



Ukraine Bulletin

A Digest of Freedom of Expression-Related Developments in Ukraine

January – February 2005

Elections

- **Election results**

On 3 December 2005, the Ukrainian Supreme Court ruled the second round of presidential elections (held on 21 November) to be invalid, due to widespread election fraud,¹ and ordered its re-run to be held on 26 December 2004. International observers of the repeat second round judged it to have been relatively fraud-free,² and the official Central Election Commission (CEC) results gave Victor Yushenko's Our Ukraine coalition 51.99 percent of votes, and Victor Yanukovich 44.20 percent.³ Victor Yanukovich officially resigned from the post of Prime Minister in a televised address (broadcast on channel UT1) on 31 December, the same day that Yushenko addressed a large New Year rally in Kyiv's Independence Square, accompanied by Georgian president Mikhail Saakashvili.⁴ Subsequently Yanukovich launched appeals to the CEC and to the Supreme Court, alleging that many voters had been prevented from participating in the 26 December vote due to recent changes in the country's

¹ The official result of the second 'run-off' round of voting had given victory to Victor Yanukovich, with a majority of 49.46% against Victor Yushenko's 46.61% share of the vote. For more detailed information on voting irregularities in the second round of elections, see ARTICLE 19, Ukraine Bulletin, December 2004, <http://www.article19.org/docimages/1910.doc> and the International Election Observation Mission "Statement of Preliminary Findings and Conclusions. Presidential Election (Second Round), Ukraine – 21 November 2004", 22 November 2004, http://www.osce.org/documents/odihr/2004/11/3811_en.pdf. Other reports on the 2004 elections by the International Election Observation Mission are available http://www.osce.org/documents/odihr/2004/11/3811_en.pdf.

² Steven Lee Myers, New York Times, 1 January 2005, in *The Action Ukraine Report Monitoring Service 2005* No. 1, 1 January 2005.

³ TV 5 Kanal, Kyiv, in Ukrainian, 10 January 2005, BBC Monitoring Service, UK, in English, Mon, January 10, 2005 in *The Action Ukraine Report Monitoring Service 2005* No. 7, 11 January 2005; One Plus One TV, Kyiv, Ukraine, in Ukrainian, 20 January 2005, BBC Monitoring Service, UK, in English, Thursday, 20 January, 2005 *The Action Ukraine Report Monitoring Service 2005* No. 14, 20 January 2005.

⁴ Channel 5, 31/12/04; BBC Monitoring Service, 31 Dec 2004 in *The Action Ukraine Report Monitoring Service 2005* No. 1, 1 January 2005.

absentee voting rules.⁵ While these appeals were under consideration by the Supreme Court, the official publication in two government newspapers *Uriadovy Kurier* and *Holos Ukrainy* of the election results (a prerequisite for the inauguration of Yushenko as Ukrainian president) was delayed, and did not take place until Thursday 20 January 2005.⁶ On the same day, the Supreme Court ruled that it was rejecting Yanukovich's appeal and upholding Yushenko's victory in the repeated election⁷; the text of this ruling was then broadcast on Ukrainian State television.⁸

With the election results officially declared, the Verkhovna Rada (the Ukrainian Parliament), voted to hold the presidential inauguration on 23 January 2005,⁹ and on this date Victor Yushenko was sworn in as the third president of post-Soviet Ukraine¹⁰ at a ceremony at the Verkhovna Rada, broadcast live on State television channel UT1.¹¹ Following the inauguration, Yushenko addressed an estimated half a million people in Kyiv's Independence Square, urging national unity and promising "...a democratic government, a free press and an independent judiciary where every citizen could defend their rights in a law-based State."¹²

- **Media Coverage**

Media coverage was judged to be far less biased during the campaign for the repeat second round of elections, with opposition candidates and spokespersons being granted a much higher level of access to State media outlets than had been the case during the earlier campaigns.¹³ This was reflected in the findings of the media monitoring activities carried out by the Kharkiv Group of Human Rights Protection (KHPG) and the Institute of Mass Information (IMI),¹⁴ and in the preliminary report

⁵ Steven Lee Myers, New York Times, 1 January 2005 in *The Action Ukraine Report Monitoring Service 2005*, No. 1, 1 January 2005; AP, Kyiv, Ukraine, Tuesday, January 11, 2005 in *The Action Ukraine Report Monitoring Service 2005* No. 7, 11 January 2005.

⁶ Interfax-Ukraine, Kyiv, Ukraine, 11 January 2004 in *The Action Ukraine Report Monitoring Service 2005* No. 7, 11 January 2005; Ukrainian News Agency, Kyiv, 18 January, 2005 in *The Action Ukraine Report Monitoring Service 2005* No. 13, 19 January 2005

⁷ Reuters, Kyiv, Ukraine, January 19, 2005 in *The Action Ukraine Report Monitoring Service 2005* No. 14, 20 January 2005.

⁸ One Plus One TV, Kyiv, Ukraine, in Ukrainian, 20 January 2005, BBC Monitoring Service, UK, in English, 20 January, 2005 in *The Action Ukraine Report Monitoring Service 2005* No. 14, 20 January, 2005.

⁹ Verkhovna Rada, Kyiv, Ukraine, 20 January 2005 in *The Action Ukraine Report Monitoring Service 2005* No. 14, 20 January 2005.

¹⁰ Saul Hudson, Reuters, Kyiv, Ukraine, 22 January 2005 in *The Action Ukraine Report Monitoring Service 2005* No. 15, 23 January 2005.

¹¹ UT1 State TV, Kyiv, Ukraine, in Ukrainian 23 January 2005, BBC Monitoring Service, UK, 23 January, 2005 in *The Action Ukraine Report Monitoring Service 2005* No. 16, 26 January 2005.

¹² UT1 State TV, Kyiv, Ukraine, in Ukrainian 23 January 2005; BBC Monitoring Service, UK, 23 January 2005 in *The Action Ukraine Report Monitoring Service 2005* No. 16, 26 January 2005; The Wrap, The Guardian, United Kingdom, 25 January 2005 in *The Action Ukraine Report Monitoring Service 2005* No. 17, 27 January 2005.

¹³ Ivan Lozowy, Transitions OnLine Prague, Czech Republic, 6 January, 2005b in *The Action Ukraine Report Monitoring Service 2005* No. 5, 7 January 2005.

¹⁴ *Election Monitoring Newsletter*, No. 10, 23 December 2004, which monitored nation-wide media during the week of 11-18 December 2004 and *Election Monitoring Newsletter*, No. 11, 28 January 2005; ARTICLE 19. The Institute of Mass Information and The Kharkiv Human Group of Human Rights Protection. The monitoring was carried out with the logistic support of ARTICLE 19 and the financial support of the European Commission Delegation in Kyiv.

on the elections prepared by the OSCE International Election Observation Mission,¹⁵ both of which concluded that television coverage in particular was far more balanced, and presented a far more diverse range of viewpoints.

Television

According to media monitoring carried out by the IMI and KHPG, Victor Yushenko enjoyed a far greater degree of access to national TV stations Inter, UT-1, ICTV and 1+1 than he had done in the previous two campaigns, with, for instance, all channels reporting the press conference in which Yushenko's doctors stated that his illness was due to dioxin poisoning.¹⁶ In addition, the amount of airtime afforded to each candidate was roughly the same.¹⁷ These findings were echoed in the OSCE's preliminary report, which also concluded that the main television networks were no longer following *temnyky* (guidelines issued by the presidential administration instructing the media on how it should cover certain news items).¹⁸ Both the IMI/KHPG team and the OSCE also found that the revised format of the televised debate between Yushenko and Yanukovich, which took place on 20 December 2004, afforded an opportunity for a direct exchange of views between the two candidates, which had not been the case in previous televised debates. However, the OSCE's report did note that two television stations, TRK Ukraine and Channel 5, continued to display overt bias in favour of Yanukovich and Yushenko respectively,¹⁹ while IMI/KHPG found that in the Autonomous Republic of Crimea, the local television channel GTRK Krym continued to provide coverage that was overtly biased in favour of Victor Yanukovich.²⁰

Print Media

The OSCE's preliminary report concluded that State newspapers *Uriadovy Kurier* and *Golos Ukrainyi* had both met the obligations established by the CEC to allocate free space equally between the 2 candidates, although *Uriadovy Kurier* still showed its support for Yanukovich by granting him 60 percent of its political and election reporting.²¹ However, the IMI/KHPG media monitoring activities reported that there

¹⁵ International Election Observation Mission, Presidential Election (repeat Second Round), Ukraine, 26 December 2004, 'Statement of Preliminary Findings and Conclusions', http://www.osce.org/documents/odihr/2004/12/4007_en.pdf: these findings were based on media monitoring of 6 nationwide TV channels, 2 TV channels with partial nation-level coverage and 9 daily newspapers

¹⁶ *Election Monitoring Newsletter*, No. 10, 23 December 2004, which monitored nation-wide media during the week of 11-18 December 2004; Article 19. The Institute of Mass Information and The Kharkiv Human Group of Human Rights Protection.

¹⁷ *Election Monitoring Newsletter*, No. 11, 28 January 2005; Article 19. The Institute of Mass Information and The Kharkiv Human Group of Human Rights Protection.

¹⁸ International Election Observation Mission, Presidential Election (repeat Second Round), Ukraine, 26 December 2004, 'Statement of Preliminary Findings and Conclusions', http://www.osce.org/documents/odihr/2004/12/4007_en.pdf: these findings were based on media monitoring of 6 nationwide TV channels, 2 TV channels with partial nation-level coverage and 9 daily newspapers

¹⁹ *Ibid*

²⁰ *Election Monitoring Newsletter*, No. 10, 23 December 2004, which monitored nation-wide media during the week of 11-18 December 2004; Article 19. The Institute of Mass Information and The Kharkiv Human Group of Human Rights Protection.

²¹ International Election Observation Mission, Presidential Election (repeat Second Round), Ukraine, 26 December 2004, 'Statement of Preliminary Findings and Conclusions',

was a less significant change in print media with regards to balanced coverage, with the daily newspaper *Fakty ta Komentary* remaining biased in favour of Yanukovich, and non-state newspapers *Silski Visti* and *Ukraina Moloda* continuing to offer coverage biased in favour of Victor Yuschenko.²²

Despite improved media coverage during the repeat second round of elections, the OSCE concluded that "...the situation with the media in regions remains problematic since many regional media outlets are economically dependent on local authorities, and as such lack editorial independence."²³ Human Rights Watch, which also carried out media monitoring during the run up to the repeat second round of voting, also questioned whether the evident changes in media coverage reflected a true change in the status quo, rather than "... a calculation on the part of many media outlets about which way the political winds were blowing."²⁴

ARTICLE 19 welcomes the more balanced and impartial media coverage during the run-up to the repeat second round of elections in Ukraine. The organisation urges the authorities to ensure that, in all elections, the following principles are applied.

Political Developments

- **Relations with Russia**

In a move seemingly designed to ensure good ongoing relations with Russia, despite President Vladimir Putin's open support for Victor Yanukovich in the Presidential elections, Victor Yuschenko made his first official visit as President to Russia, the day after his inauguration,²⁵ and underlined the principle that Russia and Ukraine would remain strategic partners. However, prior to his inauguration and in the days immediately following this trip, Yuschenko made repeated statements reaffirming his belief that closer integration with Europe, and eventual EU membership, remained Ukraine's main strategic priority,²⁶ and that Russia should avoid attempts to block this.²⁷ This message was further underlined by the appointment in early February of the pro-European Borys Tarasyuk as Minister for Foreign Affairs, who commented

http://www.osce.org/documents/odhr/2004/12/4007_en.pdf: these findings were based on media monitoring of 6 nationwide TV channels, 2 TV channels with partial nation-level coverage and 9 daily newspapers

²² *Election Monitoring Newsletter*, No. 10, 23 December 2004, which monitored nation-wide media during the week of 11-18 December 2004 and *Election Monitoring Newsletter*, No. 11, 28 January 2005; Article 19. The Institute of Mass Information and The Kharkiv Human Group of Human Rights Protection.

²³ *Ibid*

²⁴ Human Rights Watch, Letter to President Yuschenko, 21 January 2005:

<http://hrw.org/english/docs/2005/01/21/ukrain10012.htm>

²⁵ The Kremlin, www.Kremlin.ru, Moscow, Russia, 24 January, 2005 in *The Action Ukraine Report Monitoring Service 2005* No. 16, 26 January 2005

²⁶ TV 5 Kanal, Kyiv, Ukraine, in Ukrainian, 28 January 2005; BBC Monitoring Service, UK, in English, 28 January, 2005 in *The Action Ukraine Report Monitoring Service 2005* No. 19, 29 January 2005.

²⁷ Interview with Viktor Yuschenko by Christian Neef Der Spiegel web site, Hamburg, in German, 31 Dec 04; BBC Monitoring Service, UK, in English, 2 January, 2005 in *The Action Ukraine Report Monitoring Service 2005*, No. 2, 4 January 2005.

that he believed that Ukraine should use its strategic position between Russia and the EU to become a regional leader.²⁸

Relations between Ukraine and Russia were further complicated by the appointment of Yulia Tymoshenko as acting Prime Minister on 25 January 2005. Tymoshenko was briefly imprisoned by the Ukrainian authorities on charges of bribery, money-laundering, corruption and abuse of power when she was head of an energy-trading company in the 1990s. While the Prosecutor General in Ukraine has dropped all charges relating to her, she is still wanted in Russia on similar charges. Tymoshenko was then confirmed as Prime Minister following a vote in the Verkhovna Rada on 4 February 2005, and quickly formed a government made up of fellow reformers. Thanks to constitutional reforms introduced in December 2004, transferring many presidential powers to the Parliament and the Prime Minister, Tymoshenko will enjoy considerably more power than previous prime ministers;²⁹ she will also be responsible for implementing President Yushchenko's programme of reform.³⁰ At a speech to the World Economic Forum in Switzerland on 28 January 2005, Yushchenko outlined his policy priorities, which include European integration, liberal market reforms, the elimination of the 'black economy', transparent taxation, challenging corruption and the development of an independent judiciary.³¹ The President has also committed his new government to re-examining the privatisation of State facilities during the Kuchma period, in particular the sale of the Kryvorizhstal steel company to a consortium led by Victor Pinchuk, ex-president Kuchma's son-in-law, for a price that was far lower than anticipated.³²

As well as the selection of a new cabinet, which includes the appointment for the first time of civilian heads to the so called 'power ministries' (in charge of security and law enforcement), the leaders of all 27 regional administrations in Ukraine have been replaced with Yushchenko loyalists.³³ The establishment of a Presidential Secretariat, a virtual mirror image of the previous administration's Presidential Administration, which acted as the chief body of executive power in Ukraine, relegating the Cabinet to a minor role, has also raised concerns, voiced by Deputy Prime Minister Mykola Tomenko, amongst others.³⁴ Meanwhile, within the Verkhovna Rada, opposition to the President and his new government seems to be evaporating, with many MPs defecting from what had been the pro-Kuchma bloc to President Yushchenko's *Our Ukraine* bloc, and to other factions within Parliament.³⁵ This has given Yushchenko a

²⁸ Associated Press, Kyiv, Ukraine, 8 February 2005) in *The Action Ukraine Report Monitoring Service 2005* No. 27, 9 February 2005.

²⁹ AP Interview with Ukraine Parliament Speaker Volodymyr Lytvyn, Mara D. Bellaby, AP Worldstream, Kyiv, 4 February, 2005 in *The Action Ukraine Report Monitoring Service 2005* No. 23, 4 February 2005.

³⁰ International Outlook, Business Week magazine, New York, 7 February, 2005 in *The Action Ukraine Report Monitoring Service 2005* No. 22, 2 February 2005

³¹ TV 5 Kanal, Kyiv, in Ukrainian 28 January 2005; BBC Monitoring Service, UK, in English, 28 January, 2005 in *The Action Ukraine Report Monitoring Service 2005* No. 19, 29 January 2005.

³² Ivan Lozowy, Transitions OnLine Prague, Czech Republic, 6 January, 2005 in *The Action Ukraine Report Monitoring Service 2005* No. 5, 7 January 2005

³³ UNIAN news agency, Kyiv, in Ukrainian 20 January 2005; BBC Monitoring Service, UK, in English, 20 January 2005 in *The Action Ukraine Report Monitoring Service 2005* No. 14, 20 January 2005

³⁴ *Ibid*

³⁵ UNIAN news agency, Kyiv, in Ukrainian 20 January 2005, BBC Monitoring Service, UK, in English, 20 January 2005 in *The Action Ukraine Report Monitoring Service 2005* No. 14, 20 January 2005.

comfortable majority, as evidenced in the endorsement given to his closest ally Yulia Tymoshenko in her nomination as Prime Minister.

- **Yuschenko's Commitments to Free Expression**

The Ukrainian media played an undisputed role in the success of the 'Orange Revolution', following the actions of the majority of Ukrainian journalists committing to more fair and balanced reporting. The new government has made promising signs of its commitment to ensuring that the media's new-found freedom is preserved, with President Yuschenko stating that "...a free press is an inalienable part of the progress" of Ukrainian society,³⁶ and Prime Minister Yulia Tymoshenko declaring that a media "... unencumbered by politics or economic gain" is a prerequisite for successful economic and social reform.³⁷ President Yuschenko has also stated that he is ready to sign an agreement with journalists to ensure non-interference in their work, as well as freedom from persecution and from pressure to serve political interests.³⁸ In another move indicating the new administration's commitment to media freedom, Mykola Tomenko, former head of the Parliamentary Committee on Freedom of Speech and Information and an outspoken critic of temnyky,³⁹ was appointed Vice Prime Minister for Humanitarian and Social Issues:⁴⁰ his duties in this role will include ensuring the creation of a 'competitive environment' in the media, challenging the current monopoly over media ownership enjoyed by a small number of oligarchs,⁴¹ a goal to which Yuschenko has also committed himself. Tomenko has also urged those working in the media to produce evidence on how and by whom they were censored during the election campaign.⁴²

- **Suspicious Deaths of Heorhiy Kirpa and Yuriy Liakh**

While the repeat elections held on 26 December 2007 have been judged to be relatively fraud-free, concern has been raised regarding the apparent suicides of then Transport Minister Heorhiy Kirpa and prominent banker Yuriy Liakh in the days immediately following the 26 December vote. It is alleged that both men were heavily implicated in fraudulent activities on behalf of presidential candidate Victor Yanukovich during the run-up to the second round of voting (21 November 2004): Kirpa was implicated in allegations that State railway trains had been used to transport Yanukovich supporters around the country free of charge, allowing them to cast multiple absentee ballots, and had also blocked suspected Yuschenko supporters

³⁶ UNIAN news agency, Kyiv, 19 November, 2004 in *The Action Ukraine Report Monitoring Service 2005*, No. 13, 19 January 2005.

³⁷ Commentary by Bishop Paul Peter Jesepe in *The Action Ukraine Report Monitoring Service 2005*, No. 10, 17 January 2005 (quoting an article in *Korrespondent*, www.korrespondent.net)

³⁸ Ukrainian News Agency, Kyiv, 7 February 2005 in *The Action Ukraine Report Monitoring Service 2005*, No.28, 11 February 2005.

³⁹ Instructions from the presidential administration on the coverage of news.

⁴⁰ Electronic Bulletin of the Kyiv Media Law Institute, *Media Law and Practice Developments in Ukraine* No. 1, 1-4 February 2005.

⁴¹ Ukrainian News Agency, Kyiv, 9 February, 2005 in *The Action Ukraine Report Monitoring Service 2005*, No. 28, 11 February 2005.

⁴² Institute of Mass Information, 25 January 2005, <http://eng.imi.org.ua/?id=read&n=1894&cy=2005&m=news>

from buying tickets and travelling during the campaign.⁴³ The Ukrainian Credit Bank, of which Yuriy Liakh was chairman, was allegedly used to launder funds for Yanukovich's election campaign.⁴⁴ As of 3 January 2005, the Prosecutor General's office had opened an investigation into Heorhiy Kirpa's death on 'forced suicide charges'⁴⁵ under Article 120 of the Ukrainian Criminal Code, which provides for liability for forcing an individual to suicide.⁴⁶

- **Yuschenko Poisoning**

In December 2004, the investigation into the possible poisoning of Victor Yuschenko during the early stages of the election campaign was reopened by the newly reappointed Prosecutor General, Svyatoslav Piskun, having been closed in September 2004.⁴⁷

According to tests carried out by forensic experts in Amsterdam and Vienna in December,⁴⁸ Victor Yuschenko was indeed poisoned with TCDD, an extremely harmful dioxin.⁴⁹ Suspicion as to when this poisoning may have taken place has been pointed at a dinner that Yuschenko attended with the head of the Ukrainian Security Service,⁵⁰ and the Security Service's involvement in the case is now under investigation. In addition, an audiotape with a recording that is alleged to be a conversation between officers from the Russian FSB (successor to the KGB) discussing the role of Kremlin election advisor Gleb Pavlovsky in Yuschenko's poisoning has come to light, and is also under investigation;⁵¹ by mid-February, the Prosecutor General's Office claimed to have identified those speaking on the tape.⁵²

Legislative Developments

- **Proposed 'Instructions' on Licensing**

⁴³ New Europe, Athens, Greece, 3 January, 2005 in *The Action Ukraine Report Monitoring Service 2005* No. 3, 5 January 2005; Taras Kuzio, Eurasia Daily Monitor, Volume 2 Issue 1 The Jamestown Foundation, Washington, D.C., 3 January 2005 in *The Action Ukraine Report Monitoring Service 2005*, No. 4, 6 January 2005.

⁴⁴ Taras Kuzio, Eurasia Daily Monitor, Volume 2 Issue 1 The Jamestown Foundation, Washington, D.C., 3 January, 2005 in *The Action Ukraine Report Monitoring Service 2005* No. 4, 6 January 2005.

⁴⁵ New Europe, Athens, Greece, 3 January, 2005 in *The Action Ukraine Report Monitoring Service 2005* No. 3, 5 January 2005

⁴⁶ Oleksandra Prymachenko, Zerkalo Nedeli, Kyiv, 30 December 2004; BBC Monitoring Service, 4 January 2005, in *The Action Ukraine Report Monitoring Service 2005*, No. 4, 6 January 2005.

⁴⁷ Interfax-Ukraina, in *Ukrainska Pravda*, 18 February 2005,

<http://www2.pravda.com.ua/en/archive/2005/february/25/3.shtml>.

⁴⁸ Gennady Petrov, Russia Profile, Moscow, Russia, 14 January, 2005 in *The Action Ukraine Report Monitoring Service 2005* No. 10, 17 January 2005

⁴⁹ Jane's Intelligence Digest, UK, 21 January, 2005 in *The Action Ukraine Report Monitoring Service 2005*, No. 19, 29 January 2005

⁵⁰ Natasha Lisova, AP Worldstream, Kyiv, Ukraine, 8 February 2005 in *The Action Ukraine Report Monitoring Service 2005*, No. 26, 8 February 2005; *Ukrainska Pravda*, 10 February 2005,

<http://www2.pravda.com.ua/en/archive/2005/february/25/3.shtml>

⁵¹ BBC News, 'Progress in Ukraine murder probe', 28 February 2005,

<http://news.bbc.co.uk/1/hi/world/europe/4304133.stm>

⁵² *Ukrainska Pravda*, 18 February 2005,

<http://www2.pravda.com.ua/en/archive/2005/february/25/3.shtml>

On 9 February 2005, the National Council on Television and Radio gave preliminary approval to the draft 'Instructions on Documents Submitted by Entities Engaging in Retransmission or Cable Broadcasting', which, among other things, proposes to introduce the requirement for broadcasters to obtain an a second licence for the retransmission of programmes. The draft legislation has yet to be voted on.

ARTICLE 19 is concerned at the effects that the adoption of this legislation would cause. While a separate licence may legitimately be required for retransmission of a separate channel, there should be no requirement to obtain an additional licence for the retransmission of individual programmes. There is no specific need for a second licence in this case, whilst its introduction would create a burdensome system for the media, which would detract from its ability to fulfil its role in a democratic society - that of effectively delivering to the people information in the public interest.

- **Draft Provisions on Music Broadcasting**

Further legislative developments relating to the media include the registration in the Verkhovna Rada of draft Law No. 7076, "On Amendments to the Law of Ukraine on Television and Radio", which proposes that 50 percent of music broadcast on television and radio should be produced and / or performed in Ukrainian language.

Some local organisations have expressed preoccupation at the fact that there is no sufficient popular Ukrainian music to meet the requirement imposed by such a high threshold. These matters should be dealt with during the licensing process, according to the licensee and its niche.

Recommendations

- The draft provision which requires obtaining a second licence for retransmission of individual programmes, contained in the "Instructions on Documents Submitted by Entities Engaging in Retransmission or Cable Broadcasting", should be abolished.
- The 50 percent threshold for the broadcasting of Ukrainian music, included in draft Law No. 7076, should be lowered to a more realistic percentage, according to the licensee, and negotiated during the licensing process.

- **Public Service Broadcasting**

Long before his election as President, Victor Yushenko had declared his commitment to the establishment of public service broadcasting (PSB) in Ukraine,⁵³ and the new government is now taking steps to realise this pledge. This has included the creation on 20 January 2005 of the Public Broadcasting Coalition, made up of the Public Council for the Freedom of Speech and Information, the Independent Association of Television and Radio Broadcasters, the Institute of Politics, the Telekrytyka nongovernmental organization, the Academy of Ukrainian Press, the Rivnist Mozhlyvostei (Equality of Opportunities) committee, and the Kyiv

⁵³ Steven Eke, BBC regional analyst, BBC NEWS, UK, 22 January, 2005 in *The Action Ukraine Report Monitoring Service 2005*, No. 15, 23 January 2005; Institute of Mass Information, 18 January 2005 <http://eng.imi.org.ua/?id=read&n=1863&cy=2005&m=news>

Independent Media Trade Union.⁵⁴ This coalition will consider the various options available for the formation of a Public Service Broadcasting TV channel, which include using UT-1, an existing State channel, as a base for the new station, as well as canvassing popular opinion on the issue, before reporting back to the Verkhovna Rada.⁵⁵

ARTICLE 19 welcomes the decision by the Ukrainian authorities to establish PSB in Ukraine. We consider PSB to be an important element of a diverse media environment, serving the public interest in a wide range of programming content.

However, ARTICLE 19 notes that a difficult issue currently under consideration is whether to transform the existing State channel UT-1 into PSB or to maintain these stations in their existing form and to create a new, parallel PSB station.

ARTICLE 19 recognises the difficult practicalities of creating a PSB where one does not exist and we do not wish to provide specific recommendations on this here. However, we note that, in a democratic society, the independence of publicly-funded broadcasters is of paramount importance, and the use of public funds to finance a government-controlled media outlet is illegitimate. Public funds should be used to serve the public rather than the government as such or the party in power.

As a Recommendation of the Committee of Ministers of the Council of Europe notes, “independence of the media, including broadcasting, is essential for the functioning of a democratic society”.⁵⁶ The same Recommendation “stress[es] the importance that it attaches to respect for media independence, *especially by government*” [italics added].⁵⁷ The 4th European Ministerial Conference on Mass Media Policy⁵⁸ affirmed participants’ commitment to “develop a strong public service broadcasting system in an environment characterised by an increasingly competitive offer of programme services and rapid technological change”, services that may be provided by “privately owned companies as well as public organisations”.⁵⁹ State-owned outlets were not included as they hinder the creation of a dynamic broadcasting environment offering a plurality of programme services.

Recommendation

- The Ukrainian authorities should refrain from maintaining broadcasting outlets that answer to the government rather than the people. Instead, these bodies should be transformed in genuine PSBs.

- **Freedom of Information**

⁵⁴ Ukrainian News Agency, Kyiv, Ukraine, 9 February 2005 in *The Action Ukraine Report Monitoring Service 2005*, No. 28, 11 February 2005.

⁵⁵ Korrespondent, 28 February 2005 <http://www.korrespondent.net/main/115534>

⁵⁶ Recommendation No.R(96)10 of the Committee of Ministers to Member States on the Guarantee of the Independence of Public Service Broadcasting, 11 September 1996.

⁵⁷ *Ibid.*

⁵⁸ “The Media in a Democratic Society” (Prague, 7-8 December 1994), Resolution No. 1, the Future of Public Service Broadcasting..

⁵⁹ *Ibid.*

According to information released by the Kharkiv Group for Human Rights Protection (KHPG), President Yushenko signed in secret edicts 116/2005 and 117/2005, which were classified as ‘Not for publication’.⁶⁰ In an open letter to the authorities, KHPG expressed the hope that this ‘misunderstanding’ is a hang-over from the previous Presidential Administration, and calls for both edicts to be made public, or reversed. Classifications through stamps carrying the message ‘Not for publication’, ‘Not for printing’ and ‘For service use only’ were often used arbitrarily by the previous regime; according to KHPG, this was frequently done to conceal corrupt activities, such as those involving the sale of public utilities.

ARTICLE 19 is concerned at the news that the above edicts were not made public, despite the fact that they are effectively pieces of legislation, to which the public clearly needs access. Moreover, the adoption of new legislation should be followed by an open and consultative process.

ARTICLE 19 is also concerned about the illegitimate use of the above stamps, which is not provided for by Ukrainian law. Restrictions to the right of freedom of information are legitimate only when they meet the following strict test:

- (1) the information relates to a legitimate aim listed in the law;
- (2) disclosure threatens substantial harm to that aim; and
- (3) the harm to the aim is greater than the public interest in having the information.⁶¹

Recommendations

- Measures to increase the flow of information from the State institutions to the public should be enhanced and effective measures should be taken to address the culture of secrecy which still prevails in the public service.
- There should be a presumption in favour of the disclosure of all information, subject only to a limited regime of exceptions which permits information to be classified only in accordance with the above-mentioned three-part test. Practices that constitute abuses to this system should be immediately eradicated.

Relations with International Organisations

- **International Election Observation Mission**

As mentioned above, in its preliminary report on the repeat second round of voting the International Election Observation Mission concluded that media coverage had been far more balanced.⁶² In addition, the conduct of the election process in general was found to have brought Ukraine much closer to meeting OSCE election commitments and Council of Europe standards, with only 2 percent of the 1367 election monitors deployed throughout the country reporting that voting was poorly or very badly conducted. The Conduct of the Central Election Commission was also

⁶⁰ Open letter to President Yushenko from Evhen Zakharov, Co-chairman of the Kharkiv Group for Human Rights Protection, undated. <http://www.khpg.org/index.php?id=1110442656>

⁶¹ *The Public's Right to Know: Principles on Freedom of Expression Legislation*, London: ARTICLE 19, June 1999, Principle 4, <http://www.article19.org/docimages/512.htm>.

found to have been more open and professional, and the legislative changes to the regulations governing absentee voting seem to have had the desired effect of eliminating the wide scale fraud witnessed in the first two rounds of voting.

Despite the improvements observed by the election monitors, Yulia Tymoshenko called on the OSCE not to reduce the number of its mission members in Ukraine until after parliamentary elections to the Verkhovna Rada, due to take place in March 2006.⁶³

- **Parliamentary Assembly of the Council of Europe**

In one of his first acts as President, Victor Yushchenko addressed the Parliamentary Assembly of the Council of Europe (PACE) in Strasbourg, asserting that ‘... Ukraine would take account of the Organisation’s recommendations to achieve freedom of the media, independence of the judiciary, transparency and respect for human rights and freedoms, and to combat corruption.’⁶⁴ Poland currently holds the chair of the Council of Europe and, in an address to Committee of Ministers’ Delegates, Jan Truszczyński, Polish Deputy Minister for Foreign Affairs, underlined the ongoing role that he felt PACE should play in strengthening standards of human rights, democracy and the rule of law in Ukraine, and that Ukraine should be included as broadly as possible in Council of Europe programmes.⁶⁵

- **European Parliament**

As was the case with the two previous rounds of voting, the European Parliament sent an election observer delegation to Ukraine to monitor the repeat second round of voting.⁶⁶ This delegation concluded that this round of voting had been “...free and fair, in accordance with international standards, and that they had taken place in a peaceful atmosphere.”⁶⁷ As a result, a resolution welcoming the ‘substantially fair’ elections was passed by a large majority of MEPs on 13 January 2005. This resolution also urged the new Ukrainian government to promote democracy, civil society and the rule of law, as well as pledging the European Parliament’s ongoing support to Ukraine in its drive to establish an “... open democratic system, ... a prosperous market economy and ... its rightful place in the community of democratic nations.”⁶⁸

Broadcasting

⁶² International Election Observation Mission, Presidential Election (repeat Second Round), Ukraine, 26 December 2004, ‘Statement of Preliminary Findings and Conclusions’.

http://www.osce.org/documents/odihr/2004/12/4007_en.pdf

⁶³ Ukrainian News Agency, Kyiv, 5 January, 2005 in *The Action Ukraine Report Monitoring Service* 2005, No. 4, 6 January 2005.

⁶⁴ Parliamentary Assembly of the Council of Europe, 25 January 2005, <http://www.coe.int/NewsSearch/InternetNewsSearchDateKW.asp?lmLangue=1&qNewsExpMonth=01&qNewsExpYear=2005&KW=ukraine&Submit=Go>

⁶⁵ *Ibid*

⁶⁶ *The European Parliament and Ukraine*

<http://www2.europarl.eu.int/omk/sipade2?PUBREF=-//EP//TEXT+PRESS+BI-20050126-1+0+DOC+XML+V0//EN&LEVEL=2&NAV=S#SECTION1>

⁶⁷ *Ibid*

⁶⁸ *Ibid*

At a meeting of the Parliamentary Committee on Freedom of Expression and Information (the FOE Committee) on 2 February 2005, agreement was reached that the Committee would recommend that the Verkhovna Rada should not approve the National Council on TV and Radio's (NCTR) report for 2004, and that a vote of no confidence in the members of the NCTR should be passed.⁶⁹ 'Mass resignations' from the NCTR followed this, with only Oleksandr Budko remaining from the pre-Yuschenko regime.⁷⁰ *Ukrainska Pravda* reported that Mykola Tomenko, Deputy Prime Minister in charge of Humanitarian Issues and former head of the FOE Committee, would now head the NCTR, and that henceforth, a third of NCTR members should be chosen by the Cabinet, a third by the Verkhovna Rada, and a third by the public.⁷¹

In addition, on 14 February 2005 President Yuschenko accepted the resignation of Aleksandr Savenko as head of the Ukrainian National Television Company (NTVC),⁷² naming MP Taras Stetskiv as his replacement on 25 February 2005.⁷³ The 41-year-old MP, who does not have a media background, named preparations for the forthcoming Eurovision Song Contest as his first priority, followed by removing the old management of the NTVC and reforming UT-1.⁷⁴

ARTICLE 19 is concerned at issue of lack of independence and possible political control over bodies that have regulatory powers over the media, following the appointment of people who held a position in government to their boards. Indeed, Principle 13.3 of the ARTICLE 19 Principles on Freedom of Expression and Broadcast Regulation, states that

The following exclusions or 'rules of incompatibility' should apply. No one should be appointed [to governing bodies of public entities which exercise powers in the areas of broadcast and/or telecommunications regulation] who:

- is employed in the civil service or other branches of government;
- holds an official office in, or is an employee of a political party, or holds an elected or appointed position in government ...⁷⁵

The appointment of MPs to bodies that exercise powers in broadcast regulation can jeopardise the guarantees of independence of these bodies and, therefore, in itself constitute an illegitimate restriction of the right to free expression.

Recommendation

⁶⁹ Electronic Bulletin of the Kyiv Media Law Institute, *Media Law and Practice Developments in Ukraine*, No.1. 1-4 February 2005.

⁷⁰ Electronic Bulletin of the Kyiv Media Law Institute, *Media Law and Practice in Ukraine*, No.3, 14-20 February 2005.

⁷¹ *Ukrainska Pravda*, 14 February 2005,

<http://www2.pravda.com.ua/en/archive/2005/february/25/3.shtml>

⁷² *Korrespondent*, 14 February 2005, <http://www.korrespondent.net/main/114307/>.

⁷³ *Korrespondent*, 25 February 2005, <http://www.korrespondent.net/main/115337/>

⁷⁴ *Ibid*

⁷⁵ Access to the Airwaves. Principles on Freedom of Expression and Broadcast Regulation. ARTICLE 19, London, April 2002.

- Those employed in any branches of government should not be appointed to governing bodies of public entities which exercise powers in the areas of broadcast.

Denial of Access

As outlined above, during the repeat second round of elections, media coverage was far less biased than it had been in previous periods, with candidates from both sides being granted access to airtime and space in print media. Even in the eastern Donetsk region, where media is controlled by pro-Yanukovich oligarchs, opposition politicians were given access to the media, with Yulia Tymoshenko appearing on 'Ukraina' television station on 30 December 2004.⁷⁶

However, since the formation of the new government, the Editor-in-Chief of *Inter* Television News Department, Oleksij Mustafin, has claimed that the station's reporters were denied authorisation to cover the visit of President Yuschenko to Strasbourg, shortly after his inauguration, and that its cameras were not admitted to the initial session of the Cabinet of Ministers on 4 February 2005.⁷⁷ When challenged on this, the President's Press Secretary, Iryna Herashchenko, stated that this failure to provide accreditation to *Inter's* journalists had been due to a technical glitch.⁷⁸

ARTICLE 19 was unable to establish the reasons underlying this particular instance of a refusal of accreditation, but we would like to remind the Ukrainian authorities that accreditation should be imposed only where there are legitimate reasons to do so, such as restricted space and security. The accreditation procedure must also be politically impartial and fair.

Distribution

The Odessan State media distribution company ('Pres Sluzhba Odesy') refused to allow the dissemination of the local Russian language opposition newspaper *Obozreniye* via the city's network of kiosks.⁷⁹ According to the newspaper's editor, Oleksandr Kamenny, the explanation given by the Pres Sluzhba Odesy for this refusal was that the paper would find no readership in Odessa. Other local publications have had similar experiences, with one, *Robota i vidpochinok*, forced to close down as a result of Pres Sluzhba Odesy's refusal to distribute it.

Recommendation

- Distribution services should be offered to all media at equitable rates, based only on legitimate commercial considerations. There should be no

⁷⁶ 'Ukraina' is controlled by Renat Akhmetov, a close ally of Yanukovich. Ivan Lozowy, Transitions OnLine Prague, Czech Republic, 6 January 2005 in *The Action Ukraine Report Monitoring Service* 2005, No. 5, 7 January 2005.

⁷⁷ *Ukrainska Pravda*, 8 February 2005, <http://www2.pravda.com.ua/en/archive/2005/february/25/3.shtml>

⁷⁸ *Ukrainska Pravda*, 10 February 2005, <http://www2.pravda.com.ua/en/archive/2005/february/25/3.shtml>

⁷⁹ Institute of Mass Information, 31 January 2005, <http://eng.imi.org.ua/?id=read&n=1913&cy=2005&m=news>

discrimination based on the content, ownership or language of the media, particularly by public printing and distribution services.

Harassment/ “Disappearances”

- **Update on the Gongadze Case**

In his address to the Council of Europe shortly after his inauguration as president, Victor Yushenko pledged his commitment to a full investigation of the case of murdered journalist Heorhiy Gongadze,⁸⁰ who disappeared in 2000 following his fierce criticism of the Kuchma government in *Ukrainska Pravda*, the internet newspaper that he founded. He also stated that two cases directly linked to the murder had already been handed over, and that the case would reach court within two months.⁸¹ Indeed, soon after his reappointment as Prosecutor General, Svyatoslav Piskun announced that a new forensic examination would be carried out by the Chief Bureau of the Forensic Medical Examination attached to the Ministry of Health, aided by experts from the University of Munich,⁸² and, by the end of February, Ukrainian police claimed to have identified those who abducted Gongadze,⁸³ as well as having located the car used in the kidnapping.⁸⁴

In its report on the Gongadze killing and the failures of the official investigation which followed it, published in January 2005, the International Federation of Journalists found that investigating authorities had consistently failed to follow correct procedure, and in fact had deliberately obstructed and confounded the investigation over a long period of time.⁸⁵

While the new government has reiterated its commitment to investigating the case, and Prosecutor General Piskun has gone as far as stating that he is convinced of the involvement of Ministry of Internal Affairs officials in the murder,⁸⁶ as yet no further analysis has been made of the Melnichenko tapes.⁸⁷ Interior Minister Yuriy Lutsenko has already offered immunity to intelligence officers who monitored Gongadze’s activities while he was still alive.⁸⁸ In a further worrying development, former

⁸⁰ TV 5 Kanal, Kyiv, 25 Jan 2005, BBC Monitoring Service, UK, Jan 25, 2005 in *The Ukraine Action Monitoring Report 2005*, No. 17, 27 Jan 2005.

⁸¹ *Ibid.*

⁸² *Ukrainska Pravda*, 16 February 2005:

<http://www2.pravda.com.ua/en/archive/2005/february/25/3.shtml>

⁸³ BBC News ‘Progress in Ukraine murder probe’, 28 February 2005:

<http://news.bbc.co.uk/1/hi/world/europe/4304133.stm>

⁸⁴ *Ukrainska Pravda*, 27 February 2005:

<http://www2.pravda.com.ua/en/archive/2005/february/25/3.shtml>;

Korrespondent, 2 March 2005: <http://www.korrespondent.net/main/115773>

⁸⁵ International Federation of Journalists *The Gongadze Inquiry: An investigation into the failure of legal and judicial processes in the case of Georgy Gongadze*: <http://www.ifj.org/pdfs/gongadze-january2005.pdf>

⁸⁶ *Ukrainska Pravda*, 7 February 2005:

<http://www2.pravda.com.ua/en/archive/2005/february/25/3.shtml>

⁸⁷ Cassette tapes supposedly recording senior members of the Ukrainian government, including then President Kuchma, discussing how to ‘get rid’ of Gongadze.

⁸⁸ BBC News, 28 February 2005 ‘Progress in Ukraine murder probe’:

<http://news.bbc.co.uk/1/hi/world/europe/4304133.stm>

Interior Minister Yuriy Kravchenko was found dead an hour before he was due to give evidence in the case, at the beginning of March.⁸⁹

Recommendation

- The Ukrainian authorities should fulfil their pledge to carry out a thorough and impartial investigation into the fate of Heorhiy Gongadze.

⁸⁹ BBC News, 4 March 2005: <http://news.bbc.co.uk/1/hi/world/europe/4317377.stm>