

---

**Кримінальне право та кримінологія;  
кримінально-виконавче право**

---

УДК 343.9

DOI 10.33244/2617-4154.4(13).2023.91-97

**G. V. Didkivska,**  
*Doctor of Law, Professor,  
Professor of the Criminal Department  
Law and Process,  
State University of Ukraine  
ORCID ID 0000-0003-1714-4804*

## **PREVENTION OF INTERFERENCE WITH THE PROFESSIONAL ACTIVITIES OF JOURNALISTS**

*This article examines the issue of preventing obstruction of the professional activity of journalists and the issue of solving the proper protection of freedom of mass information is impossible without a comprehensive reform of criminal legislation and legislation on mass media. It is noted about the need for reform and law enforcement practice with mandatory consideration of the requirements of international standards regarding information security. It is noted that the protection of the professional activity of journalists and the right of citizens to receive important information in a timely manner is possible only on the basis of a system of interrelated norms of criminal legislation, legislation on mass media and laws providing for citizens' access to quality information.*

*Legal inaccuracies regarding the definition of the victim, different approaches to the definition of concepts and terms, lists, which entail certain inconsistencies in the prevention of criminal offenses related to the obstruction of the professional activities of journalists, lead to problems of bringing guilty persons to criminal responsibility. It is noted that the protection of the professional activity of journalists and the right of citizens to receive important information in a timely manner is possible only on the basis of a system of interrelated norms of criminal legislation, legislation on mass media and laws providing for citizens' access to information. The opinion is expressed that such activities will need to be strengthened after martial law and effective mechanisms for crime prevention in this area should be developed.*

**Key words:** *crime prevention, criminal liability, punishment, qualification of criminal offenses, obstruction of the professional activity of journalists, mass media, information security.*

Today, the issue of prevention of obstruction to the professional activities of journalists, the issue of adequate protection of freedom of mass information is impossible without a comprehensive reform of criminal legislation and legislation on mass media. There is a need

to reform law enforcement practice with mandatory consideration of the requirements of international standards. Protection of the professional activity of journalists and the right of citizens to receive important information in a timely manner is possible only on the basis of a system of interrelated norms of criminal legislation, legislation on mass media and laws providing for citizens' access to information. Although, currently, during martial law, this is a somewhat complicated issue to solve comprehensively.

Article 171 of the Criminal Code of Ukraine currently provides for "illegal seizure of materials and technical means collected, processed, prepared by a journalist, which he uses in connection with his professional activities, illegal denial of a journalist's access to information, illegal prohibition of coverage of certain topics, exposure of individuals, criticism of a subject of authority, as well as any other deliberate obstruction of a journalist's legitimate professional activity - shall be punished by a fine of up to fifty tax-free minimum incomes of citizens, or by arrest for a term of up to six months, or by restriction of freedom for a term of up to three years" [1].

According to many scientists and practitioners, it is believed that the structure of the article is such that it does not meet the modern requirements of our society. Therefore, the Verkhovna Rada of Ukraine adopted the law "On Amendments to the Criminal Code of Ukraine on Strengthening Liability for Criminal Offenses Against Journalists" (draft law No. 3633). This is stated on the website of the parliament. 341 deputies voted for this decision, according to the website of the Verkhovna Rada.

"The draft law is aimed at strengthening the protection of journalists, their close relatives and their family members against the use of threats or violence in connection with journalists' legitimate professional activities, as well as in the case of obstruction of their legitimate professional activities," the explanatory note says.

According to the document, responsibility in the form of deprivation of liberty for a period of seven to fourteen years is imposed for violence against a journalist or members of his family, committed repeatedly or with a prior conspiracy by a group of persons or an organized group.

The law increases the sanctions of Article 171 of the Criminal Code of Ukraine (Hindering the legitimate professional activity of journalists). In particular, the following changes have been made to this article: illegal seizure of journalistic materials "is punishable by a fine of five hundred to one thousand tax-free minimum incomes of citizens or by arrest for a term of up to six months, or restriction of freedom for a term of up to three years"; influencing a journalist with the aim of hindering professional activity "is punishable by a fine of one thousand to two thousand non-taxable minimum incomes of citizens or by arrest for a term of up to six months, or restriction of freedom for a term of up to four years"; obstructing the work of journalists by officials "is punishable by a fine of two thousand to three thousand tax-free minimum incomes of citizens or restriction of freedom for a period of up to five years, with or without deprivation of the right to hold certain positions or engage in certain activities for a period of up to three years".

The authors of the draft law believe that the adoption of the law will help strengthen the protection of journalists, their close relatives and their family members from threats or the use of violence during journalists' legitimate professional activities [2].

In order to understand the need to make changes to the legislation, it is advisable to cite several examples of obstacles to the professional activities of journalists.

Yes, it is documented that security guards periodically did not allow journalists to enter the building of the Zakarpattia Regional State Administration during regional council sessions. "This is selective admission of journalists, non-admission of a separate part to the meeting of the regional council session, which is and should take place on the basis of the principles of openness and publicity," said journalist Stanislav Danko, who was not admitted to the Zakarpattia Regional State Administration due to the lack of an invitation. He said that from 2017 to 2020, this was the fifth case of obstructing journalistic activity in his practice. One of them happened while working with a colleague Olena Mudra. The journalist noted, "We and our colleagues discovered that 1.5 million hryvnias on two projects are questionable in the use of the services we bought," said Olena Mudra. answered my questions, and then stopped, so I filed a complaint with the law enforcement authorities".

Cases of interference with journalistic activity were recorded during the all-Ukrainian project "Barometer of Freedom of Speech".

The regional representative of the Institute of Mass Information in Transcarpathia, Yaroslav Gulan, said that in just one year, approximately 229 possible violations are detected in Ukraine: starting from admission to the session and ending with frank physical obstruction – beating.

"According to official information from the Transcarpathian Regional Prosecutor's Office, in 2020, 9 criminal proceedings were instituted under Art. 171 of the Criminal Code of Ukraine "Interference with the lawful professional activity of journalists", of which 5 were closed, and 4 cases are still under investigation – says Yaroslav Gulan [3].

As we can see, the motives and goals of obstructing the legitimate professional activity of journalists are very diverse: personal hostility, careerism, misunderstood interests of the service, fear of losing the position, reluctance to publish information about the work of the headed institution, etc. In particular, PERSON\_1 was convicted under Art. 171 of the Criminal Code of Ukraine, in connection with the fact that she illegally created obstacles for the journalist to receive information about establishing or refuting the fact of cruelty to animals on the territory of the headed KP "High-Speed Tram", thereby obstructing the journalist's legal activity [4]. An important element for the correct qualification of the actions of guilty persons under Art. 171 of the Criminal Code of Ukraine, the victim of this criminal offense speaks. After all, the further criminal responsibility of the guilty person depends on the correct qualification. Please note that according to Art. 1 of the Law of Ukraine "On State Support of Mass Media and Social Protection of Journalists", a journalist is a creative worker who professionally collects, receives, creates and prepares information for the mass media, performs editorial and official duties in the mass media (in the state or on a freelance basis) in accordance with the professional job titles (jobs) of a journalist, which are specified in the state classifier of professions of Ukraine [5, p. 302].

According to the note to Art. 345-1 of the Criminal Code of Ukraine under the professional activity of a journalist in Article 171, 345-1, 347-1, 348-1 of the Criminal Code of Ukraine should be understood as the systematic activity of a person related to the collection, receipt, creation, distribution, storage or other use of information with the purpose of its distribution to an indefinite circle of persons through print mass media, television and radio organizations, information agencies, the Internet. The status of a journalist or his affiliation with the mass media is confirmed by an editorial or service certificate or other document issued by the mass media, its editorial office, or a professional or creative union of journalists [6, p. 131].

The study of judicial practice established that the correct definition of the method of committing a criminal offense provided for by Art. 171 of the Criminal Code of Ukraine, affects the correctness of the qualification of the actions of the guilty person. Thus, the verdict of the Svalyavsky district court of the Transcarpathian region dated September 20, 2019 acquitted the head of the Polyana village council under Article 171 of the Criminal Code of Ukraine. It was established that the latter did not organize proper consideration of six information requests of the editor-in-chief and a journalist of the newspaper "Syla Narodnoy Kontrolyu", which PERSON\_4 sent in a cover letter to the head of the Polyana village council. While acquitting the person, the court noted that the charge of not providing the journalist with access to information is not specific, as the crime consists of actions consisting in the illegal denial of access to information, and not actions consisting in not providing access to information [7].

Let's turn to the causal complex of the investigated criminal offense. The economic reasons for committing a criminal offense provided for in Art. 171 of the Criminal Code of Ukraine, there is instability, which is manifested, first of all, in unemployment and the long-term growth of the bureaucratic apparatus, which has a high social and material status. Political reasons for committing a criminal offense provided for in Art. 171 of the Criminal Code of Ukraine, are: removal of the population from the real levers of power, from law-making and law enforcement, which contributes to the ever-increasing dependence of the population on officials; penetration of state bodies by criminal elements; corruption. The psychological reasons for committing a criminal offense provided for in Art. 171 of the Criminal Code of Ukraine, there are: deformation of the moral consciousness of officials and the population; legal nihilism of the adult population; the opinion about the impossibility of fighting the "bureaucratic machine" and the corruption of law enforcement bodies is rooted in the public's consciousness. We believe that the reasons for the commission of this criminal offense may also be a negative attitude towards mass media rooted in all layers of Ukrainian society, a large amount of "yellow press", the main purpose of which is to entertain the user of information, low moral standards in society and a misunderstanding of the terms "corporate ethics", "corporate solidarity". The conditions that contribute to the commission of a criminal offense are those phenomena and facts that do not directly cause criminal offenses, but the presence of which can contribute to the emergence of a person's intention to commit them. It is worth noting that the "classical" conditions for committing crimes (alcoholism, drug

addiction, vagrancy, prostitution, poverty) are not characteristic of hindering the legitimate professional activity of a journalist. Most often, a kind of "conflict of interests" arises between the perpetrator and the victim, who have similar socio-demographic characteristics. The final part of the criminological characterization is the development of recommendations for the prevention of the criminal offense provided for in Art. 171 of the Criminal Code of Ukraine, which should consist of high-quality training and selection of law enforcement officers to effectively combat this type of criminal offenses, development of specific measures for prompt response and investigation of the specified criminal offenses, informing journalists and other media employees about forms and measures to protect their rights in within the framework of current legislation. There are many ways to implement them. But, in our opinion, it is the opinion of S.Yu that deserves special attention. Lukashevich, who notes that the implementation of measures to prevent crime is, first of all, possible with the help of a diverse set of public administration tools, in particular, by applying a programmatic approach at different levels according to the scope of action [8, с. 44–45].

Summarizing the above, it is worth emphasizing that the correct definition of a victim of a criminal offense provided for in Art. 171 of the Criminal Code of Ukraine, currently represents a significant problem in the field of lawmaking. It was this that became the subject of consideration by the Supreme Court, which in its decision dated 19.08.2020, after analyzing the above two definitions of the concept of "journalist", concluded that the concept specified in the footnote to Art. 345-1 of the Criminal Code of Ukraine, is much broader than what is established in the mentioned Law of Ukraine. Thus, the legislator included in the Criminal Code of Ukraine the functional criterion of the profession of a journalist as the basis of the definition of this concept, i.e., the status of a journalist directly related to the activity, with the features specified in the footnote to Art. 345-1 of the Criminal Code of Ukraine, and not with the position. Next, the legislator in the note to Art. 345-1 of the Criminal Code of Ukraine was not limited to the dissemination of information only through mass media, which includes print media (press) (Part 1 of Article 1 of the Law of Ukraine "On Printed Media (Press) in Ukraine), audiovisual (electronic) media (Art. 1 of the Law of Ukraine "On Television and Radio Broadcasting"), information agencies (Article 1 of the Law of Ukraine "On Information Agencies"), but also included the Internet in the specified list.

So, as we can see, legislative inaccuracies regarding the definition of the victim, different approaches to the definition of concepts and terms, lists lead to certain inconsistencies in the qualification of criminal offenses related to obstructing the professional activities of journalists, which leads to problems of bringing guilty persons to criminal responsibility. We note once again that the protection of the professional activity of journalists and the right of citizens to receive important information in a timely manner is possible only on the basis of a system of interrelated norms of criminal legislation, legislation on mass media and laws providing for citizens' access to information. In our opinion, such activities will need to be strengthened after martial law.

## REFERENCES

1. Перешкоджання законній професійній діяльності журналістів. Стаття 171. URL : [https://protocol.ua/ua/kriminalnyi\\_kodeks\\_ukraini\\_stattya\\_171/](https://protocol.ua/ua/kriminalnyi_kodeks_ukraini_stattya_171/)
2. Рада посилила відповідальність за вчинення злочинів проти журналістів. URL : <https://www.radiosvoboda.org/a/news-zakon-zlochyny-proti-zhurnalistiv/31082081.html>
3. 5 випадків перешкоджання журналістській діяльності виявили на Закарпатті у 2020-му. URL : <https://suspilne.media/101807-5-vipadkiv-pereskodzanna-zurnalistskij-dialnosti-viavili-na-zakarpatti-u-2020-mu/>
4. Вирок Саксаганського районного суду м. Кривого Рогу Дніпропетровської області від 29.03.2019 року в справі № 214/4970/18. URL : <http://www.reyestr.court.gov.ua/Review/80823666> (дата звернення: 27.10.2020).
5. Про державну підтримку засобів масової інформації та соціальний захист журналістів : Закон України від 23.09.1997 № 540/97-ВР. *Відомості Верховної Ради України*. 1997. № 50. 302 с.
6. Кримінальний кодекс України : Закон України від 05.04.2011 № 2341-ІІІ. *Відомості Верховної Ради України*. 2001. № 25–26. 131 с.
7. Вирок Свалявського районного суду Закарпатської області від 20.09.2019 № 306/1018/18. URL : <http://www.reyestr.court.gov.ua/Review/84433914> (дата звернення: 27.10.2020).
8. Лукашевич С. Ю. Програмування і планування заходів запобігання злочинності та корупції. *Науковий вісник публічного та приватного права*. 2018. № 5. С. 41–46.

### **Г. В. Дідківська. ЗАПОБІГАННЯ ПЕРЕШКОДЖАННЮ ПРОФЕСІЙНІЙ ДІЯЛЬНОСТІ ЖУРНАЛІСТІВ**

*У цій статті розглянуто питання щодо запобігання перешкоджанню професійній діяльності журналістів. Питання щодо вирішення належної охорони свободи масової інформації неможливе як без комплексної реформи кримінального законодавства, так і законодавства про засоби масової інформації. Зазначено про потребу в реформуванні та правозастосовної практики з обов'язковим урахуванням вимог міжнародних стандартів щодо інформаційної безпеки. Наголошено, що захист професійної діяльності журналістів і права громадян на своєчасне отримання важливої інформації можливий лише на основі системи взаємопов'язаних норм кримінального законодавства, законодавства про засоби масової інформації і законів, що передбачають доступ громадян до якісної інформації.*

*Вказано про законодавчі неточності щодо визначення потерпілого, різні підходи до визначення понять і термінів, переліків, що зумовлюють певні неузгодженості під час запобігання кримінальних правопорушень, пов'язаних з перешкоджанням професійній діяльності журналістів, що призводить до проблем притягнення винних осіб до кримінальної відповідальності. Зазначено, що захист професійної діяльності журналістів і права громадян на своєчасне отримання важливої інформації можливий лише на*

основі системи взаємопов'язаних норм кримінального законодавства, законодавства про засоби масової інформації і законів, що передбачають доступ громадян до інформації. Висловлено думку, що таку діяльність необхідно буде посилити після воєнного стану та розробити дієві механізми щодо запобігання злочинності у цій сфері.

**Ключові слова:** запобігання злочинності, кримінальна відповідальність, покарання, кваліфікація кримінальних правопорушень, перешкоджання професійній діяльності журналістів, засоби масової інформації, інформаційна безпека.

Стаття надійшла до редколегії 18 жовтня 2023 року