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SCIENTIFIC STUDIES OF THE CONSTITUTIONAL AND LEGAL STATUS OF MASS MEDIA

Abstract. Purpose. The substantiation of the study of the constitutional and legal status of mass media and its components, as well as the prospects and shortcomings of the relevant status in the present period are analyzed. Determining the constitutional and legal foundations of the organization and activity of the media in Ukraine, identifying the place and status of the media in modern civil society, establishing their role in our everyday life, providing scientifically based proposals aimed at improving the activity of the media in Ukraine.

Research methods. The work was performed on the basis of general scientific and special methods of scientific knowledge.

Results. Today, all over the world, information has the greatest value. People constantly perceive new information, sometimes even without noticing it. Its sources are television, radio, newspapers, magazines, and the Internet, or in other words, mass media. As for Ukraine, it has not become an exception among other countries of the world. It should be noted that the problem of the constitutional and legal foundations of the organization and activity of mass media is multifaceted, which led to the activation of scientists and practitioners in the study and development of specific scientific works, as evidenced, in particular, by the research of O. Voznesenska, T. Zavorotchenko, I. Isayenka, O. Kaplii, T. Kostecka, H. Kranostup, I. Ludvik, L. Mardakhaeva, O. Nesterenko, V. Serdyuka, Yu. Todyky, T. Chubaruk, and other leading scientists. Violations of the rights and status of mass media enshrined in the Constitution of Ukraine are analyzed. The main reasons for violation of the fundamentals of the constitutional status of mass media are indicated, and the classification of mass media following the degree of dependence on the state is given. The option of solving the problem concerned both by of the state and society is analyzed.

Conclusions. Currently, the legal foundations for the organization and activity of mass media have been created, and state guarantees have been established in accordance with the Constitution of Ukraine and the relevant above-mentioned Laws of Ukraine. Individual issues of the organization and activity of mass media in Ukraine are regulated by orders of the Ministry of Justice of Ukraine and Resolutions of the Verkhovna Rada of Ukraine. It should be noted that only since 05/07/2022, the normative legal acts of the former Ukrainian SSR and the USSR have not been applied on the territory of Ukraine due to the universally recognized international principle of legal succession, which is directly related to the full-scale invasion. Among them, it should be noted, in particular, the Law of the USSR "On the press and other mass media". It is obvious that such legislation needs to be changed.

Key words: Constitution, constitutional law, constitutional status, constitutional guarantees, mass media.

1. Introduction.

The mass media are undoubtedly the most active participants in public information relations. Their significance comes from the possibility to affect the consciousness of people. In modern society, printed publications, radio, and television are

the most widespread and accessible ways of finding, receiving, and disseminating information.

Today, information is the most valuable thing in the world. People constantly perceive new information, sometimes even without noticing it. Its sources are television, radio,

newspapers, magazines, the Internet, or in other words, mass media. As for Ukraine, it is not an exception among other countries.

It should be noted that the globalization trend appeared in the world at the end of the 20th century. In general, the relevant term means the process of assimilation by countries of scientific achievements and cultural characteristics in other states. In the 21st century, the phenomenon has gained untold proportions, beginning with politics and ending with holidays. The process of globalization most likely would not have had such rapid development and spread in the world if there had not been mass media.

The media, having facts crucial for the whole world, conveyed them not only to ordinary people but also to heads of the states and officials, who ultimately facilitated the extension of globalization. Countries adopted normative legal acts regulating the basics of the status of mass media. Ukraine is not an exception: according to Part 2 of Art. 15 of the Constitution of Ukraine "Censorship is prohibited", and Art. 34 states "Everyone is guaranteed the right to freedom of thought and speech, and to 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".

2. Mass information.

In the modern world, the implementation of freedom of the media is based on efficient and enforceable legislation; it is one of the essential features of civil society and the rule of law. At the same time, the institute of freedom of the media is prone to change, as well as the number of media kinds and ways of searching for, receiving, and disseminating mass information increases. For example, electronic media, which are available in the information and communication network – the Internet, have already firmly become part of our lives.

Mass information means printed, audio, audiovisual, and other messages and materials intended for an unlimited number of people.

The media means a periodical, an online media outlet, a TV/radio channel, a television program, a radio program, a video program, a newsreel program, or another form of periodic dissemination of mass information under a permanent name. As you can see, the legislator comprehensively define the concept, indicating that the relevant sphere of public life will be almost completely protected by law, thereby excluding or minimizing the occurrence of conflicts and violations of media rights.

3. The mode of mass information.

The legal regime of mass information is a specific procedure for regulating the search, receipt, production, storage, and dissemination of infor-

mation and other transactions carried out by subjects of media relations in respect of and within the institute of freedom of the press based on the norms of constitutional law and other branches of Ukrainian law, as well as the norms of constitutional and administrative law of Ukraine.

Freedom of the press should be understood as the objective opportunities, restrictions, and prohibitions established by the legislation of Ukraine for individuals and legal entities in search, receipt, production, dissemination, and storage of messages and information through the media.

Media censorship can be primary and secondary. Primary censorship had been applied in Ukraine since 1721 and was actually banned only in 1993. Primary censorship applies when arranging media products for release (broadcast), and its important form is the provision of mandatory instructions by state bodies to publishers, editors, etc. The secondary censorship can be applied under the law in the period from the initial publication (broadcast) of media products. Secondary censorship may involve any lawful measures toward editorial material, including forfeiture, classification, etc. The relevant type of censorship is currently used in Ukraine.

Freedom of information is closely related to freedom of thought, but the former is not a derivative of the latter. The same holds for freedom of the press which is closely related to freedom of speech while is not derived from freedom of speech but is an independent legal institution.

According to Part 2 of Art. 15 and Art. 34 of the Constitution of Ukraine, everyone is guaranteed the right to freedom of thought and speech, and censorship is prohibited. In fact, the freedom of dissemination of mass information and freedom of the media has been proclaimed. But such freedom cannot be absolute. Article 34 of the Constitution of Ukraine establishes that everyone has the right to freely collect, store, use and disseminate information by all legal means. The above provisions of the Constitution apply both to relations related to the search, production, and distribution of mass information, and to other types of public relations arising from information circulation. The Laws of Ukraine "On Printed Media (Press) in Ukraine" and the Law "On Information" directly deal with the regulation of media relations.

Therefore, as mentioned above, the legal regime of mass information is a specific procedure regulating the search, receipt, production, storage, and dissemination of information and other transactions carried out by the subjects of media relations arising in respect of and within the institution of freedom of mass information based on the norms of constitutional law and other

branches of Ukrainian law. It defines the rights and obligations of participants in media relations, restrictions, and prohibitions applied in the field of freedom of mass information.

The constitutional model of freedom of the press in the aggregate with the legislation on the media can guarantee and maintain a fairly effective enforcement of the right to freedom of the press. The implementation of freedom of information is regulated by legislative norms of various branches of Ukrainian law.

The specifics of the media activities (freedom of the press, censorship prohibition, the obligation of state bodies, public associations and their officials to provide the relevant information at the editorial office's request, etc.) allow the media to be intermediaries between citizens and state bodies and organizations, local governments, public associations, and their officials in obtaining information.

The media are able to influence social relations inside and outside of state-legal regulation. It can result in a violation of the stability of social relations. In addition to various types of state support for the media, the state conducts such activities as control and supervision in relation to the media. They occur upon the establishment and operation of the media. Information control is carried out to reproduce individual social behavior, that is, to keep the media stable. After the registration of the media entity, state intervention should take place with the maximum guarantee of freedom of speech but with the necessary forms of state support.

The institute of freedom of mass information includes the norms available in the Constitution of Ukraine, laws, declarations, by-laws, international acts, etc. These norms ensure independent regulation of particular relations in the production, dissemination, use, modification, consumption, and storage of mass information.

Another main component of the constitutional-legal status of the media and other subjects of constitutional law is their legal personality. The media's constitutional legal personality is a system of legal capability, legal capacity, and delictual capacity of the subject defined by the Constitution and laws of Ukraine. Summarizing the provisions on the legal construction of the constitutional and legal status of the media in Ukraine, it is worth emphasizing the complexity of its construction. Thus, one can argue about the two-level legal construction of the legal status of the relevant subject of constitutional law. The essence of the legal structure of the media status is determined by the doctrinal, regulatory, and organizational legal elements, and the content – by the concept of the media, the principles of their work,

the constitutional legal personality of the media and the guarantees of their activities. The essential and content structural elements of the constitutional and legal status of the media are considered sufficient for the effective activity or behavior of the media in implementing and ensuring the constitutional right of citizens established by part two of Art. 34 of the Constitution of Ukraine (Burlakov, 2020, pp. 47).

4. Problems of mass information freedom

Freedom of mass information as a principle meets the corresponding political and legal regime. In other words, the legal regime expresses the degree of rigidity of legal regulation, the presence of known restrictions or benefits, the permissible level of activity of subjects, and the limits of their legal independence. Freedom of information is guaranteed by the state. At the same time, the implementation of freedom of mass information in Ukraine cannot go without significant problems.

One of the determining factors of attributing messages and data to the category of mass information is their dissemination through the media – print, audiovisual, or other. Freedom of mass information cannot be interpreted as permissiveness. Strict restrictions are imposed on the media, which is why the current Ukrainian legislation on the media is based primarily on imperative norms.

In fact, there are many violations of the legal status of the media. Thus, in studying the constitutional and legal status of the media and its observance in practice, the authors managed to draw two interim conclusions: first, you cannot help marking that in most cases the rights of the media are respected and protected, and all means are provided for protection in case of their violation; secondly, there are often cases (and there are many) when the constitutional rights of the media are grossly violated, and they are deprived of any opportunity to defend their legitimate interests. Thus, information becomes a tool for achieving the goals of the state and ensuring its security (Vitkova, 2018, pp. 17).

Consequently, it raises the question about the reasons for that state of affairs of the media in Ukraine. Most experts in political science and history associate it with the historical development of the media in Ukraine, involving innovative methods of using information in modern history. The fact is that since pre-revolutionary Ukraine, newspapers and magazines operated within state limits. A striking example is the censorship during the reign of Alexander III, and even the regulation of the media in the totalitarian USSR. It is natural that the state authorities try to fully subjugate the media as the main channel of influence on public awareness (Posida, 2020, pp.168)

It is important to understand that the media can shape public opinion and be the cause of changes in domestic political processes. According to the researchers, the media in Ukraine have lost such essential functions as assessing government actions, expressing the opinion of society, and providing unbiased information.

The media in Ukraine are directly controlled by government agencies, so the media are under strict supervision and are financially dependent on officials.

Freedom of speech and freedom of information are one of the fundamental principles of democracy and, as already mentioned, are enshrined in the Constitution of Ukraine. Such a foundation is of utmost importance for the work of the media, as we can judge about the political and legal regime in the country by the quality and veracity of their performance.

Experts distinguish three types of the media in Ukraine:

The first type is the media that are completely subordinate to the state and provide information as the seat of power requires.

The second type is the media controlled by the economic elite of the country. Such an option of organizing the media in democratic countries is quite free, but in Ukraine, in the current political situation, the economic elite is closely intertwined with the political one. In this regard, the freedom of this kind of the mass media does not differ from the first type, upon which the mass media are controlled by the state.

The third option is the completely independent mass media. Their number in percentage ratio is much smaller, and they mostly work to bring advertising to the viewer, not to conduct a high-quality journalistic investigation.

It should be noted that in 2015, the international non-governmental organization Freedom House published a global survey and rating of press freedom in the world in 2015 (Global Press Freedom, 2015). Therefore, according to the rating, the Ukrainian media are not free. At the same time, Yemen and South Sudan are a sequence higher in the list, although the level of democratic development in these countries is much lower than in Ukraine. A major problem is not even the subordination of the media to the government, but the social state since it drives the limited freedom of the media. The mass media is one of the most effective methods of enjoying citizens' rights, and it is their free development that leads to the creation of a strong civil society.

Freedom of the press is often given a central place in the block of constitutional guarantees relating to freedom of expression. Abroad,

the term "freedom of the press" is used to refer to the print media, but it is sometimes used more broadly to mean freedom of all types of mass media.

5. International practices

The main criteria for choosing a state for analyzing the constitutional legislation on freedom of mass information were as follows: the availability of specific norms on freedom of the press in the constitution and the presence or absence of a special law on the media in the system of national legislation. And, first of all, we were interested in Western European situation, because the first newspapers appeared in Western Europe, and therefore, it has the most considerable experience of legal regulation of the right to freedom of mass information.

Most foreign states now have significant legislative regulation of the media. Such countries as Germany, Italy, the United States, France, Sweden, and Austria have a pronounced freedom of expression enshrined in writing in the constitutions. The relevant provision does not exist in Great Britain and Australia. Lawmakers in these countries claim that freedom of expression is guaranteed in their unwritten constitutions.

All leading European countries, except Great Britain, and the USA have specific constitutional guarantees protecting the freedom of the press. A strong judiciary plays a big part in ensuring freedom of the press, as well as the right of citizens to access information in the countries under consideration.

At the same time, in all foreign countries, the legislation on the media establishes legal restrictions on freedom of the print press and establishes state control over their activities.

6. Conclusions

The media's constitutional and legal status is a system of specific elements that determine the components of the activities and conduct of the media toward the implementation of freedom of the media and enforcement of the constitutional right of citizens of our state to be able to dispose information they possess as their discretion.

There has recently appeared a belief that the media are the "fourth" power branch in the state. Given the study conducted, it is possible to say for sure that the above statement is true. The media play an extremely important role in enjoying the rights and freedoms of a person and a citizen. Nevertheless, we have to state that the media performance has not yet become the factor that would contribute to achieving national harmony in the state and eliminating social tension in society.

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НАУКОВІ ДОСЛІДЖЕННЯ КОНСТИТУЦІЙНО-ПРАВОВОГО СТАТУСУ ЗАСОБІВ МАСОВОЇ ІНФОРМАЦІЇ

Анотація. Мета. Обґрунтування дослідження конституційно-правового статусу засобів масової інформації його складових, а також проаналізовано перспективи та недоліки даного статусу в період сьогодення. Визначення конституційно-правових засад організації та діяльності ЗМІ в Україні, виявлення місця та статусу ЗМІ в сучасному громадянському суспільстві, встановлення їхньої ролі в нашому повсякденному житті, надання науково обґрунтованих пропозицій, спрямованих на удосконалення діяльності ЗМІ в Україні.

Методи дослідження. Робота виконана на базі загальнонаукових та спеціальних методів наукового пізнання.

Результати. Сьогодні в усьому світі найбільшу цінність містить в собі інформація. Люди постійно сприймають нову інформацію, деколи навіть не помічаючи цього. Телебачення, радіо, газети, журнали, інтернет – є її джерелом, або іншими словами – засобами масової інформації. Що стосується України, то вона не стала винятком серед інших держав світу. Слід зазначити, що проблема конституційно-правових засад організації та діяльності ЗМІ є багатоаспектною, що зумовило активізацію учених та практиків щодо вивчення та вироблення наукових напрацювань із даної теми, про що свідчать, зокрема, дослідження О.А. Вознесенської, Т.М. Заворотченко, І.П. Ісаєнка, О.В. Каплій, Т.А. Костецької, Г.М. Краноступ, І.В. Людвик, Л.В. Мардахаєва, О.В. Нестеренко, В.В. Сердюка, Ю.М. Тодики, Т.В. Чубарук та інших провідних вчених. Проаналізовано порушення прав та статусу засобів масової інформації, закріплених у Конституції України. Вказано основні причини порушення основ конституційного статусу ЗМІ, наведено класифікацію ЗМІ відповідно до ступеня залежності від держави. Аналізується питання можливості вирішення цієї проблеми як з боку держави так й суспільства.

Висновки. Наразі створено правові основи організації та діяльності ЗМІ, встановлено державні гарантії згідно з Конституцією України та відповідними вищезазначеними Законами України. Окремі питання організації та діяльності ЗМІ в Україні урегульовуються наказами Міністерства юстиції України та Постановами Верховної Ради України. Слід зазначити, що лише з 07.05.2022 року не застосовуються на території України нормативно-правові акти колишнього УРСР та СРСР у силу загальновизнаного міжнародного принципу правонаступництва, що безпосередньо пов'язано з повномасштабним вторгненням загарбників. Серед таких слід зазначити, зокрема, Закон СРСР «Про пресу та інші засоби масової інформації». Очевидно, що таке законодавство потребує змін.

Ключові слова: Конституція, конституційне право, конституційний статус, конституційні гарантії, засоби масової інформації.

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