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LEGAL REGULATION OF PROFESSIONAL ACTIVITIES OF A JOURNALIST IN THE CONTEXT OF CRIMES AGAINST JOURNALISTS

Keywords: journalist, state of law, law enforcement, media, Ukraine, legal practice

ABSTRACT: The problem of legal regulation of professional activities of a journalist is relevant because the state and its law enforcement system, the state of law and order in the society as well as its moral values appear to the public as it is seen (or should be seen by their owners) by the mass media (hereinafter – the media). However, the real situation may differ significantly from how it is presented by the journalists. That is why their activity should be clearly regulated by law.

Legal regulation in the narrow sense is understood as the aggregate effect of the law and other specific legal tools onto behavior of the society members and their social relations for their normalization and progressive development. In the broadest sense the whole number of events, including legal ideas, principles, doctrinal legal provisions that do not have the legal form (law and other regulations, the decisions of judicial authorities or organs of state power and control) affect social relations in many different ways.

INTRODUCTION

The definition of “legal regulation” remains a subject of scientific inquiry since the content of the term is an issue for discussions. The essence of the discrepancy is that some authors include to the term “legal

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regulation” all impacts of law on the consciousness and behavior of the society members, including the educational impact. However, most scientists believe that the regulation consists only of special effects through legal tools, i.a. legal norms, legal relations, acts of law and so on. However, it is unanimously recognized in scientific literature that regulating social relations means setting boundaries of behavior for their members (Tobolkin, 1983, p. 15). Thus, legal regulation of the professional activity of a journalist is a specific way of the impact of the state on public relations arising in the implementation of systematic activity of a person associated with the collection, receipt, creation, distribution, storage or other use of the information, the purpose of which is subordinating the society members to the will of the state by means of the law.

The system of normative legal acts should be adequate to the media in Ukraine, because the ways of spreading of the information through media are changing. Thus, the emergence and further development of the Internet significantly corrects the system of mass communication, shifting the media discourse into the Internet. Information and communication revolution has become one of the indicators of social change in the world that is increasingly globalized. It has established a well-developed electronic infrastructure designed to serve not only highly specialized forms of activity, but also information and communication needs of citizens (Sergeyenko, 2010, p. 157–162).

Legal regulation of professional activities of a journalist is restricted by principles and norms of the Constitution of Ukraine and Laws of Ukraine “On Information” (Law of Ukraine, No. 2657-XII), “On the Printed Media (the Press) in Ukraine” (Law of Ukraine, No. 2782-XII), “On Information Agencies” (Law of Ukraine, No. 74), “On the National Council of Ukraine on Television and Radio” (Law of Ukraine, No. 538), “On the Order of Depicting the Activity of the State Authorities and Local Self-Government in Ukrainian Media” (Law of Ukraine, No. 539), “On Television and Radio” (Law of Ukraine, No. 3759), “On Public Television and Radio Broadcasting of Ukraine” (Law of Ukraine, No. 1227), “On Access to Public Information” (Law of Ukraine, No. 2939), “On State Support of Media and Social Protection of Journalists” (Law of Ukraine, No. 540), “On Foreign Broadcasting System of Ukraine” (Law of Ukraine, No. 856), Ukrainian presidential

decrees (*On the National Plan for 2013*), decisions of the Government (about the distant protection of viscritosti in the activities of law enforcement agencies) and other state authorities (on the approval of the Plan of verification of the television organization and providers of the programme service of Ukraine for the third quarter of 2016).

The special role of crime using media is defined in the Civil and other codes. The basic concepts such as freedom of the media, mass information, the media, media editorial office, editor, journalist, publisher and distributor of media products, registration of mass media, etc. are formulated there. Also, the basic principles, including the inadmissibility of censorship, restricting the freedom of the media only by law and inadmissibility of abuse of freedom by the mass media are formulated there. There is a differentiation of legal regulation of relations depending on their specificity and the characteristic features of the individuals involved in the professional activity of journalists, the legal status of the journalist. The printed media receive special regulation of their activity.

As lack of regulation we observe no general law on the media for all the media, that would regulate the general principles of their activities. However, there are separate Laws “On the Printed Media (the Press) in Ukraine”, “On Information Agencies”, “On Television and Radio”, “On Public Television and Radio Broadcasting of Ukraine”, that do not regulate the Internet environment. And information on the Internet is left without legal support, is controlled by nobody and is not restricted.

The Law of Ukraine “On the Printed Media (the Press) in Ukraine” creates the legal basis for the printed media (the press) in Ukraine, establishes state guarantees of their freedom according to the Constitution of Ukraine, the Law of Ukraine “On Information” and other acts of current legislation and international legal acts recognized in Ukraine. In the Law of Ukraine “On the Printed Media (the Press) in Ukraine” the printed media (the press) is defined as recurrent and prolonged editions, under the same title, which appear at intervals of one or more numbers (issues) during the year on the basis of a certificate of state registration. Annexes to the printed media of newspaper and magazine type are separate and prolonged periodic printed editions and should be registered on the common grounds (Law of Ukraine, No. 2782).

THE PRINTED MEDIA ARE FREE

The establishing and funding of government agencies, institutions, organizations for censoring the media is prohibited. However, the press in Ukraine cannot be used for: 1) calls for the seizure of power, violent change of the constitutional order or territorial integrity of Ukraine; 2) the propaganda of war, violence and cruelty; 3) incitement to racial, national and religious hatred; 4) distribution of pornography and acts of terrorism and other criminal acts; 5) communist propaganda and/or National Socialist (Nazi) totalitarian regimes and their symbols. The use of press can not be used for: 1) interference in private and family life of a person, except as provided by law; 2) damage to the dignity of the person; disclosure of any information that could lead to the revealing of a juvenile offender without his consent and the consent of his representative (Law of Ukraine, No. 2782).

Activities of the printed media include the collection, creation, editing, preparation of information for printing and publication of the media product for its distribution among readers. The mentioned activities mentioned are ensured by the independence of the founder (founders) of printed media, its editor (editor-in-chief), editorial board, editors, editorial staff, journalistic staff, author, publisher and distributor in all types of relationships, related to their rights and obligations. Interference with the printed media other than defined by the Law of Ukraine “On the Printed Media (the Press) in Ukraine” is prohibited.

The Law of Ukraine “On Information Agencies” establishes the legal framework in Ukrainian news agencies and their international cooperation. News agencies according to this Law are legal persons registered as entities of informational activity to provide information services. Under the representation agency in Ukraine any establishment (office, agency, bureau, etc.), which is a state or non-state Ukrainian news agency, registered as a legal entity under the current legislation of the country, and which operates in Ukraine in the sphere of information according to the Laws of Ukraine “On Information”, “On Information Agencies” should be understood (Law of Ukraine, No. 74).

The Law of Ukraine “On Television and Radio” regulates relations arising in the field of television and radio broadcasting in Ukraine, defines the legal, economic, social and institutional conditions of their activity aimed at implementing the freedom of speech, the rights of citizens to receive complete, accurate and timely information, an open and free discussion of public issues. The Law of Ukraine “On Television and Radio” is applicable to relations between the subjects in the sphere of TV and radio regardless of their form of ownership, the purpose of creation, type of statutory activities, as well as the method of distribution of television and radio programmes and broadcasting designed for mass consumers. The structure of the National Television and Radio Broadcasting of Ukraine includes: Public broadcasting, public joint stock company “National Public Broadcasting Company of Ukraine”, State TV and Radio Company “World Service”, Ukrainian Television and Radio Broadcasting “State Enterprise Parliamentary TV Channel Rada”, private (regardless of the method distribution programmes), and other public broadcasters, established in accordance with the Law (Law of Ukraine, No. 3759).

THEORY OF POWER AND RIGHTS

Interesting from the standpoint of our study is the legal status of a journalist defined by the Laws mentioned above which regulate his professional activity because this concept is a major one in the understanding of such activities. In most cases, the notion of “legal status” is defined by its structural elements without revealing its essence. Thus, most scientists agree that the core of the legal status of a person are their rights and obligations, but there is another point of view, according to which the rights and obligations are only the main element of the legal status (Kolodiy, Kopeychikov, Lisenkov, 2002, p. 73).

M.V. Vitruk considers that, legal status is socially acceptable and necessary opportunities, potencies of a person not just as an individual but also as a citizen of the state (Vitruk, 1985, p. 176). This notion of “legal status” should be analyzed in the perspective of

relationships in which the person is involved, since only committing certain acts on the basis of the possibilities granted the individual realizes his legal status. Providing the legal subjects with relevant capacity in this case is a stage mechanism of legal regulation. In addition, the concept of “opportunity” refers to committing their own actions and the possibility to require from other members to carry out certain actions. In other words, the concept of “opportunity” comprises the rights and obligations of legal entities. Thus, under the legal status we understand the totality of socially permissible, formally defined and publicly guaranteed opportunities for individuals as subjects of specific relations.

In the scientific and academic literature, there are different points of view on the content and structure of legal status, which can be summarized in three main issues: 1) structural elements of a legal status should recognize the rights and duties of a person (Cherdantsev, 1999, p. 106; Matuzov, 1997, p. 134) and other academics of law – advocates of so-called “narrow” understanding of legal status); 2) the structure of the legal status of a citizen involves subjective rights, legal interests, legal responsibilities, guarantees the rights and obligations (Skakun, 2009, p. 59), benefits and legal personality (Khalfina, 1974, pp. 124–126). M. I. Matuzov believes that is only possible to fully characterize the nature of the legal status through “law, establishing the legal status, legal personality, basic rights and duties legitimated interests, nationality, legal liability, legal principles, relationships of general legal (status) type” (Matuzova, Malko, 1997, p. 237). V. V. Ladychenko understands under the legal structure the legal status of a person a legal institute that is based on the fundamental ideas of a person’s relations with the society and the state, and which establishes a system of fundamental rights, freedoms and responsibilities, implementation of which is based on the capacity and nationality of the person, and the guarantees (Ladichenko, 2008).

These points of view with extended interpretation of the meaning of legal status, comprise some differences. But for all the scientists that support advanced approach to understanding of the legal status the common view is that: the legal status includes the core rights and obligations of individuals; the term “legal status”, consists only of rights and obligations and is a part of the concept of “legal status” due to additional elements

(Vitruk, 1979, pp. 25–34). Probably, there is some logic in it. For example, when we think of a coherent system of rights, obligations and interests of a person, their legal capacity and other legal tools that make up their ability to act as a subject to any legal relations, to realize their interests, in this case, the term “legal condition” should be used. But to describe the complex of rights and obligations in specific legal relationships the concept “legal status” should be used.

However, there is a problem with understanding and usage of specified terms that can lead to the substitution of one another, since the word “status” in Latin means the state, condition of someone. These concepts are synonymous, so they should not be distinguished in content and volume, and the unity of the denoted above legal tools should be expressed through other terms.

Some doubt causes the including into the term “legal status” additional (other than rights and obligations) legal means. Thus, analyzing the concept of legal status, the conditions provided to the person to achieve a goal should be included. These favorable conditions in legal relationships are transformed into concrete subjective rights and duties. They play the role of a clear definition of the legal residence of each individual in the society, the vector of his movement in a particular sphere of its life, setting provided by the law opportunities and necessities that affect its behavior. The rights and obligations are closely interrelated in the relationship, which has two aspects: 1) interrelation of links between rights and responsibilities of different individuals (legal right of the one corresponds to the duty of the other); 2) the rights and obligations should balance one another (balanced relationship between them within the same status) – a certain system of favorable conditions (features) provided to a person must meet the measures necessary balancing the opportunities and vice versa. This balance is necessary to prevent violation of one of the main manifestations of the law as a social regulator.

It can be concluded that the presence in the legal status of the two legal measures (rights and obligations) is sufficient to determine its definition as a set of capabilities provided to the individual. Any additional legal tools proposed by scientists, which is not characterized by the necessary features, can not make the structure of the concept of legal status. Thus, the

term “citizen” refers to the legal relationship of the person (people) with a particular state, which provides a mutual set of legal rights, duties and responsibilities. This link shows the concept of “citizenship” that means belonging to the resident population of the state, membership in the state (Skakun, 2009, p. 57). According to the Art. 1 of the Law of Ukraine “On Citizenship of Ukraine” a Ukrainian citizen is a person who has acquired citizenship of Ukraine according to the Law of Ukraine and international agreements of Ukraine. The concept of “citizenship” in legal literature is seen as a prerequisite for acquiring a particular legal status, or a form of constitutional relationship in which a person already has an appropriate status and opportunities. That means that citizenship cannot be included into the concept of legal status be its integral part.

The category of “legal personality” should be investigated in the same way, i.e. in comparison to the legal status. In the general theory of law it is defined as the legal ability of individuals or entities to be a part of legal relationship that includes legal capacity, capability and tortious liability. They are the prerequisite of ownership and realization of subjective rights and legal obligations. However, legal personality alone does not determine the possibilities in legal relationships and therefore is not a constitute unit of the legal status, but is a prerequisite for its acquisition and entering legal relationships.

It is necessary to bear in mind that not nature, not society, but the government determines who and under what conditions (what qualities or properties one can have) may be subject to the law, and therefore enter relationships. That is, only the Law can establish and defined special legal properties that allow the organization (person) be a subject of law. This property is called legal personality (Zaichuka, Onishchenko, 2006). From this we can conclude that the legal liability is not a part of the content of the legal status because of its connectivity with the category of tortious liability indicates understanding of liability as a consequence of the legal implementation of the legal status and therefore it does not fit the boundaries of the legal status.

You can not determine the norms of law and its principles as a part of the legal status. This is because criminal law is a mandatory rule associated with a command, which includes compulsory potential of tools of legal

effect (Mitrofanov, 2015, p. 17), so, the norms should be recognized as the legal form of display of legal status. Basic principles, as key ideas depicted in the law and determining its building, also determine the activity of some of its institutions, as well as law-making and other activities (Mitrofanov, 2015, p. 24). Concerning the legal status principles act as the basis of its formation and can not be a part of its structure.

Such legal tools as freedom and legitimate interests can not be a part of the meaning of “legal status” as freedom and subjective rights have the same legal nature and purpose and differ only in detail of the contents and guaranteeing their usage by the State (Vitruk, 1985, p. 11). That makes it impossible to refer to them as to a part of structure of the legal status. Being connected with the relationships of a specific participant, legal status fixes in its content a strictly defined set of favorable conditions (features) provided to a particular entity in certain relationships. Freedom, belonging to the “common” type of notions and used in different legal relationships on level of social relations, can not be included into the structure of the legal phenomenon. Legitimate interests are defined as recognized by an individual legal needs that are not directly covered by the content of the statutory rights and freedoms, but are a subject of the protection by law. A legitimate interest in this case is implemented within a certain type of relationships. Grevtsov Yu. I. notes that the desire of an individual to enter legal relations is mostly the desire to achieve a legitimate objective, to realize interests that meet the needs (Grevtsov, 1987, p. 59). Thus, legitimate interest is a specific prerequisite for entering legal relationships and gaining a legal status, so they can not be included into the concept of “legal status”.

So, the content of the legal status comprises rights and obligations, the system of which is required for effective usage of the legal status of any participants, including journalists. The proposed model of the legal status should be recognized as stable, so it must be established in all cases clarifying the legal status of any individual. In other words, investigating the legal status of a journalist, you must learn their rights and obligations according to the law that regulates legal relationships in Ukraine. Thus, the journalist’s only legal status is defined in the Art. 25 of the Law of Ukraine “On information”.

It contains prerequisites under which the performance of the professional duties of a journalist include the rights: 1) to create written, audio and video materials with the use of appropriate technical tools, except cases determined by law; 2) to freely visit the premises of government agencies, outdoor activities that they organize, and to be personally accepted within reasonable time by the officials, except cases determined by law; 3) not to disclose the source of information or information that allows you to establish a source of information, except when ordered by court based on law; 4) upon presenting a document certifying his professional affiliation, to collect information in areas of natural disasters, catastrophes, accidents in places, mass unrests, acts of war, except cases determined by law; 5) to distribute prepared content (soundtracks, videos, written texts etc.) with his signature (authorship) or under nickname (pseudonym) 6) to refuse authorship (signature) of material if its contents after the editorial revision (editing) is contrary to his opinion. In addition, the Art. 25 of the Law of Ukraine “On Information” contains the fundamental rule that the rights and obligations of journalists and media defined by this Law apply to foreign journalists, foreign media working in Ukraine (Law of Ukraine, No. 2657).

Specific content acquire rights and obligations in the Laws governing the activities of a particular type of the media. For example, in the Ch. 1, Art. 26 of the Law of Ukraine “On the Printed Media (the Press) in Ukraine” it is stated that in carrying out their activities based on professional independence, the journalist uses the rights and fulfills the responsibilities determined by the Law of Ukraine “On Information” and this Law. The journalist has the right: 1) to freely receive, use, distribute (publish) and store the information; 2) to visit state agencies, local governments, and enterprises, institutions and organizations and be accepted by their officials; 3) to record, including the use of any technical tools, except cases determined by law; 4) to have free access to statistical data, archive, library and museum documents with restrictions due to specific values and those of their safety, provided by the current Law of Ukraine; 5) upon presenting a document certifying his professional affiliation, provided by the publisher of printed media, to collect information in the area of natural disasters, catastrophes, accidents, mass disturbances, rallies and dem-

onstrations, as well as in the territories where a state of emergency is declared; 6) to apply to specialists when checking the information received; 7) to distribute prepared content (soundtracks, videos, written texts etc.) with his signature (authorship) or under nickname (pseudonym) or unsigned (anonymous) 8) to refuse authorship (signature) of material if its contents after the editorial revision (editing) is contrary to his opinion; 9) to keep the secrecy of authorship and sources of information, except when revealing those secrets is requested by the court (Law of Ukraine, No. 2782).

According to the Part 1 Art. 26 of the Law of Ukraine “On the Printed Media (the Press) in Ukraine” a journalist is obliged to: 1) to comply with the programme of the printed media, with the editorial board of which he is in labour or other contractual relations, guided by the statute; 2) to provide for publication the objective and reliable information; 3) to satisfy the request of persons who provide information on the origin or their authorship secrecy; 4) to refuse to fulfill the assignment of the editor (editor in chief) or editorial board if it can not be fulfilled without violating the law; 5) to present the certificate or other document confirming his identity or professional credentials provided by the publisher of printed media; 6) to serve as participants in information relationships; 7) to refrain from distributing commercial information materials containing advertising information with the details of the manufacturer of products or services (address, contact number, bank account), the commercial features of the goods or services etc (Law of Ukraine, No. 2782).

CONCLUSIONS

Thus, the consideration of legal regulation of professional activity of journalists in the context of the study of crimes against journalists leads us to the need to study its legal status under which a system of socially permissible, formally determined and guaranteed by the authority of the state favorable conditions (features) of full-time or freelance media professionals which are, should be understood who during their professional activity and according to the duties is involved in the collection, receipt,

storage and use of information as a subject of legal information relationships. The content of the legal status of the journalist are only his rights and obligations as a legal entity of information relationships.

BIBLIOGRAPHY:

- Cherdantsev, A. F. (1999). *Theory of the state and law: textbook for higher education institutions*. Moscow: Yurait.
- Grevtsov Yu, I. I. (1987). *Legal relations and exercise of the right*. Leningrad: Region State University.
- Khalfina, R. O. (1974). *General doctrine on legal relations*. Moscow: Legal literature.
- Kolodiy, M., Kopeychikov V. V., Lisenkov S. L. (2002). *Theory of power and rights: e.g., theories of power and rights*.
- Ladichenko V. V. (1998). *Theory and History of Power and Law; History of Politics and Law*. Kiev: National Pedagogical University of M. P. Dragomanov.
- Ladichenko V. V. (2008). *Humanistic Foundations of the Organizational Structure of the State: Dissenter of Science*. Kiev: Instict of the Verkhovna Rada Legislation for the sake of Ukraine.
- Law of Ukraine No. 1227-VII dated 17.04.2014. *Vedomosti of the Verkhovna Rada of Ukraine*, 2014, No. 27, Art. 904.
- Law of Ukraine No. 2657-XII 02.10.1992. *Vedomosti of the Verkhovna Rada of Ukraine*, 1992, No. 48, Art. 650.
- Law of Ukraine No. 2657-XII dated 02.10.1992. *Vedomosti of the Verkhovna Rada of Ukraine*, 1992, No. 48, Art. 650.
- Law of Ukraine No. 2782-XII dated 16.11.1992. *Vedomosti of the Verkhovna Rada of Ukraine*, 1993, No. 1, Art. 1.
- Law of Ukraine No. 2782-XII, 16.11.1992. *Vedomosti of the Verkhovna Rada of Ukraine*, 1993, No. 1, Art. 1.
- Law of Ukraine No. 2939-VI dated 13.01. 2011. *Vedomosti of the Verkhovna Rada of Ukraine*, 2011, No.32, Art. 314.
- Law of Ukraine No. 3759-XII dated 21.12.1993. *Vedomosti of the Verkhovna Rada of Ukraine*, 1994, No. 10, Art. 43.
- Law of Ukraine No. 538/97-VR dated 23.09.1997. *Vedomosti of the Verkhovna Rada of Ukraine*, 1997, No. 48, Art. 296.
- Law of Ukraine No. 539/97-VR, 23.09.1997. *Vedomosti of the Verkhovna Rada of Ukraine*, 1997, No. 49, Art. 299.

- Law of Ukraine No. 540/97-VR dated 23.09.1997. *Vedomosti of the Verkhovna Rada of Ukraine*, 1997, No. 50, Art. 302.
- Law of Ukraine No. 74/95-VR, 28.02.1995. *Vedomosti of the Verkhovna Rada of Ukraine*. 1995, No. 13, Art. 83.
- Law of Ukraine No. 856-VIII dated 08.12.2015. *Vedomosti of the Verkhovna Rada of Ukraine*, 2016, No 4, Art. 37.
- Matuzova N. I, Malko A. V. (eds.) (1997). *Theory of the state and the right: a course of lectures* (1997). Moscow.
- Mitrofans I. I. (2015). *The tanning is a part of the criminal law of Ukraine*. Odessa: Kremenchuk National University in the name of Mikhail Ostrogradsky.
- On the approval of the Plan of verification of the television organization and providers of the program service of Ukraine for the third quarter of 2016: Decision of the National Radio and Television Authority of 02.06.2016 No. 896*. Downloaded from: <http://zakon2.rada.gov.ua/rada/show/vr896295-16>
- On the approval of the Rivne National Program of Spivrobotnitsyn Ukraine – NATO for 2016 rik: Decree of the President of Ukraine of 12.02.2016, No. 45/2016*. Official Chronicle of the President of Ukraine, 2016, No. 6.
- On the National Plan for 2013 on the implementation of Economic Reform Programs for 2010-2014 “Customs Union, Competitive Economy, Effective Power”: Decree of the President of Ukraine of 12.03.2013, No. 128/2013*. Official Journal of the President of Ukraine, 2013, No. 7 (Special Issue).
- Resolution of the Cabinet of Ministers of Ukraine of 29.08.2002, No. 1302*. Official Gazette of Ukraine, 2002, No. 36.
- Sergeyenko, A. A. (2010). Professional activity of a journalist in the conditions of information-communication revolution and convergence of mass media: to the statement of a problem. *Journalism*, 3.
- Skakun, O. F. (2009). *Theory of rights and powers. Handbook*. Charków: Espada.
- Tobolkin, P. S. (ed.) (1983). *Social conditionality of the criminal-legal norms* (in Russian). Sverdlovsk: Sredn.-Uralsk.
- Vitruk, N. V. (ed.) (1979). *Fundamentals of the theory of the legal status of a person in the socialist society* (in Russian). Moscow.
- Vitruk, N. V. (1985). *Legal status of a person in the USSR*. Moscow: Yurid.