



INDEPENDENT MEDIA COUNCIL

Opinion No. 46

Regarding material produced by the Avers TV Company and its affiliates

Kyiv

April 27, 2021

### I. Contents of the complaint

1. 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, on March 10, 2020, the Council found the complaint in this case partly admissible, given the importance of the journalistic material in question for the Volyn Oblast and the need to improve the quality of local media outlets.

### II. Regulation

#### 1. [Constitution of Ukraine](#)

Article 34. Everyone is guaranteed the right to freedom of thought and speech and the free expression of his or her views and beliefs.

Everyone has the right to freely collect, store, use and disseminate information by oral, written or other means of his or her choice.

The exercise of these rights may be restricted by law in the interests of national security, territorial indivisibility or public order, to prevent disturbances or crimes, protect the health of the population, the reputation or rights of other persons, preventing the publication of information received confidentially or supporting the authority and impartiality of justice."

#### 2. [Convention for the Protection of Human Rights and Fundamental Freedoms \(European Convention on Human Rights\)](#)

Article 8. The right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 10. Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

#### Article 17. Prohibition of abuse of rights

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

### 3. [Law of Ukraine On Information](#)

#### Article 2. Main principles of information relations

1. The main principles of information relations are:  
guaranteed right to information;  
openness, availability of information, freedom to exchange information;  
reliability and completeness of information;  
freedom of expression of views and beliefs;  
eligibility to receive, use, disseminate, store and protect information;  
protection of a person from interference in their personal and family life.

#### Article 29. Dissemination of socially salient information

1. Restricted information may be disseminated if it is in the public interest, and the public's right to know that information outweighs the potential harm from its dissemination.

2. The subject of public interest is information indicating a threat to state sovereignty, territorial integrity of Ukraine; ensuring the implementation of constitutional rights, freedoms and responsibilities; indicating possible human rights violations and misleading the public, harmful environmental and other negative consequences of the activities (inaction) of individuals or legal entities, etc.

#### Article 30. Exemption from liability

2. ...Should a person think that value judgments or opinions degrade their dignity, honor or business reputation, as well as other personal non-property rights, they shall be entitled to exercising the right of reply granted by law, as well as their interpretation of the case in the same media to prove the groundlessness of the judgments spread, providing a different evaluation...

### 4. [Law of Ukraine On Television and Radio Broadcasting](#)

#### Article 6. No abuse of freedom of broadcasting organizations' activities shall be allowed

2. It shall be prohibited to use broadcasting organizations for disseminating any information which violates legal rights and interests of natural or legal persons.

#### Article 59. 1. Broadcasting organizations shall

c) disseminate objective information...

- j) comply with the rules of advertising and sponsorship established by law...
- l) refute the information provided and recognized it as unreliable, defamatory, etc.

## 5. [Election Code](#)

### Article 47. Main Principles of Information Support to Elections

[...]

4. The election commissions, mass media and information agencies, state executive bodies, state bodies of the Autonomous Republic of Crimea, bodies of local self-government, their officials, public associations, as well as other persons shall - when disseminating information on the elections that shall not be considered election campaigning, under Article 51 of this Code - abide by the principles of unbiased, unprejudiced, balanced, reliable, complete and accurate information, and to avoid discrimination and sexism.

### Article 49. Principles of participation of mass media and news agencies in information support of elections

2. Information agencies and mass media shall disseminate information on the course of the election process and on related events based on principles of providing credible, complete, accurate, and objective information in an unbiased way.

[...]

Television and radio broadcasting organizations shall independently determine the amount of airtime to be allocated to the coverage of facts and events related to the election process. When releasing such materials, television and radio broadcasting organizations shall be prohibited from providing a different attitude or granting privileges, to certain electoral subjects.

Mass media shall provide balanced coverage of comments made by candidates and parties (party organizations) that are electoral subjects at election-related events.

### Article 51. Forms and means of election campaigning

1. Election campaigning shall mean carrying out any activity aimed at encouraging voters to vote or not to vote for a particular candidate or party (party organizations) that are electoral subjects. Election campaigning may be performed by any means that do not contradict the Constitution of Ukraine and the Laws of Ukraine. Election campaigning may be conducted in the following forms:

[...]

4) making public political advertisements, speeches, interviews, essays, films, audio and video clips, other publications and notices in print and audiovisual (electronic) mass media;

5) distributing election leaflets, posters and other printed campaigning materials or printed publications containing election campaigning materials.

### Article 57. Restrictions on Conducting Election Campaigning

4. During the election process, media organizations, functionaries and officials and creative employees thereof shall be prohibited from appealing, in their materials and programs other than those based on agreements concluded in compliance with the requirements of Part three of Article 55 or Part two of Article 56 of this Code, to vote or not to vote for candidates or parties (party organizations); evaluating their election programs or giving preference to them in any other form.

8. It shall be prohibited to include election campaigning materials of candidates or parties (party organizations) or political advertisements in informational television and radio programs. Political advertisements shall be separated from other broadcasts and identified as such.

#### **6. [Law of Ukraine On Combating Terrorism](#) (Part 2 of Article 17)**

It shall be prohibited to spread, via the mass media and in any other way, information, which...

[...]

can complicate the conduct of an anti-terrorist operation and (or) endanger the lives and health of hostages or other persons in the area of the operation or outside it;

is intended to propagate or justify terrorism, contains statements by persons resisting or calling for resistance to an anti-terrorist operation...

#### **7. [Ethics Code of Ukrainian Journalists](#) (2013 version)**

2. Serving the interests of the government or owners, not the society, is a breach of the ethics code.

3. Journalists shall respect other people's private life

Journalists shall respect a person's private life. This does not preclude their right to a journalistic investigation related to certain events and facts, should public significance of the information collected and disseminated by journalists be higher than a person's private interests.

4. Coverage of trials shall be impartial towards defendants in court. Journalists cannot call a person a criminal until the respective court decision.

6. Respecting the public's right to complete and objective information about facts and events is a journalist's first duty. Journalists and editors must take steps to check the reliability of all reports, video and audio materials coming from the public, freelancers, press services and other sources.

7. Information and analytical materials must be separated from advertising by the appropriate heading.

9. Facts, judgments and assumptions have to be separated from each other. Spreading information containing biased, unfounded accusations is unacceptable.

10. The opponents' viewpoints, including the views of the targets of media criticism, should be presented in a balanced way. Independent experts' views should also be presented in a balanced way.

12. Journalists shall do everything possible to correct any imparted information should it turn out not to be true.

13. Journalists shall not use illegal methods to obtain information

Journalists shall not use illegal methods to obtain information. When collecting information, journalists act within the Ukrainian legal framework and use any legal procedures, including court procedures, against those who prevent them from collecting information. Using covert methods of gathering information is allowed only when it is necessary to ensure the authenticity or accuracy of the material. Such methods can only be justified when it is impossible to gather information differently.

19. A deliberate violation of the journalistic ethical norms shall be deemed completely incompatible with professional journalism, subject to public condemnation, the reason for forfeiting a press card or membership in trade unions and the National Union of Journalists. Ethical and professional conflict situations are considered by the Commission on Journalistic Ethics.

## **8. [PACE Resolution 1003 \(1993\) "Ethics of Journalism" \[1\]](#)**

4. News broadcasting should be based on truthfulness, ensured by the appropriate means of verification and proof, and impartiality in presentation, description and narration. Rumor must not be confused with news. News headlines and summaries must reflect as closely as possible the substance of the facts and data presented.

15. Neither publishers and proprietors nor journalists should consider that they own the news. News organisations must treat information not as a commodity but as a fundamental right of the citizen. To that end, the media should exploit neither the quality nor the substance of the news or opinions for purposes of boosting readership or audience figures to increase advertising revenue.

21. ...Journalism should not alter truthful, impartial information or honest opinions, or exploit them for media purposes, in an attempt to create or shape public opinion, since its legitimacy rests on effective respect for the citizen's fundamental right to information as part of respect for democratic values. To that end, legitimate investigative journalism is limited by the veracity and honesty of information and opinions and is incompatible with journalistic campaigns conducted on the basis of previously adopted positions and special interests.

25. In the journalist's profession the end does not justify the means; therefore information must be obtained by legal and ethical means.

## **9. [Recommendation No. R \(99\) 15 of the Committee of Ministers to member states on measures concerning media coverage of election campaigns adopted on 9 September 1999](#)**

Where self-regulation does not provide for this, member States should adopt measures whereby public and private broadcasters, during the election period, should, in particular, be fair, balanced and impartial in their news and current affairs programs, including discussion programs such as interviews or debates (Paragraph 2 of Section II).

In member states where political parties and candidates are permitted to buy advertising space for electoral purposes, regulatory frameworks should ensure that...

- the public is aware that the message is a paid political advertisement. (Paragraph 5 of Section II).

## **10. Editorial [Charter](#) of the Avers TV Subsidiary Company**

4. Main requirements for the provision of reliable information

4.1. The journalists of the TV company shall proceed from the premise that the reliability of information is defined by its source and adhere to the following rules...

2) one shall avoid obtaining information only from one source, prioritizing the source which can be named;

5) should it become known that the information spread was not accurate, one shall retract such information immediately and on their initiative.

5. Main requirements for the provision of accurate information

The journalists of the TV company shall proceed from the premise that the accuracy of information is defined by its original content so as not to misguide the audience, adhering to the following rules:

1) facts shall be separated from comments, providing the source for the latter including the source's competence in matters commented on...

3) expressing the TV company journalists' personal opinion in news programs (except for analytical author programs) shall only be acceptable with regard to matters of television and radio broadcasting; one shall refrain from using judgmental words and emotionally colored expressions...

## 6. Main requirements for the provision of impartial information

The journalists of the TV company shall proceed from the premise that the impartiality of information is defined by impartial attitude toward any persons participating in the events or programs' guests, adhering to the following rules:

- 1) before a conversation on air or a recorded interview, one shall not fail to warn their conversation partner about their political neutrality and unbiased attitude, without ever promising to ask convenient questions;
- 2) one shall always differentiate between such things as an individual civil position or certain political views and preferences and the journalist's position expressing no views, sympathies, or preferences...
- 5) the targets of criticism in the program shall have an opportunity to reply within the same program.

## 7. Main requirements for the provision of objective information

The journalists of the TV company shall proceed from the premise that the objectivity of information is defined by eliminating the journalist's attitude toward the contents of such information as much as possible during its preparation and dissemination, adhering to the following rules:

- 1) everyone shall be provided with an opportunity to comment on the event directly relating to them; should it be impossible to speak for everyone, at least two opposing comments shall be provided...

## 8. Main requirements for balanced information

The journalists of the TV company shall proceed from the premise that balanced information is defined on the one hand by the direct relationship between the level of public interest to a certain event and the level of its coverage, and on the other hand, by equal treatment of all public and political forces and actors, adhering to the following rules:

- 1) proper balance does not require complete neutrality on each issue or departure from the basic democratic principles of freedom of speech and creativity, it is not achieved by mathematical methods, i.e. by balancing each opinion with another one opposite in content; the purpose of balance is to cover the widest possible range of opinions and views...
- 3) should a series of interconnected programs be broadcast dealing with the same or related problems, the whole series can provide proper balance, with the authors' intention to achieve impartiality in this way being planned and communicated to the audience. At the same time, in a series of programs, where each issue addresses completely different and unrelated issues, the balance shall be ensured in each separate program.

## 11. Editorial [Charter](#) of Rivne-1 TV company LLC (the text largely coincides with the text of the Avers TV Company's editorial charter)

4.1. The journalists shall proceed from the premise that the reliability of information is defined by its source, adhering to the following rules:

- 1) one shall try to be a witness of the events, and, if this is impossible, one shall try to obtain information from sources (participants in or other witnesses of the events); one shall always prioritize the source which is the closest to the original source;
- 2) one shall avoid obtaining information only from one source, always preferring the source that can be named;
- 3) one shall provide information received from an anonymous source only if such information is a matter of significant public interest and if the source is reliable and competent; should it be necessary to spread

information received from an anonymous source, one shall try to provide the audience with an extent of information which makes it possible, on the one hand, to protect the person, and, on the other hand, not misguide the audience as regards their status...

#### 5. Main requirements for ensuring the accuracy of the transmitted information

The journalists of the TV company shall proceed from the premise that the accuracy of information is defined by preserving its original contents so as not to misguide the audience, adhering to the following rules:

1) facts shall be presented as clearly separated from comments; when providing comments, their source shall be provided and their competence in the matter commented on, sufficiently provided...

3) expressing the TV company journalists' personal opinion in news programs (except for analytical author programs) shall only be acceptable with regard matters of television and radio broadcasting; one shall refrain from using judgmental words and emotionally charged expressions...

#### 6. Main requirements for the provision of impartial information

The journalists of the TV company shall proceed from the premise that the impartiality of information is defined by impartial attitude toward any persons participating in the events or programs' guests, adhering to the following rules:

1) before a conversation on air or a recorded interview, one shall not fail to warn their conversation partner about their political neutrality and unbiased attitude, without ever promising to ask convenient questions;

2) one shall always differentiate between such things as an individual civil position with certain political views and preferences and the journalist's position expressing no views, sympathies, or preferences...

5) targets of criticism in the program shall have an opportunity to reply within the same program.

#### 7. Main requirements for the provision of objective information

The journalists of the TV company shall proceed from the premise that the objectivity of information is defined by eliminating journalists' attitude toward the contents of such information as much as possible during its preparation and dissemination...

### **12. "Media and terrorism". [Report](#) by the Committee on Culture, Science and Education of the Parliamentary Assembly of the Council of Europe (Doc. 10557, May 20, 2005)**

7. The Assembly trusts in the ability of the European political system and culture and its citizens, politicians and journalists to avoid over-sensational media reports related to terrorism.

8. The Assembly invites media professionals to...

iv. avoid contributing to the aims of terrorists by adding to the feeling of public fear which terrorist acts can create or by offering terrorists a platform of high publicity...

### **13. [Criminal Code of Ukraine](#)**

Article 162. Violation of the security of residence

1. Unlawful entry into residence or any other property of a person, or unlawful examination or search thereof, and also unlawful eviction or any other actions that violate the security of a citizen's residence shall be punishable by a fine of 50 to 100 tax-free minimum incomes, or correctional labor for a term up to two years, or restraint of liberty for a term up to three years.

2. The same actions committed by an official, or accompanied with violence or threats of violence shall be punishable by imprisonment for a term of two to five years.

### **III. The circumstances of the case and assessment of compliance with legal requirements and professional standards in journalistic materials**

#### **1. In this section, journalistic pieces by Avers and Rivne-1 TV companies are examined for possible violations of the requirements for the coverage of the electoral process**

During the election period, the media influence not only public opinion but also future election results. However, the Electoral Code quite clearly forbids the media to single out particular candidates. Influencing public opinion is not equal to forming it. The media's political neutrality is especially important during elections. Ukrainian legislation requires that the media adhere to the journalistic principles of objectivity, impartiality, balance, reliability, and accuracy of information.

- **The Avers TV Channel**

#### **Piece 1.1. "Shock: Bohdan Shyba's dirty PR"**

In her lead-in to the story, the anchor says that one of the candidates for mayor of Lutsk, Bohdan Shyba, allegedly "lies and manipulates", claiming that a relative of a deputy who supported him is being pressured. The story's alleged victim (captioned as "head of the Boratyn ATC") states that he was not threatened. B. Shyba has no comment on this.

During the election campaign, politicians can indeed make statements, not confirmed later or refuted by someone else, and it is the media's task to talk about them, informing the audience and voters. However, while informing the audience has to be their primary task, the media must enable the voters to make an informed choice on their own, without imposing it during the election campaign.

This material is unbalanced since the TV channel did not enable Bohdan Shyba to comment on Serhiy Yaruchyk's statements, which contradict the candidate's statements. It is not stated whether Avers TV requested a comment at all, which would be appropriate to mention if Mr. Shyba declined to comment. Nor is anything said about the alleged threats to S.Yaruchyk and those making them, which also gives a reason to talk about an incomplete story.

To boot, the anchor makes value judgments to negatively characterize Bohdan Shyba in her lead-in to the news story. The Media Council believes that the TV channel does not have to prompt the viewers on how to evaluate the information in the story and what conclusions to derive from it, especially before the audience watches it in full. The requirement that facts be separated from comments is stricter with regard to news pieces. Journalists, too, should not make any judgments.

Impartiality in the coverage of the story produced during the election period provides enough reason to believe that it aims to make the viewers not vote for Bohdan Shyba. That is, the piece in question as well as the anchor's comments preceding it is campaigning, not properly captioned as such and airing as part of a newscast. The term "political advertising" cannot formally be applied in this case, since, according to the Law of Ukraine On Advertising, the definition for such advertising can be applied only to political parties, not candidates.

Therefore, this piece is in violation of Clauses 6, 7, 9, 10 of the Ethics Code of Ukrainian Journalists; as well as of the following regulations: Part 2 of Article 49, Part 5 of Article 51 and Part 8 of Article 57 of the Electoral Code; Clauses 5, 6, 7 (1) and 8 (3) of the editorial charter.

#### **Piece 1.2. "Ihor Polishchuk: my story..."**

I.Polishchuk, a Lutsk mayoral candidate, speaks about his life in an interview, with the interviewer occasionally asking him abstract questions about his life and childhood, avoiding sharp questions and only specifying some



details, but not stopping the candidate. The piece contains calm classical music. In the beginning and the end, the story is captioned as advertisement.

This piece is contested as “campaigning”. However, it is not captioned as campaigning on YouTube. Yet, we managed to find another, longer [video](#) on Facebook that includes episodes immediately before and after this piece aired, captioned as campaigning.

The piece is quite long (16.5 minutes), and questions may arise as to whether the viewers who turned on Avers TV after the program had already begun were aware of its nature. According to Part 6 of Article 55 of the Electoral Code, *“During the broadcast of a political advertisement, airing at the expense of resources of a party’s (party organization’s) electoral fund, the broadcaster shall indicate the surname, given name and patronymic, or the full name of the customer in the form of a text message covering no less than fifteen per cent of the screen area that shall be made in a color contrasting the background and shall be easily perceptible to the viewer”*. However, as mentioned earlier, the definition for political advertising is limited to propagating party structures only: *“political advertising is information of any kind, disseminated in any form and aiming at publicizing the activities of a political party (party organization), drawing attention to the activities of a political party (party organization) and its position on issues of national (local) importance.”* (Article 1 of the Law of Ukraine On Advertising). Therefore, technically, there is no violation regarding captioning such material as campaigning in this case.

Considering that the piece had captions before and after airing, the Media Council believes that this material contains no violations, nor is it a journalistic product.

### **[Piece 1.3. “I’m not a poor person” – How Bohdan Shyba “purchased” an apartment via the Executive Committee”](#)**

At the beginning of the story, various “sins” of candidate Shyba are listed, later moving on to his housing situation (a story by another media is partly used as a basis, whose journalists visited B.Shyba’s apartment at his invitation), specifically his previous apartment, received at the expense of the budget and later sold. At the end of the story, it is mentioned that Mr.Shyba’s salary as mayor (in case he wins the election) will be half of what he earns in his current job. No comments from the candidate are provided.

This piece aired as part of a newscast on Avers TV. The narrator’s voice in the story specifically notes that “the ex-mayor’s previous term was marked with scandal” (0:47), that a criminal case regarding a car accident “was immediately covered up because it concerned... Lutsk mayor” (1:35); it is also stated that the ex-mayor “wasn’t driving alone but with a young female companion”, four died in the crash, but there are “no guilty ones” (no sources of information are provided). Separate statements made by candidate B.Shyba are referred to as being “completely and utterly cynical” (2:25).

It is alleged that the candidate’s children lived together in their apartment in 2015 and that their apartment was allegedly rented (4:30): the journalists failed or were reluctant to ask Bohdan Shyba for such information, expressing instead their assumptions in the piece. Next, it is said that B.Shyba “obtained the apartment via the Executive Committee and, perhaps, totally for free”, so information about purchasing the apartment on credit “sounds strange and false” (5:10). In conclusion, it is said that “one should truly love Lutsk residents to deprive his own family of a piece of bread” (6:45), “and maybe there’ll be another apartment coming up, for free” (7:8).

We provide detailed quotes from this material to point to a lot of value judgments in it, although such a thing is not acceptable in a newscast as imposing a certain viewpoint on the viewers via the anchor’s judgments. The negative nature of the journalist's judgment directed at Bohdan Shiba is clear. At the same time, no comments from him are provided regarding the allegations against him to enable him to contradict or confirm the journalist’s assumptions in the story, although the footage is shown of an Avers TV journalist standing with a microphone near B.Shyba (6:00). The journalists do not provide information that the candidate declined to comment.

Overall, this news story is unbalanced due to the absence of the candidate’s comments. With no sources for facts alleged in it and the two violations referenced above, it is also incomplete. To boot, the story is biased against Bohdan Shyba because his comments are not provided; several negative facts about him have no

sources; many value judgments made by the journalist are not in his favor; the reason to do the story is allegedly Shyba's housing situation while it appears to also mention, inter alia, a car accident involving him, which has nothing to do with housing. That is, the TV channel's intention to show this candidate in a negative light is obvious, probably to urge the voters not to vote for him. Because of this, the material is agitational, but not captioned as campaigning. Also, it is part of a newscast, just like the piece "Dirty PR of Bohdan Shyba" (paragraph 3.1.1 above).

It should be noted, though, that the Independent Media Council does not intend or has enough reason to believe that all allegations against Bohdan Shiba are false or baseless. However, the Council does not examine his behavior but the contested media stories about this candidate. Journalism must remain impartial, especially in providing news stories and during elections. This is required by its ultimate goal of serving the viewers' interests, which requires that news be provided in a neutral tone and include the views of all participants in the story, even if their lack of integrity seems obvious. The conclusions from the news should be drawn by viewers, not journalists.

This piece, too, is in violation of Clauses 6, 7, 9, 10 of the Ethics Code of Ukrainian Journalists; as well as of the following regulations: Part 2 of Article 49, Part 5 of Article 51 and Part 8 of Article 57 of the Electoral Code; Clauses 5, 6, 7 (1) and 8 (3) of the editorial charter.

#### **Piece 1.4. "Inside out: how Bohdan Shyba manipulates entrepreneurs"**

Once again, in her lead-in to the story, the news anchor talks about "lies and manipulations" on the part of B. Shyba. In the material, this candidate's current rhetoric toward entrepreneurs is compared with his past mayoral term when entrepreneurs in the realm of trade protested against closing down the marketplace and turning it into a construction site. The story does not contain the candidate's comments on these allegations.

The anchor also states in her lead-in that B. Shyba "started twisting the facts and rewriting history"; "entrepreneurs almost kicked him out of the session hall"; "his rhetoric was completely different"; "he lobbied for the transfer of land". Later in the story, the journalist says that B. Shyba "reversed his stance and started courting entrepreneurs" (3:55); "[he] distorts what has already become the history of his managing: perhaps, he hopes that Lutsk residents have a short memory, or perhaps he forgot..." (4:23). The piece also provides the position of entrepreneurs on non-renewal of market lease agreements with them (1:20), containing comments from the journalist on this issue and no position of Bohdan Shyba (except his reaction to the entrepreneurs' protests without an explanation for (non)continuation of the city market). That is, in the material, his opponents comment on various aspects, with some commenting on the cause of the conflict (non-continuation of the market) and others only on its consequences, i.e. (il)legitimacy of the entrepreneurs' protest). This is not a balanced coverage of the issue.

The motivation that we expressed earlier in paragraph 3.1.1 of this Opinion regarding the news anchor's lead-in imposing a clearly critical stance toward B. Shyba is also totally applicable to this material. That is, there is a violation of such professional standards as the unacceptability of biased comments made by journalists during newscasts; the provision of balanced, complete, and impartial information; as well as the piece's campaigning nature, aired during the newscast without being properly captioned.

The Independent Media Council does not judge or justify B. Shyba's stance in his past conflict with entrepreneurs or his recent statements concerning the conflict but draws attention to the interests of TV viewers as taking precedence over all other considerations. As discussed above, this piece came out [on the eve](#) of the second round of elections for mayor of Lutsk in 2020, of which B. Shyba and another candidate, I. Polishchuk, were the leaders. The piece under consideration, as well as other aforesaid stories concerning B. Shyba, actually campaigned against him and in favor of his opponent. Without properly captioning such material, to boot.

This piece is in violation of Clauses 6, 7, 9, 10 of the Ethics Code of Ukrainian Journalists; as well as of the following regulations: Part 2 of Article 49, Part 5 of Article 51 and Part 8 of Article 57 of the Electoral Code; Clauses 5, 6, 7 (1) and 8 (3) of the editorial charter.

### **Piece 1.5. “What’s wrong about it? – Bohdan Shyba commented on the infamous sale of land plots”**

**This piece was part of a newscast on the Avers TV Channel.** Again, it starts with a dubious lead-in by the anchor: "Mayoral candidate Bohdan Shyba got all worked up in his election campaign: he must have completely forgotten his previous term... we'll now talk about the land that Lutsk lost from 2006 to 2010" (B. Shyba's mayoral term). The journalist then adds her comments to the story: "Last time we told you about how the land was sold in Lutsk, courtesy of Bohdan Shyba" (30:00), "We'll tell you how the land was distributed virtually for free" (40:00), "Karbysheva is just the area where communal land was sold in hectares as if no one needed it" (1:20), "Bohdan Shyba is a sincere soul because he distributed so much land and property for free" (10:45).

This piece is the only one featuring Bohdan Shyba's comments for Avers TV Channel (3:00, 6:00, 8:30). However, the same story tells us about permission to build an underground sports and health facility granted to PE L.Y. Pavlovych. We are told that instead of a sports and health center, a virtual reality club "CUBE" is located there (5:00); "it was a big scandal" because the residents of the neighboring house were afraid that the underground construction would cause cracks in it, but "this entrepreneur didn't care about what people thought". L.Y. Pavlovych's position is not provided in the piece, nor is it made clear whether the channel asked for it. The piece, therefore, is in violation of the standard of balanced information, not due to the failure to provide B. Shyba's position but that of the person who obtained communal land. Next, we are told about the land plot on Trunkin Street that is allegedly being used for free by the West Victoria company (later referred to as "Victoria West" by the journalist), which even resulted in criminal proceedings (8:00). As the journalist puts it: "the land plot was craftily rented out" (7:45), or even "seized without permission" (8:45). This, too, is commented on by B. Shyba but not by the company, which also makes the piece unbalanced. Lack of balance due to failure to provide the participants' positions also violates the professional standard of complete information.

Although the piece has B. Shyba's position, the biased comments made by the anchor in her lead-in to the story and the journalist's comments are clearly directed against this candidate. If considered separately, this piece would merely look like some low-quality journalistic material containing unbalanced and incomplete information. However, considering that the aforementioned news stories dedicated to B. Shyba aired around the same time, i.e. on the eve of the second round of the mayoral election in which Mr. Shyba competed with another candidate, which were also biased toward Bohdan Shyba, it gives a reason to talk about this material as a part of campaigning against the candidate.

This material, too, is in violation of Clauses 6, 7, 9, 10 of the Ethics Code of Ukrainian Journalists; as well as of the following regulations: Part 2 of Article 49, Part 5 of Article 51 and Part 8 of Article 57 of the Electoral Code; Clauses 5, 6, 7 (1) and 8 (3) of the editorial charter.

**The Independent Media Council specifically stresses** that the Avers TV Channel regularly broadcast biased material against one of the candidates on the eve of the second round of elections for mayor of Lutsk. Therefore, it was a covert campaign in favor of Bohdan Shyba's rival.

- **Rivne-1 TV Channel**

### **Piece 1.6. “Good deed as a PR technique: one of the candidates pompously opened a rehab center for veterans” (Rivne-1 TV Channel)**

The piece is dedicated to the opening in communal premises of a center for ATO participants by Rivne mayoral candidate, Viktor Shakyryan. In her lead-in, the anchor's tells us that this candidate is running "probably, the most expensive election campaign" and that there are discussions on the Internet on how his 3 million dollar campaign was "sponsored": "they purchased a party and a TV channel" at the expense of V. Shakyryan's partner who allegedly "robbed pensioners" in his youth. The piece features the candidate's comments on the premises and attempts to obtain comments from the election campaign's "investor".

The Rivne-1 TV Company's corporate rights [belong](#) to the Avers TV Affiliate Company. **It should be noted that one of this piece's authors is Natalka Polishchuk, known for her [work](#) at the Avers TV Company.**

The footage is preceded by a two-paragraph text introduction.

In this case, the news also starts with the anchor's value judgments: "A hostel or a rehab for veterans was pompously opened in Rivne"; businessman Viktor Shakyryzian "became the cock of the walk at the celebration... those invited never stopped taking selfies with the event's star"; "Viktor Shakyryzian probably has the most expensive election campaign in the city and the renovation of the House of Veterans is a drop in the ocean in this election campaign. It is widely discussed on the Internet that Shakyryzian's election campaign was sponsored for at least 3 million dollars. And so they purchased a party and a whole TV channel. Roman Kurys, Shakyryzian's business partner, is said to be the main investor for the election, he recently gained notoriety for robbing pensioners in his youth". At the beginning of the program, a Facebook post by a certain "Ariadna Abramova" is shown regarding spending "3 million dollars" on the election campaign of the aforesaid candidate (including the purchase of the media). We are citing this lead-in because it lasts for a whole minute and mostly features anonymous sources of information and the anchor's negative judgments toward the candidate in the election. In other words, it is biased and inclines the viewers accordingly before broadcasting the piece itself.

At the beginning of the piece, the journalist makes an allegation that a rehab center could be built from scratch for those 3 million dollars, "but why do that if you can simply renovate a communal building, hold a pompous opening ceremony to boast about it?". Next, the journalist evaluates the premises for ATO participants as having nothing but 5 beds in one of the rooms.

In the piece, the candidate is spoken about positively by his supporters. There are also the candidate's comments in reply to a question by a Rivne-1 journalist. There are statements made by the candidate's team members accusing the journalists of being corrupt. This is followed with the journalist making her judgments in the story: "The most cynical thing is when they get a combatant's mother to approach the journalists, and it looks like she was previously told bad things about journalists too. This woman probably doesn't know that during the war, this ceremony's organizer, Viktoriia Shynkarenko, bought herself... a gorgeous mansion (7:00). Facebook posts are shown again and then the journalist asks the volunteer about the price of her house and is told: 125 thousand dollars.

The journalist also showers the viewers with her conclusions: "The cynicism of this PR campaign is incredible. Think of it again: V.Shakyryzian's election campaign is called the most expensive. They connect it to the Rivne developer R.Kurys, Shakyryzian's partner. Recently, the media published some information about this man. It appears that he was involved in a robbery at some point" (9:00). A picture of the first page of the court decision accusing R.Kurys according to Articles 185, 186, 357 of the CC of Ukraine is shown. We managed to find the [verdict](#) in question in the State Register of Court Decisions but we doubt that the viewers could do the same without being able to pause the respective picture to see the court decision's details. The journalists asked candidate Shakyryzian about his alleged partner, but he avoided talking about it, which still cannot be interpreted as a confirmation of the persons' connection to each other (taking into consideration the critical attitude toward Rivne-1 on the part of the candidate's team members).

Therefore, the material under consideration lacks references to the sources of information (concerning V.Shakyryzian's connection to Roman Kurys, the price of the election campaign, purchasing the media and the political force). Social network posts cannot be such sources if the journalists failed to fact check the information since questions remain as to whether those social media users are real persons or whether they are really well-informed and unbiased. This also makes the material incomplete because it is difficult to assess information without knowing its sources.

Even though the journalists asked the criticized party for comments they also made many personal judgments in the piece, as well as in the lead-in to the story. Those judgments are clearly critical toward V.Shakyryzian, with the lead-in and dubious sources of negative information about the candidate inclining the viewers accordingly prior to watching the piece.

Considering that the story aired during the election period as part of a newscast and contained biased comments against the candidate made by the Channel's representatives, the piece should be considered as campaigning, constituting a violation of the legal requirement that campaigning be captioned, especially in newscasts.

**Thus, this piece is in violation** of Clauses 6, 7, 9, 10 of the Ethics Code of Ukrainian Journalists; and of the following regulations: Part 2 of Article 49, Part 5 of Article 51 and Part 8 of Article 57 of the Electoral Code; Clauses 4.1, 5, 6, paragraph 1 of Clause 7 of the editorial charter.

## **2. In this section, we consider the material by the Avers TV Company in violation of the requirements for the coverage of the hostage-taking in Lutsk**

### **Piece 2.1. “Journalists spoke to the terrorist (TELEPHONE CONVERSION)”**

When in a store, an Avers TV journalist called Maksym Kryvosh on the phone, who seized the bus with passengers in July 2020, proposing to air his demands via the TV channel and asking him whether he was armed, and a bomb planted. When asked annoying questions, M. Kryvosh eventually said goodbye and hung up.

The very fact of being able to get through to someone holding hostages (via phone or Internet) cannot justify the media’s actions, which decided to talk to Maksym Kryvosh directly and at a critical moment. We consciously avoid applying the word “terrorist” to him before a court verdict in this case.

The actions of Avers TV should be broken down into several components: 1) the fact of calling M.Kryvosh; 2) proposing that he go on the air on the TV channel; 3) publishing the video of the process of the conversation between the journalist and M. Kryvosh.

The law forbids the dissemination of information that can make freeing the hostages more difficult (paragraph 3 of Part 2 of Article 17 of the law of Ukraine On Combating Terrorism). Although the law does not contain a literal prohibition of conversing with a person taking hostages, in our opinion, the prohibition to disseminate such information (not only in the media but also via other communication channels, as noted in the law) also includes communication with a hostage-taker due to the following reasons:

In a hostage situation, the psychological state of the person holding people hostage is very important: the life and health of those taken hostage directly depend on it. Special law enforcement units are working on freeing the captives either by force or by convincing the hostage-taker, with the use of force being very risky for the life and health of hostages. Therefore, negotiations are held. We do not have information or sufficient competence to assess the work of law enforcement in that situation, but we are convinced that the media representatives should not have communicated with Maksym Kryvosh before the anti-terrorist operation was over. Distracting the latter from negotiations with law enforcers, affecting his psychological state in a certain way due to the communication with the media and giving him hope to go on the air on a TV channel – all this could have had totally unpredictable consequences and potentially harmed the hostages and/or extended the process of freeing them. The journalists did not have a full picture of the hostage situation and there was no way they could have it as complete as law enforcement. Journalists’ communication with hostage-takers can negatively affect the process of convincing them to release the hostages or accidentally interfere with the scenario of freeing the hostages by force. Such interference can always have unpredictable and potentially harmful consequences. Therefore, it is in violation of the well-known humanistic principle of “doing no harm”.

Also, on the same day (07.21.2020), the TV channel broadcast a conversation with Maksym Kryvosh, which is airing the statements of someone opposing an anti-terrorist operation. This is also prohibited in order to prevent hostage-takers from coordinating their actions with possible accomplices (after M.Kryvosh turned himself in, the police reported an accomplice although the defendant denies it in the interview below). Since journalists cannot get a full picture, even if hostage-takers make commonplace remarks, their speech may contain code words to convey messages to their accomplices.

Finally, the prohibition on disseminating statements made by hostage-takers is intended to prevent others from being encouraged to commit such acts. In the process of his communication with the journalist, Maksym Kryvosh invited others to read his pages on social networks. It might be problematic to quickly research and qualitatively assess the content of such pages for potentially illegal content. For these reasons, the TV channel should have refrained from broadcasting the conversation. It is unrealistic to expect unlawful content on the hostage-taker's social media pages to be blocked within a few hours after the hostage-taking.

In view of this, the Independent Media Council believes that the Avers TV channel violated the requirements of Part 2 of Article 17 of the Law of Ukraine On Combating Terrorism both by the very fact of communication between its journalist and M. Kryvosh and by subsequently releasing a video of their communication on the same day.

### **Piece 2.2. "Maksym Kryvosh: on Zelenskyi, cinema, the detention center (INTERVIEW)"**

The journalists actually interview M. Kryvosh in the courtroom in the presence of court guards and representatives of the prosecution (for over half an hour). Specifically, they ask him about who helped him during the hijacking of the bus, the conditions in the pre-trial detention center, and the film that the defendant demanded that the President advertise. The video looks like it has been edited in some places (e.g. 24:00 and at the end).

This video was released by Avers TV more than a month and a half after the hostage-taking in Lutsk. The footage is not one-piece, one can notice that at least several frames were cut out in some places. The court guards and the representative of the prosecution do not object to the defendant commenting to journalists in the courtroom.

The Independent Media Council draws attention to the fact that the restrictions on the dissemination of information laid out in paragraph 3 of Part 2 of Article 17 of the law of Ukraine On Combating Terrorism are no longer applicable to this interview because the hostage release operation was already over, and such material could not harm. Therefore, the aforesaid interview should be considered in terms of compliance with the requirements of paragraph 4 of Part 2 of Article 17 (other restrictions of this rule are not considered here since the material does not feature law enforcement officers, their methods of work or acts of techno-terrorism), namely, whether it aimed at "propagating or justifying terrorism"... The aspect of the presence in the piece of statements of "persons resisting or calling for resistance to the conduct of an anti-terrorist operation" is again not considered due to the operation being complete and the impossibility of interfering with it by airing the piece.

This interview is rather lengthy (over half an hour), and during it, the conversation returns several times to the motives of M.Kryvosh's act and the pieces in which he expresses his views. The story is not a monologue of the defendant, nor does it focus exclusively on his motives and posts, covering a wide range of issues, including the conditions of his detention and the assessment of the President's actions.

The interview features a book and essays written by Maksym Kryvosh, and posts on his pages on social networks (he notes that he does not run them personally, but relays his thoughts to others, who then make them public). In our opinion, a month and a half from the moment of the hostage-taking is a sufficient time for law enforcement agencies to study the content of M. Kryvosh's works, his pages on social networks and take steps to stop the distribution of content, potentially inciting terrorist attacks. The same applies to individuals responsible for the distribution of such content (publishers, social media administrations). The piece does not contain quotes from the works of Maksym Kryvosh, only their existence is mentioned. Considering the one and a half month period, we believe that journalists should not be responsible for mentioning in their stories the pages on social networks and the defendant's works, whose potentially illegal content should already be investigated and, if necessary, access to them should be limited due to the actions of the competent bodies.

Also, although Maksym Kryvosh does not promote terrorism as such, he justifies his hostage-taking by the absence of innocent individuals among citizens in general (mentioning Shakespeare and citizens' responsibility for the actions of the authorities they choose). The Criminal Procedure Code of Ukraine does not provide the possibility of a closed court hearing based on considerations of criminal proceedings against a person under the Articles of the Criminal Code of Ukraine regarding terrorism (Part 2 of Article 27 of the Criminal Procedure Code). The CPC also allows for the dissemination of statements made in a court session in such a case, in particular, statements made by the defendant, since according to Part 6 of Article 27 of the CPC, those present in the courtroom during a court session are allowed to record any information in writing or using portable audio recording devices. That is, the legislation does not contain a prohibition on relaying the defendant's statements made in his defense, which simultaneously can be considered as a form of justifying or propagating terrorism. The circumstance that M. Kryvosh's statements were not made directly at a court hearing should be considered

taking into account the following: the court guards and the representative of the prosecution did not interfere with producing this interview; the material came out as an interview in which journalists, under certain circumstances, opposed M.Kryvosh, i.e. not as his monologue or calls for certain actions.

Considering the above, we believe that this interview is not in violation of anti-terrorism legislation.

### **3. In this section, the material by Avers TV regarding the violation of the special access regime to SBU facilities is considered.**

#### **Piece 3.1. “The Avers TV journalist violated the security regime of the SBU” – lawyer**

According to the materials provided by the complainant, the journalists of the Avers TV company entered the territory of the SBU parking area without permission when the automated gate was opening to make it possible to park the vehicles. According to the journalists, they came to the SBU territory to film the types of vehicles used by the employees of the Security Service. In addition, the Avers TV journalists did not introduce themselves when requested by the Department’s guards, nor did they use their journalistic credentials. Also, the TV crew refused to leave when requested to leave the territory of the facility requiring special access. To establish their persons and clarify the circumstances of this episode, an SBU officer called the police.

According to the Department’s press secretary, the territory of the SBU is the territory of a special law enforcement agency, i.e. a military unit with access control. The area where the official and personal vehicles of employees is parked is adjacent to the Department’s main administrative building and, like the other parts of the territory, is equipped with security systems, video surveillance and guarded around the clock. Hence, staying in such territory without special permission, pass or certificate is in violation of the access regime, i.e. immediately after being informed about a violation, the persons must leave the territory as requested by an authorized person.

The camera crew of the Avers TV company ignored the warning of the Department’s officer on duty regarding the special regime of the facility and continued filming despite the demands to leave the territory. The information obtained as a result of such actions can be deemed as obtained by illegal methods and accordingly, as violating journalistic standards. Specifically, in its [Decision](#) on 10.17.2017, the Commission on Journalism Ethics noted that gathering information in locations with restricted access due to some reason – be it private property or special access facility – is in violation of journalistic standards. Knowingly collecting such information cannot be considered a matter of public interest. The ECtHR adheres to the same approach, which in [Couderc and Hachette Filipacchi Associés v France](#) stressed that the fairness of the means used to obtain information and reproduce it for the public and the respect shown for the person who is the subject of the news report are also essential criteria to be taken into account [§132]. Besides, in [Satakunnan Markkinapörssi Oy and Satamedia Oy v Finland](#) the Court emphasized that even attempts to act in public interest rarely justify the use of illicit ways to obtain information, especially given that specialized media outlets are well aware of the standards used in their sphere [§151, 185]. Also, in [Bédat v Switzerland](#) the ECtHR noted that a clear violation occurs when the media is aware of the unlawfulness of obtaining information in a certain way [§57]. Therefore, the camera crew of Avers TV company, at least after another warning by the officer, was fully aware of the illegality of staying in the parking area of the SBU, and thus the process of collecting information and continuing filming without permission was **in violation of principle 13** of the Ethics Code of Ukrainian Journalists.

According to the [Decision](#) by the CJEU, dated 06.20.2018, the Avers TV Company repeatedly and knowingly violated the principles of journalistic ethics, including their ignoring the requests and demands made by law enforcement bodies. In this episode, the Avers TV journalists continued filming despite the officer’s demand that they leave the territory, unwilling to name themselves and show their press credentials, knowingly violating journalistic ethics. For instance, in [Haldimann and Others v Switzerland](#), the Court recognized that journalists could reasonably doubt the legality of releasing a report on commercial practices of insurance brokers because it was filmed with a hidden camera. That is, violations in this ECtHR case could have occurred due to negligence. By contrast, after being warned, the journalists of the Avers TV Company were clearly and undoubtedly aware of their violating the SBU facility’s special access regime. Likewise, failure to report their journalistic status and present credentials were the camera crew’s willful and deliberate actions. Furthermore, even if the information was of public interest, the Avers TV company’s employees had other, legal, ways to obtain data on the SBU

employees' cars (by making inquiries, checking official declarations, etc.). Therefore, the public interest in obtaining information cannot outweigh the fact of obtaining it unlawfully. Thus, the journalists of Avers TV violated principle 19 of the Code of Ethics of Ukrainian Journalists.

**4. In this section, we consider the material by Avers TV in violation of the right to privacy, as well as biased, incomplete and inaccurate coverage**

**Piece 4.1. "The Avers TV journalist was drunk and behaved inappropriately", — ATO participants"**

The complainant provided a link to the material about the Avers TV camera crew's attempts to interview a man who wanted to set himself on fire ("Hans"). Eyewitnesses note that journalist Natalka Polishchuk was intoxicated and behaved incorrectly: she screamed in the hospital, quarreled and swore, insulting those present and accusing "Hans" of being intoxicated. Among other things, the journalist used phrases like "tell me, did you want to do a terrorist attack or just do yourself in?" Also, the journalists tried to shoot episodes of "Hans" changing into dry clothes, despite obvious objections from the people close to him and others present. There was no reaction at all to the refusal to participate in the filming, and the journalist's questions often were not in line with the subject of filming due to her ignorance of the situation and its circumstances. In the [video](#) on YouTube, "Hans" is called a "scandalous character", and the video footage is mainly of this man's psychiatrist's refusal to answer questions due to the critical character of the situation and unwillingness to escalate the situation. At the same time, the nearly nine-minute video does not provide information about the press conference where "Hans's" actions were explained. However, this piece contains no footage from inside the hospital. Thus, it is not known whether the journalists were filming there at all."

However, even no filming was done inside the hospital, many violations of the law and the Ethics Code of Ukrainian Journalists are found in the Avers TV journalists' behavior. In particular, continuing to film despite the objections from the people involved in this situation is in violation of the right to privacy. For instance, in [Mosley v the United Kingdom](#) the Court recognizes that using intimate images or videos without a person's consent is in violation of the right to privacy [§131–132]. It is forbidden to publish images in which a person is in a vulnerable position. Also, according to [Article 307](#) of the Civil Code of Ukraine, it is forbidden to photograph or televise if there are objections from the persons in the frame. Therefore, the Avers TV Company was filming unlawfully and the information obtained in this way is illegally obtained. Thus, the Avers TV camera crew's actions are in **violation of Part 2 of Article 6 of the Law of Ukraine On Television and Radio Broadcasting** in terms of violating the rights of other persons (the right to privacy), as well as in **violation of principles 3 and 13** of the Ethics Code of Ukrainian Journalists.

Besides, the events taking place in the hospital were covered by the Avers TV journalists biasedly and incompletely. Specifically, "Hans" was called a "scandalous character", with his entourage being only shown to refuse to provide comments at the moment when such a situation occurred. At the same time, the information about the press conference is incomplete, containing no meaningful quotations from the ATO participant's psychologist or his colleagues regarding "Hans's" behavior. Thus, the opposite points of view of those who became the object of journalistic criticism were not presented fully and in a balanced way. In this context, in accordance with the ECtHR practices, it is indispensable for the proper functioning of democracy that it transmits impartial, independent and balanced news, information and comment and in addition provides a forum for public discussion in which as broad a spectrum as possible of views and opinions can be expressed ([Manole and Others v Moldova](#), §101). In this particular case, the Avers TV journalists paid more on-air and substantive attention to criticizing the behavior of the persons involved in this episode, rather than to balanced coverage of all positions. Thus, such behavior of the camera crew constitutes a **violation of Clause "C" of Part 1 of Article 59 of the Law of Ukraine On Television and Radio Broadcasting, principles 6 and 10** of the Ethics Code of Ukrainian Journalists, and **Clause 7 (1) of their own editorial charter**.

According to [Zarubin and Others v Lithuania](#), aggressive and provocative behavior at high-level events is incompatible with responsible journalism [§53, 57]. Such behavior can be actions able to provoke illegal behavior, like reports on terrorism or war propaganda that can cause public reaction ([Gözel and Özer v Turkey](#), §56). As for Avers TV, the camera crew was repeatedly warned about a possible escalation of the situation due to their actions, the questions they asked of the person involved with this episode and the general presence of journalists at the epicenter of events. The journalists thus deliberately violated journalistic ethics, continuing to



ask provocative questions without any respect for personal dignity, which **runs counter to principle 19** of the Ethics Code of Ukrainian Journalists.

#### **Piece 4.2 "An open letter regarding retracting information aired during a newscast by the Avers TV company."**

Covering the forum "Independent courts and free media: expanding cooperation opportunities", the Avers TV journalists paid special attention to how this event was funded, i.e. the amounts spent on the forum as well as the origin of this money. Specifically, at the end of the video, the journalists note that the forum was funded from the budget, that is, held at taxpayers' expense, with the amount equaling the monthly salary of a judge at the Constitutional Court of Ukraine. In response, the Volyn Region Court of Appeal issued an open letter demanding that the Avers TV retract the information and providing evidence that the event was carried out by Global Affairs Canada as part of the Ukrainian-Canadian project to support judicial reform (with links to all necessary documents)... Avers TV did not correct the false information. The Court also denied information about difficult access for media representatives to court sessions, noting that it had not received a single complaint about violations of the principle of publicity on the part of judges of Volyn courts.

The Independent Media Council believes that the principle of objective and complete news coverage was violated when producing the piece about the judicial and media forum. Without a doubt, recognizing news as a "perishable commodity", the ECHR emphasized that journalists cannot always fact check the data published in the material, given the necessity of prompt publication (*Observer and Guardian v the United Kingdom*, §60). Besides, the Court emphasized that even reporting on "stories", "public opinion" or "rumors" emanating from other persons is allowed if they are not completely without foundation (*Timpul Info-Magazin and Anghel v Moldova*, §36). However, this rule does not mean that any opinion, let alone a factual statement, can be disseminated without proper verification. Thus, the concept of "obligations and responsibility" means that the media should act in good faith, providing the public with reliable and precise information following ethical standards (*Bergens Tidende and Others v Norway*, §53; *Goodwin v the United Kingdom*, §39; *Fressoz and Roire v France*, §54). This rule is especially relevant for cases, where additional information or verification of available data can be obtained without hindrance and within a short time frame. In the case of Avers TV, nothing impeded the journalists from sending a request to the organizers regarding the sources of funding for the event. Furthermore, information about the event's support through a cooperation program with Canada is seen on the banners and logos used during the forum. Therefore, such data can generally be considered publicly available, which makes the allegations by the Avers TV company not only incomplete and inaccurate but also deliberately manipulative. Thus, Avers TV violated **Clause "C" of Part 1 of Article 59 of the Law of Ukraine On Television and Radio Broadcasting**, **principle 6** of the Ethics Code of Ukrainian Journalists, and **Parts 4.1 (5) and 6 (5) of its editorial charter**.

In addition, Avers TV did not correct its mistake after the Volyn Region Court of Appeal demanded that the false information in the piece be corrected and explanations provided regarding the real sources of the forum's funding. Thus, in *Melnychuk v Ukraine*, the ECtHR established an obligation for the media to correct information in the event of inaccurate or false material, as well as to provide an opportunity to retract or reply to allegations [§2]. In this case, Avers TV still has not retracted the information it disseminated despite clear evidence of its being false. Thus, it **violated principle 12** of the Ethics Code of Ukrainian Journalists, as well as **Parts 4.1 (5) and 6 (5) of its editorial charter**.

#### **Piece 4.3. "We work so you can enjoy it: generals' brothel in Lutsk"**

In one of its programs, the TV channel said that a brothel allegedly operated in a local salon, founded by former ATO participants. Specifically, in a lead-in to one of the stories, the journalist described the situation as "*the peace of the priestesses of pleasure was watched over by a security company founded by the members of the Svityaz police battalion*". Avers TV supported this with a photograph of a car of one of the ATO participants, parked in front of the building, in which, according to the channel's journalists, there would be a brothel ("Yunona" salon). The car's owner noted that he did have a security company, but the car was parked in that place because he lived in the house across the street. The man also noted that his company did not provide any salon services. The man also stressed that the Avers TV journalists came to his house. In support of this statement, he provided a photo of the car, allegedly belonging to the TV channel. Avers TV did not react to the demands to retract the information despite numerous protests under the newsroom's windows.

Considering that Avers TV [did not provide](#) any evidence of the involvement of the security company, founded by members of the Svityaz police battalion, in this type of activity, the piece should be considered as having no sufficient evidence base. Specifically, the mere fact of parking a car in front of the salon does not prove any connection to this establishment and is not a proper basis for the conclusions drawn by the Avers TV journalists in their report. Also, the report does not include the opinions of the persons whose behavior became the subject of criticism in the TV channel's report, namely the representatives of the security company or the persons directly accused of committing offense. In this regard, the ECtHR stressed in [Flux and Samson v Moldova](#), that informing the reader of the other party's story is good faith, which is the foundation of responsible journalism [§26]. Although the TV channel tried to interview representatives of the Yunona salon to provide their position on "the brothel's presence in the building," and also interviewed numerous eyewitnesses and witnesses, no such actions were taken with regard to the security company. In the case of Avers TV, this standard was not observed. Also, the journalists concluded without proper reason that the police officers were involved in committing crimes, which can be regarded as a violation of the presumption of innocence, making numerous value judgments about the security company's employees and the salon itself. Thus, Avers TV **violated principles 6, 9 and 10** of the Ethics Code of Ukrainian Journalists.

The disseminated information also had the potential for significant damage to the reputation of the persons mentioned in the TV channel's story. In this regard, the ECtHR has consistently stated that despite a difference between the commercial reputational interests of a company and the reputation of an individual, some statements can do double harm ([Uj v Hungary](#), §22). In particular, in this situation, the dissemination of such narratives by Avers TV negatively affected both the person, featured in the episode and the security company, founded by the persons covered in the story.

[Article 30](#) of the Law of Ukraine On Information provides that in the event of the dissemination of value judgments that degrade the honor, dignity or business reputation of a person, as well as their other non-property rights, they have the right to reply and provide their own interpretation of the case. Also, according to [Article 277](#) of the Civil Code of Ukraine, the person is entitled in this case to reply to such information in the media in the same way and form that the information was first disseminated. In situations like the aforementioned [Melnychuk v Ukraine](#), the media's refusal to publish the person's reply, their personal interpretation of the case or the retraction of false or inaccurate data is in violation of this person's rights [§2]. To boot, in [Smolorz v Poland](#) the ECtHR emphasized that the obligation to provide a public apology and a retraction is valid regardless of a court decision about the media's unlawful actions, with their refusal to do so being an aggravating circumstance when establishing the media's responsibility [§42]. In this case, Avers TV has not yet retracted the disseminated information in **violation of principle 12** of the Ethics Code of Ukrainian Journalists, as well as **Parts 4.1 (5) and 6 (5) of its editorial charter**.

#### **[Piece 4.4. "Avers admitted to slandering Andriy Pokrovskiy \(documents\)"](#)**

The complainants provided links to the piece containing information about the retraction of data previously disseminated by Avers TV. The news concerns the financial participation of a deputy of the Lutsk City Council, Mr. Pokrovskiy, in the organization of an investment forum and a buffet reception to mark that occasion (the business forum held at the Promin Center on 21.09.2018). This information was [retracted](#) in the piece "*What to do with our money? The Volyn RSA announces another business forum*". Even before receiving an official request for a retraction, the journalists [agreed](#) that the disseminated information was false. The retraction was issued in time, but the form of this retraction was offensive, manipulative and did not identify the disseminated data as correction. And although the offensive statements themselves are protected, done this way, the retraction once again negatively affected the reputation of the person referred to in the piece, making the media's behavior unacceptable.

Specifically, Avers TV noted that "*the assistant... informed our TV channel that Pokrovskiy did not participate financially in the forum. Indeed, no fools when it comes to feeding and wining officials at your own expense...*". That is, the requirement to issue a retraction was formally met, but the sincerity of such a retraction remains doubtful. The Independent Media Council **does not see** this episode as a **violation of principle 12** of the Ethics Code of Ukrainian Journalists, but it does not advise that Avers TV issue a retraction in this form.

Among other things, the complainant also provides links to several court decisions, recognizing Avers TV as a disseminator of false materials obliged to retract such information. Specifically, this concerns the [Resolution](#) by the Supreme Court composed of a judge panel of the Commercial Cassation Court in case No. 903/927/19 of 08.04.2020, the [Resolution](#) by the North-West Commercial Court of Appeal in case No. 903/344/20 of 12.10.2020, the [Resolution](#) by the North-West Commercial Court of Appeal in case No. 903/299/20 of 11.26.2020, as well as the [Decision](#) by the Volyn Region Commercial Court in case No. 903/691/20 of 11.12.2020. The Independent Media Council believes that, in addition to violating national legislation, such activities of Avers TV **constituted a deliberate violation of journalistic ethics, contrary to principle 19** of the Ethics Code of Ukrainian Journalists.

The Independent Media Council has neither the authority nor the objective ability to provide a legal assessment of court decisions that have entered into legal force. However, the Council expresses concern about a significant number of violations on the part of Avers TV, as well as the channel's behavior of regularly and systematically disseminating false, unconfirmed or manipulative information, providing biased, one-sided coverage of events and frequently avoiding issuing retractions for such stories. Being aware that according to [Yordanova and Toshev v Bulgaria](#), expressions designed to attract the public's attention to the news, capital letter headlines or other means that can increase the reader audience are not a violation of journalistic standards [§52], the Independent Media Council disagrees that drawing attention and growing audience should be achieved by way of disseminating false and manipulative information. Journalists' status does not automatically entitle the person to pursue, unchecked, a policy that runs counter to the editorial charter ([Nenkova-Lalova v Bulgaria](#), §59–60). According to [Travaglio v Italy](#), quoting the statement out of the context and considerably shrinking ("cutting") material misguide the reader, substantially diminishing such information's contribution to public discussion [§34]. At the same time, aggressive or provocative behavior that transgresses the boundaries of ethical and responsible journalism is deemed a conscious violation of journalistic ethics ([Zarubin and Others v Lithuania](#), §53, 57). Considering the systematic violations and the TV channel's persistent reluctance to make its media behavior more professional, regular violations of national legislation, the Ethics Code of Ukrainian Journalists and their editorial charter, the Independent Media Council believes that in its activities, the Avers TV Company abuses its right to freedom of expression.

#### IV. Conclusions

**The Independent Media Council believes that the following material by the Avers TV Company is in violation of Clauses 6, 7, 9, 10 of the Ethics Code of Ukrainian Journalists, as well as of the following regulations: Part 2 of Article 49, Part 5 of Article 51 and Part 8 of Article 57 of the Electoral Code; Clauses 5, 6, 7 (1) and 8 (3) of the Avers TV Company's editorial charter:**

- "Shock: Bohdan Shyba's dirty PR";
- "I'm not a poor person: how Bohdan Shyba "purchased" the apartment via the Executive Committee";
- "Inside out: how Bohdan Shyba manipulates entrepreneurs";
- "What's wrong about it?" – Bohdan Shyba commented on the infamous sale of land plots".

**"Journalists spoke to the terrorist":** The Independent Media Council believes that this material was created and aired in violation of Part 2 of Article 17 of the Law of Ukraine On Combating Terrorism.

**"Ihor Polishchuk: my story":** The Council believes that this material is not a journalistic piece and not in violation of campaign ad captioning; the piece **"Maksym Kryvosh: About Zelenskyi, cinema, the detention center"** does not violate antiterrorism legislation.

**"The Avers TV journalist violated the security regime of the SBU":** this material is in violation of principles 13 and 19 of the Ethics Code of Ukrainian Journalists.

**"The Avers journalist was drunk and behaved inappropriately":** this material is in violation of Part 2 of Article 6 of the law of Ukraine On Television and Radio Broadcasting in terms of violating the rights of other persons (to

privacy), Clause “C” of Part 1 of Article 59 of the law of Ukraine On Television and Radio Broadcasting, principles 3, 6, 10, 13 and 19 of the Ethics Code of Ukrainian Journalists, and also Clause 7 (1) of the Avers TV Company’s editorial charter.

“**We work so you can enjoy it: generals’ brothel in Lutsk**” is in violation of principles 6, 9, 10 and 12 of the Ethics Code of Ukrainian Journalists, and also of Part 4.1 (5) and 6 (5) of Avers TV Company’s editorial charter.

“**Open letter about retracting information aired during the newscast by the Avers TV Company**” is in violation of Clause “C” of Part 1 of Article 59 of the law of Ukraine On Television and Radio Broadcasting, principles 6 and 12 of the Ethics Code of Ukrainian Journalists, and Part 4.1 (5) and 6 (5) of the Avers TV Company’s editorial charter.

“**Avers admits to slandering Andriy Pokrovskiy (documents)**” does not violate principle 12 of the Ethics Code of Ukrainian Journalists.

The Independent Media Council believes that the piece “**Good deeds as a PR tool: one of the candidates pompously opened a rehab center for veterans in Rivne**” by the Rivne-1 TV Channel is in violation of Clauses 6, 7, 9 of the Ethics Code of Ukrainian Journalists, Part 2 of Article 49, Part 5 of Article 51 and Part 8 of Article 57 of the Electoral Code, Clause 4.1, Clauses 5 and 6, paragraph 1 of Clause 7 of the Rivne-1 TV Company’s editorial charter.

The Independent Media Council also concludes that the practices of the Avers TV Company contain signs of systematic and deliberate violations of journalistic ethics, running contrary to Principle 19 of the Ethics Code of Ukrainian Journalists.

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[1] <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16414&lang=en>

Votes:                    “In favor”    — 11  
                              “Against”     — 0  
                              “Abstained” — 1

Head of the Independent Media Council



A. Cherevko

Secretary of the Independent Media Council



O. Holub

Secretary of the Independent Media Council



P. Moiseyev