments for information provision and finally confidential information are all considered. The law regulates that access to open information should be provided through systematic publication of such information in officially printed periodicals and distributed through mass media.

Information with restricted access is divided into confidential and secret information. Confidential information includes data about a person (e.g. education, marital status, religion, health). It should be mentioned that the comment on the Law On Information of the Constitutional Court of Ukraine from 30 September 1997 regulates journalistic activities, with the goal of restricting the

distribution and storage of information: 'It is prohibited not only to collect, but also to keep, use and distribute confidential information about a person without their prior consent, except cases, provided by the law, and only in the interests of national security, economical wealth, rights and freedoms of a person'. The legal provisions for information access in Ukraine are constantly being violated.

Changes in the past five years Over the past few years, Ukraine's media law has been modified and supplemented repeatedly (10 times), though even now it is far from perfect. The law includes general definitions, general principles about the activities of television and radio organisations, articles on licensing and protection for the interests of the national producer. Separate sections are devoted to how the television and radio stations have to be organized, the rights and duties of journalists and companies, the rights of TV viewers and radio listeners, the facilities and equipment of television and radio organisations, responsibility in cases of breach of the law and international cooperation in television and radio broadcasting.

After the presidential elections of 2004 the Ukrainian media entered a new stage of development. The tendencies have been generally positive. Temniki (secret instructional memoranda prepared and distributed by the presidential administration to top managers and editors of national television stations and some newspapers – from the Russian *temy nedeli* or weekly themes) disappeared; there is less evident pressure on the editorial boards.

Although the legal situation has improved strongly, there are still negative indicators with the practical applications of the new laws. These include dismissing editors of newspapers and television companies. For example, the decision of the city council in Kharkiv to deprive the correspondent of the newspaper *Kommersant-Ukraine* M. Spalek of accreditation, stating that the journalist had misinformed the citizens about the reformation of housing and communal services, was significant for limiting freedom of speech and access to information. Officials of the mayor's office punished the journalist for the information, which they depicted as incorrect. This is a very dangerous precedent, which undoubtedly leads to journalists' self-censorship. Unfortunately, this has not been the only case. In January 2007, city mayor of Ladyzhin banned the journalists of *Ladyzhins'ka gazeta* from the meetings of the town council. The reason was the allegedly biased attitude of the newspaper to city authorities.

In several cases, the worst traditions of Kuchma's times have reappeared. In December 2006 in Dnipropetrovsk the central post office terminated the distribution agreement of the newspaper *Litsa* because it accused the city mayor of budget squandering. Following the protest from journalists in December 2006 the president signed amendments to a series of laws, facilitating the participation of the mass media in covering the election process. However, the court retained the right to halt mass media activity during the election campaign period if a breach of election law was proved.

Nevertheless, modifications to free media coverage have had very favourable impacts on the freedom of the media. The situation has strongly improved over the last five years.

Legal censorship Article 15 of the constitution forbids censorship, stating that there should be no structures which legally allow censorship and that no people, groups or institutions can be banned from coverage. The period of prohibiting coverage of certain politicians or public characters came to an end at the turn of 2004. Now there are no examples of implementing (or attempting to implement) political censorship. Attempts by the authorities to control the contents of the mass media have been replaced by economic censorship, meaning strict control by owners of the mass media. As a consequence of the rights provided by the constitution, journalism is a free profession without prohibitions; no special permission is required for journalists to exercise their profession. Journalists from the print media as well as from TV may participate in all public activities of the government and of the parliament. However, they need to undergo an accreditation procedure, which is not discriminatory in nature.

The activities of television and radio organisations in Ukraine is regulated by the Laws On the National Council of Ukraine on Television and Radio Broadcasting from September 1997 and On the System of Public Television and Radio Broadcasting of Ukraine from July 1997. The first considers the licensing procedure in Articles 13–19. According to the law, Ukrainian citizens and legal entities of the Ukraine have a right to set up TV and radio organisations. TV and radio organisations with more than 30 per cent of foreign investments are not allowed to operate. In practice, however, this provision is easily evaded. The constitutional body responsible for licensing is the National Council on Television and Radio Broadcasting of Ukraine. The decision on issuing a licence is based on competitive selection and made within a month.

Media licenses

Additionally, Articles 11–20 of the Law On Printed Mass Media are devoted to registration issues. Printed papers need to obtain registration from the State Committee for TV and Radio Broadcasting before starting work. A special registration fee is required to obtain a certificate. After getting a certificate, a founder is obliged to start publishing a newspaper, or any other printed medium as provided in the certificate, within one year. Registration may be denied if a media body with the same name is already registered, if less than a year has passed since the court ruling on suppression of such a printing organ, or if the name or the programme concept contradicts the laws of Ukraine. Generally, licences for radio or TV stations as well as newspapers are only rarely taken away and this procedure is only possible with a court ruling or if it is the founder's decision.

Certain printed mass media may be distributed without registration. This is possible if they are issued in the form of bulletins by legislative, executive or judicial bodies, if they are informational digests of documents of companies, enterprises, educational or scientific institutions, and if their printing production is not meant for public distribution.

A problem remains with the forming of monopolies and cartels, especially at the regional level. In theory, there are provisions in the legislation that are aimed against the formation of media monopolies. Article 10 of the Law On Printed Mass Media prohibits printed media monopolisation. An individual or legal entity cannot control more than 5 per cent of the printed media. Article 7 of the Law of Ukraine 'On Television and Radio Broadcasting' regulates 'antimonopoly limitations'. According to this article, TV and radio organisations, including their subsidiaries, have no right to broadcast on more than two TV channels and three radio channels. The communication enterprises operating these broadcasting networks cannot become founders or owners of TV and radio organisations.

Monopolies and cartels

The legislative provisions are direct and rigid. In practice however, they are successfully evaded.

An important TV holding is associated with the name of V. Horoshkovsyi. The holding owns TV channels such as Inter (1)¹, Enter (29), Enter-Film (17), which were recently joined by D. Firtash channels, such as K1 (23), K2 (31), Megaspport (16) as well as NTN (10). Novyj kanal (3), ICTV (4), STB (5), M1 (12), 11 kanal (24) (Dniepropetrovsk) are parts of the media empire of V. Pinchuk (Leshchenko 2006).

Major newspaper publications are owned by Ukrainian tycoons who wanted to influence public opinion. For example, the paper Fakty is owned by V. Pinchuk, whose main business is connected with metallurgy. The newspaper Segodnya (daily circulation 170,000) and the regional paper Salon Dona i Bassa play a key role in the empire of R. Akhmetov. I. Kolomoyskiy is a shareholder of Gazeta po-kievski (around 60,000) and Komsomolskaya pravda v Ukraine (144,000). Perhaps the largest newspaper holding is the Ukrainskiy media-holding, owned by B. Lozhkin. He prints around 80 newspapers and magazines of various trends, including Komsomolskaya pravda v Ukraine (co-owned by I. Kolomoyskiy), Argumenty i fakty v Ukraine (185,000, owned together with A.Chaban) and the magazine Fokus. Another media holding is owned by the American J. Sunden. The holding prints, in part, the magazine Korrespondent (50,000), the newspaper Kyiv Post (25,000) and a free newspaper 15 minut (120,000).

3. POLITICAL CONDITIONS

Coverage of marginal groups As mentioned above, the political situation for the mass media has significantly improved since the Orange Revolution in 2004. Since then all layers of society and social groups have been represented in the media. NGOs conduct social campaigns, drawing attention to groups such as the Roma or people suffering from particular illnesses, etc. There are no sections of the population that are deliberately excluded by state action from their right to freedom of information. The state does not hinder access to the internet in any way.

Self-censorship Self-censorship remains a problem in Ukraine. It affects equally the journalists of all mass-media groups: TV, radio and the press. The phenomenon of self-censorship is conditioned not by potential repression by the authorities (as it used to be before 2005) but by the economic dependence of journalists on the owners of newspapers and magazines. It is an 'unwritten law', that journalists do not publish material which could damage any (primarily, economic) interests of the owner. On the contrary, the publication of items directed against the interests of the owner's rivals (not necessarily media rivals; for a considerable part of media owners' media activity is not related to their media business) is encouraged.

State repression Journalists and media companies or organisations do not have to fear state repression. State repression is now almost never used against the media; the new president and the government destroyed the system of state censorship (which was carried out through special instructions – *temniki*). Later, the system of political diarchy was formed, when different branches of power controlled each other. This led to the improvement of freedom of speech in Ukraine and ended intrusion into the work of the mass media by the state

Obstacles to internet access Generally, the internet in Ukraine is not subject to censorship. Internet publications in Ukraine are not regulated by any separate legislative tools, but this freedom was nearly restricted in 2005: Transportation and Communication Minister E. Chervonenko planned an order 'On securing the order for conducting the state registration of electronic media', obviously attempting to secure state control over internet media. The open protest of journalists and the internet community, and the threat from internet media owners to transfer their resources to foreign servers forced the authorities to drop their plans. As already mentioned, the dependence of the mass media on various financial and political groups remains an acute problem for society. Still, it would be wrong to speak of a monopoly in the Ukrainian media, as there are too many different groups controlling the media.

4. ECONOMIC PRESSURES

State subsidies The private media are not subsidised by the state, either directly or through advertisements, although there are types of indirect state support: in particular, the state remits the value added tax for paper and for printing equipment imported from abroad. The state conducts no advertising campaigns (except during elections). Since 2006 (according to the media expert O. Khomenko) a series of local authorities have concluded agreements with private media companies on coverage of their activities (such agreements were previously concluded exclusively by state media organisations and they were most often covering their corresponding state organs free of charge). In any case, state advertising plays an inconsiderable role in the media market. During election campaigns, state media organisations undertake all state advertising.

Further aspects The distribution of newspapers remains a serious problem for Ukraine as there still exists a virtual distribution monopoly. Around 95 per cent of newspapers are circulated by subscription and the only distributor – Ukrpochta – charges around 40 per cent of the printing cost price for distribution. However, there is now a system for non-governmental newspaper delivery in Ukraine. Yet, the tariffs are set in a non-transparent way, which leads to considerable problems for newspapers' survival. It was only in November 2007 that a distributor in Odessa increased the tariffs for newspaper delivery twice, which led to the representatives of Soyuzpechat in Luhansk to demand multiple payments for newspapers to be included into the sales system (Artazey 2007). Thus, the

delivery system clearly does not favour the newspapers. However, there are no longer any attempts to create difficulties for the distribution of opposition publications or to influence the contents of newspapers. State authorities almost never take advantage of the control mechanisms available to them in order to influence contents.

5. NON STATE REPRESSION

Though journalists and media companies do not have to fear state repression, physical safety problems for the journalists themselves and their families still prevail.

Repression by non-state groups

In April 2006, an assault was made on the editor-in-chief of the publishing house CN-stolichnye novosti, V. Katzman. He was beaten with wooden bats at the entrance of a residential building. The assailants took none of his belongings. The publication management believes the assault was connected with the newspaper's campaign against incidents of anti-Semitism. A month later a law-enforcement officer seized the property of the journalist, who was convicted by a court in Pecherskyi for his published criticism of the anti-Semitic policy of the management of the inter-regional Academy of Personnel Management.

In June 2006, an unknown person set the apartment of Kievskie vedomosti's staff correspondent, S. Yanovskiy, on fire. Petrol was poured from upper floors into the apartment, when the journalist, his wife and his son were at home, and set on fire. It was only by sheer luck that the journalist and his family survived. One year later the deputy of the regional council of the party of regions, D. Shantsev, beat up a press photographer from the Associated Press and ITAR-TASS agencies, A. Avdoshin, who filmed a fight between deputies during the council session.

The problem of physical threats is intensified by the fact that those organising crimes against journalists are usually not convicted and stay out of prison. Impunity leads to further crimes. This undoubtedly intensifies the potential threat of attacks on journalists. However, non-state repression against journalists, media companies and organisations remain a rare occurrence and the situation has strongly improved over the past five years.

Changes in the past five years

Two reasons for this positive development should be mentioned. Firstly, international interest in and pressure on the investigation of the murders of G. Gongadze and A. Aleksandrov demonstrated the danger of such actions for potential perpetrators. Secondly, potential criminals have changed their tactics they use against journalists from physical threats to corruption and the payment of bribes.

6. CONCLUSIONS

It can be concluded that freedom of the media has been secured in the Ukraine and that there has been a strong improvement over the last five years. The main achievement of the new authorities (succeeding L. Kuchma) was to destroy state censorship. However, today there are no guarantees that censorship will not be imposed again. A major guarantee would be provided by the introduction of public broadcasting and the denationalisation of newspapers. State censorship has been replaced by owner's censorship and, apart from this, the state still exercises influence through the state and communal press.

Freedom of the media: general situation

In principle, the activities of the mass media in Ukraine are legally regulated and should function normally. In practice, however, the implementation of these laws leaves much to be desired. There is no single media law, which would be implemented in its full scope.

However, all things considered, the Ukraine is going through the hard task of consolidating democracy. The process of forming a democratic press is on its way. The pluralism of opinions in the Ukrainian media, however, is not supported by the independence of newspapers and TV and radio broadcasting companies.

Major obstacles to free media coverage The main factor threatening freedom of speech is the poor economic state of the mass media in general. Media ownership has not yet become transparent, and antimonopoly legislation has not started working properly. The new power is to blame for that, too. For most media owners the media are not a way of making profit, but a means of creating favourable public opinion. Thus, when investing money into the media business, most investors treat it as auxiliary to their main business. It is therefore no longer surprising that popular publications are sold at rock-bottom prices (this is especially so during election campaigns), which cannot cover the costs. Moreover, the non-profitability of the media is, paradoxically, beneficial for their owners. The journalists are more easily manipulated when they know that their wages depend not on their audience or advertisements, but on the contribution of the media owner. In the end, it is the dire financial situation of the publications that invites hidden advertising. Under these circumstances many critical items published in the media are not an indicator of press freedom, but of founders' or sponsors' orders to destroy their business or political rivals. Many of the mass media organs are not means for informing the audience, but a tool of influence for financial and political clans. Thus, society's interests are pushed into the background. The media's editorial independence, therefore, is curbed by their owners as well as by administrative meddling. Protecting the freedom of speech in Ukraine is critical.

Valerij Ivanov/Nico Lange

1| The numbers in brackets represent the market share rating, according to GFK Ukraine.

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