

ТЕОРІЯ ТА ПРАКТИКА ЖУРНАЛІСТИКИ

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THEORETICAL AND HISTORICAL ANALYSIS OF THE REASONS OF MEDIA REGULATION

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The geopolitical catastrophes of the twentieth century have called into question the postulate of the concept that everyone is rational and seeks to find the truth, guided only by reason. Throughout the history of the development of information dissemination channels, we have constantly observed attempts by the state or other strong organizations to regulate, limit their activities – from preventive (censorship) to repressive, and often a mixture of them. The problem is the fundamental uncertainty of what exactly needs to be regulated – the circulation of information or the activities of the media. The constant search for a balance between freedom and responsibility of the media, setting boundaries and restrictions on the media and journalists, expressed through the adoption / amendment / repeal of laws and other regulations indicate the need to identify the main reasons for such regulation.

Based on the understanding that any regulation is an interference in current activities, we can assume that the standardization of activities in the field of media is carried out for a specific purpose (public interest, for example), to meet market needs (support fair competition) or for technical reasons (technical standards), etc. It is carried out at various levels – from relevant international norms and standards, national provisions in regulations of various levels to administrative procedures and technical specifications. In addition, it can be external – normatively defined for a certain type of activity and internal – in the form of self-regulation, such as internal control or public pressure from the outside.

Key words: media, regulation, history of media regulation, reasons of media regulation, law.

Introduction. Throughout the history of civilization, social communication has been a major factor connecting the diversity of human life in economic, legal, cultural, political and other spheres, which together created such a format of human existence as society. The diversity and multi-vector nature of such socio-communicative processes objectively requires certain levers – if not regulation, then at least coordination and classification against the general background of modern society, primarily through the introduction of the relevant legal field.

The explanatory dictionary of the Ukrainian language defines regulation as “to organize something, to manage something, subjecting it to the relevant rules, a certain system” [1]. Based on the understanding that any regulation is an interference in current activities, we can assume that the standardization of activities in the field of media is carried out for a specific purpose (public interest, for example), to meet market needs (support fair competition) or for technical reasons (technical standards), etc. It is carried out at

various levels – from relevant international norms and standards, national provisions in regulations of various levels to administrative procedures and technical specifications. In addition, it can be external – normatively defined for a certain type of activity and internal – in the form of self-regulation, such as internal control or public pressure from the outside.

Formulation of the problem. One of the main directions of the state policy of Ukraine is the formation of a holistic information society, active civil society and meeting its needs in obtaining objective and unbiased information. Much attention is paid to supporting the functioning and development of public television and radio broadcasting in Ukraine. Today, the process of harmonization of Ukrainian media legislation with international information law through the adoption of new documents, amendments to existing ones, etc. is underway. In particular, the Verkhovna Rada of Ukraine is considering a bill “On Media”, one of the tasks of which the authors see in creating a single, orderly and mutually agreed system of legal norms aimed at regulating legal relations in the media. Current legislation has often been created without theoretical research on the legal nature of the media, resulting in the media being seen as both a subject of law and an object of law. “What to regulate”, the limits of intervention, are a mirror of the problem of freedom & responsibility, that is, the root causes of such intervention remain relevant.

Relevance of research. The constant search for a balance between freedom and responsibility of the media, setting boundaries and restrictions on the media and journalists, expressed through the adoption / amendment / repeal of laws and other regulations indicate the need to identify the main reasons for regulation.

The aim of the study is to identify the main reasons for regulating the activities of the media throughout the history of the development of forms of media.

The objectives of the study are:

- to explore ways to regulate the activities of the media in the historical aspect;
- to identify the main reasons for regulating the activities of modern media.

Analysis of recent research and publications. Problems of legal regulation of the media have been studied by scientists in various fields: the activities of those who use Internet technologies (O. Baranov [2], A. Novytskyi and P. Ripp [3], M. Farbota [4]), the evolution of media regulation in Ukraine (D. Protsenko [5]), constitutional and legal regulation of the media (O. Kapliy [6]), principles of state regulation of the media (A. Cherban [7]).

According to Denis McQuail [8], a scholar who studied media and communications, the history of their regulation begins with the invention and use of the printing press and the production of the first book in the mid-15th century. It was then that printing became an alternative to copying manuscripts by hand, which was not formally regulated by the state institutions of the time, but in fact took place under the close supervision of the church. With the development of printing and industry, the church and the state became increasingly interested in the content of what was published, primarily to combat dissent and heresy, and which quickly led to state licensing of such activities, often with prior approval of church authorities. Exports and imports of books were also strictly controlled or banned altogether. In autocratic countries such as the Ottoman Empire or the Russian Empire, printing was banned for more than two hundred years, and the development of this industry dominated in Western European countries. The clerical and secular authorities understood very well the power of the printed word and constantly competed for control over it, actively applying preventive measures – censorship.

During the 16th and 19th centuries, the history of media regulation in Western Europe and North America was marked by a constant struggle against restrictions on the press, culminating in gradual changes in the late 18th and early 19th centuries, and in some countries as early as the 20th century. The

emergence of liberal theory in the XVII century in connection with the development of democracy, science, freedom of religion, trade, which proposed postulates contrary to those in which there were authoritarian regimes in which man was a dependent being in need of guidance and direction, defined man as thinking individual, who in the process of obtaining conflicting information is able to distinguish between truth and deception, as well as make the right choice – the belief in the rational was asserted.

Seeking the truth is a natural right of every person, where the press has an honorable role to be its leader and partner. American researchers – Siebert F.S., Peterson T., Schramm W. noted that the press takes the form and color of the socio-political structures within which it operates [9]. In the process of developing this theory in the XX century, it was called the theory of social responsibility, which posed new challenges to the media, because as in authoritarian regimes, power in the media was concentrated in the hands of the social elite, but defined the opposite principles – self-regulation, free market of ideas, thinking self-sufficient individual.

It is worth noting that the owners were not politicians and, nevertheless, the activity on the free market of ideas in the conditions of a certain involvement was complicated. They believed that in the conditions of free circulation of information, the priority of individual freedom, the truth will definitely win. This theory had the philosophical principles of the ancient world, much in common with the doctrines of early Christianity, where the concepts of reason, understanding of good and evil are given by God and can not be limited to the state, because they are sufficient to know and navigate the world. John Milton [10] believed that truth has such properties that will allow it to resist and defeat misinformation, so he criticized censorship and licensing, and in his “Areopagitics” started from the understanding that each person is a rational being who strives with all his being find the truth. Moreover, he believed that any restrictions on freedom of speech are offensive not only to the author, but most of all to the reader, and said “read all sorts of books that only fall into your hands, because you can properly think and explore everything... For the pure – everything clean”. He believed that there was no point in fighting threats with the help of censorship, only ethical, unwritten, non-coercive laws of education, religious and civic culture could win. John Mill [11] developed this theory on the postulate that every adult has the right to do and say anything as long as this freedom does not interfere with the exercise of their rights. That is, freedom of speech, like other freedoms, has certain limits, the main of which is the freedom of another person.

The geopolitical catastrophes of the twentieth century have called into question the postulate that man is guided only by reason, and the debate that has begun is that the press has gained great power, which it uses for its own ends, serves big business, opposes social change, and focuses on meaningless entertainment, which threatens public morals, interferes in private life, is controlled by the elite. American researchers of the “Four Theories of the Press” [9] noted that if the concentration and monopolization of the media threatens democracy, which can not cope with it, the mass media must engage in self-regulation or the government. That is, the theory of social responsibility of the mass media, which replaced the theory of free press (libertarian), as its logical development and civilizational consequence outlined the most important functions of the press, which can be defined as: maintenance of the political system (providing opportunities for discussion), education, protection of human rights from government arbitrariness, advertising (maintenance of the economic system), entertainment, ensuring financial independence. The main break between the two theories is that the mass media have a responsibility to society and their right is not absolute, because it is limited by the rights of other participants in the social process, ie there is a transition from “freedom from” (negativist approach) to “freedom for” (positivist approach) – serving the interests of society, “fair play”, balance of opinions, respect for the rights of others. There has been some departure from the understanding that man’s actions are guided solely by reason, a person is active in the search for truth and is guided by it until he realizes that he is more apathetic, uninitiative and the result is that this can be used by manipulators (including those media that are dependent on certain political or economic interests) achieving their own goals.

In those countries where the free media movement began earlier (Western Europe, North America, Australia), a repressive doctrine came into force in the late 19th century that did not prohibit free media,

but established responsibility for violating borders, that is, the boundary between what is allowed and what is forbidden was determined. Thus, repressive measures were added to preventive measures (censorship), which can be described by the well-known phrase “half on prevention, half on repression, in an unusual mixture.” As the press was still quite expensive, it was common practice for most of these media outlets to belong to the government or to act in its interests in order to survive.

Despite their activities within the framework of national legislation, there is a need to adopt international agreements, norms and standards for their use, in particular technical requirements, such as, the allocation of radio frequencies. With the advent of cinema, there was a need to regulate the safety of spectators (from fire, for example) and the content of the broadcast (compliance with moral norms). According to the researcher, radio and television in the history of media development have been and remain the most regulated areas and have never had such freedom as the print media.

The invention of new forms of media at the end of the 19th century – the electric telegraph and radio broadcasting – added a new dimension to regulation. In particular, in American history, media regulation began in the early 20th century for the sake of combating unfair methods of combating trade, including the creation in 1927 of the Federal Radio Commission to restore order in a chaotic situation resulting from the incapacity of previous acts that were designed to normalize wireless communication. The function of this five-person body was to issue broadcasting licenses, assign frequencies and “power” levels to each radio station. After the creation of the Federal Communications Commission in 1934, they ceased their activities, as the law completely transferred their powers to the newly created body responsible for regulating interstate and international communications through radio, television, wired, satellite and cable communications and during the presidency of F. T. Roosevelt they worked to establish a fast, efficient nationwide and global wired and wireless service. One of the four key divisions is the Media Bureau, which aims to develop, recommend, and administer licensing policies and programs related to electronic media, including television (including cable) and US radio. The rise of media and media documents in the United States was initially designed to prevent large companies from monopolizing the media, but in the early 1970s, under public pressure to reduce state control, deregulation began, overturning some acts, in particular, the term of licenses increased from 3 to 5 years, corporations were allowed to own up to 12 separate TV studios, the ban on owning media facilities in more than one area was lifted, etc., which had a significant effect on the country’s media landscape – the media giants appeared (Viacom, Disney, Columbia Journalism Review, etc.). The issue of deregulation of the American media market remains open and is still being discussed, as some believe that any business will only benefit from reduced state control, while others believe that such regulation is vital for the media, because the concentration of media ownership in one hand threatens democratic the principle of “checks and balances” [12].

Thus, as noted by B. Kormych [13], the practice of information society in different countries has its own characteristics, but the similarities make it possible to distinguish three main models: European, American and Asian, which, according to the author, differ in vector of transformation, forms and ways of participation of the state, formats of interaction between the main subjects of information relations. The European model of information society development is characterized primarily by social orientation and active involvement of the state and international institutions. Thus, the EU bodies are implementing a number of programs to build the information society and create a Single European Information Space. These programs are aimed at ensuring the rights and freedoms of citizens, the development of information infrastructure, free access to it and public awareness, creating favorable conditions for the development of entrepreneurship in the field of information technology. The American model of information society development is based on the popular in the United States concept of “minimal state”. According to this model, the main burden on informatization, development of information infrastructure and in general on the formation of ideology and information development programs falls on the private sector. First of all, the state ensures the regulation of information activities, free competition, participates in the implementation of the largest projects, informatizes public authorities, and so on. Given the leading role of the private sector, this model is more commercialized, focused not on solving social and societal

challenges, but on saturating the market with commercial information products and services, show business development and more. The Asian model of the information society is due primarily to the specifics of the philosophy and traditions of building government, business, public relations. Accordingly, most of the tasks of informatization are solved within the interaction of the state and corporations. In addition, considerable attention is paid to ensuring the daily needs of society, the availability of information products and services.

State regulation takes place in several ways: permits, obligations, prohibitions. According to Part 2 of Article 34 of the Constitution of Ukraine, the right of everyone to freely collect, store, use and disseminate information orally, in writing or otherwise – may be limited by law in the interests of national security, territorial integrity or public order to prevent riots or crimes, to protect public health, to protect the reputation or rights of others, to prevent the disclosure of information obtained in confidence, or to maintain the authority and impartiality of justice [14]. All information in the order of access is divided into open and restricted access, which, in turn, is divided into confidential, secret and official [15]. Thus, the principle applies – everything is allowed, except what is expressly prohibited by law.

Any rationing by its nature sets the limits of freedom, because they are not absolute, except freedom from slavery and not to be tortured. This is one of the most important principles of a democratic society, because our right (freedom) stops where the right (freedom) of another participant in public communication begins. There is another positive aspect to this, apart from respect for the rights of others, and it is that there must be clear, understandable in wording and requirements, convincing grounds for regulation, reconcile with the principles of freedom and democracy, although not relieve some tension. There is no clear answer to the question of “why regulate” and whether there will be real answers to these questions on the surface, which may obscure real goals, such as the interests of the state.

Based on the reasons identified by Denis McQuail [8] for regulating the activities of the media, we propose to classify them as follows:

- management (leadership of key economic resources in countries such as “information society” with a high dependence on forms of communication);
- security (support of public order, state institutions, as well as justice);
- defensive (protection and defense of the rights of individuals and groups whose interests may be affected by the unrestricted use of communication channels);
- technical (promoting efficiency and development of communication systems through standardization, innovation, connection and provision);
- communicative (promoting access to freedom of communication, achieving cultural goals);
- guarantee (providing conditions for the effective operation of free markets for media services, competition and access, protection of consumer rights of information products, stimulating innovation and expansion).

Conclusions and prospects for further research. Throughout the history of the development of information dissemination channels, we have constantly observed attempts by the state or other strong organizations to regulate, limit their activities – from preventive (censorship) to repressive, and often a mixture of them. The problem is the fundamental uncertainty of what exactly needs to be regulated – the circulation of information or the activities of the media. We believe that we need to start from the understanding that the media is a tool for disseminating information, the media is an object of law, and regulated by entities, ie persons who own such a tool and are responsible for the content of information disseminated through such a tool .

The reasons that currently underlie the regulation are divided into managerial, security, technical, defensive, communication, warranty. Further research is needed to identify the principles of regulating the circulation of information and media activities.

References

1. Bilodid, I. (Ed.). (1980). *Slovnnyk ukrainskoi movy* [Dictionary of Ukrainian Language]. Kyiv: Naukova dumka.

2. Baranov, O. A. (2012). Pravove rehuliuвання ZMI, shcho vykorystovuiut Internet-tekhnologii [Legal regulation of media using Internet technologies]. *Pravova informatyka*, 2(34), 28–38.
3. Novytskyi, A. M. & Rippa, P. S. (2010). Suchasne pravove stanovyshe zasobiv masovoi informatsii shcho zdiisniuiut diialnist u merezhi internet [The current state of the media operating on the Internet]. *Pravova informatyka*, 1(25), 30–34.
4. Farbota, M. R. (2015). Pravovyi status zasobiv masovoi informatsii v internet-seredovyschi [Legal status of mass media in the Internet environment]. *Informatsiia i pravo*, 2(14), 92–96.
5. Protsenko, D. V. (2012). Rozvytok zakonodavstva Ukrainy u sferi rehuliuвання diialnosti ZMI [Development of Ukrainian legislation in the field of media regulation]. *Naukovi zapysky NaUKMA*, 129, 88–93.
6. Kaplii, O. V. (2013). Konstytutsiino-pravove rehuliuвання diialnosti ZMI v Ukraini [Constitutional and legal regulation of the media in Ukraine]. *Yurydychnyi visnyk*, 1, 38–45.
7. Cherban, A. (2017). Vplyv derzhavy na informatsiinu diialnist zasobiv masovoi informatsii [The influence of the state on the information activities of the media]. *Epistemolohichni doslidzhennia v filosofii, sotsialnykh i politychnykh naukakh*, 37(3), 61–67.
8. McQuail, D. (2010). Media Regulation. Retrieved from file:///C:/Users/User/Downloads/mod2unit11cg.pdf.
9. Siebert, F. S., Peterson, T. & Schramm, W. (1956). Four theories of the press. – Urbana.
10. Kohan, P. Milton, J. O svobode pechaty. Rech k anhyiskomu parlamentu (Areopahyka) [On freedom of the press. Speech to the English Parliament (Areopagy)]. Retrieved from <http://evartist.narod.ru/text2/28.htm>
11. Fridman, A. (1993). Dzhon Mill “O svobode” [John Mill. “About freedom”]. *Nauka i zhizn*, 11, 10–15; 12, 21–26.
12. Open.lib.umn.edu.Government regulation of media. Retrieved from <https://open.lib.umn.edu/mediaandculture/chapter/15-2-government-regulation-of-media/>
13. Kormych, B. A. (2011). Informatsiine pravo [Information law]. Kharkiv: BURUN i K.
14. Konstytutsiia Ukrainy [Constitution of Ukraine]. No 254к/96-ВР part II article 34. (1996) [in Ukrainian].
15. Zakon Ukrainy “Pro informatsiiu” [Law of Ukraine “About information”]. No 2658-XII part II article 20-21. (1992) [in Ukrainian].

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ТЕОРЕТИКО-ІСТОРИЧНИЙ АНАЛІЗ ПРИЧИН РЕГУЛЮВАННЯ МЕДІА

Геополітичні катастрофи ХХ століття поставили під сумнів постулат концепції про те, що кожна людина є раціональною та прагне віднайти істину, керується лише розумом. Упродовж історії розвитку каналів поширення інформації ми постійно спостерігаємо спроби держави чи інших сильних організацій регулювати, обмежувати їхню діяльність – від превентивних (цензура) до репресивних, і часто в їх суміші. Проблема полягає у засадничій невизначеності, що саме потрібно регулювати – обіг інформації чи діяльність медіа. Постійний пошук балансу між свободою і відповідальністю медіа, встановленням меж та обмежень діяльності ЗМІ та журналістів, що виражаються через прийняття/зміну/скасування законів та інших нормативно-правових актів вказують на необхідність виокремлення основних причин для встановлення такого регулювання.

Виходячи з розуміння, що будь-яке регулювання є втручанням у поточну діяльність, можемо припустити, що унормування діяльності в царині медіа здійснюється задля певної мети (суспільного інтересу, до прикладу), задоволення потреб ринку (підтримка добросовісної конкуренції) чи з технічних причин (налаштування технічних стандартів) тощо. Здійснюється на різних рівнях – починаючи від відповідних міжнародних норм та стандартів, національних положень у нормативно-правових актах різних рівнів до адміністративних процедур та технічних специфікацій. Крім того, може бути зовнішнім – нормативно визначеним для певного виду діяльності та внутрішнім – у формі саморегуляції, як внутрішній контроль чи тиск громадськості зовні.

Ключові слова: медіа, регулювання, історія регулювання медіа, причини регулювання медіа, закон.