

# STRENGTHENING FREEDOM OF MEDIA AND ESTABLISHING PUBLIC BROADCASTING SYSTEM IN UKRAINE

## Summary of results

The “Strengthening freedom of media and establishing public broadcasting system in Ukraine” Project (the Project) was launched in January 2016 and was implemented during two years within the Council of Europe Action Plan for Ukraine 2015-2017. In December 2017 a two months no-cost extension for the Project (January-February 2018) was approved due to delay with the launch of the new Action Plan for Ukraine 2018-2021.

The Project has become a strong, committed and reliable partner of Ukraine in implementing media reforms. The support provided by the Project covered many areas of media freedom and access to public information. Indirectly it helped Ukraine to become stronger against new challenges, such as information disorder. The Project played a crucial role in the process of establishing of the public broadcaster in Ukraine from scratch, strengthened the capacities of the Regulator, organised a series of activities aimed at ensuring safety of journalists, provided expertise, which was requested and considered by Ukrainian authorities on several important issues.

The period of the Project’s implementation has coincided with the process of the major reform in the media and information society field in Ukraine which has been carried out since 2014. A number of important legislative acts, including the new Law on public service broadcasting, Law on transparency of media ownership, Law on reform of state and communal print media and etc., were adopted in Ukraine in 2014-2015 and the Project supported proper implementation of some of these and other reforms in practice. To make this process comprehensive and sustainable, in September 2016 the Project presented the Institutional Mapping Analysis in the Sphere of Information Policy and Media in Ukraine, which contains detailed conclusions and specific recommendations on how to eliminate the out-dated, dysfunctional and conflicting remits of the institutions operating in the media and access to information spheres and to achieve bigger progress in the reforms’ implementation.

Throughout the Project’s implementation period, it worked in the areas identified as key-ones in its logframe, namely:

- Supporting transition to public broadcasting system and developing the model of regional public broadcasting;
- Developing capacity of the public broadcaster to enable the production of higher-quality programming;
- Raising institutional capacity of the public broadcaster’s Supervisory Board;
- Improving understanding of the European standards and practices around media freedom, including, protection of minors, safety of journalists and balanced media coverage of the elections;
- Developing capacity of public officials to implement the media freedom-related legislation improved;
- Improving access to official documents and information held by public authorities to media professionals and general public;
- Supporting gender equality and non-discrimination in media;

One of the major issues strongly addressed by the Project during the whole period of implementation was the process of establishing a public broadcasting system. Ukraine was one of the last European countries to launch the public broadcasting system. Transforming the state broadcasters into the public service broadcasting channels is in line with relevant Council of Europe

standards and is one of the Ukraine's obligations to the Council of Europe as stated in Resolution 1466 (2005) "On honouring the obligations and commitments of Ukraine".

Also, establishing the public broadcaster was among the key priorities of the Council of Europe Action Plan for Ukraine for 2015-2017 in the media sphere.

EU-Ukraine Association Agenda - endorsed by the EU-Ukraine Association Council on 16.03.2015 envisages "Promoting the legal and administrative framework necessary for the enjoyment of freedom of expression with a particular emphasis upon the mass media and the rights of journalists, notably by: cooperating on the development and implementation of a system of public broadcasting, including by exchange of best practices, the adoption of a legislative framework and its implementation in accordance with European and international standards". In addition, the reform is within Ukraine's obligations to NATO as ensuring functioning of Public Joint Stock Company "National Public Broadcasting Company of Ukraine" (JSC "UA: PBC") was a priority task for 2016.

In 2017 the public broadcaster was finally established in Ukraine. The registration of a legal entity of the public broadcaster - JSC "UA: PBC" took place on 19.01.2017 and was achieved with the comprehensive support by the Project in 2016. The Statute of JSC "UA: PBC" was developed and adopted by the CMU in December 2016. Regulations on Supervisory Board and Management Board of JSC "UA: PBC", developed in 2016, were approved in the beginning of 2017. The Head and members of the Management Board of the public broadcaster were elected at transparent and competitive elections in April 2017. Throughout 2017 the Project provided technical and capacity-development support to the newly established public broadcaster (See the Overview chapter below).

There is no exaggeration that the Council of Europe has become one of the leading international organizations in Ukraine to support the establishment of the public broadcasting system from the very beginning as the Project has effectively cooperated with other international donors in this area in 2016 and 2017, engaged prominent international media experts and organized a number of key events contributing to the progress of the public broadcasting reform in Ukraine.

The JSC "UA: PBC" still faces a number of problems, notably there is a lack of proper financing from the state budget of Ukraine, low quality of content, need for optimization of the company's structure and personnel, and risks of political interference in UA:PBC's work, particularly during the elections period. These issues are planned to be addressed by the new Project within the next Action Plan for Ukraine for 2018-2021.

The issue with **safety of journalists** in Ukraine was repeatedly raised on the international agenda in 2017. The safety of journalists, protection of freedom of media and countering impunity in crimes against freedom of expression were in the focus of the Project in 2016-2017. Positive results were achieved in this area due to two international conferences in Kyiv and a series of seminars for law-enforcement officers and judiciary all over Ukraine on safety of journalists. After the conference devoted to the safety of journalists in October 2016, the Ukrainian government started to actively cooperate with the Council of Europe Platform<sup>1</sup> for the Protection of Journalism and Safety of Journalists and to reply to the alerts posted on it.

An important step was made when the Chairperson of the Parliamentary Committee for Freedom of Speech and Information Policy requested the Council of Europe expertise of the articles of the Criminal Code of Ukraine (Articles 163, 171, 345-1, 348-1 and 349-1) on safety of journalists. The expertise was carried out with the support of the Project and presented in October 2017. Now it serves as a guideline for civil society activists and relevant public officials on what other directions should be pursued in the sphere of safety of journalists – namely, what legislative changes to consider. There is also a plan to develop a specialized training course for police officers on the rights of journalists at the National Academy of Internal Affairs.

The Project has translated into Ukrainian and published a brochure which contains all recommendations of the Committee of Ministers of the Council of Europe and other relevant documents on safety of journalists. Also a number of relevant ECtHR case-law were translated into

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<sup>1</sup> <https://www.coe.int/en/web/media-freedom/home>

Ukrainian and disseminated during the high-level conference in Kyiv on 19.10.2017 as well as posted online.

Jointly with the Presidential Administration, General Prosecutor's Office of Ukraine, National Police of Ukraine, Ministry of Internal Affairs of Ukraine, CSO "Institute of Mass Information" ("IMI"), the National Academy of Internal Affairs, Kharkiv National University of Internal Affairs and National University "Odesa Law Academy", the Project organized 4 training seminars for over 800 prosecutors, investigators, judges, patrol police officers and journalists from 16 regions of Ukraine.

According to the information provided by the Presidential Administration of Ukraine, these seminars have already had positive effect on situation: in January-June 2017 the National Police sent 10 cases related to crimes against journalists to courts (against 6 cases during the same period of 2016).

During 2017, the **National Council of Television and Radio Broadcasting of Ukraine (the Regulator, or the National Council)**, while still waiting for changes that should be introduced regarding its status and scope of authority by the Law On Audiovisual Services, was actively familiarizing its employees on best European practices on media regulation with the support of the Project. It is especially important that the National Council is actively developing regulatory framework on protection of minors from the harmful media content as there were several notorious instances of showing minors<sup>2</sup> without any restrictive measures on Ukrainian TV that would be absolutely unacceptable in Europe. The industry is difficult to work with since any limitations are not favored by the broadcasters. However, the Project has supported the Council of Europe recommendation to provide institutional independence of the Regulator which includes the independence in decision-making and enforcement measures, as well as legal guarantees and regulatory powers as the most important prerequisites.

In 2017 the Project supported a detailed plan of the implementation of **Institutional Mapping Analysis** in the sphere of media that should become a basis for further changes and will be actively referred to by both the members of the Parliamentary Committee for Freedom of Speech and Information Policy and civil society activists. All Council of Europe international experts who are engaged in any sort of activities Ukraine notice the country's complicated media landscape and it is useful to start changing the situation given that a sound analytical basis for it already exists.

Positive development in the area of **access to public information** happened when in April 2017 the President of Ukraine Petro Poroshenko authorized the Minister of Justice of Ukraine to sign the Council of Europe 2009 Tromsø Convention *On Access to Official Documents*. This is expected to happen in 2018. The importance of signing and ratification of the Convention was stressed at the international conference "RTI250: Celebrating the Right to Information's 250th Anniversary and Further Strengthening National Systems of the EaP Countries", organized by the Project in October 2016, and these processes were triggered. Follow-up conference "Right to know day: providing access to public information" was held in Kyiv in September 2017 attended by more than 200 participants.

The demand for public information has been on the rise in Ukraine for the past several years and the Ombudsperson's Office put forth huge efforts aimed to eliminate violations on the part of the information administrators and also on the part of the civil society organizations when it comes to monitoring the implementation of the legislation on public information held by the public authorities.

In 2017 the Ukrainian society received 3 online learning courses devoted to the topic of access to public information developed with the support of the Project. It includes the unique 5 weeks online course "Access to Public Information: from A to Z" which is open to anyone wishing to undertake it at the Prometheus web platform.<sup>3</sup> All course materials and the possibility to receive a certificate upon the course completion are accessible on a permanent basis. Two specialized courses were

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<sup>2</sup> <http://detector.media/infospace/article/131001/2017-10-17-ombudsmen-vidreaguvala-na-skandalne-stosuetsya-kozhnogo-pro-mamu-ditinu-i-ne-viklyuchae-sudovogo-pozovu-proti-intera/>

<sup>3</sup> [https://courses.prometheus.org.ua/courses/course-v1:COE+PI101+2017\\_T1/about](https://courses.prometheus.org.ua/courses/course-v1:COE+PI101+2017_T1/about)

developed as follow-up tools for the mentioned course – one of them is specifically designed for civil society activists<sup>4</sup> requesting information, and the other one – for the information administrators.<sup>5</sup>

The Project also supported the reforming in the sphere of archives in Ukraine - the first step was made by drafting a roadmap of changes as a result of the international conference "Access to archives as part of right to information" held in Kyiv in November 2017.

In addition to the main objectives, issues of gender stereotypes in media were one of the topics discussed as 1<sup>st</sup> Ukrainian Women's Congress that was supported by the Project.

The issue of media coverage of elections campaigns remains a highly debated topic as recent conference in Ukraine held on 30.11.2017 showed. Development of technologies, Internet, new media dictates new tendencies that should be adjusted to and reveals new challenges civilized solutions for which are to be found. This is an extremely sensitive topic since the new elections phase is approaching in Ukraine in 2019 and, therefore, proper and balanced legislative regulation of this matter is crucial.

Summing up, it should be noted that the Project could be considered as a success, since important and sustainable results, such as establishment of the public broadcaster and development of Institutional Mapping Analysis in the sphere of media, have been achieved.

During January 2016 - December 2017, the project implemented **116 public activities** that contributed to development of legal and institutional guarantees for freedom of expression, higher quality of journalism and pluralistic media landscape in Ukraine, creation of the Public service broadcaster, ensuring safety of journalists, approximation of media legislation to the European regulatory framework, strengthened the capacity of the Ukrainian public officials and civil society with regard to freedom of media and access to public information, in line with the Council of Europe standards.

**Table-1:** Type and number of Project activities in 2016-2017

Type of activity	Number of activities
Seminar	15
Training	15
Conference	13
Round table	14
Study visit	6
Press conference	6
Regional visit	6
Monitoring	4
Public event	4
Legal opinion/Expertise	2
Online course	3
Sociological survey	2
Expert and CoE management meeting	22
Steering Committee meeting	4
<b>Total</b>	<b>116</b>

Throughout the implementation period the Project also focused on promoting the implementation of the Council of Europe standards, studies and the case-law of the European Court of Human Rights

<sup>4</sup> [https://courses.prometheus.org.ua/courses/course-v1:COE+PIPA101+2017\\_T3/info](https://courses.prometheus.org.ua/courses/course-v1:COE+PIPA101+2017_T3/info)

<sup>5</sup> [https://edx.prometheus.org.ua/courses/course-v1:COE+PIM101+2017\\_T3/info](https://edx.prometheus.org.ua/courses/course-v1:COE+PIM101+2017_T3/info)

in the field of media and freedom of expression in Ukraine which included the Recommendation 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, Recommendation CM/Rec(2012)1 of the Committee of Ministers to member States on public service media governance, Council of Europe study “Information disorder: Toward an interdisciplinary framework for research and policy making” (2017) and etc.