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I. V. Mukomela, Ph. D. in Law, Researcher, Scientific Research sector of theoretical and methodological problems organization of state power Institute of State Building and Local Government of the NALS of Ukraine
ORCID ID: 0000-0001-9315-2692

THE EVOLUTIONARY DEVELOPMENT AND ROLE OF THE RIGHT TO INFORMATION IN THE INFORMATION SOCIETY

Abstract. *This article explores the evolutionary development of the right to information, with a particular emphasis on the theoretical and legal foundation provided by freedom of expression. It highlights the significant impact that the rights to access information and to communicate have had on the rethinking of the right to information as a whole. The study concludes that in the information society, information itself has become inherently valuable, thus justifying the recognition of the right to information as an independent and distinct right. The necessity for legislative recognition of the right to information, the right to participate in the information society, and the right to access the Internet is also substantiated.*

Keywords: *information, information society, right to information, freedom of expression, right to access information, right to communicate, Internet.*

Problem Statement: Open and free flow of information is the foundation of democracy. The right to information is one of the most

important guarantees for the development, observance, and protection of universal human rights [2, p. 267]. This right has gained particular significance and importance during the emergence and development of the information society. As a result, its legislative regulation and doctrinal research have deepened.

Analysis of various aspects of the right to information has been the subject of research by both domestic and foreign scholars such as I. Aristova, O. Baranov, V. Bryzhko, O. Dzioban, O. Zernetska, O. Kokhanovska, A. Marushchak, O. Nesterenko, A. Paziuk, V. Tsimbaliuk, M. Shvets, and others.

Objective of the Article: To analyze the evolutionary development of the right to information and its role in the information society.

Main Material Presentation. The right to information permeates all generations of human rights, acquiring new meanings within each of them. This is due to the gradual formation of fundamental rights, as well as the rights and freedoms derived from them, within specific historical circumstances. As rightly noted by P. M. Rabinovich, at each stage of their development, these rights are objectively determined by the level of societal progress achieved [11, p. 12].

The right to information has evolved over the past few centuries, starting from the late 18th century, and continues to develop in modern times. The overarching legal foundation of the right we are examining is freedom of expression, as the right to information primarily serves a communicative function aimed at enabling citizens to form conscious positions regarding state affairs and societal life based on the information they receive.

The essence of freedom of thought is closely interconnected with freedom of speech, and it lies in the fact that no one can prohibit individuals from adhering to their own thoughts, reflecting objective reality in their perceptions, and publicly expressing these materialized manifestations through language, including views and beliefs [12, p. 158]. This principle applies only to thoughts that are objectively expressed in an external form, as thoughts themselves are beyond the scope of legal regulation. The legislator should not regulate this sphere of an individual's life or impose, as was the case during the Soviet period, what a person should believe in, strive for, or love. Legal responsibility cannot be established based on thoughts, regardless of their nature.

Freedom of thought and speech, the free expression of one's views and beliefs, belong to the first generation of rights. In modern legal science, there is a tendency to classify these rights as inherent personal (civil) rights, as they constitute the basis of an individual's legal status, aiming to ensure the freedom and autonomy of the individual as a member of civil society and their legal protection against any unlawful external interference [6, p. 111]. This position is advocated by a number of scholars, including P. Rabinovich, Y. Todika, O. Fritzky, O. Skrypniuk, and others. These rights embody what is known as negative freedom, as they oblige the state to refrain from interfering in the sphere of personal freedom and create conditions for citizens' participation in political life. These are the traditional liberal values that were formed during bourgeois revolutions and subsequently specified and expanded in the practice and legislation of democratic states.

During the post-World War II period, the right to information gained its international recognition as a derivative right of freedom of thought and expression. This was achieved by incorporating its fundamental competencies into international instruments, namely the right to seek, receive, and impart information. The Universal Declaration of Human Rights, proclaimed by the United Nations General Assembly on December 10, 1948, in Article 19 states that «Everyone has the right to freedom of thought, conscience, and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers» [3, art. 19]. A similar trend of enshrining the right to information as an integral element of freedom of expression is also observed in international legal instruments such as the European Convention on Human Rights and Fundamental Freedoms of November 4, 1950 [3, art. 10] and the International Covenant on Civil and Political Rights of December 16, 1966 Article 19.

It should be noted that the mentioned international legal instruments did not specifically recognize the right to information at the time of their adoption. However, as rightly stated by T. Mendel, the drafters of international human rights agreements showed foresight by providing the necessary formulation for the right to freedom

of expression, encompassing not only the right to impart, but also the right to receive information and ideas. In addition to the important role of freedom of speech, they acknowledged a broader concept of the free circulation of information and ideas in society. They recognized the significance of protecting not only those who speak, but also those who listen [9].

Despite the prevailing view that the right to information has a conventional origin and has not yet become universally recognized, it can be argued that the aforementioned international legal instruments formed the basis for the recognition of the right to information as a separate category. The interpretation of international legal instruments regarding the right to information is comprehensive, as it encompasses the exercise of the following capabilities: seeking, receiving, and disseminating information. It is precisely the broad interpretation of the relevant provisions of international legal instruments that allows us to speak of the recognition of the right to information as a distinct right.

It is worth noting that with the development of communication and information technologies, the scope of the aforementioned capabilities is expanding due to the process of information democratization. In industrial and post-industrial societies, seeking and obtaining information required overcoming significant territorial distances, which also involved time and financial costs. It is also important to mention that the search for and acquisition of information used to be elitist in nature. In an information society, however, information and communication technologies enable us to overcome the tyranny of distance while ensuring equality and ease of access to information.

Thanks to the diversity of information and communication technologies, as well as the Internet, the accessibility of information is increasing, along with the collection of scattered and fragmented materials, formatting them into new datasets, which are publicly provided to users through entirely new channels. Today, anyone who has a computer or other devices such as a tablet or smartphone with Internet access can gain access to various materials and easily transmit (one-to-one) or distribute (one-to-many) them without much effort or time. Clearly, this erases the boundaries that previously existed

between information consumers and producers. Examples include Wikipedia, an encyclopedia containing millions of articles that can be edited by any Internet user; YouTube, a popular video hosting platform; and theeuropeanlibrary.org, a consortium of libraries from nearly 50 member countries of the Council of Europe.

Information and communication technologies provide qualitatively better opportunities for preserving information (books, audio, photos, videos, etc.) in electronic format. The reproduction of rare and hard-to-access materials, such as artworks, rare books, historical documents, scientific works, and so on, in digital form is of particular importance.

The above examples demonstrate that the transition to a new type of society involves a transformation of the prerogatives of the right to information. While previously the focus was on three types of prerogatives, which have also undergone changes under the influence of the information society, it is now relevant to discuss the existence of new forms of implementing this right, such as storage, processing, creation, transmission, and dissemination of information.

The constitutional recognition of the right to access information came later than the right to information itself. In general, the right to know has been a gradually developing tradition in Europe, starting from the emergence of the press to the understanding that press freedom alone is insufficient if the state keeps all information about its affairs secret. The study of the legislative history of the right to be informed allows us to assert that, despite certain components of this right being recognized as subjective rights as early as the 18th century, the right to access information as an independent subjective right emerged from the principles of transparency, freedom of speech, and the press in the second half of the 20th century [5, p. 12]. The reason for this lies in the particular nature of this right, the full realization of which can only be ensured at a certain stage of development of a constitutional legal state that is willing to undergo further self-restraint in order to promote a high level of societal awareness for the purpose of advancing democracy.

It is worth noting that the right to access information should not be equated with the right to freedom of information, as they have a similar goal of ensuring the realization of an individual's information

needs, but they serve different functional purposes. The function of the right to access information lies in providing the opportunity to directly obtain information from state authorities and local self-government about their activities and information about oneself, that is, access to official information, as well as socially significant information held by private legal entities. On the other hand, the purpose of freedom of information is to ensure the ability to freely search for and acquire any information from publicly available sources, obtain information about the actions of the government, but in the interpretation by media representatives, the ability to watch films, access scientific works, artistic creations, and the ability to communicate, etc. [8, p. 98]. This difference is manifested in the fact that while freedom of information requires non-interference from the state in its exercise, the right to access information reflects a direct cooperation and interaction between the state and the citizen, in which the state acts as an active participant, ensuring all conditions for individuals to exercise their right.

When determining the classification of the right to access information within a specific generation of human rights, its contentious nature should be acknowledged. In terms of its content, this right belongs to political rights as it enables individuals to participate in social (state and public) life and influence the activities of various government bodies [12, p. 11], local self-government bodies, and courts through access to information about their activities. However, by its nature, the right to access information is closer to the second or even third generation of human rights, as the establishment of mechanisms for its implementation requires regulation and support from the state, including the existence of corresponding guarantees regarding the conditions under which this right will be ensured. This is the fundamental difference between the second and third generations of rights and the first one – the necessity of positive actions by the state.

In the era of the information society, all branches of government have their online representation, which significantly facilitates access to public information. Thus, information and communication technologies progressively contribute to the improvement and increased effectiveness of the realization of the right to access public

information, ensuring transparency and openness in the activities of government authorities and local self-government, as well as citizen participation in the democratic process.

The next stage in the evolutionary development of the right to information is considered to be the elaboration of the concept of the right to communication. Its founding father is regarded as Jean d'Arcy, who held the position of Director of Radio and Visual Services in the Department of Public Information at the United Nations during the 1960s and 1970s. Through the analysis of satellite communication and new satellite information and communication technologies, Jean d'Arcy argued that the use of this type of communication would lead to the emergence of a new form of communication – interactive or participatory communication. This fact necessitates the recognition of the right of each individual to participate in communication. Summing up the results of his analysis, the French scientist draws the following conclusions: «The time has come when the Universal Declaration of Human Rights must include a broader right than the right to information... It is the right to communication. This is the perspective from which the future development of communication will be understood in its entirety» [1, p. 18]. According to O. Zernetzka, the motivating force that drove Jean d'Arcy's scientific and public opinion was this: Article 19 of the Universal Declaration of Human Rights inadequately reflects communication; it does not address communication as an interactive process. The mentioned article focuses on the unidirectional process of searching, receiving, and disseminating information and ideas. It considers communication as a «message transmission» only in one direction, without feedback [4].

The right to communication consists of two main elements: 1) the right to access information and communication technologies, which is understood as the ability of a potential consumer to effectively and efficiently use available means of communication as a recipient of information based on equality; 2) the right to personally participate in the communicative process, which is understood as the real and effective opportunity for the consumer to become a direct or indirect creator and disseminator of information.

Chronologically and substantively, the right to communication belongs to the rights of the third generation, because: 1) it was

formed in the second half of the 20th century (temporal criterion); 2) communication is inherently a polysemous concept. In everyday language, according to the definition provided in dictionaries, it means «the exchange of information, contact.» Thus, the right to communication arises only where and when there are interpersonal relationships between individuals, and therefore its realization can only be achieved collectively.

The right to communication is universal, encompassing not only the rights of individuals but also the rights of communities and states to communicate. The right to communication for developing nations is their general-civilizational right to development through communication. This includes the right to non-discriminatory access to infrastructure, the right to fair distribution and use of public resources (radio frequency spectrum, telephone numbering resources, Internet addressing space), the right to preserve and develop their cultures, including in the virtual information sphere on the Internet [10].

One of the key elements of the right to communication is access to information and communication technologies, particularly the Internet. The Internet has become a vital means of communication, allowing people to freely exercise their right to freedom of expression, as well as their right to seek, receive, and impart information and ideas, as guaranteed by Article 19 of the Universal Declaration of Human Rights and Article 10 of the International Covenant on Civil and Political Rights [13]. The right to access the Internet can be defined as the state-protected right of individuals to access the global network of the Internet for the realization of fundamental human rights.

Currently, countries such as Estonia, Greece, France, Finland and Spain have enshrined the right of citizens to access the Internet in their legislation. A useful example for our country can be found in Article 5A of the Constitution of Greece [7], which was introduced into the Greek Basic Law through constitutional amendments in 2001. In Article 5A, paragraph 1, it is proclaimed that every person has the right to information, and the cases in which this right may be restricted are defined. Paragraph 2 of Article 5A establishes that every person has the right to participate in the information society and that the state is obliged to promote the production, exchange, dissemination, and access to electronic information.

From the provisions of this article, it follows that, firstly, the Constitution of Greece, by enshrining the right to information and the right to participate in the information society in a single article, recognizes the inseparable connection between these two rights. Secondly, the Constitution of Greece establishes a forward-looking direction for the development of the right to information, which is manifested in its interrelation with the right to participate in the information society. Thirdly, the individual's right to participate in the information society includes: free access to the Internet, electronic communications and services; the right to unrestricted access to electronic communications and participation in various information society services, such as news groups, forums, chats, social media, etc. Therefore, it can be argued that the right to participate in the information society indirectly encompasses the right to communication, including its important element – access to the Internet.

Currently, courts have started to play an important role in establishing the right to access the Internet. For example, the Constitutional Court of Costa Rica, in its decision, recognized the right to Internet access as a fundamental human right. The European Court of Human Rights is increasingly considering cases related to the Internet. In the case of Ahmet Yildirim v. Turkey (Application No. 3111/10) [14], the court states that the Internet has become one of the primary means for individuals to exercise their right to freedom of expression and information, thereby providing them with necessary mechanisms to participate in activities and discussions on political and matters of public interest.

Conclusions. Law regulates the process of societal development by documenting its stages. The three generations of human rights today are nearly canonical, allowing us to trace the historical establishment of human rights as an evolving system in global practice. An illustration of this is the evolutionary development of the right to information. It emerged in the context of the first generation of human rights, specifically as a derivative right from freedom of thought, speech, and expression in the late 18th century, but gained autonomous character only at the beginning of the 21st century. Moreover, the right to information received a new impetus for development and became

subject to reinterpretation under the influence of the right to access to information and the right to communication.

Information serves as the foundation of an information society. Information has always been present in the structure of social relations (reflected in law), but it did not play the leading role it does today. It is through the unprecedented development of information and communication technologies, the rapid accumulation and exchange of information, as well as the recognition of the special significance of knowledge, that the right to information has become an independent right, filled with substantive content and fully established.

The values that have been shaping over time in previous stages of human development, thanks to the information society, acquire a new interpretation. The focus shifts towards rights, with particular emphasis on the right to information and its associated right to communication. The fundamental element of the latter is the right to access the Internet. These rights are now taking center stage and becoming the driving force of development for both society as a whole and individuals in particular. In our opinion, it is necessary to revise the definition of the right to information at the constitutional level, not only to establish its legitimacy but also to explicitly define the concept (name) of the «right to information,» which would signify its completeness as a distinct legal category. Its absence has generated numerous debates within academic circles regarding its existence. It is logically appropriate to establish the right to information alongside the right to participate in the information society, indicating that with the advent of the information age, information itself has become valuable. Alongside this important element of the information society is the right to access the Internet, which should also be legislatively enshrined, with its realization ensured through positive actions by the state.

REFERENCES :

1. DArcy, J. (1969). Direct Broadcast Satellite and the Right to Communicate. EBU Review. Vol. 118.
2. Dzoban O. P. (2013). *Filosofiiia informatsiinoho prava: svitohliadni i zahalno teoretychni zasady*. Kharkiv: Maidan.
3. *Zahalna Deklaratsiia Prav Liudyny vid 10/12/1948r.* URL: http://zakon1.rada.gov.ua/laws/show/995_015

4. Zakon Ukrainy «Pro dostup do publichnoi informatsii». Naukovo-pravktychnyi komentar. R. Holovenko, D. Kotliar, O. Nesterenko, T. Shevchenko. (Eds.). (2012). Kyiv: SPD Honcharuk A. B.
5. Zernetska O. V. (2014). Pravo na komunikatsiiu v hlobalizovanomu sviti. *UA Foreign Affairs*. URL: <http://uaforeignaffairs.com/ua/zs/anglomovna-versija/view/article/pravo-na-komunikaciju-v-globalizovanomu-sviti/>
6. Konstytutsiine pravo Ukrainy. Kolisnyk V. P., Barabash Yu. H. (Eds.). (2008). Kharkiv: Pravo.
7. Konstytutsiia Hretskoi Respubliky. URL: http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/SYNTAGMA1_1.pdf
8. Nesterenko O. V. (2012). Informatsiia v Ukraini: pravo na dostup. Kharkiv : Akta.
9. Mendel, Toby Freedom of information: a comparative legal survey. New Delhi : UNESCO New Delhi, 2003. 134 p.
10. Paziuk A. V. (2016). Pravo na komunikatsiiu v mizhnarodno-pravoviidoktryni ta mizhnarodnomu pravi: aktualni pytannia. Mizhnarodno-pravove rehuliuвання informatsiinoi sfery (teoretychni i praktychni aspekty) : Doctor's thesis : 12.00.11. Kyiv.
11. Rabinovych P. M. (2013). Osnovopolozhni prava liudyny: sotsialno-antropolohichna sutnist, zmistova klasyfikatsiia. *Visnyk Natsionalnoi akademii pravovyk hnauk Ukrainy*. № 2 (73).
12. Rabinovych P. M. (2004). Prava liudynyihromadianyna. Kyiv: Atika..
13. «The world is moving online»: promoting freedom of expression. URL:<https://www.ohchr.org/en/stories/2012/03/world-moving-online-promoting-freedom-expression>
14. ECHR Chamber judgment, case Ahmet Yildirimv. Turkey, 18.12.2012. URL: <http://hudoc.echr.coe.int/web/services/content/pdf/003-4202780-4985142>

Список використаних джерел :

1. D'Arcy. J. Direct Broadcast Satellite and the Right to Communicate. *EBUReview*, 1969. Vol. 118.PP. 14–18
2. Дзьобань О. П. Філософія інформаційного права: світоглядні і загальнотеоретичні засади: Монографія. Харків: Майдан 2013. 360 с.
3. Загальна Декларація Прав Людини від 10 грудня 1948 р. URL: http://zakon1.rada.gov.ua/laws/show/995_015
4. Закон України «Про доступ до публічної інформації». Науково-правкційний коментар. Р. Головенко, Д. Котляр, О. Нестеренко, Т. Шевченко. Київ: СПД Гончарук А. Б., 2012. 335 с.
5. Зернецька О. В. Право на комунікацію в глобалізованому світі. *UA Foreign Affairs*. 2014. URL: <http://uaforeignaffairs.com/ua/zs/anglomovna-versija/view/article/pravo-na-komunikaciju-v-globalizovanomu-sviti/>

6. Конституційне право України: Підручн. для студ. вищ. навч. закл. За ред. В. П. Колісника та Ю. Г. Барабаша. Харків: Право, 2008. 416 с.
7. Конституція Грецької Республіки. URL: http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/SYNTAGMA1_1.pdf
8. Нестеренко О. В. Інформація в Україні: право на доступ. Харків : Акта, 2012. 307 с.
9. Mendel, Toby Freedom of information: a comparative legal survey. New Delhi : UNESCO New Delhi, 2003. 134 p.
10. Пазюк А. В. Право на комунікацію в міжнародно-правовій доктрині та міжнародному праві: актуальні питання. Міжнародно-правове регулювання інформаційної сфери (теоретичні і практичні аспекти) : автореф. дис. ... д-ра юрид. наук : 12.00.11. Київ, 2016.
11. Рабінович П. М. Основоположні права людини: соціально-антропологічна сутність, змістова класифікація. *Вісник Національної академії правових наук України*. 2013. № 2 (73). С. 10–16
12. Рабінович П. М. Права людини і громадянина. Навчальний посібник. Київ: Атіка, 2004. 464 с.
13. «The world is moving online»: promoting freedom of expression. URL: <https://www.ohchr.org/en/stories/2012/03/world-moving-online-promoting-freedom-expression>
14. ECHR Chamber judgment, case Ahmet Yildirimv. Turkey, 18.12.2012. URL: <http://hudoc.echr.coe.int/web/services/content/pdf/003-4202780-4985142>

І. В. Мукомела

Еволюційний розвиток та роль права на інформацію в інформаційному суспільстві

Анотація. У статті здійснено спробу аналізу еволюції права на інформацію через призму поколінь прав людини. Акцентується увага на тому, що право на інформацію пронизує всі покоління прав людини, набуваючи нового змісту в межах кожного з них. Проаналізовано, що право на інформацію почало формуватися наприкінці XVIII століття і продовжує свій розвиток у сучасних умовах. Стверджується, що загальною правовою основою права на інформацію є свобода вираження думки та слова, які відносяться до першого покоління прав людини. Міжнародне закріплення права на інформацію отримало в другій половині XX ст. як похідне від свободи поглядів і переконань та вільного їх вираження. Зроблено акцент на тому, що у тлумаченні міжнародних правових актів право на інфор-

мацію є комплексним, оскільки його реалізація відбувається через правомочності: шукати, одержувати і поширювати інформацію. Широке тлумачення відповідних положень міжнародно – правових актів дозволяє говорити про самостійність права на інформацію як окремої правової категорії.

Обґрунтовується, що наступним етапом в еволюції права на інформацію є закріплення на конституційному рівні права на доступ до інформації, яке є похідним від принципу гласності, свободи слова та друку і сформувалося як окреме суб'єктивне право в другій половині ХХ ст. Це стало можливим лише на певному етапі розвитку конституційної правової демократичної держави, яка готова піти на формування високого рівня поінформованості в суспільстві з метою якісного забезпечення прав людини. Наголошується, що сутність права на доступ до інформації полягає у праві на доступ до офіційної інформації, яка є публічною та важливою інформацією, що може бути отримана від держави, місцевих органів влади та суб'єктів владних повноважень. Обґрунтовується, що право на доступ до інформації має спірний характер в приналежності до певного покоління прав людини. Дане право за своїм змістом належить до політичних прав, за своєю ж природою право на доступ до інформації є ближчим до другого, або навіть третього покоління прав людини, оскільки для створення механізму його реалізації необхідне регулювання та сприяння з боку держави, тобто наявність відповідних гарантій щодо умов за яких це право буде забезпечено

Відзначається, що право на доступ до інформації та право на комунікацію вплинули на переосмислення права на інформацію в цілому. Акцентується, що складовими елементами права на комунікацію є: 1) право на доступ до інформаційно-комунікаційних технологій; 2) право особисто брати участь у комунікативному процесі. Важливим елементом права на комунікацію є право на доступ до мережі Інтернет, яке було визнане Радою ООН з прав людини. Хронологічно і змістовно право на комунікацію відноситься до прав третього покоління.

Робляться висновки, що інформаційне суспільство надало нового прочитання як фундаментальним правам людини в цілому, так і праву на інформацію зокрема. Саме в інформаційному суспільстві інформація стала цінною сама по собі, що дає підстави говорити про виділення права на інформацію в окреме самостійне право. Обґрунтовується

необхідність законодавчого закріплення права на інформацію, права на участь в інформаційному суспільстві, а також права доступу до Інтернету.

Ключові слова: *інформація, інформаційне суспільство, право на інформацію, свобода переконань, право на доступ до інформації, право на комунікацію, Інтернет*