



INFORMATIONAL RIGHTS' PROTECTION IN INTERNATIONAL LAW

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SUMMARY

The article is devoted to the analysis of informational rights' definition and meaning, analysis of the rules of international law regulating the informational rights' realization and protection. The analysis of international legal instruments estimating the freedom of information and the right to information is carried out. On the basis of legal literature the definition and peculiarities of informational rights are given. The problems of Internet legal regulation and the right to access to Internet as one of informational rights are viewed. The analysis of international organs' activity on the protection of informational rights is carried out. The directions of international cooperation in the sphere of informational rights' protection are defined.

Key words: right to information, freedom of information, informational rights, informational rights' protection, Internet, human rights.

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Статья посвящена анализу понятия и содержания информационных прав человека, анализу норм международного права, касающихся реализации и защиты информационных прав человека. Осуществляется анализ международно-правовых документов, закрепляющих свободу информации и право на информацию. На основании юридической литературы дается определение понятия информационных прав человека, определяются их особенности. Раскрываются проблемы международно-правового регулирования Интернета, права доступа к Интернету как одного из информационных прав человека. Осуществляется анализ деятельности международных органов по защите информационных прав человека. Определяются направления международного сотрудничества в сфере защиты информационных прав.

Ключевые слова: право на информацию, свобода информации, информационные права человека, защита информационных прав, Интернет, права человека.

Resolution of the problem. Informational rights are the basis of the democratic society and many international legal instruments confirm this. A person has some inalienable rights from his birth in particular the right to information. A state has no right to violate human rights, the informational rights' observance is a necessary condition of deserving person's life, and they are guaranties for all other human rights' realization. It is stressed in UN Resolution 59 (I) 1946, where underlines that freedom of information is the main human right and it is also a criterion for all other kinds of freedom which are under defense of UNO.

Globalization, informational society development and Ukrainian integration in the world informational space cause the necessity for a scientific research of theoretical and methodological grounds of informational sphere in international law, in particular the sphere of informational rights' realization and protection.

Relevance of the research topic is also confirmed by the following. Free access to information has a defining character for guaranteeing of democratic relations between a state and its citizens who should influence the state organs' decisions adoption and realization effectively. This influence will provide all human rights and freedoms appropriate realization, because informational rights can be characterized as all human rights' guarantee. Despite some positive changes human rights situation in Ukraine remains insoluble. Such a conclusion was made by American law-defense organization «Human Rights Watch» in its review published 29.04.2011 in New-York. However a complex research of informational rights' protection in the sphere of human rights protection was not made.

State of research. Informational relations development caused an interest of

many scientists including the representatives of international law doctrine. Some aspects of the problem were researched by such scientists as I.L. Bachilo, Ju.M. Baturin, B. Gogol, A. Grischenko, O. Ermishina, Ju. Kolosov, V. Kopilov, O. Kohanovska, O. Nesterenko, A. Pazjuk, D. Saveljev, M. Cherkes, K. Shahbazjan, T. McDonag, M. Frumkin, D. Mente and some others. Their works were the fundamental basis for research of the issues examined in this article.

The main purpose of the article is to discover and generalize theoretical and practical grounds of informational rights' protection in international law on the basis of complex and comprehensive analysis of doctrine, legal acts and practice concerning informational rights' realization and protection.

Basic material. Informational rights' protection in international law became

an independent trend in human rights development. It is connected with the principle of democracy fixation in international law. The meaning of this principle is rather wide and it includes the international law principles' functioning characteristic and some criteria for a national legal and political system development. International human rights standards can be realized only in a democratic state. Democracy and the right to information cannot exist in isolation from one another. The right to information, including information about personal rights and the mechanisms of their realization and protection, is the main «stone» of human rights' protection mechanism.

For many centuries a society has discussed and debated issues related to freedom. This freedom is represented by freedom of a person and an individual. They are economic, political and social freedoms. They are freedoms for different political system and at different times.

The freedom of information, its receiving and spread and information change is of great importance too. Information is vital to man, because without it he cannot make a choice, and use his freedom.

The right to information and its interpretation and realization in today's society originates from the freedom of information. The freedom of information is not limited by the function only to receive information. The freedom of information is a part of human freedom and affects its



realization. For this freedom's realization a person fills up the available information, for example, by sharing it with other people, producing new information [1, p. 3-4].

UN Resolution 59 (1) 1946 stresses that the freedom of information is a basic human right and it is a criterion for all other kinds of freedom which are under defense of UNO.

Human rights are defined and normatively structured features and peculiarities of an individual that express his freedom, they are also integral and necessary means and conditions of his life, relationship with a society, state and other individuals [2, p. 1].

Informational rights are special and specific kind of human rights because informational society poses the problems of finding more appropriate mechanisms of relations regulation at all levels [3, p. 71].

As Afanasjeva O. and Afanasjev M. [4] underline, the sphere of human rights is characterized by significant change and it is a reply for the modern crisis of democracy. The realization of democratic ideas is restricted by the individuals' selfishness and by the specialization and professionalization of politics, significant manipulations of public opinion. And a subjective right to information resists these phenomena. The right to information has a public, state-civil nature and plays a state-building and society-building role [5, p. 156]. This right is the real guarantee of political domination transparency [6, p. 6].

As it is rightly noted by L. Tereschenko, the access to information is important not only for individuals, it is also of great interest for business structures, because it is important for them to receive information on a wide range of issues in time [7, p. 46].

Marhgeim M. and Gavrishov D. underline that it is difficult to include informational rights in one of the generations of human rights, because they can be considered as the rights of the first generation, so as the rights of the fourth generation of human rights [8, p. 4].

In the process of informational rights' legal regulation it is necessary to observe the rules and principles of international law and take into account that the right to information meaning has changed together with the civilization development.

It should be also taken into account that information is not just data, but it is connected with the individual's possible behavior, the probability of individual's self-expression, the necessity of the establishment of certain guarantees and protection of the right to information.

Informational rights can include such elements:

- the right to access to the documents and other materials, information resources and informational systems,

- the right to appeal for information to certain entities,

- the right to receive information from certain subjects,

- the right to record information, including through technical means,

- the right to reproduce the information obtained in a lawful way,

- the right to bring information to specific entities through its publication and spread through data exchange network (including Internet), transmission it through the mass media in the mode of messages [9, p. 127-132].

International fixation of the right to realize informational rights not only in the territory of one country, but also in foreign countries, became the basis for a number of constitutions and a condition of international informational exchange development [10, p. 107].

Informational rights can be represented by the rights of mass media, the right of access to Internet, the right to ecological information, the right to access to public, legal information, the right to protect private information (privacy) etc.

The fulfillment of informational rights and freedoms should not violate the rights and freedoms of other individuals. That is why there should be one more informational right in legislation, that is the right to protection from information, and the issues of informational rights restriction should be clearly regulated. However, the limitations of informational rights should apply only as an exception, and the governmental agencies can use such measures only if they are really necessary in the situation and it is impossible to solve the task by any other legal means [11, p. 26].

An informational society that was usually thought as a product of the future is a reality now. Nowadays Internet is developing quickly and it is covering a wide range of participants of international informational change. It is obvious that Internet became a significant factor of public, political and economic life. This explains the different scientists' interest to informational rights, to the global network, however the issue of legal regulation of Internet and of international legal regulation particularly, are opened for research.

Information and communication technologies are among the main factors that influence the modern society formation. For many people Internet became a common phenomenon, as print media, television or radio.

International law also regulates the activities connected with the global network. International law regulates the issues concerning the rights and freedoms in Internet, some kinds of activities in Internet, and also the functioning of Internet. The observance of the general and special principles of international law by the participants of informational change is of great importance.

The issues of personal rights and freedoms protection, e-commerce, intellectual property protection, labor in Internet are mostly studied. International community is interested in the development of these issues regulation and the results of the activity of a number of universal and regional international organizations prove this.

Though Internet has many advantages, it also has some negative aspects which should be taken into account in order to be regulated, for example censorship is necessary as for some materials that threaten morals of society.

The possibility to use informational wars by some developed countries is one of the problems when enormous potential of informational and cybernetic technologies is used in the interests of military and political advantage and violent confrontation.

The problem of the invisible web is also worth of being regulated by international law. Such invisible mobile Internet-systems are established on the territories of foreign states with the aim to prepare the actions of disobedience, to organize mass anti-government activities and so on. In fact these are the programs for the «revolutions» in invisible web independent from the state power. In such a way the situations arise that are contradictory to the principles of international law, such as sovereignty, territorial integrity of a state, rule of law, human rights and democratic standards observance.

One of the discussible issues is the creation of the «closed Internet» by some countries or the creation of the safe domain zones. They violate the above mentioned principle of the freedom of information and human rights.

In some countries there were made some attempts to restrict informational rights by means of access to Internet limitation. That is why the Resolution was adopted 03.06.2011, under which some regions disconnection from



a Global network is a breach of informational rights. The spread of information should be maximum free.

The next and one of the most important issues concerning the legal regulation of Internet is its classification and interpretation as the common heritage of mankind (by analogy with space, sea, air space). The result of such a classification would be the appropriate international legal regulation and it would provide proper informational rights realization.

International control under the observance of human rights including informational rights is the main judicial means able to protect certain individuals' rights and assist the legislature development and practice of states in accordance with international standards.

International mechanisms of human rights protection, including informational rights, are represented by international legal instruments and organs, organizations which have the aim to protect these rights and realize the instruments.

These mechanisms can be subdivided into universal acting all over the world and regional acting in the grounds of some regions.

Surely the central organization in the system of informational rights' protection is the UNO, whose Charter estimates an obligation of UN to assist general respect and observance of human rights.

The United Nations Organization pays considerable attention to informational rights. Within the UN an organizational system for the informational rights' protection exists, which includes the Council on Human Rights, Human Rights Commission, UN Working Group on arbitrary detention, UNESCO Committee on Conventions and Recommendations, The UN Special Rapporteur on freedom of speech and expression, The UN High Commissioner for Human Rights. Altogether their activity in the sphere of informational rights' protection is quite effective.

Alongside the universal mechanisms of human rights' protection the regional conventions and organs exist. These regional mechanisms are united on the basis of relative historical, religious and cultural traditions, the same level of political and economic development and human rights' protection can be more efficient at regional level. This concerns informational rights also.

Regional cooperation in the sphere of informational rights' protection can be an

addition to the universal system of human rights protection and it can give an opportunity to fill all the gaps and lacks, to take into account the region's specificity and to improve a general level of informational rights' protection. There are regional cooperation in the sphere of human rights' protection in Arabian, African, American states, states of the Commonwealth of Independent States and European community [12, p. 314].

It is generally recognized that the system of the Council of Europe is the most developed and judicially effective. It is based on the Convention for the Protection of Human Rights and Fundamental Freedoms 1950 and its «main control» organ – The European Court of Human Rights.

European system of human rights' protection includes also Council of Europe Commissioner for Human Rights who has an initiative in analyzing of legislation and practice of the Council of Europe states-members.

The European Court of Human Rights has heard a big number of cases concerning informational rights, including the role of Mass-media in democratic society, informational rights' restrictions, critic of political leaders in the context of the right to information etc.

Conclusions. Informational rights' protection in international law became an independent trend in human rights development. International human rights standards can be realized only in a democratic state. Democracy and the right to information cannot exist in isolation from one another.

Informational rights can be represented by the rights of mass-media, the right of access to Internet, the right to ecological information, the right to access to public, legal information, the right to protect private information etc.

Mechanism of human rights realization and protection, including informational rights, has such elements: a) international and regional standards in the sphere of human rights and freedoms; b) international and regional standards' implementation in national law; c) international and regional organs for the protection of human rights; d) international and regional organs' protection of human rights standards.

International community's activity in the sphere of informational rights' protection can have such ways: efforts on ratification, international informational law rules' implementation, conclusion of new treaties,

international legal responsibility's mechanism and control improvement, because they guarantee international informational law rules fulfillment.

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