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**HUMAN SECURITY IN THE CONTEXT OF  
GLOBALIZATION: MODERN LEGAL PARADIGM**

Monograph

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The monograph highlights the human security holds a specific place among social values as one of the most important human needs, a necessary condition for full and productive life of an individual, society and the state. The problem of human security in a globalized world is especially important given the emergence of many new phenomena and attributes of the modern world that give rise to new threats and require proper legal regulation.

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### 1.2. Safety of journalists: current legal dimension

Among the urgent tasks which the State and society are facing with, issues related to the development of the institution of the mass media (the MM) have an important significance. In particular, an important aspect of this problem is the improvement of the legislation of Ukraine concerning the professional activity of journalists, which would meet European standards. In modern conditions the task of ensuring the dialogue between the society and the State depends on the media. The mass media is a tool of discussion of issues of public importance and the most important resource of the support of public initiatives, which can unite and consolidate the society and stimulate civil and legal activity of the population.

Freedom of speech and expression of views is one of the important capabilities of human and other subjects, which has a great importance and impact on other rights. The journalists are the subjects, for whom the expression of views is the essence of the profession. Recently, the problem of security of journalists' professional activity is gaining a great importance, because the level of violence against journalists, including murders, assaults with grievous bodily harm and facts of intimidation has significantly increased in the recent years and has negative consequences.

The studying of the professional activities of mass media started in the beginning of the XX century, but attempts to create theoretical concepts appeared in the middle of the XX century in the works by P. Lazarsfeld and G. Laswell. In the sixties and the seventies of the XX century the search of new approaches to understanding the role of the MM in the society took place, by this the growth of the interest to the works by theorists of post-structuralism and postmodernism (T. Adorno, R. Barth, M. Horkheimer, J. Derrida, G. Deleuze etc.) was stipulated.

Concerning works by Ukrainian researchers, who investigated the activities of the mass media, it should be noted, that in the present context mentioned above problems began to be studied only since independence of Ukraine. Among the native contemporary works devoted to the problems of the mass media, which are more general in nature, the publications by such scholars as V. Bebyk, O. Hrytsenko, S. Kvit, N. Kostenko, I. Mashchenko A. Rychka should be pointed out. Such scientists and media lawyers as

D. Andreyev, D. Dutsyk, V. Konah, T. Kotyuzhynska, O. Nesterenko, M. Siryi, G. Pocheptsov, T. Shevchenko etc. devoted their works to the following the law of freedom of speech including the protection of journalists' professional activity. Problems of crime in the sphere of the journalists' professional activity are studied by native scientists such as R. Veresha, O. Kapliy, S. Lyhova, L. Mostepanyuk, I. Medytskyy, Ye. Pysmennytskyy, N. Savinova, L. Yarmol etc.

The aim of the article is the research of theoretical and legal foundations of security of journalists' professional activity in the conditions of creation of information and a legal space in the modern Ukraine.

Legal regulation of professional work of the native mass media and journalists is carried out by a set of regulations, including: The Constitution of Ukraine (1996), Criminal Code of Ukraine (2001), Civil Code of Ukraine (2003), Criminal Procedural Code of Ukraine (2012), Laws of Ukraine: "On Information" (1992), "On print media (the press) in Ukraine" (1992), "On Television and Radio Broadcasting" (1992), "On Information Agencies" (1995), "On the National Council of Television and Radio Broadcasting of Ukraine" (1997), "Law about state support of mass media and social protection of journalists" (1997), "On the order of media coverage of actions of state authorities and local self-government in Ukraine" (1997), "Publishing Law" (1997), "On access to public information" (2011), "Law of Ukraine on Public Television and Radio Broadcasting" (2014), "On Amending Some Legislative Acts of Ukraine to Increase Guarantees of Journalistic Activities" (2015) and others. The legal analysis of the legislation makes it possible to conclude, that methods of public and private law: braves, permits, prohibitions, determining of mandatory and non-mandatory norms are used in complex.

In accordance with the Law of Ukraine "On information", the mass media is the means for public spreading of printed or audiovisual information. On the one hand, a journalist has the right to collect and receive necessary information without hindrances to prepare and spread materials, on the other hand, he is obliged not to abuse information and give it fairly and objectively. The basic principles, which should be known and respected by each journalist are the principles of information relations:

guaranteed information right, transparency, accessibility of information, freedom of information exchange, authenticity and completeness of information, freedom of views and convictions expression, the legitimacy of obtaining, usage, spreading, storage and protection of information, safety of the person from interfering in her personal and family life<sup>9</sup>. However, in the legislation of Ukraine there is no single definition of the term "journalist". It is possible to agree with the opinion by O. Bukhatyy, that in the Law of Ukraine "On information" two concepts are used - "journalist" and "media worker". legislation of Ukraine contains no unified definition of the term "journalist"<sup>10</sup>.

With the proclamation of independence of our State the Constitution of Ukraine and other normative and legal acts guaranteed the right for freedom of thought and speech, for free expression of views and convictions. But in practice, there are dangerous violations of journalists' rights for life and health, in particular, perverting from their professional activities, unlawful seizure of information carriers, objects and means of shooting. It is clear, that the legitimate activities of journalists require appropriate legal protection. One of the first steps concerning the safety of journalists was the establishment of criminal responsibility for perverting from journalistic activities in the article 171 of the Criminal Code of Ukraine (CCU)<sup>11</sup>.

An essential condition of the development of information society in Ukraine is a creation of legal information space. Journalists are participants of legal and information relationships that influence the formation of information and legal space, the result of which is functioning of information legal environment. According to N. Onishchenko, appeal to the information legal environment makes it possible to examine the legal life in all its various manifestations and contradictions and on this basis prove the perspectives of development of lawmaking and enforcement of the right of

<sup>9</sup> Pro informatsiiu: Zakon Ukrainy vid 02 zhovtnia 1992 r (iz zminamy ta dopovnenniamy) // Vidomosti Verkhovnoi Rady Ukrainy. – 1992. – № 48. – St. 650.

<sup>10</sup> Bukhatyy O.Ie. Svoboda slova ta pravovi aspekty posylennia vidpovidalnosti za pereshkodzhannia profesiinii diialnosti zhurnalistiv / O.Ie. Bukhatyy // Stratehichni priorytety. – 2014. – № 1 (30). – S. 10–17. – S.13.

<sup>11</sup> Kryminalnyi kodeks Ukrainy vid 5.04.2001 r. № 2341-III // Ofitsiinyi visnyk Ukrainy. – 2001. – № 21. – St. 920.

entire legal system in the context of focusing on providing the regime of the great assistance in person's life<sup>12</sup>.

One of the conditions of efficacy and safety of journalists' professional activities is their legal culture. The journalists' professional activities are regulated by the system of normative and legal acts. Journalists' duties are not just following the law by themselves, but they also are the subjects of formation of legal culture of society.

To achieve this goal, journalists should not only to know and accept, but also understand the effect of legal norms, to treat law as the value, which is directly related to their legal culture<sup>13</sup>.

Herein, legal boundaries of journalism should identify creative freedom and provide a legal basis for its economic support.

That is why, in each country legislatively and actually is formed the right for freedom of the media, in society appears actual level of achieved freedom of the press, radio, television and the Internet. In particular, some states mentioned in its legislative acts freedom of the press and information through all media and interdicted censorship etc<sup>14</sup>.

According to The Principle No.12 in situations of conflicts and pressure, Member States of the Council of Europe should investigate incidents concerning the breaking of physical immunity of journalists, which occurred within their jurisdiction. Member States of the Council of Europe should use all necessary means to bring to amenability those, who made these wrongdoings, whether they were planned, encouraged or carried with persons, who belong to terrorist or other organizations, persons, who work for the government or other public authorities, or persons, who act at their own convenience<sup>15</sup>.

<sup>12</sup> Onishchenko N. Informatsiino-pravovyi prostir: problemy formuvannia, rozvytku, analiz pozytyvnykh i nehatyvnykh vplyviv na pravosvidomist suspilstva ta osobystosti / N. Onishchenko // Viche. – 2012. – № 7. – S. 9–13. – S.28.

<sup>13</sup> Makeieva O.M. Pravova kultura zhurnalistiv (teoretyko-pravovi aspekty): avtoref. dys. kand. yuryd. nauk: 12.00.01 / O.M. Makeieva. – K., 2015. – 20 s. – S.1.

<sup>14</sup> Kolb O.H. Okremi aspekty pravovoho rehuliuвання diialnosti zhurnalistiv shchodo zapobihannia pereshkodzhanniu yikh zakonni diialnosti / O.H. Kolb, I.S. Zaiats // Naukovyi visnyk Uzhhorodskoho natsionalnoho universytetu, 2014, Seriya PRAVO. Vypusk 24. Tom 4. S. 25-20. – S.29.

<sup>15</sup> Pro zakhyst zhurnalistiv za umov konfliktiv i tysku : Rekomendatsiia Komitetu ministriv Rady Yevropy № R (96) 4 vid 3 trav. 1996 r. [Elektronnyi resurs]. – Rezhym dostupu: [http://zakon2.rada.gov.ua/laws/show/994\\_734\\_OBS](http://zakon2.rada.gov.ua/laws/show/994_734_OBS).

At the international level, especially recently, a lot of international documents according to the safety of journalists, including: UN Human Rights Council Resolution on Safety of Journalists (2012), the report of the UN High Commissioner for Human Rights: Safety of Journalists (2013), decision of the General Assembly Committee: Safety of journalists and the problem of impunity (2013) were passed.

In 2015, the Council of Europe has created online platform for journalism protection and safety of journalists, which carefully controls recorded violations of journalists' rights in the Member States and calls for actions to protect media freedom. 218 violations in 27 countries were recorded on the Platform in 2016<sup>16</sup>.

An important step to ensure safety of journalists in Ukraine was adoption of the Law of Ukraine "On the Amendments to some Legislative Acts of Ukraine on strengthening of the guarantees of journalists' activities" in 2015, which establishes additional guarantees of safety of legal professional journalists' activities. In particular, the amendments to the Article 18 of the Law of Ukraine "On State Support of Mass Media and Social Protection of Journalists" (1997) were moved, norms on social support and protection of journalists and their families were introduced and social guarantees in the case of injury or death of the journalist were added. Also by this law, the current Criminal Code was supplemented with several specific bodies of crimes, criminal liability for such criminal acts as threat or violence against journalists (Art. 3451 of the Criminal Code of Ukraine); intentional destruction or damage of journalist's property (Art. 3471 of the Criminal Code of Ukraine); infringement on life of a journalist (Art. 3481 of the Criminal Code of Ukraine); hostage taking of a journalist (Art. 3491 of the Criminal Code of Ukraine); and also designedly illegal court sentence, decision, resolution or injunction in order to pervert the journalist's activities (Ch. 2, Art. 375 of the Criminal Code of Ukraine) were foreseen<sup>17</sup>.

<sup>16</sup> Bezpeka zhurnalistiv. Dovidnyk. 2-he vydannia. «Imprimerie/Centrale Luxembourg». – Viden, 2014. – S.34

<sup>17</sup> Pro vnesennia zmin do deiakyykh zakonodavchykh aktiv Ukrainy shchodo posylennia harantii zakonnoi profesiinoi diialnosti zhurnalistiv: Zakon Ukrainy vid 14 travnia 2015 r № 421-VIII // Vidomosti Verkhovnoi Rady Ukrainy. – 2015. – № 29. – St. 264.

Even though there are debates on this issue in legal literature. I. Medytskyi stresses that the Criminal Code of Ukraine even before appropriate amendments had the desired scope of the materials, practical application of which would ensure full protection of journalists' against illegal behavior<sup>18</sup>. L. Mostepanyuk believes, that criminal responsibility for such acts has been provided by the current Criminal Code of Ukraine: in particular, before this law came into legal force, if preventing from professional journalists' activities became apparent in murder threat or in violence use, as well as in the direct commitment of violence actions with availability of grounds, it should be qualified as aggregate of crimes under the Art. 171 of the Criminal Code of Ukraine and according to the Articles 121, 122, 125-127, 129 of the Criminal Code of Ukraine<sup>19</sup>. According to Ye. Pysmennytskyi, first of all the problems of efficiency of legal protection of journalists as representatives of the "fourth branch of government" can be solved by improving the mechanism of application of the relevant criminal and legal prohibitions, not by means of their accumulation<sup>20</sup>.

In our opinion, in the current conditions, which arose in Ukraine, these norms are still necessary and they will provide safety guarantees of journalists' professional activities, if they will be put into practice.

Also an important note is included to the article 3451 of the Criminal Code of Ukraine according to the definition of journalists' professional activities. Under the professional activities of a journalist should be understood the systematic activities of the person connected with the accumulation, receipt, creation, spreading, storage or other usage of information in purpose to its spreading to the indefinite range of persons through the print media, radio broadcasting organizations, news agencies and the Internet. The status of the journalist or his membership of the mass

<sup>18</sup> Medytskyi I. B. Kryminalno-pravova okhorona profesiinoi diialnosti zhurnalista u svitli ostannykh zakonodavchykh zmin / I. B. Medytskyi // Problemy nauky kryminalnoho prava ta yikh vyrisnennia u zakonotvorchii ta pravozastosovni diialnosti: materialy Mizhnar. nauk.-prakt. konf., 8–9 zhovt. 2015 r. / redkol. : V. Ia. Tatsii (holov. red.), V. I. Borysov (zast. holov. red.) ta in. – Kharkiv : Pravo, 2015. – S. 294–297. – S.295.

<sup>19</sup> Mostepaniuk L.O Do pytannia pro neobkhdnist vstanovlennia dodatkovykh harantii bezpeky zakonnoi profesiinoi diialnosti zhurnalistiv / L.O. Mostepaniuk // Visnyk Asotsiatsii kryminalnoho prava Ukrainy. – 2016. – № 1(6). – S.250 – 258. – S.254.

<sup>20</sup> Pysmennytskyi Ie.O. Zlochyny u sferi profesiinoi diialnosti zhurnalistiv u konteksti zabezpechennia potreb ukrainskoho suspilstva na suchasnomu etapi yoho rozvytku / Ie.O. Pysmennytskyi // Visnyk kryminolohichnoi asotsiatsii Ukrainy. – 2016. – № 1 (12). – S. 90-103. – S.99.

media can be proved by an editorial certificate or certificate of employment or other document issued by the media, his editorial office, professional or creative Union of Journalists<sup>21</sup>. It should be noted that adding to the list of the traditional media and to the online media is extremely important. The legal protection of freedom of speech should not be limited by the print media, television and radio broadcasting, but also should be concerned to the Internet media journalists.

Moreover, "The Regulation of the Council on the protection of professional activities of journalists and freedom of speech", which main task is monitoring of ensuring protection of journalists' professional activities and freedom of speech in Ukraine was approved by decree of the President of Ukraine in 2016<sup>22</sup>.

In 2016 in the unoccupied territory of Ukraine was recorded 262 cases of violations of freedom of speech (on December 27), which is approximately 15% less than last year (in 2015 IMI recorded 310 violations of freedom of speech in Ukraine, in 2014 - 995 cases). These are the data of the annual study by the Institute of Mass Information "Barometer of freedom of speech". In 2016 the number of violations of freedom of speech together with the occupied Crimea (31) and territories of Donbas (12) made up 305 cases<sup>23</sup>.

International conferences in Kyiv showed the importance of safety issues of journalists' professional activities. International Conference on the topic of "Safety of Journalists in Ukraine. Stop Impunity" November 2016, has a close relationship to the recently adopted resolutions of the Parliamentary Assembly of the Council of Europe. International conference "Safety of journalists as a compulsory condition to the free media: freedom of speech and public order" February 2017, was supported by the OSCE, UNESCO, Ministry of Foreign Affairs of Ukraine and Ministry of Information Policy of Ukraine. The Institute of Mass Information and

<sup>21</sup> Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy shchodo posylenia harantii zakonnoi profesiinoi diialnosti zhurnalistiv: Zakon Ukrainy vid 14 travnia 2015 r. № 421-VIII // Vidomosti Verkhovnoi Rady Ukrainy. - 2015. - № 29. - St. 264.

<sup>22</sup> Polozhennia pro Radu z pytan zakhystu profesiinoi diialnosti zhurnalistiv ta svobody slova: Ukaz Prezydenta Ukrainy vid 23 liutoho 2016 r. № 61/2016 // Ofitsiinyi visnyk Ukrainy. - 2016. - № 16. - St. 622.

<sup>23</sup> Barometr svobody slova za 2016 rik [Elektronnyi resurs]. - Rezhym dostupu: <http://imi.org.ua/news/55944-u-2016-rotsi-v-ukrajini-zafiksovano-262-porushennya-svobodi-slova-imi.html>

organizers of the conference cited statistics: only in Ukraine the journalist was murdered in 2016, 30 assaults, 108 facts of preventing of professional activities and 7 cases of censorship were recorded<sup>24</sup>.

Thus, analyzing the current legislation of Ukraine, we can conclude that today the State and the public pay considerable attention to the legal protection of the journalists' safety. During accomplishment of legal professional activities journalists are able to use generally recognized freedom of opinion and speech, freedom of expression of views and have additional social guarantees. Various types of legal liability for the violation of the rights and freedoms of journalists, for censorship, for prevention the legal journalist's activities, for threats or violence against journalists, for intentional destruction or damage of journalist's property, for persecution and hostage taking of a journalist, for infringement on life of a journalist etc. were established. In general, analyzing the situation in Ukraine and comparing it with the state of the media in the developed countries of the world, it should be mentioned, that today native legislation is not perfect, we need the efforts of legislators, the public and journalists in order to prevent negative consequences. At the same time, in spite of making a number of amendments to the Ukrainian legislation, this problem cannot be solved in a society only at the legislative level by changing texts of laws or making operative changes to them etc. In the Ukrainian legal system, practice of law usage has evidently more important significance, than the text of the law. In the current conditions it is necessary: to ensure implementation of new legislation norms, to improve the mechanism for exercise of legislation according to the safety of journalists and to strengthen the safety guarantees of legal professional journalists' activities.

<sup>24</sup> [Elektronnyi resurs]. - Rezhym dostupu: <http://vkksu.gov.ua/ua/news/u-kievi-projshla-miznarodna-konferenciia-iezpieka-zurnalistiv-iak-oboviazkova-umova-dlia-wilnich-zmi-svoboda-slova-i-gromadskij-poriadok/>