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## LEGAL ENSUREMENT OF FREEDOM OF EXPRESSION IN UKRAINE

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### Summary

The article examines the general theoretical and constitutional dimensions of the legal safeguards for the protection of freedom of expression in Ukraine.

The purpose of the study is to provide a comprehensive theoretical characterization of the legal mechanisms ensuring the realization and protection of freedom of expression in Ukraine.

The methodological framework of the research is grounded in a system of conceptual approaches (anthropological, systemic, dialectical), general scientific methods (analytical, formal-dogmatic, structural), and specialized legal methods (interpretation of legal norms, comparative legal analysis, and structural-legal methodology).

Findings and conclusions. Based on the analysis of the structure of the freedom of expression of a person as a subjective legal right, the concept of this right is defined as the ability of a person, enshrined in legal norms and provided by the state, to freely express views, collect, search, receive, record, store, distribute, transmit, and to use information and ideas orally, in writing or in any other form and in any way, except for cases specified by law.

The legal mechanism for ensuring freedom of expression in Ukraine is a system of effective legal means of implementing, protecting, and safeguarding freedom of expression in general, as well as its individual elements (possibilities), enshrined in national legal acts and other sources of law.

I would like to emphasize that a number of positive trends in the field of legal support for the implementation of freedom of expression are manifested in Ukraine, namely:

- formation of Ukrainian legislation (in particular, recognition of binding international documents) on issues of freedom of expression and information rights as its component;
- increased criminal liability for crimes against journalists and their family members;
- the possibility for citizens and other subjects to apply to the Parliamentary Ombudsman of Ukraine, the Constitutional Court of Ukraine, the European Court of Human Rights on issues of protection of freedom of expression, etc.

Despite positive trends in the field of legal protection of freedom of expression in Ukraine, there are still a number of problems in this field. The biggest problem is the full-scale invasion of the Russian Federation against Ukraine, which caused massive violations of the rights of journalists and mass media.

**Key words:** human rights, freedom of expression, information rights, violations of the right to freedom of expression in Ukraine, Ukrainian legislation.

### 1. Introduction

Freedom of expression is the foundation of civil society. Its real and maximum provision is a criterion of the state's democracy, and its effective implementation is an important indicator of the level of provision of other human opportunities.

Freedom of expression as a fundamental human right is reflected in the main international human rights documents of global and regional significance. In

Ukraine, the basis of the legal mechanism for ensuring freedom of expression is national legislation, primarily the Constitution of Ukraine dated June 28, 1996, which “guarantees everyone the right to freedom of thought and speech, and to the free expression of his or her views and beliefs” (Part 1, Article 34), the Law of Ukraine “On Information” dated October 2, 1992 (as amended by the Law of Ukraine dated January 13, 2011), as well as other normative legal acts.

An analysis of Ukrainian legislation on freedom of expression and legal guarantees for its provision provides grounds for asserting that it needs improvement and coordination with the norms of international legal documents on human rights.

In Ukraine, human rights are massively violated, in particular, freedom of expression, as a result of the full-scale military invasion of the Russian Federation on the territory of Ukraine.

All these arguments confirm the relevance of the research topic and its scientific, theoretical, and practical significance.

The aim of this study is to provide a general theoretical overview of the legal framework for safeguarding freedom of expression in Ukraine.

To achieve this aim, the following objectives must be addressed:

- to define the concept and structure of the subjective legal right to freedom of expression in Ukraine;
- to describe the legal mechanisms for ensuring freedom of expression in Ukraine;
- to outline violations of freedom of expression in Ukraine under wartime conditions;
- to formulate and substantiate proposals, based on the research findings, for improving the legal mechanisms that guarantee the exercise of the right to freedom of expression in Ukraine.

**The methodological basis of the study** comprises a system of conceptual approaches, general scientific and specialized legal methods, as well as techniques of scientific inquiry. The anthropological approach made it possible to reveal the value and essence of freedom of expression as a subjective legal right. The systemic approach enabled an analysis of freedom of expression as a complex construct encompassing a range of opportunities, including information rights. The use of the formal-dogmatic method allowed for the formulation of definitions of the key concepts under study, as well as proposals for improving the current legislation of Ukraine regarding freedom of expression. Through the structural-legal method, the structural elements of freedom of expression as a subjective legal right were identified. The study also employed such methods as dialectical analysis, comparative analysis, and interpretation of legal norms.

**Analysis of Recent Research and Publications.** Theoretical-legal, international, and branch aspects of freedom of expression, its individual elements (possibilities) and the relationship with other human rights are investigated by the following famous domestic and foreign scientists: V. Bed, S. Gilbert, M. Harrison, M. Verpo, J. Wilcke, E. Zakharov, O. Kokhanovska, N. Kushakova-Kostytska, O. Nesterenko, V. Pavlykivskyi, S. Shevchuk and others.

## 2. The concept, structure of the subjective legal right to freedom of expression in Ukraine

Scientific sources from the theory of state and law, international law, constitutional law of Ukraine, and

other legal sciences contain different interpretations of the content and structure of freedom of expression as a subjective legal right.

According to modern scientific research, international documents on human rights, and normative legal acts of Ukraine and other states, freedom of expression is not considered a political right of a citizen but a personal right inherent to everyone. In this context, S. Shevchuk's researches on constitutional theories of understanding the content and meaning of freedom of expression are important. In particular, the researcher considers the following theories:

– *the theory of four values* (developed by the American professor T. Emerson), according to which constitutional guarantees of freedom of expression are aimed at ensuring the development of the individual; their acquisition of knowledge and establishment of the truth; participation of all subjects of society in the process of state decision-making;

– *the theory of the political process* (it is represented by Professor A. Michaeljohn, American judge R. Bork). According to it, the only purpose of the constitutional guarantee of freedom of expression is to support the democratic political process;

– *the theory of the free market of ideas* (it originated in the works of the English philosophers D. Milton and J.S. Mill). It assumes that open debate, in the absence of state intervention, leads to the discovery of the truth, or at least to the determination of the best prospects, or to the solution of social problems;

– *the theory of individual self-realization* (developed by the American professor M. Radish), according to which the constitutional guarantee of freedom of expression serves to ensure the only fundamental social value – the self-realization of the individual. (Shevchuk S., 2005).

S. Shevchuk emphasized that these theories, which are mostly inherent in the American constitutional doctrine, determine the constitutional practice of the US Supreme Court, although they are no less relevant for other countries, for the practice of the ECtHR (Shevchuk S., 2005). In this context, it is appropriate to emphasize the publication of "Freedom of Speech. Decisions of the Supreme Court of the United States", which highlights thirteen court cases of the Supreme Court of the United States related to freedom of speech – they vividly illustrate the legal duel between the right of citizens to speak freely and the powers of the state to intervene and punish (Maureen Harrison, Steve Gilbert, 2004).

In our opinion, the meaning of the freedom of expression is most fully revealed by the theory of individual self-realization, which covers various aspects of the manifestation of a person's views in the political, economic, spiritual, and aesthetic spheres, and not only in one of them. In our opinion, freedom of expression is a type of personal human rights.

Philosopher J.S. Mill stressed that for the mental well-being of mankind (on which all other types of well-being depend), freedom of thought and freedom of expression are necessary (Mill J.S, 2001).

At this stage of society's development, freedom of expression as a natural possibility of a person is most fully reflected in the main international documents on human rights, which embody the achievements of humanity during the entire period of its existence. These documents record the possibilities of the external manifestation of specific elements of human consciousness (views, faith, beliefs, etc.), for example:

- the right to freedom of thought, conscience, and religion (Article 18 of the Universal Declaration of Human Rights (UN, 1948) (hereinafter - UDHR); Article 18 of the International Covenant on Civil and Political Rights (UN, 1966) (hereinafter - the ICCPR) ); Article 10 of the Charter of Fundamental Rights of the EU);
- the right to freedom of thought, conscience, religion, and belief (Paris Charter for a new Europe);
- the right to freedom of beliefs and to their free expression (Article 19 of the UDHR);
- the right to freely adhere to one's views (Part 1, Article 19 of the ICCPR) and the right to freely express one's views (Part 2, Article 19 of the ICCPR);
- the right to freedom of expression (Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Council of Europe, 1950) (hereinafter - the Euroconvention));
- the right to freedom of expression (Article 11 of the Charter of Fundamental Rights of the EU).

ICCPR and Euroconvention are also components of the national legislation of Ukraine.

The ICCPR declares that «everyone shall have the right to hold opinions without interference» (Part 1, Article 19); «everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice» (Part 2, Article 19).

The structural elements of freedom of expression, according to the European Convention (Article 10), are the following possibilities of a person: to hold opinions and to receive and impart information and ideas.

The content and structure of freedom of expression as a subjective legal right, the principles on which it is based are primarily reflected in the Constitution of Ukraine, the Law of Ukraine «On Information». In a number of other legal acts, the legal means of realization, protection, and safeguarding of this freedom in general, as well as its individual elements (possibilities), are defined: Law of Ukraine «On Media» of 13 December 2022; Law of Ukraine «On State Support for Media, Guarantees of Professional Activity, and Social Protection of Journalists» of 23 September 1997; Law of Ukraine

“On Access to Public Information” of 13 January 2011; Law of Ukraine «On the Basic Principles of Ensuring Cybersecurity of Ukraine» of 5 October 2017.

The Constitution of Ukraine enunciates a number of important principles on which freedom of expression is based: 1) social life in Ukraine is based on the principles of political, economic, and ideological diversity (Part 1, Article 15); 2) No ideology shall be recognised by the State as mandatory (Part 2 of Article 15); 3) censorship is prohibited (Part 3 of Article 15); 4) provision of information security, along with the protection of sovereignty and territorial integrity of Ukraine, provision of economic security, are the most important functions of the State, and a matter of concern for all the Ukrainian people (Part 1, Article 17); 5) ensuring the free and comprehensive development of the individual in society (Article 23).

The Constitution of Ukraine guarantees everyone «the right to freedom of thought and speech, and to the free expression of his or her views and beliefs» (Part 1, Article 34); «everyone has the right to freely collect, store, use and disseminate information by oral, written or other means of his or her choice» (Part 2 of Article 34). So, the Constitution of Ukraine declares individual opportunities for everyone, that are:

- freedom of thought and speech;
- the right to freely express one's views and beliefs;
- the right to freely collect, store, use and impart information (so-called information rights).

According to the Constitution of Ukraine, the so-called information rights are not a component of freedom of expression, as it is enshrined in the main international human rights documents. Freedom of speech is declared in the Basic Law of Ukraine separately from freedom of expression.

The Law of Ukraine «On Information» (Article 2) also singles out the guarantee of the right to information among the main principles of information relations; freedom of expression of views and beliefs. The mentioned law of Ukraine enshrines: “Everyone has the right to information, which provides for the possibility of freely obtaining, using, distributing, storing and protecting information necessary for the realization of their rights, freedoms and legitimate interests” (Part 1, Article 5); «the state guarantees all subjects of information relations equal rights and opportunities to access information» (Part 1, Article 7).

Therefore, according to the Law of Ukraine «On Information»:

- the right to information includes separate opportunities for receiving, using, distributing, storing, and protecting information;
- the right to information is not included in the freedom of expression, as it is declared in the main international human rights documents.

In the Civil Code of Ukraine (in the second book, «Personal non-property rights of a natural person»), the

freedom of expression is, unfortunately, not declared. However, the document contains a caveat that the list of personal non-property rights established in it is not exhaustive (Part 3 of Article 270). The Civil Code of Ukraine declares the right of an individual to information as one of the personal non-property rights that ensures his social existence. In particular, it is established that a natural person has the right to freely collect, store, use and disseminate information (Part 1 of Article 302). In our opinion, a person's freedom of expression is an inalienable personal non-property right; therefore, it should be reflected in the Civil Code of Ukraine.

Analysis of the content and structure of the freedom of expression of a person, based on the Constitution of Ukraine, the Law of Ukraine «On Information», international documents (ICCPR and the European Convention), gives grounds for drawing a number of important conclusions.

1. The interpretation of the considered human freedom in the main international human rights documents and in the Constitution of Ukraine is not the same, so it is necessary to eliminate this discrepancy, namely, to declare in the Constitution of Ukraine that everyone has the right to freedom of expression. In addition, it is expedient to declare not only the freedom of expression but also the freedom of their formation in the main international acts on human rights and in the Constitution of Ukraine.

2. Freedom of expression, according to the ICCPR and the European Convention, which are part of the national legislation of Ukraine, includes such possibilities (elements) as to adhere to one's views and to freely express views (this right includes the following freedoms: to seek, receive, impart, disseminate any information and ideas).

In Article 34 of the Constitution of Ukraine, in contrast to international acts on human rights, the components (possibilities) of freedom of expression are not specified. The Law of Ukraine "On Information" does not declare the right to information as a component of freedom of expression but considers it as a separate possibility of subjects.

Therefore, the structurally subjective legal right to freedom of expression consists of the following elements (possibilities):

- adherence to one's views;
- free expression of views (this right covers the following freedoms: to collect, search, receive, record, store, distribute, impart, and use information and ideas, except for cases defined by law).

In our opinion, the structure of freedom of expression of views reflected in the legislation of Ukraine needs some clarification. First, the right to adhere to one's views is not subject to legal law, as it concerns the internal sphere of the individual. Secondly, the informational rights of a person have a double

subordination; they belong both to the right to form their views (these are the possibilities of searching, accessing, receiving, and storing information and ideas) and to the right to their expression (these are the possibilities of distribution, transmission, and use of information and ideas). In view of this, it is proposed, as already mentioned, to declare in the Constitution of Ukraine not only the freedom of expression but also the freedom of their formation.

3. The results of a comparison of the elements of freedom of expression as a natural right and as a subjective legal right in Ukraine allow us to state that the elements (possibilities) of freedom of expression as a natural right are generally reflected in the legislation of Ukraine. However, some elements of freedom of expression, such as the ability to change one's views, refuse them, and not express them, also need to be legally enshrined in the Constitution of Ukraine.

In the Constitution of Ukraine, it is also necessary to enshrine the following normative provision: no one can be forced to express views or refuse them. In order for such a normative legal provision not to be declarative, it is necessary to provide administrative responsibility for coercion to express views and coercion to renounce them.

4. Based on the analysis of the structure of the freedom of expression of a person as a subjective legal right, the concept of this right is defined as the ability of a person, enshrined in legal norms and provided by the state, to freely express views, collect, search, receive, record, store, distribute, transmit, and to use information and ideas orally, in writing or in any other form and in any way, except for cases specified by law.

### **3. The mechanism of the legal protection of freedom of expression in Ukraine**

Freedom of expression, like any other right of a person or other subjects, in addition to its consolidation and proclamation, requires the establishment of legal means of implementation, protection, and safeguarding, which together constitute a legal mechanism for its provision. In general, legal protection of freedom of expression does not require high financial costs of the state; it is necessary to create an effective system of legal guarantees of the right in question and its elements, which would correspond to international norms.

I believe that the main purpose of the state in the field of the legal protection of freedom of expression is its (the state's) non-interference in the exercise of freedom of expression, not creating obstacles to its implementation. The state's activities to ensure freedom of expression should be carried out in the following areas:

- legislative declaration of freedom of expression and its individual possibilities;
- delineation of clear boundaries of freedom of expression;



- assistance in the realization of freedom of expression in necessary cases (for example, during peaceful assemblies, when expressing views by children, journalists, or when accessing information, etc.);
- creation of mechanisms for promoting the formation of people's views (in the educational process, in the mass media, etc.);
- protection of freedom of expression from possible encroachments on it;
- protection of freedom of expression in cases of encroachment on it or obstruction in its implementation.

The legal mechanism for ensuring freedom of expression in Ukraine is a system of effective legal means of implementing, protecting, and safeguarding freedom of expression in general, as well as its individual elements (possibilities), enshrined in national legal acts and other sources of law.

I would like to emphasize that a number of positive trends in the field of legal support for the implementation of freedom of expression are manifested in Ukraine, namely:

- formation of Ukrainian legislation (in particular, recognition of binding international documents) on issues of freedom of expression and information rights as its component;
- increased criminal liability for crimes against journalists and their family members;
- the possibility for citizens and other subjects to apply to the Parliamentary Ombudsman of Ukraine, the Constitutional Court of Ukraine, the European Court of Human Rights on issues of protection of freedom of expression;
- support and development of the national audiovisual product;
- reduction of the number of state television and radio organizations and subjects of information activity, etc.

Despite positive trends in the field of legal protection of freedom of expression in Ukraine, there are still a number of problems in this field. The biggest problem is the full-scale invasion of the Russian Federation against Ukraine, which caused massive violations of the rights of journalists and mass media.

#### **4. Violation of freedom of expression in the conditions of war in Ukraine**

With its full-scale military invasion of Ukraine, the Russian Federation caused violations of both natural human rights and subjective legal rights enshrined in Ukrainian legislation.

In the three years and four months since the start of Russia's full-scale war, the Russian Federation has committed 839 crimes against journalists and media in Ukraine, according to monitoring by the Institute of Mass Information (hereinafter -IMI).

As of June 24, 2025, Russian forces have killed a total of 107 journalists in Ukraine. Of these, 12 journalists were killed while performing their professional duties

(839 crimes committed by the Russian Federation against journalists and media in Ukraine, 2025).

On March 1, 2022, LIVE TV channel operator E. Sakun died as a result of Russian shelling of a TV tower in Kyiv.

On March 13, 2022, Russian occupiers shot dead The New York Times correspondent Brent Renaud in Irpen near Kyiv. Another American journalist, Juan Diego Herrera Arredondo, was wounded.

On March 14, 2022, Ukrainian journalist O. Kuvshynova was killed during artillery shelling by Russian troops in the village of Gorenka, Kyiv region. Irish citizen Pierre Zakrzewski, the operator of the Fox News TV channel, was killed the same day.

On April 3, 2022, in the city of Mariupol, the Russian military killed the Lithuanian director and documentary maker Mantas Kvedaravičius. The director died while trying to leave the city.

On May 30, 2022, a journalist of the French channel BFMTV, Frédéric Leclerc-Imhoff, was killed in Luhansk Oblast as a result of Russian shelling.

On September 8, 2022, O. Yurchenko, operator of the "Pryamiy" TV channel, who served in the Armed Forces of Ukraine, died in the battles for the liberation of the city of Balaklia (Kharkiv Region) (Russia committed 454 crimes against journalists and media in Ukraine in seven months, 2022).

In June 2025, V. Voloboyev, a mobilized journalist from the Kryvyi Rih city newspaper *Pulse*, was killed. He died as a result of a Russian attack on a military training ground. At the time of his death, he had only been in military training for five weeks. At the *Pulse* city newspaper, the journalist has worked for five years. Other illegal offenses against journalists and media were also committed during the war in Ukraine, namely: kidnapping of journalists – 29; injuries to journalists – 42; attacks on journalists – 46; harassment of journalists, threats, intimidation – 130; shelling of TV towers – 21; raids and attacks on media editorial offices – 30; cybercrimes – 106; turning off Ukrainian broadcasting and broadcasting Russian propaganda – 35 (839 crimes committed by the Russian Federation against journalists and media in Ukraine, 2025).

Among the problems of the legal protection of freedom of expression in Ukraine, we can also single out the following:

- ineffective information policy in the field of countering the information war waged by the Russian Federation against Ukraine;
- imperfection, inconsistency with international human rights documents of certain provisions of Ukrainian legislation on freedom of expression;
- an inadequate level of ensuring the professional activity of journalists and especially their safety; ineffective investigation of crimes against them and their family members;
- insufficient provision of access to the Internet for citizens.

## 5. Conclusions

The structure of the subjective legal right to freedom of expression, enshrined in the legislation of Ukraine, includes the following elements (possibility) of a person: 1) to adhere to one's views; 2) to freely express views (this right includes the freedom to seek, receive, impart, transmit any information and ideas - except for cases specified by law). It was emphasized that the right to adhere to one's views does not fall under the scope of legal law, as it concerns the internal sphere of a person. The structure of freedom of expression as a subjective legal human right needs to be supplemented with the following possibilities: to change one's views, not to express them, to renounce them.

The mechanism of the legal protection of freedom of expression in Ukraine consists of the following elements: national legislation (in particular, ratified international treaties as part of it), which declares freedom of expression, as well as its individual possibilities (elements); legal means of realizing freedom of expression; legal means of its protection; legal means of its safeguarding.

Taking into account the provisions of international human rights documents, it is proposed:

a) to amend Part 1, Article 34 of the Constitution of Ukraine as follows:

"Everyone has the right to freedom of formation and expression of views. This right includes the ability to freely collect, seek, receive, record, store, disseminate, transmit, and use information and ideas, to change one's views, to renounce them and not to express them in any form and by any means."

b) to supplement the Constitution of Ukraine with a regulatory provision: "No one can be forced to express views or to renounce them."

The main problem in the field of legal protection of human rights, in particular, and freedom of expression in Ukraine, is a significant, massive violation of these rights by the Russian Federation as a result of its full-scale military invasion of Ukraine.

In the 21st century, in the center of Europe, the totalitarian state of the Russian Federation committed terrible crimes against the Ukrainian people, in particular, encroachment on freedom of expression. This is a period of trials both for Ukraine and for other countries of the world and for each of us personally. In my opinion, strengthening the faith of the Ukrainian people, and forming a strong Christian state in Ukraine will help to overcome the enemy and win the final victory! Ukraine is a shield for Europe and other countries of the world! The countries of the world should take an example from Ukraine in its fight against evil and injustice! The struggle takes place not only on the material level but also on the spiritual level! Strong faith in God is the key to Ukraine's final victory!

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## ЮРИДИЧНЕ ЗАБЕЗПЕЧЕННЯ СВОБОДИ ВИРАЖЕННЯ ПОГЛЯДІВ В УКРАЇНІ

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### Анотація

У статті проаналізовано загальнотеоретичні та конституційні аспекти юридичного забезпечення свободи вираження поглядів в Україні.

Метою дослідження є загальнотеоретична характеристика юридичного забезпечення свободи вираження поглядів в Україні.

Методологічну основу дослідження становить система концептуальних підходів (антропологічний, системний, діалектичний), загальнонаукових (аналіз, формально-догматичний, структурний) методів і спеціально-юридичних методів (тлумачення юридичних норм, порівняльно-правовий, структурно-правовий).

На підставі аналізу структури свободи вираження поглядів людини як суб'єктивного юридичного права поняття цього права визначено як можливість людини, закріплена в юридичних нормах та забезпечувана державою, вільно виражати погляди, збирати, шукати, одержувати, фіксувати, зберігати, поширювати, передавати і використовувати інформацію та ідеї усно, письмово або в будь-якій іншій формі та в будь-який спосіб, крім випадків, визначених законом.

Юридичним механізмом забезпечення свободи вираження поглядів в Україні є система ефективних юридичних засобів реалізації, охорони та захисту свободи вираження поглядів загалом, а також окремих її елементів (можливостей), закріплених у національних нормативно-правових актах та в інших джерелах права.

Наголошено, що в Україні проявляється ряд позитивних тенденцій у сфері правового забезпечення реалізації свободи вираження поглядів, а саме:

- формування законодавства України (зокрема, визнання обов'язковими для себе міжнародних документів) з питань свободи вираження поглядів та інформаційних прав як її складової;
- посилення кримінальної відповідальності за злочини проти журналістів та членів їхніх сімей;
- можливість громадян та інших суб'єктів звертатися до парламентського омбудсмена України, Конституційного Суду України, Європейського суду з прав людини з питань захисту свободи вираження поглядів та ін.

Попри позитивні тенденції у сфері правового забезпечення свободи вираження поглядів в Україні, залишається все ж таки ще низка проблем у цій сфері. Найбільшою проблемою є повномасштабне вторгнення Російської Федерації проти України, яке спричинило масові порушення прав журналістів та медіа.

**Ключові слова:** права людини, свобода вираження поглядів, інформаційні права, порушення свободи вираження поглядів в Україні, законодавство України.