

Ukraine: Countering Media Aggression (2014-2018)

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Start of the aggression

- 22-23 February 2014 – Yanukovych is “rescued” onto the Russian territory
- 23-24 February 2014 – “people’s mayor” is “elected” in Sevastopol
- 26-27 February 2014 – Crimean Verkhovna Rada is captured by the pro-Russian forces
- 1 March 2014 – State Duma of Russia allows Putin to command Russian armed forces to enter Ukraine
- 11 March 2014 – Crimea and Sevastopol declare “independence”
- 16 March 2014 – «referendum» is held as to the status of Crimea and Sevastopol
- 18 March 2014 – «treaty» on the accession of the Republic of Crimea to Russia

Limiting the influence of the TV

- Russia had always been solidly represented in the Ukrainian media environment
- Russian TV-channels were the most popular TV-channels in the eastern and southern portion of Ukrainian territory
- 25 March 2014 – Kyiv City District Administrative Court in the proceedings between the National Broadcasting Council of Ukraine and LLC “Torsat” issued the court order stopping the retransmission of **«1 Channel. World Network»**, **«RTR-Planeta»**, **«Russia-24»**, **«NTV World»**

Motivation of the court order

- Broadcasting of the channels shall be adopted to the requirements of the European Convention on Transfrontier Television (hereinafter – ECTT) (Russia is not a State-Party)
- Threat to the information security of the state
- The banned channels broadcasted deliberately distorted information aimed at inciting hatred, violating human rights and endangering territorial integrity of Ukraine

Further legislative steps

- 5 February 2015 – **Law on Amending Certain Laws of Ukraine in Relation to the Protection of Information Environment of Ukraine** was adopted

This law **prohibited the broadcasting of the following content:**

- television broadcasts produced after 1 August 1991 which popularize aggressor-State's public authorities as well as its actions that justify or legitimize occupation of the Ukrainian territories;
- audiovisual materials (except for informational and analytical ones), one of the characters of which is the person included in the List of the Persons who Pose a Threat to the National Security;
- any films, originating from Russia, produced after 1 January 2014;
- any films which popularize aggressor-state's public authorities as well as its actions, which create positive image of aggressor-state's agents, agents of Soviet state security authorities, justify or legitimize occupation of the Ukrainian territories, and produced after 1 August 1991.

Further legislative steps

- 14 March 2015 – **Law on Amending Certain Laws of Ukraine Concerning the Peculiarities of Broadcasting (Retransmission) of Advertisements, Contained in Foreign Broadcasters' Programming** was adopted
- In accordance with the amendments, the **retransmission of foreign broadcasting** outside EU-member-states and state-parties to the ECTT was only allowed **if it complies with the legislation of Ukraine, ECTT and is included into the list of programming, permitted for retransmission on the territory of Ukraine**. The list is created and updated by the National Broadcasting Council (hereinafter – the NBC).
- As of September 2018, **the NBC has eliminated more than 80 broadcasters originating from Russia** from the list of programming, permitted for retransmission on the territory of Ukraine

Further legislative steps

- 17 May 2016 – further amendments to the Law on TV- and Radio-Broadcasting, which provided for the **70% weekly quota for the European programming** (including that of the USA and Canada), **50% weekly quota on Ukrainian-produced programming** and **50% weekly quota on works of Ukrainian authors and performers for the radiobroadcasters' weekly programming** (all quotas relevant for the timing between 7:00 and 23:00)
- 8 December 2016 – amendments to the Law on Publishing, which provided for **the system of permits on export of the print products** (in quantities more than 10) from the territory of Russia (“aggressor-state”) and the temporarily occupied territory of Ukraine

Creating Ukrainian Media Environment

- After imposing the necessary restrictions on the content and successfully stopping the spread of Russian content in Ukraine, the next logical step was to substitute Russian product with the Ukrainian cultural content.
- Ukrainian language as the key identifying factor for Ukrainian culture in times of war should have received proper support from the state and should have been implemented by the media.

Quotas for radio broadcasting

- 16 June 2016 – **Law on Amending Certain Law of Ukraine Concerning the Quotas of Music Works in Broadcasters' Programming** was adopted, effective from October

This Law established quotas for the use of Ukrainian language in the radio broadcasting:

- **35% of the total amount of songs during the day, as well as between 7:00-14:00 and 15:00-22:00**
- **25% of the total amount of songs during the day, as well as between 7:00-14:00 and 15:00-22:00 (if 60% of the total amount of songs is broadcasted in EU official languages)**
- **60% of the total amount of programming**
- quotas are implemented gradually (25%-30%-35% and 50%-55%-60% respectively during the first, second and further years of the enforcement of the law)
- the NBC is authorized to penalize the violators by the fees amounting to **5% of the total license fee of all the licenses of the broadcaster**

Quotas for TV-broadcasting

- 23 May 2017 – **Law on Amending Certain Laws of Ukraine Concerning the Language of Audiovisual Media**, effective from September

This Law established quotas for the use of Ukrainian language in the TV-broadcasting:

- **75% of duration of filming and programming during 7:00-18:00 and 18:00-22:00 time intervals** for national and regional broadcasters
- **60% of duration of filming and programming during 7:00-18:00 and 18:00-22:00 time intervals** for local broadcasters
- **75% of duration of news programming during 07:00-18:00 and 18:00-22:00 time intervals**
- obligatory dubbing of the films, created in the former USSR, into Ukrainian
- obligatory subtitling of the foreign language content
- the NBC is authorized to penalize the violators by the fees amounting to **5% of the total license fee of all the licenses of the broadcaster**

Broadcasting: technical aspects

- 7 December 2017 – **Law on Amending Certain Laws of Ukraine Concerning the Temporary Broadcasting Permits on the Territory of ATO and Border Regions of Ukraine**, allowing the NBC to issue free temporary broadcasting licenses during the period of ATO and one year after its conclusion for the territories neighboring Crimea and “ORDLO”
- **Draft Law #8600** – modifies the terminology (ATO is changed to OUF – “operation of united forces”) and broadens the scope of licenses, including the possibility to issue such licenses for radio broadcasters on the entire territory close to the Russian border
- 19 April 2018 – **first signal jammers were installed and turned on in the ATO/OUF-zone**, analogue signal from Russia became weaker

Aid to the cinematography

- 23 March 2017 – **Law on State Aid of Cinematography in Ukraine** was adopted after being vetoed by the President

This law establishes:

- possibilities for the financial support of the production studios by the state
- criteria for recognizing the film as a national one
- Protection of copyright in the Internet through the notice-and-takedown procedure
- cash rebate for the studios, which produced films in Ukraine

Minimizing the influence of state on the media

- Apart from limiting the influence of the aggressor-state on the media environment in Ukraine and popularizing of Ukrainian language and culture, Ukraine developed a number of media reforms, aimed at improving its media landscape.
- Creation of the public service broadcaster and destatization of print media allowed to restrict the influence of state on the editorial policies and to minimize the risk of censorship on behalf of the state.

Public service broadcasting

- In 2014 the formation of the public service broadcaster had finally started with the adoption of the **Law on Public Service TV- and Radio-Broadcasting of Ukraine**
- After further amendments to the law in 2015 and 2016, the broadcaster (UA: PBC) commenced its operations in January 2017
- In May 2017, the Board of UA: PBC was elected and is now currently responsible for the internal reform of the company
- For the first time in Ukrainian history, state does not interfere into the editorial policy of the state-funded TV-channel, whereas the TV-channel itself is highly critical of the authorities

Destatization of print media

- In the end of 2015 the **Law on Reforming State and Communal-Owned Print Mass Media** was adopted with the aim to transform local state-funded press into business entities
- These changes resulted in minimization of local governments' influence on the editorial policy of the respective press and stopped them from remaining the voices of the local ruling elites
- The reform is due to finish in December 2018; as of June 2018 210 out of 731 media entities had transformed
- Parliamentary committee has elaborated certain amendments to the law to implement the reform in a more efficient manner

Transparency of media ownership

- In Ukraine, owners of the media had constantly had major influence on the editorial policy of these media. Hence, to interpret the messages of those media, it is important to understand who stands behind them.
- 3 September 2015 – Law on Transparency of Media Ownership was adopted
- It prescribed the obligation of audiovisual media and program service providers to publish the data on their ownership on their respective websites, as well as to report it to the NBC
- The NBC is also authorized to penalize the violators by the fees amounting to 5% of the total license fee of all the licenses of the broadcaster

Ways to combat Russian propaganda and disinformation

- Foreign broadcasting
- Media literacy
- Implementation of the foreign experience

Foreign broadcasting

- In the circumstances of effective work of Russian media with the foreign viewers, the question of establishing the new Ukrainian foreign broadcasting service arose
- 8 December 2015 – **Law on the System of International Broadcasting of Ukraine** was adopted, which resulted into creation of UA:TV
- Broadcasting is made in Ukrainian, Russian, Crimean Tatar, English and Arabic

Media literacy

- It is considered as being the best method of combating disinformation in accordance with the international recommendations on the matter
- Ministry of Education and Science is implementing experimental courses on media literacy in primary and secondary schools
- It is the most effective method of fighting against information aggression in long-term perspective

Countering disinformation and propaganda: foreign experience

- Germany – Network Enforcement Act (2017) – restriction of access to content (including “deliberate defamation”) 24 hours after the notice was received; non-compliance leads to penalties up to 5 mln EUR for the social media
- France – legislative proposals by President Macron, aimed to regulate the process of elections: the regulator will be authorized to revoke the licenses from broadcasters, which are subject to foreign influence; social media are to disclose information about the advertisers and the sums, paid by them as well as the action taken in response to the users' notifications
- USA – Honest Ads Act (2017) – legislative proposal, aimed at the establishment of the public registers of persons, who pay more than 500 USD for ads at a certain platform. Another aim is to impose upon the social media the responsibility to ensure that political advertisement is not bought by the foreign residents.

Countering disinformation and propaganda:

how to do this in Ukraine?

- 7 September 2018 – Draft Bill on Amending the Law “On Tv- and Radio-Broadcasting” Concerning the Strengthening of Information Security and Countering Aggressor-State in the Information Sphere

The Bill proposes:

- To add two categories of content, prohibited for broadcasting: **“broadcasting of statements, which justify or recognize as lawful the occupation of the territory of Ukraine”** and **“dissemination of terminology which runs contrary to the Law of Ukraine “On Peculiarities of State Policy on Providing Sovereignty of Ukraine on Temporarily Occupied Territories in Donetsk and Luhansk Oblasts”** – but only when such content is ***aimed at inciting hostility or violence***;
- To clearly provide the criteria, which must be analyzed by the NBC whether the statements contained incitements to hostility or violence, based on the case-law of the European Court of Human Rights – ***the status of the speaker, the nature and wording of the statements, the context in which they were published, their potential to lead to harmful consequences***;
- To impose the fine of 25% of the license fee for broadcasting of such types of content;
- To speed up the procedure for the NBC to apply to courts for revocation of the licenses – namely, the NBC will be able to apply for the revocation in case the violation was not stopped during the month time or when the fine was applied repeatedly for the violation of the same provision of the Law “On TV- and Radio-Broadcasting”.

Criteria for analysis whether certain

statements incited to hostility or violence

- 204. The Court has been called upon to consider the application of Article 10 of the Convention in a number of cases concerning statements, verbal or non-verbal, **alleged to stir up or justify violence, hatred or intolerance**. In assessing whether the interferences with the exercise of the right to freedom of expression of the authors, or sometimes publishers, of such statements were “necessary in a democratic society” in the light of the general principles formulated in its case-law ..., the Court has had regard to several factors.
- 205. One of them has been **whether the statements were made against a tense political or social background**; the presence of such a background has generally led the Court to accept that some form of interference with such statements was justified...
- 206. Another factor has been **whether the statements, fairly construed and seen in their immediate or wider context, could be seen as a direct or indirect call for violence or as a justification of violence, hatred or intolerance** In assessing that point, the Court has been particularly sensitive towards sweeping statements attacking or casting in a negative light entire ethnic, religious or other groups ...
- 207. The Court has also paid attention to **the manner in which the statements were made, and their capacity – direct or indirect – to lead to harmful consequences...**

Perinçek v Switzerland [GC] App no 27510/08 (ECtHR, 15 October 2015)

Criteria for analysis whether certain statements incited to hostility or violence

- 102. [Application of the abovementioned principles] ... In so doing, the Court will have particular regard to **the applicant's status, the nature of the impugned articles and their wording, the context in which they were published**, and the approach taken by the Russian courts to justify the interference in question.

Dmitriyevskiy v Russia App no 42168/06 (ECtHR, 3 October 2017)

- 93. In its assessment of the interference with freedom of expression in cases concerning expressions alleged to stir up or justify violence, hatred or intolerance, the Court takes into account a number of factors, which have been summarised in the case of *Perinçek*. The Court will examine the present case in the light of those principles, with a particular regard **to the context in which the impugned statements were published, their nature and wording, their potential to lead to harmful consequences** and the reasons adduced by the Russian courts to justify the interference in question.

Stomakhin v Russia App no 52273/07 (ECtHR, 9 May 2018)

- 66. In its assessment of the interference with freedom of expression in cases concerning the expressions mentioned in the previous paragraph, the Court takes into account a number of factors, which have been summarised in the case of *Perinçek*... The Court will thus examine the case at hand in the light of those principles, with a particular regard **to the nature and wording of the impugned statements, the context in which they were published, their potential to lead to harmful consequences** and the reasons adduced by the Russian courts to justify the interference in question.

Savva Terentyev v Russia App no 10692/09 (ECtHR, 28 August 2018)

Thank you for your
attention!