

# ASERS

## Journal of Advanced Research in Law and Economics

Quarterly

Volume X

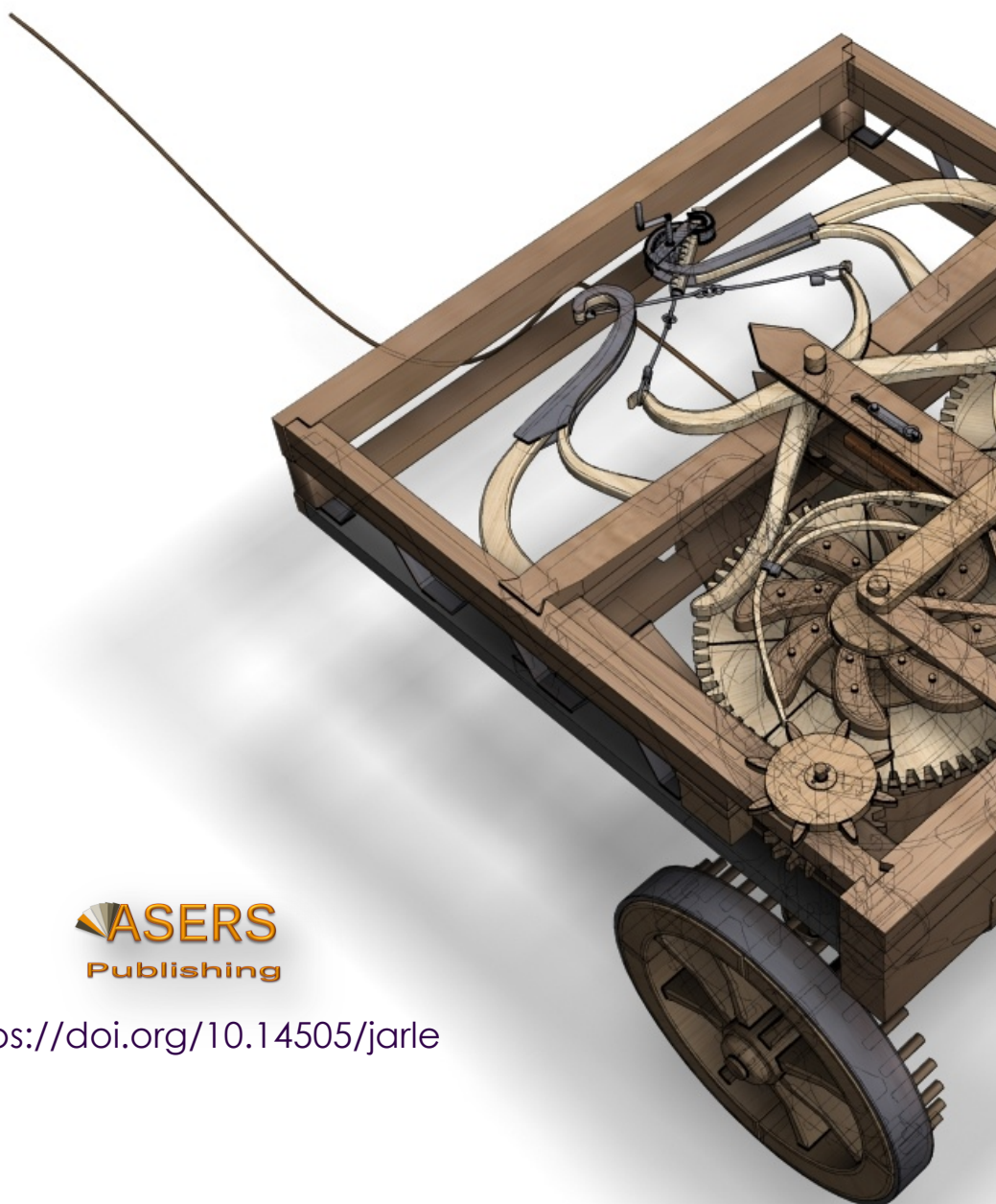
Issue 1 (39)

Spring 2019

ISSN: 2068-696X

Journal's DOI: <https://doi.org/10.14505/jarle>

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<http://journals.aserspublishing.eu>  
ISSN 2068-696X  
Journal DOI: <https://doi.org/10.14505/jarle>  
Journal's Issue DOI:  
[https://doi.org/10.14505/jarle.v10.1\(39\).00](https://doi.org/10.14505/jarle.v10.1(39).00)

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DOI: [https://doi.org/10.14505/jarle.v10.1\(39\).25](https://doi.org/10.14505/jarle.v10.1(39).25)

## General Characteristics of Guarantees of Journalists Rights in Ukraine

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### Suggested Citation:

Komisarov, Oleksandr H. *et al.* 2019. General Characteristics of Guarantees of Journalists Rights in Ukraine, *Journal of Advanced Research in Law and Economics*, Volume X, Spring, 1(39): 247 – 253. DOI: [10.14505/jarle.v10.1\(39\).25](https://doi.org/10.14505/jarle.v10.1(39).25). Available from: <http://journals.aserspublishing.eu/jarle/index>

### Article's History:

*Received* 15 December, 2018; *Received in revised form* 18 January, 2019; *Accepted* 25 February, 2019;

*Published* 31 March, 2019.

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### Abstract:

The relevance of the article is that guarantees for the journalists' rights realization became one of the priority directions of legislation improvement not only in Ukraine, but all over the world because it is precisely this career that involves risks in the course of professional activities associated with the location of media workers in the areas of hostilities and emergencies. The article is devoted to the general characteristics of guarantees of the journalists' rights in Ukraine. The leading method for the study of this problem is the method of analysis, which made it possible to study the existing legislative framework on the subject and identify shortcomings concerning the rights of journalists. The proposal of defining the term 'journalist' in the legislation of Ukraine is substantiated and the guarantees of journalists' rights are determined. The classification of guarantees of the rights of journalists is given based on the analysis of the current legislation. It is made the conclusion on the necessity of passing the law On Protection of Professional Activities of Journalists in Ukraine.

**Keywords:** law; mass media; social protection; political impartiality; guarantees for the protection.

**JEL Classification:** K24; K38; H55.



## Introduction

Guarantees for the journalists' rights realization became one of the priority directions of legislation improvement not only in Ukraine, but all over the world. It is precisely this career that involves risks in the course of professional activities associated with the location of media workers in the areas of hostilities and emergencies. But, unfortunately, the danger to journalists also arises in peace time, when state authorities, legal entities, and even ordinary citizens hinder journalists from fulfilling their professional duties. Therefore, at the state level, guarantees should be provided for the observance of the rights of journalists as persons whose activities involve professional risk.

It should be mentioned that the guarantees of journalists' activities include not only freedom of speech but also the protection of journalists' lives and health. Statistics related to this matter is really disappointing so far. For instance, according to the General Prosecutor's Office of Ukraine, a total of 149 criminal proceedings were filed in respect of crimes committed against media workers from January to July 2017. Of these, 14 criminal proceedings (including criminal proceedings against past years violations) were transferred to court (Since the beginning of the year 2017; Leirose *et al.* 2018). The general notion of legal guarantees is studied by scientists from the general theory of state and law, such as Volynka, Zaychuk, Kelman, Krestovska, Matveyeva, Murashin, Onishchenko, Skakun, and others. Various aspects of the guarantees of the journalists' rights were investigated by Aristova, Barabash, Buryak, Dyachkova, Kovalenko, Marushchak, Nesterenko, Pavlykivskiy, and others. The protection of journalists' rights is carried out at different levels of legislation from the Constitution up to the by-laws.

At the level of the Constitution of Ukraine, it is provided that every citizen of Ukraine, regardless of his profession, is guaranteed the right to freedom of thought and speech, to the free expression of his views and beliefs. Everyone has the right to gather, store, use and disseminate information orally, in writing or in another way of his other choice freely (Constitution of Ukraine 1996). These rights apply not only to individual citizens of Ukraine, but to journalists as well. At the level of laws, the guarantees of the protection of journalists' rights in Ukraine are provided for in the Criminal Code of Ukraine, the Code of Ukraine on Administrative Offenses, the Civil Code of Ukraine, as well as in more specific legal acts such as the Laws of Ukraine 'On Information' (1992), 'On printed mass media (press) in Ukraine' (On printed media in Ukraine 1992), 'On Information Agencies' (Information Agencies 1995), 'On the Procedure for Covering the Activities of Public Authorities and Local Authorities in Ukraine by the Mass Media' (On the Procedure for Covering 1997), 'On Television and Radio broadcasting' (On Television and Radio Broadcasting 1993), 'On state support of mass media and social protection of journalists' (On State Support to Mass Media 1997; Vilaça *et al.* 2018) and soon.

### 1. Legal Definition of the Term 'Journalist'

For today legal protection of journalists' activities is fulfilled with the help of legal guarantees defined at different levels of Ukrainian legislation. In this case, general guarantees of the protection of human and citizens' rights and freedoms may apply to journalists, but with additional guarantees related to professional activity.

In the legal relationship that arises in the process of guaranteeing the rights of journalists, various participants are involved, but the principal parts are the journalist and the state. Therefore, the legal definition of the term 'journalist' aims to establish a layer of persons who are covered by guarantees of the protection of their professional rights. However, after analyzing the legal acts, we can conclude that the term 'journalist' depends on the type of media or regulatory act in which it is defined. Thus, in the Law of Ukraine 'On State Support to Mass Media and Social Protection of Journalists', a journalist is a creative laborer (employee) who professionally gathers, receives, creates and is engaged in the processing of information for the media, performs editorial duties in the media (being in the staff or on a freelance basis) according to the professional titles of the posts of the journalist, which are indicated in the state classifier of professions of Ukraine (On the Protection of Journalists 1996). A journalist of an information agency is a creative employee who gathers, receives, creates and prepares information for an information agency and acts on its behalf on the basis of labor or other contractual relations with him or his authority (Information Agencies 1995). A television journalist is a full-time or freelance creative laborer of the broadcasting organization that professionally gathers, receives, creates and prepares information for dissemination. A journalist of an editorial staff of some printed media is a person who professionally gathers, receives, creates information or he/she is engaged in the information processing for the printed media and operates on the basis of labor or other contractual relations with its editor or is engaged in such activities under its authority, as evidenced by an editorial certificate or another document issued to him/her by the editors of this printed mass media (On printed media in Ukraine 1992).

A wider definition is given in Recommendation N R (96) 4 of the Committee of Ministers of the Council of Europe 'On the Protection of Journalists in Conflicts and Pressure'. The term 'journalist' should be understood as

encompassing all media representatives who are involved in gathering, processing and dissemination of news and information, including operators and photographers, as well as auxiliary staff drivers and translators (On the Protection of Journalists 1996). In Recommendation No. R (2000) 7 'On the right of journalists not to disclose their sources of information', the term 'journalist' means any individual or legal entity who is regularly or professionally involved in gathering and public disseminating of information through any media. This Recommendation also uses the term 'media workers': it covers all persons involved in the collection, processing and dissemination of information for the media. It also includes operators and photographers, and technical staff, such as drivers and translators (On the right of journalists 2000). In addition, according to the United Nations Plan of Action on Journalists' Security and the issue of impunity: 'The protection of journalists should not be limited to those who are officially recognized as being journalists, it extends to other persons, in particular media community representatives and civilian journalists and other persons who may use new media as a means of addressing their audience' (Collection of documents...). Taking into consideration the European integration processes taking place in Ukraine, information law requires the implementation of a broader meaning of the term 'journalist', including auxiliary staff. Only after the legislator's approval of a general concept of a notion of journalist, we can talk about the comprehensive coverage of persons who need to guarantee their professional journalism.

## 2. Rights of Journalists in Ukrainian Legislation

It is natural that the state provides guarantees for the observance of universal human rights. However, in Ukrainian legislation, in addition to general rights, special rights of journalists, which are implemented in the course of their professional activities, are envisaged, namely: (1) free acquisition, use, distribution (publication) and storage of information; (2) free access to statistical data, archival, library and museum funds; restrictions on this access are determined only by the specifics of the values and the special conditions of their safety, which are determined by the current legislation of Ukraine; (3) to refer the experts when checking the received informational materials; (4) to make written, audio and video records using the necessary technical means, except in cases stipulated by law; (5) to visit freely the premises of the subjects of power authorities, open actions that are held by them and to be personally accepted within a reasonable time by their officials and officers, except in cases determined by law; (6) not disclose the source of information or information that allows the establishment of sources of information, except when he/she is obliged to this by the court decision on the basis of law; (7) upon presentation of a document certifying his professional identity, a media employee has the right to collect information in areas of natural disaster, disasters, places of accidents, mass disorders, military operations, except in cases provided for by law; (8) distribute the materials prepared by him/her (phonograms, videos, written texts, etc.) by his own signature (by authorship) or under the conditional name (pseudonym); (9) has the right to refuse authorship (signature on the material), if its contents contradicts his conviction after editorial editing (editing) (On information 1992).

It is in the defense of these rights that the state guarantees the protection of journalists' rights. In the sphere of professional journalism, the Law of Ukraine 'On printed mass media (press) in Ukraine' includes the gathering, creation, editing, preparation of information for printing and publication of print media in order to spread it among readers. A journalist should be well aware of the fact that he is responsible within the limits of the current legislation for exceeding his rights and non-fulfillment of duties. As a guarantee, the dictionary of the Ukrainian language means the surety in something, providing something; conditions that ensure the success of something (Academic dictionary of the Ukrainian language). As the legal guarantee (French guarantee – surety, condition, to provide anything) it means legally established instrumentalities of protecting the subjective rights of citizens and organizations, the ways of their implementation, as well as the ways of ensuring law and order, the interests of the individual, society and state (Interpretative dictionary of the Ukrainian language). Thus, we can understand the means and/or ways of protecting the rights and freedoms of journalists, which are secured at the legislative level, and the possibilities to carry out their professional activities objectively as a guarantee of the journalists' rights protection. Moreover, the protection of the rights of journalists as a part of the legal status is the key point here. Therefore, classification of the guarantees of the protection of journalists' rights can be applied by means of generally accepted in the legal science classification.

So, Kelman and Murashin detach economic, political, ideological and legal guarantees (Kelman and Murashin 2005). Krestovska, Matveyeva distinguish international legal and internal guarantees (economic, social, political, ideological, legal) (Krestovska and Matveyeva 2008). Volynka includes the following components in the system of legal guarantees of the rights and freedoms of the person: material and procedural guarantees, institutional and organizational guarantees, industry guarantees, international legal guarantees, legal liability (Volynka 2003). Zaychuk, Onishchenko distinguish the general guarantees (economic, political, organizational) for



practical purposes and special guarantees, such as general, generic, branch, individual, according to the guaranteed peculiarities of legal status (Zaychuk and Onishchenko 2006).

It guarantees the rights of journalists to be defined as generic, which help protecting the interests of certain categories of citizens. As Kovalenko correctly pointed out, the Constitution and laws guarantee journalists that during their professional activities they can enjoy universally recognized civil rights and freedoms, in particular freedom of thought and speech, freedom of conscience, freedom of intellectual activity, the right to unlimited expression of their views and beliefs, the results of their intellectual and creative activities, the free gathering, use, dissemination of information, etc. Legislation also contains norms which, in view of the specifics of professional activity of journalists, determine their professional rights (Kovalenko 2012). Thus, the guarantees of the rights of journalists can be divided into general (political, economic, social) and special (which take into account the specifics of the professional activities of journalists and established in regulatory legal acts regulating the activities of journalists) and legal liability.

Economic guarantees for the protection of journalists' rights are provided by the law of Ukraine 'On State Support to Mass Media and Social Protection of Journalists'. State support of the mass media is a set of legal, economic, social, organizational and other measures of state assistance for the strengthening and development of the information industry, its infrastructure. In particular, section II 'Main directions and forms of state support of mass media' provides grounds and conditions for the provision of state targeted support to the mass media, organization of financial, economic and other state support of mass media, tax, customs, currency, tariff regulation, etc. (On State Support to Mass Media 1997).

Political guarantees are state securing non-interference in media activities and in the work of journalists directly. Thus, the law of Ukraine 'On Television and Radio Broadcasting' stipulates that any interference, which is not motivated by the legislation of Ukraine, by public authorities or local self-government bodies, public or religious associations, their officials or employees, as well as owners in the sphere of professional activity of the broadcasting organizations is not allowed. In Ukraine, the establishment of broadcasting organizations is prohibited by state authorities and local self-government bodies, if the decision on their creation or provision does not provide for the authority to establish a TV and radio organization; political parties, trade unions, religious organizations and legal entities they have founded (On Television and Radio Broadcasting 1993).

During the election, the legislation provides for equal opportunities for election campaigning. The position of all political forces, represented in the authorities, officially published in any way is required to be provided by television and radio institutions in their information units. Election campaign, that uses mass media of all forms of ownership, is carried out with observance of the principle of equal conditions and opportunities (On local elections 2015). In the case of nominating an employee of the broadcasting institution as a candidate for elective office, he/she has equal rights with other candidates for the use of television and radio broadcasting. The broadcasting organization employee has no right to use his/her official position in the interests of the candidate for elective office of which he is a trustee (On Television and Radio Broadcastin 1993).

An additional guarantee of political impartiality of journalists is the administrative responsibility for violating the prohibition, in any form, to comment on or assess the content of the election campaign, television program of the relevant candidate, political party (bloc), to provide any information on this candidate, this political parties (bloc) by owners, officials and media workers. As well as the maintenance of official communications with comments of agitational character, as well as video, audio recordings, cinematographic works, photo illustrations about actions of officials of state authorities and local self-government bodies as candidates for deputies and for the positions of village, town and city mayors during the election process (Code of Ukraine on Administrative Offenses 1984).

Apart from other types of guarantees of journalistic activity, dispensing the non-interference of the state and other persons in the professional activities of journalists is to be ensured. In particular, the law of Ukraine 'On Information' prohibits censorship that is any requirement directed directly to a journalist, the media, its founder (co-founder), publisher, manager, distributor, etc. to coordinate information before its dissemination or imposition of a prohibition or impediment in any other form of replication or dissemination of information. Intervention in the professional activity of journalists, control over the content of disseminated information is prohibited, in particular, with the purpose of disseminating or not disseminating certain information, suppressing publicly necessary information, imposing a ban on covering certain topics, displaying individuals or disseminating information about them, prohibiting criticizing subjects of authority, except in cases established by law, the contract between the founder (owner) and the labor collective or the editorial charter. A deliberate impediment to the legitimate professional activities of journalists and/or prosecution of a journalist for performing professional duties, for criticism, entails responsibility in accordance with the laws of Ukraine. One of the main guarantees of observance of journalists' rights is legal liability for violations in this area, which is divided into civil, administrative or criminal.

Violation of the Ukrainian legislation on the protection of journalists' rights results in civil, administrative or criminal liability in accordance with the laws of Ukraine.

Thus, Article 171 of the Criminal Code of Ukraine establishes responsibility for intentional interference with the legitimate professional activities of journalists. In addition, the prosecution of a journalist for performing professional duties or for criticism, committed by an official or a group of persons under a preliminary agreement, is punishable by a fine of up to two hundred tax-free minimum incomes, or restraint of liberty for a term up to five years, or a deprivation of the right to occupy certain posts for a term up to three years (The Criminal Code of Ukraine 2001). In 2015, the criminal responsibility for interfering with the professional activities of journalists was strengthened, in particular, the Law of Ukraine 'On Amendments to Certain Legislative Acts of Ukraine on Strengthening the Guarantees of Legal Professional Activities of Journalists' was adopted on May 14, 2015, No. 421-VII. Due to this, the Criminal Code of Ukraine was supplemented by Articles 345-1, 347-1, 348-1, 349-1 where criminal liability is foreseen for threats or violence against a journalist, intentional destruction or damage to the journalist's property, encroachment upon journalist's life, seizure of a journalist as a hostage (On Amendments to Certain Legislative Acts 2015).

However, the responsibility for committing a crime against a journalist in connection with the performance of his professional duties or impeding his professional activities is equated with liability for committing such acts against an employee of a law enforcement agency. The journalist's service cannot be the reason for his arrest, detention, and removal of collected, processed, prepared materials and technical means that he uses in his work. Article 17 of the Law of Ukraine 'On State Support to Mass Media and Social Protection of Journalists' establishes responsibility for encroachment upon journalist's life and health, other actions against him and the responsibility of the journalist for the moral (non-material) damage he caused (On State Support to Mass Media 1997).

According to the Civil Code of Ukraine, in case of indemnity by the journalist and the media of the moral (non-property) damage inflicted by them, it shall be jointly and severally liable to them, taking into account the guilt of each person. It should be noted that in the case of a court hearing a dispute regarding moral (non-property) damage inflicted by a journalist or a media institution as a defendant and a political party, an electoral bloc, an official (officials) as a plaintiff, the court is entitled to award compensation for moral (non-property) damage only for presence of the intention of the journalist or mass media officials. The court takes into account the consequences of the use of extrajudicial opportunities by the plaintiff, in particular pre-trial refutation of false information, defending his honor and dignity, business reputation and settling the dispute as a whole. Taking into account the above circumstances, the court is entitled to refuse to indemnify non-pecuniary damage (Legal frame work for journalists in Ukraine 2011).

There is no separate article of the Code of Ukraine on Administrative Offenses regarding administrative responsibility to prevent the professional activities of journalists. Although some offenses in this area that do not contain evidence of a criminal offense, but in the presence of relevant articles of the Code of Administrative Offenses, could promote the attraction of individuals and legal entities to administrative liability. Nevertheless, journalists have the right, on a general basis, to bring authorized persons to administrative liability for the unjustified referencing of information to restricted information, failure to provide a response to a request for information, failure to provide information, unlawful refusal to provide information, untimely or incomplete information provision, provision inaccurate information, unlawful refusal to accept and consider a petition, another violation of the Law of Ukraine 'On Citizens' Appeals' (Code of Ukraine on Administrative Offenses 1984).

## Conclusions

For today, ensuring the rights of journalists is carried out with the help of guarantees defined at different legislative levels. Nevertheless, the legal concept of a term 'journalist' is not unified and needs to be specified due to the European standards. This will enable to identify the range of persons covered by state guarantees for the protection of journalists' rights. As guarantees of journalists' rights, one can understand the means and/or ways of protecting the rights and freedoms of journalists fixed at the legislative level, the possibility of realizing their professional activities fairly. The guarantees of the rights of journalists can be divided into general (political, economic, social) and special (which take into account the specifics of the professional activities of journalists and are established in regulatory legal acts regulating the activities of journalists) and legal responsibility. Violation of the Ukrainian legislation on the protection of journalists' rights results in civil, administrative or criminal liability in accordance with the laws of Ukraine.

Considering the very diverse legal and regulatory framework in this area, most of the guarantees of journalists' rights are governed by various legal acts. Therefore, there is an urgent need for the adoption of the Law of Ukraine 'On the Protection of Professional Activities of Journalists', the draft law of which was with drawn from

consideration by the Verkhovna Rada of Ukraine. This will enable the concept of 'journalist' to be fixed, the rights and obligations of journalists to be defined, and journalists' rights to be guaranteed.

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ISSN: 2068-696X

Journal's DOI: <https://doi.org/10.14505/jarle>

Journal's Issue DOI: [https://doi.org/10.14505/jarle.v10.1\(39\).00](https://doi.org/10.14505/jarle.v10.1(39).00)