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Historical evolution of legislative regulation of the media in the west

ЭВОЛЮЦИЯ ЗАКОНОДАТЕЛЬНОГО РЕГУЛИРОВАНИЯ СМИ НА ЗАПАДЕ

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Abstract

The objective of this study is to analyze the legal regulation of the media in Western countries. The study is based on universal scientific methods, such as observation, deduction, analysis, comparative and historical historical analysis of different legislatures and the practices of their implementation. The countries chosen for the analysis are the so-called "old Europe" countries. The study concludes that the legal regulation of the media is a complex issue that must be addressed with a holistic approach. The law is important, but it is not enough to guarantee freedom of expression and information pluralism. There is also a need for effective law enforcement and media monitoring systems.

Keywords: media, legislative regulation, Western Europe, Media Law, censorship.

Аннотация

Целью данного исследования является анализ правового регулирования СМИ в западных странах. Исследование основано на универсальных научных методах, таких как наблюдение, дедукция, анализ, сравнительно-исторический анализ различных законодательных актов и практики их применения. Страны, выбранные для анализа, являются так называемыми странами "старой Европы". В исследовании делается вывод о том, что правовое регулирование средств массовой информации является сложным вопросом, который необходимо решать с использованием целостного подхода. Законодательная база очень важна, однако только ее недостаточно для гарантии свободы выражения мнений и информационного плюрализма. Существует также потребность в эффективных системах правоприменения и мониторинга СМИ.

Ключевые слова: СМИ, законодательное регулирование, Западная Европа, Закон о СМИ, цензура, демократическая журналистика.

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Introduction

Legal mass media regulation is a cardinal matter in Western countries. The viral spread of fake and destructive content in mass media in the recent years has caused an utterly negative response of audience and overwhelming distrust to the mass media in question. The proportion of mass media legal rights and obligations in this respect differs significantly in the legislations of different countries. The very need for such regulation has been caused by the deep understanding of the fact that clear and accurately articulated rules in this sphere inspire the development of social institutes protecting both civil rights and freedom of speech and communication. This balance of rights and obligations is observed differently in different countries.

In some Western states the activity of mass media is regulated within the frame of the universal civil code or some other legislations. In this case, some important norms for journalism are contained in different legal statutes and codes such as the Law on Civil Liability, the Law on Data Protection, the Law on Competition, the Law on Broadcasting and many other laws.

In other countries mass media are regulated by a special law on mass media. Such a law usually constitutes the rules of organizing, functioning and control of mass media. Sometimes these laws may include the norms for the freedom of speech and civil rights protection.

The level of mass media legal regulation varies from country to country from very strict to a soft and flexible grade. In general, mass media regulation must provide a sustainable balance between the freedom of speech and personal civil rights protection (Nguyen et al., 2023).

The main objective of this scientific research is the profound analysis of mass media legal regulation in the Western countries. In particular, the following aspects of the matter will be under a thorough scrutiny:

- different forms of mass media legal regulation in Western countries;
- rights and liabilities proportion in different countries;
- relations between media and authorities.

The article is structured as follows:

In the first section of the article, the historical analysis of mass media legal regulation emerging and developing is presented.

In the second section, the specific ways of different countries' movement towards the freedom of speech will be traced.

In the third section the current level of relations between mass media and politicians in the old European countries will be analyzed, alongside with the specific national mass media regulation legislatures features in different countries.

In the fourth section, the main principles of modern mass media regulation and legal practice problems will be considered.

The analysis ends that it's not just the law itself, which regulates the relations between mass media and the state, between mass media and society but, first and foremost, the system of its proper implementation. That's why it's just the independent mass media watch-dog organizations and, subsequently, courts of all levels that play a key role in the effective functioning of mass media legal system.

Theoretical framework or literature review

The theoretical basis of this research is made up of works by Anikeev B.E., Beglov S.I., Bykov A.Y., Pruttskov, G.V., Rassolova I.M. and other authors. Some articles from The Law Reviews (TLR), the world's leading journal on antitrust and competition law, were used. In her work Skorik N.V emphisises that the freedom of speech doesn't mean permissiveness, but should be strictly limited by law (Rubtsova, & Devdariani, 2022). Levkina L.I. believes that a right for information is one of the basics of democracy and she gives a more than 400 –year old retrospective history of how this legal formed internationally and in the West European states (Levkina, 2015). In her article Nadirova G.K. analyses the efficiency and implementative practice of the laws forbidding mass media crossownership in the Western countries. She pays special attention at mass media antitrust legislation and its evolution and underlines the hazards of over- and under-regulation of mass media. Having studied the specificity of interaction between the British government and central and regional mass media in the country (Nadirova, 2017). Gavrilina S and Surma I. presented its typology and elicited some instruments of the government used to control

mass media. The authors consider that the British government influence and use mass media as a political instrument, even though there is no formal censorship in the country. Using the comparative method for analyzing Russian, European and American mass media legislation (Gavrilina, & Surma, 2020) Rubtsova E.V., Devdariani N.V. stress the peculiarities in the forms of interaction between the state authorities and the civil society in different countries (Rubtsova, & Devdariani, 2022). The detail research of mass media constitutional legal administration in Germany is given in the works written by Privalov S.A. (Nguyen et al., 2023), (Privalov, 2022) and also by Erofeev I.M. (Erofeev, 2018a). Legal, (Erofeev, 2018b).) and Areeva M.V. who investigate the mass media legal system of FRG (Areeva, 2016). Bogach K.O. conducts a comparative legal analysis of the interaction models between the state and mass media in Russia, America and Germany in his research (Bogach, 2011).

Materials and Methods

The article in question is a high-quality research based on such universal scientific methods as observation, deduction, analysis, comparative and comparative historical analysis of different legislatures and the practices of their implementation. The countries chosen for the analysis is a core of the European legal system, they are so-called ‘old Europe’ countries. Knowing of the specificities in their mass media legal systems evolution enables us to better understand their national ways and stands in this sphere.

In Western media studies, two clearly expressed directions associated with the specifics of historical development and found their form in the 19th-20th centuries are distinguished: "island" (Britain and the USA) and "European-continental" (continental Europe). Thus, in Australia, Spain, the Netherlands, and Norway, as well as in the UK and the USA, there are no separate media laws. France has many press laws, which, however, are contained in different codes. In Germany, on the contrary, a whole series of federal media laws has been developed, moreover, each of the lands has its own separate law regulating this sphere (Wilhelm, 2008).

Results and discussion

The countries of Old Europe faced censorship quite early and then fought for a long time for its abolition. The path to reaching consensus between the media and the authorities in terms of recognizing the state's right to restrict the dissemination of information that the authorities considered harmful or undesirable was thorny (Rubtsova, & Devdariani, 2022). And at the beginning, political methods were used to pressure freedom of speech. The first censor of Europe was the Catholic Church: as early as the 5th century, Pope Innocent I compiled a whole list of undesirable books for the flock. Then in the 13th century, the emerging Universities, which were under the strong influence of the clergy, picked up the censorship relay. For instance, at the University of Sorbonne in Paris, the function of censorship was performed by the theological faculty. In the German city of Mainz (1486), the first censorship department was opened, the first act of which was a ban on the distribution of books printed in the local dialect. The first law on preliminary censorship appeared in Spain in 1502. Seven years later, English King Henry VIII passed a law according to which all printing was subject to "secular censorship" (preliminary review by university professors) and "spiritual censorship" (approval by the Archbishop of Canterbury). From 1515, by the bull of Pope Leo X, censorship for all printed publications was introduced in all Catholic countries.

Starting in 1517, a widespread "tightening of the screws" began. For instance, in Germany, the "Edict of Worms on Pre-Censorship" (1521) was adopted, according to which Martin Luther was declared a heretic and a criminal, and all his books were banned from publication and distribution (Nguyen et al., 2023). The introduction of secular censorship, established at the princes' congress in Speyer (1529), led to the printing press becoming completely dependent on local authorities. In France, a taboo was placed on all publications of religious topics that had not been approved by the Sorbonne (1521). In England, after the adoption of the law (1538), without obtaining a royal patent for printers or an ordinance (1557), as well as a decision of the High Royal Court, books and flyers were not allowed for publication, and in the printing houses of London, Oxford and Cambridge without prior approval of the Archbishop of Canterbury or an order of the Bishop of London. All this sharply limited the opportunities for engaging in publishing activities (Bykov, 2023).

The assault on press freedom continued to escalate. In Germany, Charles V proposed new censorship restrictions, which entailed measures of persecution and punishment for the absence of the printer's name and place of printing on the printed publication, 1530. The new censorship

charter adopted at the princes' convention in Speyer (1570) began to regulate not only the content of printed publications but also the printing business as a whole. Censorship became even stricter with the rise of the Jesuits to power (Nadirova, 2017).

In all Catholic countries, the papal inquisition became increasingly harsh:

1545-1563 - The "Council of Trent" in Italy approved a list of prohibited Protestant books (Index of Trent);
1559 - The first printed index of banned books (Index Librorum Prohibitorum) was introduced, compiled by Pope Paul IV;
1571 - Pope Pius V established the Congregation of Indexes, which was responsible for the regular preparation and publication of lists of banned publications (Bykov, 2023).

In England, by the decree of the Star Chamber on book printing (1637), all legal books were subject to the review of the supreme judges, and the chief state secretaries were obliged to censor political works. All other literature fell under the supervision of the Archbishop of Canterbury and the Bishop of London. Only compositions that did not contain "anything contrary to the Anglican Church, the state and government, as well as good manners" were allowed to print. The decree allowed searches and seizures, and only persons who fully met certain requirements and only with the permission of the spiritual authority and members of the Supreme Commission were allowed to engage in typographical work. At the same time, all foreign publications were also subject to review at customs (Pruttskov, 2002).

The approved Patent for Book Affairs in France (1547) prohibited the printing and sale of books directed against the Catholic religion. It obliged, firstly, to submit all works of religious content for preliminary inspection by the theological faculty of the Sorbonne, and secondly, to state the names of the author, printer, and place of the building on each printed work. Secret print shops were categorically prohibited. The edict of 1551 strengthened restrictions, according to it, the death penalty threatened not only owners but also buyers of a book if it did not have preliminary and formal permission (Anikeev, 1999). Every subsequent act adopted by the authorities only complicated the life of publishers. Louis XIII violated the established censorship rights of universities by obliging all manuscripts to be submitted for preliminary review to the chancellor and the custodian of the state seal, and the monarch assigned the duty of monitoring the strict observance of press laws to a special institution (Syndicat pour l'Imprimerie et la Librairie), which was supposed to carry out control over printing houses and bookstores (Beglov, 2002).

As a result of such steps in Europe, power begins to actively use economic levers of pressure on the press through the issuance of patents and censorship. The 17th century was also enriched by a number of laws related to censorship restrictions. Thus, in England, a law on preliminary censorship (1643) and an Act on the licensing of printing (1662) were adopted, and all newspapers criticizing the crown were banned by the chief censor, Roger L'Estrange (Gavrilina, & Surma, 2020).

The tightening of censorship in the 18th-19th centuries involved even greater pressure on the printed word. In France, in 1723, a censorship code was introduced, which provided for executions for any indecent publications directed against religion and the authority of the government. As a result of the division of Germany due to the 13-year war, Friedrich Wilhelm issued a verdict on press cases, and after the unification of many German states into the German Confederation (1815), by the decision of the Carlsbad Conference of Ministers (1819), widespread censorship was introduced for all politically-oriented messages. The adoption and repeated extension of the "Law against Harmful and Dangerous Aspirations of Social Democracy" (1878-1890) in Germany led to a sharp reduction in opposition publications (Privalov, 2022).

Each of the European countries took its own path towards freedom of speech. The dramatic journey towards freedom and the legislative framework for the media that was ultimately formed, as well as its effectiveness, can be traced in the case of the oldest European countries (Rassolova, 2017).

Citizens of both Germany and the United Kingdom have the right to freedom of expression and freedom of information dissemination, and censorship is prohibited by law in both countries. However, it should be understood that freedom cannot be unlimited, as one person's freedom ends where another's begins. Therefore, in the studied countries, a normative legislative framework has been established to create conditions for the adequate functioning of journalism. Laws act as guarantors of the preservation of certain rights and freedoms of citizens and are aimed at ensuring the protection

of both society, journalists, and the state (Erofeev, 2018a).

In the development of the existing legislative framework in Europe that regulates the activities of the media, historical events played a significant role in the countries under consideration. First and foremost, the period of military conflict from 1939 to 1945 had a profound impact on the current functioning of media law. This was particularly evident in the legislation of Germany, as after a long period under the Nazi regime (1933-1945), during which journalism had no rights to freedom of expression, the Constitution adopted in 1949 enshrined the basic rights and freedoms of citizens at the legislative level. In the United Kingdom, freedom of speech was enshrined by law as early as 1689, when the Bill of Rights was adopted. After the end of the war, the country ratified the Convention for the Protection of Human Rights and Fundamental Freedoms, and also introduced new laws for the effective functioning of the media (Rassolova, 2017).

It is important to note that the majority of laws governing European media today were passed before the 2000s. Since then, new laws have been enacted mainly to regulate the internet and television. In Germany, the main general laws regulating the media include the Youth Protection Act, the Cartel Act, the State Secrets Act, and the Defamation Act. In the field of media, we have identified the following specific laws: the Broadcasting Act, the State Treaty on Broadcasting and Telemedia, and the Telemedia Act (Eng-News (n/f)). In 2020, the new State Treaty on Media (Medienstaatsvertrag, MStV) came into effect (Erofeev, 2018b).

In the United Kingdom, the media is subject to the following laws: broadcasting law, defamation law, state secrets law, and communications law. In the country, self-regulatory mechanisms have a stronger impact on the activities of the media compared to Germany. However, the media also adheres to general legislation, the foundations of which are similar in both countries.

There is no single law on the media in the United Kingdom and Germany. In the United Kingdom, the media is subject to a number of general laws of the country. In Germany, the media also operates in accordance with the general laws of the country, but each state in Germany has its own media law. It is important to note that the laws of the German states regarding the media are largely similar, but they have some differences. In order to harmonize these media laws in Germany, there are special agreements that do not allow the states to enact their own laws if they contradict the Basic Law of the Federal Republic of Germany to a certain extent and significantly differ from each other. For example, the State Treaty on Broadcasting defines the organization of television and radio broadcasting structures, which must guarantee freedom of speech and pluralism of opinions to the society, as well as exclude monopolization in the market of information services.

It is important to understand that in a democratic society, laws, both specific to the media sphere and general, to which the media are subject, are created for the benefit of progressive development of journalism. Analysis of specific cases and lawsuits has shown that the legal regulation of the media in the United Kingdom and Germany, despite some differences in the structural organization of legislation, have a number of similar approaches. Given that both countries do not have a single law on the media, they rely on similar laws (Areeva, 2016).

In both the pre-internet era and today, despite a fairly well-developed legal framework, the relationship between journalists and society often moves from the media environment to the courts.

In modern European law, the regulation is based on the principle of complexity of organizational, administrative, social, legal, and economic mechanisms. However, serious problems arose with the rapid spread of internet resources that did not fall under the status of traditional media (Positive Technologies, 2020). When the situation reached threatening proportions, work began on the regulation of activities of individual segments of the Global network. However, these legislative acts do not represent a clear trend towards restraint, and sometimes the actions of European authorities appear inconsistent (Bogach, 2011).

Conclusions

Thus, the Internet gradually becomes an integral part of legal frames in the European countries. The states with even most prominent democratic institutes can't do without a systematic work on the mass and social media legislature advancement to avoid chaotic distribution and consumption of information. The analysis undertaken has revealed that it's not just the law itself, which regulates the relations between mass media and the state, between mass media and society but, first and foremost, the system of its proper implementation. That's why it's just the

independent mass media watch-dog organizations and, subsequently, courts of all levels that play a key role in the developing of free and independent journalism. Actually, mass media legal regulation in the Western countries both makes problems and gives opportunities. On the one hand, it's very important to guarantee the freedom of expression and the pluralism of opinions, but, on the other hand, it's indispensable to defend national security and protect private life and other fundamental rights of citizens. The balance between these two objectives is utterly fragile and requires constant work of the government, mass media and civil society.

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