HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
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**Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression**

REFERENCE: AL
UKR 6/2015:

16 November 2015

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression pursuant to Human Rights Council resolution 25/2.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning **the decree banning 41 international journalists, bloggers and media personnel from Ukraine, and alleged media censorship in the country**.

According to the information received:

On 16 September 2015, Ukrainian President Mr. [redacted] signed a decree banning 41 international journalists and bloggers from Ukraine for one year. Reportedly, these journalists and bloggers were part of a larger group of 388 named individuals who were identified as representing an "actual or potential threat to national interests, national security, sovereignty and territorial integrity of Ukraine."

Most of the journalists and bloggers named in the mentioned decree were Russian, but the decree also banned media personnel from other countries, such as Bulgaria, Estonia, Germany, Hungary, Israel, Kazakhstan, Latvia, Macedonia, Moldova, Poland, Serbia, Slovakia, Spain, Switzerland and the United Kingdom. Allegedly, the decree is an attempt to crackdown on the work of some journalists on the situation in the Crimean Peninsula and the east of Ukraine.

On 17 September 2015, three *BBC* media workers, along with two Spanish journalists from *El Pais*, and a German reporter from *Die Zeit,* were taken off the media ban list.

The ban remains in effect for the remaining 362 named individuals in the decree, including 35 journalists and bloggers.

Serious concern is expressed about the banning of 41 journalists and bloggers, allegedly for exercising their rights to freedom of opinion and expression. Further concern is expressed about the impact of these allegations on media freedom in Ukraine, and the manifestation of a situation of censorship and undue restrictions of basic rights and fundamental freedoms.

I appeal to your Excellency's Government to take all necessary measures to guarantee the right to freedom of opinion and expression in Ukraine by respecting the space in which media workers operate. The legitimate exercise of the right to freedom of expression and opinion is of central importance in the effective functioning of a democracy.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention. I would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above mentioned allegations.

2. Please provide detailed information on the decree issued on the 16 September 2015, and subsequent amendments, specifying how the authorities' actions are compatible with international human rights norms and standards.

3. Further, please identify the criteria used by authorities to determine which journalists and bloggers should be included in the decree. In particular, what constitutes a threat to Ukrainian "national interests" and to "national security."

4. Please provide detailed information of the alleged review undertaken, which resulted in the removal of six media workers from the decree on 17 September 2015.

5. Please indicate what measures have been taken to ensure that journalists, bloggers, and civil society members at large, are able to carry out their legitimate work in an enabling environment without fear of sanction.

I would appreciate receiving a response within 60 days.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

## Annex
## Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to refer your Excellency's Government to the right to freedom of opinion and expression as set forth in article 19 of the Universal Declaration of Human Rights (UDHR) and article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Ukraine on 12 November 1973, which provides that "[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." I would like to remind your Excellency's Government that any restriction to this right shall be provided by law; may only be imposed for one of the grounds set out in article 19 and subparagraphs (a) and (b) of paragraph 3 and must conform to the strict tests of necessity and proportionality.

In paragraph 30 of its General Comment No. 34 on the right to freedom of opinion and expression, the Human Rights Committee has indicated that in the value placed by the Covenant upon uninhibited expression is particularly high in circumstances of public debate. The Committee stated that "[e]xtreme care must be taken by States parties to ensure that . . . provisions relating to national security . . . are crafted and applied in a manner that conforms to the strict requirements of paragraph 3 [of the ICCPR]."

Further, in paragraphs 34–35, the Committee explained that "[r]estrictions may not be overbroad" and when invoking a legitimate ground for restricting speech, States must "demonstrate, in specific and individualized fashion, the precise nature of the imminent threat, as well as the necessity for and the proportionality of the specific action taken." Additionally, in paragraph 43, the Committee explained that permissible restrictions on the operation of media communication "generally should be content-specific; generic bans on the operation of certain sites and systems are not compatible with paragraph 3."