

THE LEGAL ASPECTS OF THE ACTIVITIES OF JOURNALISTS AND MEDIA PROFESSIONALS RELATED TO HUMAN RIGHTS PROTECTION

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ABSTRACT

Description: The purpose of the article is to analyze the legal aspects of the activities of journalists and media professionals related to human rights protection.

The subject of the study: The subject of the study is the legal aspects of the activities of journalists and media professionals related to human rights protection. Methodology. Research methods are chosen based on the object, subject and purpose of the study. The study used general scientific and special methods of legal science. Thus, the analysis and synthesis method as well as the logical method were used to formulate a holistic view on professional rights of journalists and media professionals, as well as on the problematic issues of Media Law. The logical-semantic method was used to establish the meaning of the concepts of “information”, “Media Law” and freedom of speech. The historical method helped us to study the history of the establishment of legislation on information, which is the main source of Media Law. The comparative method was used when analyzing international and national legislation of Ukraine on the issue under consideration, as well as scientific categories, definitions and approaches. The system-structural method was applied to determine the structure of Media Law, in particular its General and Special Parts.

The results of the study: The results of the study showed that the fundamental rights of journalists based on universally agreed human rights standards are the right to freedom of expression and the right to information. The specific, exclusive rights of journalists and media workers, are: the right to use the help of informants; the right to professional secrecy; copyright in the sphere of copyright (observance of personal and property copyrights, the right to use and manage work, the right to fees and official commendations, the right to use other people’s texts on the basis of legal use, to make official claims for copyright infringement); the right to a journalist’s pension. Practical implications. It was proved that since independence of Ukraine, the study of Media Law issues has become organizational, with the definition of cornerstones, among which the freedom of speech took the lead. At the same time, legal responsibility of the media and legitimate restrictions on freedom of expression require further research.

Value/originality: Scientific and applied essence of the concept of professional rights of journalists and media professionals were determined in the course of the study.

Keywords: Legal Aspects, Media Law, Journalists, Media Professionals, Human Rights, Professional Rights, Freedom to Speech.

INTRODUCTION

The profession of journalist involves a great risk: a person who is dissatisfied with the content of the material can sue him (her). As a result a journalist can lose his (her) job, and sometimes he (she) can lose health and even life. Journalists repeatedly ask themselves in the course of their professional practice: am I entitled to do this or how should I act in accordance with the rules?

So the purpose of this article is to figure out the answers to at least two of these questions.

Before presenting the main material we should note that the rights of journalists arise from numerous legal acts. Some of these rights are of the universal character, that is, those that apply to all Ukrainian citizens regardless of gender, race, profession, age, etc. However, the exercise of these rights by journalists is directly related to the problems that are specific to the profession.

Let us remind that a journalist is a person involved in editing, creating or preparing press materials. He (she) is in employment relations with the publisher or engaged in activities that are performed on behalf of and under the direction of editors. So, from a legal point of view, a journalist provides services under a civil contract, and sometimes—depending on the circumstances of the case—he (she) can be a student, volunteer or unionist, who prepares press materials for a small newsletter for free. The status of a journalist is acquired on the basis of the law itself.

MATERIALS AND METHODS

Research methods are chosen based on the object, subject and purpose of the study. The study used general scientific and special methods of legal science. Thus, the analysis and synthesis method as well as the logical method were used to formulate a holistic view on professional rights of journalists and media professionals, as well as on the problematic issues of Media Law. The logical-semantic method was used to establish the meaning of the concepts of “*information*”, “*Media Law*” and freedom of speech. The historical method helped us to study the history of the establishment of legislation on information, which is the main source of Media Law. The comparative method was used when analyzing international and national legislation of Ukraine on the issue under consideration, as well as scientific categories, definitions and approaches. The system-structural method was applied to determine the structure of Media Law, in particular its General and Special Parts.

The studied materials are UN legislation the legislation of Ukraine, which regulate the issue under consideration, as well as the works of Ukrainian and foreign scientists, who have studied the investigated problem.

Scientific Essence of the Concept of Professional Rights of Journalists and Media Professionals

The theoretical and methodological basis for the study of the legal foundations of functioning of the media is foreign philosophical and legal heritage, above all the discussions about justice as an attribute of social institutions, law and justice, social responsibility and law. In particular, in Ricoeur classic treatise *“The Theory of Justice”* (1995), we find essential comment about the Media Law:

“The principles of justice relate to the fundamental social structure, the methods, with the help of which social institutions distribute fundamental rights and obligations”. It is the basis for the conclusion that society organized on the basis of justice is a necessary context for the media’s legal activities. Bekeshkina (2017) analyzes the relationship between legal and moral responsibility as components of social responsibility, which is essential in understanding the freedom and responsibility of the media in his work “Law and Justice”.

Freedom and responsibility of the mass media in the context of Ukrainian state-building were considered in the works of the Doctor of Philological Sciences, Honored Journalist of Ukraine Lizanchuk & Bilous (2002). In particular, the scientist emphasizes the connection of journalists’ activities with the interests of the nation as the highest social value when asserting the journalists right to *“express his (her) thoughts freely and publicly”*. Emphasis is also placed on

“The inadmissibility of the use of freedom of speech as propaganda against the State, the destruction of state thinking, the erosion of national feelings”,

On the importance of creating a comprehensive legal framework that:

“Comprehensively guarantees the freedom of speech, the freedom to receive information, and the freedom of activity of the mass media”.

A powerful tradition of research on the legal regulation of mass media activities with significant perspective of the relevant issues was formed within the Kiev journalistic school. The works of Moskalenko—the Honored Journalist of Ukraine, Full Member of the International Academy of Computerization, and the Academician of the Academy of Sciences of the Higher School of Ukraine—were the first ones in this sphere. Analyzing the interaction between the media and society, Moskalenko (1998) emphasized that

“The freedom of the press is the main guarantor of constitutionality from the many varieties of political liberties”.

The statement of Moskalenko that the media of developing countries can demand freedom only if they are in the service of national interests and have a patriotic orientation.

The scientist defined the legal aspect of freedom of the mass media as a legal fixation of the *“boundaries of social and creative freedom”*, aimed, on the one hand, at providing solid legal basis for the protection of journalists, expanding their access to information, and on the other hand—at defining journalistic responsibilities.

An important contribution to the study of Media Law issues was made by Doctor of Philology, Professor, and the President of the Academy of Ukrainian Press Ivanov (2010). A characteristic feature of the scientist's works is a deductive way of considering problems: from general (study of Media Law and the concept of "information") to the specific, based on a thorough analysis of the legal bases for media activity.

A significant methodological step towards legal definition of the concept of "freedom of speech" is the theoretical and comparative analysis of conventional and interrelated concepts—the freedom of belief, thought, and expression, dissemination of information, obtaining information, exchange of information, mass media, and freedom of the media. Thus, according to the researcher, these phenomena

"Are characterized not by the relation of subordination, but by the relations of intersection, interdependence, correlation. Thus, freedom of expression, freedom of speech and freedom of information are fully realized only through freedom of the press and the media. In turn, freedom of the press and freedom of the media largely owe their existence to the freedom of information".

Summarizing the Ukrainian and foreign experience on defining the legal content of freedom of the press, the scientist analyzes its representations in the acts of international law, in the Constitution and of Ukraine and legislation on information, focusing on the content of legal acts, in which freedom of speech is recognized as one of the fundamental democratic values. In the study of functioning of Ukrainian mass media in the context of the applied characteristics of Media Law, we consider it is worth noting that there is a mechanism and technology for exercising the right to press freedom.

The analysis of journalistic research, in particular in the area of applied social-communicative technologies, shows that during the 1990-2010's there was a formation of basic scientific journalistic centers in Ukraine (on linguistic issues, on the problems of national identity). The key figures that formed the scientific directions were distinguished, the cornerstones were established, among which the freedom of speech took the lead. The vectors of convergence of social-communicative and jurisprudential studies were identified, as well as a number of publications appeared, problematically and methodologically close to legal discourse.

In general, the significance of identifying the genesis, structure and importance of social responsibility in the social-communicative space, the relation between the concepts of freedom, necessity and responsibility, social responsibility and social norms and values, including justice in its institutional dimension, are important for the definition of the problem situations in the works under consideration.

The basis for journalistic conceptualization of legal regulation of mass media activity is theoretical and methodological legal research, differentiated by the branches of legal knowledge.

The fundamental direction of legal consideration of the problem is the analysis of Media Law in the context of information legislation of Ukraine, in particular in the aspects of its consolidation, the reflection of the principles of natural law, information as an object of law and the regime on access to it, including media professionals, State information policy, international standards of law on information, legal support of information activity in Ukraine, legal basis of the information society and formation of its institutions, legal basis for information security of the State and protecting society from harmful information.

Media Law is a complex area of information law that has the main (defining) object of the legal relationship—information. The scientists pay special attention to the structure of the

Media Law, in particular to its General and Special parts, emphasizing that legal relations related to the mass media occupy a significant array of rules of conduct among the directions and types of informational activity, which structure the Special Part by an objective assessment.

Information Law as a source of Media Law is analyzed in the monograph by Tsimbalyuk *“Information Law: Conceptual Provisions for the Codification of information legislation”* (2011). Among the studies in this area, attention is drawn to scientific work, in which the right to freedom of the media is considered in the context of administrative and legal support for the right to freedom of expression. Drawing on the theoretical and legal tradition, the author reveals the essence, meaning and content of the administrative and legal support of the right to freedom of speech in Ukraine, generalizes its experience in the countries of the European Union; develops proposals and recommendations to increase the effectiveness of its implementation and to improve the relevant regulations. It is worth agreeing with the researcher’s view that the guarantees of freedom of expression are manifestation of the social responsibility of the State, which provide for the creation of such conditions under which the exercise of the freedom of speech is unimpeded and effective.

Methodologically, we consider the analysis of the correlation between legal regulation and self-regulation of the media activity and justification of the expediency of legislative consolidation of the fundamental principle of European audiovisual policy, that is, the principle of proportionality, which lies, in particular, in maintaining the balance between State regulation and self-regulation. Proposals for regularizing legislation on audiovisual media and its systematization, in particular, by incorporating thematic classification of current norms, are of practical significance.

Legal intelligence covers all the elements of the media related to receiving, processing and disseminating information, highlighting the dialectical balance of free speech and media responsibility, with a clear focus on the first one. A characteristic feature of jurisprudence research is the rational differentiation of the conceptual and terminological apparatus, the detailed study of normative legal acts, the reasoning of proposals for their improvement, attention to legal mechanisms for ensuring the right to information, harmonization of national legislation in the area of the media with international legal norms. At the same time, it should be noted that the social-communicative aspects of Media Law are covered superficially, usually in the context of broader legal issues.

Summarizing the research of journalistic, legal and other sectoral scientific works, we note that since independence of Ukraine, the study of Media Law issues has become organizational, with the definition of cornerstones, among which the freedom of speech took the lead. At the same time, legal responsibility of the media and legitimate restrictions on freedom of expression require further research.

The Applied Essence of the Concept of Professional Rights of Journalists and Media Professionals

To get the entire picture, the relationship between human rights and the rights of journalists would be presented on the example of the Convention on the Protection of Human Rights and Fundamental Freedoms (which represents human rights), the Code of Ethics for Journalists in Ukraine, which demonstrates journalism’s ability to be socially responsible and

self-regulated, and the data from the nationwide survey *“What Do Ukrainians Know and Think about Human Rights”*.

The right to freedom and personal immunity the surveyed journalists ranked the 4th in Top 10 of human rights, and the surveyed Ukrainians ranked it the 7th. Freedom of thought, conscience and religion was put in the 3rd place by the journalists and on the 9th by Ukrainians. At the same time, record numbers of clauses of the Code of Ethics for Journalists in Ukraine are devoted to this right (The Code of Ethics for Ukrainian Journalist, 2020).

In the context of this issue, data from a survey *“What Do Ukrainians Think about Human Rights”* explains why society sees the media as the most effective way to protect human rights. After protecting them, journalism defends itself. At least when it comes to the right to liberty and security of person, freedom of thought, conscience and religion, freedom of expression and freedom of assembly and association.

Speaking about Ukrainians understanding of the effective ways of upholding human rights, the most effective way of protection, according to the respondents, is to appeal to the media (about 28% of all respondents share this opinion). Also, the most cited ways include appealing to the European Court of Human Rights (about 19% of the interviewed), calling upon relatives and acquaintances (about 16%), appealing to the court (about 16%) and appealing to the police (about 14%). At the same time, about 19% of respondents believe that there are no effective remedies for human rights protection, and almost 15% found it difficult to answer.

In general, such a hierarchy will be preserved if we take into account the opinions of:

1. Just those, who faced with the violation of their rights;
2. Only those, who having faced with the violation of all their, tried to protect them;
3. Only those, who managed to protect the rights violated. In all these cases, the media receive the priority, the European court of human rights takes the second place, and the assistance of relatives and acquaintances is in the third place.

This situation leads to information and emotional overload of journalists, professional exhaustion and loss of motivation to work. According to Bruce Shapiro-the executive director of the Dortmund Center for Journalism and Injury at Columbia-from 6% to 30% of journalists (depending on the country) are experiencing post-traumatic stress disorder.

“Coverage of street crime, domestic violence, natural disasters, wars or violations of human rights requires knowledge, skills and support. And the more such cases cover a journalist, the greater is the risk that he (she) will get PTSD as a result” (Kleinwachter, 1995; Kopper, 1996).

Duties to the Society

Journalists and citizens are united in their attitude to the right to life-it ranks first in both groups surveyed. As for other rights, it can be assumed that journalists, who face violations of human rights including various forms of slavery and torture on a regular basis because of their work, put the prohibition of torture in the 5th place in Top 10 of human rights, and the prohibition of slavery and forced labor-in the 7th place. The public as a whole is less sensitive to these rights.

The right to fair trial journalists put in the 2nd place (citizens-in 5th place). The fact that the right to an effective remedy and no punishment without law did not enter Top 10 in both groups, which in my opinion, may indicate that the respondents consider them to be constituents of the right to a fair trial.

Television is the absolute leader of the possible sources of information on human rights and the ways of protecting them: 3/4 of Ukrainians surveyed mentioned it as such a source. Friends, relatives and colleagues are in second place (41%). Instead, websites (which ranked third) are the source of similar information for less than 1/3 of respondents (30%). The smallest number of citizens are informed about human rights issues by the representatives of non-governmental and charitable organizations, religious organizations and State agencies (their employees and through information materials of these agencies).

The use of websites as a source is significantly dependent on age (the higher the age, the less is the use—from 49% among young people to 30% among middle-aged and 13% among older people. There is an inverse relationship regarding watching of television (the highest level of appeal is in the oldest age category). There are no significant age differences when using other sources. Television is not only the main source of information on human rights issues but also the most influential one. In particular, almost 57% of those polled said that this source has the greatest influence on the formation of perceptions of human rights. Family and friends are in the second place. Internet and social networks and educational institutions are significant for about 1/4 of those polled.

Although the media is a leader in all age groups, they have a somewhat smaller impact on the youth (less than half of young people consider them influential). Instead, young people are significantly more affected by the Internet and social networks than other age groups.

As we can see, newspapers, radio and online media have an example to follow and the reason to compete, as the expansion of legal information on its platforms helps the media to gain greater public support and thus to better protect their own rights.

CONCLUSION

The current stage of development of Ukraine is characterized by the growing role of the information sphere. The media form the opinions, views of the population, carefully ensure that politicians, leaders, law enforcement agencies perform their duties in good faith and do not violate the law. However, often media workers, when gathering information, meet with resistance and pressure from the authorities. Therefore, in order to fully fulfill their responsibilities, journalists and media workers should take into account the legislative framework.

Freedom of the media is the basis of all democratic freedoms. When the State does not guarantee this freedom, all other freedoms are at stake, as is democracy itself and society as a whole.

The rights of journalists and media workers have repeatedly been violated in Ukraine. Therefore, each of the representatives of the “fourth power” should know and be able to exercise their rights and fulfill their duties.

Thus, the fundamental rights of journalists based on generally accepted human rights are the right to freedom of expression and the right to information. The specific, exclusive rights, exclusive of journalists and media workers, are: the right to use the help of informants; the right to professional secrecy; copyright in the sphere of copyright (observance of personal and property copyrights, the right to use and manage work, the right to fees and official commendations, the right to use other people’s texts on the basis of legal use, to make official claims for copyright infringement); the right to a journalist’s pension.

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