

ЗАКОНОДАВЧЕ ВРЕГУЛЮВАННЯ ПРАВАЗАСТОСУВАННЯ

UDK 351.746:004.9

Andreiev D. – Doctor of Law, Associate Professor, Director of the Educational and Research Institute No. 3 of the National Academy of Internal Affairs, Kyiv, Ukraine

FEATURES OF THE STATE INFORMATION POLICY CONCERNING LEGITIMIZATION OF THE AUTHORITIES BY MECHANISMS OF INTERNET RESOURCES

The article considers the features of the state information policy for legitimization of the authorities through involvement to this communication process of new mass media. In particular we study challenges of improving national legislation in the sphere of regulation of information and communication relations. Special attention is paid to the problems of legal support of activity of news agencies and other Internet resources.

Keywords: information society, mass media, Internet resources, communication, information and communication technology, legitimization of the authorities.

According to the researchers, the main feature of modern state information policy, in particular the ability of the state to ensure effective communication with the society, is its quite complicated mechanism of implementation, a high rate of implementation of information and communication technologies and unpredictable development of new mass-media resources. First of all it refers to interactive social networks, but to a greater extent it is much more about advanced Internet resources, since all identified processes are in a stage of permanent establishment. However, their social significance and decisive role in the formation of a new information society persist.

The review of the main material, in our opinion, we should start with the thesis that as a result of global informatization of social and

legal relations, the center of regulation of state information policy from the political plane gradually shifts into the sphere of liberal relations. The risk of the policy of gradual removal of the state from the settlement of problematic issues related to information relations development is that the unregulated market of the media is characterized by the phenomenon of concentration of ownership and monopolization, which in turn (as it is not paradoxical) often leads to a restriction of freedom of speech and pluralism of thoughts.

Niklas Louman notes that the positive term of the legitimacy of power is the acquisition of the power of law through a solution, not because in some historical periods it was introduced as a means of codification... – but because at any time it can be changed, that the non-use of this opportunity causes its approval. The main thing is that the legitimacy in principle is no longer based on a historical reference, but rather on contemporary and future opportunities for change [1, p. 154].

Establishment, development and functioning of the institution of independent mass media is possible when the individual has legally secured guarantees of rights to collect, process, store and disseminate information, primarily in the mass media, which in turn have legal protection against legally unjustified interference in their activities by the authorities.

It is about an extremely broad sphere of communicative relations – «mass information», which the Law of Ukraine «On Information» defines as that is extending in order to bring it to an unlimited number of individuals. This act also provides definition to «mass media» – the means intended for the public distribution of printed or audiovisual information. Domestic legislation also defines the main directions of state information policy, which include: ensuring access of everyone to information; ensuring equal opportunities for the creation, collection, reception, storage, use, dissemination, protection, protection of information; creation of conditions for the formation of information society in Ukraine; ensuring openness and transparency of the activities of the authorities of power; creation of information systems and information networks, development of e-governance; promotion of international cooperation in the information sphere and the entry of Ukraine into the world information space, etc. [2].

It is obvious that the challenge of legal regulation of information relations, the question of the functioning of mass media in the society and activities of the means of its dissemination in Ukraine does not

lose its relevance since the state declared independence until now. Modern legal relations in the field of mass media are regulated by a number of laws and by-laws, which constitute the appropriate hierarchical system, at the top of which is the Basic Law – the Constitution of Ukraine.

Article 34 of the Constitution of Ukraine guarantees the right of everyone to freedom of thought and speech to the free expression of their views and beliefs. It should be noted that this right is not absolute, since it may be restricted by law in the interests of national security, territorial integrity or public order in order to prevent disturbances or crimes, to protect public health, to protect the reputation or rights of others, to prevent disclosure of information obtained confidentially or to maintain the authority and impartiality of justice [3].

At the same time, it should be noted that the current system of legislation in the field of mass media is rather complicated, not very perfect and somewhat morally obsolete. Actually, the problem of legal relations connected, in particular, with the development of advanced media, first of all the latest Internet resources and the development of the global information space, in general, is quite obvious.

Laws of Ukraine «On printed mass media (press) in Ukraine», «On Television and Radio Broadcasting» – established the legal framework for the activities of traditional mass media, but they often fail to resolve issues related to the development of converged mass media, as well as modern social and information relations.

In our opinion, there are a number of problem issues related with the activities of both the traditional and the newest mass media, which require legislative regulation, mainly by adapting it to the generally recognized European standards.

It should be noted that today the general range of information relations in Ukraine is regulated by the basic legislative act in the information sphere – the Law of Ukraine «On Information». Accordingly, the activities of the traditional mass media: the press and broadcasting are regulated by special legislative acts.

The legal basis for the activities of the print media (press) is determined by the Law of Ukraine «On printed mass media (press) in Ukraine», which was adopted next year following independence, on November 16, 1992, which, according to expert estimates, still has high quality [4]. It should be noted that additional legal, economic, organizational principles of state support to mass media and social

protection of journalists are foreseen by another legislative act – the Law of Ukraine «On state support to mass media and social protection of journalists» [5].

Regarding the legal aspects of regulating the activities of the traditional mass media (press, radio and TV), it should be noted that the state information policy legislatively defines the boundary list of authorities that perform registration and regulatory functions in the field of broadcasting. Legislation clearly defines a ban on creating new or endowing existing state bodies with identical or duplicate powers regarding audiovisual media. In short, at present, the problem of legal regulation of traditional media in the process of legitimizing power practically does not arise.

At the same time, today the most effective tools of communication between the authorities and the society are Internet resources that de facto act as mass media and have a significant impact on the formation of public opinion, but de jure aspects of their activities to a certain extent remain legally unregulated. Therefore, we consider it is appropriate to indicate all the components of the domestic normative base, which regulates this segment of new media.

First of all, it is the Law of Ukraine «On information agencies», which determines that the activity of news agencies is to collect, process, create, store, prepare information for the distribution, production and distribution of information products. The main types of information agencies are state and non-state news agencies of Ukraine and foreign information agencies operating in Ukraine through their representations. Information agencies in Ukraine may have any organizational and legal forms.

Note that the products of an information agency are a materialized result of its activity, intended for distribution in order to meet the information needs of citizens, legal entities, and the state. The main types of products of news agencies are: electronic, print, photo, cinema, audio and video products. Information agencies have the right to release products provided for by their statutory documents and other informational products not prohibited by the current legislation of Ukraine.

Citizens and legal entities of Ukraine have the right to establish an information agency. Foreigners and foreign legal entities have the right to act only as co-founders. At the same time, «the creation and operation of information agencies is prohibited, with the statutory

fund of which the aggregate share owned by foreigners is more than 35 %» [6].

It is necessary to emphasize the rather liberal legislation of Ukraine regarding the legal regulation of the activities of news agencies. The information agency, the actors of the activity of news agencies are not responsible for the dissemination of information that is not true, degrades the honor and dignity of citizens and organizations, violates their rights and legitimate interests, or constitutes an abuse of the freedom of activity of news agencies and the rights of journalists, if this information:

1) received from other news agencies or mass media and is verbatim reproduction of materials published by these agencies or mass media, if they were refuted in accordance with Art. 33 of this Law;

2) is contained in the official response to a request for information provided in accordance with the Law of Ukraine «On Information»;

3) is a literal reproduction of official speeches of officials of state bodies, organizations and associations of citizens;

4) is the result of making changes, reductions or edits of products of news agencies carried out without their knowledge by the distributor or the consumer of information.

These rights are often used by Internet resources, deliberately spreading false information and forming their own informational content. Moreover, at present, experts in the media market recognize the existence of an entire network of transit Internet resources, which purposefully deal with the discrediting of power structures, political and public institutions. However, the state has no legal basis for bringing them to justice, because such Internet resources avoid the opportunity to register as a mass media, and therefore it is impossible to establish their owner. Thus, we can formulate one of the biggest problems in the modern domestic system of communications of power and society.

On the other hand, limiting the activity of Internet resources may lead to a certain state usurpation of the information space. In our opinion, the solution of this problem may be in the search for international approaches to understanding the nature and phenomenon of new mass-media resources.

It should be noted that in the decision of the European Court of Human Rights the Internet is defined as an information and communication tool that differs from the print media: in particular, in

its potential for the storage and transmission of information. The electronic network at the service of billions of users in the world is not and can not be subject to similar regulation and control. The risk of harming the exercise and enjoyment of human rights and fundamental freedoms, and in particular the right to respect for privacy in relation to content and communication on the Internet, is likely to be higher than that which the press may face [7, p. 186].

Actually, the experience of the Canadian Commission on Broadcasting and Telecommunications, which is provided the state information policy as well as in the Internet media segment is also interesting. It advises to characterize all Internet resources that contain the features of the media with the following definition: «New media is a media service distributed over the Internet and includes a wide range of communication products and services using video, audio, graphics and alphanumeric text. Such services include, but are not limited video games, e-mail, online telecommunication, fax, e-commerce and IP-telephone» [8].

At the same time, the development of media in countries that adhere to the principles of a free market has led to a contradiction that has become vivid in the late 20th Century [9]. The free press was regarded as a driving force for the dissemination of rational knowledge, but, as experience proves, market competition led to the emergence of the first «barons» of the free press, which sought to monopolize the intellectual market. Therefore, the problem of state intervention in the activities of the press, as we see, caused many complicated philosophical discussions. Various substantiations of the freedom of the press, of course, contained common points [9, p. 38–37].

Not fully accepting Keane John's opinion expressed in «Mass Media and Democracy», we support his general position on the need for state institutions to provide legal regulation of media activities.

Ideally, the activities of state regulators during the licensing process should be aimed at ensuring public interest in the media. Actually, the domestic policy of ethics in the regulation of the mass media is based on the «three pillars» of public interest: the diversity of the media, taking into account the interests of all social groups for access to information products and the prevention of monopolization. However, today it is evident that new approaches should be developed to rethink the principles of state regulation in the media field.

REFERENCES

1. Luman, N. (2004). *Mirovoe vremia i istoriia sistem [World time and system history]*. Logos [in Russian].
2. Zakon Ukrainy pro vnesennia zmin do Zakonu Ukrainy pro Informatsiiu: vid 13 sich. 2011 r. No. 2938-VI [Law of Ukraine on Amendments to the Law of Ukraine on Information from January 13, 2011, No. 2938-VI]. *Vidomosti Verkhovnoi Rady Ukrainy, Bulletin of Verkhovna Rada of Ukraine*, 32 [in Ukrainian].
3. Konstytutsiya Ukrainy: vid 28 cherv. 1996 r. No. 254k/96-VR [Constitution of Ukraine from June 28, 1996, No. 254k/96-VR]. *Vidomosti Verkhovnoi Rady Ukrainy, Bulletin of Verkhovna Rada of Ukraine*, 30 [in Ukrainian].
4. Zakon Ukrainy pro drukovani zasoby masovoi Informatsii (presu): vid 16 lystop. 1992 r. No. 2782-XII [Law of Ukraine on printed mass media Information from November 16, 1992, No. 2782-XII]. *Vidomosti Verkhovnoi Rady Ukrainy, Bulletin of Verkhovna Rada of Ukraine*, 1 [in Ukrainian].
5. Zakon Ukrainy pro derzhavnu pidtryмку zasobiv masovoi Informatsii ta sotsialnyi zahyst zhurnalistiv: vid 23 veres. 1997 r. No. 540/97-VR [Law of Ukraine on state support to mass media Information and social protection of journalists from September 23, 1997, No. 540/97-VR]. *Vidomosti Verkhovnoi Rady Ukrainy, Bulletin of Verkhovna Rada of Ukraine*, 50 [in Ukrainian].
6. Zakon Ukrainy pro Informatsiini ahentstva: vid 28 liut. 1995 r. No. 74/95-VR [Law of Ukraine on Information Agencies from February 28, 1995, No. 74/95-VR]. *Vidomosti Verkhovnoi Rady Ukrainy, Bulletin of Verkhovna Rada of Ukraine*, 13 [in Ukrainian].
7. Shevchenko, T., & Balatska, A. (2012). *Svoboda vyrazhennia pohliadiv: praktyka Yevropeiskoho sudu shchodo Ukrainy [Freedom of expression: the practice of the European Court in relation to Ukraine]*. Kyiv: Feniks [in Ukrainian].
8. Protsenko, D., & Tupchienko, D. (2012). *Ohliad pidhodiv do rehulivannia novykh konverahentnykh audiovizualnykh zasobiv masovoi Informatsii: mizhnarodnyi dosvid [An overview of approaches to the regulation of new congressional audiovisual mass media: international experience]*. Kyiv: Orhanizatsiia z bezpeky ta vzaemodii v Evropi [in Ukrainian].
9. Hnatiuk, S. *Normatyvno-pravove rehulivannia diialnosti audiovizualnykh ZMI v Yevropeiskomu Soiuzi i v Ukraini: porivnialnyi*

analiz [Regulatory and legal regulation of audiovisual media activity in the European Union and in Ukraine: comparative analysis]. Retrieved from <http://old.niss.gov.ua/Monitor/april08/19.htm> [in Ukrainian].

10. Kin, D. (1999). *Mas-mediia i demokratiia [Mass media and democracy].* Kyiv: K.I.S. [in Ukrainian].

Стаття надійшла до редколегії 28.07.2017
