

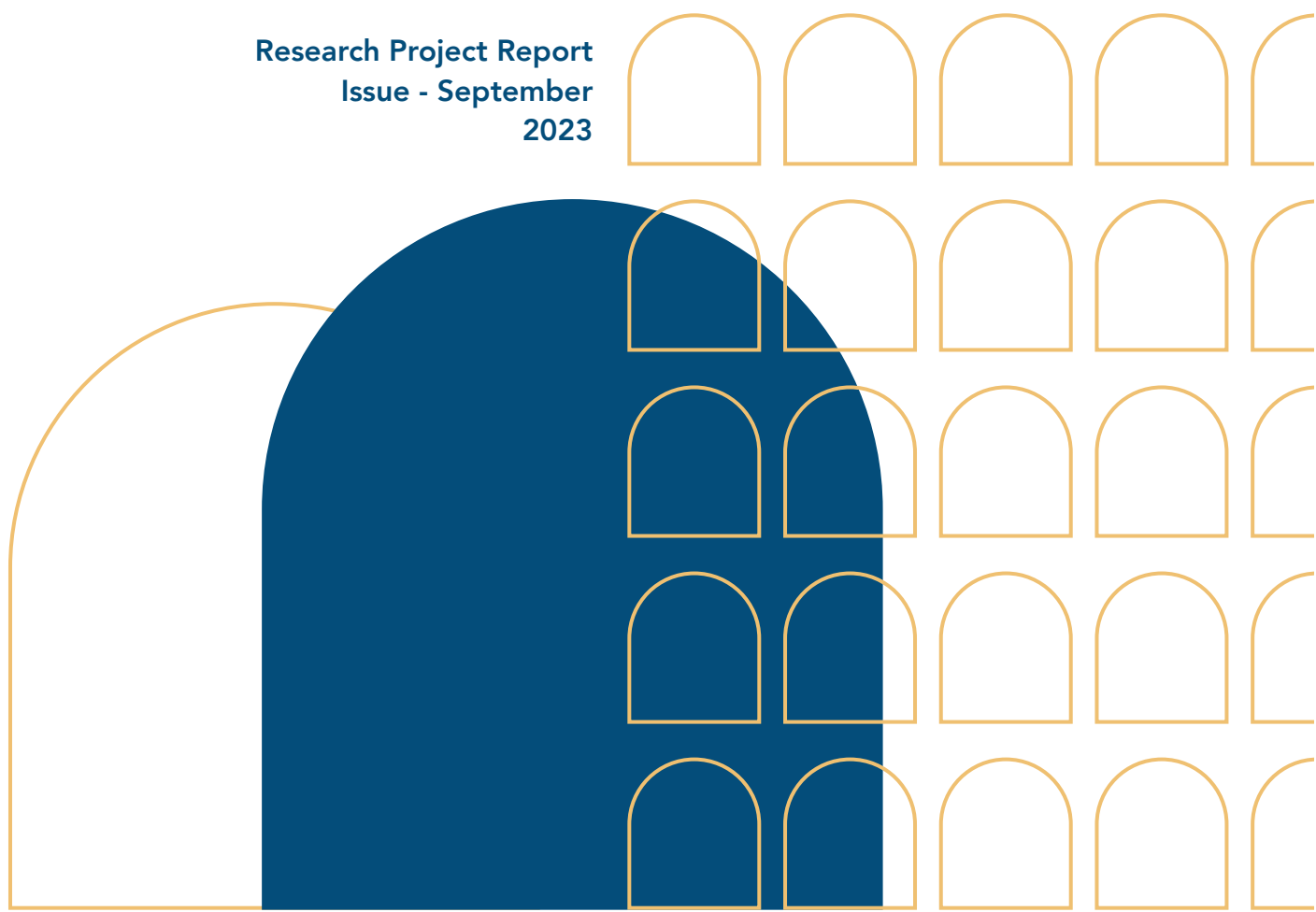
# MONITORING MEDIA PLURALISM IN THE DIGITAL ERA:

## APPLICATION OF THE MEDIA PLURALISM MONITOR IN THE EUROPEAN UNION, ALBANIA, MONTENEGRO, THE REPUBLIC OF NORTH MACEDONIA, SERBIA AND TURKEY IN THE YEAR 2022

Preliminary study to the implementation of the Media Pluralism Monitor: Ukraine

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## 1. Introduction

- **Country overview.** Ukraine is the largest country in Europe with an area of 603.5 thousand km<sup>2</sup> <sup>1</sup>. Part of its territory was illegally occupied and annexed by the Russian Federation in 2014 and 2022. As of the end of 2022, the size of the territory that was under the effective control of the Ukrainian Government was constantly changing. As of January 1, 2021, the population of Ukraine, excluding the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol, was 41,588,354. As of January 1, 2022, there was a slight decrease in the population of Ukraine to 41,167,335 inhabitants (State Statistics Service of Ukraine, 2022: 26).

With the beginning of Russian full-scale invasion of Ukraine on February 24, 2022, the population of Ukraine has significantly decreased. However, at the time of this report's preparation, there is no reliable data on the number of people remaining in Ukraine. This is due to the fact that the state statistics bodies do not have the opportunity to collect such information due to the martial law. It is also impossible to determine the number of people who left Ukraine for abroad (response of the State Statistics Service of Ukraine of 04/26/2023 to the request of D. Opryshko).

- **Languages.** The most common language in Ukraine is Ukrainian, and the second most common is Russian. This is a heritage of the Soviet past since the Russian language had the status of a language of international communication in the USSR. According to the Constitution of Ukraine, the free development, use and protection of Russian and other languages of national minorities of Ukraine is guaranteed (Constitution, 1996: part 3 of Article 10). The state protects languages of further national minorities of Ukraine: Belarusian, Bulgarian, Gagauz, Greek, Jewish, Crimean Tatar, Moldavian, German, Polish, Russian, Romanian, Slovak and Hungarian, (Law № 802-IV of 2003: Article 2) and guarantees the possibility of studying the languages of the indigenous peoples of Ukraine, in particular languages of Crimean Tatars, Karaites, Krymchaks (Law №1616-IX of 2021: par. 3 of Article 5).
- **The level of media literacy.** According to the research of the NGO “Detector Media” conducted in 2021, 13% of respondents had a low level of media literacy, 33% – a level below the average, 45% – a level above the average, and 10% – a high level of media literacy (Naumova, 2022). In 2022, the level of media literacy improved significantly: 6% of respondents had a low level of media literacy, 13% had a below-average level, 50% had an above-average level, and 31% had a high level of media literacy (Naumova, 2023: 10). This change may be explained by the consistent and systematic work of non-governmental organizations as well as state authorities, aimed at the increase

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<sup>1</sup> Babka V. L., Bogoradova Y. V., Ukraine: general profile // The Great Ukrainian Encyclopedia. Source: <https://vue.gov.ua/Україна: загальний профіль>

of the media literacy level of the population of Ukraine. Besides, armed aggression of Russian Federation undermined trust in Russian sources of information.

- **Geographical location of the country.** Ukraine is situated in Eastern Europe and borders seven countries: Belarus, the Russian Federation, Moldova, Romania, Poland, Hungary and Slovakia. It is washed by the waters of the Black and Azov Seas and has the Carpathian Mountains to the west, as well as the Crimean Mountains to the south.
- **Economic situation.** The type of Ukrainian economy is assessed differently: some sources define it as a mixed economic system<sup>2</sup>, others – as a developed market economy<sup>3</sup>. In 2021, the GDP of Ukraine amounted to around 176,4 billion Euro<sup>4</sup> (World Bank, 2023a). In 2022, against the background of the war, it decreased by 29.2% (Ministry of Economy of Ukraine, 2023). It is forecasted that GDP will grow by 0.5% in 2023 (Pavlysh, 2023b). The number of unemployed people in 2021 was 1.7 million people, including 842,000 women and 870,000 men. The unemployment rate of the population was 9.9% of the labour force, among women – 10.2%, among men – 9.6%. Due to the martial law, there is no official data on the unemployment rate for 2022 (State Employment Service, 2023: 2). In 2022, the inflation rate increased by 26,6%, comparing to 2021 (Pavlysh, 2023a).
- **Political situation.** The Constitution of Ukraine was adopted by the Verkhovna Rada of Ukraine (hereinafter – the Parliament of Ukraine) on June 28, 1996. It provides that Ukraine is a unitary democratic republic (Constitution, 1996: part 1 of Article 1, part 2 of Article 2, part 1 of Article 5). State power in Ukraine is exercised based on its division into legislative, executive and judicial (Constitution, 1996: part 1 of Article 6). In Ukraine, the single body of legislative power is Parliament – Verkhovna Rada of Ukraine (Constitution, 1996: Article 75). Executive power is exercised by the Cabinet of Ministers of Ukraine (the highest body in the system of executive bodies), to which ministries and other executive power bodies are subordinated<sup>5</sup>. Judicial power in Ukraine is exercised by independent and impartial courts established by law.

The President of Ukraine is the head of state and speaks on its behalf. He/she does not belong to any of the branches of state power, but is a guarantor of state sovereignty, territorial integrity of Ukraine, compliance with the Constitution of Ukraine, human and citizen rights and freedoms, as well as the implementation of the state's strategic course to acquire full membership of Ukraine in the European Union and the North Atlantic Treaty Organization. The

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<sup>2</sup> GlobalEDGE, <https://globaledge.msu.edu/countries/ukraine>

<sup>3</sup>UkraineInvest, <https://ukraineinvest.gov.ua/en/invest-in-ukraine-now-2/key-facts-figures-about-ukraine/>

<sup>4</sup> The World Bank states that Ukraine's GDP amounted to 199.7 billion of US dollar in 2021. Conversation into Euro is done considering exchange rates as of 31.12.2021.

<sup>5</sup> Government portal. Unified web portal of executive authorities of Ukraine, <https://www.kmu.gov.ua/catalog>

President of Ukraine is elected by the citizens of Ukraine for a term of five years (Constitution, 1996: Article 102, part 1 of Article 103). The last regular elections of the President of Ukraine were held on March 31, 2019, and Volodymyr Zelenskyy (political party “Sluha Narodu”) won them.

Verkhovna Rada of Ukraine consists of 450 People’s Deputies of Ukraine, who are elected for five-year terms (Constitution, 1996: part 1 of Article 76). Currently, the Ukrainian Parliament has only 424 people’s deputies of Ukraine, because it was impossible to hold elections in the Autonomous Republic of Crimea and certain parts of the Donetsk and Luhansk regions of Ukraine due to Russia’s illegal occupation. The composition of the current Verkhovna Rada of Ukraine that was elected in extraordinary parliamentary elections on July 21, 2019, is formed by the following political parties: centre-liberal party “Sluha Narodu” (254 mandates), social party “Oposutsiyna Platforma – Za Zhyttya” (43), centre party “Batkyvschchyna” (26), conservative centre-right party “Evropeyska Solidarnist” (25), liberal party “Golos” (20), social-democratic party “Oposutsyynnyy Blok” (6), Christian-democratic party “Samopomich” (1), centre party “Yedynyj tsentr” (1), conservative nationalist All-Ukrainian Union “Svoboda” (1), liberal party “Bila Tserkva Razom” (1) (Rzheutska, 2019).

It is worth noting that the legislation of Ukraine prohibits the formation and activity of political parties whose program goals or actions are aimed at eliminating the independence of Ukraine, changing the constitutional order by violent means, violating the sovereignty and territorial integrity of the state, undermining its security, illegal seizure of the state power, propaganda of war, violence, on inciting inter-ethnic, racial, religious hostility, encroachment on human rights and freedoms, health of the population (in particular, part 1 of Article 37 of the Constitution of Ukraine). A similar prohibition is established by the Law of Ukraine “On Political Parties in Ukraine”. Moreover, the specified Law contains additional grounds for banning the activities of political parties, which include cases when the program goals or actions of political parties are aimed at the propaganda of communist and/or national socialist (Nazi) totalitarian regimes, armed aggression of Russia against Ukraine, their symbols etc. (part 1 of Article 5). The activity of political parties can be prohibited through the courts (part 3 of Article 5 of the Law of Ukraine “On Political Parties in Ukraine”). Based on the above-mentioned rules the courts of Ukraine have banned the activities of at least 16 political parties, including the pro-Russian Opposition Platform — For Life party (“Oposutsiyna Platforma – Za Zhyttya”) since June 2022 (Feshchenko, 2022).

- **Description of the media market.** In Ukraine, print mass media are mostly private. During 2016-2018, 90% of the editorial offices of Ukrainian state and municipal printed editions were reformed into enterprises of private ownership. In 2021 and 2022, two state-owned print media were published in Ukraine – the newspapers “Golos Ukrainy” and “Uryadovyj Kurier”, which officially published laws, other normative legal acts, as well as news, analytics etc.

The sphere of television and radio broadcasting is represented by private, state, municipal mass media and a public broadcaster. As of December 31, 2021, there were 1,306 television and radio organizations and program service providers registered in Ukraine. They conducted activities according to the following types of broadcasting: satellite television – 109 licensees; satellite radio broadcasting – 3; terrestrial television – 118; terrestrial radio – 335; cable – 143; wired – 84; multi-channel television – 163; multi-channel radio broadcasting – 12; software service providers – 595. Of them, 7 licensees were state-owned, 151 – municipal, 1148 belonged to other types (in particular, private)<sup>6</sup> (reply of the National Council of May 9, 2023, to the request of D. Opryshko). As of December 31, 2022, the number of television and radio organizations and program service providers declined. It was connected with Russian armed aggression (some organizations and program service providers were located on the occupied Ukrainian territories and temporary terminated their activities due to this fact; others had to close down because of the financial difficulties that deepened with the beginning of Russian full-scale invasion) and shift from wire broadcasting to terrestrial and digital broadcasting.

The Law of Ukraine “On Media”, adopted in December 2022, provides that municipal television and radio organizations shall be reorganized into local public audiovisual media. This process shall start on September 30, 2023. However, in the event if the martial law is in force, the reorganization will begin after its termination or cancellation. However, for municipal television and radio organizations located in the temporarily occupied territories of Ukraine, this process will begin much later, namely in 6 months from the moment of full restoration of the constitutional order of Ukraine on these territories (Law № 2849-IX of 2022: clause 38 of the Final and Transitional Provisions).

In 2021 and 2022, several events that had a significant impact on the television market in Ukraine took place. On February 2, 2021, sanctions were imposed against a number of legal entities broadcasting on the TV channels “112 Ukraine”, NewsOne and ZiK that included, in particular, cancelling or suspending licenses and other permits, the receipt (existence) of which is a condition for carrying out of a certain type of activity; prohibiting the use of radio frequency resource of Ukraine; terminating the provision of services of retransmission/distribution of television programs/provision of telecommunications services and the use of public telecommunications networks (Decision of the NSDC of 2021). This resulted in the termination of their broadcasting. Such a decision is connected with the fact that these TV channels systematically rebroadcast Russian disinformation and propaganda (Radio Svoboda, 2021). Another significant event was the unification of nationwide TV channels, the content of which consists mainly of information and/or information-analytical programs, into a 24-hour information marathon “Unified News #UArazom” (hereinafter – Unified telemarathon). This happened in

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<sup>6</sup> The indicators of the total number of licensees and the indicators of the number of licensees by type of broadcasting/activity differ, since one licensee may have several licenses with different types of broadcasting.

response to Russia's full-scale invasion of Ukraine and was based on a decision of the National Security and Defence Council (Decision of the NSDC of 2022). Currently, the telemarathon is created with the participation of the largest private media groups ("1+1", "Inter", StarLightMedia), the parliamentary TV channel "Rada" and the public broadcaster, which divided the airtime into 6-hour slots. Cooperation between TV channels is carried out on the basis of a memorandum (Korba, 2022). Initially, the telemarathon programs were prepared at the expense of the TV channels themselves, and later it began to be financed by the state. In 2023, the state allocated 146,722,482 UAH<sup>7</sup> to the telemarathon (Prozorro, 2023), while the funding of the public broadcaster remains extremely low: the budget for 2023 covers only 28.7% of its needs (CEDEM, 2022). At the beginning of the Russian full-scale invasion, such format of protection of the information space was fully justified and provided the population with access to important up-to-date and verified information, contributing to the cohesion of society, but over time the need for the existence of a telemarathon becomes more and more questionable due to the threat it might pose to media pluralism and economic competition in the field of media. In addition, there are signs of a negative impact of the telemarathon on the right to freedom of expression due to the prevention to its creation of some TV channels (which led to the exclusion of three TV channels associated with the former President of Ukraine Petro Poroshenko from the digital broadcasting). In addition, the telemarathon began demonstrating its commitment to the representatives of the current state authorities more and more.

The year 2021 showed a trend towards a further decline in news consumption through traditional mass media (television, radio broadcasting, press). The main reason for this is the growing role of online news sites and social networks as sources of information. For example, in 2021, 63% of consumers received news from social networks, 48% – from online news sites, 46% – from television, 13% – from radio, and 7% – from print publications. The audience preferred national media when it came to social networks, internet news sites, television and radio broadcasts. At the same time, the opposite trend was observed in the field of print media, where preference was given to regional publications (InMind, 2021: 4, 5, 8-13). In 2022, there were significant changes in the consumption of news due to the full-scale invasion of Russia on the territory of Ukraine. There was a reduction in the consumption of news through television, radio, the press and Internet sites, due to the transition of the audience to social networks. The role of radio and print publications as sources of news has significantly decreased: radio was used by 11% of the audience, and print publications – only 3%. In addition, regional news consumption increased significantly in 2022 (across all media types, but a particular increase was observed for radio and internet sites). Smartphone was the main means of getting news, and Telegram was the main source of news, while Facebook has lost its lead in this category, compared to 2021 (InMind, 2022: 4, 5, 8). Studies show that after February 24, 2022, 63.3% of Ukrainians started reading

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<sup>7</sup> It amounted to EUR 3,622,208.78 as of April 20, 2023



Telegram channels to receive news, while only 35.9% did so before the full-scale invasion. After the beginning of the full-scale invasion of Russia into Ukraine, the authorities began to actively create their own telegram channels for direct and fast communication with the population (Dutsyk et al., 2023: 4).

## 2. Fundamental Protection

*In 2021, legal regulation aimed at protection of the right to freedom of expression was quite effective in Ukraine. The right to access to public information has gained additional protection owing to the ratification of the Council of Europe Convention on Access to Official Documents. Access to the journalistic profession remained free and easy. The most common violation of the right to freedom of expression was physical aggression against journalists. In 2021, the independence of the media regulator – the National Council of Ukraine on Television and Radio Broadcasting – had been strengthened at the legislative level. The situation has changed significantly since the beginning of the full-scale invasion of the Russian Federation on the territory of Ukraine on February 24, 2022. Due to the introduction of the legal regime of martial law in Ukraine, restrictions on the right to freedom of expression were introduced. Ukraine has been forced to derogate from its obligations under Article 19 of the International Covenant on Civil and Political Rights and Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms. In the illegally annexed Crimea and in the occupied territories of Ukraine – that is, on the territories not under the control of the Ukrainian authorities, the situation with the realization of the right to freedom of expression was extremely difficult, in particular due to the mass disappearances, tortures, murders etc. of media workers and civil journalists, committed by occupier authorities, as well as in connection with the forced application of significantly stricter Russian media legislation.*

- **Protection of freedom of expression**

In Ukraine, the right to freedom of expression is guaranteed to everyone, and censorship is prohibited (part 3 of Article 15, Article 34 of the Constitution of Ukraine). Ukraine is a party to such international agreements as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (hereinafter – the International Covenant), the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the European Convention), the Council of Europe Convention on Access to Official Documents (hereinafter – the Tromsø Convention), which contain guarantees of the right to freedom of expression. The European Convention and the case-law of the European Court of Human Rights are the source of law in Ukraine (Law № 3477-IV of 2006: Article 17). In 2021, there was an improvement of implementation of European standards in the field of media both by representatives of the executive authorities and the courts. The full-scale invasion of Russia on February 24, 2022 became a serious challenge to the right to freedom of expression in Ukraine. Ukraine forcibly withdrew from its obligations under Article 19 of the International Covenant and Article 10 of the European Convention (CN65.2022.TREATIES-IV.4 ; JJ9325C Tr ./005-287). The withdrawal is carried out on the basis of the Decree of the President of Ukraine “On the introduction of martial law in Ukraine” (Decree № 64/2022) and on its continuation (in particular, Decree № 58/2023), approved by the relevant Laws of Ukraine (in particular, Law № 2102-IX of

2022, Law № 2915-IX of 2023). Derogation from obligations is carried out for the duration of the legal regime of martial law and is in line with the international principles and standards in this area (Apostol, 2022: par. 167). In addition, amendments and additions to the Criminal Code of Ukraine that may have an impact on the freedom of expression in Ukraine (CCU, 2001) were adopted. Some of the novelties are limited in time (for example, Article 114-2 of the Criminal Code applies only in the circumstances of martial law or a state of emergency), while others do not have such time limits, creating potential threats to the right to freedom of expression in the future (for example, Article 435-1 of the CCU).

**Sphere of online media.** In 2021 and 2022, the sphere of online media in Ukraine was not regulated by the special legislation (the exceptions included relations in the field of copyright and related rights and the distribution of child pornography). However, the massive systematic disinformation campaigns of the Russian Federation against Ukraine, were becoming an increasingly serious threat to Ukraine's national security from year to year. This factor became one of the main reasons for the adoption of the Law of Ukraine "On Media" at the end of 2022, aimed, in particular, at regulation of the online media activities (Opryshko, 2023).

- **Access to public information**

In Ukraine, the right to access to public information is guaranteed by Ukrainian legislation. The Law of Ukraine "On Access to Public Information" (Law № 2939-VI of 2011) is based on the best international standards and is recognized as one of the best in the world in this field<sup>8</sup>. In addition, on May 20, 2020, Ukraine ratified the Tromsø Convention, due to which the mentioned Convention entered into force in December 2020. In connection with the Tromsø Convention's entry into force, the process of its implementation has begun. In particular, representatives from Ukraine were elected to the convention bodies (Groups of Specialists and Consultations of the Parties) and the work on the preparation of a draft law on the implementation of the provisions of the Tromsø Convention began. The biggest challenge was that the rules of Ukrainian legislation provided significantly wider protection of the right to access to public information compared to the norms of this Convention. For instance, in Ukraine the circle of subjects that shall provide information upon the request is much wider, comparing to the Tromsø Convention; the Law "On Access to Public Information" obliges administrators of information to provide information upon the request, forbidding them to refer to a publicly available source, when, on the contrary, the Tromsø Convention expressly allows to do so. The work on the preparation of a draft law on the implementation of the provisions of the Tromsø Convention was not finished due to the full-scale invasion of Russia to Ukraine. During the war in 2022, the state of compliance with the right to access to public information significantly deteriorated

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<sup>8</sup> In 2020 the Law of Ukraine "On Access to Public Information" took 17-19 place in the RTI rating (three states scored 115 points out of 150). Source: <https://dostup.pravda.com.ua/news/publications/2020-ukrainskyi-zakon-pro-dostup%E2%80%A6-tsohorich-posiv-17-19-mistse-u-sviti-koly-povernennia-v-top-10> ; <https://www.rti-rating.org/>

(Vdovenko, 2023; Vashchuk-Ogdanska, 2022). The major problems included restriction of public access to the state registers which were previously opened; suspension consideration of inquiries in connection with Russian armed aggression; missing deadlines for providing replies or for publication of public information on official websites etc. Starting from May-June 2022 the situation began to improve, however still causes concerns.

- **Journalistic profession, standards and protection**

**Access to the profession.** Access to the journalism profession in Ukraine is quite easy. According to the legislation of Ukraine, effective in 2021 and 2022, the status of a journalist could be confirmed by an editorial identification or other document issued to him/her by the editorial office of a printed mass media (Law № 2782-XII of 1992: Article 25) or a television and radio organization (Law № 3759-XII of 1993: part 4 of Article 58) or by a service certificate of an information agency or other document issued to him/her by such agency (Law № 74/95-BP of 1995: part 2 of Article 21). In addition, the professional affiliation of a journalist can be confirmed by a document issued by a professional association of journalists. For example, the National Union of Journalists of Ukraine<sup>9</sup> (hereinafter – NUJU) is authorized to issue membership cards to its members. In order to obtain such a document, a person who has reached the age of 18 should have applied to the regional organization of NUJU with a corresponding application, creative materials attached to it, as well as recommendations from two members of NUJU. After considering the application, the board or commission of the board of the regional organization of the NUJU makes a decision on admission of a person to the membership of the NUJU<sup>10</sup>. Bloggers can also become members of NUJU, which is explicitly stated on the websites of some of their regional organizations.

**General state of the environment.** In 2021, the Institute of Mass Information (hereinafter – IMI) recorded 197 violations of freedom of speech, of which 145 cases were related to physical aggression against journalists (Institute of Mass Information, 2022). These statistics differ from the official ones. According to the Office of the Prosecutor General of Ukraine, 122 cases of criminal offenses against journalists were registered during this period (Office of the Prosecutor General of Ukraine, 2021).

In 2022, the statistics of offenses committed against journalists have changed significantly. IMI experts recorded 567 cases of violations of freedom of speech, of which 470 violations were committed by the Russian Federation (that is, 80% of the total number) (Institute of Mass Information, 2023). According to IMI, the offenses committed by Russia include murders, kidnappings, shooting and wounding of journalists, shelling, destruction of TV towers, threats and attacks on media editorial

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<sup>9</sup> The National Union of Journalists of Ukraine is an All-Ukrainian union that comprises mostly of representatives of regional media.

<sup>10</sup> National Union of Journalists of Ukraine. The Charter, <http://nsju.org/wp-content/uploads/2020/01/nsju-statut.pdf>

offices, cybercrimes, shutting down Ukrainian broadcasting, as well as appropriation of local mass media by the occupation authorities and using their brands to disseminate aggressive Russian propaganda. At the same time, the number of violations of the right to freedom of expression by Ukraine more than halved – 97 relevant cases were recorded. Although these statistics traditionally do not coincide with the official ones (the Office of the Prosecutor General of Ukraine reported 42 criminal proceedings regarding criminal offenses committed against journalists in 2022 (Office of the Prosecutor General of Ukraine, 2022), the number of offenses committed against journalists on the territory controlled by the Ukrainian Government has decreased significantly. In addition, it cannot be bypassed by the fact that in 2022, there were problems with the accreditation of journalists in the war zones<sup>11</sup>. However, as a result of joint efforts, the representatives of the state bodies and the media community concluded a memorandum in which they agreed on the rules of media work in circumstances of war (Opryshko, 2022). It is also worth noting that during 2021 and 2022, strategic lawsuits against public participation (SLAPP) and cases on the protection of honour, dignity and business reputation were not a systemic problem in Ukraine.

**Crimea and the occupied territories of Ukraine.** On the mentioned territories that were not under the control of the Ukrainian Government, the situation with independent journalistic activities was difficult. The forced re-registration of Crimean media in accordance with the requirements of Russian legislation (which began in 2015 [PPPJS, 2015]) made the activity of media that were in the opposition to the occupation authorities virtually impossible. In 2021, the practice of kidnapping journalists and public activists, torturing, making pressure and intimidating them continued (PPJS, 2021a), as well as the conduction of show trials with the deprivation them of liberty for significant terms (PPPJS, 2021b; PPPJS, 2021c). After the start of the full-scale invasion, the situation deteriorated significantly. Russia demanded that the media cover the war in Ukraine, according to the strict standards of Russian legislation (PPPJS, 2022a), journalists and public activists were killed (PPPJS, 2022b; PPPJS, 2022c; PPPJS, 2022d), tortured (PPPJS, 2022e), kidnapped (PPPJS, 2022f), detained (PPPJS, 2022g), sentenced to significant terms (PPPJS, 2022h), Russian forces fired at TV towers and destroyed newsrooms, simultaneously shutting down Ukrainian communications and blocking the Ukrainian segment of the internet, as well as access to Ukrainian web resources (Detector Media, 2022a; Nikitenko, 2023) .

- **Independence and effectiveness of the media authority**

The regulator in the field of television and radio broadcasting is the National Council of Ukraine on Television and Radio Broadcasting (hereinafter – the National Council).

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<sup>11</sup> In 2022, these problems included cases of very lengthy accreditations' issuing (until 24.02.2022 for the zone of the Joint Forces, after 24.02.2022 – for the frontline zone formed as a result of Russian full-scale invasion of Ukraine); introduction of new legal rules in the Criminal Code of Ukraine that complicated work of journalists highlighting events, connected with the war; cases of obstructing activity of accredited journalists by representatives of the state and local authorities as well as by private citizens.

The National Council consists of 8 persons, 4 of whom are appointed by the Verkhovna Rada of Ukraine, and 4 by the President of Ukraine for a term of 5 years. This principle of formation is important for assessing the independence of the said regulator, since as a result of the last presidential and parliamentary elections in 2019, one political force that is the “Sluha Narodu” party, came to power. Accordingly, the specified party gained influence on the appointment of members of the National Council, both under the quota of the President of Ukraine and the quota of the Parliament. The risk of political influence of the mentioned party existed not only during the appointment, but also during the early dismissal of members of the National Council. This is due to the fact that every year the activity of the regulator is assessed by the Parliament of Ukraine on the basis of its annual report. At the same time, the law does not provide clear criteria for the mentioned assessment. In the event of a negative assessment of the National Council’s activities, its members could be dismissed from their posts early. It is worth noting that the Law of Ukraine “On Media” adopted at the end of December 2022, should eliminate both problems. Despite the fact that this Law preserved the above-mentioned quotas for appointing members of the regulator (4 members from the President, 4 from the Parliament), the conditions for electing candidates for members of the National Council from the President of Ukraine have changed. From now on, the candidates under his quota shall be assessed by the competitive commission consisting of 5 people. The President shall appoint only those candidates that were recommended for taking the office as members of the National Council by this commission. Regulation on the competitive commission shall be adopted by the President of Ukraine. In addition, the Law no longer contains such grounds for early dismissal of members of the National Council as dismissal in case of a negative assessment of the regulator’s activity. This should reduce the political influence on the National Council.

Regarding the remuneration of members of the National Council, the following should be noted. In 2021, for the first time, guarantees of payment for their work were established at the level of law (Law № 1556-IX of 2021). Thus, it was provided for the following salaries: for the chairman of the National Council, it was 12 amounts the subsistence minimum for able-bodied persons, established on January 1 of the calendar year, for the first deputy chairman of the National Council – 11.5, for the deputy chairman of the National Council and the responsible secretary of the National Council – 11, for a member of the National Council – 10 amounts of the subsistence minimum for able-bodied persons, established on January 1 of the calendar year. During the preparation of the draft of this law, higher salaries were foreseen to guarantee greater independence of the regulator. However, in the conditions of the war and the decline of the economy by almost 30%, the existing wages may be justified. They are not critically low from the point of view of ensuring the independence of the National Council. For example, in May 2021, the Chairman of the National Council received approximately 1,300 euros (Ukrainian News, 2021a), in August 2021 – 1,950 euros (Ukrainian News, 2021b), and in January 2022 – 1,550 euros (Ukrainian News, 2022). In addition, in 2022, the powers of the National Council were strengthened in circumstances of war. The corresponding law (Law № 2534-IX of 2022) was intended to solve problems related, in particular, to the granting and termination of licenses and permits and bringing to liability during martial law.

However, the most important change was the adoption of the Law of Ukraine “On Media” on December 13, 2022, that entered into force on March 31, 2023, and drastically changed the role of the National Council in regulating the media sphere in Ukraine. It became a unified regulator for all subjects in the sphere of media (audiovisual media, print media, online media, providers of audiovisual services, providers of video sharing platforms, providers of electronic communication services for broadcasting needs using the radio frequency spectrum), therefore the scope of its powers was significantly broadened.

It is worth noting that as of 2021 and 2022, there was no separate independent regulator in the field of print media and information agencies. However, the Ministry of Justice of Ukraine played an important role in this area. According to the legislation of Ukraine, effective as of 2021 and 2022, print mass media and news agencies had first to register as legal entities or individuals-entrepreneurs, and after – to register print media or information agencies, founded by them, within the Ministry of Justice of Ukraine, receiving relevant certificate about registration. The Ministry of Justice of Ukraine monitored the implementation of the Law of Ukraine “On Printed Media (Press) in Ukraine” regarding the prevention of monopolization of the press, which took place during the mentioned registration procedure. In case of violation of the requirements of the Ukrainian legislation on the protection of economic competition, as well as in other cases provided for by law, the Ministry of Justice of Ukraine had the right to refuse to issue the mentioned certificates, which made it impossible to carry out information activities. In addition, the Ministry of Justice of Ukraine had the right to apply to the court with a claim for the termination of the publication of print mass media or an information agency in the event of significant violations of the legislation of Ukraine.

### 3. Market Plurality

*In 2021 and 2022, the right of the public to know the ultimate beneficial owners of audiovisual mass media and program service providers was ensured in Ukraine. However, this did not make it possible to properly assess the level of concentration in the media market. In its turn, as of 2022, the Antimonopoly Committee of Ukraine – a special state body in the field of economic competition protection – has not conducted research on this issue. On the eve of the war, there was a trend towards rapid growth of the advertising market in Ukraine, which was ahead of the forecasted indicators (All-Ukrainian advertising coalition, 2021). However, after February 24, 2022, due to the full-scale invasion of Russia, it completely collapsed, what had an extremely negative impact on the activities of mass media.*

- **Transparency and concentration of media ownership**

In 2015, legislation of Ukraine was amended, and rules on transparency of media ownership were introduced (Law № 674-VIII of 2015). According to the Law of Ukraine “On Television and Radio Broadcasting”, effective as of 2021 and 2022, subjects of information activities in the field of television and radio broadcasting (television and radio organizations, program service providers etc.) were obliged to publish information that makes it possible to identify all persons who have direct and/or indirect significant participation in a legal entity or the possibility of significant or decisive influence on the management and/or activity of a legal entity, including control relationships between all persons in the chain of corporate rights ownership regarding this legal entity, as well as to determine the ultimate beneficial owner on their official website and annually submit to the National Council. Failure to comply with these requirements could result in a refusal to issue a broadcasting license, return of the documents, a fine, cancellation of a broadcasting license of a television and radio organization or cancellation of a license of a program service provider through the court (Law № 3759-XII of 1993: part 4 of Article 12, part 7 of Article 24, part 3 of Article 30, part 3, paragraph 2 of part 7 of Article 40, part 11, part 13 of Article 72). Links to the web pages where licensees publish annual reporting information on their ownership structure are published by the National Council on its website. Therefore, the specified information is publicly available. Almost all broadcasters have published this information on their websites. It is worth noting that the requirements to publish information about their ownership structure did not apply to print mass media, information agencies and online media. However, with the adoption of the Law of Ukraine “On Media”, the range of entities that are required to provide information on their ownership structure will be expanded from 2023 significantly.

According to the Law of Ukraine “On Television and Radio Broadcasting” no individual or legal entity individually and/or jointly with a group of related persons had the right to control in any way, including through influence for the formation of management and/or supervisory bodies of a broadcasting organization or by exercising control over



the owner of a broadcasting organization, more than 35% of the total volume of the relevant territorial broadcasting market – national, regional or local (part 1 of Article 8). According to the Law of Ukraine “On Print Media (Press) in Ukraine” an individual or legal person could not be a founder (co-founder) or control more than 5% of such editions (Article 10). The legislation of Ukraine did not provide for any restrictions in the field of online editions. The Antimonopoly Committee of Ukraine did not conduct research on the concentration level of the media market of Ukraine (reply of the Antimonopoly Committee of Ukraine of 05/04/2023 to the request of D. Opryshko). Based on publicly available information, it can be concluded that in 2021 several private media groups were the main players in the field of television, namely: “1+1 Media”, “Media Group Ukraine”, Inter Media Group and StarLightMedia. In July 2022, “Media Group Ukraine” ceased its activities. However, it is difficult to estimate exactly what share each of these media groups had in the market due to the lack of relevant studies on the level of concentration of media ownership. At the same time, according to the research of the Industrial Television Committee, as of December 2021, the TOP-10 TV channels included the following: ICTV with an audience size of 1.34%, 1+1 (1.17%), STB (1.06%), Ukraine channel (0.92%), Novy Kanal (0.87%), Inter (0.60%), 2+2 (0.39%), TET (0.37%), NTN (0, 26%), K1 (0.16%)<sup>12</sup>. The indicated data is almost consistent with the results of another study, which recorded the ratings of TV channels in the context of news consumption (InMind, 2022: 17). TV channels “1+1”, “2+2”, TET belong to the media group “1+1 Media” (owner Ihor Kolomoiskyi); TV channels “STB”, “ICTV”, “Novy Kanal” – to StarLightMedia (owner Viktor Pinchuk), TV channel “Ukraine” – to “Media Group Ukraine” (owner Rinat Akhmetov); TV channels “Inter”, “K1”, “NTN” – to Inter Media Group (owner Dmytro Firtash) (Krytska, 2022). In the field of radio broadcasting, the following radio stations were among the most rated in the context of news consumption: “Lux FM”, “Ukrainian Radio”, “Hit FM”, “Autoradio Ukraine”, “Nashe Radio”, “Radio HB” (InMind, 2022: 17). There is no publicly available generalized information on the media groups that own the leading radio channels in 2021 and 2022. Similarly, there are no publicly available studies on the level of market concentration of printed and online mass media of Ukraine.

- **Viability of media**

As of 2022 in Ukraine, 95% of the entire advertising market and audience accounted for private television and radio organizations (Ukraine’s Answers to the EU Questionnaire on the Application for Membership, 2022: 100). According to the estimates of the All-Ukrainian Advertising Coalition, specialised industry associations, as well as the largest players of the advertising and communication market, rapid growth of the television advertising market was observed in 2021: compared to 2020, it grew by 12%. In 2021, in the field of print mass media, the tendency to increase the share of advertising that publishing companies attracted independently, was on average 70% (30% of advertising was placed by advertising agencies). According to the estimates of the Ukrainian Association of Media Business, in 2021, 50% of the

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<sup>12</sup> Industrial Television Committee. Top channels, <http://tampanel.com.ua/uk/rubrics/canals/>

volume of advertising revenues of Ukrainian publishers consisted of revenues from the print press, and 50% – from revenues from digital media. The press advertising market grew by 9.05% compared to 2020. Significant growth was also observed in the radio advertising market – it amounted to 19% compared to 2020. In 2021, the digital (internet) advertising market grew by 55%, compared to the previous one (All-Ukrainian advertising coalition, 2021). At the same time, 2021 has become a crisis year for a number of print media. It was connected, inter alia, with the economic crises, COVID-19 pandemic and the loss of advertisement revenues. A survey of 150 newspaper editors showed that 85% of publications lost advertisers; every third newspaper reduced the number of issues or the volume of issues. Almost 40% of editorial offices refused new projects. Every twentieth editorial office temporarily suspended publication, and the same number stopped publication. In addition, almost 40% of newsrooms reduced staff, 50% reduced wages, and almost 14% sent journalists on unpaid leave. The workload on the remaining employees has increased in 55% of editorial offices (Resolution of the All-Ukrainian Meeting of Newspaper Editors, 2021). During this time, media began to use new models of monetization, in particular, due to money received from readers: paywalls (paid access to materials), donations from readers, subscriptions (repeated donations from readers), memberships (additional bonuses, opportunities to communicate with the editorial offices, additional content). This contributed to the improvement of their viability. Thus, in 2021, the greatest number of problems related to media activity were observed in the field of print media.

Despite the optimistic forecasts, the full-scale Russian invasion led to an enormous decrease in the advertising market. Thus, in 2022, direct advertising on television has decreased by almost 80%, and sponsorship – by 87%. According to experts, the gradual recovery of the market began in August 2022, and in the fall, the volumes of the television advertising market were already almost a third of the 2021 level. With the beginning of the full-scale invasion, the advertising market in the print media collapsed to zero. According to experts, advertisers began to cautiously return to the press advertising market from May 2022, and during the summer, the volume of placements reached the level of 25-30% compared to the volume of 2021. Overall, in 2022, the print media advertising market has decreased by 79%. The smallest decline was observed in the radio advertising market, which was 61%, and in the digital (internet) advertising market – 42% (All-Ukrainian advertising coalition, 2022).

The legislation of Ukraine, effective as of 2021 and 2022, did not include the term “state advertising”. At the same time, the state bodies and bodies of the local self-government had the right to enter into agreements on the coverage of their activities with mass media (Law № 539/97-BP of 1997: Articles 2, 5). The amount of funds provided in the local budgets for the mentioned purposes was insignificant, and the information placed in the mass media under a paid agreement with a subject of authority was not considered as advertising within the meaning of the Law of Ukraine “On Advertising” (Ukraine’s Answers to the EU Questionnaire on the Application for Membership, 2022: 109). In addition, the authorities could distribute social advertising, which was usually free of charge. Forms of state support for the mass media in the specified time period included: financing of the public broadcaster; payment to the

mass media for coverage of the activities of state authorities or local self-government bodies on the basis of concluded contracts; financing of official printed editions of state bodies, which usually publish information about adopted, amended or invalid normative legal acts; financing of subjects of state foreign broadcasting; reduction of administrative costs of mass media (for example, in accordance with the Tax Code of Ukraine, operations on the supply [subscription] and delivery of periodicals of the mass media [except for erotic publications] of domestic production are exempted from taxation with value added tax [20% of the tax base], as well as for the fee for issuing a broadcasting license radio broadcasting in digital multi-channel television networks, is reduced by 90%, etc.). The legislation of Ukraine, valid as of 2021 and 2022, also provided for the provision of state support to mass media in which the representative bodies independently directly own at least 51% of the authorized capital and/or voting rights of shares (parts, shares) of the mass media, if such mass media, in accordance with a broadcasting license or a temporary broadcasting permit, carry out at least 50% of broadcasting in the languages of the Indigenous peoples of Ukraine and/or devote at least 50% of the broadcasting to issues of the realization of the rights of the Indigenous peoples of Ukraine in accordance with the Law of Ukraine “On Indigenous Peoples of Ukraine” (Ukraine’s Answers to the EU Questionnaire on the Application for Membership, 2022: 109-110). This should support the activities of the media of indigenous peoples that face financial difficulties, stimulate the creation of new media of indigenous peoples as well as wider coverage of their life, culture and traditions. In addition, the legislation of Ukraine provided for the possibility for reformed print mass media to rent premises that were in state or municipal property and in which they were at the time of reformation on preferential terms (Law № 917-VIII of 2015: part 2 of Article 9).

In 2019-2020, prepaid circulations of Ukrainian print mass media decreased by one and a half million copies and, as of January 1, 2021, amounted to 6,300,000 copies. The largest decline was experienced by the circulation of local newspapers, the total subscription circulation of which amounted to 2 million 250 thousand copies in 2021, which is one million less than in 2019 (3.3 million copies) (NUJU, 2021). Such a significant decrease in circulation is connected with several factors: the COVID-19 pandemic; the financial difficulties and unstable situation in which the media found themselves, in particular due to the denationalization reform carried out in 2016-2018; the imperfect system of distribution of printed media by the Ukrainian post office (NUJU, 2021; Dragomir, 2021: 27). According to the Ukrainian post office, there were 148 newspapers that closed down in 2021 (for 2020-2021, the total number of closed down newspapers is 290 editions or 770 indexes in the subscription catalogue, what is around 21% of the total number of indexes) (Ukrposhta, 2022). This became one of the reasons for a 10% decrease in subscriptions to printed publications in 2022, compared to 2021 (Detector Media, 2022b). In 2022, problems related to paper and the delivery of printed media became particularly acute. Thus, according to the president of the Ukrainian Media Business Association, the availability of newsprint became a matter of state security during the war, since before it began, more than 90% of paper for printing newspapers was imported from Russia and Belarus (Dan’kova, 2022). In addition, since the beginning of the war, further problems arose for the stable work of media: shelling and partial destruction of television towers, the

destruction of the telecommunications and energy infrastructure of Ukraine, on which, in particular, the functioning of the Internet depends, the shutdown of Ukrainian broadcasting, the physical destruction of media equipment and premises, which makes it impossible to quickly restore the work of mass media and requires significant financial investments to bring them back to life. The full-scale war resulted in the termination of 216 media outlets due to the fact that some of them were in combat zones or under occupation, as well as due to the financial crisis caused by the war (Institute of Mass Information, 2023). The latest publicly available studies of the labour market in the field of media indicate that in 2019, the average salary of a journalist was 18 thousand hryvnias<sup>13</sup> after the employer paid all taxes (Garus, Yanitskyi, 2019: 28). According to other data, it ranged from 7,300 UAH to 19,700 UAH<sup>14</sup>, depending on the position, functions, number of written materials, etc. (Happy Monday, 2020: 8).

- **Editorial independence from commercial and owner influence**

The legislation of Ukraine prohibits demanding from a journalist, a subject in the field of media, its founder (co-founder), publisher, manager, distributor to agree on information before its dissemination or to impose a prohibition or to prevent the reproduction or dissemination of information in any other form. In addition, it is prohibited to interfere in the professional activities of journalists and to control the content of disseminated information, in particular with the aim of spreading or not disseminating certain information, silence publicly necessary information, impose a prohibition on coverage of certain topics, show individuals or disseminate information about them, prohibiting criticizing subjects of authority, except for cases established by law, by the contract between the founder (owner) and the labour collective, by editorial statute (Law № 2657-XII of 1992: parts 1, 2 of Article 24). Obstructing the professional activity of journalists; threats or violence against a journalist, his close relatives or family members; attempt on their lives; taking them as hostages in connection with the journalist's performance of his/her professional activities, is subject to criminal liability. The journalist also has the right to refuse to publish the material under his/her own signature, if its content after editorial correction contradicts the personal beliefs of the author (Law № 2657-XII of 1992: part 6 of Article 25). In addition, he/she is obliged to refuse the order of the editor (chief editor) or the editorial office, if it cannot be performed without violating the law (Law № 2782-XII of 1992: clause 10 of part 2, clause 4 of part 3 of Article 26). However, despite legal guarantees, human rights organizations report censorship cases in some mass media. This is evidenced by the results of a journalists' survey (Bondarenko, Pechonchyk. et al., 2023: 7). Censorship was carried out both by the authorities and by media owners. In addition, there were cases of journalists' self-censorship. It is worth noting that the majority of those interviewed consider the United telemarathon a form of censorship and are of the opinion that it should be stopped. The legislation of Ukraine prohibits

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<sup>13</sup> Approximately 680 euros as of 12/30/2019

<sup>14</sup> Approximately 280-750 euros as of 12/30/2019

hidden advertising (Law № 270/96-BP of 1996: part 5 of Article 9), however, in practice it (so-called “jeans”) is quite common<sup>15</sup>.

Ukraine is characterized by the influence of the so-called oligarchs<sup>16</sup> on media. The number of oligarchs in Ukraine is estimated differently: from 11 to 86 people (Vinnichuk, 2019; Tarasovskyi Y., 2022). In 2021, the Parliament of Ukraine adopted the so-called “anti-oligarchic Law” (Law № 1780-IX of 2021) with the aim to reduce the influence of big business on mass media. It is worth noting that the implementation of this Law with taking into account the relevant opinion of the Venice Commission, is one of the requirements of the European Union to confirm status of Ukraine as a candidate (COM (2022)407 final). However, the Venice Commission underlined in its Opinion of 12 June 2023 that the “anti-oligarch” Law cannot be seen as a democratic response to the oligarchisation, inter alia, because of the vagueness of the criteria used to designate a person as an “oligarch”, the broad discretion of the decision-making body in interpreting and applying these criteria, the lack of independence/impartiality of this body, the lack of due process guarantees and effective remedies afforded to persons designated as “oligarchs”, as well as the lack of proportionality and consideration for other less-intrusive measures. The Venice Commission recommended to legally defer the implementation of this Law and to apply a “systematic” approach to address the problem of oligarchisation in Ukraine that includes various measures in different spheres (inter alia, in the areas of competition policy, prevention of corruption, public procurement policy, anti-money laundering policy, judicial system etc.) (CDL-AD (2023)018: 13, 16, 17). At the same time, it is worth mentioning, that in connection with the full-scale invasion of the Russian Federation, the influence of the oligarchs on the media environment has significantly decreased. It is connected both with their loss of a significant share of their assets and political influence, and with the strengthening of the role of the state in the field of media (in particular, through the holding of the United telemarathon).

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<sup>15</sup> Institute of mass information. Research of “jeans”, <https://imi.org.ua/monitorings/doslidzhennya-dzhynsy>

<sup>16</sup> An oligarch is a person who directly or indirectly influences the economic and political life of the country and plays a significant role in it.

## 4. Political Independence

*In Ukraine, state authorities and local self-government bodies have the right to establish television and radio organizations, but they do not have the right to be founders (co-founders) of print mass media. Since the Russian full-scale invasion state influence on media increased. In particular, it is connected with the unification of nation-wide TV channels, the content of which consists mainly of informational and/or information-analytical programs on a single informational platform of strategic communication – a 24-hour informational marathon “Unified News #UArazom”. That is, this refers to the strengthening of the influence of the state on television broadcasting. The impact on other types of mass media is much lower. There is a public broadcaster in Ukraine, 100% of whose shares belong to the state. Despite this, it remains independent due to the existence of special procedures for the appointment of the Supervisory Board, the Board and the Editorial Board. The legislation of Ukraine, in force at the time of the last elections of the President of Ukraine, the Parliament, as well as the elections of local self-government bodies, required mass media and news agencies to cover the course of the election process objectively and in a balanced way, giving the opportunity to express their views to each of the parties to the election campaign. However, during the elections, the influence of the owners on the mass media belonging to them, as well as violations of the Code of Ethics of the Ukrainian journalist, were recorded.*

- **Political independence of the media**

The legislation of Ukraine, effective as of 2021 and 2022, granted the right to establish television and radio organizations to state authorities and local self-government bodies, as well as the right to be their owner. In Ukraine, there is a system of foreign broadcasting, which consists of the state enterprise “Multimedia platform of foreign broadcasting of Ukraine” and the Ukrainian national information agency “Ukrinform”; and the state enterprise “Parliamentary TV channel “Rada”. In turn, as of 2022, the state-owned enterprise “Multimedia Platform for Foreign Language of Ukraine” included the FREEDOM TV channel, the DOM TV channel, as well as two communication channels on the YouTube service and the Facebook social network (UATV ENGLISH and UATV ARABIC) (Jolos, 2023). In 2021 and 2022, the radio station of the Central Television and Radio Studio of the Ministry of Defence of Ukraine (logo “Army FM – military radio”) continued its work in Ukraine. With the beginning of the full-scale invasion, the state united a number of nationwide TV channels into the Unified telemarathon, and from the middle of 2022, it began to allocate funds from the state budget for its financing. In general, in 2022, almost 400 million UAH from state funds were spent on the production of television products (Pylypenko, 2023a). Of these, the largest amount of funds was received by Kinokit LLC, which journalists-investigators associate with the former Deputy Head of the Office of the President of Ukraine Kyryll Tymoshenko (Detector Media, 2022c), who held this position from June 2019 to January 2023. In addition, there are a large number of municipal television and radio channels established by local self-government bodies. They are financed

mainly from local budgets. Most of these broadcasters work in the FM range and have a limited audience and coverage (Ukraine's Answers to the EU Questionnaire on the Application for Membership, 2022: 101). It is worth noting that the Law of Ukraine "On Media", adopted at the end of 2022, obliges local self-government bodies to reorganize municipal television and radio organizations into local public audiovisual media (Law № 2849-IX of 2022: clause 38 of Section X).

In 2015, the Verkhovna Rada of Ukraine adopted a law (Law № 917-VIII of 2015) that determined the mechanism for reforming print mass media established by state authorities, other state bodies, and local self-government bodies into private ones. As of 2015, their number was more than 550 mass media (Ukraine's Answers to the EU Questionnaire on the Application for Membership, 2022: 100). During 2016-2018, about 90% of state and municipal print mass media were reorganized into private ones. According to the legislation in force as of 2021 and 2022, state authorities, other state bodies, and local self-government bodies did not have the right to act as founders (co-founders) of print mass media. The exceptions are two official printed publications: "Golos Ukrainy" and "Uryadovyj Kuryer", which publish laws, regulatory acts and other information. It is worth noting that after the denationalization, the influence of state authorities and local self-government bodies on the printed media significantly decreased. At the same time, due to the difficult situation with attracting funding, in particular in the advertising market, agreements concluded with state and local self-government bodies to cover the activities of the latter remained an important source of income for print media. In addition, during this time there was a certain tendency for local authorities to subscribe to printed publications (in the number of tens of thousands) in order to cover their work in these publications (Pylypenko, 2023b). Thus, there are certain signs that indicate the existence of influence of state and local authorities on some media. In 2022, the influence of the state increased significantly in all spheres of life in connection with Russia's war against Ukraine, including the media sphere. An example of such influence can be the creation of the United telemarathon.

- **Independence of PSM governance and funding**

There is one public broadcaster in Ukraine – JSC "National Public Television and Radio Company of Ukraine" (hereinafter – UA:PBC or public broadcaster). 100% of UA:PBC shares belong to the state. The legislation of Ukraine prohibits the alienation, transfer (except for short-term lease), privatization of real estate, objects of unfinished construction, land plots on which they are located, as well as shares belonging to the state in the authorized capital of NSTU (Law № 1227-VII of 2014: part 2 of the Article 1). However, despite formal state ownership, UA:PBC's independence is guaranteed through special procedures for the appointment of the Supervisory Board, the Board, and the Editorial Board.

The UA:PBC Supervisory Board includes one representative from the parliamentary factions and groups of the Verkhovna Rada of Ukraine of the current convocation and

nine members from public associations and associations, the main activity of which includes activity in the field of education and science; in the field of ensuring the rights of national minorities; in the field of physical education and sports; in the field of journalism; in the field of human rights protection; in the field of protecting the interests of children and youth; in the creative field; in the field of local self-government; in the field of protection of the rights of persons with special needs. If the number of members of the Supervisory Board of UA:PBC, elected from the parliamentary factions and groups of the Parliament, is equal to or exceeds the number of members elected from civil unions and associations, the National Council of Ukraine on Television and Radio Broadcasting holds an additional conference of all civil organizations that took part in the election of members of the Supervisory Board of UA:PBC, at which additional members of the Supervisory Board of UA:PBC are elected from civil unions and associations in a number that will ensure their excess by one person. A member of the Supervisory Board of UA:PBC, who was a member of any political party before being appointed to the position, suspends their membership in this party during the exercise of their powers. They cannot take part in party activities or carry out the instructions of the party, any of its bodies or officials. The term of office of members of the UA:PBC Supervisory Board is five years. Members of the Supervisory Board of UA:PBC exercise their powers on a free basis.

The board of UA:PBC is an executive body of the public broadcaster. Members of the UA:PBC board are elected by the Supervisory Board of the public broadcaster on the proposal of the chairman of the board for a term of four years.

The UA:PBC Editorial Board is a special supervisory body within the management bodies of the public broadcaster, which is formed from the creative workers of the UA:PBC in the composition of fifteen people: five people appointed by the Supervisory Board of the UA:PBC, five people elected by the general meeting of the creative team of the UA:PBC, and five persons who are appointed at the conference of the editorial boards of regional units of UA:PBC. The term of office of the members of the UA:PBC Editorial Board is 4 years (Editorial Charter, 2019: subsections 3.1.1, 3.1.2 of clause 3).

According to the legislation of Ukraine, UA:PBC is financed from the state budget, in the amount of not less than 0.2% of the expenditures of the general fund of the State Budget of Ukraine for the previous year. However, the problem of underfunding the activities of the public broadcaster remained one of the most urgent in 2021 and 2022. In 2021, the activities of UA:PBC were financed at the level of 85% of the amount stipulated by law (Zhuk, 2022), which is the highest rate for all the years of its existence. In 2022, UA:PBC funding was expected to be 77.8% of the legally guaranteed minimum (CEDEM, 2022). The mechanism for the use of funds provided for in the state budget from the general fund and from the special fund for the support of the public broadcaster is defined in the relevant Procedure for the use of funds approved by the Cabinet of Ministers of Ukraine (Procedure for the use of funds of 2017). The distribution of funds received from the budget is carried out by the State Committee on Television and Radio Broadcasting (hereinafter referred to as the STRC) in accordance with the justifications submitted by the UA:PBC. In turn, the



public broadcaster uses budget funds in accordance with the plan for the use of budget funds, agreed with the STRC. UA:PBC and its separate structural subdivisions submit information on the use of budget funds to the State TV and Radio Committee every quarter by the 20<sup>th</sup> of the following month. After summarizing, the STRC submits this information to the Ministry of Culture and Information Policy of Ukraine (by the 25<sup>th</sup> of the corresponding month). In turn, the Ministry of Culture and Information Policy of Ukraine submits a report on the use of budget funds by UA:PBC every quarter by the 30<sup>th</sup> of the corresponding month to the Ministry of Finance of Ukraine.

- **Audio visual media, online platforms and elections**

The legislation of Ukraine, in force at the time of the last elections of the President of Ukraine (2019), People's Deputies of Ukraine (2019), as well as local elections (2020), obliged mass media and news agencies to cover the election process objectively and in a balanced manner, giving each of the parties of the election campaign the opportunity to express their views (Law № 474-XIV of 1999: part 4 of Article 13, part 3 of Article 56-5; Law № 4061-VI of 2011: part 4 of Article 13, part 3 of Article 66; Law № 595-VIII of 2015: part 4 of Article 13, part 3 of Article 52, part 1 of Article 57). In December 2019, the Verkhovna Rada of Ukraine adopted the Election Code of Ukraine, which imposes a similar obligation on mass media and news agencies (Election Code of Ukraine: part 2 of Article 49). Despite the above, there are problems associated with independent and objective election coverage in practice. For example, during the last presidential elections of Ukraine, the facts of mass media being under the powerful influence of their owners were recorded. These mass media openly demonstrated their support for specific candidates and political actors throughout the election campaign. The only exceptions were public broadcasting and the website [hromadske.ua](http://hromadske.ua). In addition, a significant number of materials with a violation of journalistic standards and materials with signs of political ordering ("jeans") were recorded (Burmagin, Dutsyk, et al., 2019a: 18). Similar problems were fixed during the parliamentary elections (Burmagin, Dutsyk, et al., 2019b: 27, 29, 30). Monitoring of the local elections' coverage in online media and the Facebook social network confirmed the presence of a significant number of materials that contained signs of violations of the Ukrainian journalist's Code of Ethics. The main ethical violations recorded by the monitors concerned the violation of the public's right to full and objective information about facts and events; violations in terms of distinguishing of informational and analytical materials from advertising; violation of the standard of balance (as opponents points of view, in particular those who have become the object of journalistic criticism, shall be presented in a balanced way) (Burmagin, Dutsyk, et al., 2020: 20). In 2021 and 2022, issues related to the distribution of political advertising in mass media were regulated by the Election Code of Ukraine and the Law of Ukraine "On Advertising" (Law № 270/96-BP of 1996). The legislation of Ukraine guaranteed the subjects of the election process equal rights and opportunities to participate in the election process, which had to be ensured, in particular, by the equal and impartial attitude of the mass media and news agencies towards the subjects of the election process. The Election Code of Ukraine obliged the mass media and news agencies to

provide information on the course of the election process and events related to the elections, on the basis of balance, credibility, completeness and accuracy, objectivity of the information disseminated, accessibility in compliance with the requirements of the legislation on information and on mass media, norms of journalistic ethics (part 4, clause 5 of part 5, part 6 of Article 12 of the Election Code of Ukraine). In general, in practice, informing about the subjects of the election process was diverse. However, according to expert assessments, the majority of mass media (primarily TV channels) were under the strong influence of their owners and openly demonstrated support for one or another political forces (Burmagin, Dutsyk, et al., 2019a: 18; Burmagin, Dutsyk, et al., 2019b: 19). During the parliamentary election campaign, a small number of mass media, in particular the public broadcaster, remained relatively neutral and objective (Burmagin, Dutsyk, et al., 2019b: 19). In the national elections of 2019 and the local elections of 2020, social networks and messengers played a significant role. The legislation of Ukraine, valid for 2019-2022, did not regulate issues related to the coverage of the political process and the financing of political campaigns in social networks. In this regard, there were problems in distinguishing between ordinary content and political advertising, as well as difficulties in tracking the sources of funding for the advertising of the subjects of the election process (Burmagin, Dutsyk, et al., 2020: 17; Burmagin, Dutsyk, et al., 2019a: 44; Burmagin, Dutsyk, et al., 2019b: 48). On the Facebook network, political ads that did not contain proper labelling were blocked based on the internal policies of this social network (Burmagin, Dutsyk, et al., 2019a: 44-45).

## 5. Social Inclusiveness

*In 2021 and 2022, despite the legally enshrined right of territorial communities to create public television and radio organizations there was no community broadcasting in Ukraine. During this period, the problem related to Russian disinformation and aggressive propaganda, as well as the dissemination of hate speech, did not lose its relevance. To counter Russian disinformation, the state created two specialized institutions: the Centre for Countering Disinformation and the Centre for Strategic Communications and Information Security, as well as the National Media Literacy Project “Filter” were launched. In addition, there are powerful non-governmental fact-checking organizations whose activities are aimed at countering disinformation continued working in Ukraine (in particular, StopFake, VoxCheck, TEXTY.ORG.UA, Media detector (DisinfoChronicle project)).*

- **Local and community media**

In Ukraine, the vast majority of local and regional print press is private-owned. At the same time, municipal TV and radio organisations may be established by local communities (local councils). They were funded predominantly from local budgets. The majority of such broadcasters operate on the FM band and have limited audience and coverage (Ukraine’s Answers to the EU Questionnaire on the Application for Membership: 101).

The legislation of Ukraine, effective as of 2021 and 2022, provided for the possibility of creating civic television and radio organizations in order to meet the informational needs of territorial communities (Law № 3759-XII of 1993: Article 18). However, community media were not created. The situation should change after the entry into force of the Law of Ukraine “On Media”, adopted in December 2022. This law provides for the right of civic associations, as well as institutions, non-entrepreneurial societies or enterprises created for non-commercial activities, founded by them, to create entities in the field of audiovisual media of communities. Such subjects will carry out activities in communities united by a common interest (for example, nationality, language, profession, creative activity, hobbies). The status of a non-profit organization is a mandatory condition for their activity. In the event of a decision to cancel such status, the National Council shall decide to cancel the license of the subject in the field of broadcasting of communities or to cancel its registration (Law № 2849-IX of 2022: part 5 of Article 29, paragraph 3 of part 1 of Article 62, paragraph 3 of part 4 of Article 65).

- **Protection against misinformation and hate speech**

To combat the dissemination of disinformation in Ukraine, sanction legislation, namely the provisions of the Law of Ukraine “On Sanctions” (Law №1644-VII of 2014) was

primarily used. In particular, such restrictive measures included prohibition to use the radio frequency spectrum of Ukraine; restriction or termination of the provision of electronic communication services and the use of electronic communication networks; other sanctions that correspond to the principles of their application established by the Law of Ukraine “On Sanctions”. It is worth noting that such a type of restrictive measures as “other sanctions that correspond to the principles of their application established by the Law of Ukraine “On Sanctions” was used as a basis for blocking access to websites and subdomains, Russian social networks, internet services, what does not meet international standards in the field of freedom of expression. This approach of the legislator has been subjected to a lot of criticism from human rights defenders, representatives of the industry (Opryshko, 2019: 2-6) and international institutions due to its inconsistency, unpredictability, and also due to the granting of excessive discretionary powers to state authorities since 2017. It continued to be criticized on the same grounds in 2021 (Dvorovy, 2021) and 2022 (Digital Security Lab, 2022). However, despite this, it must be recognized that the prohibition on accessing Russian websites and social networks led to a significant decrease in the number of their Ukrainian users (Kazansky, 2017). In turn, this significantly reduced the influence of Russia’s aggressive policy on Ukrainian society. In addition, there is administrative responsibility for the dissemination of false rumours that can cause panic among the population, or a violation of public order is foreseen in Ukrainian legislation (Code on Administrative Violations, 1984: Article 173-1). However, despite 30 years of its existence, this rule was actively applied only at the beginning of the COVID-19 pandemic in Ukraine. Currently, there are only isolated cases of application of administrative responsibility for dissemination of false rumours. In 2021, the President of Ukraine approved the Strategy of Information security (Strategy of information security of 2021), in which the first strategic goal is to counter disinformation and information operations, and the third is to increase the level of media culture and media literacy in society. To fulfil these goals, two specialized state institutions were created: the Centre for Combating Disinformation, established within the National Security and Defence Council of Ukraine, and the Centre for Strategic Communications and Information Security within the Ministry of Culture and Information Policy of Ukraine (hereinafter – MCIP). In addition, in 2021, MCIP launched the National Media Literacy Project “Filter”, whose activities are aimed at increasing the level of media literacy in society. It should be noted that there are powerful fact-checking non-governmental organizations working in Ukraine, whose activities are aimed at countering disinformation. The most famous of them are StopFake, VoxCheck, TEXTY.ORG.UA, Media detector (DisinfoChronicle project).

Ukraine is a party to a number of international treaties aimed at countering hate speech and incitement to hatred. The legislation of Ukraine does not contain a definition of the term “hate speech”. However, the Criminal Code of Ukraine (hereinafter referred to as the Criminal Code) establishes criminal liability for the commission of intentional actions aimed at inciting national, regional, racial or religious hostility and hatred, at humiliating national honour and dignity, or for offending the feelings of citizens in connection with their religious beliefs, as well as for direct or indirect restriction of rights or establishment of direct or indirect privileges of citizens based on race, skin colour, political, religious and other beliefs, gender, disability, ethnic and social origin, property

status, place of residence, language or by other signs (Article 161 of the Criminal Code). Depending on the seriousness of the criminal offense, such actions may be punishable by a fine, imprisonment for a term of up to 8 years with or without deprivation of the right to hold certain positions or engage in certain activities for a period of up to three years. However, the lack of clarity in the formulation of the *corpus delicti* of the crime leads to the low effectiveness of the investigation of criminal offenses under this article, and therefore to problems with its enforcement (Martynovsky et al., 2021: 20). Accordingly, the level of its application in practice is low. In addition, during the researched period, the legislation of Ukraine prohibited the use of mass media and information agencies to incite hostility and hatred based on nationality, race, religion or other characteristics; propaganda of war and/or its incitement; propaganda of violence and cruelty, etc. For non-compliance with these requirements, disciplinary, civil, administrative or criminal liability measures could be applied to the offender. Thus, in case of violation of the above-mentioned prohibition, the National Council of Ukraine on Television and Radio Broadcasting could decide to fine television and radio organizations and/or program service providers for the amount of 25% of the license fee. An example of the National Council's application of sanctions for the dissemination of hate speech is the imposition of two fines, totalling UAH 239,089.50 (approximately 7,470 euros at the time) on a broadcaster (National Council, 2021). In addition to what has been said, it is worth noting that the Code of Ethics of Ukrainian Journalists determines that in the performance of his/her professional duties, a journalist cannot discriminate against anyone on the basis of language, race, religion, national, regional or social origin, or political preferences (Code of Ethics of Ukrainian Journalist: Clause 15). In the case of non-compliance with the provisions of the said Code, a warning, a statement or a statement in the form of a public condemnation may be issued regarding the offender. After the entry into force of the Law of Ukraine "On Media" (that is from March 31, 2023) the duty of journalists to comply with the Code of Ethics of a Ukrainian journalist was recognized at the legislative level.

## 6. Approximation of Ukrainian legislation in the field of media to European standards and the European Union's framework

During 2021 and 2022, Ukraine continued to actively work towards approximation of its legislation in the field of media to the European standards and the legal framework of the European Union. First of all, the draft law of Ukraine “On Media” was finalized after numerous discussions with a wide range of stakeholders and consideration of the comments of experts of the Council of Europe and the European Commission. One of the main goals of the mentioned draft is Ukraine’s implementation of the Audiovisual Media Services Directive<sup>17</sup>. It is worth noting that the implementation of the mentioned Directive is one of the requirements set by the European Union for Ukraine to confirm its candidate status (COM (2022)407 final). The draft law was highly evaluated by the European experts in the field of the right to freedom of expression (DGI (2023)03). It was adopted by the Parliament of Ukraine on December 13, 2022 and signed by the President of Ukraine on December 29, 2022. Most of the provisions of this Law entered into force on March 31, 2023. In addition, in 2023, amendments were made to the legislation of Ukraine (Law No. 3136-IX of 2023) with the aim of implementing the provisions of the Audiovisual Media Services Directive, in particular in the area of legal regulation of advertising, into the legislation of Ukraine. According to the representatives of the European Commission, Ukraine has successfully fulfilled the requirements of the European Union in the field of media<sup>18</sup>.

In addition, the Information Security Strategy (Strategy of information security of 2021) was adopted in 2021. The strategic goals set by Ukraine for the period until 2025 include, in particular, the fight against disinformation, increasing the level of media literacy of the population, ensuring the rights of individuals to freedom of expression, as well as ensuring the protection of the rights of journalists. There was an active work on the preparation of draft laws on improving the protection of the right to access to information (in particular, on the implementation of the norms of the Tromsø Convention) and strengthening the protection of journalists’ rights before the full-scale invasion of the Russian Federation. Due to armed aggression, the mentioned work was forcibly suspended.

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<sup>17</sup> Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive, AVMSD), as amended by the Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018

<sup>18</sup> Press remarks by Neighbourhood and Enlargement Commissioner Olivér Várhelyi, following the informal General Affairs Council, [https://ec.europa.eu/commission/presscorner/detail/en/statement\\_23\\_3460](https://ec.europa.eu/commission/presscorner/detail/en/statement_23_3460)

## 7. Relevant legislation of Ukraine

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2. Code on Administrative Violations (1984) Code of Ukraine on Administrative Violations of 07.12.1984 № 8073-X, <https://zakon.rada.gov.ua/laws/show/80731-10#n1863>
3. CCU (2001) Criminal Code of Ukraine of 05.04.2001 № 2341-III, <https://zakon.rada.gov.ua/laws/show/2341-14#n3905>
4. Election Code of Ukraine of 19.12.2019 No. 396-IX, <https://zakon.rada.gov.ua/laws/show/396-20#Text>
5. Law № 2782-XII of 1992: Law of Ukraine “On Printed Media (Press) in Ukraine” of 16.11.1992 № 2782-XII, <https://zakon.rada.gov.ua/laws/show/2782-12#n181>
6. Law № 2657-XII of 1992: Law of Ukraine “On Information” of 02.10.1992 № 2657-XII, <https://zakon.rada.gov.ua/laws/show/2657-12#n150>
7. Law № 3759-XII of 1993: Law of Ukraine “On Television and Radio Broadcasting” of 21.12.1993 № 3759-XII, <https://zakon.rada.gov.ua/laws/show/3759-12#n876>
8. Law № 74/95-BP of 1995: Law of Ukraine “On Information Agencies” of 28.02.1995 № 74/95-BP, <https://zakon.rada.gov.ua/laws/show/74/95-%D0%B2%D1%80#n123>
9. Law № 270/96-BP of 1996: Law of Ukraine “On Advertising” of 03.07.1996 № 270/96-BP, <https://zakon.rada.gov.ua/laws/show/270/96-%D0%B2%D1%80#n117>
10. Law № 539/97-BP of 1997: Law of Ukraine “On the procedure for covering the activities of state authorities and local self-government bodies in Ukraine by mass media” of 23.09.1997 № 539/97-BP, <https://zakon.rada.gov.ua/laws/show/539/97-%D0%B2%D1%80#Text>
11. Law № 474-XIV of 1999: Law of Ukraine “On Elections of the President of Ukraine” of 05.03.1999 № 474-XIV, <https://zakon.rada.gov.ua/laws/show/474-14#Text>
12. Law № 802-IV of 2003: Law of Ukraine “On the ratification of the European Charter for Regional or Minority Languages” of 15.05.2003 № 802-IV, <https://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=802-15#Text>
13. Law № 3477-IV of 2006: Law of Ukraine “On the Implementation of Decisions and Application of the Case-Law of the European Court of Human Rights” of 23.02.2006 № 3477-IV, <https://zakon.rada.gov.ua/laws/show/3477-15#Text>

14. Law № 2939-VI of 2011: Law of Ukraine “On Access to Public Information” of 01.11.2011 № 2939-VI 13, <https://zakon.rada.gov.ua/laws/show/2939-17#Text>
15. Law № 4061-VI of 2011: Law of Ukraine “On Elections of People’s Deputies of Ukraine” of 17.11.2011 № 4061-VI, <https://zakon.rada.gov.ua/laws/show/4061-17/ed20200723#Text>
16. Law № 1227-VII of 2014: Law of Ukraine “On Public Television and Radio Broadcasting of Ukraine” of 17.04.2014 № 1227-VII, <https://zakon.rada.gov.ua/laws/show/1227-18/ed20230101#Text>
17. Law №1644-VII of 2014: Law of Ukraine “On Sanctions” of 14.08.2014 № 1644-VII, <https://zakon.rada.gov.ua/laws/show/1644-18#Text>
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22. Law № 2136-VIII of 2017: Law of Ukraine “On the Constitutional Court of Ukraine” of 13.07.2017 № 2136-VIII, <https://zakon.rada.gov.ua/laws/show/2136-19#Text>
23. Law № 1556-IX of 2021: Law of Ukraine “On Amendments to Certain Laws of Ukraine Regarding Ensuring the Independence of the National Council of Ukraine on Television and Radio Broadcasting” of 17.06.2021 p. № 1556-IX, <https://zakon.rada.gov.ua/laws/show/1556-20#Text>
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26. Law № 2849-IX of 2022: Law of Ukraine “On Media” of 13.12.2022 № 2849-IX, <https://zakon.rada.gov.ua/laws/show/2849-20#n2285>



27. Law № 2102-IX of 2022: Law of Ukraine “On Approval of the Decree of the President of Ukraine “On the Introduction of Martial Law in Ukraine” of 24.02.2022 № 2102-IX, <https://zakon.rada.gov.ua/laws/show/2102-20#Text>
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29. Law № 2915-IX of 2023: Law of Ukraine “On Approving the Decree of the President of Ukraine “On Extending the Term of Martial Law in Ukraine” of 07.02.2023 № 2915-IX, <https://zakon.rada.gov.ua/laws/show/2915-20#Text>
30. Law № 3136-IX of 2023: Law of Ukraine “On Amendments to the Law of Ukraine “On Advertising” and other laws of Ukraine regarding the implementation of the norms of European legislation into the national legislation of Ukraine through the implementation of certain provisions of the legislation of the European Union in the field of audiovisual advertising (European Convention on Transfrontier Television, Directives of the European Parliament and the Council 2010 /13/EU on audiovisual media services of March 10, 2010 as amended by Directive (EU) 2018/1808 of November 14, 2018)” of 30.05.2023 № 3136-IX, <https://zakon.rada.gov.ua/laws/show/3136-IX#Text>
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