

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

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AL UKR 4/2021

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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 43/4.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning personal sanctions against the owner of three opposition TV channels, which as a result were forced to cease their broadcasting.

According to the information received:

On 2 February 2021, the President of Ukraine signed decree No. 43/2021 imposing personal sanctions against the owner of three largest opposition television channels (ZiK, Newsone and 112 Ukraine), who is also a Member of Parliament representing the opposition political party "Opposition Platform Za Zhyttia". The sanctions imposed, *inter alia*, included the revocation of the licenses of the three television channels and the immediate termination of their broadcasting. As a result of the decree, access to the three channels, which are among the ten most popular channels nationwide, were blocked on the same day. On 8 February, the main Internet domains belonging to the three sanctioned channels ceased to function. On 24 April, the broadcast on YouTube of these channels were also blocked. All channels are currently operational through reserve domains and reserve YouTube channels.

It is reported that prior to the sanctions against their owner, the television channels had provided opportunities for representatives of opposition parties and opinion leaders often critical to the government to express their views on a number of programmes.

The sanctions against the businessman and his eight companies based in Ukraine are derived from a decision of the National Council for Security and Defence, an executive authority chaired by the President of Ukraine. The sanctions are said to be based on article 5 of the Law "On Sanctions" No. 1644-VII of 14 August 2014, with reference to Parliament resolution No. 2589-VIII of 4 October 2018 "On approval of suggestions to impose individual special economic and other restrictive measures (sanctions)". The decision reportedly fails to specify the exact reasons for the sanctions, but reference to the Law "On Sanctions" suggests that the sanctions were taken on counter-terrorism grounds.

While I do not wish to prejudge the accuracy of these allegations, I am concerned that the personal sanctions imposed have had serious adverse effects on the right to freedom of expression, including the right to information, as protected by

Article 19 of the International Covenant on Civil and Political Rights (ICCPR). In particular, I would like to emphasize that any restriction on freedom of expression or information that a Government seeks to justify on grounds of national security or counter terrorism, must have the purpose of protecting a legitimate ground, pursuant to standards of legality, necessity and legitimacy and according to an order by an independent and impartial judicial authority, in accordance with due process and appellate review, per Article 19 (3) of the ICCPR. I am concerned that the decision fails to demonstrate the necessity and proportionality of the specific action taken, in particular by failing to clearly indicate the specific threats that the television channels may pose to the national security.

Blanket restrictions on the right to information do not advance the common interests of States to combat terrorism, nor do they address the phenomenon of disinformation. I would like to underline that under international human rights law, the right to freedom of expression protects expression that may be regarded as deeply offensive (General Comment No 34, para. 11). Measures such as censoring of broadcasting for reasons that go beyond Articles 20 (2) of the ICCPR are not only incompatible with international human rights law but also contribute to amplifying misperceptions, fostering fear and entrenching public mistrust of institutions. Media plays a crucial role in any democracy and its capacity to operate should not be unduly restricted and journalists should not be penalized for carrying out legitimate activities. In line with international human rights standards, non-violent criticism of the State or its policies cannot serve as grounds for restricting freedom of expression. In this respect, I recall that “the penalization of a media outlet, publishers or journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression (General Comment No 34, para. 42).

Regarding the procedure used for restricting expression, I would further like to emphasize that blocking orders should follow all procedural guarantees set out in international human rights law. I note with concern that the decision to restrict the right to information was not taken by an independent and impartial body. I am further concerned that the decision does not appear to provide clear indications of the threats posed by the programmes aired by the three television channels. I would like to recall that the use of national security and counter-terrorism as justifications to restrict the right to freedom of expression, without meeting the strict threshold established by article 19 (3) of the ICCPR, would be incompatible with Ukraine’s obligations under international human rights law.

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

As 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 be grateful for your observations on the following matters:

1. Please provide any additional information and/or comments you may have on the above-mentioned allegations.

2. Please clarify the legal grounds for the sanctions, including how they are compatible with the legality, necessity and proportionality standards provided by article 19 (3) of the ICCPR.
3. Has a complaint been lodged by or on behalf of the aforementioned individual? If so, please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to this case. Please explain if the execution of the decision has been halted. If no inquiries have taken place, or if they have been inconclusive, please explain why.

I would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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.

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

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Annex

Reference to international human rights law

I would like to draw the attention of 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 and article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Ukraine on 12 November 1973, which provides that "Everyone 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".

In particular, I would like to underscore that any action or measures taken which restricts the right to freedom of opinion and expression must be proven as necessary and proportionate to pursue a legitimate purpose listed in article 19, paragraph 3 of the ICCPR. As a result, any such restrictions should be the least restrictive measure, should be necessary and proportionate to achieve an intended and legitimate purpose. I recall that when a "State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat." (CCPR/C/GC/34, para. 35).

In this respect, I underscore that Article 19 of the ICCPR protects expressions related to political discourse, commentary on one's own and on public affairs, discussion of human rights and journalism, among others (CCPR/C/GC/34, para. 11). In its General Comment 25, the Human Rights Committee set out that "the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion" (CCPR/C/21/Rev.1/Add.7, para. 25). It requires the full enjoyment and respect for the rights and freedoms to "engage in political activity individually or through political parties and other organizations... to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas" (Id.).

Broadly or vaguely worded restrictions to the freedom of expression are therefore not only incompatible with the requirement of legality, but risk that the scope of the restrictions are broader than necessary to achieve the legal objective. In this regard, we recall that the media plays a crucial role in informing the public independently and that journalists should not be penalized for carrying out their legitimate activities. In particular, we recall that the Human Rights Committee emphasized that "A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society (CCPR/C/GC/34, para. 13).

Concerning allegations that the sanctions may be based on terrorism reasons, we would like remind Your Excellency's Government of the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004),

1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180. Although there is no agreement on a multilateral treaty on terrorism which *inter alia* defines terrorism, States should ensure that counter-terrorism legislation is limited to criminalizing conduct which is properly and precisely defined on the basis of the provisions of international counter-terrorism instruments and is strictly guided by the principles of legality, necessity and proportionality. The definition of terrorism in national legislation should be guided by the acts defined in the Suppression Conventions,¹ the definition found in Security Council resolution 1566 (2004) and also by the Declaration on Measures to Eliminate International Terrorism and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, which were approved by the General Assembly.² We recall the model definition of terrorism advanced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, which provides clear guidance to States on appropriate conduct to be proscribed and best practice.³ Those elements include:

- a) Acts, including against civilians, committed with the intention of causing death or serious bodily injury, or the taking of hostages,
- b) Irrespective of whether motivated by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, also committed for the purpose of provoking a state of terror in the general public or in a group of persons or particular persons, intimidating a population, or compelling a Government or an international organization to do or to abstain from doing any act,
- c) Such acts constituting offences within the scope of and as defined in the international conventions and protocols relating to terrorism.⁴

¹ See e.g. the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention) of 1963; the Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention) (1970); the International Convention on the Taking of Hostages (Hostages Convention) of 1979; the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 1971; and the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, of 1973; [E/CN.4/2006/98](#) paras. 25-50.

² [S/RES/1566](#); [A/RES/51/210](#).

³ [A/59/565 \(2004\)](#), para. 164 (d).

⁴ [E/CN.4/2006/98](#), para 37