

Russian Media Organisations Banned for Three Years in Ukraine

Ukraine abides by all commitments and international standards of ensuring freedom of speech in spite of the continued Russian aggression, the occupation of Ukraine's sovereign territory in violation of all international rules, the use by the aggressor State of some media of various forms of ownership with a view to carrying out special information operations in the information field of Ukraine and other States by its security services.

This is confirmed by Ukraine's performance in Press Freedom Index 2018, compiled by the international organization Reporters Without Borders.

According to the rating, Ukraine has moved one position up and is now ranked 101st.

With regard to the concern expressed in the alert published on the Council of Europe Platform on the alleged prohibition of Russian media in Ukraine, the following information shall be taken into account.

It is common knowledge that since 2014 Ukraine has been subjected to hybrid aggression of the Russian Federation. This aggression manifested not only in the illegal occupation of the Autonomous Republic of Crimea and military aggression in Donetsk and Luhansk regions but also in an unprecedented disinformation and propagandistic campaign against Ukraine. With a view to establishing a legal framework to counter the aggression, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Sanctions" (hereinafter referred to as the Law) on 14 August 2014.

Article 1 of the Law states that, with a view to protecting national interests, national security, the sovereignty and territorial integrity of Ukraine, countering terrorist activities, as well as preventing infringement of rights and restoring infringed rights, freedoms and lawful interests of citizens of Ukraine, society and the state special economic and other restrictive measures (hereinafter referred to as 'sanctions') may be taken.

The Law provides for a mechanism of submitting proposals pertinent to the application of sanctions, their consideration and application on reasonable grounds. In particular, the grounds for applying sanctions include actions of a foreign state, a foreign legal or natural entity, or other actors which constitute actual and/or potential threats to national interests, national security, the sovereignty and territorial integrity of Ukraine; contribute to terrorist activities and/or violate rights and freedoms of the person and citizen, and interests of society and the state; result in the occupation of territory, extortion, restriction on the right to property, infliction of damage to property, hampering sustainable economic development, the full-fledged exercise by Ukrainian citizens of their rights and freedoms.

In addition, the Law stipulates that sanctions shall be applied based on the principles of lawfulness, transparency, objectivity, appropriateness, and effectiveness.

The Law further states that the decision as to the application, removal, and modification of sanctions with respect to particular foreign legal entities, legal entities under control of a foreign legal entity or a non-resident foreign natural entity,

foreigners, stateless persons, as well as individuals and organizations implicated in terrorist activities (personal sanctions) shall be adopted by the Council of National Security and Defence of Ukraine and shall be enacted by a decree of the President of Ukraine.

It should be noted that the Council of National Security and Defence of Ukraine is a coordinating body on national security and defence issues under the President of Ukraine.

This means that the application of sanctions is an issue of national security and defence of Ukraine, and the procedure of their application is clearly set out in the current legislation of Ukraine.

As regards the application of sanctions against Russian legal entities claiming to be mass media, the following should be pointed out.

During recent years, certain Russian journalists have completely abandoned standards of journalism. In particular, there has been systematic violation of practically all principles of the journalist's conduct, approved in the Declaration of Principles on the Conduct of Journalists, which was adopted at the 2nd World Congress of the International Federation of Journalists (Bordeaux, 25-28 April 1954) as amended at the IFJ 18th World Congress (Helsingör, 2-6 June 1986). One of the visionaries of modern 'Russian journalism', Dmitry Kiselyov, noted: "the time of distilled journalism is gone. It is not possible even in theory. In the vast ocean of information selection is either subjective or subject to the editorial policy."¹ Today these mass media are one of the tools at the disposal of Russia's leadership to wage large-scale hybrid aggression against Western states, of which destructive information activities is an important part.

In 2016 the European Parliament adopted a Resolution clearly defining Russian media such as Sputnik as 'pseudo news agencies'². It is indicative that this document has already constituted a precedent. On 28 August 2017, the Government of Estonia of referring to it³ in reply to the Platform alert regarding the non-admission (refusal to accredit) of journalists of the International News Agency Rossiya Segodnya (Russia Today) to the meeting of ministers for foreign affairs of the EU states.

Attention is drawn in particular to the fact that Recommendations

CM/Rec(2016)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors state that "the exercise of the right to freedom of expression carries with it duties and responsibilities, as stated in Article 10, paragraph 2 [of the European Convention on Human Rights]. In the context of journalism, relevant duties and responsibilities are understood as including acting in good faith in order to provide accurate and reliable information, in accordance with the ethics of journalism".

¹ Киселев: "Моя журналистика не является нейтральной" // <https://styler.rbc.ua/rus/zhizn/kiselev-moya-zhurnalistika-vlyaetsya-neytralnoy-1466677373.html>

² EU strategic communication to counteract anti-EU propaganda by third parties // <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2F%2FEP%2F%2FNONSGML%20TA%20P8-TA-2016-0441%200%20DOC%20PDF%20V0%2F%2FEN>

³ Response of the Estonian authorities to an alert dated 28 August 2017 on the Platform to Promote the Protection of Journalism and the Safety of Journalists // <https://rm.coe.int/estonia-reply-en-russian-journalists-refused-accreditation-to-cover-eu/168073e9a5>

Given the abovementioned rules, adopted by the European community, distribution of information in violation of the generally recognized rules and standards of journalism may not be regarded as mass media activities.

May we invite your attention in particular to Article 10, paragraph 2 of the Convention, which reads that ‘the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.’

In addition, President of France Emmanuel Macron at a joint conference with Vladimir Putin noted that such resources as RT and Sputnik are agents of influence, and their activity has no bearing on journalism.⁴

All the mentioned above testify to the recognition by European institutions and states of an actual threat of manipulative and propagandistic nature posed by Russian agencies which present themselves as mass media.

Furthermore, in analysing the nature of the application of sanctions against such legal entities, it worth realising that the priority aim of applying sanction is not restricting access to anti-Ukrainian propaganda and disinformation materials but the public recognition of Russia-controlled resources as constituting a threat to the national security, sovereignty, and territorial integrity of Ukraine. Therefore, the effectiveness of sanctions is determined, first of all, by the public recognition of such resources as an instrument for manipulations and propaganda of the aggressor State, as envisaged by the Law.

In the light of the above, the application of special economic and other restrictive measures (sanctions) against legal entities which are used as a tool of hybrid aggression by the Russian Federation and which systematically distribute anti-Ukrainian propaganda is an issue of national security and defence of Ukraine, and it is, therefore, inappropriate to consider this issue in the context of the right to freedom of speech.

⁴ Macron, standing by Putin, calls RT and Sputnik ‘agents of influence’ // <http://www.politico.eu/article/macron-and-putin-agree-on-restart-of-ukraine-talks/>