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МІЖНАРОДНО-ПРАВОВЕ РЕГУЛЮВАННЯ ПРАВ І СВОБОД В ІНТЕРНЕТІ

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Пілюк С.В., Саракуца М.О. Міжнародно-правове регулювання прав і свобод в Інтернеті.

Інтернет, що розглядається як глобальна інформаційно-комунікаційна мережа, має кілька значних показників. Він забезпечує обмін інформацією, інформація передається через мережі зв'язку, її кількість практично не обмежена ані обсягом, ані сферами інтересів. Інтернет, що не належить жодній державі, жодній організації, об'єднує різні інформаційні системи та мережі електрозв'язку без національного обмеження. Споживачами інформації, що передається, можуть бути будь-які суб'єкти-користувачі мережі. Більшість правил, на підставі яких функціонує Інтернет, – протоколи, які дозволяють зберігати працездатність мережі за різними параметрами. З урахуванням названих параметрів Інтернет не може залишитися за межами правового простору. Тому важливим є питання про те, на якому рівні і хто має визначати правові параметри функціонування Інтернету. Чи можливе регулювання з боку лише міжнародного права через глобальність цієї мережі. У якому обсязі національний законодавець має право регламентувати питання управління Інтернетом. Яким має бути співвідношення норм міжнародного та національного права у цій сфері. В якому обсязі допустиме саморегулювання. Проблематика правового регулювання Інтернету важлива ще й через потребу розглядати інформаційно-комунікаційну мережу як засіб реалізації практично будь-яких прав людини. Де є права, там є й обов'язки і завжди є можливість їх порушення. Отже, можливість реалізації права і свободи через Інтернет і водночас існування величезної кількості порушень цих права і свободи підтверджують необхідність прийняття у сфері правових актів різного рівня. Звісно ж, що внутрішньо мережеве регулювання (саморегулювання) Інтернет спільнотою відносин у мережі не забезпечить свободи інформаційного простору, не встановить чітких правил поведінки користувачів мережі, зокрема з тієї причини, що рекомендації, резолюції, інші акти не є універсальними та обов'язковими для користувачів, у тому числі держав. Тому останнім часом все частіше можна почути, що у сфері регулювання питань управління Інтернетом потрібне прийняття актів, що містять, зокрема, міжнародно-правові стандарти, які є обов'язковими для національного законодавця. Поступово формується міжнародне Інтернет-право, покликане регулювати загальні питання управління Інтернетом, взаємини між державами у цій сфері, заходи контролю за використанням Інтернету та найголовніше за дотриманням у ньому прав громадян. Висловлюються пропозиції щодо прийняття Загальної декларації цифрових прав, конвенції про гарантії та захист прав людини у цифровому світі або Цифрової конституції. А можливо, просто слід визнати етап формування четвертого покоління прав, пов'язаних з інформаційною та цифровою революцією, що завершився, і врегулювати зміст цих прав, гарантії їх реалізації новим міжнародним документом.

Ключові слова: Інтернет, права і свободи, міжнародне право, інформаційні права, інформаційні технології

Piliuk S.V., Sarakutsa M.O. International legal regulation of rights and freedoms on the Internet.

The Internet, viewed as a global information and communication network, has several significant characteristics. It facilitates the exchange of information, information is transmitted through communication networks, its number is practically not limited either by volume or by spheres of interest. The Internet, which is not owned by any state or organization, unites various information systems and telecommunication networks without

national restrictions. The consumers of the transmitted information can be any subjects-users of the network. Most of the rules on the basis of which the Internet functions are protocols that allow the network to remain operational according to a variety of parameters. Taking into account the named characteristics, the Internet cannot remain outside the legal space. Therefore, the important question is at what level and who should determine the legal parameters for the functioning of the Internet. Is it possible to regulate only by international law due to the global nature of this network. To what extent does the national legislator have the right to regulate Internet governance issues? What should be the correlation between the norms of international and national law in this area? To what extent is its self-regulation permissible. The issue of legal regulation of the Internet is also important because of the need to consider the information and communication network as a means of realizing almost any human rights. Where there are rights, there are obligations and there is always the possibility of their violation. Thus, the possibility of realizing rights and freedoms via the Internet and at the same time the existence of a huge number of violations of these rights and freedoms confirm the need for the adoption of legal acts of different levels in this area. It seems that the on-net regulation (self-regulation) by the Internet community of relations in the network will not ensure freedom of the information space, will not establish clear rules of behavior for network users, in particular, because recommendations, resolutions, and other acts are not universal and obligatory for users, in including states. Therefore, in recent years, one can hear more and more often that in the sphere of regulating Internet governance issues, the adoption of acts containing, in particular, international legal standards that are binding on the national legislator is required. Gradually, international Internet law is being formed, designed to regulate general issues of Internet governance, relations between states in this area, measures of control over the use of the Internet and, most importantly, the observance of citizens' rights in it. Proposals have been made for the adoption of a Universal Declaration of Digital Rights, a Convention on the Safeguards and Protection of Human Rights in the Digital World, or a Digital Constitution. Or, perhaps, we should simply recognize the completed stage of the formation of the fourth generation of rights related to the information and digital revolution, and regulate the content of these rights, guarantees of their implementation by a new international document.

Key words: Internet, rights and freedoms, international law, information rights, information technologies

Formulation of the problem. The Internet, viewed as a global information and communication network, has several significant characteristics. First, it facilitates the exchange of information. Secondly, information is transmitted through communication networks. Thirdly, its number is practically not limited either by volume or by spheres of interest. Fourth, the Internet, which is not owned by any state or organization, unites various information systems and telecommunication networks without national restrictions. Fifthly, the consumers of the transmitted information can be any subjects-users of the network. Sixth, most of the rules on the basis of which the Internet functions are protocols that allow the network to remain operational according to a variety of parameters. Taking into account the named characteristics, the Internet cannot remain outside the legal space. Therefore, the important question is at what level and who should determine the legal parameters for the functioning of the Internet. Is it possible to regulate only by international law due to the global nature of this network. To what extent does the national legislator have the right to regulate Internet governance issues? What should be the correlation between the norms of international and national law in this area? To what extent is its self-regulation permissible? The issue of legal regulation of the Internet is also important because of the need to consider the information and communication network as a means of realizing almost any human rights. Where there are rights, there are obligations and there is always the possibility of their violation.

The state of research of the topic. The foundations of international human rights standards continue to evolve simultaneously with the process of forming new legal systems that declare in their constitutions the ideas of the rule of law and respect for human rights. Doctrinal approaches to the interaction of international and national law, to the legitimacy of universal international legal standards and their role in the protection of individuals in the context of practical issues and challenges that exist at the international and national levels should now be considered. The human rights sector is constantly evolving through the development of new international and national legal instruments.

The aim of the article. The aim of this article is to study international legal regulation of rights and freedoms on the Internet in the context of the fact that human rights issues are most important in international law, as well as the role of the UN in shaping international human rights standards.

Presentation of the main material. The history of the Internet began with the creation of the world's first computer network ARPANET, when, in 1969, at the initiative of the US Department of

Defense, information was exchanged between computers located in different cities for the first time. Then private networks emerged, each linking a small number of computers. But after a couple of years, they were all integrated into the ARPANET, and due to the name of the data transfer protocol, the united network was called «Internet». Having emerged as a closed system for the military and scientific institutions of the United States, the Internet has acquired a global character, becoming accessible to an increasing number of subjects. At the first stage, the legal regulation of the Internet was carried out through the adoption by the developers of the networks of acts defining technical standards. For example, the Internet Service Provider Open Forum has developed «Network Usage Standards». They, in particular, talk about generally accepted norms of work on the Internet, aimed at ensuring that the activities of each network user do not interfere with the work of other users. In addition, the Open Society Institute issued guidelines in 1996, called the Open Internet Policy Principles, so that policymakers around the world take into account the wishes and demands of the Internet community when setting network policies [11]. Networking associations have also been formed (Internet Configuration Management Board, Internet Architecture Board, Internet Design Working Group, Internet Society, and others). At the same time, there was no centralized regulation of Internet governance issues. Subsequently, in order to resolve sectoral issues, acts began to be adopted by individual international organizations created primarily within the framework of the United Nations (the UN Commission on International Trade Law, the International Telecommunication Union, the World Intellectual Property Organization, under which the Standing Committee on Information Technologies, the International Chamber of Commerce , Economic Commission for Europe, Trade and Electronic Business Promotion Center, etc.)[3]. Since certain questions have accumulated, and not only in the sphere of the functioning of the Internet itself, but also in the implementation of a number of human rights through it, the United Nations initiated the holding of the World Summits on the Information Society in 2003 in Geneva and in 2005 in Tunisia. As a result, the Declaration of Principles "Building the Information Society - a Global Challenge in the New Millennium" (even the Declaration of Principles) and the Action Plan, as well as the Tunis Commitment and the Tunis Agenda for Action for the Information Society were adopted. In addition, it was decided to establish an annual Internet Governance Forum. The objectives of the forum were to promote the development of the Internet, ensure its security and stability [12].

The Declaration of Principles, adopted in Geneva, reaffirmed the focus on the development of an information society in which everyone can create, access, use and share information and knowledge to enable individuals and peoples to realize their full potential, contributing to their sustainable development by enhancing the quality of their lives in accordance with the purposes and principles of the Charter of the United Nations and fully respecting the Universal Declaration of Human Rights. The commitment of the 2003 World Summit participants to many documents adopted within the framework of the United Nations (the Millennium Development Goals, the Johannesburg Declaration and Plan of Implementation, the Monterrey Consensus, the Vienna Declaration) was recognized. The foundation of the information society was proclaimed enshrined in Art. 19 of the Universal Declaration of Human Rights, the right of everyone to freedom of opinion and expression, provided that this right includes the freedom to pursue one's convictions unhindered and the freedom to seek, receive and impart information and ideas by any means and regardless of state borders. Moreover, the Declaration of Principles recognized communication as one of the basic human needs and the foundation of any social organization at the heart of the information society. Everyone, wherever they are, should be able to participate in the information society, and no one should be deprived of the benefits that society offers.

Therefore, it is necessary to shape, develop and implement a global culture of cybersecurity in cooperation with all stakeholders and competent international organizations. Committed to the principles of freedom of the press and freedom of information, as well as independence, pluralism and diversity of the media, which are the main constituents of the information society, the Declaration states that all participants in the information society must take appropriate actions and take legal measures to prevent the misuse of information and communication technologies (illegal acts and other actions motivated by racism, racial discrimination, xenophobia and related manifestations of intolerance, hatred, violence, all forms of child abuse, including pedophilia and child pornography, as well as human trafficking and their exploitation). Thus, the Declaration of Principles identified the need for an appropriate legal and policy framework based on due respect for human rights in areas such as privacy, security and consumer protection, while maintaining economic initiative [13].

As a result, the information society has come to be seen as one of the tools for strengthening and protecting human rights. The Declaration

[3] For example, the 1987 Electronic Funds Transfer Legal Guidelines, 1985 Recommendations on the Legal Value of Computer Records, UNCITRAL Model Law on Electronic Commerce, 1996 on Electronic Commerce, 2001 UNCITRAL Model Law on Electronic Signatures, Convention on the Use of Electronic communications in international treaties 2005, UNCITRAL Model Law on Electronic Transferable Records 2017.

laid the foundation for the definition of rights that are realized on the Internet, and gradually, in international law, approaches began to form not only to their proclamation, but also to their protection. For example, the right to free access, search and dissemination of information, provided for in universally recognized international acts, has acquired new content in connection with the development of the Internet. In 1948, this right was enshrined in the Universal Declaration of Human Rights: "Everyone has the right to freedom of opinion and expression; this right includes the freedom to freely adhere to one's convictions and the freedom to seek, receive and impart information and ideas by any means and regardless of state borders" (Article 19).

The right to freedom of speech is also enshrined in the International Covenant on Civil and Political Rights: "Everyone has the right to freedom of expression; this right includes the freedom to seek, receive and disseminate all kinds of information and ideas regardless of state borders, orally, in writing or through the press, or artistic forms of expression, or in other ways of their choice "(Article 19). In a slightly different way, this right is disclosed in the European Convention for the Protection of Human Rights and Fundamental Freedoms: "There is an opportunity to adhere to the freedom of one's opinion and freedom to receive and impart information and ideas without any interference from state bodies" (Article 10). Similar provisions are contained in other acts (the Convention on the Rights of the Child, the UN Declaration on Basic Principles Concerning the Contribution of the Media to Strengthening Peace and International Understanding, to the Development of Human Rights and to the Fight against Racism and Apartheid and Incitement to War, etc.) ... Of course, it should be taken into account that many universally recognized international acts were adopted before the development of the Internet, nevertheless, the provisions contained in them are still applicable today, including with regard to the possibility to exercise the listed rights with the help of new technologies. Taking into account the global nature of the Internet and at the same time the ability of states to restrict access to it, in 2011 in the next report of the United Nations (Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression) it was noted that the list inalienable human rights added a new right to access the Internet. It was recognized that the Internet has become a powerful tool for the realization of human rights, that state power becomes transparent when using it, therefore the dissemination of information should be as free as possible, except in situations where it can lead to a violation of someone's rights. Disconnecting specific regions from the global network since June 2011 is considered a violation of human rights. The document states that "on the way of information on the Internet there should be as few obstacles as possible, except for individual exceptional and strictly defined cases, in accordance with international conventions on human rights" [1].

The Report listed the conditions for disconnecting the Internet: the restriction must be provided for by law, which is clear and accessible to everyone (principles of predictability and transparency); the restriction must pursue one of the goals specified in paragraph 3 of Art. 19 of the International Covenant on Civil and Political Rights (to protect the rights and reputation of others, to protect state security or public order, health or morals of the population (the principle of legality); the need for restriction (using it as an exclusive means of achieving the intended goal (principles of necessity and proportionality). Nevertheless, the blocking of certain sites in political interests continued, in connection with which the UN Human Rights Council has repeatedly addressed this issue. In 2016, Resolution A / HRC / 17/27 "On the Promotion, Protection and Implementation of Human Rights on the Internet" was adopted. She points out that people have the same right to freedom of expression on the Internet as they do off-line, and condemns States that deliberately restrict access to or dissemination of information online in violation of international human rights law. [2] Thus, the resolution indicated that the rights that a person is endowed with in real life should be protected on the Internet. In a number of countries (Estonia, France, etc.) the right to the Internet has been recognized at the level of the law [3]. Similar norms appeared in the laws of Greece, Spain, Costa Rica, Finland. The latter country was also the first to make broadband Internet access a legal right of every citizen [4].

In the legal regulation of the use of the Internet, it is necessary to take into account that information and communication technologies are dangerous. In this regard, states apply restrictions to reduce threats within a sovereign territory. The first law to introduce censorship on the Internet was passed back in 1995 in South Korea. In North Korea, restrictions are enforced primarily by bans on wireless networks and computer control. In 2018, in Egypt, in order to ensure national security, the Law on Combating Cybercrime was adopted, which tightens the control of the authorities over the Internet [5]. India passed the Information Technology Act in 2007 and introduced partial censorship. The reason was the terrorist attacks in Mumbai, so the restrictions affected primarily political and extremist resources. Websites in

Pakistan are also blocked. Ethno-separatist materials usually serve as a pretext. In 2009, Chinese activists in Xinjiang province used Facebook to organize a major riot that resulted in the deaths of about 200 people, most of whom were women and children. As a result, the government imposed a ban on Facebook [6]. Other events are also reasons for imposing restrictions. So, in Japan it happened after the earthquake and the accident at the Fukushima nuclear power plant (to stop the dissemination of information about the consequences of the accident). The above examples confirm the need for international legal regulation for the introduction of general parameters for restricting access to the Internet. In the modern information world, Internet users are faced with another important issue related to the human right to the protection of personal information. This issue becomes especially relevant in the case of cross-border exchange of information. Today, the right to the protection of personal data is recognized as a necessary element of human rights. It was originally enshrined in the Universal Declaration, which states that people have the right to protection from interference with privacy and privacy of correspondence. Thus, infringement of personal data against the will of a person is not allowed to any third parties (citizens, organizations, public authorities). This right was provided for in other international acts (International Covenant of 1966, European Convention of 1950, etc.), including special ones. In particular, this is the resolution of the European Parliament «On the protection of individual rights in connection with the progress of informatization» (1979), recommending the relevant countries to adopt national laws in the field of protection of personal information rights. In 1985, the Council of Europe adopted the European Convention for the Protection of Natural Persons in Matters Relating to Automatic Processing of Personal Data. This act guarantees the observance of human rights in the collection and processing of personal data, establishing the principles of storing this data and access to it, methods of physical protection of data, and also directly excludes any processing of information about race, religion, opinion in the field of politics without a legal basis. In 2018, the report of the High Commissioner for Human Rights was prepared in the framework of Human Rights Council resolution 34/7. It emphasized that each country should adopt legislation on the protection of privacy (and confidential data) that would be in line with international human rights standards, limit the principles of proportionality and the need for the formation of big data systems (providing for the collection and storage of biometric data), tracking communications and exchange of intelligence information, etc. [7]

On the Internet, rights can not only be enforced, but also violated. All illegal actions on the Internet are usually called cybercrimes, regardless of whether they are committed using computer technology or against them. The 2001 Council of Europe Convention on Cybercrime distinguishes between two types of unlawful acts related to cybercrime: crimes and offenses (crimes against the confidentiality, integrity and availability of computer data and systems; computer-related offenses; data content offenses; offenses related to violation of copyright and related rights, acts of racism and xenophobia committed through computer networks) [8]. In 2003, the Declaration on Freedom of Communication on the Internet was adopted, which stipulates not to impose restrictions on the content of information on the Internet; encourage self-regulation on the Internet; remove obstacles that hinder the provision of access to the Internet or the creation and operation of Internet sites for certain segments of society; guarantee the right to anonymity; protect consumer rights; not to restrict the movement of goods and services, the possibility of economic activity, the conclusion of transactions [9]. The Additional Protocol to the Convention stipulates the introduction of criminal liability for offenses committed through computer networks, related to manifestations of racism and xenophobia. As a result, each state must create legal conditions for combating cybercrime, determine the parameters of the relationship between Internet providers and law enforcement agencies. Nevertheless, the scale of cyber threats today is such that they can only be neutralized by joining the efforts of the entire international community. The documents adopted in Europe were also devoted to the regulation of certain aspects of the realization of human rights on the Internet: the EU Directive on consumer protection in relation to distance contracts (distance selling) (1997); EU Directive concerning the processing of personal data and the protection of privacy in the telecommunications sector (1997); EU Directive on the Legal Framework for Electronic Signatures (1999); EU Directive on Certain Legal Aspects of Information Society Services, Including Electronic Commerce, in the Internal Market (2000); EU Directive on the establishment and operation of electronic money institutions and on the supervision of their activities (2000); EU Directive concerning the processing of personal data and the protection of privacy in the electronic communications sector (2002); European Parliament Resolution on the Safe Use of the Internet and New Online Technologies (2004); EU Directive on new rules and procedures for taxation of Internet commerce (2004). The Okinawa Charter for the Global Information

Society in 2000, signed by the leaders of the G8 countries, is often called the main document defining the principles of cooperation in the field of Internet governance. However, it should be borne in mind that this is a political document that is not legally binding on states. Nevertheless, most states apply the Charter and often refer to its provisions. According to it, all people everywhere, without exception, should be able to enjoy the benefits of the global information society. This document confirmed the desire of states to introduce information technologies into the public administration system [10]. In 2017, the leaders of the G20 countries adopted the Declaration "Shaping an Interconnected World", dedicated to the digital future: digital economy, digital equality, security of information and communication technologies. It should be noted that many acts adopted by various international structures (the Charter of the International Telecommunication Union, the Okinawa Charter, the Declaration of the Committee of Ministers of the Council of Europe on the principles of Internet governance and many others) are of a recommendatory nature. They are political documents, and therefore are often ignored by many countries. This is confirmed, in particular, by the resolutions on online rights (2012, 2014), on the right to freedom of expression on the Internet (2016), and in support of freedom of speech on the Internet (2018), repeatedly adopted by the UN Human Rights Council. They emphasize the importance of an accessible and open Internet, and draw attention to the need to hold accountable those responsible for violence, harassment and other violations against people who freely express themselves on the Internet. Moreover, the documents indicate specific violations by individual countries of rights on the Internet.

Conclusions. Thus, the possibility of realizing rights and freedoms via the Internet and at the same time the existence of a huge number of violations of these rights and freedoms confirm the need for the adoption of legal acts of different levels in this area. It seems that the on-net regulation (self-regulation) by the Internet community of relations in the network will not ensure freedom of the information space, will not establish clear rules of behavior for network users, in particular, because recommendations, resolutions, and other acts are not universal and obligatory for users, in including states. Therefore, in recent years, one can hear more and more often that in the sphere of regulating Internet governance issues, the adoption of acts containing, in particular, international legal standards that are binding on the national legislator is required. Gradually, international Internet law is being formed, designed to regulate general issues of Internet governance, relations between states in this area, measures of control over the use of the Internet and, most importantly, the observance of citizens' rights in it. Proposals have been made for the adoption of a Universal Declaration of Digital Rights, a Convention on the Safeguards and Protection of Human Rights in the Digital World, or a Digital Constitution. Or, perhaps, we should simply recognize the completed stage of the formation of the fourth generation of rights related to the information and digital revolution, and regulate the content of these rights, guarantees of their implementation by a new international document.

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