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THE LEGAL FRAMEWORK OF THE IMPLEMENTATION OF COMMUNITY MEDIA IN UKRAINE

Summary: The ongoing globalization of mass media offers ample opportunities for citizen debate and pluralism of thought. One of the recent world media trends is the creation of different models of public media, which are an alternative to other means of communication. Public media might address issues of contemporary journalism, namely the quality and independence of media, ensuring that citizens receive accurate and impartial information.

Ukraine has undergone tremendous changes since it has gained independence in 1991 but the political and legal systems remain unduly centralized, the economy weak, and the government attempts to limit freedom of speech and work of media. During both the Orange Revolution in 2004 and the Euromaidan 2013–2014, the need to deepen democratic freedoms was emphasized. Major advocates of the reform called for strengthening the rule of law, decentralization, denationalization of media, and the establishment of community media in the country, which will be created by the society, serve the society, and work under its control.

Measures to increase the diversity of Ukrainian media are one of the practical means to guarantee freedom of speech and diversity of viewpoints. The diversity of media includes not only the diversity of content and multiplicity of media owners but also the variety of media types. Along with traditional models of public service media and private commercial broadcasting, community media emerged as the “third level” of media development that enhances freedom of speech.

This article examines the legal aspects of community media implementation in Ukraine, their compliance with the standards and principles of the media law of European countries that govern the media community, and illustrates the development of community broadcasting in the world. It also provides an overview of the international standards for community media, which are backed by legislatures and regulators.

Analyzing the Ukrainian media legislative draft, the author of the article offers improvements to the content and funding of community media in Ukraine.

Key words: freedom, diversity, public service broadcasting.

1. Introduction

An integration into the world media space, globalization, and rapid development of the media society have both positive and negative impacts on villages, towns, and cities' communities in Ukraine. On the one hand, it speeds up the spread of information and provides them with up-to-date news from other regions and countries. On the other hand, being a part of the global information network, small communities receive less information that focuses on their community matters, local culture and traditions. The last one might subdue the community's sense of belonging to their own village, town, or city, making residents less united and interconnected due to insufficient illustration of common experience and events.

Hence, the development and support of local media are crucial for village, town, and/or city communities and non-governmental organizations that operate in these communities.

Community media is an essential part of modern mass media because it fosters a country's democratic development, ensuring the independence of mass media, pluralism and protecting the rights of citizens on unbiased and balanced information.

"Nowadays, we are talking about a developed civil society where people are able to unite for the effective protection of their rights, and in the solidarity of their interests, when citizens value their freedoms and defend justice, perceive their equality and are responsible for themselves, their families and the country, when non-governmental organizations are effective in helping the disadvantaged, sick, and the environment, when the media freely critique governments and governments listen to the critique, when citizens respect each other, celebrate socio-cultural differences and resist xenophobia, discrimination, and violence", says scientist Viktor Stepanenko.

The European experience demonstrates the benefits of community media, such as increase in state's mass media competitiveness, independence, and diversity of viewpoint. As of January 1, 2019, the National record of Television and Radio Broadcasting Entities acknowledged 1553 broadcasters, namely 1453 broadcasters and broadcaster's service providers, and 100 information agency. Out of 1453 license-holders, 7 are state-owned, 219 are municipal, and 1227 are private (Buckley, 2016).

From the first years of Ukraine's independence, both scholars and journalist have emphasized the urgent need for quality broadcasting at a national and local scale. The characteristics of community media such as the satisfaction of the interests of a wide range of viewers, independence, objectivity, and pluralism will ensure quality content.

According to PACE Resolution 1466 (2005), Ukraine as a member of the Council of Europe has to eliminate state and municipal media, introduce public service broadcasting and guarantee compliance with the new law on media in Ukraine, with the standards of the Council of Europe, and its experts' recommendations (Parliamentary Assembly of the Council of Europe, 2005).

Following the adoption of the Law on Public Television and Radio Broadcasting of Ukraine, in 2017 Ukrainian state broadcasting has been officially transformed into public broadcasting, however community media has not been legislated yet (On Public Television and Radio Broadcasting of Ukraine). Ukraine has pledged to legitimate and promote the development of community media within the framework of the Association Agreement with the European Union. The Verkhovna Rada's Committee on Freedom of Speech and Information Policy has approved a strategy for the development of Ukrainian media legislation in line with European standards, which includes development of community media as a third sector alongside commercial and public broadcasting.

Requirements of Council of Europe and the Association Agreement with the European Union as well as the need for the Ukrainians to have a platform where community can showcase its interests and their diversity highlight the relevance of the topic.

To implement community media in Ukraine, the European experience must be considered because the standards of public broadcasting have been formed there. However, it is also crucial for Ukraine to develop its own version of community media in television and radio broadcasting, considering the specific features of the media environment in Ukraine.

2. Materials and methods

The purpose of this research is to analyze, systematize and summarize the basic legal framework for imple-

menting community media in Ukraine as a separate media institute alongside public, commercial, and foreign broadcasting.

Secondary data analysis was used to fulfill the purpose of this research. The legislations concerning community media such as legal acts of the Council of Europe Resolution of the European Parliament 2008 on Community Broadcasting in Europe, the Declaration of the Committee of Ministers of the Council of Europe on the role of Community Broadcasting 2009, Ukrainian legislations, and the Draft Law of Ukraine “On Media” that define the essence of community media and the process of its implementation in Ukraine were analyzed. The comparison of the Council of Europe’s legislative regulation of community media and the legislative regulations of community media proposed in the Draft Law “On Media” in Ukraine was done to identify correspondences and give recommendations considering specifics of Ukrainian media.

3. Results

Community media and its characteristics

Before analyzing the implementation of community media in Ukraine, it is important to understand the theoretical foundation of this concept. In the media space, the terms “public media”, “civic media”, and “community media” exist. It is worth noting that over the past years the concepts of “civic media” and “community media” have acquired different semantic nuances.

The scientists Jonson and Menichelli define community media as “a communication within a community”, while Clementia Rodriguez believes that community media are the media that allow people to effectively exercise their civil rights in everyday life. The scientist Dzialoszynski says that community media is capable and should create an environment for equal dialogue between different social groups, which will help to establish community relations, resolve disputes and conflicts.

UNESCO (The United Nations Educational, Scientific and Cultural Organization) defines community media as a non-profit media that are created by active members of the community, serve the interests

of the community, are managed and financed (at least partially) by the community, aiming to solve community problems and ensure sustainable development of a community (Dzholos, 2020).

The World Association of Community Radio Broadcasters (AMARC) defines community media as a television and radio community that rooted in and responsible to the communities they serve. They are committed to human rights, social justice, environment and sustainable development. They are driven by social objectives rather than the private profit maximizing motive. They empower people rather than treat them as passive consumers, and they nurture local knowledge rather than replace it with standard solutions (Amendments to the draft).

Although the aforementioned definitions slightly vary, all of them share common characteristics, such as community media are created and controlled by local citizens and aimed at meeting their information needs and creating a communication platform for interest-based discussion and dialogue.

Historical overview of community media

The emergence of community media is often associated with political changes, including the strengthening of democracy and more active participation of civil society. For the first time community media, as a community-based organization that broadcasts the routine, matters, traditions, and/or culture of a particular group of people emerged in America in the 1940s. At the time Bolivia’s ore miners, Colombia’s education workers, and USA’s social activists created non-profit radio stations that satisfied interests of a specific community (Amendments to the draft).

Since 1940s community media – a type of media that is organized and controlled by local communities – was adopted by other countries because, unlike commercial broadcasters that are profit-oriented and ruled by their owners, community media works for social welfare and covers the interests of a specific group of people that tend to be marginalized or underrepresented by public and private broadcasters (First Mapping of Community Media in Europe | Community Media Forum Europe, 2020).

According to the 2012 Community Media Forum Europe (CMFE), “there were 2237 community

radio stations and 521 community television stations in Europe”. Most stations are located in EU member countries. Out of 27 EU member states, 23 have community media with most community stations located in France, Netherlands, Italy, United Kingdom, Denmark, Spain, Germany and Sweden (First Mapping of Community Media in Europe | Community Media Forum Europe, 2020).

Outside the European Union, only the countries of the former Yugoslavia - Bosnia and Herzegovina, Macedonia and Serbia - have community radio or television.

The Chairman of the Federal Union of Civic and Educational Media Wolfgang Rössman states that “community media is the voice of civil society. They are the catalyst for the strengthening of the civil society through the reform of television and radio broadcasting systems in Eastern Europe. At the time of local and regional media crisis that affected both private and public newspapers, magazines, radio and TV stations, community media became extremely important as a tool for communication on a local and regional scale” (Doliva and Rankovich, 2020).

Studying community media in Central and Eastern Europe, researchers Doliva and Rankovich identify a number of obstacles to the development of community media, including lack of political willingness, low level of awareness, weak civil society, limited public funding, and the allocation of more frequencies to public media.

Legal framework of community media established by Council of Europe and AMARC

The legal framework for community media should include a clear statement of the principles that regulates an activity of community media, ensures freedom of speech, diversity and free flow of information and ideas (African Charter on Broadcasting). 2008 European Parliament Resolution on Community Broadcasting advises the Member States to legally recognize community media as a separate group, alongside commercial and public broadcasting in the absence of such recognition (European Parliament Resolution on Community Media in Europe).

Council of Europe Declaration 2009 on the role of community broadcasting in promoting social co-

hesion and intercultural dialogue emphasizes the need not only to recognize community broadcasting as a separate media sector, alongside public and private commercial broadcasting, but also to adapt regulatory framework to enable the recognition and development of community media (Declaration of the Committee of Ministers on the Role of Community Media in Promoting Social Cohesion and Intercultural Dialogue).

To be officially recognized, the community media should have a social purpose, non-commercial status, independence from political and private economic interests, conditions for public access and participation, and serve either a geographic community or a community of identity or interest (Amendments to the draft Declaration of Principles and the Draft Action Plan).

The Committee of Ministers Declaration on the role of community media also requires community media either broadcasting, print, or electronic to be independent from religious institutions (Declaration of the Committee of Ministers).

Overview of Ukrainian Draft Law on Community Media

International experts state that the constitutional and legal framework of media in Ukraine is one of the most progressive in Eastern Europe. Article 34 of the Constitution of Ukraine guarantees freedom of thought and expression, views, and beliefs, and Article 15 prohibits censorship (The Constitution of Ukraine, 2020). Broadcasting is regulated by the National Council for Television and Radio Broadcasting, an independent regulatory body created in 1997 (The National television and radio broadcasting Council of Ukraine). The broadcasting is regulated by the Law of Ukraine “On Television and Radio Broadcasting” of 2006 that issues licenses to mass media.

The Law of Ukraine “On Television and Radio Broadcasting” defines community media as a non-profit broadcaster, established to inform and satisfy the needs of a geographic community (The National television and radio broadcasting Council of Ukraine).

However, this is an incomplete definition because it does not state that community media can be

created and controlled by a community of identity that share a common interest unrelated to the place of residence of members of the community, such as nationality, language, profession, creative activity, and/or hobbies.

As of February 2021, the Draft Law of Ukraine No. 2693 “On Media” was registered in the Parliament of Ukraine, which will replace the imperfect and outdated Law “On Television and Radio Broadcasting”. This law will regulate Ukrainian broadcast space, including the community media. A number of norms on community media were drafted in accordance with the current Law on Public Broadcasting, namely the management and sources of funding.

The Draft Law “On Media” identifies the following functions of community media in Ukraine. The community media system has to enhance the identity of communities and their role in ensuring democratic governance of Ukraine, preserve the cultural and linguistic diversity of Ukrainians, increase media pluralism, and ensure objective coverage of community life (The National television and radio broadcasting Council of Ukraine).

There are multiple genres that can be covered by community media, including informational-analytical, nonfiction, cultural-artistic, scientific-educational, and entertaining (The National television and radio broadcasting Council of Ukraine).

The Draft Law stipulates that, outside of its own broadcast, which should be at least 2 hours per day, community media has to broadcast for free one of the programs produced by either the National Public Broadcasting Company of Ukraine or other community media (The National television and radio broadcasting Council of Ukraine).

The community media are obliged to participate in the coverage of the election campaign at the level of territorial communities (at local elections). The draft law “On Media” requires a geographical community media to broadcast meetings and activities carried out by local governments. In the author’s opinion, this requirement is controversial and should be reconsidered, as these gathering might not serve the interests of the community. In our opinion, the law should assign the right, but not the obligation of the geographical community media to cover the activity of executive governmental, local government, other state bodies, and their officials, except for the cases

when information relates to emergencies, their localization and elimination of their consequences. It is important that the final decision on a content and program policies is made by the community media that serves its community to meet their needs and preferences.

The first in the list of those who can broadcast to the community are non-governmental organizations (NGOs), NGOs’ public associations, enterprises created for non-profit purposes and are not owned and/or controlled by political parties. Religious organizations can also create community media, however only print media can have status of community media because, according to the law “On Television and Radio Broadcasting”, religious organizations are already allowed to utilize radiofrequency (<https://www.nrada.gov.ua/derzhavnyj-reyestr-sub-yektiv-informatsijnoyi-diyalnosti-u-sferi-telebachennya-radiomovlennya/>, 2020).

A geographic community broadcast can be carried out by municipal non-profit enterprises established by local governments that have the rights to represent the interests of the geographic community, including the united community, or the community created on the basis of a cooperation agreement, in accordance with the Law on Cooperation of Geographic Communities, if the geographic communities aren’t larger than a region (The National television and radio broadcasting Council of Ukraine).

The norm that the broadcasting of the geographic communities can be carried out by municipal non-profit enterprises established by local governments faced a backlash because, according to the European Parliament Resolution on Community Broadcasting, 2008, Council of Europe Declaration 2009, and AM-ARAs, governmental representatives cannot establish community media (The National television and radio broadcasting Council of Ukraine).

In the author’s opinion, the Draft Law “On Media” sets out the editorial independence, pluralism, impartiality, philosophy, mission, and goals for the community media, stating that: “Community media are created to fulfill the democratic, informational, social, and cultural needs of Ukrainian society by strengthening the identity of communities and their role in ensuring democratic governance of the Ukrainian state; preserving the cultural and linguistic diversity of Ukrainians; increasing media plural-

ism; impartially covering a community life. However, the fact that the governmental representatives are allowed to establish community media might threaten community media's independence and sovereignty.

The structure of community media

Every community media has to have a Supervisory Committee. The Supervisory Committee must be composed of one representative from the four largest deputy groups of the local government body that founded the enterprise, as well as five members from non-governmental organizations. If the community media is established on the basis of a cooperation agreement, its supervisory committee must be represented by one member of the largest and smallest deputy group of each local government body that reached the cooperation agreement. The number of NGOs' representatives must be one person greater than the number of members from local governments (The National television and radio broadcasting Council of Ukraine).

This structure of community media overlaps with the structure of Ukrainian public broadcasting required under the Law on Public Broadcasting, which stipulates that Ukrainian public broadcasting's supervisory committee must have one representative from one of the parliamentary parties of the Verkhovna Rada and nine members of non-governmental organizations. However, the supervisory community of community media has a shorter list of NGOs' specializations than Ukrainian public broadcasting. To become a member of community media's supervisory board, NGOs have to specialize in human rights, environmental, social, children and youth, or historical and cultural heritage protection. In addition, the NGOs should have organized public events for and relevant to the community where community media will be created over the last three years (The National television and radio broadcasting Council of Ukraine).

Members of the supervisory committee from NGOs are chosen through the vote at the conference. Every NGO can vote only once for the representative. The conference is held by the local government body, which is the founder of the non-governmental organization that will create a community media. The pro-

cedure for conferences and the election of members of the supervisory committee is determined by the National Council (The National television and radio broadcasting Council of Ukraine).

The Supervisory Committee of Community Media can appoint and terminates a manager, approve programs' concepts, review complaints, and annually report on its activity (The National television and radio broadcasting Council of Ukraine).

The sources of funding for community media

The Draft Law "On Media" states that the community media can be funded by any means not prohibited by the Constitution of Ukraine, including local budgets. Hence, the local authority that may create the community-based organization, and then community media has to ensure the proper funding. In addition, funding can be acquired through advertisement, however, the volume of advertising on the community media should not exceed 50 percent of the amount required by law for other types of broadcasting. The price of advertising on community media should be the same as the market price.

Financial independence and stability are the key to the effective work of community media. There are various models of economic stability for the community media, such as support from the target community in a form of donations, membership schemes, fundraising events, payment for small ads, fees for providing services and external sources, such as public development organizations and non-governmental organizations (Buckley, 2011). The ability to control costs and operate at a low income, largely relying on volunteers, is crucial for the stability of any community media. The majority of community media worldwide utilize commercial sponsorship. However, advertisements and commercials are regulated by the restrictions on the number of minutes of advertising per hour or the amount of advertising as a percentage of total revenue (Buckley, 2016 p.13).

Limits on commercial profit have to be set solely to protect the service itself not to undermine its interests. The AMARC Principles on Democratic Legislation on Broadcasting states that community media and non-profit broadcasting community groups have the right to secure their economic stability, independ-

ence, and development through the use of donations, sponsorships, commercial and publicity advertising, and/or other legitimate means. All of them will be fully reinvested to ensure the operation of the station and the achievement of their goals. Any restrictions on the time or amount of advertising must be justified and non-discriminatory. Community media should provide bills to ensure the transparency of financial management (Principles for a Democratic Legislation on Community Broadcasting).

In countries, where community media is protected by law and regulations, public funding is also available to maintain stability and social importance. European countries that support community media by the public funding include Austria, Belgium, Denmark, Ireland, France, Germany, the Netherlands and the United Kingdom. In addition, in many cases community media takes advantage of reduced costs or exemption from licensing fees (Doliva and Rankovich, 2020).

Revenues derived from the use of copyrights and rights on the intellectual property of a community media broadcaster as well as a subscription fee can become the sources of funding for media communities as well.

However, the draft law “On media” misses key details on how the community will financially contribute to the activity of its community media, stating that “Broadcasting of communities can be financed by any proceeds not prohibited by law” (Draft law “On Media” №2693).

The author of this paper suggests that the details on the funding sources of community media have to be added. The means of funding may include prepayment, subscription fee or other forms of local tax, charitable donations, financial income from community-based stakeholders, contribution by other governmental bodies, grant support from national and international organizations, income from the commercial services.

The author believes that the variety of funding sources is important, as it will ensure independence, financial stability and sustainable development of the community media. Despite receiving some funds, community media will still remain non-profit, as these funds will be utilized to provide social welfare services for the community. In addition, the European experience has illustrated the success of the finan-

cial model that combines funds from the community, government, and business.

However, considering Ukrainian specifics, the author thinks that the fact that Ukrainian legislation allows local governments to finance community media may threaten the sovereignty and independence of community media. Hence, the draft law identifies local budgets as the most realistic source of funding for media communities.

Licensing of community media

According to the United Nations Human Rights Committee, community media get frequency resources from the government. Additionally, “a limited frequency resource should give equal frequency access to commercial, public and community media” (Buckley, 2016). The majority of countries that have community media provide frequencies to community media on preferential terms or even for free.

The National Council may grant licenses for FM broadcasting to local radio stations and for digital broadcasting on television channels through the competition. Contests for community broadcasters are held separately from other mass media and for broadcasters of geographical communities separately from other broadcasters of communities.

Community media have to pay a small license fee, which is the same as the registration fee (Parliamentary Assembly of the Council of Europe, 2005).

The expert of Council of Europe Steve Buckley, who wrote the analytical report “Community Media in Ukraine: Opportunities for Development”, is confident that there should be no problem in Ukraine with the allocation of radiofrequency resources to community television and radio. However, he provides the following recommendations on the technological aspects of the implementation of community media (Parliamentary Assembly of the Council of Europe, 2005):

- Community radios should not be restricted on the transmission power over a limited geographical area, the assignment of one frequency to one service with an effective radiation power of 100-500 watts will be satisfactory.
- A sufficient number of frequencies that are currently available in the FM band (97.5–108 MHz) should be reserved for community media.

- After switching from analog to digital broadcasting, the frequencies should be transferred to community radio.
- Part of at least one of the digital television multiplexes must be reserved for the future community media, including universal must-carry rules and guaranteed front-page coverage in electronic television programs.
- Access to community media on multichannel broadcast platforms, including digital terrestrial television, should be free or low-cost in accord with a multichannel broadcast license.

However, Buckley provides the following recommendations to ensure the stability and sustainable development of the media community sector:

- Local authorities should have the right to provide financial support for the community media. The provision should be transparent and offered on a fair competitive basis to all community media services in their administrative territory. It should be given for a specified period of time without encroachment on the independence of the service.
- Support should be provided to facilitate the transformation of existing municipal broadcasting services into independent community media services.
- Consideration should be given to setting up a national community media fund to support operating costs and local news coverage.
- Community broadcasting services should not be charged any licensing fees.
- Access to community media on multi-channel broadcast platforms, including digital television, should be free or nearly free under a multi-channel broadcast license.
- Support should be given in organizing training and development programs for managers, producers, journalists, technical workers of the community media.

The Draft Law “On Media” takes into account all the recommendations given by Steve Buckley the expert of Council of Europe. The Draft Law stipulates that the National Council may, on a competitive basis, grant licenses for the use of the Ukrainian radio frequency resource, including FM broadcasting to local radio stations and digital broadcasting to local TV channels. There are no capacity limits for broadcasters that will be used by community media. The

government also gives some competitive benefits to community media, such as the bill stipulates that competitions for community broadcasters are held separately from other categories of broadcasting, and for broadcasters of geographic communities separately from other broadcasters of communities. There is a small license fee for community broadcasters, which is equal to the registration fee (Draft law “On Media” №2693).

Sanctions towards community media

In case of violation of the law, licensing norms, the National Council should apply the sanctions stipulated by the general media bill such as fine, sentence, appeal to the court for a suspension or take away of the license or registration.

The fine should be no more than 10% of the fines that can be applied to other broadcasters. However, in case of severe misconduct, community media has to pay the same fine as other broadcasters.

4. Conclusions

The reform of the media legislation is not only a responsibility of Ukraine as a member state of the Council of Europe but also an important step towards decentralization, deepening of democracy, and the rule of law and freedom.

In our opinion, implementation of community media in Ukraine will ensure quality, credible, socially important information content that will meet the needs of various communities and marginalized groups. The legislation should enable local journalism to create an editorial policy that provides freedom to choose topics, spread only credible information, be accessible and responsible to the community it serves.

A new type of public media - community media is needed to give Ukrainian local communities freedom, independence, and chances to succeed. With the development of independent media, a society of informed citizens will develop, which is the basis of any democratic state.

Entitling communities with the right to access best-fit information, create community-based discussion platforms will help resolve disagreements within

communities, unite communities around common values, and guarantee equal rights for all members. Community media can also facilitate mediation in crisis situations such as the current conflict in Donbass, as they did in Northern Ireland, the Balkans and Africa, helping to solve civil conflicts (Doliva and Rankovich, 2020).

Overall, the law 2693 “On Media”, namely Section III “Community media” complies with the standards and principles of the media legislation of the European Parliament Resolution 2008 on Community Broadcasting in Europe and the Declaration of the Committee of Ministers of the Council Europe on the role of community broadcasting, 2009 because it defines community media as a non-profit broadcaster, established to inform and satisfy the needs of a geographic community, preserve its cultural and linguistic diversity, increase media pluralism, and ensure objective coverage of community life (The National television and radio broadcasting Council of Ukraine).

The author supports the fact that community media will function as non-profit organizations that are largely funded by their community because this type of ownership will prevent influence on community media by the authorities and politicians. Although, considering the socio-economic deprivation of some territories and the economic instability in Ukraine, the ability of local governments and private business to finance community media, in our opinion, may threaten the sovereignty and independence of media.

The author of this paper suggests that among the requirements for independence, diversity and relevance of content, non-profit activities, locality of interests, organization of civil dialogue, freedom of speech, ethical coverage of community activity, critical communication, community media should become educational, cultural, and initiative platforms of a certain territorial or identity community where everyone will be able to speak and be heard.

Taking into consideration the needs of its individual community, the editorial policy of the community media should fulfill the educational function, that includes provision of new knowledge to the community, communicative function, that provides community with the opportunity to voice their concerns and/or share experience, create their own official channel for communication with national minorities or other categories of population, and outreaching function

that involves cooperation with local schools and universities. These functions of community media will allow citizens to get a sense of responsibility to the community, increase their media literacy, enhance national identity, diversity, and culture of their community.

Lastly, it should be noted that the success of any reform depends on whether it is understood by its target audience or not. Therefore, the introduction of community media in Ukraine should be supplemented by educational programs that will raise awareness of civil society on the role, functions, and importance of community media.

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