

# Ukraine's media policies in the context of ongoing war and future reconstruction – lessons learned from the Balkans

Nicolae-Alexandru Andronic

**Abstract:** During the future post-war reconstruction of Ukraine, which is going to be guided by democratic principles and EU values, safeguarding and consolidating the pluralism and freedom of the media will be of great importance. This article will analyse Ukraine's current media policies and their effects, departing from the lessons learned from the post-war reconstruction of Western Balkan countries after the conflicts of the 1990s. This analysis highlights the fact that Kyiv has learned from the experience of the Balkan reconstruction (and other such cases), passing legislation that prevents oligarchic capture and covert ownership of media outlets. However, there are negative economic factors, largely triggered by Russia's illegal invasion, which hinder the goal of both maintaining a financially viable private media sector and preventing oligarchic and foreign malign influence. Therefore, Ukraine will need more funds to offset these issues and to keep its media outlets alive – and this is a dimension where the West, and especially the European Union, can play a crucial role.

## ***Introduction***

As Russia's illegal war against Ukraine continues, Kyiv and its Western partners have already begun discussing about reconstruction. While this might seem premature, it is actually a sign of strategic maturity, since the reconstruction that Ukraine wants and deserves, firmly rooted in democratic values, must be planned in advance to maximise its success. This process will also cover the media ecosystem, which has been severely impacted by the invasion. Post-war recovery of a country's media is tough to manage, and the way in which this was done in parts of the Western Balkans after the conflicts of the 1990s shows the cost of not getting it right. There are however reasons to be optimistic with regards to the situation in Ukraine, as there are factors working in favour of a free Ukrainian media which were not present in the post-war Balkans.

## ***Balkan lessons on (un)free media***

Theoretically, the media ecosystem in the Western Balkans could constitute a robust fourth estate, capable of acting as a check on politicians' power excesses, since local legislative frameworks tend to be

largely synchronised with EU standards in this field (Stojarová, 2020, p.165). As Stojarová notes, “the accession process and subsequent Europeanization is pivotal in the shaping of countries’ legislation” because “the EU’s political commitment to media pluralism and freedom is generally high” (2020, p.165). Consequently, “media freedom and plurality is guaranteed and censorship prohibited by all of the constitutions in the region” (Stojarová, 2020, p.166). Moreover, the Balkan media ecosystem is highly fragmented (Southeast European Leadership for Development and Integrity, 2022, p.8), which should lead to a diversity of viewpoints covered by outlets. For example, the least fragmented media market when matching for population figures, Serbia, still contains over 200 TV stations (Stojarová, 2020, p.164).

However, in many Balkan countries, the influence of these factors is overshadowed by other structural forces working against media freedom: dependency upon state advertisements/financing, ownership of outlets by politically connected oligarchs, and weak/politicised regulatory bodies (Stojarová, 2020, pp.163-166).

If the financial dependency upon governmental funds and consequent politicisation of public broadcasters is a relatively straightforward process, the mechanisms behind the capture of private media by political interest groups are a bit more complex. Advertising is the basis of revenue for private media, but it is a very limited resource, since “the advertising market has been consistently shrinking” (Stojarová, 2020, p.169). The impact of the 2008 financial crisis upon this industry has brought about a situation where Balkan governments constitute “the most important source of revenue for private companies, supporting media directly and indirectly in many different ways” (European Parliament Think Tank, 2016, p.3). The awarding of advertisement contracts is often linked to political loyalty (Stojarová, 2020, p.170), and a lack of transparent legislation has solidified clientelist practices (Kmezić, 2020, p.192).

An equally serious problem is the untransparent ownership of numerous Balkan media outlets by politically connected businessmen (European Parliament Think Tank, 2016, p.8; Stojarová, 2020, pp.167-170). This can endanger editorial independence, especially when said outlets are financed from the profits of their owners’ other businesses, which may very well be exposed to political favouritism or retaliation (Stojarová, 2020, pp.169-170). Privatisation, which should theoretically be a strong counterbalance to government influence in state media, has on several occasions been marked by overt cronyism (Kmezić, 2020, pp.193-194). Unfortunately, such political influence mechanisms are not a new phenomenon, but rather an “original sin” of the first wave of post-war privatisation which has perpetuated itself throughout the following waves as well (Kmezić, 2020, p.186). An associated toxic trend is the high concentration of media ownership, also facilitated by obscure ownership structures and dubious public-private linkages (European Parliament Think Tank, 2016, p.8).

Therefore, it becomes apparent that the European-standard media regulations “are not necessarily observed” and that the fragmentation of the media landscape has not brought a diversity of views, but rather the saturation of a market characterised by reduced profits and financial unsustainability (Stojarová, 2020, pp.166-167). Counterintuitively, this fragmentation has not even stopped media concentration, which has increased to a worrying extent (European Parliament Think Tank, 2016, p.8). Therefore, one could say that the Balkan media ecosystem represents the “worst of both worlds”: it contains too many outlets, most of which are owned by a very limited number of people and present the same viewpoints.

To this already problematic image of the media landscape, one must also add the fact that “regulatory bodies are generally perceived as being weak, unprofessional, biased and dependent on the political powers” (Stojarová, 2020, p.166). Since members of these bodies are usually “elected with a simple parliamentary majority and are thus closely related to the ruling party”, while also being financially dependent upon government funds and not endowed with proper monitoring capabilities, the result is a politicised regulatory system (Stojarová, 2020, p.166).

A big factor in all of these processes has been the lack of foreign ownership in the media sector, “which could have also contributed to the lack of growth of media professionalization” (Stojarová, 2020, p.167). Western (and especially European) involvement and foreign direct investment (FDI) in Balkan media would have made an even greater difference on the issue of independence, as outlets belonging to global conglomerates are much harder to pressure politically without generating serious international backlash. This process should have been encouraged by Western governments, as pure local market considerations do not provide a strong enough incentive for such investment. By blindly trusting the “invisible hand” of the market during the privatisation process, the West has failed to notice the stacks of dirty cash that hand was often holding, with dramatic consequences.

### ***Ukraine: European “economic firepower” will make the difference***

There are reasons to be optimistic about the future of Ukrainian media, as Kyiv appears to have learned from the experience of the post-war Balkans and other similar cases.

The law “On Prevention of Threats to National Security Related to Excessive Influence of Persons Who Have Significant Economic and Political Weight in Public Life (Oligarchs)” addresses a lot of the ownership issues described in the previous section.

Understanding how problematic the politics-business-media nexus is for media freedom, the de-oligarchization law defines an oligarch as a person who meets at least three of the criteria listed below:

*“1) is involved in political life;*

*2) exerts significant influence on mass media;*

*3) is the ultimate beneficial owner of a business entity that, after the enactment of this Law, is a natural monopoly entity or occupies a monopoly (dominant) position in the market according to the Law of Ukraine on Protection of Economic Competition, and maintains or strengthens such position within one consecutive year;*

*4) the confirmed value of the person’s assets (and those of the business entities in which he/she is a beneficiary) exceeds 1 million subsistence minimums established for able-bodied persons as of January 1 of the respective year.”* (European Commission for Democracy Through Law, 2021, p.3)

Under the law, oligarchs are prohibited from making political donations and financing political campaigns, as well as from participating in the privatisation of large-scale assets (European Commission for Democracy Through Law, 2021, p.5). The persons identified as oligarchs are included in a state register, and public officials must declare contacts with them or their representatives (European Commission for Democracy Through Law, 2021, pp.4-7).

Furthermore, while it has attracted some controversy (Nilsson-Julien & Federico, 2023), the more recent law titled “On Media” should also help prevent the unhealthy covert ownership practices that can be encountered throughout much of the Balkan region. The law compels media outlets to either obtain a license or register themselves with the relevant state authorities, depending upon the type of media concerned (Directorate General Human Rights and Rule of Law, 2023, p.16). The registration and licensing processes force outlets, including online ones, to “disclose clear information on their stakeholders and owners”, thus making

it much harder for pro-Russian actors to covertly own publications and TV stations (Nilsson-Julien & Federico, 2023). This should also prevent the paradox of media ecosystem fragmentation and concentration occurring simultaneously: with outlets forced to disclose information about owners and stakeholders, tycoons can only accumulate a limited amount of media market share before falling under the incidence of the de-oligarchization law, the obligations of which diminish their power to influence politics. Therefore, it becomes apparent that “On Prevention of Threats to National Security Related to Excessive Influence of Persons Who Have Significant Economic and Political Weight in Public Life (Oligarchs)” and “On Media” are two pieces of legislation which reinforce each other.

Besides, “On Media” also establishes a more transparent procedure for the selection of members for the National Council of Television and Radio Broadcasting, Ukraine’s media regulatory body, as it “requires the President to select new members from a shortlist that has been proposed by media NGOs and unions, and vetted by an appointed five-person Commission which organises the application process and considers the nominations” (Directorate General Human Rights and Rule of Law, 2023, p.7). Appointment powers are shared between the President and the Parliament, each nominating half of the National Council’s members (Nilsson-Julien & Federico, 2023).

This is not to say that Ukraine’s media policies or their effects are flawless; due to multiple factors, creating perfect policies would be an impossible task for Kyiv under the present circumstances. For example, the de-oligarchization law compelled persons identified as oligarchs to sell their media assets quickly, which was impossible in the context of Russia’s invasion and generalised investor weariness (Grămadă, 2022). In response, some tycoons simply handed their media licenses to the state, to the point where some experts claim that “the state is turning into a media mogul” (Grămadă, 2022). This is not an ideal situation, and the fair and transparent re-privatisation of these assets after the war will be a challenge for the Ukrainian authorities. On the other hand, any de-oligarchization effort was bound to encounter such problems given investors’ reluctance and the current risk levels associated with the Ukrainian market.

The aforementioned example leads to the identification of the key threat to Ukrainian media freedom and diversity: lack of funding. Despite the authorities' Europeanisation drive, Ukraine cannot fight unfavourable economic conditions alone. The impact of Russia's invasion upon the Ukrainian media sector has been massive, as "local media have seen a 40 to 80% drop in their income and many of their offices and equipment were occupied, destroyed, or looted" (Ukrainian Media Fund, 2022/23, p.3). Advertising spending, which is a core source of money for Central and Eastern European media companies, fell across the region by at least 22.8% in 2022 compared to 2021 (Zaiceva, 2022). Forced to devote significant coverage to the war, outlets are finding themselves in a situation where a large part of their content cannot be monetised, as advertisers concerned about brand image just "filter out news and stories of Ukraine or Russia" (Zaiceva, 2022).

Absent foreign help, these economic realities and their impact will make the re-privatisation of media licenses and assets recently transferred from oligarchs to the state a thorny issue. If everything is left to the "invisible hand of the market", many financially challenged Ukrainian outlets risk attracting dubious would-be investors or buyers, driven primarily by motivations other than profit or civic spirit. This could leave Ukrainian authorities with a lose-lose choice: they could either allow dubious investors and buyers to acquire outlets and licenses, leading to a regress towards the oligarchic model that was meant to be replaced, or they could block such acquisitions under the de-oligarchization and media laws, unintentionally maintaining the state's unwanted media monopoly in the absence of legitimate investors and buyers.

This is where the West, and especially the European Union, can make a decisive contribution in favour of Ukrainian media. By providing financial aid to struggling outlets, the EU and its partners can help remove or at least partially mitigate some of the negative economic factors that Kyiv is facing in its attempts to both maintain an economically functional private media sector and keep that sector free of oligarchic and malign foreign influences. If guarantees of EU support are provided, Ukrainian outlets will become more attractive for legitimate investors both inside and outside Ukraine, whose acquisition of said outlets would increase and consolidate media pluralism and freedom.

Furthermore, if major Western media trusts and conglomerates were to develop a presence on the Ukrainian media market, either through acquisitions of existing outlets or through the opening of local branches, this would not only solidify pluralism, but it would also help provide Ukrainian journalists with better international visibility, which in time would also bring more funds and opportunities, thus leading to second-degree mitigation effects of unfavourable economic factors.

While posing a significant challenge, the democratic reconstruction of the Ukrainian media sector can be achieved, and Kyiv has shown the will and the capacity to enact the necessary reforms. The decisive element will be the amount of “economic firepower” that the EU provides Ukraine with.

### ***Conclusion***

Overall, it is safe to conclude that the main threat towards the pluralism and freedom of Ukrainian media stems from the tough economic circumstances that the country is facing. In terms of government policies, Kyiv is taking the right steps to prevent oligarchic influences and to foster ownership transparency, as demonstrated by its media legislation. The current government has embarked upon a strong Europeanisation campaign and is thus a reliable partner in promoting the EU’s vision of a democratic and pluralistic media ecosystem.

However, Ukraine’s leaders have to face not just Russia’s illegal invasion, but also the negative economic forces it unleashed, and the unavoidable problems brought by the legacy of oligarchic media control during the previous decades. These issues cannot be mitigated by the Ukrainian government alone, and the help of its Western partners is vital.

Therefore, the policy recommendation of this article will be directed not towards Ukraine, but towards the West and the European Union in particular: in its efforts to rebuild the post-war media sector upon democratic principles, Ukraine will need more “economic firepower” in order to maintain both market functionality and pluralism. In this regard, the EU is best positioned to make a difference, and the returns on this investment will be significant, because it is an investment in democracy that will make an impact for decades.

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