



Freedom of Expression
in Times of Conflict:

UKRAINIAN REALITIES

Analytical report

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Digital Defenders Partners

DDP
Kyiv, Ukraine

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is a Ukrainian-based non-governmental organisation established with a view of protecting human rights online and promoting the idea of free, open and affordable to all Internet.

Main work areas:

- expert analysis
- analytical support
- advocacy
- legal consulting
- awareness-raising campaigns
- capacity building.

Key thematic areas:

human rights online, strengthening multistakeholderism in media and digital spheres, privacy and personal data protection, access to public information, cybersecurity, media literacy.

"Digital Defenders Partners"

is a young, ambitious, talented and hard-working team of professionals, who know how to protect your rights online and are ready to provide their assistance.

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“Unless potential perpetrators know that their attacks will have legal consequences, these instances of violence against journalists will persist. And victims are not only the journalists themselves but also societies as a whole that end up being deprived of critical information”.

*David Kaye,
UN Special Rapporteur
on the Promotion and Protection of the Right
to Freedom of Opinion and Expression*

In the 21st century, the information turned into a key resource, the availability and diversity of which serve as an indication of democracy, transparency and social responsibility of the state. The free Internet is the cornerstone of the broader processes of maintaining rule of law and democratic governance in Ukraine while fostering the integration of the country into a global information society. Without providing sufficient guarantees and means for exercising human rights online, as well as sustaining a reasonable balance between freedom of expression and national security, Ukraine would significantly restrict its growth and development opportunities, thus depriving its citizens of the benefits brought by a digital era.

The last three years posed a challenging task for Ukraine. According to the data collected by the Office of the United Nations High Commissioner for Human Rights (OHCHR), during the period from mid-April 2014 to 15 February 2017 there were 33,146 victims among the Armed Forces of Ukraine, civilians and the members of armed groups, including 9,900 killed and 23,246 wounded.¹ The most intense

aggravation of the military confrontation in the past two years occurred in the early 2017 in Avdiivka, with simultaneous disruption of water, electricity and heating supply in severe winter conditions, when temperatures dropped down to 20 degrees below zero. As of 25 April 2017, the Ministry of Social Policy of Ukraine reported the number of approximately 1.7 million registered IDPs (internally displaced persons) from Crimea and Donbas.²

From the very beginning, the conflict with Russia contained a significant information component, which moved the confrontation from purely physical to information space. The Internet turned into a separate battlefield, where it is easier to conceal manipulations, disseminate propaganda and impose restrictions under the shield of national security. The response had to be prompt, proportionate to the threat and reliant on the existing information potential. The lack of official recognition of the state of armed conflict provided for unconditional

1. Report on the Human Rights Situation in Ukraine: 16 November 2016 to 15 February 2017, *Office of the United Nations High Commissioner for Human Rights*, http://www.ohchr.org/Documents/Countries/UA/UAReport17th_EN.pdf.

2. Обліквано 1 583 827 переселенців, - Мінсоцполітики, 25 Квітня 2017, <http://www.msp.gov.ua/news/13032.html>.

compliance by Ukraine with all valid peacetime rules of international law. At the same time, many initiatives launched at the national level sparked a mixed reaction from international human rights groups, media community and ordinary citizens. Information started to be recognised as such that threatens territorial integrity and sovereignty, and, thus, justifies the governmental attempts to block and filter content, and ensure greater scrutiny of the broadcasters' licensing.

OHCHR noted that as of 15 February 2017, freedom of expression on both sides of the contact line remained limited and politicised. Media experts and representatives of some NGOs complained of the state and editorial censorship with respect to the content related to the conflict and the Russian Federation. Media representatives working on the territory not controlled by Ukraine were at high risk to find themselves under indiscriminate fire, and suffered from violence, censorship and illegal detention by armed groups. Access to these areas also remained problematic.³

The idea of this report appeared in a response to the emergence of serious signals indicating the swinging of a balance between national security and freedom of expression within the state as a reaction to an external aggression. Restrictive wordings of the recent legislative amendments in respect of the protection of the right to access to information and freedom of expression require a careful analysis

in order to prevent their transformation from yet declaratory, framework provisions into binding normative rules. Threats to journalistic activities and attacks on journalists may potentially create a significant chilling effect on the unbiased coverage of events, especially from the areas temporarily out of the Ukrainian government's control. Positions of Ukraine in world rankings of media freedom and the right to freedom of expression demonstrate a downward trend.

This report is aimed at ascertaining of the interrelation between the conflict in Donbas, annexation of Crimea and respect for freedom of expression in Ukraine based on the comprehensive analysis of the international legal standards, national legislation and reports of international human rights organisations.

3. *Ibid.* Pp. 26-28.

UKRAINE

IN WORLD RANKINGS



The systematic analysis of the reports of international non-governmental organisations with the focus on the protection of and respect for the freedom of expression in different countries around the world demonstrated that Ukraine was traditionally ranked somewhere in-between, gradually improving its positions during each subsequent reporting period. Freedom of expression directly depends on the political and socio-economic climate in the country. Therefore, changing of peacetime realities, the annexation of Crimea and the protracted conflict in the East of Ukraine have led to the deterioration of the state's positions in international rankings.

According to the independent international *Institute for Economics and Peace*, Ukraine was ranked 156th in Global Peace Index 2016 (1 – the highest rank, 162 – the lowest rank) and turned out to be in the group of countries with the lowest level of security, along with Syria, South Sudan, Iraq, Afghanistan, Somalia, Yemen and Central African Republic. At the same time, the militarisation level was estimated at 2.8 points out of 5 (1 – the safest, 5 – the most dangerous), society and security factor received 3.4 points out of 5, while the indicator of domestic and international conflict equalled to 3.3 points out of 5. Pursuant to the data provided by the Institute, the approximate cost of violence in Ukraine reached 43 billion dollars.⁴

According to a report by the international non-governmental human rights organization *Freedom House* “*Nations in Transit 2017*”, since 2008 the ranking of media independence in Ukraine has gradually deteriorated and reached the point of 5.75 out of 7 possible (1 – the highest, 7 – the lowest) in 2017. The citizens enjoy access to different sources of information, and despite the fact that television remains the primary source of information for the majority of Ukrainians, its impact is reduced. Comparing to 2014, when 89% of Ukrainians watched daily news on TV, in 2016 this number dropped to 79%. At the same time, 62% of Ukrainians use the Internet. This indicator increased by 7% comparing to the previous year.

Some national and international media have expressed concerns about the pressure on journalists. In particular, in October a leading Internet publication “Ukrainska Pravda” (“Ukrainian Truth”) published an open letter to the Ukrainian government, providing evidence that the work of investigative journalists was under surveillance. The protracted conflict with Russia raises the question of the media freedom in Ukraine. The issue of the limits of legal restrictions on freedom of media in the context of the “information war” with Russia is a subject of constant debate, especially in terms of Russian propaganda TV channels, the broadcasting of which was prohibited in Ukraine since 2014.⁵

4. Ukraine, Global Peace Index 2016, *Institute for Economics and Peace*, <http://static.visionofhumanity.org/#page/indexes/global-peace-index/2016/UKR/OVER>.

5. Ukraine Country Profile, *Nations in Transit 2017*, <https://freedomhouse.org/report/nations-transit/2017/ukraine>.

According to another report by Freedom House *"Populists and autocrats: the dual threat to global democracy"* published in January 2017, Ukraine remained on the same position as in 2016 when it was ranked 61st (1 – the highest, 100 – the lowest) and was recognised as only partly free. Civil rights, including freedom of expression, are ensured at the 3rd level out of 7 possible (1 – the highest level of freedom, 7 – the lowest level of freedom). Ukraine joined the list of 28 countries that suffered the largest drop in the ranking of freedom during the past 10 years. For Ukraine, as well as for Russia, Nauru, Ecuador and the Dominican Republic, the general index declined by 12 points.

Ukraine received 11 points out of 16 possible in the ranking of freedom of expression and opinion. It is noted in the report that media environment in Ukraine is characterised by considerable pluralism and open criticism of the government. However, many media are funded and controlled by oligarchs pursuing different political interests. In 2014, the Ministry of Internal Affairs banned the broadcast of more than ten Russian channels, substantiating this decision by a need to protect the public information space. The murder of Pavlo Sheremeta, a famous Ukrainian journalist, was mentioned separately as an alarming signal of existing threats to the security and freedom of journalists. The report includes also references to other incidents of violence and harassment towards media workers and organisations on the territories both controlled and non-controlled by the government of Ukraine.

In May 2016, the website "Myrotvorets" ("Peacemaker"), focused on identifying the enemies of Ukraine, published the names and contact information of more than 4,000 Ukrainian and foreign journalists accredited by the separatist forces to cover the fighting in the East of Ukraine. The distribution of this information was strongly criticised as such that violates media freedom and puts at risk the safety of journalists working in the conflict zone. However, Arsen Avakov, the Minister of Internal Affairs of Ukraine, defended the actions of the website. In August 2016, Tetiana Popova, the Deputy Minister of Information Policy, resigned in a protest against the government's failure to prevent harassment and attacks on journalists and to defend freedom of expression.⁶ It is concluded in the report that in general, Ukrainians can freely express their views privately, though the conflict had a significant effect on polarising political views. Intimidation is still a common tool in the areas controlled by separatists.⁷

Noteworthy that freedom of expression in Crimea became the subject of a separate report due to the peninsula being classified as the territory with disputed status. This distinction was caused by significant differences in the level of protection of political and civil rights within this disputed territory and the rest of the country. Crimea was ranked 9th in the overall table, which means no freedom. At the same time, according to the

6. Facebook-коментар Тетяни Попової щодо відставки з посади заступника міністра інформаційної політики України <https://www.facebook.com/TVP777/posts/10209796756737297>.

7. Ukraine Profile, *Freedom in the World 2017*, <https://freedomhouse.org/report/freedom-world/2017/ukraine>.

estimations by the *Freedom House* the level of execution of civil rights equaled to 6 out of 7. Crimea received 11 points out of 16 possible in the ranking of freedom of expression and opinion.

Freedom of speech in Crimea is significantly limited. In addition to other restrictive rules of the Russian legislation, the amendments to the Criminal Code of the Russian Federation that came into force in 2014 banned public calls for taking actions aimed at violation of the territorial integrity of the Russian Federation. It basically means that a person can be sentenced to imprisonment for up to five years for the statements against the annexation of Crimea, including those in the media.

The Russian Federal Service for Supervision in the Sphere of Telecom, Information Technologies and Mass Communications "Roskomnaglyad" obliged all Crimean media to pass re-registration in accordance with the Russian legislation by April 2015. Before the annexation of Crimea, there were about 3,000 media outlets. After the final term for re-registration in 2015, Roskomnaglyad announced that it had registered and allowed the operation of 232 media entities. The occupation authorities actually blocked the access to Ukrainian television in Crimea. Independent and pro-Ukrainian media, as well as Crimean Tatar media, do not longer work in Crimea. Internet service providers must comply with the draconian rules of the Russian law on media.

According to some reports, the FSB (the Federal Security Service of the Russian Federation) encourages local residents to inform on people who oppose the annexation of Crimea, while the atmosphere of fear and intimidation significantly contributes to the unwillingness to discuss political issues privately.⁸

In the ranking provided in the report "*Freedom on the Net 2016*", Ukraine scored 38th out of 100 (0 - the best score, 100 - the worst score) and was recognised as partly free in the context of ensuring freedom on the Internet. The report covers the period from June 2015 to May 2016 and points to a number of violations in the Ukrainian online environment. The protracted conflict between Ukrainian armed forces and pro-Russian separatists in the East of Ukraine undermined the rights of the users of Internet resources and contributed to the establishment of self-censorship. Ukraine's indicators in the Internet freedom ranking declined due to arrests for expressing "separatist" views on social networks and blocking access for Donbas users to dozens of prohibited websites. The case of distributing personal data of journalists working in the East of Ukraine was mentioned once again. In terms of the obstacles to access to Internet Ukraine is on 8th level out of 25; as for content restrictions it is ranked at 11th level out of 35, and for violations of users' rights - at 19th out of 40. Overall, since 2012

8. Crimea Profile, *Freedom in the World 2017*, <https://freedomhouse.org/report/freedom-world/2017/crimea>.

Ukraine's position in the ranking has decreased by 11 points.⁹

According to the recent *World Press Freedom Index* published by international non-governmental organisation "Reporters without Borders" in April 2017, Ukraine has improved its position by 5 points comparing to the previous year and was ranked 102nd among 180 countries with the global score of 33.19 (0 – the best indicator, 100 – the worst indicator), thus recognised as problematic with regard to ensuring freedom of journalistic activities¹⁰. Oligarchic control over the media and information war with Russia remain the biggest threats. It is also pointed to the government's failure to provide adequate guarantees for journalists and the lack of access by international observers and journalists, able to provide critical overview of the events, to the territories non-controlled by the Ukrainian government.

In January 2017, an international non-governmental organisation Human Rights Watch published a new *World Report "Populism vs. Human Rights: Global Conflict"*. It is mentioned in the report that in 2016, the government of Ukraine continued to take controversial steps, which limited the media freedom and justified that mainly by the need to counter the anti-Ukrainian propaganda of the Russian Federation. In May 2016, the Ukrainian government banned 17 Russian journalists and media managers from entering Ukraine. During 2016, several attacks have been accomplished against

"Inter" TV channel, which has a reputation of being mainly pro-Russian. The structure of media ownership remains opaque. Nationalist radicals carried out attacks against journalists because of their work in Eastern Ukraine. The decision of the appellate court to justify Ruslan Kotsaba, a journalist and blogger accused of state treason for calling to boycott conscription, is mentioned among positive trends.

A separate part of the report on Ukraine is devoted to Crimea. It is noted that Russia continued to prosecute people for publicly opposing its occupation of Crimea, further shrinking space for free speech and freedom of association. Under the pretext of fighting against extremism and terrorism, authorities harassed and took arbitrary action against some Crimean Tatar activists in apparent retaliation for their peaceful opposition to the Russian occupation.¹¹

The World Report of Human Rights Watch 2016 contains the indication to a number of controversial steps taken by the Ukrainian government in 2015 and being of restrictive nature in terms of freedom of expression. In December 2014, the establishment by the government of the Ministry of Information Policy coincided with the publication of independent reports about the

9. Ukraine: Country Report, *Freedom on the Net 2016*, <https://freedomhouse.org/report/freedom-net/2016/ukraine>
10. 2017 World Press Freedom Index, https://rsf.org/en/ranking_table
11. Ukraine - Events of 2016, *World Report 2017 "The Dangerous Rise of Populism Global Attacks on Human Rights Values"*, <https://www.hrw.org/world-report/2017/country-chapters/ukraine>.

abuses by Ukrainian forces in Eastern Ukraine. Ukrainian bloggers and journalists protested against the new ministry, fearing that its operation could lead to censorship. In April, Ukraine banned the demonstration of all films produced in Russia after 2014, and subsequently in January – of all films produced after 1991, which present positive images of Russian military forces. In August, the government prepared a list of 38 books, by mostly Russian authors, banned from being imported to Ukraine, as well as the “black list” of Russian singers and actors, based on their views on the conflict. In September, the government expanded the list of “persona non grata” prohibited from entering Ukraine up to 382 people. Among them, there are 35 journalists and bloggers from various countries, including those from Russia, Israel and the UK. In June, a package of laws prohibiting Nazi and communist symbols, and providing for criminal responsibility for denying the “criminal nature of the communist totalitarian regime”, entered into force. Another law recognises the nationalist groups that fought against Germany during the World War II, while simultaneously collaborating with the Nazis, as the “fighters for independence”. The law provides for criminal responsibility for questioning the legality of their actions.¹²

In the context of the adoption of the above laws, the OSCE Representative on Freedom of the Media noticed that they constituted a threat to freedom of expression and

free media. In her opinion, “the media is a vital component of a healthy democracy and their role should be respected at all times. Disputed information and potentially problematic statements should not be prohibited; on the contrary, they should be dealt with through open discussions”.¹³

According to the international non-governmental organisation “*Committee to Protect Journalists*”, during the active phase of the conflict in Eastern Ukraine in 2014, 5 journalists were killed while performing their professional duties. Such statistics put Ukraine on a par with Syria (17 deaths) and Iraq (5 deaths) that were deemed the most dangerous countries for journalists. During 2015-2016, two more journalists were killed in Ukraine.¹⁴

12. Ukraine - Events of 2015, *World Report 2016 'Twin Threats: How the Politics of Fear and the Crushing of Civil Society Imperil Global Rights'*; <https://www.hrw.org/world-report/2016/country-chapters/ukraine>.

13. New Laws in Ukraine Potential Threat to Free Expression and Free Media, OSCE Representative says, 18 May 2015, <http://www.osce.org/fom/158581>.

14. 12 Journalists Killed in Ukraine since 1992/Motive Confirmed, <https://cpj.org/killed/europe/ukraine/>.

Therefore, even a brief review of the rankings and reports provided in this section gives the opportunity to understand that the vast majority of threats to freedom of expression in Ukraine are related to the ongoing armed conflict. Moreover, Ukraine managed to maintain intermediate positions in these rankings due to the fact that Crimea is the subject of a separate analysis and takes an independent position in the overall ranking. It goes without saying that lack of effective control of Ukrainian government over some areas of Donetsk and Lugansk regions and Crimea does not allow Ukraine to guarantee and ensure the proper protection of freedom of expression on these territories. At the same time, people who live in the grey area have more urgent needs in housing, food, medical care and employment. Under such settings freedom of expression is often left neglected.

However, given the strong information component of the armed conflict, there is an urgent need to strengthen Ukraine's information space and create, to the largest extent possible, safe and tolerant environment for freedom of expression both for ordinary citizens in private conversations or social networks and for professional journalists, who often put their lives at risk in an attempt to report from the most dangerous parts of the country and to inform the public about the most complex and sensitive issues.

Freedom of expression is an indispensable element of any democratic society. The greatest trials of this freedom always occur during the periods of instability. Currently, it is extremely important for Ukraine to strengthen the guarantees for protection of freedom of expression and maintain the balance between freedom of every person to speak and be heard and ensuring national security. The task is not an easy one, but the way Ukraine would choose to cope with it, will serve as an indicator of the democratic nature of the government and its openness to criticism, as well as its commitment to structural reforms and further integration of the country into the single European information space.

As the famous Greek playwright Aeschylus properly pointed out back in the 5th century B.C., the first casualty of war is truth. In the following section we will describe the threats to freedom of expression and to those who defend it in Ukraine during the times of conflict.

INTERNATIONAL STANDARDS AND THREATS TO JOURNALISTS



"Behind each statistic is an individual journalist with a name and a story that they were seeking to uncover. By doing their work, in particular in dangerous circumstances, journalists defend the public's right to know and are therefore human rights defenders.

For each journalist that is killed or attacked, countless other journalists are intimidated to self-censor and entire societies are deprived of important information. States must act to end this tragedy."

*Thomas Hughes,
Executive director of ARTICLE 19*

In times of an armed conflict, both on the territory of warfare, in the frontline area, and in other regions of the country, arises the biggest amount of obstacles to freedom of expression threatening the safety of journalists, forcing ordinary citizens to resort to self-censorship and verifying the government's ability to respond efficiently to the challenges of military and information confrontation between the conflicting parties by using means that are proportionate and reasonable in a democratic society. Ukraine appeared to be significantly unprepared for changing peacetime rhetoric into the one of an armed conflict, which can be clearly seen from the fact that three years upon the outset of information and military aggression the means of response still remain restrictive and prohibitive. However, the period of immediate response under the emergency settings has long ago transformed into a protracted phase, which requires a transition from defensive to offensive tactics. When applied to information space the offensive tactic means creating high-quality Ukrainian content in multiple languages and delivering Ukraine's position to the broadest possible range of international community. The government should demonstrate openness and tolerance towards pluralism of views and criticism of its politics. Technological development along with minimum skills of using the Internet gives a lot of opportunities to overcome any restrictions. Therefore, the emphasis should be put on raising the level of users' legal

awareness and their understanding of possible threats and available remedies. The armed conflict has led to a downturn of Ukraine's position in international rankings of ensuring freedom of expression, with lack of proper investigation of cases of journalists' rights violations and adoption of restrictive legislation being recognized as one of the main reasons therefor.

As a general rule, the journalists working in an armed conflict zone are protected by international humanitarian law. However, Ukraine is not officially in a state of an armed conflict, conducting the anti-terrorist operation in the non-government controlled areas. Therefore, the journalists should seek protection in the peacetime legislation.

The right to freedom of opinion and expression is enshrined in the Universal Declaration of Human Rights of 1948 (Article 19) and the International Covenant on Civil and Political Rights of 1966 (Article 19). If the Declaration recognizes this right as absolute, the Covenant specifies possible restrictions, which, however, must be provided by law and required for the respect of the rights or reputations of others; or for the protection of national security, public order, health or morals. Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 expands the list of restrictions in the interests of territorial integrity or public safety, for the prevention of disorder, crime or disclosure of confidential

information, or for maintaining the authority and impartiality of the judiciary. Moreover, any restrictions on the freedom of expression must be proportionate to the aim pursued.

In 2012, the UN approved the Plan of Action on the Safety of Journalists and the Issue of Impunity elaborated by the UNESCO member states. The document is aimed at ensuring respect for freedom of expression in the world through creating a free and safe environment for journalists and media workers. With regard thereto, it is necessary to establish danger reduction mechanisms both in times of war and peace and to strengthen legal mechanisms for protection of freedom of expression and the right to access to information. Respective programs for the implementation of the Action Plan have already been completed in Nepal, Pakistan, South Sudan and Tunisia.¹⁵

In September 2016, in response to the ongoing attacks and harassment of journalists and media workers, particularly in times of an armed conflict, the United Nations Human Rights Council adopted a Resolution "The Safety of Journalists", which immediately got high appraisal among human rights activists for its revolutionary character. The document indicates the need to create and maintain a secure environment for journalists based on the principles of freedom and independence from undue interference. States are encouraged to develop and implement strategies to combat impunity for attacks and

acts of violence against journalists. National legislation should not restrain journalists and media workers in the performance of their professional functions. Furthermore, states are obliged to provide guarantees that the measures for combating terrorism and maintaining national security are in compliance with their obligations under international law and do not cause undue or excessive damage to the activities and safety of journalists. For the first time, it was required that all states immediately and unconditionally release the journalists and media workers, who suffered illegal detentions or arrests, as well as refrain from opposing the use by journalists of encryption and anonymization means.¹⁶

Within the framework of the Council of Europe (CoE) was adopted quite a big number of documents on the issue, namely, the Declaration (2014) and the Recommendation (2016) of the Committee of Ministers on the Protection of Journalism and Safety of Journalists and Other Media Actors, the Declaration (1996) and the Recommendation (1996) of the Committee of Ministers on the Protection of Journalists in Situations of Conflict and Tension, the Resolution of the Parliamentary Assembly 1438 (2005) on Freedom of the Press and the Working Conditions of Journalists in Conflict

15. UN Plan of Action on the Safety of Journalists and the Issue of Impunity, http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/official_documents/UN-Plan-on-Safety-of-Journalists_EN_UN-Logo.pdf.

16. Human Rights Council Resolution 33/2 "The safety of journalists", 29 September 2016, http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/33/L.6&refereer=http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20628&Lang=E.

According to the latest data published by the international project *Mapping Media Freedom*, covering 42 countries, in the third quarter of 2016 (1 July – 30 August) Ukraine was ranked third (44 cases), following Turkey (114) and Russia (58), by the number of violations of journalists' rights and prevention of their work.

The report marked an unprecedented increase in the number of cases of combating free journalism in Europe. 4 deaths of journalists were recorded during the reporting period, with two of them in Ukraine – the murders of Pavlo Sheremeta and Oleksandr Shchetynin. Among 54 cases of physical attacks on journalists, 11 took place in Ukraine. Ukraine was also mentioned with regard to the cases of arson attacks on property owned by journalists and media companies. During the reporting quarter, the rate of intimidation of journalists increased by 37% and reached the number of 112 cases, with 16 of them in Ukraine.²⁰

An international non-governmental organisation *Press Emblem Campaign (PEC)* provides convincing statistics in support of the growing threats to journalists working in conflict zones. In 2016, in accordance with the safety index for media workers, developed by PEC, Ukraine's position worsened by one level comparing to 2015, which moved the country down to 3rd level (1 – the safest conditions, 5 – the most dangerous conditions) along with Brazil, Central African Republic, the Democratic Republic of Congo, Egypt, Israel, etc.²¹

On 9 March 2017, Dunja Mijatović, the *OSCE Representative on Freedom of the Media*, published her regular report covering the period from 2 December 2016 to 9 March 2017. While the description of the situation with freedom of media in the majority of countries required just a few paragraphs, Ukraine, Azerbaijan, Belarus and Russia were given a few pages each. Dunja Mijatović expressed her concern regarding some legislative initiatives, in particular, the restriction of access to the Ukrainian market of foreign printed materials with anti-Ukrainian content and approval of the Doctrine of Information Security of Ukraine; prosecution of the Crimean journalist Mykola Semena; injuries of media workers (Pavlo Chuprin and Christopher Nunn); denials of broadcasting licenses; interrogation of journalists; arson attacks on property owned by journalists. The report repeatedly highlighted the deterioration of the respect for media freedom and safety of journalists in areas outside the control of the government of Ukraine. It also contains the referral to the statement by the Chief Monitor of the OSCE Special Monitoring Mission to Ukraine – Ambassador Ertuğrul Apakan, who pointed out the prohibition of 350 websites and the restriction of access of Ukrainian media companies to the non-government controlled territory of Ukraine.

20. Report: Journalists under "unprecedented" attack, 29 November 2016, *Mapping Media Freedom*, <https://mappingmediafreedom.org/plus/index.php/2016/11/29/report-journalists-under-unprecedented-attack/>

21. 31.10.2016. International Day to End Impunity for Crimes against Journalists on 2 November – PEC says media workers face increasing risks in a number of countries, *Press Emblem Campaign (PEC)*, <http://pressemblem.ch/pec-news.shtml>

Intimidation of media workers and arrests of bloggers constitute a huge threat.²²

The previous report covering the period from 11 March to 1 December 2016 was severely criticized by the Ukrainian authorities and media community, who characterized it as partly lacking impartiality and grounded on the outdated information. The report released in March 2017 almost coincided with the expiration of Dunja Mijatović's powers as the OSCE Representative on Freedom of the Media. At the moment of preparation of this report the position remained vacant. The role of regional coordinator is extremely important in terms of maintaining the proper balance in ensuring freedom of expression. Therefore, it is an urgent matter of high significance to find the appropriate candidate to undertake the responsibility of protecting media freedom in the OSCE region.

An independent NGO *Institute of Mass Information (IMI)* conducts monthly monitoring of the state of ensuring freedom of speech in Ukraine. According to the consolidated data, there were 262 cases of freedom of speech violations recorded on the unoccupied territory of Ukraine in 2016, which demonstrates approximately 15% decrease compared to 2015 (in 2015 – 310 violations; in 2014 – 995 violations). Along with the occupied Crimea (31 cases) and Donbas (12 cases), the number of press freedom violations reached 305 cases in 2016.

The majority of violations fall into the category of preventing journalistic activities – 107 cases (in 2015 – 100 cases, in 2014 – 150 cases, in 2013 – 130 cases). Most cases of prevention come from the individuals, police and local authorities. The second largest category of cases includes intimidation and threats to journalists – 42 cases. In 2016, this category exceeded the indicator of the year of 2015, when 36 threats to journalists were recorded (in 2014 – 98 cases, in 2013 – 35 cases). Individuals and deputies of different levels were named as a source of threat in the majority of cases. Beatings and attacks on journalists, along with restrictions on access to public information (30 cases each) constitute the third largest category. In addition, one journalist was killed in 2016 in Ukraine (in 2015 – 2, in 2014 – 7, in 2013 – none).

Given a limited access to Donetsk and Luhansk regions, IMI managed to register 12 cases of freedom of expression violations on the occupied territories. In particular, they included blocking of Ukrainian TV channels broadcasting and websites, publication of journalists' personal data on separatist websites and detention of bloggers. In 2016, 31 cases of freedom of expression violations were registered in annexed Crimea, which is slightly lower than in 2015 (43 cases). Similarly to the previous year, the media outlets and journalists on the peninsula were under pressure of

22. Regular Report to the Permanent Council for the period from 2 December 2016 to through 9 March 2017, OSCE, <http://www.osce.org/representative-on-freedom-of-media/303956?download=true>.

Russian intelligence agencies, Roskomnaglyad and occupation Crimean authorities.²³

At the same time, starting from the beginning of the year and as of 23 April 2017, IMI registered 2 cases of beatings, 15 cases of prevention of journalistic activities, 2 cases of censorship and no case of murder of journalists in Ukraine.²⁴

During the period from 12 December 2016 to 12 January 2017, NGO *"Internews-Ukraine"* conducted an expert survey entitled "Ensuring Internet freedom in situations of an armed conflict", during which 100 respondents from Ukraine were interviewed, namely, the representatives of media community, human rights activists and Internet technologies experts. Most respondents (57%) believe that there are threats to Internet freedom in Ukraine, but they are insignificant. However, 22% of respondents mentioned that the risks are high. Respondents expect that during the next two years the following violations will be among the most significant in Ukraine: progovernment manipulations in online discussions and blocking of content (65%), legislative initiatives restricting Internet freedom (59%), pressure on the Internet service providers (52%). An armed conflict in Eastern Ukraine restricts free development of the Internet in Ukraine due to self-regulation and self-censorship in the media sector. Many respondents are sensitive when it comes to the issue of security during the conflict. Thus, 43% of them were ready to accept some restrictions of users' Internet freedom

in the interests of national security. However, 35% of the respondents believe that there should be no restrictions regardless of circumstances.²⁵

According to *the Prosecutor General's Office of Ukraine*, during 2013-January 2017 there were 645 criminal proceedings registered under the Article 171 of the Criminal Code of Ukraine "Obstruction to lawful professional activities of journalists." Among them, 326 cases (50.6%) were closed at the stage of investigation and only 46 cases (7.1%) ended up in courts. The rest of the cases (42%) are under investigation.

When commenting on such statistics, *the National Union of Journalists of Ukraine (NUJU)* indicated that only 1/12 of criminal proceedings initiated as a result of crimes against journalists are considered in courts. Following the events of Euromaidan, the number of criminal cases regarding the obstruction to the work of journalists is not decreasing. Upon 2013-2014, when there were 182 and 152 such cases respectively, the number dropped to 120 in 2015 and again increased to 176 in 2016. The NUJU draws attention to the fact that only in January 2017 there were 15 registered cases of violations falling under this category.²⁶

23. 2016 рік. Підсумки стану свободи слова в Україні - інфографіка, *Тижень.іа*, 28 грудня 2016, <http://tyzhden.ua/News/182014>.

24. Барометр свободи слова 2017, Інститут масової інформації, <http://imi.org.ua/barometr/>.

25. Результати опитування щодо ризиків Інтернет-свободи в Україні, 2017, *Інтерньюз-Україна*, <http://internews.ua/2017/01/netfreedom-survey/>.

26. 3 2013 року зареєстровано 645 кримінальних проваджень за перешкоджання діяльності журналістів - ГПУ, *Інтернет-видання "Детектор медіа"*, 2 березня 2017, <http://detectormedia.infospace/article/123702/2017-03-02-z-2013-roku-z-areestrovano-645-kriminalnikh-provazhen-za-pereshkodzhannya-diyalno-sti-zhurnalistiv-gpu/>.

The above statistics indicate the existence of real threats to freedom of expression and security of journalists. Attacks on journalists and lack of an impartial investigation of such cases turned out to be a normal practice in Ukraine. All together it raises concerns of the international community and adversely affects the image of Ukraine in the world. However, we deem as positive the fact that when carrying out their own monitoring of respect for freedom of expression in Ukraine, the OSCE and the Council of Europe give an overview of the whole country within its internationally recognised borders, including Crimea and temporarily occupied areas of Donetsk and Luhansk regions. Sometimes, this approach is criticised as such that leads to deterioration of Ukraine's ratings by the indicators of ensuring rights and freedoms on the territories over which the Ukrainian government does not exercise the effective control. Noteworthy, that such comprehensive reporting has never been used to accuse Ukraine of violations on the territories beyond its control but rather constitutes an evidence of the whole territory of Ukraine being continuously recognised by the international community as integral within the internationally recognised borders.

INFORMATION SECURITY
US.
FREEDOM OF EXPRESSION



"Those who would give up essential liberty to purchase a little temporary safety, deserve neither liberty nor safety".

Benjamin Franklin

Finding a proper balance between protecting national security, including its information component, and ensuring freedom of expression in times of the most difficult trials for the country is a huge challenge and a test for democratic governance of the state and its orientation towards the protection of human rights. For Ukraine this challenge was posed by the annexation of Crimea and an armed conflict in the East of the country. The situation got even more complicated due to the fact that the state is not officially engaged in war, does not introduce martial law, and, therefore, has no legal grounds for restricting rights and freedoms. Being unprepared to resist information attacks from Russia, Ukraine was gradually closing its information space from external influence and started regulating its contents. This caused serious concerns among Ukrainian human rights activists and international community, and was repeatedly pointed out, in particular, by Dunja Mijatović, the OSCE Representative on Freedom of the Media. However, the priority of information security over the freedom of expression is still embedded in legislative amendments aimed at protection of the national interests of Ukraine.

On 25 February 2017, the President of Ukraine Petro Poroshenko signed a decree enacting the decision of the National Security and Defense Council of Ukraine (NSDC) *“On the Information Security Doctrine of Ukraine”*. The aim of the Doctrine is countering destructive information influence of the Russian Federation

under the settings of orchestrated by it hybrid war. Since the document is of a national importance and is approved for a long-term perspective, it is worth expanding the wording of its purpose; otherwise, any new threat from the country other than the Russian Federation will require a revision of the whole document. The use of the information space for any destructive purposes or for any actions aimed at discrediting Ukraine internationally is forbidden. Given wording is quite broad and may further lead to qualification of any dissenting opinion as a threat to national security, thus increasing the number of prisoners of conscience. It is proposed to specify at the legislative level the mechanism for blocking and taking down the Internet content threatening national sovereignty, promoting communist and/or the national socialist totalitarian regimes and their symbols. Every Internet user may be brought to responsibility upon the suspicion of being used by the aggressor state for conducting information war against Ukraine. The monitoring function is delegated to the Ministry of Information Policy of Ukraine and the Security Service of Ukraine.²⁷

At the same time, it is important to note that Ukraine didn't ask the Council of Europe to provide a preliminary expert analysis of the draft doctrine. Though, the draft doctrine

27. Указ Президента України №477/2017 від 25 лютого 2017 року Про рішення Ради національної безпеки і оборони України від 29 грудня 2016 року Про Доктрину інформаційної безпеки України? <http://www.president.gov.ua/documents/472017-21374>.

in its 2015 edition received many serious remarks by the Council of Europe.²⁸ The Doctrine was criticized by the international human rights organisation Amnesty International. The experts of this organisation noted that the proposed monitoring system poses a serious threat to freedom of speech in the country.²⁹ In its turn, the Internet Association of Ukraine drew attention to the ambiguity of definitions of the terms “state information space” and “Ukrainian segment of the Internet”, as well as to the fact that telecommunications operators and service providers are not responsible for the content transmitted through their networks. Moreover, the exclusive powers for the official monitoring of television and radio programs belong to the National Council on Television and Radio Broadcasting of Ukraine.³⁰

By his other decree dated 13 February 2017 the President of Ukraine enacted the NSDC decision *“On Threats to State’s Cyberspace and Emergency Measures for Neutralization Thereof.”* Based thereon within a three-months period, the Cabinet of Ministers is expected to submit to the Verkhovna Rada of Ukraine the draft laws regarding the implementation of the Convention on Cybercrime dated 2001, and to specify therein blocking of some information resources (websites) by telecommunications operators and providers upon court decision; provision by telecommunication operators and providers at the request of law enforcement authorities of the information necessary to identify service providers

and route through which the information was transmitted; entitlement of law enforcement authorities with the powers to issue writs to the computer data owners regarding the immediate fixation and retention of computer data needed to solve the crime for up to 90 days with the possibility of extending this period for up to 3 years.³¹ Moreover, the NSDC decision contains two secret provisions that were not published.

Ivan Petukhov, the Chairman of the National Assembly of the Civil Sector of Ukraine, noted that the legislative framework of Ukraine is gradually absorbing the key ideas of the laws of 16 January 2014, with the new laws being even more restrictive than the draconian ones.³² The Internet Association of Ukraine also expressed its concerns and pointed to a number of significant inconsistencies of the proposed amendments with the Convention on Cybercrime. It noted that the most important feature of all existing censorship systems is a complete inability to block access

28. Council of Europe Does Not Pre-Analyze Ukraine’s Information Security Doctrine, *Ukrainian News Agency*, 01 March 2017, <http://ukranews.com/en/news/482571-council-of-europe-does-not-pre-analyze-ukraine-s-information-security-doctrine>.

29. *Amnesty International* виступило проти тотальної цензури в Україні, *UkrWill*, 28.02.2017, <https://ukrwill.com/amnesty-international-vistupilo-proti-totalnoyi-tsenzuri-v-ukrayini>.

30. Лист №36/1-5 від 07.03.2017 щодо реалізації Указу Президента України від 25.02.2017 № 47/2017, *Інтернет Асоціація України*, <http://inau.ua/document/lyst-no361-5-vid-07032017-shchodo-realizaciyi-ukazu-prezydenta-ukrayiny-vid-25022017-no>.

31. Указ Президента України №32/2017 від 13 лютого 2017 року Про рішення Ради національної безпеки і оборони України від 29 грудня 2016 року Про загрози кібербезпеці держави та невідкладні заходи з їх нейтралізації, <http://www.president.gov.ua/documents/322017-21282>.

32. Цензура та жорсткий контроль за суспільством, *Конфлікти і закони*, 22.03.2017, <https://k-z.com.ua/ukrayna/41799-cenzura-ta-zhorstkiy-kontrol-za-suspilstvom>.

for those actively seeking such access to banned content. According to the Association, the real goal of blocking information is to introduce political censorship.³³

The Law of Ukraine "On Introducing Amendments to Some Laws of Ukraine on the Protection of Information Television and Radio Space of Ukraine" adopted in February 2015 is also worth mentioning. The important amendments were introduced to *the Law of Ukraine "On Cinematography"*, which from then on has banned the distribution and demonstration of films produced after 1 August 1991 and containing propaganda or popularisation of the aggressor state bodies and their actions, regardless of the country of origin. The broadcasting of all films produced by individuals and legal entities of the aggressor state after 1 January 2014 (Article 15¹) is also prohibited.³⁴

Since March 2016, all films first demonstrated after 1 January 2014 are banned as well. This restriction has a clear territorial linkage, is non-selective and actually blocks access to the Ukrainian media market for any cinematographic products originating from Russia, regardless of their thematic content. However, the Internet gives the possibilities to circumvent such technical limitations and access forbidden movies online. Pursuant to its commitments under the European Convention on Trans-frontier Television, Ukraine must ensure freedom of reception and restrain from imposing limits on retransmission of program services,

which meet the requirements of the Convention, on its territory (Articl 4).³⁵ The non-selective nature of transmission blocking contradicts this provision. Moreover, subject to the Recommendation of the Committee of Ministers of the Council of Europe "On Protecting Freedom of Expression and Information in Times of Crisis" member states should not restrict public's access to information in times of crisis beyond the limitations provided for in Article 10 of the European Convention on Human Rights and interpreted in the case-law of the European Court of Human Rights (Paragraph 17). National governments, media organisations, national or international governmental and non-governmental organisations should strive to ensure the protection of freedom of expression and information in times of crisis through dialogue and co-operation (Paragraph 27).³⁶

Restrictions also affected the books. Starting from 1 January 2017, a new authorization procedure was established for the import to Ukraine of publishing production originating or produced and/or imported from the territory of the aggressor state or temporarily occupied territories of Ukraine. The analysis and evaluation of publications should be performed by a specially established expert committee. The decision on granting a

33. Лист №32 від 28.02.2017 Президенту України щодо Рішення РНБО від 29.12.2016 Про загрози кібербезпеці держави та невідкладні заходи їх нейтралізації, Інтернет Асоціація України, <http://inau.ua/document/lyst-no32-vid-28022017-prezidentu-ukrainy-shchodo-rishennya-rnbo-vid-29122016-pro-zagrozy>.

34. Закон України Про внесення змін до деяких законів України щодо захисту інформаційного телерадіопросторту України" від 05.02.2015, <http://zakon2.rada.gov.ua/laws/show/159-19>.

35. Європейська конвенція про трансгосподорне телебачення 1989 року, http://zakon3.rada.gov.ua/laws/show/994_444.

36. Збірник документів Ради Європи "Безпека журналістів", Рада Європи, 2016, С. 22-23.

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806b5970>.

permit must be approved within 10 days following the receipt of the application and the respective package of documents (Article 28¹).³⁷ Media community representatives questioned the ability to provide the expert committee with the sufficient number of personnel required for prompt and comprehensive review of all books offered for import. This legislative innovation breaches Article 10 of the Constitution of Ukraine, which stipulates free development, usage and protection of Russian and other national minorities' languages in Ukraine. According to the European Charter for Regional or Minority Languages, Ukraine is obliged to promote the use of regional or minority languages, in speech and writing, in public and private life and/or encourage their use (Article 7). Moreover, the very fact of licensing the products based on their production in a particular country violates the commitments undertaken by Ukraine as a member of the World Trade Organisation with regard to non-tariff barriers and licensing (General Agreement on Tariffs and Trade of 1994) and does not qualify as exceptions (Art. XX-XXI).³⁸

The Action Plan approved by the Cabinet of Ministers of Ukraine and aimed at implementation of some principles of the state internal policy with regard to certain areas of Donetsk and Luhansk regions, where state authorities temporarily do not exercise their powers, became a document with a positive connotation, but declarative provisions.

In terms of language policy, it provides for the right of citizens living in the non-controlled territory to make a free choice of the language for consuming information, particularly, through creating conditions for the dissemination of information in Ukrainian and other languages (including Russian). It also envisages the (re)construction of broadcasting infrastructure and installation of technical equipment necessary for transmitting the signal to the non-controlled territories, distribution of publications and installation of telecommunications equipment at checkpoints on the contact line and in nearby area to facilitate access to high-speed mobile internet (3G) and arranging Wi-Fi-zones.³⁹ Such measures are aimed at promotion of gradual reintegration of people living on the temporary non-controlled territories.

New legislative initiatives seem to serve as attempts to legitimise already existing restrictive practices. Thus, the international NGO Amnesty International in its *2016-2017 report* draws attention to the fact of the intimidation of media perceived as supporters of pro-Russian or pro-separatist views, as well as those actively criticising the government. The report refers to the attacks on "Inter" TV channel, the closure of Savik Shuster's 3STV channel, illegal conviction of journalist Ruslan Kotsaba, and the murder of journalist Pavlo Sheremeta.

37. Закон України «Про видавничу справу» у редакції від 01.01.2017, <http://zakon3.rada.gov.ua/laws/show/318/97-%D0%B2%D1%80/page>.

38. Моніторинг дотримання конституційних прав людини в Україні за 2016 рік, *Forbidden to Forbid*, 30.12.2016, <http://forbiddentoforbid.org.ua/uk/monitoring-dotrimannya-konstytucijni-2/>.

39. Розпорядження Кабінету Міністрів України від 11 січня 2017 р. No 8-п, <http://zakon3.rada.gov.ua/laws/show/8-2017-%D1%80>.

The report also states that journalists with pro-Ukrainian views or those working in the Ukrainian media could not work freely in Crimea and on the territories controlled by separatists.⁴⁰

During the last three years, many TV channels, radio stations and online media were closed in Ukraine. The following cases created the biggest resonance: license withdrawal of the opposition television channel "Gamma" and radio "Vesti" ("News"); shutdown of the most popular political talk-show of the country "Shuster Live" and TV "Channel 17" known for its journalists' investigations; arson attack on "Inter" TV channel office; refusal to prolong the license for channel "112 Ukraine" and unscheduled inspection of TV channel "NewsOne." According to the organisation "Ukrainian Cyber Army", during the period from June 2014 to February 2017, 142 websites not favoured by the state were closed and 30 were blocked without any court decision.⁴¹ In general, during 2014-2016 the National Council for Television and Radio Broadcasting limited the retransmission of 76 Russian TV channels in Ukraine. As of the date of this report, the Ministry of Information Policy of Ukraine was compiling a list of websites to be blocked in Ukraine in the nearest future.⁴²

One of the most recent and notorious examples of restricted broadcasting in 2017 is the case of the independent Russian TV channel "Dozhd" ("Rain"), which is under pressure in Russia as well. Demonstration of the map showing Crimea as a part of Russia and broadcasting of Russian advertisements are named among the

reasons for banning the channel. TV Director explained that the use of that cartographic image was required by Russian legislation. OSCE Representative on Freedom of the Media Dunja Mijatović called this prohibition a serious threat to media pluralism in Ukraine. The Committee to Protect Journalists, the European Federation of Journalists and the Human Rights Watch also stood for lifting the ban.⁴³

Another interesting example of the lack of critical information materials regarding the governing elite is a research conducted by an independent analytical platform VoxUkraine, which in September 2016 published the results of a two-year analysis of weekly summaries of news programs of the most popular Ukrainian TV channels (1+1, Inter, Ukraina, ICTV) in the prime time on Sundays to assess the objectivity of coverage of the activities of the President of Ukraine. The dynamic of references to the President's activities was similar for all four channels – the peaks and slumps of references almost perfectly matched. The percentage of negative references is also similar for all channels and equals to approximately 1-2%. For the comparison purposes, the authors of the analysis referred to similar research of references to President Obama during

40. Річна доповідь 2016/2017: Україна, *Amnesty International*, <http://amnesty.org.ua/news/richna-dopovid-2016-2017-ukrayina/>.

41. "Демократична" влада після Майдану закрила десятки телеканалів, радіостанцій та інтернет-ЗМІ, [UA] *Голос ПраВДи*, 11.03.2017, <https://golospravdy.com/demokraticzna-vlada-pislya-majdanu-zakryla-desyati-telekanaliv-radiostancij-ta-internet-zmi/>.

42. У списку на закриття сотні "антиукраїнських" сайтів, *Корреспондент.net*, 2 квітня 2017, <http://ua.korrespondent.net/ukraine/3834901-u-spySKU-na-zakrytt-ia-sotni-antyukrainskykh-saitiv>.

43. The National Radio and TV Council of Ukraine Bans Broadcast of Russian TV Channel Dozhd, *Council of Europe*, 17 February 2017, <https://www.coe.int/en/web/media-freedom/all-alerts/-/jsq/alert/22241532>

the first year of his presidency, conducted by Media Monitor (52% of positive references). With a view thereto, the study prepared by VoxUkraine ends up with a conclusion about the ceremonial role of the President in the Ukrainian news and leaves open the question of (self)censorship on top Ukrainian channels.⁴⁴

The adoption of the Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda by four representatives responsible for media freedom at the universal (UN) and regional (OSCE, OAS, ACHPR) levels appeared to be extremely timely and important with a view to implementation of restrictive practices in the area of freedom of expression in Ukraine and all over the world. Declaration specifies key principles of protecting freedom of expression: compliance with the proportionality test when introducing any restrictions, including those with regard to foreign media companies; inadmissibility of intermediaries’ liability for the third party content; prohibition of content’s filtering; using blocking as a last resort measure; ban of broadcasting only upon court’s decision or that of any other independent body due to illegality of content; maintenance of a pluralistic media environment, etc.⁴⁵

Two years earlier another Joint Declaration on Freedom of Expression and Responses to Conflict Situation was adopted. It states, in particular, that censorship

is not an effective response to extremism, while, to the contrary, open and critical discussion should be encouraged. States should not react to crises by introducing additional restrictions on freedom of expression, except where clearly required because of the situation or provided by international human rights law. The filtering of content on the Internet using communications “kill switches” (i.e. shutting down entire parts of communications systems) and the physical takeover of broadcasting stations cannot be justified under the human rights law. States shall take effective measures to prevent attacks on journalists and conduct efficient investigation of such cases. Moreover, states should promote the development of citizen journalism and create conditions for all groups of the society to be heard. Any restrictions on freedom of expression must meet three criteria: to be provided by law; to serve as protection of legitimate interests recognized under international law; and to be required for the protection of such interest.⁴⁶

44. Self-Censorship on TV: How Do the Most Viewed Ukrainian TV Channels Report Poroshenko’s Activities, *VoxUkraine*, 8 September 2016, <https://voxukraine.org/2016/09/08/self-censorship-on-tv-how-do-the-most-viewed-ukrainian-tv-channels-report-petro-poroshenko-s-activities/>.

45. Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda, 3 March 2017, <http://www.coe.int/en/web/media-freedom/-/joint-declaration-on-freedom-of-expression-and-fake-news-disinformation-and-propaganda>.

46. Joint Declaration on Freedom of Expression and Responses to Conflict Situation, 04 May 2015, ARTICLE 19, <https://www.article19.org/resources.php/resource/37951/en/joint-declaration-on-freedom-of-expression-and-responses-to-conflict-situation>.

Despite the declarative nature of the above provisions, they reflect minimum standards of ensuring freedom of expression in different countries, which, similarly to Ukraine, have undergone through a conflict. It is extremely important to ensure that legislative innovations developed at national level comply with the best international practices and preserve strong focus on human rights and maintenance of freedom of expression and media pluralism.

CONCLUSIONS

In times of armed conflicts freedom of expression is hardly a high priority for any country. The protection of human lives and national security become the determining factors for a state policy during the period of instability. The last three years of the conflict with Russia, accompanied by complex transformation processes, geopolitical reorientation, human losses and sometimes controversial reforms, tested Ukraine for its statehood and identity. Starting from 2014, Ukraine has been gradually adjusting its inability to deter and repel external threats through increasing its internal capacity. Dialectical and hybrid nature of the threat considerably complicated the search for effective and proportionate response mechanisms. Significant part of the conflict is still happening in cyberspace through the application of information technologies. And while a military component has been studied for years, which allowed achieving respective arrangements regarding permitted means and methods of warfare at the international level, the proper moment to analyse the information component is right now.

This report appeared as an idea to show the importance of access to information and freedom of expression in times of conflict. It is not a big deal to manipulate the thoughts and behaviour of people when the whole nation is undergoing through the critical moments of its history. However, the protection of national security does not provide for the lawfulness of human rights restrictions. These two concepts cannot be mutually exclusive; to the contrary, they should be

treated as complementary. Critical and pluralistic ideas, thoughts and expressions constitute the foundation of a democratic society and prevent the usurpation of state power.

The blocking of information threats and the application of defensive tactics cannot serve as a basis for a successful long-term strategy in the digital era. There will always be more advanced technologies and tools enabling the circumvention of any technical restrictions. At the moment, it is extremely important to create high-quality multi-lingual Ukrainian content and expand the platforms for its distribution.

All the voices should be heard. And this relates not only to professional journalists but also bloggers, citizen journalists and every person sharing his/her views on the Internet. Murders and attacks on journalists, as well as lack of proper investigation thereof lead to a reduction in civic engagement and create an atmosphere of fear and self-censorship. Critical and pluralistic views are the only opportunity to create the most objective and comprehensive picture of developments. Distortion and substitution of reality occur every time when freedom of expression is getting sidelined. Freedom cannot be sacrificed regardless of the purpose. There always can be found alternative tools of protecting national security and territorial integrity that bear no devastating consequences for human rights.

In an attempt to gain access to the areas non-controlled by the government of Ukraine or reporting on the events taking place therein, journalists simply do their job. And the task of the state is to

promote the development of journalism. All cases of intimidation and attacks on journalists should be properly investigated, while the perpetrators should be found and brought to responsibility. The removal of the content is possible only upon the court's decision, provided that such a measure is necessary and proportionate to the pursued aim as required by international law.

When drafting any new legislation, Ukraine should be guided by the recommendations and observations of the specialised international bodies and institutions in the sphere of freedom of expression. It is truly valuable that all human rights organisations preparing world rankings on media freedom do not simply offer the rating table, but provide extensive comments on why a state was placed on this particular position. These comments should be considered by national governments to improve media environment in the country, increase security guarantees for journalists and maintain international standards of ensuring freedom of expression. It is unlikely that Ukraine would significantly improve its positions in world rankings unless the government control is restored over the whole territory of the country. As for now, the responsibility for the violations of freedom of expression is attributed to the parties exercising effective control over the respective territory.

During the periods of unrest, the restrictions imposed for the protection of national interests serve as the best indicator of state's democratic governance and transparency. And while some of these restrictions are not yet of a compulsory nature, their final approval

should be prevented, with a priority given to a pluralistic media environment. The value of freedom of expression is particularly evident and critical in times of conflict when access to certain areas of the state and true information remains limited. Ukraine can be a vivid trial and error example of state policy in this sphere.

FOR NOTES

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