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TOWARD THE ANALYSIS OF THE MECHANISM OF CONTROL OVER MASS MEDIA IN UKRAINE

The paper discusses the socio-political conditions of the functioning of mass media in independent Ukraine. The data from interviews with journalists and media practitioners are used to buttress the thesis that the state has waged a war against mass media to insure effective control over them.

Introduction

After the breakdown of the Soviet Union and the end of the Leninist rule, the old Orwellian methods of suppression of freedom of speech in general and media in particular seemed to have gone forever. Mass media became a burgeoning market, and both members of emergent civil society as well as media community hoped that post-Soviet countries were on a way to Western standards of media freedom and independence. Democratic theorists emphasized the role of freedom of speech in constitution of modern civil society [1]. and constitutional state where the power, according to Hegel, derives its legitimacy «not at all from force, only to a small extent from habits and custom, [but] really from insight and argument» [2].

Nevertheless, these hopes were short-lived and never came into being in Ukraine. The political pendulum of electoral/illiberal democracy oscillating between substantive, participatory democracy and authoritarianism, is swinging toward authoritarian backlash in those successive states of the former Soviet Union which were ruled by communist regime for more than 70 years. The nourishment of illiberal/delegative democracy in Ukraine has rendered the freedom of media only the value of declaration and rhetoric with little connection to reality. The rise of new post-Leninist political class — many observers have defined it as oligarchy — with its particularistic interests which often contradicting those of broader circles of a society led to the development of new strategies and techniques as far as subduing mass media is concerned. These strategies have often proved successful as far as suppression of media freedom is concerned. For instance, in 1999 New York based Committee to Protect Journalists recognized President of Ukraine Mr. Kuchma a 6th worst enemy of the free press in a world in 1999, along with such notorious oppressors of free press as President Lukashenka of Belarus and President Milosevic of Yugoslavia. This paper seeks to analyze how the state control over mass media in Ukraine has

developed in well established mechanism, resembling a full fledged war waged against journalists. The paper will explore the mechanism of control over media by examining the existing legal framework for their activities. The latter will be contrasted with real situation of the war waged by Ukrainian state against independent minded media and journalists. The paper is making extensive use of survey data obtained during numerous polls as well as interviews with leading TV channels journalists. The paper is focusing on the disappearance of oppositional journalist Georgy Gongadze as a paradigm example of state war against journalists.

Legal Framework of Mass Media Activities in Ukraine

Ukrainian student of mass media Valery Ivanov has pointed out that «Ukraine occupies the top position among other Commonwealth of Independent States in terms of a number of laws devoted to regulating mass media. At the same time, making these laws enforceable leaves much to be desired» [3]. The activities of mass media in Ukraine are regulated by The Constitution of Ukraine, Laws of Ukraine, Constitutional Court of Ukraine rulings, decrees and orders of the President of Ukraine, decisions of the Cabinet of Ministers of Ukraine. The Constitution of Ukraine adopted in 1996 officially outlawed censorship (Article 15). At the same time, even Constitution contains a number of fundamental contradictions in articles dealing with freedom of speech and media, thus, mass media situation is unpredictable and volatile. Moreover, such contradictions provide state authorities and courts with an effective tool for curtailing media freedom. For example, while Article 34 of The Constitution of Ukraine stipulates that «everyone has the right to collect, preserve, use and disseminate information orally or in any other form», Article 32 insists that «it is prohibited to collect, preserve, use and disseminate information on a person without his/her consent, unless otherwise is stipulated by the law». The ruling of the Constitutional Court of Ukraine of October, 1997 made matters

even more complicated since it upheld the Article 32 ban on collection of personal information. Ivan Tymchenko, Constitutional Court of Ukraine Supreme Justice, thus commented the court's decision: «It is not aimed against journalists. In any case, I would recommend that journalists seek professional lawyers' advice if they have doubts whether or not the information is confidential and its collection method is legal» [4]. Given that according to Ukrainian legislation confidential information includes information on one's education, marital status, health, date and place of birth, religion, income, etc. it is difficult not to cross the line of what is allowed while making a news report or writing a newspaper feature.

Another example of contradictory legislation on mass media, allowing encroachments on their freedom, is the President's executive order #419 «On Coordination of the Activities of Press Services and Information-Analytical Divisions of State Executive Power Bodies» issued in November 1995. The order stipulated that the hierarchy of press services of state executive power bodies be established. These press services are supposed to coordinate its activities concerning information to be presented to mass media with the President of Ukraine press service. It is worth noting that though the Constitution gives the President the right to establish «deliberative, consulting and other supportive bodies and services» (Article 106 (28)), the legal status of Presidential Administration has never been defined, thus, this institution's decisions can not have a binding power for other governmental/non-governmental bodies.

Perhaps, the most graphic example of a relaxed attitude of Ukraine's power elite — the core of which is made up of executive branch members centered around President — to even existing imperfect laws on mass media activities was the refusal of National TV company of Ukraine to provide air time for the live broadcast of the speech of the then Chair of the Supreme Council of Ukraine Olexandr Tkachenko. This incident happened during presidential campaign of summer-fall 1999, and Mr. Tkachenko was one of contenders for the position of a head of state and therefore could voice his criticism of Mr. Kuchma presidency. The refusal to grant air time to the Parliament speaker was the direct violation of «The Law of Ukraine on the Procedure of the Coverage of the Activities of the Bodies of State Power and Bodies of Local Government in Ukraine by Mass Media», ironically, signed and thus enacted by Mr. Kuchma. The law in question stipulated that «at the request of the President of Ukraine, Chair of Supreme Council of Ukraine, Prime-minister of Ukraine, Supreme Justice of the Supreme Court of Ukraine and Supreme Justice of the Constitutional Court of Ukraine National TV Company must provide them with extraordinary air time for live broadcasting to deliver urgent official speeches» [5].

Above considerations confirm the assumption about the contradictory nature of Ukrainian legislation dealing with mass media. Such legal controversies coupled with the lack of transparent and enforceable rules give power brokers in Ukraine an opportunity to manipulate the legislation to their advantage, thus dramatically circumscribing declared freedom of media.

Socio-political Conditions of Media Activities in Ukraine

Recent survey conducted by the Ukrainian Razumkov Center for Economic and Political Studies exposed rather bleak situation with regard to media activities in Ukraine [6]. Students of Ukrainian mass media condition Mykola Sungurovsky and Ihor Zhdanov [7] have identified the following strategies employed by the state and media outlets owners aimed at dramatically influencing the content of media's message:

1. Attempts to introduce the political censorship — while the censorship is outlawed and no official institution vested with such a task exists, there has been witnessed a pluralization of dependencies of media on diverse political actors and institutions. Thus, being in opposition to the President and his entourage does not automatically mean being independent. It is often a sign of dependency on tycoons who simply can afford a luxury of autonomous action vis-a-vis head of state. The censorship is often exercised by media outlets founders. For example, Federation of Trade Unions of Ukraine — state supported and controlled umbrella organization, a direct heir of Soviet-era trade unions — ceased to publish in 1999 «Profspilkovu gazetnu» («Trade Union Newspaper») and «Profspilky» (magazine «Trade Unions»), claiming that the activity of publications in question have contradicted founder's goals. The same situation exists as far as electronic media are concerned — most of nationwide TV channels are either owned by the state (which entails their direct control by Presidential arm of executive) or belong to individuals who support the policy of Mr. Kuchma's regime. Besides, almost 70% of respondents of a nation wide poll conducted in October 2000 by Razumkov Center agreed that the censorship in Ukraine was a hard fact of life.

2. Financial-economic pressure on mass media to influence/change their political orientation. The most popular and effective weapon employed by the state to exercise such a pressure is State Tax Administration. For example, in October 2000 the publication of the newspaper «Silski visti» («Village News») was stopped and newspaper's accounts were frozen on accusation of Ukr Hr 2 million tax arrears. Given that «Silski visti» is controlled by former Supreme Council Chair and unsuccessful contender in 1999 presidential race Mr. Tkachenko, there are good rea-

sons to believe that the assault against the newspaper was politically motivated.

3. Interference of state executive power bodies into activities of judiciary reviewing law suites against media outlets. This intrusion is almost always hidden and takes place in «smoke filled back rooms» and only seldom occurs publicly. The rare example of a latter was a letter to Supreme Justice of the Supreme Court of Ukraine sent by Ukraine's Minister of Defense four star general Olexandr Kuzmuk who voiced his discontent with Court's decision not to proceed with one of Ministry of Defense subsidiaries suite against newspaper «Segodnia» («Today»).

4. Another effective weapon to enforce control over journalists has been the use of libel suites against media outlets for defamation. In 1999 alone there were 2258 suites against media in which plaintiffs (55 % of them were public servants) demanded payments totaling Ukr. Hr. 90 billion (this amount exceeds annual budget of Ukraine more than fourfold).

5. Last but not least, the use of physical violence against journalists has become common. Interestingly enough, opinion exhibited by experts surveyed by Razumkov Center, places underworld mobs and the President of Ukraine close to each other in terms of their potential danger to those journalists who dare criticize them (63% and 72% of experts respectively thought that criticism of the President and criminal clans would lead to negative consequences for the journalist) [8].

Gongadze Case as a Reflection of Ukrainian Media Situation

When asked what kind of negative consequences a journalist might face if he/she publishes critical piece on authorities activities, 68% of respondents thought that physical violence against the journalist was one of the most likely outcomes (see Sungurovsky and Zhdanov 2001, p. 4). Public opinion of population at large is borne out by statistical evidence — during 10 years of Ukraine's independent history dozens of journalists have been murdered, beaten up, threatened [9].

These developments reached the critical juncture with a disappearance on September 16, 2000 of Georgy Gongadze, free lance opposition journalists, head of Internet newspaper «Ukrainian Truth» («Ukrainian Truth»), known for his vocal criticism of the President, his entourage and policies as well as coverage of Ukraine's power brokers alleged shady undertakings. The so-called «Gongadze case» is a paradigm example of how the nexus of state managers, business interests and organized crime exercises its influence — including the violence — to ensure the control over mass media. Despite the fact Mr. Gongadze was known in professional circles the political rationale behind his disappearance was vehemently denied by authorities in general and

law enforcers in particular. Ukrainians access to the Internet is limited — only 1 % of population has an opportunity to surf the web [10].

The case, most likely, would have dragged forever and ended nowhere, like similar investigations into assassinations of other journalists, had not Socialist party leader Mr. Olexandr Moroz announced on November 28, 2000 to the Parliament that he possessed a tape, linking the President to the high profile case. The tapes were allegedly recorded by former Presidential bodyguard responsible for communication security of the office of the President. The cassettes — if real — revealed a foul mouthed President who discussed with his chief of staff and Minister of Interior how to get rid of Georgy Gongadze. The first independent-although unofficial — expertise conducted by Dutch Institute of Applied Scientific Research concluded that the tapes were unlikely to be fake though the poor quality of recordings made impossible the identification of the voices [11]. The second expertise conducted by Vienna based International Institute of Press was inconclusive and suggested that events described on tapes be juxtaposed with reality. This solution is impossible, for chief law enforcement officers whose job would normally be to conduct such an investigation, are either themselves implicated in scandal or act under direct supervision of the President. The scandal took an unlikely direction when the author of recording former Security Service of Ukraine (SBU) officer in his video-recorded testimony to the Parliament on December 12, 2000 said that he was willing to testify in the court. He explained that he recorded the president's conversations using an ordinary digital Dictaphone that he had hidden under a sofa: «I started the moment when, while fulfilling my official duties, I became witness to a criminal order given by Leonid Kuchma; and only after I learned that this order had been fulfilled, I began to document further affairs» [12]. Melnychenko also said he had additional proof that Kuchma ordered the head of the State Tax Administration Mykola Azarov, head of the Security Service Leonid Derkach and Interior Minister Yury Kravchenko to abolish opposition mass media outlets, such as newspapers «Silski visti» («Village News»), «Tovarysh» («Comrade»), «Hrani» («Brinks»), «Vechirni visti» («Evening news»), «Dzerkalo tyzhnia» («Mirror Weekly») and «Svoboda» («Liberty»), as well as radio stations BBC and Svoboda (Liberty) [13]. In November 2000 two villagers found headless corpse whose bracelet and other jewelry were found belonging to Georgy Gongadze. (In a latest twist of the saga the U.S. State Department confirmed on April 16 that Major Mykola Melnychenko, who had been in hiding since releasing audio tapes that allegedly link the President to the killing of Georgy Gongadze, sought and received asy-

lum in US on April 13, 2001. Washington also granted asylum to Myroslava Gongadze, the journalist's 28-year-old widow who had helped her husband in various projects).

It is also worth noting that American system of checks and balances under which different branches of power *compete* with each other. Therefore, parliament as a cornerstone of every democratic polity is supposed either to dominate the executive or form a reform minded, while democratic opposition to the President. Ukrainian Parliament has failed to do so. Setting up an a Parliamentary investigative commission to probe into Gongadze case underlined the impotence of the legislature since the commission had no legal ground for its activities — the law on Parliamentary investigative commissions (such institution is envisaged in the Constitution) was vetoed by the President and Parliament was unable to override the veto.

Behavior of authorities, following the recovery of the body, was a circumstantial evidence supportive of the theory about possible involvement of the President and his cronies into journalist's murder. Prosecutor General's office refused to recognize that professional motives could be behind Mr. Gongadze murder, insisting on purely «criminal» nature of the case. His relatives — mother and wife — were refused a status of victims on a ground the violent death of Gongadze was not borne out by evidence. According to Ukrainian legislation, the victim's status gives one an access to materials of investigation. Allowing Mr. Gongadze relatives access to information collected by law enforcement agencies could shed an additional light on the role of major actors of the saga and thus was thought of as containing threat to the top members of Presidential entourage. It took authorities several months to run a DNA test of the remains of a body. Although Russian experts verdict was that there was 99.6 probability that the body was that of Gongadze (later the probability was upgraded to 99.9), the Prosecutor General refused to admit that the journalist was dead (Security Service of Ukraine, for example, was sending anonymous press releases to different newspapers, claiming that a man, resembling Gongadze, applied for the Czech visa and then was seen at one of Ukraine bank's branches in Prague while deputy Prosecutor General Olexandr Bahanets — a person in charge of investigation — said that the results did not matter much, for the body could belong to some other relative of Gongadze's mother). Moreover, as late as on December 4, 2000 investigators claimed they had uncovered «evidence» that Gongsdze had died in an attempted robbery. No evidence has been made available to media ever since.

In April 2001 another stance was used again — Olexandr Bahanets claimed that there was a witness

who allegedly saw Gongadze in February 2001. Again no evidence was presented. Clumsy efforts of authorities to cover up the whole scandal only served to perpetuate it. As an example of a defense technique adopted by the President and his spin doctors could be Mr. Kuchma's statement that he did not know Gongadze personally despite the participation in a TV talk show during presidential race where Gongadze had an exchange with the President. Their pictures were taken, along with other journalists, after the discussion was over.

The scandal has embodied all paradigm features of Ukrainian emergent political system with its secrecy, limited participation of a public in political life, wide gap between cynical and passive society and predatory political elites. The scandal has proved both the weakness of domestic sources of democratization in Ukraine and unwillingness coupled with inability to comply with the norms expected of democratic polity by Western advanced democracies. Ukrainian authorities were reluctantly bowing to external pressure only when it was exercised by organizations with solid economic and political levers of influence — like EU or US — while completely ignoring the opinion of trans-national NGOs and institutions like Parliamentary Assembly of the Council of Europe.

Empirical Evidence — Interviews With Journalists

In order to test the hypothesis about systematic involvement of a state and its incumbents into repressions against media, interviews with leading Ukrainian TV reporters, news anchors as well as newspaper journalists were conducted.

Seven TV journalists, representing 6 major nation wide channels — ICTV, Inter, 1 + 1, STB, New Channel, First National Channel (all channels but First National Channel are in private hands) were interviewed. Volodymyr Skachko — a free lance journalist and Oleh Liashko — an editor-in-chief of the oppositional to the President weekly «Svoboda» («Liberty») were interviewed.

Out of 7 TV journalists interviewed 5 agreed to give comments on the situation with freedom of media in general and state role in repressions against journalists only on condition of an anonymity. This, I think, is a very telling sign of a climate of fear, surrounding Ukrainian journalists. I am analyzing media people answers below:

1) Journalist from ICTV channel (anonymous interview). ICTV used to be owned by the US investor channel but the investor was squeezed out of Ukrainian market and the channel now is a property of Victor Pinchuk — Ukrainian oligarch who happens to be President's son-in-law. The journalist said that the institutionalized censorship does not exist in Ukraine but he admitted that the channel does have

set of rules how to cover politically sensitive issues. These rules have never been formulated and adopted, nevertheless, they exist informally, and channel's senior management makes sure that they are strictly observed. If the journalist somehow manages to include into regular broadcast a piece critical of President and presidential arm of executive branch, he or she will inevitably be dealt with by channel managers who usually threaten a journalist with firing him/her if the same thing ever happens again. The interviewed journalist attributed the lack of autonomy of TV channels vis-a-vis the state to ill-developed market of advertising — the net annual volume of advertising market in Ukraine does not exceed million 30 US dollars, while in neighboring Poland it is more than 300 million US dollars. Thus, TV channels can hardly hope to be profitable entities staying above the fray — they are being purchased by Ukrainian power brokers with close ties to the state. Owners of mass media always have vested economic interest and hidden political agendas. Most tycoons privileged position depends on their relations with the President and his entourage, therefore media outlets owners exercise direct control over the content of mass media message.

The journalist also noticed that no enforceable and transparent rules regulating access to information exist — «One phone call of a channel owner can solve any problem» but without such support it is close to impossible to gain information from officials, especially if journalist is acting independently.

Inter channel — controlled by Victor Medvedchuk and Hrihory Surkis — two tycoons who also head United Social Democratic Party of Ukraine (the party has nothing to do with social democratic practice and ideology in Western sense and is used as an electoral tool). The party and its leaders are close associates of the President. Alexy Mustafin of Inter — head of channel's analytical-information service claimed that he never experienced political censorship either inside or outside the channel. At the same time the channel is used by its owner as a tool in political struggles. The real situation of channel's dependency from its owners is reflected by criticism of Victor Yushchenko government who made an assault on oligarchs' position in economy in general and energy sector in particular. Mirroring his bosses position toward the government, Mr. Mustafin said that the Cabinet of Ministers headed by Victor Yushchenko is the most difficult institution as far as getting information is concerned.

1+1 channel — influenced by Olexandr Volkov — close associate of the President accused of money laundering by Belgium authorities. Two representatives of the channel were interviewed, all interviews were anonymous. One of the journalists said that Presidential administration had made an attempt at

interfering into channel's affair and policy was not allowed to happen due to Mr. Volokov's political weight. Another employee claimed that 1 + 1 channel does not have any system of control over content of news reports while other channels do have institutionalized censorship. Channel's employees have often been refused access to information by Ministry of Interior and Security Service but channel never went to court because of this. One of the journalist said that the channel's management had increased the pressure on journalists, demanding that they be as obedient and loyal to ruling regime as ICTV staff. Being an independent journalist in Ukraine means being jobless — this is the only way to achieve freedom from external control under current circumstances, said one of the journalists. When the channel's owner Olexandr Volkov temporarily fell out of President's favor several months ago and began using his channel more independently from President's interests, Security Service of Ukraine was used in attempt to influence the channel and restore its loyalty to the President. One of channel's investor former Soviet and currently German citizen Boris Fuksman was barred from entering Ukraine.

STB channel is controlled by Russian oil giant «Lukoil» and Victor Pinchuk. Channel employee in his anonymous interview said that it is a common wisdom among journalists that they can't criticize the President of Ukraine. During the presidential campaign in 1999 the top management of the channel was replaced under the pressure of Presidential Administration which appointed its «proxy» to control channel's activities. According to STB journalist, when a critical piece towards the President was aired, the channel was visited by the Presidential Administration officer who warned employees that they may follow Gongadze if they criticize the President in future. Given that Mr. Pinchuk has only recently become a channel owner, the journalist thinks that the change will only be to the worse.

New Channel — controlled by Russian Alfa Bank and Ukraine's prime-minister Yushchenko. The journalist in anonymous interview said that the censorship had to be institutionalized before 1996, but it has become internalized by journalists since then. For the time being journalists know what the power elite wants them to do and obediently meet these demands. State institutions often ignore journalists request for information, especially in case of political prisoners (for example, information on health condition of the imprisoned leader of UNA-UNSO Andriy Shkil who is accused of staging mass rallies on March 9 this year which turned violent). Classical external censorship has been replaced with self-censorship, and the issues here is journalists' unwillingness to deviate from power elite expectations.

First National Channel — state owned channel

which serves as a Presidential mouth piece. Channel's President Vadim Dolganov has gained a notorious reputation as a major actor in information wars and smear campaigns against opponents of the President of Ukraine. Ms. Lyudmyla Tomanyuk who works for the channel claimed that channel's employees never experienced any censorship, threats or pressure. Nor had they any difficulties obtaining information. This testimony was not surprising given the loyalty of the channel to the President. Ms. Tomanyuk also denied existence of any form of censorship in Ukraine. Free lance journalist Volodymyr Skachko said that the power elite in Ukraine does not need to terrorize journalists since most of them have already been lured by attractive salary packages offered by tycoons owners media outlets. Given the conformity of journalists, mass media in post-Leninist Ukraine remain to be modified vehicle of propaganda and organization. According to Skachko, journalists know that their critically minded articles are unlikely to get published and this is the most effective censorship tool which precludes media people from writing such pieces.

Oleh Liashko — editor-in-chief of the newspaper «Svoboda» («Liberty») — a project supported by the Radio Liberty. This newspaper was the first one to publish transcripts of conversations allegedly taking place between the President of Ukraine and his associates where they discussed how to get rid of Georgy Gongadze. In violation of a contact with the newspaper the printing house refused to print the issue of the newspaper containing transcripts. Mr. Liashko was also a publisher of an oppositional newspaper «Politika» («Politics») which was shut down by a court decision in May 1999. The official reason was the revelation of classified information, but commentators say that the real rational was the

critical position of the newspaper towards the President. According to Mr. Liashko, murders and threats against journalists have become a common place.

Conclusion

Speaking of a war against journalists as a socio-political mechanism of control, I have been drawing upon Spinoza's criticism of Hobbes' theory of social order maintained by unlimited power of a sovereign — Leviathan. Spinoza pointed out in this respect that «about the state, subjects of which don't revolt with arms because of fear, we can say that there is no war going on in this state rather than its subjects enjoy peace. For the peace is not just the absence of war but virtue which arises from the strength of spirit... Besides, I would rather call the state where the peace depends on sluggishness of citizens who are being led as a livestock only to teach them how to subdue themselves, an uninhabited desert» [14]. Journalists' casualties are pretty numerous in this war — though no official statistics on the matter exists, Ukraine MPs inquiry to the secretary of the National Security and Defense Council Yevhen Marchuk mentions dozens of murders and assaults against journalist [15]. (According to data provided by National Union of Journalists of Ukraine, 38 journalists died violently for ten years in independent Ukraine. In none of the cases the authorities recognized that the murder was professionally/politically motivated (communication with Dr. Olexandr Beliakov, lecturer at the Institute of Journalism, Kyiv National University). Therefore, one can legitimately say that Ukrainian media obviously don't act under conditions of peace, rather there is a war going on and the state is either directly involved into encroachments on mass media freedom as well as lives of journalist or covers up actions against journalist undertaken by members of power elite.

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ДЕЯКІ АСПЕКТИ АНАЛІЗУ МЕХАНІЗМУ КОНТРОЛЮ МАСС-МЕДІА В УКРАЇНІ

Стаття обговорює соціополітичні умови функціонування мас-медіа в незалежній Україні. Використовуються дані інтерв'ю з журналістами та практиками ЗМІ задля підтвердження тези про те, що держава проголосила війну журналістам для гарантування ефективного контролю над ними.