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LEGAL GUARANTEES OF JOURNALIST'S ACTIVITIES IN THE CONDITIONS OF WAR

Abstract. Purpose. The purpose of the publication is to determine, based on the analysis of available scientific and regulatory sources, legal guarantees of the rights and freedoms of journalists and their family members under martial law. **Research methods.** The methodological basis of the scientific article was made up of such general scientific methods as dialectic, analysis, synthesis, deduction, induction, analogy and abstraction, as well as special scientific methods (formal-logical, comparative-legal, dogmatic and systemic-structural), the use of which contributed to the study of the problem guarantees of the activities of journalists in the conditions of war in the unity of their social content and legal form. **Results.** The concept of legal guarantees for the activities of journalists, as stipulated by international treaties, conventions, declarations, and other national legal acts of the system of norms, principles, legal and organizational means, conditions and requirements, which are used to observe, ensure, protect and protect the rights of journalists, is formulated and their family members. It has been established that the Constitution of Ukraine and other laws provide for the use, along with domestic guarantees, of international legal guarantees of the activities of mass media representatives. **Conclusions.** According to the provisions of international humanitarian law, journalists can have two statuses in wartime: 1) military correspondents who have the right to receive the status of a prisoner of war in case of capture and 2) journalists who perform their functions in the zone of armed conflict, which are equated to civilians, and cannot be considered as prisoners of war, although they have the right to respect and protection. It is summarized that any illegal actions against journalists in the conditions of martial law should be considered a violation of the ethics and rules of war against the civilian population. At the same time, it was emphasized that the provisions of international humanitarian law impose on journalists the duty to respect the inviolability of private life and the dignity of the dead, to refrain from close-up coverage of scenes of violence and their consequences, to maintain a balance between the public interest in complete and accurate information and the need to be compassionate, as well as not to disclose information defined by national legislation as potentially threatening territorial integrity and national interests.

Key words: journalists, martial law, legal guarantees, legal status, prisoners of war, protection.

1. Introduction

From the moment of Russia's large-scale military invasion of Ukraine on February 24, 2022, timely, reliable and non-committal information of citizens and the world about the course of the war plays an important role in resisting the enemy. In this context, the contribution of Ukrainian media becomes even more powerful than ever (Pro pravovyi rezhym voiennoho stanu: Zakon Ukrainy, 2015). Every day, thousands of journalists report breaking news about

evacuations, alerts or the deployment of hostilities, helping to prevent panic and coordinate the actions of the civilian population.

Under such realities today, the work of journalists is becoming more and more dangerous, especially when it comes to the performance of professional duties in occupied territories and areas of hostilities.

Therefore, given the extreme importance of the information front, the issue of the legal status of media representatives and the proper

protection of journalists during the war becomes more urgent, and requires the introduction of additional guarantees for them and their family members.

Certain aspects of legal guarantees of journalists' activities were studied in the scientific works of V.S. Solovyov, M.V. Vitrua, L.D. Voyevodin, V.V. Golovchenko, V.A. Kartashkin, A.M. Kolodiy, V.O. Kuchinsky, A.I. Marushchak, N.I. Matuzov, V.S. Nersesyants, A.Yu. Oliynyk, V.F. Pohorilko, N.I. Titov, O.P. Tsurkan, V.M. Chhikvadze and many other scientists. However, a general theoretical study of the guarantees of journalists' activities in wartime based on the analysis of the relevant legislative framework, under modern conditions, has not been carried out in Ukraine.

In the conditions of the war unleashed on the territory of Ukraine, there is a threat of hindering the legitimate professional activities of journalists, restrictions on freedom of speech, prohibitions on access to information, and the risk of physical and psychological impact on the mentioned persons and their family members increases. That is why the number of proposals for improving the professional activity of journalists, covering information of public interest is increasing; incorrectly fixed provisions at the legislative level that limit the professional activity of journalists and other mass media representatives.

The purpose of this article is to determine, based on the analysis of available scientific and regulatory sources, legal guarantees of the rights and freedoms of journalists and their family members under martial law. Achieving the set goal is possible thanks to the following tasks: to determine the international legal guarantees of the rights of journalists; carry out an analysis of national legislation on the protection of journalists' rights.

The methodological basis of the scientific article was made up of the methods and techniques of scientific knowledge. The leading research method is dialectical, with the help of laws and categories, the main legal guarantees of journalists and their family members at the national and international level are clarified. The use of methods of formal logic (analysis, synthesis, deduction, induction, analogy, abstraction) and special scientific methods (formal-logical, comparative-legal, dogmatic and systemic-structural) contributed to the study of the problem of guaranteeing the activities of journalists in the conditions of war in the unity of their social content and legal form.

2. International legal guarantees of the rights of journalists in conditions of war

An indispensable condition for the reality of human rights is the presence of corresponding obligations of other subjects, the state, etc. and, above all, the obligation not to violate them. At the same time, the state that recognizes human rights also has the obligation to guarantee them. At the same time, states, as participants in international cooperation in the field of human rights, assume relevant international legal obligations and, by mutual agreement, determine the means of their international legal support. Such legal means are legal phenomena that, due to their properties, are capable of being instruments of influence on states' fulfillment of their obligations: to guarantee fundamental rights and freedoms to every person under their jurisdiction (Shmelova, 2004, p. 99).

Studying the provisions of international humanitarian law leads to the conclusion that legally, journalists who perform their professional duties in places of military conflicts can have two statuses:

- Military correspondents (or journalists assigned to military units) - have the status of civilians, accreditation in the armed forces, accompany military formations, but are not their members. According to Art. 4A (Pershyi Dodatkovyi protokol do Zhenevskykh konventsii, 1949) of the 1949 Convention on the Treatment of Prisoners of War (Konventsiiia pro povodzhennia z viiskovopolonenymy, 1949) they have the right to receive prisoner of war status if captured. If there is doubt as to the applicability of this status, the person remains under the protection of international humanitarian law until the issue is resolved by a competent court. At the same time, it is important that the status of a military correspondent does not involve participation in hostilities, the use of weapons or intelligence activities, otherwise he loses the status of a civilian and acquires the status of a participant in hostilities;

- Journalists who are on dangerous business trips to armed conflict zones have the status of civilians and an editorial task to prepare material in the armed conflict zone. According to the First Additional Protocol to the Geneva Conventions of 1949 (Pershyi Dodatkovyi protokol do Zhenevskykh konventsii, 1949) customary norms of international humanitarian law (Rekomendatsiia Komitetu ministriv Rady Yevropy № R (96) 4, 1996), they cannot be regarded as prisoners of war, but have the right to respect and protection, as long as they do not take part in hostilities.

According to the First Additional Protocol to the Geneva Conventions of 1949, confirmation of the status of a journalist is a journalist's certificate issued by the state authorities. If

a person works as a freelance journalist, blogger, civilian journalist or a journalist in the territory of which an armed conflict is taking place (not accredited by the state to work in the territory where hostilities are taking place), he has the same rights and protection in the field as an average civilian population (Persnyi Dodatkovyi protokol do Zhenevskyykh konventsii, 1949).

If we talk about the guarantees of the rights of journalists and their family members, then they are reflected at the international and national level. Let's consider them in more detail, having analyzed the provisions of international legislation.

International legal guarantees are contained in various conventions, directives and declarations. In particular, the Recommendations of the Committee of Ministers of the Council of Europe No. R (96) 4 "On the protection of journalists in conditions of conflict and pressure" contain the following guarantees:

- creation of proper protection and assistance conditions for journalists working in conflict zones;
- ensuring non-discrimination of journalists on any grounds;
- sufficient insurance coverage in case of illness, bodily injury, capture or death (Rekomendatsiia Komitetu ministriv Rady Yevropy № R (96) 4, 1996);
- Resolution of the Parliamentary Assembly of the Council of Europe No. 1438 (2005) "Freedom of the press and working conditions of journalists in conflict zones" defines the following guarantees:
 - the obligation for the parties to the conflict to guarantee safe working conditions for journalists on their territory;
 - investigation of cases of violence or deaths involving journalists that occur on their territories (Rezoliutsiia Parlamentskoi asamblei Rady Yevropy № 1438, 2005).

The Declaration of the Committee of Ministers on the Protection of Journalism and the Safety of Journalists and Other Media Participants contains the following guarantees:

- ensuring protection of journalists from illegal violence;
- creation of conditions for the prevention of violence against journalists and all kinds of threats;
- prosecution for murder or acts of violence against journalists;
- implementation by states of compensation mechanisms for victims of crimes against journalists and their family members;
- financial compensation for the costs of treatment and rehabilitation of injured journalists (Rekomendatsiia CM / Rec (2016)4).

From the analysis of the provisions of international humanitarian law, it can be seen that journalists do not have a special status in the conditions of an armed conflict, because they are practically equal to ordinary civilians, who are provided with a system of guarantees in times of war.

In terms of protecting the rights of journalists under such a special legal regime, the Convention on the Protection of the Civilian Population in Time of War should be considered a key legal act, which, among other things, enshrines: the prohibition of violence against life and person; ban on taking hostages; prohibition of insulting human dignity; prohibition of conviction and punishment without a court decision; prohibition of forced mobilization by the party that occupied the territories; ensuring fundamental rights (treatment, food, housing, etc.); compensation for moral and property damage, as well as damage to health caused during the war (injury, mutilation, death of a person) (Konventsiiia pro zakhyst tsyvilnoho naseleennia pid chas viiny, 1949).

In general, international legal guarantees of the activities of journalists can be interpreted as a system of international norms, principles, legal and organizational means, conditions and requirements provided for by international treaties, conventions, declarations and other international documents, with the help of which the observance, provision, protection and protection of rights is carried out journalists and their family members.

3. National guarantees for the protection of journalists' rights

Special attention needs to be paid to the analysis of national guarantees for the protection of journalists' rights, which are reflected in the normative legal acts of domestic legislation.

In particular, the Law of Ukraine "On State Support of Mass Media and Social Protection of Journalists" contains the following guarantees:

- the right to labor protection, benefits and compensation for work with difficult and harmful working conditions, to medical examinations, social insurance, to a comprehensive investigation of accidents, death and damage caused to health in the performance of official duties, and the right to appropriate reimbursement;
- the right for family members of deceased journalists to financial aid and burial assistance;
- the right for family members of deceased journalists to one-time cash assistance in the amount of 100 subsistence minimums, established by law for able-bodied persons at the time of payment;

– the right for journalists to a one-time monetary assistance in the amount of 50 subsistence minimums established by law for able-bodied persons at the time of payment in the event of an injury (concussion, trauma or mutilation) caused to the journalist during the performance of his professional duties (Pro derzhavnu pidtrymku zasobiv masovoi informatsii ta sotsialnyi zakhyst zhurnalistiv. Zakon Ukrainy, 1997).

It should be noted that there are no other special legal acts on the social protection of journalists in Ukraine.

In the Order of the Ministry of Defense of Ukraine "On approval of the Instruction on the procedure for the implementation of norms of international humanitarian law in the Armed Forces of Ukraine" it is noted that journalists have the status of civilians. But being civilians, at the national level they also enjoy all the guarantees provided for by the legislation of Ukraine (payments in case of temporary resettlement, the right to compensation for destroyed housing, etc.) (Nakaz Ministerstva oborony Ukrainy № 164, 2017).

It is also worth recalling that on April 14, 2022, the Verkhovna Rada of Ukraine adopted the Resolution "On the Statement of the Verkhovna Rada of Ukraine on the Value of Freedom of Speech, Guarantees of Activities of Journalists and Mass Media During Martial Law", which, in particular, states that: one of one of the key tasks of the Ukrainian state should be to ensure the guarantees of freedom of speech, free obtaining, collection and distribution of information established by the Constitution of Ukraine, taking into account the restrictions established by the laws of Ukraine, related to martial law. The Ukrainian state has no right to copy the totalitarian practices of the aggressor state. Any illegal attempts to interfere in the work of journalists and mass media, any crimes against journalists or cases of technical shutdown of pro-Ukrainian TV channels from the air should receive a decisive reaction of law enforcement agencies and bring the guilty to justice. In the conditions of martial law, the state will support honest journalists, independent mass media, which is a sign of any democratic society, which, of course, is the society of Ukraine (Postanova № 2190-IX, 2022).

The rules for the work of journalists, approved by Order No. 73 of the Commander-in-Chief of the Armed Forces of Ukraine on March 3, 2022, regulate the procedure for accreditation of mass media representatives during martial law, determine the list of information that is prohibited from being disclosed, and establish the procedure for the work of journalists in the combat zone (Nakaz Holovno-

komanduvacha Zbroinykh Syl Ukrainy №73, 2022). Among other things, it is noted that the list of information, the disclosure of which can lead to the awareness of the enemy and negatively affect the performance of tasks, includes: information about the system of protection and defense of the system of military facilities and means of protection of personnel, weapons and military equipment that are used. At the same time, it is clarified that it is not about those objects that are visible or obviously expressed (Nakaz Holovnokomanduvacha Zbroinykh Syl Ukrainy № 73, 2022).

In addition, the Law of Ukraine "On the Legal Regime of Martial Law" provides for a temporary, threat-driven, restriction of the constitutional rights and freedoms of a person and a citizen, and the rights and legal interests of legal entities, with an indication of the period of validity of these restrictions. Including restrictions may apply to freedom of speech. These restrictions are related to the fact that the release of some information may pose a risk to civilians and the military (Pro pravovyi rezhym voiennoho stanu, Zakon Ukrainy № 389-VIII, 2015).

Due to the absence of a monopoly on the dissemination of information in Ukraine, the events of a full-scale war can be covered by both professional and citizen journalists (bloggers).

The Law of Ukraine "On Media" adopted on March 31, 2023 defines that a journalist is a creative employee of a subject in the field of media who professionally collects, receives, creates, edits, distributes and ensures the preparation of information for the media (Pro media, Zakon Ukrainy № 2849-IX, 2023). From this definition, we can see the key feature by which a journalist differs from a blogger – "professionally".

If we talk about how the reports of military personnel differ from the streams that are constantly conducted by the military themselves in terms of accuracy, relevance, efficiency, compliance with certain ethical norms, then there are differences between them. Professional journalists: specially trained to collect, verify and present information; they shoot not what they want, but what is socially important; availability of editorial policy, plans and tasks; compliance with journalistic standards and the Code of Ethics. A lack of balance and subjectivism is often observed in the activities of the military (Rol profesiinykh zhurnalistiv i bloheriv pid chas viiny, 2022).

Restrictions on the distribution of certain information during martial law can create difficulties for journalists trying to cover socially important topics. However, martial law does not preclude the media from making efforts to honestly inform the public. Journalists must adhere

to ethical norms and professional standards to ensure quality and objective coverage of topics important to all Ukrainians (Rol profesiynykh zhurnalistiv i bloheriv pid chas viiny, 2022).

We also note that Armed Forces of Ukraine Order No. 73 refers to the following list of information that cannot be disclosed in the media:

- names of military units and other military facilities in the areas where combat missions are carried out, geographical coordinates of their locations;
- number of personnel of military units and units;
- the number of weapons and combat equipment, material and technical means, their condition and storage locations;
- descriptions, images and conditional marks that identify or can identify military objects;
- information about hostilities or operations that are being conducted or planned;
- information on the system of protection and defense of military facilities and means of protection of personnel, weapons and military equipment used (except for those that are visible or obviously expressed);
- procedure for engaging forces and means to perform combat tasks;
- information on the collection of intelligence data (methods, methods, forces and means involved);
- information on the movement and deployment of its troops (name, number, locations, districts, routes);
- information about military units, methods or tactics of their actions;
- information on conducting unique operations with an indication of techniques and methods used;
- information on the effectiveness of the enemy's radio-electronic warfare forces and means;
- information about postponed or canceled operations;
- information about a missing or downed aircraft or a missing ship and search and rescue operations that are planned or carried out;
- information on the planning and implementation of measures to ensure the security of the use of troops (disinformation, imitation, demonstrative actions, masking, countering technical intelligence and information protection);
- photo and video recording and other visual information with representatives of illegal armed formations (Nakaz Holovnokomanduvacha Zbroinykh Syl Ukrainy № 73, 2022).

Summarizing this subsection, we note that ensuring the guarantees of freedom of speech, free receipt, collection and dissemination of information defined by the Constitution

of Ukraine (taking into account the restrictions established by the laws of Ukraine related to martial law) is one of the key tasks of the state, which is properly reflected in national legislation, and under the condition of adequate application by authorized subjects of the state, is an important tool in the mechanism of ensuring the rights of representatives of mass media.

4. Conclusions

Legal guarantees of the activities of journalists – a system of norms, principles, legal and organizational means, conditions and requirements provided for by international treaties, conventions, declarations and other national legal acts, with the help of which the rights of journalists and their family members are observed, ensured, protected and protected. Legal guarantees for journalists and their family members are reflected at the international legal and national level.

According to the provisions of international humanitarian law, journalists can have two statuses in wartime: 1) military correspondents who have the right to receive the status of a prisoner of war in case of capture and 2) journalists who perform their functions in the zone of armed conflict, which are equated to civilians, and cannot be considered as prisoners of war, although they have the right to respect and protection.

From the content of national and international legislation, it can be seen that any illegal actions against journalists in the conditions of martial law should be considered a violation of the ethics and rules of war against the civilian population. At the same time, the provisions of international humanitarian law impose on journalists the obligation to respect the inviolability of private life and the dignity of the dead, to refrain from close-up coverage of scenes of violence and their consequences, to maintain a balance between the public interest in complete and accurate information and the need to be compassionate, as well as not to disclose information, defined by national legislation as potentially threatening territorial integrity and national interests.

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ПРАВОВІ ГАРАНТІЇ ДІЯЛЬНОСТІ ЖУРНАЛІСТІВ В УМОВАХ ВІЙНИ

Анотація. *Метою* публікації є визначення на підставі аналізу наявних наукових і нормативних джерел правових гарантій прав і свобод журналістів та членів їх сімей в умовах воєнного стану. *Методи дослідження.* Методологічну основу наукової статті становили такі загальнонаукові методи, як діалектичний, аналізу, синтезу, дедукції, індукції, аналогії та абстракції, а також спеціально наукові методи (формально-логічний, порівняльно-правовий, догматичний і системно-структурний), використання яких сприяло дослідженню проблеми гарантій діяльності журналістів в умовах війни в єдності їх соціального змісту та правової форми. *Результати.* Сформульовано поняття правових гарантій діяльності журналістів як передбаченої міжнародними договорами, конвенціями, деклараціями й іншими національними нормативно-правовими актами системи норм, принципів, правових і організаційних засобів, умов і вимог, за допомогою яких здійснюється дотримання, забезпечення, охорона та захист прав журналістів і членів їх сімей. Констатовано, що Конституція України й інші закони передбачають використання поряд із внутрішньодержавними гарантіями і міжнародно-правових гарантій діяльності представників засобів масової інформації. *Висновки.* Відповідно до положень міжнародного гуманітарного права в умовах війни журналісти можуть мати два статуси: 1) військові кореспонденти, які мають право отримати статус військовополоненого в разі потрапляння в полон, і 2) журналісти, які виконують свої функції в зоні збройного конфлікту, які прирівнюються до цивільних осіб, та не можуть розцінюватися як військовополонені, хоча й мають право на повагу і захист. Резюмується, що будь-які неправомірні дії щодо журналістів в умовах воєнного стану слід вважати порушенням етики та правил війни щодо мирного населення. Водночас наголошено, що положення міжнародного гуманітарного права покладають на журналістів обов'язок поважати недоторканність приватного життя і гідність мертвих, утримуватись від висвітлення крупним планом сцен насильства та їх наслідків, дотримуватись балансу між суспільним інтересом щодо повної і точної інформації та потребою бути співчутливими, а також не розголошувати інформацію, визначену національним законодавством як таку, що може загрожувати територіальній цілісності та національним інтересам.

Ключові слова: журналісти, воєнний стан, правові гарантії, правовий статус, військовополонені, захист.

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