



INDEPENDENT MEDIA COUNCIL

Decision No.75

Kyiv

March 10, 2021

1. On December 29, 2020, the Independent Media Council received a complaint from L.Hurina, director, and O.Yelova, legal expert, of Experto Crede LLC (letter No.53, dated 12.24.2020) containing a request to express a position and provide an opinion on the dissemination of inaccurate information and manipulative content by the Avers TV Company (and affiliates). Specifically, the violations alleged in the complaint include a violation by the Avers and Rivne-1 TV channels of the requirements for media coverage of the electoral process, the Avers TV channel's failure to meet journalistic standards when covering the hostage-taking in Lutsk, a violation on the part of Avers TV journalists of the right to privacy, and the channel's biased, incomplete and inaccurate information coverage.

2. Under paragraph 12 of the Regulations on the Independent Media Council, the Council finds the complaint in this case partly admissible.

3. The Independent Media Council does not find admissible the complaint in terms of the following alleged violations:

1. Posts on social media about law enforcement behavior. One of the episodes in the complaint to the Independent Media Council [concerns](#) the detention by law enforcement of an Avers TV journalist for crossing the street in an undesignated area which jeopardized the life and health of traffic participants. Specifically, it concerns journalist Natalka Polishchuk's unwillingness to name herself at the moment of detention and her subsequent being taken to a police station to draw up a detention report. After the aforesaid events, the journalist wrote a post on social media in which she described the situation using obscene language against law enforcement. From the material provided to the Independent Media Council it follows that the posts were published on the journalist's personal page. Besides, in each of this case's episodes, the journalist acted as a private person, without using her status as a journalist.

However, when evaluating journalists' actions, their professional activities should be differentiated from situations, in which they act as private persons. In its [Decision](#) of November 24, 2020, the CJEU specifically noted that journalists' posts on their pages in social media are mainly considered as put by private individuals. According to paragraph 4 of the [Regulations on the Independent Media Council](#), the Independent Media Council is authorized to consider complaints about violations by mass media. Therefore, despite such posts being potentially able to go beyond reasonable criticism of state agencies, injuring their reputation in the eyes of society (see the ECtHR decision in [Savitchi v Moldova](#), §52–55), the Independent Media Council considers the complaint regarding this episode **inadmissible** in the absence of the jurisdiction *ratione materiae*.

2. The Volyn governor's complaint regarding the provocative questions asked by the Avers TV Company. This piece [covers](#) President Zelenskiy's visit to Volyn and journalist Natalka Polishchuk's attempts to get an interview about the state of the oblast's roads. During the Q and A session, Volyn governor Mr.Pohuliailo interrupted the

conversation saying that the Avers TV company's journalists regularly ask provocative questions and persecute him daily. The part of the video provided by the complainant shows that the journalist adhered to ethical standards and applicable media laws during the whole Q and A session with the President and local government representatives. The piece in question, therefore, contains no explicit or implicit violations on the part of the TV channel's employees. The very fact of asking provocative questions does not constitute a violation because, according to the ECtHR decision in [Oberschlick v Austria \(no 2\)](#), provocative statements are protected by Article 10 of the Convention [§31, 33]. Also, the applicant did not provide any additional material regarding a possible violation of ethical standards, interference with privacy or any other rights of the Volyn oblast governor on the part of the Avers TV company, as requested by the Independent Media Council. Thus, the Independent Media Council considers the complaint regarding the aforesaid material **inadmissible** in the absence of facts about possible violations on the part of the TV channel.

3. The piece by the Avers TV Company about President Zelenskyi's conversations with voters in Volyn. Another episode referred to by the applicant [contained](#) information about President Zelenskyi's visit to a local Volyn school and his communication with the voters. Specifically, the piece includes an interview with security guards regarding the journalists' access to the event, as well as an interview with the residents about the local community's problems. The persons' behavior demonstrates their readiness to give an interview to the Avers TV Company. Besides, the piece contains footage of the Q and A session with the local community and the President, where the journalists specifically draw attention to improper behavior on the part of the presidential guards. The piece also features the head of the education department of the Volyn Oblast State Administration and a short interview with her about her impressions on the President's visit. At the end of the piece, the vehicles which the President used to come to Volyn are shown. Besides, the Avers TV Company features an episode from Studio Quarter 95, in which Mr. Zelenskyi speaks ironically about the quality of his predecessors' presidencies.

Although the piece does contain quite radical statements and offscreen remarks by Natalka Polishchuk, critical and even insulting statements about civil servants and officials are protected (see [Koç and Tambaş v Turkey](#)). At the same time, since the information was supported by actual data and episodes about the presidential guards' behavior, there is no reason to assume that the disseminated content is defamatory or based on false information. As for the Studio Quarter 95 episode, the Independent Media Council sees no violations of journalism ethics because irony and satire are protected forms of freedom of expression. Thus, such forms as images ([Vereinigung Bildender Künstler v Austria](#), §33), signs bearing political statements ([Eon v France](#), §53), fictitious interviews ([Nikowitz and Verlagsgruppe News GmbH v Austria](#), §18), ads ([Bohlen v Germany](#), §50), caricatures ([Leroy v France](#), §44), articles in a local newspaper ([Ziembiński v Poland \(no 2\)](#), §45) were considered as acceptable and protected by Article 10 of the ECHR. A form of expression being protected does not always mean protection of the content of such an expression. For instance, in the aforementioned [Leroy v France](#), justifying and popularizing terrorist narratives was not protected as the content of expression, although the form of expression fully complied with the requirements of Article 10 of the Convention. However, there are expressions that are protected both in form and in content, e.g. political caricatures (see the recent practice in [Dickinson v Turkey](#), §54–55). Besides, information about high officials' activities and their communication with voters (if their position is elective) is a matter of public interest, and so disseminating such data is justifiable. Thus, the Independent Media Council considers the complaint concerning this piece **inadmissible** in the absence of violations of journalistic standards or applicable law.

4. Entry into a judge's property. The applicant refers to an article in the IMI [featuring](#) Avers TV Company's journalist Natalka Polishchuk being accused of unlawful entry into the property of a Lutsk City District Court judge. Specifically, the judge noted that the TV crew entered her apartment without permission where her son's girlfriend was present, attempting to get an interview without the consent of the latter. In contrast, the Avers TV Company's journalist commented to the IMI that the TV crew entered the apartment lawfully by knocking on the door that was opened by a judge's relative. To support her words, Natalka Polishchuk provided audio in which one can hear a knock on the door, a barking dog, and the journalist's question about whether the judge was living at that address. However, the representative of the Avers TV Company did not introduce herself as a journalist.

According to Part 1 of [Article 162](#) of the Criminal Code of Ukraine, unlawful entry into someone’s home or unlawful inspection is a penal act. At the same time, possible corruption of judges, illegal acquisition or non-declaration of property are a matter of public interest (*Pais Pires de Lima v Portugal*, § 60–61). However, the information provided by the applicant makes it difficult to draw a clear conclusion about the precise subject of investigation, the episode of the TV crew’s appearance at the door and the sequence of the journalist’s actions during her interaction with the judge’s relative, as well as the person’s behavior and consent to an interview about the judge’s living at that address. The video does not make it possible to conclude about unlawful entry into the judge’s place of residence. Thus, two mutually exclusive versions of the event exist, with none of them substantiated by evidence sufficient to draw an informed opinion on (il)legality of the journalist’s actions. The applicant also failed to provide any additional materials about possible violations of ethical standards, unlawful entry into the property of the Lutsk City District judge on the part of the Avers TV Company’s journalist. Thus, the Independent Media Council considers the complaint against the aforesaid material **inadmissible** in the absence of facts of possible violations on the part of the TV channel.

5. The piece by the Avers TV Company regarding violations on the part of Volyn tax officials. The applicant refers to the [piece](#) by the online media “Rayon.Lutsk”. Specifically, the news story concerns the investigative actions in the Main Department of the State Fiscal Service in the Volyn Oblast, during which none of the agency’s heads received a notice of suspicion; no leadership representatives or officials were arrested, or documents, currency or other material values confiscated. In contrast, such “violations” on the part of the fiscal service employees were featured in a story by the Avers TV Company, the retraction of which was demanded by the state agency’s employees.

The Independent Media Council reminds that in *Worm v Austria*, the ECtHR ruled as follows: *“The public’s becoming accustomed to the regular spectacle of pseudo-trials in the news media might, in the long run, have nefarious consequences for the acceptance of the courts as the proper forum for the determination of a person’s guilt or innocence on a criminal charge”* [§54]. It is also worth remembering that such actions can worsen the media’s reputation with the latter appearing incompetent in the matters addressed in journalistic pieces that they disseminate. However, in this particular case, the complainant did not provide a link to the original piece by the Avers TV Company, which is also not part of the [news piece](#) by the Rayon.Lutsk online media. Besides, when requested by the Independent Media Council, the complainant failed to provide additional materials regarding possible violations of ethical standards, the presumption of innocence or other procedural requirements regarding the coverage of legal proceedings by the Avers TV Company’s journalists. The available information does not make it possible to reach an objective conclusion about the presence or absence of violations of ethical principles or national legislation on the part of the Avers TV Company’s journalists. Thus, the Independent Media Council considers the complaint against the aforesaid piece **inadmissible** in the absence of facts.

Votes: “In favor” — 9
 “Against” — 0
 “Abstained” — 2

Head of the Independent Media Council



A. Cherevko

Secretary of the Independent Media Council



O. Holub

Secretary of the Independent Media Council



P. Moiseyev