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**FREEDOM OF MASS INFORMATION IN THE RUSSIAN FEDERATION
AND THE FEDERAL REPUBLIC OF GERMANY: COMPARATIVE
CONSTITUTIONAL AND LEGAL STUDIES**

12.00.02 - constitutional law; constitutional litigation; municipal law

SUMMARY

thesis for the degree of Candidate of Sciences in Law

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Relevance of the thesis topic. The adoption of the current Constitution of the Russian Federation by popular vote on December 12, 1993 resulted in a significant reform of the entire system of constitutional human and civil rights and freedoms. One of the new constitutional subjective freedoms was freedom of the mass media, the one guaranteed by Article 29(5) of the Constitution of the Russian Federation. This freedom is an important component of a democratic state governed by the rule of law, especially in the context of the development of an information and communications society. The development of information and digital technologies opens up new horizons both for the progressive development of Russian democracy, including through improving the implementation and protection of freedom of the mass media, and for the destabilizing impact on the established foundations of public and state order, through both the infringement and abuse of freedom of the mass media. In this regard ensuring the security of individuals, society and the state in the application of information technology and the turnover of digital data received additional guarantees by the constitutional reform in Russia¹.

However, in today's Russia, there are serious problems in the realization of freedom of the media, including through the media, as evidenced by the statistical data provided. Thus, according to the Press Freedom Index compiled annually by Reporters Without Borders, the Russian Federation ranks 148-150 out of 180 for the period from 2018 to 2021 (2018 - 148, 2019 - 149, 2020 - 149, 2021 - 150)².

The important role of freedom of the media in preserving and increasing Russia's cultural heritage and protecting the traditional values of Russian society calls for a change in the current situation. The importance of preserving these social development benchmarks was highlighted by Russian President V.V. Putin in his Address to the Federal Assembly of the Russian Federation on January 15, 2020³.

¹ Constitution of the Russian Federation: adopted by popular vote on 12.12.1993 as amended by the Law of the Russian Federation on amendments to the Constitution of the Russian Federation from 14.03.2020, № 1-FKZ // Sobranie zakonodatel'stva of the Russian Federation. 2020. № 11, art. 1416.

² Reporters Without Borders [website]. URL: <https://rsf.org/en/ranking>.

³ Address of the President of the Russian Federation to the Federal Assembly of the Russian Federation of 15.01.2020 // Rossiyskaya Gazeta. 2020. № 7.

While the «collective West» and a number of Eastern European states increasingly apply the methodology of double standards and stereotypes, used in legitimizing the actions of «their own» and «outsiders» Russian values protection becomes especially relevant⁴. Numerous refusals by countries of the «collective West» to establish an international dialogue in the field of information and cybersecurity, among other things, confirm the relevant vector of their policies, as V.V. Putin pointed out in his Address to the Federal Assembly on April 21, 2021.⁵

Amendments to the Constitution of the Russian Federation as of March 14, 2020, reflect the aspiration for preservation and further development of traditional values. In particular, the new Article 67.1 as well as the new editions of Article 68 and Article 69 of the Russian Constitution are aimed at preserving traditional Russian cultural values such as the memory of ancestors; historical truth; spiritual, moral and intellectual development of children; ethno-cultural and linguistic diversity; all-Russian cultural identity. Only through the effective functioning of the mass media as institutions for shaping public opinion and, consequently, the adequate implementation of freedom of the media guaranteed by the Constitution of the Russian Federation, can this objective be achieved.

Total globalization, including that in the field of information, is one of the modern world's trends. Globalization determines the increasing influence of legal systems of different states on each other, turning into reciprocal reception of legal experience. This process is also typical for the branch of constitutional law⁶. Joint enrichment of different states' legal systems urges scientific comparative legal research aimed at harmonization of the indicated processes.

⁴ Yeremyan V.V. Do Comparativists Have a Reason to Be Optimistic? (Russian Constitution as a «mirror» of state building) // Bulletin of Saratov State Law Academy. 2018. № 2 (121). P. 1.

⁵ Address of the President of the Russian Federation to the Federal Assembly of the Russian Federation of 21.04.2021 / official website of the President of Russia [website] URL: <http://kremlin.ru/events/president/news/65418> (date of reference: 09.05.2021).

⁶ See: Nevinsky V.V. Internationalization of the subject of constitutional law of Russia // Internationalization of constitutional law: current trends: monograph / Ed. by N.V. Varlamova and T.A. Vasilieva. M. IGP RAN, 2017. P. 50-56.

The Germany was chosen as an object for a comparative constitutional-legal study for a number of reasons: firstly, the constitutional-legal institutions of the Russian Federation and the Federal Republic of Germany are somewhat similar: both countries belong to the Roman-German legal family, are federations, and apply the same model of constitutional control - the Austrian one. Secondly, Russia historically has very close cultural, economic and political ties to these very German states. Thirdly, Germany is one of the leading democracies in the world according to the Press Freedom Index - Germany is 13th in the world in 2021 among 180 states⁷.

A comparative analysis of German legislation on the freedom of the media, the decisions of the German Federal Constitutional Court, and the practices of civil society institutions in the sphere of the media seems useful precisely because of the legal, political, and economic proximity between Russia and Germany and the high level of German democracy.

Degree of scientific development of the topic. The relevance of the research on constitutional freedom of the mass media has predetermined the availability of a considerable number of scientific papers on the subject.

The need to study the nature of constitutional freedom of the media required reference to the works of the following Russian scholars: S.A. Kulikova, V.N. Monakhov, A.G. Richter, N.A. Sarkisova, M.A. Fedotov, V.S. Khizhnyak, S.N. Sheverdyayev and others, as well as the works on freedom of the media of the following German scholars: M. Bullinger, M. Baer, A. Wagler, J. Wilke, J. Kaje, A. Koreng, M. Princip, H. Pöttker, H. Robbers, J. Salzwedel, U. Scheuner, R. Schnoor and others.

The studying of the role of freedom of mass information in ensuring the development and functioning of society and the state was followed by the analysis of scientific literature on democracy, civil society, constitutional values, as well as the nature of subjective freedom, its correlation with subjective right, constitutional guarantees, restrictions and limits of subjective freedom. In this regard, the

⁷ Reporters Without Borders [website]. URL: <https://rsf.org/en/ranking>.

dissertator studied the works of such Russian scholars as: S.A. Avakyan, M.V. Baglay, N.A. Bobrova, N.V. Vitruk, V.V. Yeremyan, V.T. Kabyshev, A.A. Klishas, G.N. Komkova, M.A. Krasnov, V.I. Kruss, V.L. Kulapov, M.A. Lipchanskaya, V.O. Luchin, A.V. Malko, A.F. Maly, S.V. Narutto, V.V. Nevinsky, I.N. Plotnikova, M.V. Presnyakov, V.A. Terekhin, A.A. Troitskaya, L.A. Tkhabisimova, I.E. Farber, N.M. Chepurnova, B.S. Ebseev and others; and also German scientists: R. Aleksi, A. Hansel, K. Gol, G. Krishniok-Schmidt, P. Lerche, R. Smend, K. Schmitt, K. Stern, and others.

The author has read the works of world and domestic philosophers, sociologists (T. Hobbes, B. Spinoza, J. Masuda, A. Starikov, A. Chernykh, L. Shesterkin and others) while researching the nature, place and role of freedom of mass information in the system of public goods.

Among the dissertation studies devoted to certain aspects of constitutional freedom of mass information are: V. G. Elizarova – «Freedom of Mass Information in the Russian Federation: Constitutional Basis and Legal Restrictions» (Moscow, 2002); S. A. Lokinskaya – «Freedom of Mass Information: Constitutional and Legal Research» (Chelyabinsk, 2004); E. G. Lysova – «Legislation of Mass Information in the Russian Federation: Constitutional and Legal Aspects» (Chelyabinsk, 2004). (Stavropol, 2005); M.S. Trofimov – «Realization of the right to freedom of mass information in the subjects of the Russian Federation located within the Southern Federal District» (Stavropol, 2005); S.A. Suslikov – «Constitutional and legal regulation of mass media in the Russian Federation» (Saratov, 2007); L.A. Pogrebinskaya – «Realization of constitutional freedom of mass information: Russian legislation and practice of its application» (Tyumen, 2009); I.G. Frolova – «Constitutional and legal guarantees of freedom of mass information in the Russian Federation» (Saratov, 2012); R. M. Karakotov – «Constitutional and legal bases and problems of realization of freedom of mass information in the Russian Federation» (Moscow, 2013).

However, in these dissertations, certain aspects of constitutional freedom of the media (guarantees, restrictions, etc.), the legislation of the Russian Federation on

freedom of the media, the history of its development, the legal status of the main subjects of this freedom (the media) are covered, mainly from the perspective of Russian constitutional law doctrine. Comparative analysis of freedom of mass information as a holistic legal phenomenon has been given little attention in the science of constitutional law of the Russian Federation and foreign countries. Therefore, a deep and comprehensive comparative constitutional and legal study of freedom of the media in the Russian Federation and the Federal Republic of Germany, as one of the most developed states in the field of legal regulation of the considered freedom, is deemed necessary.

Public relations arising in the sphere of legal regulation of constitutional freedom of the media in the Russian Federation and the Federal Republic of Germany became **the object of research**.

At the same time **the scope of the study** included the legislation of the Russian Federation and the Federal Republic of Germany on freedom of the media, subordinate acts, acts of constitutional control, law enforcement practice, together with the provisions of the Russian and German constitutional doctrines on freedom of the media.

Aim and tasks of the study. The author aimed at creating an authentic concept of mass information freedom and preparing practical recommendations for improving domestic legislation and the system of civil society institutions in the sphere of implementation of constitutional freedom of mass information based on a comprehensive monographic comparative constitutional and legal analysis of the nature of this freedom in Russia and Germany.

To specify the main goal of the study the following tasks were identified:

- to investigate the essence of freedom of mass information in the constitutional law of the Russian Federation and the Federal Republic of Germany;
- to analyze freedom of the media as a constitutional and axiological category;
- to define the role of freedom of mass information when an information society emerges and develops;

to study constitutional and legal guarantees of freedom of the media in the Russian Federation and the Federal Republic of Germany;

to undertake a comparative analysis of Russian and German legislation on freedom of the media, as well as the legal positions of the Constitutional Court of the Russian Federation and the Federal Constitutional Court of Germany regarding this freedom;

to determine the nature and correlation of the limits and restrictions on freedom of the media in the Russian Federation and the Federal Republic of Germany;

to examine public control over the realization of constitutional freedom of the media, as well as self-control in media self-regulation institutions in Russia and Germany;

to identify areas and develop proposals for improving Russian legislation.

The methodological basis of the thesis research. The formal-logical methods - analysis, synthesis, induction, deduction - formed the methodological basis of the study. Structural and systemic functional, statistical methods were also applied. While researching special methods of legal knowledge, such as comparative-legal and formal-legal, were also used.

International normative legal acts, the Constitution of the Russian Federation, the Basic Law of the Federal Republic of Germany, federal legislation of the Russian Federation and the Federal Republic of Germany, strategies, doctrines, concepts, legislation of subjects of the Russian Federation and the Federal Republic of Germany, by-laws of the Russian Federation and the Federal Republic of Germany formed **the normative legal framework of the study**.

The acts of the Constitutional Court of the Russian Federation and the Federal Constitutional Court of Germany, acts of civil society institutions of Russia and Germany, official statistics, the data of sociological surveys provided **the empirical basis of the study**.

Scientific novelty of the dissertation research is conditioned by the scope and aim of the dissertation. For the first time in Russia, a comprehensive

comparative constitutional and legal study of the legislation and doctrinal provisions of the Russian Federation and the Federal Republic of Germany on the freedom of the media, as well as law enforcement practice in the area, has been conducted. As a result of the efforts made by the author, the complex, multifaceted nature of freedom of the media was substantiated; the author's definition of subjective freedom of the media and freedom of the media as a constitutional value was formulated; the correlation between freedom of the press and freedom of information in Russian and German constitutional law doctrine was deduced, their common and special features were identified; the nature of the limits and restrictions on freedom of the media in both countries was established.

The guidelines and specific recommendations for improving and developing Russian legislation on constitutional freedom of the mass media and the relevant law enforcement practice have been defined.

The following main provisions are presented for the defense:

The following main findings are presented for the defense:

1. The author has formulated a definition of freedom of mass information as subjective freedom, whereby free mass information is understood as the ability of an individual, independently and (or) through the creation and operation of the media, to be a subject of social relations arising in the production, receipt, transmission, search and dissemination of mass information.

Freedom of mass information is a type of subjective freedom. This position is supported by the following attributes of freedom of mass information that distinguish it from a subjective right: 1) freedom of mass information, along with all subjective freedoms taken as a whole, establishes the boundaries of public relations, violation of which is not allowed, except in cases prescribed by law; 2) freedom of mass information can be implemented by a person independently, without counteraction of his counterparts in the society.

2. The axiological nature of freedom of the media in the legislation and doctrine of constitutional law in Russia and Germany has been substantiated. The axiological nature of this freedom is determined by its importance for the

development of a democratic order and civil society. In this sense, freedom of the mass media is an autonomous concept, independent of other approaches to the nature of this freedom.

Based on the independent constitutional and legal nature of freedom of mass information, such freedom can be qualified as a fundamental weal necessary for the creation and development of a democratic state and civil society, reflecting an ideal system of social relations in the sphere of production, receipt, transmission, search and distribution of information among a wide range of people, the structural unit of which is the practical implementation of subjective freedom of mass information.

3. The ontological difference between freedom of mass information and its close analogous freedom of the press and freedom of information in Russia and Germany has been proved. Freedom of the press according to the approach, which is widespread in German doctrine, as well as among some domestic constitutional law science specialists, arose prior to freedom of mass information, and has been absorbed by it during the development of methods of production and dissemination of mass information.

The correlation between freedom of information and freedom of the mass media in Germany and Russia is also not identical. Thus, one can speak of a «broad» understanding of freedom of information in Russia, in which freedom of the media is a constituent element of the former; and of a «narrow» understanding of freedom of information in Germany, which gives everyone the opportunity to obtain information from publicly available sources. Hence, freedom of information and freedom of the media in Germany are close, but not correlated as part and parcel.

4. While researching the development of information and communication society in Russia and Germany, the specifications of the new subject of freedom of mass information - social media - have been identified and specific practical proposals for the legal regulation of this institution have been developed. It is proposed that the Federal Law «On Social Media in the Russian Federation» be adopted, in which it is advisable to:

1) institutionalize social media as a subject of legal relations and give them a legal definition;

2) provide for the basic principles of organization and functioning of social media, such as: the priority of human and civil rights and freedoms, including the constitutional right to privacy, personal and family confidentiality, the right to protect one's honor and good name; freedom of mass information and prohibition of Internet censorship; reliability of information distributed through social media; unacceptability of abuse of freedom of mass information; integrity of social media administrations.

3) establish a legal mechanism to counteract the dissemination of unlawful content through social media.

5. The existence of different approaches to the legal prohibition of censorship in the Russian Federation and the Federal Republic of Germany has been confirmed. Domestic legislation uses a «broad» approach to the prohibition of censorship - both preliminary and subsequent censorship are prohibited by law. German legislation uses a «narrow» approach - the constitutional prohibition applies to preliminary censorship. This difference results from different legal approaches to understanding the nature of censorship itself. In Russia, censorship is understood to be directly unlawful actions that violate the provisions of Article 3 of the Law of the Russian Federation «On the Mass Media», and it can be carried out by subjects of different legal nature. In Germany, only state authorities and their officials perform censorship. At the same time, the interpretation of censorship uses a broader approach and understands it to include lawful actions aimed at eliminating media materials that violate other legally protected benefits. Thus, the institution of legal subsequent censorship has developed in the Federal Republic of Germany as a legal instrument to combat the dissemination of unlawful information.

6. The position that «limits» and «restrictions» on freedom of the mass information in Russia and Germany are two separate categories has been substantiated. The limits of freedom of the mass information are the boundaries of

its existence, which do not depend on the legislator and are determined by the nature of this freedom, as well as its interaction with other public goods.

In contrast to limits, restrictions are established by the domestic legislator in the manner envisaged in part 3 of Article 55 (through adoption of the federal law in order to protect the constitutional benefits) and Article 56 (in conditions of special legal regimes, in accordance with the provisions of federal constitutional laws) of the Constitution of the Russian Federation. In Germany, in accordance with Article 19(1) of the Basic Law, a procedure similar to that enshrined in Part 3, Article 55 of the Russian Constitution is established.

7. It is established that today the system of public broadcasting in Russia is at a low level, which has a negative impact on the development of civil society in the country. In this connection, it is proposed to supplement the Law of the Russian Federation of December 27, 1991 No. 2124-1 «On Mass Media» with Article 23.1 «Public Broadcasters», where the possibility of creating «public broadcasters», their structure and financing procedure should be stated. With this, it is recommended to define ««public broadcaster» as a Russian legal entity that forms a television or radio channel and distributes it in the prescribed manner on the basis of a television or radio broadcasting license, whose governing bodies are made up by two or more public associations registered in the prescribed manner on the territory of the Russian Federation.

Bring Presidential Decree № 455 of April 17, 2012 «On Public Television of the Russian Federation» into compliance with the proposed amendments.»

8. Relying on the comparative analysis of media self-regulation in Russia and Germany, the need to reform current domestic media self-regulation system by taking into account the German system of press self-regulation is substantiated. A hierarchical system of media self-regulation institute is suggested to be created and developed. The following order of formation of the institute of self-regulation seems to be appropriate: mass media - a public organization of a group of mass media jointly organized on the basis of geography or the method of creation and distribution of mass information - the Public Board.

Practical significance of the research. The conclusions drawn in the dissertation study, along with the specific proposals and recommendations which have been prepared, may form the basis for the scientifically substantiated improvement and development of the legislation of the Russian Federation on freedom of mass information. Detailed proposals for amendments and supplements to the current Russian legislation reflect the practical significance of this research. In particular it is proposed:

To supplement the Law of the Russian Federation of 27.12.1991 № 2124-1 «On Mass Media» with Article 2.1 «Public Task of Mass Media», which would consequently define the public task of mass media - participation in formation of public opinion; to supplement Article 38 «Right to Receive Information» of the Law with Part 4, empowering the mass media with the right to demand that state and local self-government agencies provide information about their activities no later than competitors of the media outlet that has applied for the information.

Approbation of the results of the study. The main provisions and conclusions of the thesis research were covered by scientific publications and presented at scientific and practical conferences of a different kind, including: International scientific and practical conference dedicated to the 25th anniversary of the Constitution of the Russian Federation (September 14, 2018, Saratov, «Saratov State Law Academy»), I International scientific and practical conference «Problems and challenges of digital society: trends of development of legal regulation of digital transformations» (October 17, 2019, Saratov, «Saratov State Law Academy»); XI International Constitutional Forum «System of constitutional law of modern Russia: values, principles, institutions and norms» (December 12, 2019, Saratov, «Saratov National Research State University named after N.G. Chernyshevsky»); VIII International scientific conference «Modern cultural and educational space of humanities and social sciences» (April 8, 2020, Saratov, FSBEI HE «Saratov National Research State University named after N. G. Chernyshevsky»); IV International scientific-practical conference «Tambov legal readings named after F.

N. Plevako» (May 22-23, 2020, Tambov, «Tambov State University named after G. R. Derzhavin»).

Certain results of the research were presented at scientific competitions of different status, in particular: the International competition of German-Russian legal prize 2018 (2018, FRG, Wiesbaden, German-Russian Bar Association, Russian-German Foreign Trade Chamber, Russian-German Law Institute, Wismar Eastern Institute), the All-Russian competition of scientific works of young scientists «Actual problems of constitutional development of the Russian Federation at the present stage», dedicated to the 25th anniversary of the Russian Federation Constitution (2018, Moscow, All-Russian public organization Association of Lawyers of Russia).

The structure and content of the thesis are determined by the aim and tasks of the research. The work consists of an introduction, three chapters, bringing together nine paragraphs, conclusion and a list of references.

The introduction of the thesis substantiates the relevance of the chosen topic, defines the object, scope, aim and tasks of the research, theoretical and practical significance of the research, formulates the novelty and the provisions put forward for their defense, presents details on the approbation of research results, outlines the structure of the work.

Chapter 1. «Freedom of mass information as a constitutional category and constitutional value in the Russian Federation and the Federal Republic of Germany» is devoted to the analysis of the essence of constitutional freedom of mass information, its axiological nature and place under the current processes of society informatization.

Chapter 2. «Constitutional and legal regulation of freedom of mass information in the Russian Federation and the Federal Republic of Germany» is focused on the specifics of the mechanism of legal regulation of constitutional freedom of mass information in the Russian Federation and the Federal Republic of Germany.

Finally, **Chapter 3. «Constitutional and Public Control of Freedom of the Media in the Russian Federation and the Federal Republic of Germany»** examines the specifics in exercising control functions to ensure freedom of the mass information by the Constitutional Court of the Russian Federation and the Federal Constitutional Court of Germany, as well as by some civil society institutions in both countries.

The conclusion summarizes the results of the research, formulates theoretical conclusions and provides specific recommendations for improving the current legislation and law enforcement practice.

Publications of the author related to the topic of the research. 11 scientific articles, including 5 articles in the leading peer-reviewed scientific journals recommended by the Higher Attestation Commission under the Ministry of Science and Higher Education of the Russian Federation, 2 of which were published in scientific journals recommended by the Academic Council of RANEPA for publishing articles on jurisprudence, were published on the topic of the dissertation research.