

**CONSTITUTIONAL AND LEGAL GUARANTEES OF MEDIA
FREEDOM AND JOURNALISTIC ACTIVITY IN THE DIGITAL
ENVIRONMENT: THE PRACTICE OF THE ECtHR
IN THE CONTEXT OF CYBER OFFENCES**

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INTRODUCTION

Freedom of expression and media freedom constitute fundamental values of modern constitutionalism and an essential prerequisite for the functioning of a democratic society governed by the rule of law. The possibility to freely disseminate information, express opinions, and participate in public debate ensures transparency in the activities of public authorities, facilitates public oversight, and promotes the development of civil society. For this reason, guarantees of freedom of speech and journalistic activity occupy a central place in the constitutional systems of democratic states.

In the contemporary era, characterized by rapid technological development and the digitalization of social relations, the traditional understanding of media activity and its legal regulation is undergoing significant transformation. Information and communication technologies, online media platforms, and social networks have greatly expanded opportunities for the dissemination of information and the exercise of freedom of expression. At the same time, the digital environment has created new legal challenges related to cyber offences, the spread of unlawful content, digital surveillance, and potential interference with journalistic activity.

These developments require a reconsideration of existing constitutional and legal mechanisms aimed at ensuring the protection of media freedom and the professional activities of journalists. It becomes increasingly important to develop legal guarantees capable of maintaining an appropriate balance between freedom of expression and other legitimate interests, including national security, public order, the protection of reputation and privacy, and the prevention of crime. In this regard, international legal standards and judicial practice play a particularly important role in shaping modern approaches to the protection of freedom of speech.

A key role in the formation of contemporary standards for the protection of freedom of expression is played by the European Court of Human Rights. Through the interpretation of Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the Court has developed a comprehensive system of legal principles that determine the permissible limits of state interference in the sphere of freedom of expression and media activity. According to the Court's established approach, any restriction on freedom of expression must be prescribed by law, pursue a legitimate aim, and be necessary in a democratic society.

The relevance of these issues has increased significantly in the context of digital transformation. Modern journalists actively use electronic communication tools, digital platforms, and cloud technologies for collecting, processing, and

disseminating information. At the same time, investigations of cyber offences often involve access to electronic devices, digital accounts, and information systems, which may potentially lead to the disclosure of journalistic sources or interference with professional activities. In such circumstances, the need to ensure a proper balance between the interests of criminal justice and guarantees of freedom of expression becomes particularly important.

For Ukraine, the issue of ensuring effective constitutional and legal guarantees of media freedom has acquired special significance in the context of digital transformation and ongoing armed aggression. The Constitution of Ukraine enshrines freedom of thought and speech, the right to information, and the prohibition of censorship as fundamental elements of the democratic constitutional order. At the same time, the national legal system continues to develop mechanisms aimed at protecting journalists and ensuring the functioning of independent media, particularly under conditions of wartime and information threats.

In this context, the study of constitutional and legal guarantees of media freedom requires a comprehensive analysis of both national legislation and the practice of international judicial institutions. The jurisprudence of the European Court of Human Rights plays a particularly important role in shaping modern legal standards for the protection of freedom of expression and journalistic activity.

The purpose of this article is to analyze the constitutional and legal guarantees of media freedom and journalistic activity in the digital environment, as well as to examine the case law of the European Court of Human Rights concerning freedom of expression in the context of cyber offences. Particular attention is devoted to the role of ECtHR jurisprudence in establishing modern legal standards for the protection of journalists and the media in the digital era.

1. Media Freedom as a Fundamental Value of Constitutionalism in the Conditions of the Digital Society

The digital transformation of social relations necessitates a reconsideration of the content and mechanisms for the implementation of constitutional and legal guarantees of media freedom and journalistic activity. In this context, particular importance is attached to the analysis of the practice of the European Court of Human Rights as an institution that establishes binding standards for member states regarding the interpretation and application of the right to freedom of expression in the digital environment, particularly in the context of the growing number of cyber offences.

The axiological foundation of these guarantees consists of the fundamental values enshrined within the European Union, namely: respect for human dignity, freedom, democracy, equality, solidarity, the rule of law, and the primacy of human rights, including the protection of minority rights. These principles reflect the content of the so-called European standards, which are based on the recognition of the universality, indivisibility, and interdependence of human rights and fundamental freedoms. Their implementation presupposes the promotion of pluralism, non-discrimination, tolerance, justice, and gender equality as essential conditions for the functioning of a democratic society.

Freedom of expression, proclaimed in the Universal Declaration of Human Rights, is one of the key prerequisites for democratic governance, the development of public dialogue, and the exercise of journalistic activity. In the digital era, its content has significantly expanded, as information and communication technologies create new channels for the dissemination of information, transform the role of the media, and change the nature of interaction between the state, society, and journalists. At the same time, the digital environment generates new challenges related to cyber offences, the abuse of freedom of speech, the dissemination of unlawful content, and interference with privacy.

Accordingly, the study of the constitutional and legal guarantees of media freedom and journalistic activity requires a comprehensive analysis of the case law of the European Court of Human Rights concerning the determination of the permissible limits of restrictions on freedom of expression, the criteria of proportionality of state interference, and the standards for the protection of journalists in the digital space. Such an approach makes it possible not only to outline the current state of legal regulation but also to determine the directions for its further development in the context of intensive digitalization and the growing number of cyber threats.

Continuing the analysis of the constitutional and legal guarantees of media freedom and journalistic activity in the digital environment, it is appropriate to turn to the fundamental principles of constitutionalism as the ideological and legal foundation of freedom of expression.

One of the key conditions of constitutionalism is freedom, which, according to the apt statement of Vsevolod Rechytskyi, acts as a genetic precondition for the diversified search for values and the general investment of human abilities and talents¹. It follows that the right to freedom of expression, in its modern understanding, constitutes not only the foundation of a democratic system but also a necessary precondition for the realization of other constitutional rights and freedoms.

Within the framework of organic constitutionalism, freedom precedes democracy, since the latter cannot function without freedom of speech, the open exchange of opinions, the dissemination of ideas, public discussion, and the guaranteed right to receive information. The absence of an adequate level of protection of freedom of expression makes the full realization of such rights as freedom of peaceful assembly, freedom of conscience and religion, freedom of association, freedom of creativity, as well as electoral rights impossible.

Thus, the above provisions confirm the decisive importance of the right to freedom of expression within the system of constitutional rights and freedoms, its priority character, and its system-forming role in ensuring the functioning of a democratic state governed by the rule of law. Therefore, this right occupies a leading place among other rights and freedoms, which should be recognized as an indisputable general proposition².

For a more comprehensive understanding of the importance of the right to freedom of expression, it is appropriate to note that in the modern world there are two

¹ Речицький В. В. Конституційне АБВ. Харків: ТОВ «Видавництво «Права людини», 2016. 408 с.

² Frowein J. A. Freedom of Expression under the European Convention on Human Rights. Strasbourg: Monitor/Inf., 1997. 42 p.

typological approaches to defining constitutional design: the *American* approach, whose priorities are traditionally associated with the categories of freedom and the market and which from the very beginning has been oriented toward rapid and effective progress; and the *European* approach, which prioritizes democracy and freedom, the latter of which may be subject to certain limitations. A characteristic feature of the European model of constitutionalism is the recognition and effective guarantee of fundamental human rights and freedoms. These rights serve as the basis for establishing clear limits on the functioning of the state and the activities of its bodies, as well as for introducing constitutional and legal restrictions on state power. In this context, human rights are not a declarative category but rather a normative criterion for the legitimacy of public authority and the limits of its discretion.

The idea of the priority of individual freedom within the system of constitutional values was thoroughly developed in the works of John Stuart Mill. In particular, he emphasized that a society cannot be considered free, regardless of the form of government, if it does not ensure freedom of thought and speech, freedom of lifestyle, and freedom of association. A society can be regarded as free only when such freedoms are fully guaranteed and equally available to all its members. At the same time, the exercise of individual freedom is limited by the necessity of preventing violations of the rights and legitimate interests of others. Only such freedom, as he noted, «deserves the name of freedom when we are absolutely free to pursue what we consider our own good in our own way—provided that we do not attempt to deprive others of theirs or impede their efforts to obtain it»³.

The aforementioned approach laid the foundations for the development of the doctrine concerning the limits of the exercise of rights and freedoms in modern constitutional law.

In further developing this concept, it should be noted that an organic constitution is regarded as a guarantor of individual freedom and the institutional autonomy of civil society. Such an understanding of the Basic Law is typical of the modern doctrine of constitutionalism, which in the Western legal tradition is closely connected with the principle of the rule of law. Freedom, in the political and legal sense, possesses the character of the highest normative value; therefore, its guarantee constitutes one of the key functions of the constitution as an act of the highest legal force that reflects and protects the interests of civil society.

In this regard, V. Rechytskyi emphasizes that the organic constitution and freedom have been conceptually interconnected since the moment of their historical formation. By guaranteeing freedom, the constitution ensures a state of autonomy of the individual and of society as a whole from the state⁴, while establishing legal mechanisms for restraining public authority.

In the view of Friedrich August von Hayek, there is only one alternative for a constitution: either a free parliament or a free people. Therefore, the constitution protects the freedom of the individual and of civil society as a whole, including protection from the arbitrariness of a parliamentary majority⁵. In this context, the

³ Міль Дж. Про свободу : есе. Київ : Вид-во Соломії Павличко «Основи», 2001. 463 с.

⁴ Речицкий В.В. Конституционализм. Украинский опыт. Харьков. Фолио, 1998. С. 57.

⁵ Hayek F. Law, Legislation and Liberty. Vol. 3. Chicago: University of Chicago Press, 1979. P. 111.

constitution is intended not only to organize the system of state power but also to guarantee the freedom of the individual and of civil society, including by preventing the arbitrariness of a parliamentary majority. Thus, the constitution functions as an instrument for the institutional limitation of power and as a legal guarantee for preserving the sphere of individual freedom.

Particular attention should be paid to the conceptually balanced formulation of the fundamental principles of freedom of expression and belief proposed by one of the leading representatives of the English legal tradition of the protection of free speech, Thomas Erskine. In his view, «the key legal guarantee lies in the fact that every person has the right freely to publish everything that his or her mind or conscience, even with the possibility of error, perceives as truth»⁶.

Within this approach, freedom of speech is regarded not only as an individual right but also as a necessary condition for the functioning of a state governed by the rule of law and for the development of public discourse.

Continuing this line of reasoning, it should be noted that modern constitutions provide for various models of the normative entrenchment of freedom and the guarantees for its protection. However, the principal guarantees traditionally include: the proclamation of freedom as a goal of the state or as the highest social value; the recognition of freedom as an independent legal category; the establishment of a system of subjective rights and freedoms of the individual and the citizen; the revision or rejection of excessively «paternalistic» socio-economic constructs; the affirmation of freedom as a principle of the constitutional order; as well as the introduction of effective procedural mechanisms for the protection and safeguarding of freedom⁷. The combination of these elements forms an institutional framework aimed at ensuring the autonomy of the individual in relations with the state.

In this context, the concept of John Rawls is particularly illustrative. According to his approach, civil society cannot be reduced to a political association in the narrow sense. Rather, it appears as an open institutional space intended to create the broadest possible opportunities for the realization of primarily individual life projects and strategies⁸. This approach corresponds to the modern understanding of the constitution as a legal instrument that ensures a balance between public interests and individual autonomy.

Therefore, the normative enshrinement of freedom in the constitution as a goal of the state and society is consistent with the classical requirement of constitutionalism: the subject of constitutional protection should be those values that are universally significant and just for all citizens, regardless of their social status, role, or position in society. Such an approach ensures the legitimacy of the constitutional order and its compliance with the principle of the rule of law.

As already emphasized, it is precisely the system of guarantees that serves as the decisive criterion of the state's genuine attitude toward freedom of thought and speech, since it ensures the possibility of their unhindered exercise, proper protection

⁶ Levy L. Freedom of Speech and Press in Early American History: Legacy or Suppression. New York, 1963. P. 256.

⁷ Речицкий В.В. Политический предмет конституции. Київ: Дух і літера, 2012. С. 349–350.

⁸ Rawls J. Political Liberalism. New York: Columbia University Press, 1993. P. 42.

against potential unlawful encroachments, and effective safeguards against illegal restrictions. In this respect, guarantees function not as an auxiliary but as a structural element of the mechanism for ensuring constitutional rights.

At the same time, the declarative recognition of the right to freedom of thought and speech is not sufficient. It is necessary to establish appropriate institutional, normative, and procedural conditions, as well as to define effective legal means through which freedom of speech and information acquires real substance. Such a state of affairs is possible only in a democratic society based on the principles of the rule of law, political pluralism, and respect for human rights

Therefore, in the absence of adequate guarantees proclaimed in the Constitution of Ukraine and other normative legal acts, rights and freedoms risk remaining «an empty sound»⁹, formal prescriptions devoid of practical effectiveness». For this reason, the prevailing approach in legal doctrine considers guarantees as a comprehensive system of means, methods, and legal norms aimed at ensuring the real implementation, protection, and safeguarding of the rights and freedoms of the individual and the citizen¹⁰. This interpretation organically fits into the general concept of constitutionalism, according to which the effectiveness of rights is determined not only by their normative enshrinement but also by the existence of an effective mechanism for their implementation.

According to representatives of constitutional legal thought, the effectiveness of the system of guarantees of rights and freedoms is determined by a set of interrelated factors. The key among them are: a) the existence of a Basic Law whose effect cannot be arbitrarily suspended; b) the recognition of state power as deriving from the power of the people and the Constitution; c) the constitutional enshrinement of the fundamental rights and freedoms of the individual and the citizen, as well as the means and conditions for their implementation; d) the existence of an independent judiciary; e) the possibility of protecting one's rights through the Ukrainian Parliament Commissioner for Human Rights and through international human rights organizations¹¹. The totality of these elements forms an institutional mechanism without which constitutional provisions do not acquire proper practical effectiveness.

For the purpose of a comprehensive analysis of the guarantees of freedom of speech, it is advisable to turn to the comparative legal dimension. The provision of such guarantees is a characteristic feature of both classical and modern constitutions, including the Constitution of the United States (1787), the Federal Constitution of Switzerland (1874, 1999), the Constitution of Spain (1978), the Constitution of Japan (1947), the Constitution of Macedonia (1991), the Constitution of Bulgaria (1991), the Constitution of Slovakia (1992), the Constitution of France (1946), and the Constitution of Poland (1997). In the constitutions of a number of post-totalitarian states, freedom is directly proclaimed as the highest social value, which indicates an attempt to normatively reconsider the role of the individual in relations with the state.

⁹ Пашинський В. М. Правові гарантії конституційних прав і свобод військовослужбовців. *Право України*. 2006. № 5. С. 61–65.

¹⁰ Слінько Т. М. Конституційно-правові гарантії свободи слова. *Наше право*. 2014. № 9. С.12.

¹¹ Колодій А. М., Олійник А. Ю. Права людини і громадянина в Україні : навч. посібник. Київ: Юрінком Інтер, 2004. С. 223.

Moreover, in the constitutions of several post-totalitarian states, freedom is directly proclaimed as the highest social value, demonstrating an aspiration toward a normative rethinking of the role of the individual in relations with the state. In particular, such provisions are contained in the Basic Laws of Croatia (1990), Uzbekistan (1992), Turkmenistan (1992), Kazakhstan (1993), Kyrgyzstan (1993), and Brazil (1988), among others.

However, the guarantees of freedom of speech in the above-mentioned constitutional acts lag behind the level of protection of civil liberty, for example, in the United States. This is largely due to the historical and doctrinal features of American constitutionalism, within which freedom of speech has traditionally been regarded as one of the fundamental values of the democratic system. The normative basis for this approach is the First Amendment to the Constitution of the United States, according to which Congress is prohibited from adopting laws that restrict freedom of speech, the press, conscience, or the right to petition.

Thus, the American constitutional model proceeds from the principle of minimal state interference in the sphere of the individual's exercise of the right to freedom of expression. This position serves as a benchmark for assessing the effectiveness of national mechanisms for guaranteeing freedom of speech and emphasizes the importance of real, rather than merely declarative, constitutional guarantees in the system of modern constitutionalism.

Freedom of expression and freedom of the media are fundamental values of the constitutional order of Ukraine and a necessary prerequisite for the functioning of a democratic society. In the digital environment, these freedoms acquire new forms of realization while simultaneously facing new risks related to cyber threats, mass data processing, online surveillance, and the use of digital evidence in criminal proceedings. The adaptation of constitutional and legal guarantees to these challenges requires a systematic analysis of the national legislation of Ukraine and the case law of the European Court of Human Rights (ECtHR).

The conducted analysis provides grounds to assert that freedom of expression and freedom of the media belong to the fundamental values of modern constitutionalism and constitute a necessary prerequisite for the functioning of a democratic rule-of-law state. Within the system of constitutional rights and freedoms, they perform a system-forming role, as they ensure the possibility of an open public dialogue, public oversight of the activities of state authorities, and the exercise of other political and civil rights of the individual.

In the theoretical and legal dimension, freedom of speech acts as one of the basic categories of the constitutional order, closely connected with the principles of the rule of law, political pluralism, and the autonomy of civil society. As demonstrated by the development of the doctrine of constitutionalism, beginning with the classical ideas of John Stuart Mill, Friedrich August von Hayek, and other representatives of the liberal legal tradition, freedom of expression is regarded not only as an individual right but also as a necessary condition for the functioning of democratic institutions and a safeguard against the arbitrariness of state power.

Under contemporary conditions of the digitalization of social relations, the content and mechanisms for the implementation of media freedom are undergoing significant transformations. Information and communication technologies create new

opportunities for the dissemination of information and the development of public debate, while simultaneously generating new challenges related to cyber threats, the spread of unlawful content, digital surveillance, and the use of electronic data in criminal proceedings. In this regard, the issue of ensuring an effective balance between guarantees of freedom of speech and the need to protect other socially significant interests, particularly national security, public order, and the rights of others, acquires special importance.

An analysis of constitutional and legal approaches in different legal systems demonstrates the existence of various models of normative protection of freedom of speech. The American model of constitutionalism has traditionally been characterized by a high level of protection of freedom of expression and minimal state interference in the sphere of information relations. In contrast, the European model proceeds from the necessity of ensuring a balance between freedom of speech and other constitutional values, which allows for its restriction provided that the principles of legality, legitimate aim, and proportionality are respected.

In this context, the case law of the European Court of Human Rights plays a particularly important role, as it forms modern European standards for the interpretation and application of the right to freedom of expression enshrined in Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The Court's judgments define the criteria for the admissibility of state interference in media activities, establish requirements for the proportionality of restrictions on freedom of speech, and emphasize the special role of journalists as «public watchdogs» in a democratic society.

Thus, media freedom in the modern digital society acts not only as an individual right but also as an institutional guarantee of the functioning of the democratic constitutional order. Its effective protection requires a comprehensive combination of constitutional, legislative, and institutional mechanisms of protection, as well as consideration of the standards developed in the case law of the European Court of Human Rights. These standards constitute the methodological basis for further research into the constitutional and legal guarantees of media freedom and journalistic activity in the conditions of digitalization and the counteraction to cyber offenses, which determines the need to move to the analysis of the relevant mechanisms for their implementation within the legal system of Ukraine.

2. Constitutional and Legal Foundations for Guaranteeing Freedom of Speech and Media Activity in Ukraine

The provision proclaimed in Article 15 of the Constitution of Ukraine,¹² according to which social life in Ukraine is based on the principles of political and ideological diversity, belongs to the fundamental principles of the constitutional order of the state. This principle implies the state's orientation toward democratic values, the recognition of the priority of human and civil rights and freedoms, and establishes the normative prerequisites for the functioning of civil society. In this

¹² Конституція України: Закон України від 28 червня 1996р. № 254к/96-ВР. *Відомості Верховної Ради України*. 1996. № 30. Ст. 141.

context, adherence to the principles of political and ideological pluralism serves as one of the key guarantees of freedom of thought and speech.

Moreover, the importance and significance of this provision have received official interpretation in the practice of the Constitutional Court of Ukraine. In particular, in Decision No. 18-rp/2001 of December 13, 2001 (the case on youth organizations), the Court formulated the legal position according to which «the principle of diversity of social life is fundamental in determining the foundations for the implementation of this constitutional right and the establishment of civil society institutions, a component of which includes various associations of citizens representing certain ideological and other views, as well as the interests of different social groups and individuals»¹³. This approach emphasizes the inseparable connection between freedom of association, freedom of expression, and the democratic character of the state.

In a broader sense, the global legal community proceeds from the premise that freedom of thought and speech, as well as the ability to freely express beliefs and conduct public discussions on issues of public importance, constitute a necessary prerequisite for the existence of a democratic and tolerant society. This concerns not only an individual right but also an institutional form of democracy itself, under which no position may be deprived of the right to be expressed and publicly discussed within the limits of the law. Under the modern conditions of the development of the information society, these rights acquire particular significance, since it is through mechanisms of information dissemination that public consciousness is formed, citizens' political rights are exercised, and transparency in the activities of public authorities is ensured.

Ideological diversity presupposes the free coexistence within society of various political and other worldview concepts, doctrines, and schools, as well as the possibility of their dissemination through mass media and their public defense without unlawful interference by the state. At the same time, the principle of ideological pluralism implies the prohibition of the establishment by the state of a mandatory ideology, that is, the inadmissibility of the normative consolidation of a system of universally binding views or beliefs that citizens would be obliged to adhere to under the threat of legal liability.

Thus, freedom of thought, speech, and information ensures the formation within society of an environment of ideological competition and diversity of information sources, which corresponds to Ukraine's democratic choice, its commitment to the principles of the rule of law, the republican form of government, and the affirmation of human rights and freedoms as the highest social value.

The enshrinement in the Constitution of Ukraine of the principle of political and ideological diversity essentially indicates that «Ukrainian democracy will be a constitutional weapon» capable of protecting itself from encroachments that occur in societies seeking to overcome their totalitarian past. This is evidenced, in particular, by the wording of the article in the first section of the Constitution devoted to the

¹³ Рішення Конституційного Суду України від 13.12.2001 № 18-рп/2001. *Офіційний вісник України* від 04.01.2002. 2001. № 51. С. 466. Ст. 2310. URL: <http://zakon0.rada.gov.ua/laws/show/v018p710-01>

principle of a multiparty system, which remained almost unchanged at the stage of its final adoption¹⁴. Ideological diversity is a natural consequence of the exercise of a complex of constitutional rights and freedoms of the individual and the citizen, in particular freedom of thought and speech, freedom of conscience (religion), and other fundamental rights. Its normative consolidation reflects the nature of a democratic state in which diversity of worldviews is recognized as an objective social reality and is protected by law.

The ideological orientation of the Ukrainian state, which bears responsibility to the individual for its activities, also follows from the provisions of Article 3 of the Constitution of Ukraine, according to which the human being, his or her life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value. In this context, the principle of ideological pluralism enshrined in Chapter I of the Basic Law acts as an institutional guarantee preventing the persecution of individuals for their beliefs, which is of particular importance in light of the historical experience of the totalitarian past. These provisions should be interpreted systematically in conjunction with Articles 34, 35, and 54 of the Constitution of Ukraine, which guarantee freedom of expression, freedom of worldview and religion, and freedom of literary, artistic, scientific, and technical creativity.

Developing these principles, the Constitution of Ukraine, in Article 34, establishes the right of everyone to freedom of thought and speech, as well as to freely collect, store, use, and disseminate information orally, in writing, or in any other manner of their choice. This provision has direct effect and applies to all forms of media, including traditional mass media, online publications, social platforms, and other digital services, which corresponds to contemporary trends in the development of the information society.

At the same time, the constitutional model of guaranteeing freedom of speech presupposes its balancing with other fundamental rights. In particular, Article 32 of the Constitution of Ukraine guarantees the right to non-interference in personal and family life, while Article 31 ensures the secrecy of correspondence, telephone conversations, telegraph, and other communications. For journalistic activity—especially in the digital environment—these provisions are of fundamental importance, as they define the limits of permissible state interference in the sphere of private communications and ensure an appropriate level of protection of information sources.

Thus, the constitutional enshrinement of ideological diversity and the rights and freedoms associated with it forms a comprehensive system of guarantees of freedom of thought and speech that corresponds to the general principles of democratic constitutionalism and the rule of law. Within this system, freedom of expression is not regarded as absolute but as one that may be subject to restrictions exclusively under the conditions defined by the Constitution.

In Ukraine, as a European state, the issue of restrictions on freedom of speech is regulated in accordance with the generally recognized European legal paradigm formed under the influence of the Convention for the Protection of Human Rights

¹⁴ Барабаш Ю.Г. Демократія як конституційна ідеологія: український варіант. Демократичні засади організації і функціонування вищих органів державної влади України : монографія. Харків : Право, 2013. С. 14.

and Fundamental Freedoms and the International Covenant on Civil and Political Rights. This approach provides that freedom of expression is not absolute; however, its restrictions are possible only on the basis of law and in compliance with the principles of legitimate aim, necessity, and proportionality.

According to Part 3 of Article 34 of the Constitution of Ukraine, the freedom to collect, store, use, and disseminate information may be restricted by law in the interests of national security, territorial integrity, or public order, for the purpose of preventing disturbances or crimes, protecting public health, safeguarding the reputation or rights of others, preventing the disclosure of confidential information, as well as maintaining the authority and impartiality of justice. This list of grounds is exhaustive and reproduces the standards developed within the European human rights tradition. In the digital environment, this means that state measures aimed at combating cyber offenses or ensuring information security cannot nullify the very essence of media freedom or create excessive obstacles to the exercise of the right to freedom of expression.

At the same time, according to Part 2 of Article 64 of the Constitution of Ukraine, certain restrictions on rights and freedoms may be introduced under conditions of martial law or a state of emergency, with an indication of the duration of their validity. In particular, the Constitution of Ukraine of 1996, drafted according to Eastern European constitutional models, contains thirteen, and with regard to martial law and a state of emergency fifteen, limitations on the fundamental freedom of speech. However, even in such circumstances, state interference must comply with constitutional criteria of legality and may not lead to the abolition of the very essence of the right to freedom of expression.

Important legal positions concerning the possibility of restricting this right were formulated by the Constitutional Court of Ukraine in its Decision of April 10, 2003 No. 8-rp/2003 (the case on dissemination of information) and in the Decision of January 20, 2012 No. 2-rp/2012, adopted in the case upon the constitutional petition of the Zhashkiv District Council of Cherkasy Region regarding the official interpretation of the provisions of Parts 1 and 2 of Article 32 and Parts 2 and 3 of Article 34 of the Constitution of Ukraine, as well as in the Decision of December 21, 2021 No. 3-r/2021.

An analysis of the provisions of the Constitution of Ukraine and the current legislation in the field of information relations provides grounds to assert that the established restrictions must comply with a number of fundamental requirements. First, they must be proportionate to the threats to the rights and freedoms protected by law and should not extend to other rights the exercise of which is not directly related to the relevant restrictions. Second, such restrictions must be consistent with the democratic principles of the functioning of the state. Third, they must be formulated with sufficient clarity and foreseeability, which ensures the possibility of properly understanding their content and predicting legal consequences. Fourth, the relevant provisions must not contradict Ukraine's international obligations.

At the same time, in the legal systems of post-totalitarian states there is sometimes a tendency to use excessively broad or evaluative concepts, such as «interests of society», «public necessity», «interests of national security», «information security», or «information sovereignty» as grounds for indirect

restrictions on freedom of expression. In the absence of clear legal criteria, such categories may be used for excessive state interference in the sphere of intellectual and creative activity of individuals, which potentially creates risks of narrowing the space of freedom of thought and speech.

Thus, at the present stage of development Ukraine recognizes as an effective mechanism for ensuring freedom of speech not only its proclamation but also a clear and normatively defined delineation of the possible limits of its exercise. Such a model, based on the principle of legal certainty and judicial control, corresponds to the standards of democratic constitutionalism and ensures a balance between individual freedom and public interests.

At the same time, constitutional provisions correspond with the norms of international law and generally recognized standards in the field of human rights. In particular, Article 19 of the Universal Declaration of Human Rights enshrines the right of every person to freedom of opinion and expression, which includes the freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers. Similar guarantees are provided in Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which establishes standards for permissible restrictions on freedom of expression and forms the basis for their interpretation at the European level.

In addition, the relevant provisions are consistent with the norms of the International Covenant on Civil and Political Rights, as well as with the obligations arising from the Final Act of the Conference on Security and Cooperation in Europe. An important stage in the further institutionalization of freedom of speech standards was the adoption in 2000 of the Charter of Fundamental Rights of the European Union, which, in Article 11, guarantees freedom of expression and information, and in Article 13 guarantees freedom of the arts and sciences.

Thus, the constitutional foundations of freedom of speech in Ukraine were formed, taking into account international human rights standards. Ukraine, as a state oriented toward European democratic values, has incorporated into its legislation the approaches developed in international legal practice. In particular, the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as the International Covenant on Civil and Political Rights, have played an important role in shaping national standards of freedom of expression. These international legal instruments have defined the basic approaches to understanding the content of freedom of speech, the limits of its exercise, and permissible restrictions.

Therefore, the national model of guaranteeing freedom of speech in Ukraine constitutes a component of the broader European and universal system of human rights protection. Its normative structure demonstrates the integration of the principles of international law into the domestic legal order and confirms the orientation of Ukrainian constitutionalism toward ensuring the real, rather than merely declarative, nature of freedom of expression.

An important component of the guarantee of freedom of speech is the law-making activity of the European Court of Human Rights, the main international supervisory body in this field, and a widely recognized «creator» of standards of

judicial protection. The Court's case law (*The Sunday Times v. the United Kingdom* (1979), *Lingens v. Austria* (1986), *Goodwin v. the United Kingdom* (1996), *Oberschlick v. Austria* (1997), *Fressoz and Roire v. France* (1999), *Romain and Schmit v. Luxembourg* (2003), *Busuioc v. Moldova* (2004), *Ukrainian Media Group v. Ukraine* (2005), *Gazeta Ukraina-Tsentr v. Ukraine* (2010) and others) demonstrates its consistency in protecting freedom of speech and freedom of expression, as well as the right to freely receive and disseminate information. In addition, the ECtHR has established strict criteria for assessing the justification of restrictions on freedom of expression, as a result of which freedom of speech has obtained a clear priority over its limitations. In this context, it should be emphasized that in Ukraine, in accordance with the Law «On the Execution of Judgments and the Application of the Case Law of the European Court of Human Rights» of February 23, 2006 No. 3477-IV, the state is obliged to execute judgments of the European Court of Human Rights in cases against Ukraine; to eliminate the causes of violations of the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols by Ukraine; and to introduce European human rights standards into Ukrainian judicial and administrative practice.

The implementation of constitutional guarantees of freedom of speech and freedom of information in Ukraine is ensured not only by the provisions of the Basic Law but also by a developed system of special legislation regulating the sphere of media and information relations.

The modern Ukrainian media space operates based on several regulatory legal acts, among which an important place is occupied by the Law of Ukraine «On Information», the Law of Ukraine «On Media», as well as the Law of Ukraine «On Television and Radio Broadcasting» (in the part of provisions that continue to be applied). In addition, the relevant legal relations are regulated by the norms of civil and criminal legislation, which determine the grounds for legal liability for violations of information rights and abuses of freedom of speech.

The constitutional guarantees of freedom of speech and media activity in Ukraine have been further developed in a number of special legislative acts. In particular, relevant provisions are enshrined in the Law of Ukraine «On Media», the Law of Ukraine «On Electronic Communications», the Law of Ukraine «On Ensuring the Functioning of the Ukrainian Language as the State Language», the Law of Ukraine «On Cinematography», the Law of Ukraine «On Advertising», the Law of Ukraine «On the Public Media of Ukraine», the Law of Ukraine «On the System of Foreign Broadcasting of Ukraine», as well as the Law of Ukraine «On State Support for Media, Guarantees of Professional Activity and Social Protection of Journalists».

One of the key guarantees of freedom of speech in the national legal order is the prohibition of censorship, which is enshrined in Article 15 of the Constitution of Ukraine and further specified in Article 24 of the Law of Ukraine «On Information», as well as in the provisions of the Law of Ukraine «On the System of Foreign Broadcasting of Ukraine». The legislation also establishes the fundamental principles of information relations, including: the guaranteed right to information; openness and accessibility of information; freedom of exchange of information; reliability and completeness of information; freedom of expression of views and beliefs; legality

in obtaining, using, disseminating, storing, and protecting information; as well as the protection of individuals from unlawful interference in their personal and family life.

Particular importance is attached to the legislative provisions concerning the legal status of statements in the sphere of public communication. In particular, according to Article 30 of the Law of Ukraine «On Information», a person cannot be held liable for expressing value judgments that are not subject to refutation or proof of their truthfulness. This approach corresponds to European standards of freedom of expression and is aimed at ensuring appropriate conditions for the development of public debate in a democratic society.

An important place in the system of modern media legislation of Ukraine is occupied by the Law of Ukraine «On Media» (2022), which significantly updated the legal regulation of media activities in accordance with European standards. This normative legal act enshrines the fundamental principles of freedom of activity of entities in the media sphere, the prohibition of censorship, as well as guarantees of editorial independence that apply both to traditional mass media and to online media. At the same time, the law also provides for certain mechanisms of state regulation of the media sphere, the application of which must be carried out taking into account the constitutional guarantees of freedom of speech and the standards developed in the case law of the European Court of Human Rights, which defines the criteria for permissible state interference in the sphere of freedom of expression.

All provisions of the special national legislation aimed at ensuring freedom of speech and the functioning of the media are based on the constitutionally enshrined right to freedom of thought and speech guaranteed by the Constitution of Ukraine. At the same time, an important element of the system of legal protection of media freedom is the establishment of appropriate guarantees for the professional activities of journalists, particularly in conditions of armed conflict and martial law, when the risks for the exercise of journalistic activity significantly increase.

In this context, the provisions of Article 25 of the Law of Ukraine «On Information» are of key importance, as they define the main guarantees of the activities of mass media and journalists. In particular, a journalist has the right, after presenting a document confirming his or her professional affiliation, to collect information in areas of natural disasters, catastrophes, at sites of accidents, mass disturbances, and military actions, except in cases provided for by law¹⁵. In addition, the legislation guarantees journalists the right to freely choose the forms of recording information using the necessary technical means, the right to disseminate information under their own authorship or under a pseudonym, as well as the right not to disclose sources of information or information that may contribute to their identification.

The Law of Ukraine «On State Support for Media, Guarantees of Professional Activity and Social Protection of Journalists» is also of significant importance for ensuring proper conditions for the professional activities of journalists. It provides a system of social and legal guarantees for representatives of the media sphere and members of their families in the event of harm to life or health while performing professional duties. Such guarantees include, in particular, the right to proper

¹⁵ Закон України від 02 жовтня 1992 р. № 2657-XII. База даних «Законодавство України» / Верховна Рада України. URL: <https://zakon.rada.gov.ua/go/2657-12>

working conditions, benefits, and compensation for work in difficult or hazardous conditions, medical examinations, social insurance, as well as the conduct of a comprehensive investigation into accidents, death, or harm caused to a journalist's health during the performance of professional duties.

In particular, the law establishes the right to appropriate compensation, financial assistance, and funeral assistance for the family members of journalists who died while performing their professional duties. It also provides for the payment of one-time financial assistance: for family members of a deceased journalist, in the amount of 100 subsistence minimums established by law for able-bodied persons at the time of payment; and for a journalist in the event of injury (concussion, trauma, or mutilation) sustained during the performance of professional duties – in the amount of 50 subsistence minimums¹⁶.

The peculiarities of the legal status of journalists during an armed conflict are also reflected in departmental regulatory legal acts. In particular, according to the Order of the Ministry of Defence of Ukraine «On Approval of the Instruction on the Procedure for the Implementation of the Norms of International Humanitarian Law in the Armed Forces of Ukraine», journalists have the status of civilians, which corresponds to the provisions of international humanitarian law. This approach confirms that journalists enjoy the full range of guarantees provided by national legislation for the civilian population, including relevant social payments and compensation.

Taking into account the increased risks faced by media representatives while covering military events, the legislator has introduced additional legal mechanisms for their protection. Thus, Law of Ukraine No. 7367 «On Providing Additional Protection Guarantees for Journalists Working in Areas of Military (Combat) Operations» was adopted, which establishes the obligation of media organizations to provide journalists with personal protective equipment against firearm injuries and shrapnel wounds, as well as medical first-aid kits¹⁷. In addition, the law establishes the requirement for mandatory insurance of journalists at the employer's expense in the event of injury or death while performing professional duties in areas of hostilities or in temporarily occupied territories.

Thus, Detector Media conducted a survey of television channels and found that some of them already insure their employees, although there is still no complete clarity regarding the insurance mechanisms as well as the practical implementation of the law. Nevertheless, in May, an International Journalists' Insurance Fund was established in Ukraine, to which media professionals who travel to combat zones and do not have grounds for insurance at the employer's expense may apply.

An important political and legal signal regarding the significance of freedom of speech during wartime also became the Resolution of the Verkhovna Rada of

¹⁶ Закон України «Про державну підтримку медіа, гарантії професійної діяльності та соціальний захист журналіста» від 23.09.1997 № 540/97-ВР URL: <https://zakon.rada.gov.ua/laws/show/540/97-вр#Text>

¹⁷ Про внесення змін до деяких законів України щодо надання додаткових гарантій захисту працівникам засобів масової інформації, які працюють у районах ведення воєнних (бойових) дій та/або на тимчасово окупованих територіях України. URL : <https://document.vobu.ua/doc/14117>

Ukraine No. 7266 «On the Statement of the Verkhovna Rada of Ukraine on the Value of Freedom of Speech, Guarantees of the Activities of Journalists and Mass Media during the Period of Martial Law». This document emphasizes that one of the key tasks of the state is to ensure the constitutional guarantees of freedom of speech, as well as the free receipt, collection, and dissemination of information, taking into account the restrictions associated with the introduction of martial law.

At the same time, the document stresses the inadmissibility of unlawful interference in the activities of journalists and mass media and the necessity of an appropriate response from law enforcement authorities to any offenses committed against journalists. It is also stated that any cases of technical disconnection of pro-Ukrainian television channels from broadcasting must receive a decisive response from law enforcement agencies, with those responsible being brought to fair legal liability.

Under the conditions of martial law, the state will support honest journalists and independent mass media, which are a defining feature of any democratic society, as undoubtedly is the society of Ukraine. Furthermore, the resolution calls upon all state authorities, including law enforcement bodies, as well as local self-government bodies, to ensure the protection of the rights of journalists and mass media during martial law, to respond promptly to reports of violations of their rights, and to guarantee freedom of speech as one of the most important features of a democratic society¹⁸.

To summarize, it should be emphasized that the work of journalists during wartime is difficult to overestimate. They operate in combat zones, constantly under tension, focused and attentive, since the risks to their life and health require the highest level of caution. All of this is done to deliver the most complete, truthful, and impartial information possible and to reproduce an accurate picture of events. The Ukrainian state understands and highly values the contribution of representatives of both Ukrainian and foreign media to the country's information policy. For this reason, it has provided additional guarantees and developed mechanisms for the protection and support of journalists working in wartime conditions.

Of particular importance for journalists in the digital environment are the provisions of the Criminal Procedure Code of Ukraine, which regulate access to items and documents (Articles 159–166), the conduct of searches (Article 234), temporary seizure of property, and the inspection of electronic information systems. The application of these norms in cases related to cyber offenses directly affects the realization of media freedom.

Thus, in modern conditions, the legal regulation of media activities in Ukraine combines constitutional guarantees of freedom of speech with a system of special legislative mechanisms aimed at ensuring the safety and proper conditions for the professional activities of journalists. These guarantees acquire particular relevance under martial law, when journalists perform an important public function by informing society about the course of military events, often working in extremely dangerous conditions. For this reason, the Ukrainian state is gradually forming additional legal instruments for the protection of journalists aimed at ensuring a

¹⁸ Постанова Верховної Ради України «Про Заяву Верховної Ради України про цінність свободи слова, гарантії діяльності журналістів і засобів масової інформації під час дії воєнного стану» від 14.04.2022 № 2190-IX URL: <https://zakon.rada.gov.ua/laws/show/2190-20#Text>

balance between the requirements of national security and the need to preserve democratic standards of freedom of speech and media activity.

The conducted analysis of the constitutional and legal foundations for guaranteeing freedom of speech and media activity in Ukraine provides grounds to conclude that the relevant system of legal regulation has been formed on the basis of a combination of national constitutional principles and international legal standards in the field of human rights. The central place in this system is occupied by the provisions of the Constitution of Ukraine, which enshrine freedom of thought and speech, the right to information, the prohibition of censorship, and the principle of political and ideological pluralism as fundamental elements of the democratic constitutional order of the state.

In particular, the provisions of Article 15 of the Constitution of Ukraine, which proclaim the principle of political and ideological pluralism, create the normative preconditions for the existence of an open information space and the functioning of independent media. In systemic connection with the provisions of Articles 3, 32, 34, 35, and 54 of the Basic Law, this principle forms a comprehensive constitutional model for the protection of freedom of expression aimed at ensuring a balance between individual human rights, the interests of society, and the needs of the state. An important role in the development of the relevant constitutional doctrine is played by the practice of the Constitutional Court of Ukraine, which, in its decisions, has repeatedly emphasized the inseparable link between the principle of ideological pluralism, freedom of association, and freedom of expression as necessary conditions for the functioning of a democratic state.

The national system of guaranteeing freedom of speech is also largely integrated into the European legal space through the implementation of the standards of the Convention for the Protection of Human Rights and Fundamental Freedoms and the case law of the European Court of Human Rights. The jurisprudence of the Court plays a key role in shaping the criteria for the admissibility of restrictions on freedom of expression, particularly through the application of the principles of legality, legitimate aim, and proportionality of state interference. These standards have become an important reference point for the development of Ukrainian legislation and judicial practice in the field of media law.

An essential element of the national model for ensuring media freedom is the system of special legislation, which specifies constitutional guarantees and determines the mechanisms for their practical implementation. The key normative acts in this sphere include the Law of Ukraine «On Media», the Law of Ukraine «On Information», the Law of Ukraine «On Electronic Communications», as well as a number of other laws regulating particular aspects of the functioning of the media sphere. These normative acts establish the legal foundations of the activities of media market participants, define guarantees of editorial independence, the rights of journalists, and mechanisms of liability for abuse of freedom of speech.

These legal guarantees acquire particular significance in the context of the digitalization of social relations and the armed aggression against Ukraine. The development of the digital information environment creates new opportunities for the realization of freedom of speech, while simultaneously generating new challenges associated with the spread of disinformation, cyber threats, and the need

to ensure the information security of the state. Under such conditions, the Ukrainian legislator is gradually forming legal mechanisms aimed at achieving a balance between guarantees of media freedom and the need to protect national security.

At the same time, law enforcement practice demonstrates that the effectiveness of constitutional guarantees of freedom of speech largely depends on the proper functioning of judicial control, the legal certainty of normative restrictions, and compliance with the standards developed in the case law of the European Court of Human Rights. It is precisely the combination of constitutional principles, international legal obligations, and modern media legislation that forms a comprehensive system for ensuring media freedom in Ukraine.

Thus, the constitutional and legal model for guaranteeing freedom of speech in Ukraine reflects the gradual integration of the state into the European legal space and the consolidation of democratic standards in the field of information relations. In the contemporary conditions of digital transformation and counteraction to cyber offenses, this model acquires particular relevance, since the effective combination of guarantees of media freedom, protection of journalistic activity, and ensuring information security determines the ability of a democratic state to maintain an open public discourse and ensure an appropriate level of protection of human rights.

3. Case Law of the European Court of Human Rights on Media Freedom and Journalistic Activity in the Digital Environment

An important component of the system of guarantees of freedom of speech and media activity in a modern democratic society is the case law of the European Court of Human Rights, which plays a key role in shaping international standards for the protection of freedom of expression. The Court acts as an authoritative interpreter of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, primarily its Article 10, which guarantees everyone the right to freedom of expression, including the freedom to receive and impart information without interference by public authorities.

The Court's jurisprudence demonstrates a consistent position regarding the priority of freedom of expression in a democratic society. This legal position was formulated as early as the judgment in *The Sunday Times v. the United Kingdom* (1979), where the Court emphasized the importance of open public debate in a democratic society. These approaches were further developed in a number of the Court's judgments. In particular, in *Lingens v. Austria* (1986), the Court stressed that the limits of acceptable criticism regarding political figures are significantly wider than those concerning private individuals. In *Goodwin v. the United Kingdom* (1996), the Court formulated the fundamental principle of the protection of the confidentiality of journalistic sources, recognizing it as one of the basic guarantees of press freedom. In the judgment in *Oberschlick v. Austria* (1997), the Court confirmed the importance of protecting political criticism within the scope of freedom of expression.

Important guidance for legal practice was also provided in *Fressoz and Roire v. France* (1999), where the Court emphasized the right of journalists to use information of public interest, and in *Roemen and Schmit v. Luxembourg* (2003), in which a violation of Article 10 of the Convention was found in connection with searches aimed at identifying journalistic sources of information. Similar approaches

were confirmed in the judgment in *Busuioc v. Moldova* (2004), where the Court stressed the special role of journalists in covering issues of public interest.

The case law of the European Court of Human Rights is of significant importance for the development of national standards for the protection of freedom of speech and media activity in Ukraine, since the Court's legal positions serve as a guideline for the development of judicial practice and the improvement of legislative regulation in the field of information relations. Thus, in the judgment in *Ukrainian Media Group v. Ukraine* (2005), the Court found a violation of Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms due to the disproportionate application of civil liability to a mass media outlet for disseminating information of public interest. The European Court of Human Rights emphasized that the imposition of substantial financial sanctions on media outlets may have a chilling effect on journalistic activity and restrict public debate on issues of public importance.

A similar legal position was expressed in the case of *Gazeta Ukraina-Tsentr v. Ukraine* (2010), in which the judgment was delivered on 15 July 2010. In this decision, the European Court of Human Rights emphasized that holding the editorial board of a newspaper liable for publishing critical materials concerning public officials, without properly taking into account the public interest, constitutes a disproportionate interference with freedom of expression. The Court stressed that national courts must consider the public interest of the disseminated information and the special role of the media as a «public watchdog», ensuring an appropriate balance between the protection of reputation and freedom of expression.

These standards were further developed in *Editorial Board of Pravoye Delo and Shtekel v. Ukraine* (2011), where the Court found a violation of Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms in connection with the imposition of liability on a newspaper editorial board for reprinting material from the Internet. The Court noted that the automatic imposition of liability on journalists for disseminating information from online sources, without assessing the good faith of their actions and the public significance of the information, is incompatible with the principles of freedom of expression.

In addition, in *Shapovalov v. Ukraine* (2012), the Court established a violation of Article 10 of the Convention due to the unjustified imposition of liability on a journalist for criticizing public authorities. The Court emphasized that the limits of permissible criticism with regard to public authorities are wider than those concerning private individuals, since the activities of state bodies must remain under close public scrutiny.

In its more recent jurisprudence, the Court has also examined cases related to information security and media freedom in the context of the Russian aggression against Ukraine. In particular, in the inter-state case *Ukraine and the Netherlands v. Russia* (2025), in which the judgment was delivered on 9 July 2025, the European Court of Human Rights recognized systemic human rights violations in the occupied territories of Ukraine, including persecution of journalists, seizure of media infrastructure, and suppression of freedom of expression.

Thus, the case law of the European Court of Human Rights concerning Ukraine has developed some important legal standards, including the necessity of adhering to the principle of proportionality in interference with freedom of speech, taking into

account the public interest of disseminated information, ensuring special protection for journalistic activity, and guaranteeing an appropriate balance between media freedom and other rights and interests in a democratic society.

Particular importance in the Court's case law is attached to the development of clear criteria for the admissibility of restrictions on freedom of expression. The Court consistently applies a *three-part test*, according to which any interference with freedom of expression must be: *prescribed by law, pursue a legitimate aim, and be necessary in a democratic society*. This approach has effectively shaped the European paradigm for assessing the justification of restrictions on freedom of speech, according to which priority is given to ensuring openness of public debate and the free functioning of the media.

In Ukraine, the case law of the European Court of Human Rights has particular significance in connection with the provisions of the Law of Ukraine «On the Execution of Judgments and the Application of the Case Law of the European Court of Human Rights», which establishes the obligation of the state to execute the Court's judgments in cases against Ukraine and to take into account its legal positions in national judicial and administrative practice. The application of the Court's jurisprudence contributes to the implementation of European human rights standards into the national legal system and ensures the harmonization of Ukrainian legislation with the general European approaches to the protection of freedom of expression.

The rapid development of digital technologies has significantly transformed the nature of journalistic activity. Modern media actively use electronic devices, cloud services, encrypted communication channels, and digital platforms for the collection, processing, and dissemination of information.

At the same time, the digital environment creates new challenges for ensuring media freedom. During the investigation of cyber offenses, state authorities may apply measures of criminal procedural coercion related to access to journalists' electronic devices, servers, or digital accounts. Such actions potentially create a risk of revealing journalistic sources and interfering with professional activities.

In this context, particular importance is attached to ensuring a balance between the interests of criminal justice, on the one hand, and guarantees of freedom of speech and the protection of journalistic sources, on the other.

In its case law, the European Court of Human Rights consistently emphasizes that the Internet has become one of the key tools for the exercise of freedom of expression. For example, in *Delfi AS v. Estonia* (2015), the Court examined the issue of the liability of an internet portal for user comments. The Court recognized the possibility of holding online platforms liable for unlawful content, but emphasized the need to comply with the principle of proportionality and to take into account the role of internet media in ensuring public debate.

Another important precedent in the field of legal regulation of online media and internet platforms was established in *Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary* (2016), in which the European Court of Human Rights delivered its judgment on 2 February 2016. In this case, the Court examined the compatibility with the requirements of Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the practice of holding owners of internet resources liable for offensive or unlawful comments posted

by users on their websites. The applicants were the Association of Hungarian Internet Content Providers and the popular news portal Index.hu, which challenged the decisions of national courts that had imposed liability on them for comments made by third parties.

Analyzing the circumstances of the case, the European Court of Human Rights noted that internet platforms and online media play an important role in ensuring freedom of public debate in a modern democratic society. It is largely through internet resources that citizens exercise their right to freely receive and disseminate information, as well as their ability to participate in public discussions on issues of public interest.

The Court emphasized that the automatic imposition of liability on the owners of websites or internet platforms for user comments, without taking into account the specific circumstances of the case, may create disproportionate restrictions on freedom of expression. According to the Court, such an approach may lead to the so-called «chilling effect», which would restrain the development of online discussions and negatively affect the functioning of internet media as an open space for public dialogue.

At the same time, the European Court of Human Rights stressed that the assessment of the liability of internet resources should be carried out about several criteria, including: the nature of the comments, the existence of content moderation mechanisms, the promptness of the platform's response to notifications about unlawful content, and the role of the relevant resource in disseminating information of public significance.

Thus, the judgment in *Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary* (2016) became an important stage in the development of European standards for regulating the activities of online media. It confirmed the necessity of ensuring a fair balance between the protection of reputation and the rights of others, on the one hand, and guarantees of freedom of expression and the development of the digital information space, on the other. This legal position of the Court is of significant importance for national law-enforcement practice, particularly in the context of determining the limits of liability of media platforms for user-generated content on the Internet.

These approaches were further developed in *Magyar Jelti Zrt v. Hungary* (2018), where the Court concluded that holding journalists liable solely for posting hyperlinks may have a «chilling effect» on the freedom of journalistic activity in the digital environment. The Court emphasized that journalists should be able to use modern digital tools for disseminating information without the risk of disproportionate interference by the state.

Protection of journalistic sources of information is recognized by the European Court of Human Rights as one of the cornerstones of media freedom. Of particular relevance in the context of the digitalization of journalistic activity is the judgment in *Sanoma Uitgevers B.V. v. the Netherlands* (2010) (14 September 2010), in which the Court formulated the requirement of prior independent review before granting state authorities access to journalistic materials. Such access must be accompanied by effective procedural safeguards designed to prevent abuse. In the modern digital context, these guarantees acquire particular significance, since journalistic materials

are often stored in the form of electronic data – on servers, in cloud storage, or in electronic correspondence.

Another decision of significant importance for the development of modern standards for the protection of journalistic materials is *Financial Times Ltd and Others v. the United Kingdom* (2009), delivered on 15 December 2009. In this case, the European Court of Human Rights examined the legality of requiring several British media outlets to disclose a source of information related to confidential data concerning the possible takeover of one company by another. The Court concluded that a requirement by state authorities to disclose journalistic sources constitutes a serious interference with freedom of expression guaranteed by Article 10 of the European Convention on Human Rights. In its judgment, the Court emphasized that the protection of the confidentiality of journalistic sources is one of the fundamental prerequisites for press freedom, since without such guarantees potential informants may refrain from providing information of public interest.

The Court stressed that the obligation to disclose sources of information cannot be applied automatically even in cases where the relevant information is of interest to law-enforcement authorities or business entities. Any state interference in the protection of journalistic sources must meet strict requirements of necessity and proportionality and must be justified by the existence of a compelling public interest.

Furthermore, the Court noted that forcing journalists to disclose their sources may create the so-called «chilling effect», which negatively affects the ability of the media to perform their democratic function of informing the public. In this regard, the European Court of Human Rights recognized that national courts must apply particularly careful scrutiny when resolving issues related to access to journalistic materials, ensuring an appropriate balance between the interests of justice and the guarantees of freedom of expression.

The aforementioned judgment became an important guideline for the development of European standards for the protection of journalistic sources and reaffirmed the established position of the European Court of Human Rights that the confidentiality of information sources is one of the key elements of the effective functioning of independent media in a democratic society.

Important benchmarks in the field of digital surveillance were also established in the judgments *Big Brother Watch and Others v. the United Kingdom* (2021) (25 May 2021) and *Centrum för rättvisa v. Sweden* (2021) (25 May 2021), in which the Court recognized that mass electronic surveillance may pose a serious threat to media freedom if it is not accompanied by effective legal safeguards. For Ukraine, these standards are particularly relevant in light of the use of cybersecurity measures and intelligence activities.

Therefore, the analysis of the case-law of the European Court of Human Rights demonstrates the formation of a comprehensive system of international standards for the protection of media freedom and journalistic activity in the digital environment. In its judgments, the Court consistently emphasizes that freedom of expression, enshrined in the European Convention on Human Rights, extends to all modern forms of communication, including the Internet, digital platforms, and other information and communication technologies.

At the same time, the digitalization of social relations generates new challenges for ensuring media freedom, particularly those related to the use of digital evidence, searches of electronic devices, access to cloud services, or the application of mass digital surveillance tools. In this regard, the European Court of Human Rights has developed a number of fundamental legal positions according to which any interference by the state in journalistic activity must comply with the requirements of legality, pursue a legitimate aim, and be necessary in a democratic society.

The Court pays particular attention to the protection of journalistic sources of information, the prevention of the so-called «chilling effect» on journalistic activity, and the ensuring of effective judicial control over the application of measures of state interference. In the digital context, these guarantees become even more significant, since access to journalists' electronic communications, servers, or mobile devices may create a real risk of revealing confidential sources of information.

For Ukraine, the implementation of these standards is of particular importance in view of the need to simultaneously ensure effective counteraction to cybercrime, protect the state's information security, and respect fundamental human rights. In this context, the practice of the European Court of Human Rights serves as an important guideline for the development of national legislation and law-enforcement practice, contributing to the formation of a balanced model of legal regulation that ensures an appropriate balance between the interests of a democratic society, the needs of national security, and the guarantees of freedom of expression and media activity in the digital era.

CONCLUSION

The modern system of guaranteeing media freedom and journalistic activity is formed under the influence of the complex interaction of constitutional principles, international legal standards, and the practice of international judicial institutions. In this context, the key role is played by the legal combination of national constitutional guarantees enshrined in the Constitution of Ukraine with the standards of protection of freedom of expression developed within the European Convention on Human Rights and further elaborated in the jurisprudence of the European Court of Human Rights.

The analysis of the theoretical and normative foundations of the functioning of media freedom indicates that in a modern democratic society, it acquires not only the character of an individual subjective right but also performs an institutional function of ensuring the openness of public discourse, transparency in the activities of public authorities, and the effective functioning of civil society. For this reason, guarantees of freedom of speech and journalistic activity should be considered an important element of the system of democratic constitutionalism, which ensures the possibility of public oversight over government and the formation of informed public opinion.

At the same time, the development of digital technologies significantly changes the nature of media activity and creates new legal challenges for ensuring freedom of expression. The digital environment considerably expands the possibilities for disseminating information, but at the same time increases the risks of unlawful interference in journalistic activity through the use of digital control tools, access to electronic data, seizure of information carriers, or the use of electronic surveillance

technologies. Under such conditions, the formation of effective legal mechanisms capable of ensuring an appropriate balance between the needs of criminal justice, the interests of information security, and the guarantees of media freedom becomes particularly relevant.

The case-law of the European Court of Human Rights plays a decisive role in this process, since its judgments have developed the key standards for assessing the lawfulness of state interference in the sphere of freedom of expression. In particular, the Court consistently emphasizes the need to apply the principle of proportionality, to prevent the so-called «chilling effect» on journalistic activity, to ensure proper protection of journalistic sources of information, and to introduce effective procedural safeguards when the state uses control mechanisms in the digital environment.

For Ukraine, these standards are of particular importance given the simultaneous need to ensure democratic freedoms, counter cybercrime, and protect the state's information security in the conditions of armed aggression and hybrid information threats. Under such circumstances, the legal positions of the European Court of Human Rights serve as an important guideline for improving national legislation, developing judicial practice, and forming a balanced model of legal regulation of media activity in the digital environment.

Therefore, ensuring effective constitutional and legal guarantees of media freedom in the digital era requires a comprehensive approach that combines constitutional principles, international legal standards, and modern mechanisms for the legal protection of journalistic activity. Such an integrated model of legal regulation is capable of ensuring an adequate level of realization of freedom of expression while maintaining a balance between democratic values, the interests of society, and the needs of ensuring state security in the conditions of the rapid digital transformation of the information space.

SUMMARY

This article examines the constitutional and legal guarantees of media freedom and journalistic activity in the digital environment, with particular emphasis on the case law of the European Court of Human Rights in the context of cyber offences. The study analyzes freedom of expression as a fundamental value of modern constitutionalism and an essential prerequisite for the functioning of a democratic society governed by the rule of law. Special attention is devoted to the constitutional framework of freedom of speech and media activity in Ukraine, as well as its relationship with international human rights standards.

The article explores the role of the European Court of Human Rights in shaping contemporary legal standards for the protection of freedom of expression under Article 10 of the European Convention on Human Rights. It reviews key ECtHR judgments concerning media freedom, the protection of journalistic sources, and the limits of permissible state interference in journalistic activity. Particular attention is given to the legal challenges arising from digital technologies, including access to electronic data, digital surveillance, and the use of digital evidence in criminal proceedings.

The study concludes that effective protection of media freedom in the digital era requires a comprehensive system of constitutional, legislative, and institutional guarantees aligned with European human rights standards.

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