

INTERNATIONAL ASPECTS OF LEGAL REGULATION OF INFORMATION RELATIONS IN THE GLOBAL INTERNET

Yu.V. YANCHUK, PhD (Law),

*Chief Specialist of the Department for Counteracting Information Threats
of the Main Department for Information Security*

*Directorate for Information Policy and Information Security,
Ministry of Culture and Information Policy of Ukraine*

E-mail: yanchukjv@ukr.net

L.V. HOLOVIY, PhD (Law),

*Associate Professor of the Department of the Administrative and Financial Law,
National University of Life and Environmental Sciences of Ukraine*

E-mail: Lyudmyla_Holoviy@nubip.edu.ua

Summary. *The article analyzes the international legal regulation of information relations on the global Internet. The role of international law in regulating public relations concerning the development of the global information society is studied. Attention is paid to the main normative legal acts that enshrine EU citizens' rights and freedoms in the information sphere. It is noted that the rules of "soft law", which are enshrined in the resolutions of international organizations and are not binding. Emphasis is placed on the need to enshrine in international regulations in the field of Internet relations the basic concepts applied to these relations to resolve possible disputes in the legislation of different states*

Keywords: *international legal regulation, information space, global network Internet, information relations*

Introduction.

Today, the level of development of the international community is determined by the growing role of information, which is the result of social activity of people, their high information cul-

ture, the rapid development of information and communication technologies. On the basis of information that has become a strategically important resource, a new concept of modern society has been formed, where human knowledge and intelligence are the highest values.

The main basis for the further intensive development of the global information society is the global Internet, which forms a special channel for the dissemination and exchange of information, the information environment.

The purpose of the article is analysis international legal regulation of information relations on the global Internet.

Results.

Modern globalization trends determine the development of the global information society and accordingly affect the development of the national information society, in particular in Ukraine. The importance and role of effective cooperation and cooperation between states is growing. The decisive role in regulating public relations for the development of the global information society belongs to international law (a complex set of legal norms created by states and intergovernmental organizations through agreements and are an independent legal system governed by interstate and other international relations) (Aristova, Krehul & Kurylo, 2012: 62).

The international documents of the World Summit on the Development of the Information Society (Geneva 2003 and Tunisia 2005) define the coordinating role of the state in the processes of forming the information society, as well as the need for all member states to adopt appropriate national strategies and programs (Kalishenko, 2020).

In accordance with the Law of Ukraine «On the Basic Principles of Information Society Development in Ukraine for 2007–2015», the mechanisms of Ukraine's integration into the world information space are the directions of Ukraine's international cooperation. As noted in Section 4 of the Law, the policy

of international cooperation of Ukraine and its participation in the development of the global information society, the integration of Ukraine into the global information space is of particular importance.

In the future, we note that on the basis of the «Agreement on Partnership and Cooperation between Ukraine and the European Community and their Member States», on September 14, 2000 in Paris, a «Memorandum of Understanding was adopted between the Directorate General for Information Society of the European Commission and the State Committee for Communications and informatization of Ukraine for the development of the information society». The significance of this document is that the parties «have agreed to cooperate for the development of the information society in Ukraine, giving it high priority». The document states that the purpose of this Memorandum is to expand cooperation between the parties in the field of information society in order to accelerate the provision of services in Ukraine. The memorandum of understanding allows to improve cooperation, firstly, in the field of strategy; secondly, in the development of joint legislation and the creation of conditions for a market economy in the field of information society services.

Specific areas of cooperation, as noted in the Memorandum, are the following: 1) continuing the development of the e-Ukraine program, which meets the needs of Ukrainian society, stimulating the development of information society services in Ukraine; 2) exchange of advice and participation in relevant activities within the e-Europe program; 3) exchange of information on frequency policy and mobile services of the third generation in the field of licensing, standards and spectrum planning; 4) co-

operation in the development of e-commerce services, especially those aimed at their interaction. Separately, it was agreed to provide advice in response to inquiries about the information society strategy developed in Ukraine, as well as to provide expert and technical assistance in accordance with existing procedures and regulations.

Another interesting point in the context of the analysis of the problems of information security of the European Union is the consideration of the main legal acts that enshrine the rights and freedoms of EU citizens in the information sphere. The main document of the European Union that enshrines such rights of citizens is the Charter of Fundamental Rights of the European Union of December 7, 2000. The Charter declares that the rights enshrined in it are based on the constitutional traditions and general international obligations of the Member States, as well as in the Treaty on European Union, the Treaty on European Communities, the European Convention for the Protection of Human Rights and Fundamental Freedoms, charters adopted by the European Community and the Council of Europe and in the case law of the Court of Justice of the European Communities and the European Court of Human Rights.

Based on the analysis of this document, it is advisable to pay attention to a number of human rights and freedoms in the information sphere in terms of information security of the European Union, which are very similar and practically repeat the provisions of the Constitution of Ukraine.

Yes, Art. 3 of this Agreement states that everyone has the right to physical and mental integrity. Thus, this thesis correlates with such a national interest of man in the information sphere as ensur-

ing the human right to protection from manipulation of individual consciousness and such a constitutional provision enshrined in Article 34 of the Constitution of Ukraine, according to which everyone is guaranteed the right to freedom of thought and speech, free expression of their views and beliefs. According to Art. 8 everyone has the right to the protection of personal information.

Thus, these rules are reflected in Art. 31 of the Constitution of Ukraine, namely: everyone is guaranteed the secrecy of correspondence, telephone conversations, telegraph and other correspondence, as well as Art. 32 – no one can interfere in his personal and family life. Article 11 stipulates that everyone has the right to freedom of expression. This right includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. Freedom and pluralism of the media are ensured. The main idea of this thesis is enshrined in the Constitution of Ukraine in Articles 15 (Public life in Ukraine is based on the principles of political, economic and ideological diversity. No ideology can be recognized by the state as mandatory. Censorship is prohibited.) And 34 (Everyone is guaranteed the right to freedom of thought and Everyone has the right to freely collect, store, use and disseminate information orally, in writing or otherwise – at their discretion).

Most international norms are declarative in nature. Therefore, European Internet law includes many directives and resolutions. In particular, the following key acts can be identified: Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (distance selling); Directive 97/66 / EC of the

European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector; Directive 1999/93 / EC of the European Parliament and of the Council of 13 December 1999 on a Community legal basis for electronic signatures; Directive 2000/31 / EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, including e-commerce, in the internal market (e-Commerce Directive); Directive 2000/46 / EC of the European Parliament and of the Council of 18 September 2000 on the supervision of entrepreneurial activities of electronic money institutions; Directive 2002/58 / EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector; Resolution of the European Parliament on the safe use of the Internet and new on-line technologies of 2 December 2004. On 1 July 2004, a Directive came into force in 15 European Union countries establishing new rules and procedures for taxing e-commerce. Now any «digital sale» will be subject to VAT. Innovations relate to the taxation of foreign online merchants (Mudryievska, 2013: 68–69).

At the same time, the process of unification of legal norms in the CIS context was launched and continues.

Thus, the following acts can be distinguished: Model Law «On Electronic Digital Signature» of December 9, 2000; Agreement on Cooperation of the Member States of the Commonwealth of Independent States in Combating Crimes in the Field of Computer Information of June 1, 2001 (Mudryievska, 2013: 69).

According to official data, the amount of information in the global information space doubles every ten years, leading to its overload. The main feature of the existence of the information society is the free access of all its members to the global computer network Internet (Kormych, 2011: 105).

The Internet affects the whole of society and all aspects of our lives. Everyone in the world is experiencing the political and socio-economic consequences of the increasing use of information and communication technologies, but despite the fact that these countries face similar problems, their political and legal reactions are very different. The openness of the Internet almost completely deprives states concerned about the preservation of their sovereignty of the ability to monitor what type of content, ideas, views or information may be made available or disseminated by citizens. At the same time, new technologies are being developed on the basis of the Internet, which allow states to control Internet traffic in the form of connections and content (Benedek & Ketteman, 2013: 117).

The problem of overcoming digital inequality, which was recognized in the Okinawa Charter as the main direction of development of the global information society, has not been solved yet. This international document stated that everyone should have access to information and communication networks. A key component of this strategy was the movement towards universal access for all («Okinavska khartiia...»). At the same time, the heterogeneity of access to the Internet is due to both socio-domestic and economic factors within the country, and is often part of its political course.

The Organization for Security and Co-operation in Europe has published

a report entitled «Control of the Internet», which states that the «black list» of countries with Internet censorship is about 20 countries. Some, in particular authoritarian countries, artificially restrict the flow of information and access of their population to the global information space, blocking certain sites and services. Some countries provide their citizens with access only to the internal network, while blocking their access to the World Wide Web. At the same time, European governments also make numerous requests for blocking and filtering, as evidenced by the Google Transparency Report, which is conducted twice a year. In addition, some states have also proposed allowing Internet users to have only one public IP address in order to simplify the process of tracking all their communications on the Internet, which would inevitably lead to restrictions on freedom of expression («Zvit Google...»).

There are many countries where the level of free access to information is limited or partially restricted, i.e. controlled by the authorities, the most common: North Korea is the most closed country in the world. Access to social networks there has been blocked since the advent of the Internet. It is logical that Facebook, Twitter, YouTube do not work there, not to mention «Classmates» or «VKontakte». The North Korean version of the social network Facebook called StarCon.net.kp appeared last May, but disappeared a day later. China is very jealous of social networks developed by other countries. Resources Google, Flickr, Dropbox, Facebook, Twitter, YouTube, and in part Wikipedia are blocked in China, and residents use Chinese counterparts. Access to a number of foreign sites from China is restricted under the 59 Golden Shield

project (the so-called Great Chinese Firewall), which has been operating since 2003. Saudi Arabia periodically struggles with Facebook and YouTube. Citizens are encouraged to actively talk about «immoral» sites so that they can be blocked. Access to Wikipedia and even Google Translate was temporarily lost in the country. In 2012, access to YouTube was completely closed («Ievropy tut nemaie»: top 10 krain...»).

Therefore, it is important to understand the state of privacy and security of Internet users, their level of access to information, is the Report on the availability of services and data (Google Transparency Report), which can be described as the Transparency Report of Google Corporation. Prior to the creation of the Internet Services and Data Availability Report, Google constantly received requests from the authorities of various countries to provide personal information to users, often in unreasonably large amounts. Security and surveillance on the Internet have become central items on the agenda after high-profile revelations by Edward Snowden, hacking of Sony Pictures Entertainment servers, discussions about encryption, and others. On June 6, 2013, information appeared on the Internet that the US National Security Agency was recording telephone conversations of millions of Americans. According to the first publication in a series of revelations by Edward Snowden, the telecommunications company Verizon was forced to provide the National Security Agency with information about all calls from its subscribers on a daily basis. Subsequent reports of government surveillance shocked the world community and made transparency one of the most pressing issues. In response, Google CEO Larry Page and Legal Director David Drummond said the company had not participated in any program in which

the U.S. government or any other country could have direct access to Google's servers. In a corporate blog, they noted that the case of PRISM proves the need for a more transparent approach and the importance of the Service and Data Accessibility Report («Zvit Google...»).

On May 13, 2014, the Court of Justice of the European Union issued an On May 13, 2014, the Court of Justice of the European Union issued an important ruling on the confidentiality of Internet users («devropy tut nemaie»: top 10 krain...). In particular, he determined that everyone has the right to request the removal of search results that contain his name, if they are «inadequate, irrelevant (or out of date) or excessive». The right to be forgotten means that at the request of a resident of a European country, Google must remove certain links from the results of a search query that contains the name of this person («Sudova sprava...»). Three years after the entry into force of this resolution, Google published the report «Three years of the Right to Oblivion» («Implementing a European...»).

Thus, the issue of the «digital divide» remains open today, and the further development of the Internet creates new lines of inequality between the population of different countries and regions, which creates contradictions in the international political arena. As a result, new forms of international conflicts, information conflicts, and network wars are emerging. Thus, the development of information technology creates new challenges to international and national security, which can be overcome only by the collective efforts of the international community.

The problem of settlement of transnational legal relations on the Internet and the role of international law in solving this problem require the development of scientific proposals for their further implemen-

tation. Therefore, it is appropriate to talk about the international law of the Internet, which is based on legal norms developed and adopted by international organizations in the format of international summits, congresses and forums. Here is an example of those international documents that regulate information relations on the Internet. In particular, on July 5, 2012, the UN Human Rights Council unanimously adopted an important resolution «On the promotion, protection and realization of human rights on the Internet». The resolution proposed by Sweden was widely supported by the international community. The resolution stated: «The rights that a person has offline should be equally protected online, in particular, freedom of expression, which applies regardless of borders and to any media chosen by a person, in accordance with Article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights» («Okinavska khartiia...»)].

In general, a number of international legal acts emphasize the minimization of state control and restrictions on the dissemination of information on the Internet, deny the establishment of restrictions on content. These include documents adopted by the Council of Europe, such as: Resolution № 1120 «On the impact of new communication and information technologies on democracy» (1997); Declaration on European Policy in the Field of New Information Technologies (1999); Declaration on Freedom of Communication on the Internet (2003); Declaration of Human Rights on the Internet (2005) (Dubov & Ozhevan, 2013: 9–10).

Conclusion and prospects.

Given the global nature of the Internet, the absence of borders, it is necessary that international regulations

in the field of Internet relations define the basic concepts applied to these relations to resolve possible disputes in the legislation of different states. Such international documents are urgently needed today, as important issues need to be addressed, such as the jurisdiction of states, the responsibility of providers, the main directions of the international fight against information terrorism and crimes that threaten the information security of global information civilization.

References

1. Aristova, I.V., Krehul, I.Yu. & Kurylo, V.I. (2012). Problemy pravovoho rehuliuвання spivrobitnytstva Ukrainy z mizhnarodnoiu orhanizatsiieiu YuNESKO u sferi pravovoho zabezpechennia rozvytku informatsiino-ho suspilstva v Ukraini [Problems of legal regulation of cooperation of Ukraine with the international organization UNESCO in the field of legal support of development of information society in Ukraine] / za zah. red. I.V. Aristovoi. Kyiv: IRIDIUM, 246 (in Ukrainian).
2. Kalishenko, Ye. (2020). Instytutsiine zabezpechennia rozvytku elektronnoho uriaduvannia v Ukraini. Pravo. Liudyna. Dovkillia [Institutional support for the development of e-government in Ukraine], 11(1). Available at: <http://journals.nubip.edu.ua> (in Ukrainian).
3. Pro Osnovni zasady rozvytku informatsiino-ho suspilstva v Ukraini na 2007–2015 roky [On the Basic Principles of Information Society Development in Ukraine for 2007–2015] (2007): Zakon Ukrainy vid 09.01.2007. Vidomosti Verkhovnoi Rady Ukrainy, 12, 102 (in Ukrainian).
4. Uhoda pro asotsiatsiiu mizh Ukrainoiu, z odniiei storony, ta Yevropeiskym Soiuzom, Yevropeiskym spivtovarystvom z atomnoi enerhii i yikhnimy derzhavamy-chlenamy, z inshoi storony [Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part] (2015): mizhnarodnyi dokument vid 30.11.2015 № 984_011. Available at: https://zakon.rada.gov.ua/laws/show/984_011 (in Ukrainian).
5. Memorandum pro vzaiemorozuminnia mizh Heneralnym Dyrektoratom z pytan Informat-siinoho suspilstva Yevropeiskoi Komisii ta Derzhavnym komitetom zv'iazku ta informatyzatsii Ukrainy shchodo rozvytku informatsiino-ho suspilstva vid 14.09.2000 [Memorandum of Understanding between the General Directorate for Information Society of the European Commission and the State Committee for Communications and Informatization of Ukraine on the Development of the Information Society dated 14.09.2000] (2000). Available at: <http://www.e-ukraine.biz/ukraine8.html> (in Ukrainian).
6. Khartiia osnovnykh prav Yevropeiskoho Soiuzu [Charter of Fundamental Rights of the European Union] (2000): mizhnarodnyi dokument vid 07.12.2000 № 994_524. Available at: https://zakon.rada.gov.ua/laws/show/994_524 (in Ukrainian).
7. Konstytutsiia Ukrainy [The Constitution of Ukraine] (2016): stanom na 01.09.2016. Verkhovna Rada Ukrainy. Kharkiv: Pravo, 82 (in Ukrainian).
8. Mudryievska, L.M. (2013). Pravove rehuliuвання diialnosti internetu ta yoho znachennia u formuvanni informatsiino-ho suspilstva v Ukraini. Aktualni problemy vitchyzniano yurysprudentsii [Legal regulation of the Internet and its importance in the formation of the information society in Ukraine. Actual problems of domestic jurisprudence], 4: 63–71 (in Ukrainian).
9. Kormych, B.A. (2011). Ynformatsyonnoe pravo [Information law]. Kharkiv: BURUN y K., 334 (in Russian).
10. Benedek, W. & Ketteman, M. (2013). Freedom of expression and the Internet. Strasbourg Cedex, 205 (in English).

11. Okinavska khartiia hlobalnoho informatsiinoho suspilstva. Zakonodavstvo Ukrainy, dokument 998_163 [Okinawa Charter on Global Information Society] (in English).
12. Zvit Google pro dostup servisiv i danykh [Google Report on Access to Services and Data]. Available at: <https://transparencyreport.google.com/about?hl=ru> (in Ukrainian).
13. «Ievropy tut nemaie»: top 10 krain, de zaboroniati sotsialni merezhi [«Europe is not here»: top 10 countries where social networks are banned]. Available at: <http://my.rv.ua/hotnews/yevropi-tut-nemaye-top-10-krayin-de-zaboronyayut-sotsialnimerezhi> (in Ukrainian).
14. Sudova sprava shchodo Prava na zabuttia [The case concerning the right to forget]. Available at: <https://curia.europa.eu/jcms/upload/docs/application/pdf/2014-05/cp140070en.pdf> (in Ukrainian).
15. Implementing a European, not global, right to be forgotten. Available at: <https://europe.googleblog.com/2015/07/implementing-european-not-global-right.html> (in English).
16. Dubov, D.V. & Ozhevan, M.A. (2013). Shyrokosmuhovy dostup do merezhi Internet yak vazhlyva peredumova innovatsiinoho rozvytku Ukrainy [Broadband access to the Internet as an important prerequisite for innovative development of Ukraine]. Kyiv: NISMD, 108 (in Ukrainian).

Ю.В. Янчук & Л.В. Головій (2020). МІЖНАРОДНІ АСПЕКТИ ПРАВОВОГО РЕГУЛЮВАННЯ ІНФОРМАЦІЙНИХ ВІДНОСИН В ГЛОБАЛЬНІЙ МЕРЕЖІ ІНТЕРНЕТ. Право. Людина. Довкілля, 11(3): 181-188. <https://doi.org/10.31548/law2020.03.022>.

Анотація. У статті здійснено аналіз міжнародно-правового регулювання інформаційних відносин в глобальній мережі Інтернет. Досліджено роль міжнародного права в упорядкуванні суспільних відносин щодо розбудови глобального інформаційного суспільства. Приділено увагу основним нормативно-правовим актам, що закріплюють права та свободи громадян Євросоюзу в інформаційній сфері. Зазначено, що міжнародно-правові засади регулювання інформаційних відносин в Інтернет регламентуються нормами «м'якого права», що закріплені в резолюціях міжнародних організацій і не мають зобов'язального характеру. Наголошено на необхідності закріплення в міжнародних нормативних актах в області Інтернет-відносин основних понять, що застосовуються до даних відносин для усунення можливих суперечок у законодавстві різних держав

Ключові слова: міжнародно-правове регулювання, інформаційний простір, глобальна мережа Інтернет, інформаційні відносини