

THE RIGHT OF ACCESS TO THE INTERNET AS FUNDAMENTAL HUMAN RIGHT GIVEN THE DEVELOPMENT OF GLOBAL INFORMATION SOCIETY

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Abstract

Purpose – This article examines the pressing problem of ensuring the right to Internet access as a basic human right that is fundamental for the formation and the development of the modern information society. The purpose of the study is to promote the idea of adhering to such right, clarifying conceptual approaches, to understand its content as reflected in the decisions of the United Nations, the Council of Europe, and the European Court of Human Rights, as well as determining both the place and the role of this right in the European mechanism for the provision of human rights at the current stage of the information society.

Methodology/Approach/Design – In order to reach a comprehensive understanding of the human right to Internet access and to reduce the level of digital inequality both in the European countries and globally, several authors have given their suggestions, which are considered appropriate for their implementation by international organizations, governments, telecommunication companies, and Internet service providers.

Findings – By propelling this analysis, the authors advocate the need to recognize the right to Internet access as one of the inalienable human rights that are necessary for decent living and development in the information society. Special attention is given to the fact that the right to Internet access, due to its unique kind allows individuals to exercise other rights, namely the right to information, the right to freedom of opinion and the dissemination

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thereof, the right to freedom of assembly and association, the right to education, among others. This imposes positive obligations on states to ensure the human right to Internet access and to create a safe and favorable Internet environment for all.

Keywords: Right to Internet Access. Information Society. Internet Users. Fundamental Human Right.

INTRODUCTION

Against the backdrop of the development of modern society, information and communication technologies penetrate deeply into people's lives. These technologies are one of the most important factors influencing the formation of society in the 21st Century. They quickly turned into a vital stimulus for the development of not only the world economy but also other spheres of human activity.

In a society claiming the status of information-oriented, the information should play a leading role, as well as technologies that facilitate continuous access to it, in particular, the World Wide Web. The Internet has become a socially important resource, which is commonly used in the everyday language in the meaning of the World Wide Web and the information available in it, and not in the sense of the network itself.

The issue concerning the right to access the Internet is topical nowadays. The gap between those who have access and those who do not is called the digital divide. The degree of Internet accessibility varies across the globe. Thus, according to Internet World Stats, as of June 2019, the penetration rate of the Internet in different regions of the world is as follows: North America – 89.4%, Europe – 86.8%, Oceania/Australia – 68.4%, Latin America/Caribbean – 68.0%, Central Asia – 67.2%, Asia – 51.9%, Africa – 39.8%, with an average of 57.3% worldwide¹.

According to the 2019 Global Digital industry status reports by We Are Social and Hootsuite, the number of people accessing the Internet is growing at a rate of 1 million new users per day. In 2019, the Internet audience is 4.39 billion people, which is 366 million (9%) more than in January 2018. There are 3.48 billion users registered on social networks. Compared to the data at the beginning of last year, this indicator increased by 288 million (9%). Today, 3.26 billion people access social networks from mobile devices. This is 10% more than last year when there were 297 million less².

¹ INTERNET USAGE STATISTICS. The Internet Big Picture. World Internet Users and 2019 Population Stats Available at: <https://www.internetworldstats.com/stats.htm>

² DIGITAL 2019: GLOBAL INTERNET USE ACCELERATES. Available at: <https://wearesocial.com/blog/2019/01/digital-2019-global-internet-use-accelerates>

Even though billions of people in the world have access to the Internet, there are countries in which the authorities are trying to restrict or control the access of its citizens, for example, North Korea, Iran, Syria, China, Vietnam, Saudi Arabia, Pakistan, Tunisia, Turkmenistan, and Burma³⁴. A combination of political, social, religious, and cultural factors in these countries is the reason for such a restriction or control over the access of citizens to the Internet.

Nowadays, the Internet allows a person to exercise his right to freedom of expression or the right to seek, receive and transmit any kind of information and ideas guaranteed by Article 19 of the Universal Declaration of Human Rights, Article 19 of the International Covenant on Civil and Political Rights, Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, Article 11 of the Charter of Fundamental Rights of the European Union of 2000, Article 13 of the Convention on the Rights of the Child of 1989, and other international legal instruments.

The significance of the information society, and, in particular, the Internet, in the realization of human rights, is so high that many scholars consider access to the Internet to be an inalienable human right in the modern world. For most countries, an information society is one of the most important national priorities. This has become the basis for research on recognition of everyone's right to access the Internet, which, given its link with technical progress. The right to access the Internet can be attributed to the fourth generation of human rights. That is why such countries consider it urgent and necessary to study the issue of recognition of the right of access to the Internet as a basic human right in the scenario of the formation and development of the information society.

THE ROLE OF THE INTERNET IN THE SYSTEM OF LEGAL RELATIONS

The modern informational virtual space of local and global communications requires the provision of certain standards of access for as many citizens as possible to the latest information and communication technologies. Some information-rich societies and states form (with certain distinctive differences of national models) a fundamentally new legal mechanism to implement basic information rights and freedoms. Often, the elements of this mechanism are presented in the form of “access rights to information.” An

³ Lavanya Rathnam. Internet Censorship: Five Countries That Block The Web // Cloudwards: site. 28.11.2017. Available at: <https://www.cloudwards.net/internet-censorship/>.

⁴ Top 10 censors of the internet and how to avoid internet censorship // Le VPN: site. 01/06/2017. Available at: <https://www.le-vpn.com/top-10-censors-internet-avoid-internet-censorship/>.

important element of this mechanism is the right of access to the Internet as a global information computer network, representing the union of many regional computer networks and computers, which exchange different information through communication channels.

Professor I. M. Rassolov determines that, in the sphere of the Internet, the subjective right comprehends the form and extent of the possible or permitted behavior of subjects of Internet relation, guaranteed by the rules of law⁵. Thus, the right of access to the Internet is to ensure the actions of Internet users within the framework of Internet relations, governed by relevant rules. If we analyze international documents, we can conclude that the essence of this right lies, first of all, in free access to the Internet, in other words, the possibility of a person to connect to the Internet through Internet providers. At the same time, you should not accept the freedom to connect to the Internet as a guarantee of free access to the network. In our opinion, it is necessary to separate the right of access to the Internet from freedom of expression of views on the Internet and the right of free access to information, since these rights, although being closely connected, should exist separately.

Today one can note that due to the proliferation and development of the global computer network of the Internet, more and more countries focus their attention on the necessity to legal regulation the identified sphere.

V. S. Tatarova defends that this necessity is predetermined by the fact that, due to the rapid development, the Internet contributes to revolutionary transformations in all spheres of public life. The Internet has already become a powerful factor in social, educational, and cultural development, and provides new opportunities for both public authorities, ordinary citizens, and educators, eliminating barriers to the creation and dissemination of materials by offering universal access to the number of digital information sources, which are constantly increasing. However, the Internet also contains a part of potentially inappropriate, obscene, abusive, or even illegal information and can sometimes be used as a means of criminal activity. Although the benefits of the Internet greatly outweigh its potential disadvantages, these problems cannot be ignored⁶.

⁵ Y.M. Rassolov. *Pravo y Yinternet: pidruchnyk. 2-he vyd.* Moskva: Norma, 2009. 210 s.

⁶ Tatarova V.S. *Osoblyvosti pravovoho rehuliuвання merezhi Internet. Upravlinnia rozvytkom.* 2014. № 6 (169). S. 105-108.

INTERNATIONAL LEGAL FRAMEWORK TO REGULATE THE INTERNET ACCESS RIGHT

In order to promote the idea of observance and protection of human rights and freedoms on the Internet, including the right of access to the network, international organizations have developed and implemented several recommendations, conventions, guidelines, etc. The first important international instrument was the Charter of the Global Information Society, adopted on July 22, 2000 (Okinawa, Japan). The document consolidated the provision that the state shall guarantee such conditions for the development of the society that would ensure the global information society⁷.

The Council of Europe Declaration on Freedom of Communication on the Internet has contributed significantly to the development of Internet law, adopted on May 28, 2003 (Strasbourg, France). The document expresses concern about attempts to restrict universal access to communications on the Internet for political or other reasons, which is not in line with democratic principles. It emphasizes that the Member States should promote and encourage access to the Internet on a non-discriminatory basis at an affordable price.

The declaration provides for the prohibition to restrict access to the Internet information, as well as the refusal of state control (not to use blocking, filters), and the guarantee of the right to anonymity⁸.

The idea of understanding and recognizing human rights of access to the Internet was supported during the World Summit on the Information Society in 2003 (Geneva, Switzerland) and was widely endorsed by the World Summit on the Information Society (Tunis, 2005). After long negotiations between the governments, representatives of civil society, and business, the Summit adopted the Declaration of Principles of the World Summit on the Information Society. This confirms the importance of the information society to support human rights, as well as the aspiration of the involved countries to build a people-centered, open to everyone and development-oriented information society, where everyone can access, use and share information and knowledge⁹.

⁷ Okinavska khartiia hlobalnoho informatsiinoho suspilstva vid 22.07.2000 // Baza danykh «Zakonodavstvo Ukrainy» / Verkhovna Rada Ukrainy. Available at: http://zakon2.rada.gov.ua/laws/show/998_163.

⁸ Declaration on freedom of communication on the Internet. (Adopted by the Committee of Ministers on 28 May 2003 at the 840th meeting of the Ministers' Deputies) Council of Europe. Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805dfbd5.

⁹ Declaration of Principles Building the Information Society: a global challenge in the new Millennium, WSIS-03/GENEVA/DOC/4-E, World Summit on the Information Society, Geneva 2003 – Tunis 2005 // International Telecommunication Union. Available at: <http://www.itu.int/net/wsis/docs/geneva/official/dop.html>.

The value of providing access to the Internet has been widely recognized by international institutions and experts. For example, on May 16, 2011, the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue presented to the United Nations Human Rights Council a report on the main trends and issues concerning the right of all individuals to seek, receive and disseminate information and ideas of any kind via the Internet. He stressed that, since the foundation of the Internet, mankind has received an instrument used by people around the world regardless of their age. The unprecedented phenomenon of the Internet is also explained by the fact that modern life has been enriched with its important virtual component. Nowadays, it is necessary to consider the Internet as one of the most effective tools of the 21st Century to increase the level of openness, transparency, access to information, as well as to facilitate the process of active civil support in the development of democratic societies. In addition, a growing wave of protests within the Middle East and North Africa regions has made it possible to understand the role of the Internet in mobilizing the population in the fight for justice, equality, accountability of authorities, and respect for human rights. Thus, improving access to the Internet for all groups with a minimum of restrictions should be a priority for any state. Any restriction should be clearly defined by law and justified as the necessary and least burdensome means available for the protection of the rights of others¹⁰. Due to this report, the United Nations is believed to have taken the first steps towards recognizing everyone's right to access the Internet as an inalienable human right. Unjustified deprivation of the right of the person to seek, receive and disseminate information through the network is a violation of this right.

Scientists Wolfgang Benedek and Matthias Kettelman in their article *Freedom of Expression and Internet* note that “although someone considered Frank La Rue's report as the United Nations' proclamation of the new right of access to the Internet, however, if we read carefully, it was rather a recognition of the importance of providing access to the Internet as a priority of the policy of the states”. The speaker considers the role of access to the Internet more like a catalyst for other human rights and facilitating change¹¹.

The principles, similar to the position of the United Nations, have been included in a new cyber-strategy of the United States. The document, adopted by

¹⁰ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. Human Rights Council. Seventeenth session. Agenda item 3. Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development // United Nations. Available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf.

¹¹ Volfhanh Benedek, Mattias Kettelman. *Svoboda vyrazhennia pohliadiv ta Internet*. Strasburh: Rada Yevropy, 2013. 204 s. Available at: <https://rm.coe.int/168059936a>.

the State Department, declares that, for the world as a whole, the Internet has become a platform for new ideas. It is a mechanism of free dissemination of information that predetermines the degree of society's strength. The strategy, in particular, contains provisions as ensuring wide access to the Internet and cooperation with resources and organizations, which promote the expression of opinion through the Internet¹².

At its 32nd session, on June 27, 2016, the United Nations Human Rights Council adopted the Resolution "Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development", which confirms "that the same rights a person has in the offline space should also be protected in the online space"¹³. In particular, it concerns the right to freedom of expression. According to the position of the United Nations Human Rights Council, the right to freely express views shall be protected without interference in any way. Thus, any media and technical method may be used. This guarantee can be found in Article 19 of the Universal Declaration of Human Rights of 1948, Article 19 of the International Covenant on Civil and Political Rights, Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and other instruments. At the same time, the resolution calls on all countries to promote and improve access to the Internet, as well as to establish special procedures for monitoring the observance of the rights and freedoms of Internet users.

Unfortunately, this Resolution has not received universal support since several countries have abandoned it, in particular, Russia, China and South Africa¹⁴.

The United Nations Science and Technology Commission for Development has expanded some of the economic, social, and political advantages and benefits which may arise due to the provision of access to the Internet to people:

- It creates opportunities for economic development through online services, enterprises and programs that simultaneously create jobs. A

¹² International strategy for cyberspace. Prosperity, Security, and Openness in a Networked World. May 2011 // The White House President USA. Available at: https://obamawhitehouse.archives.gov/sites/default/files/rss_viewer/international_strategy_for_cyberspace.pdf.

¹³ Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: Resolution Human Rights Council General Assembly dated 27 June 2016 A/HRC/32/L.20 / United Nation. Available at: https://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/32/L.20.

¹⁴ Tim Sandle. UN thinks internet access is a human right / BUSINESS INSIDER. Jul. 22, 2016, Available at: <http://www.businessinsider.com/un-says-internet-access-is-a-human-right-2016-7>.

recent study by the Brookings Institution's Center for Innovation Technologies demonstrated the economic benefits for the country arising from Internet access, highlighting the significant economic value of online services and applications. Also, the study addresses the issue of blocking the Internet services in Uganda in February and May 2016 and concluded, that Uganda, as a result, lost at least US\$2.16 million. In Morocco, the 182-day blockade of free or cheap voice calls through Skype, Viber, Tango, WhatsApp and Facebook Messenger caused economic losses of US\$320 million. More recently, in 2017 a four-week blocking of Cameroon's access to Internet services in two English-speaking regions cost the country's businesses more than US\$1.39 million;

- It improves education since it provides a platform for the exchange of information and education;
- It can also be useful in the healthcare system, since it provides people, especially in rural areas, with quick and direct access to consulting services on basic health issues;
- It provides benefits for cultural and social development. For example, artists have the opportunity to reach more people in the Internet space, while others can find a greater variety of information.

And, finally, access to the Internet can contribute to the political engagement of the population. The Internet, especially social media, is widely used for informational purposes for the dissemination of several news and events. They are also used to hold debates, exchange ideas and views, as well as political reforms around the world¹⁵.

Great attention is paid to access to the Internet within the framework of the Council of Europe. In 2007, the Committee of Ministers of the Council of Europe endorsed Recommendation CM/Rec (2007)16 on measures to promote the public service value of the Internet, which emphasizes that “the Internet access, ability and opportunity to use it shall be considered as an integral part of the full realization of human rights and fundamental freedoms in the information society”¹⁶.

¹⁵ Obmezhenia svobody Internetu v Ukraini: shcho tut ne tak / Internet svoboda. 10/10/2017. Available at: <https://netfreedom.org.ua/obmezhenia-svobody-internetu-v-ukraini/>.

¹⁶ Recommendation CM/Rec(2007)16 of the Committee of Ministers to member states on measures to promote the public service value of the Internet (Adopted by the Committee of Ministers on 7 November 2007 at the 1010th meeting of the Ministers' Deputies) / Council of Europe. Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805d4a39.

Nevertheless, arguments are put forward in favor of the perspective that the Internet is just a technology that can change, and that would be the reason why, as in the case of electricity, it should be considered a useful instrument of exercising rights rather than the actual object of human rights. Other assertions are also wary of the expansion of human rights, namely: the proclamation of new human rights without adequate effective protection. In this regard, it should be noted that the Parliamentary Assembly of the Council of Europe is concerned that “mediators of the media based on information and communication technologies may excessively restrict access and dissemination of information for commercial and other reasons without informing their users and violating the rights of the latter”. Often, states are afraid of imposing additional obligations on them. Therefore, most of them oppose the recognition of Internet access as a human right. At the same time, many countries have recognized the right of Internet access in their national law, sometimes even in constitutional provisions¹⁷.

In 2011, the Committee of Ministers of the Council of Europe emphasized, in the Declaration on Internet Governance Principles, its vision of the Internet as a human-centered network based on respect for human rights and freedoms. In 2012, the Committee of Ministers of the Council of Europe created the Committee of Experts on Internet User Rights (MSI-DUI), whose task was “not to establish new human rights, but to study the possibility of application of the existing rights to the Internet.” In 2014, the Committee of Ministers of the Council of Europe approved the Recommendation CM/Rec (2014)6 and noted that the Member States are obliged to ensure all human rights and fundamental freedoms outlined in the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. The obligation is also valid when it comes to the use of the Internet. The Recommendation emphasizes that the existing human rights and fundamental freedoms equally relate to both real life and Internet space. No one shall be subjected to unlawful interference in the exercise of human rights and fundamental freedoms while working on the Internet.

In 2014, the Council of Europe introduced the Human Rights Guide for Internet Users, which explains human rights and freedoms concerning the use of the Internet. These guidelines are based on the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, other conventions of the Council of Europe and instruments that reveal various aspects of the protection of human rights and freedoms.

The Human Rights Guide for Internet Users emphasizes that:

¹⁷ Volfhanh Benedek, Mattias Kettman. Svoboda vyrazhennia pohliadiv ta Internet. Strasburh: Rada Yevropy, 2013. 204 s. Available at: <https://rm.coe.int/168059936a>.

- The access to the Internet is an important means of carrying out human rights and freedoms, as well as participating in democratic processes. That is why deprivation of access to the Internet is possible only by a court decision or under the terms of the contract;
- It shall be provided at a reasonable price and be non-discriminatory;
- Public authorities shall take reasonable efforts and specific measures to promote access to the Internet if the person lives in rural and geographically remote areas, and also if the person belongs to the poor and/or people with special needs or disability;
- When interacting with public authorities, Internet service providers and Internet content providers, as well as with other users or user groups, a person shall not be subject to discrimination on any grounds such as sex, race, color, language, religion or belief, political or other opinions, nationality or social origin, membership of a national minority, property status, origin or any other status, in particular, ethnic origin, age or sexual orientation¹⁸.

Of significant interest is the report *Is Internet access to the list of human rights?* by the Head of the Media and Information Society Committee of the Council of Europe Andris Melacaus (January 2012-December 2013). Analyzing the views of the United Nations, the Organization for Security and Co-operation in Europe, the Council of Europe, the European Union, the European Court of Human Rights on this issue, Andris Melacaus concludes that “given the unique and universal character of the Internet and its unsurpassed potential for freedom of expression, it is important to state that it is time for the Council of Europe to consider the necessity of adopting a new Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. If the Protocol will be adopted, there will be an issue of positive obligations of the state”¹⁹.

On March 7, 2018, the Committee of Ministers of the Council of Europe adopted Recommendation CM/Rec (2018)2 on the role and responsibilities of Internet intermediaries, which confirmed once more the particularly important role of the Internet in the implementation of human rights as provided for by the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, namely: the right to freedom of assembly and unions, and the right to

¹⁸ Posibnik z prav lyudini dlya internet-koristuvachiv ta poyasnyvalnij memorandum (Rekomendaciya SM/Rec(2014)6 Komitetu ministriv Radi Yevropi derzhavam-chlenam shchodo posibnika z prav lyudini dlya Internet-koristuvachiv ta poyasnyvalnij memorandum). Kiiiv. Radi Yevropi, 2015. 56 s. Available at: <https://rm.coe.int/16802e3e96>.

¹⁹ Zhurba Yu.A. Pravo na dostup do Internetu: normatyvne zakriplennia. Pravo i suspilstvo. 2016. № 2 ch.3. S.12-17.

education. In addition, the global Internet computer network provides access to knowledge and culture, as well as participation in public and political debates and democratic administration. The recommendation confirmed the obligation for Internet intermediaries to try providing their products and services without any discrimination. Internet intermediaries shall, in all their actions, respect the recognized human rights and freedoms²⁰.

The above provisions show such feature of the right of access to the Internet as a fundamental right that defines human rights as such opportunities, which are necessary for its worthy existence and development in certain historical conditions²¹.

There are certain discussions in the scientific literature regarding the recognition of the right of access to the Internet as a positive or negative right. Thus, if such rights are recognized as negative, it would mean that, above all, they do not require state interference in their realization. Therefore, they do not directly depend on the level of socio-economic development of the country. While positive human rights require more active support from public institutions. They oblige the state with due regard to its available resources to take measures to gradually ensure their full realization. John Kwan in *The Internet Access as a Fundamental Law* and Jonathon Penny in *The Right of Access to the Internet: History and Origins* have noted that the right of access to the Internet in its essence can be both negative and positive²²²³. Nowadays, in some countries, the right of citizens to access the Internet has become normative in national legislation, which indicates a positive obligation of the state.

On January 24, 2012, the Federal Court of Germany (Bundesgerichtshof) ruled that Internet access was central to human life. Accordingly, users have the right to claim damages from their Internet service providers for the absence of access to the network. The Court noted that the use of the Internet is already an economic benefit, and the lack of access can significantly undermine the material basis of life. This makes it very special, and therefore the effects of lack of access

²⁰ Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries (Adopted by the Committee of Ministers on 7 March 2018 at the 1309th meeting of the Ministers' Deputies) / Council of Europe. Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680790e14.

²¹ Teoriia derzhavy i prava: pidruchnyk / pid red. O.V. Petryshyna. Kharkiv, Pravo, 2014. 368 s.

²² John Kwan. Internet access as a fundamental right. TWS Policy Paper. 2011. 4 p. Available at: <http://thewilberforcesociety.co.uk/wp-content/uploads/2011/06/INTERNET-ACCESS-AS-A-FUNDAMENTAL-RIGHT.pdf>.

²³ Jonathon W. Penney. Internet Access Rights: A Brief History and Intellectual Origins. William Mitchell Law Review. 2011, Vol. 38, Iss. 1, Article 11. 42 p. Available at: <https://open.mitchellhamline.edu/cgi/viewcontent.cgi?referer=https://www.google.com.ua/&httpsredir=1&article=1440&context=wmlr>.

are felt immediately and painfully. This line of reasoning is important because it helps to understand the important role, which the Internet has started to play in the life of the European population. In particular, the role of the Internet will also grow when the generation that has grown up on the Internet is employed.

The Court decision of 2012 is in line with the previous decision of the Federal Constitutional Court of Germany, asserting that the state is obliged to provide everyone with the opportunity to participate in modern communication channels, including the Internet. Such conclusion is based on Article 1 of the German Constitution (Grundgesetz), which guarantees the protection of human dignity and confirms the principle of a social state, which collectively provide the opportunity for everyone to “maintain contact with other people” and “participate in the social, cultural and political life” of the state.

Moreover, since July 1, 2010, every citizen of Finland has been guaranteed the right of access to the broadband link at a speed of 1 Mb/s. This technological commitment has been assumed by the state on behalf of information and communication companies. Subsequently, the Finnish Government connected all citizens by 2015 to the Internet at a speed of 100 Mb/s. The obligation of the Government of Finland does not provide for payment for access to the Internet of each citizen, but the state’s guarantees of a minimum level of services and access to the network are an important step towards ensuring access in rural areas. It is considered that such an approach can change the demographic trends associated with reducing the amount of the rural population and revitalize the creative approach to the accumulation of knowledge.

A similar provision was introduced to Spanish law 2/11 “On a sustainable economy” of March 4, 2011. Article 52(1) obliges the state to provide each individual with broadband access to the public communications network at a minimum speed of 1 Mb/s²⁴.

THE PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS WITH REGARD TO THE RECOGNITION OF THE RIGHT OF ACCESS TO THE INTERNET

A separate legal position was established in the practice of the European Court of Human Rights (ECHR) regarding the recognition of the right of access to the Internet. The indicative case of ECHR regarding the right of access to the Internet is the case of Ahmet Yıldırım v. Turkey of 2013. After analyzing the issue of access to the Internet in this case, ECHR found restrictions on access to the Internet by violating Article 10 “Freedom of Expression” of the Convention for

²⁴ Volfhanh Benedek, Mattias Ketteman. Svoboda vyrazhennia pohliadiv ta Internet. Strasburh: Vydavnytstvo Rady Yevropy, 2013. 204 s.

the Protection of Human Rights and Fundamental Freedoms of 1950. The First Instance Criminal Court decided to block the site because its owner was charged with abuse of Atatürk's memory. The Turkish telecommunications company's administration appealed to the court to extend the order to block access to Google Sites, where the applicant's site was located, for technical reasons. As a result, the applicant was not able to access his site even after the criminal proceedings against him had been terminated. The European Court of Human Rights recognized that the Internet had become one of the main means of exercising the right to freedom of expression and information. The Turkish law did not contain any provisions on blocking Internet access, as decided by the Turkish court, nor norms that would allow the blocking of the entire Internet domain, such as Google Sites. In addition, Google Sites was not informed that this specific site was subject to criminal proceedings, according to which the site was to be blocked. Thus, the Criminal Court of Turkey did not comply with the Convention's requirement of legalizing the relevant restrictions and sanctions and did not provide the applicant with the necessary level of protection to which he was entitled. The latter meant that the measures taken were arbitrary, and therefore led to violation of Article 10 of the Convention. In particular, the European Court of Human Rights has ruled that issues of access to the Internet are guaranteed by the obligations of the state under Article 10 of the Convention.

The European Court of Human Rights has noted that, according to the results of the study, the Court concluded that “theoretically the Internet access is protected by constitutional guarantees of freedom of expression, freedom to receive ideas and information” in the Council of Europe member states, namely: Germany, Austria, Azerbaijan, Belgium, Spain, Estonia, Finland, France, Ireland, Italy, Lithuania, Netherlands, Poland, Portugal, Czech Republic, Romania, Great Britain and Northern Ireland, Slovenia, Switzerland.

The European Court of Human Rights has further stated that the right of access is inherently connected with the right to access information protected by the national constitutional law. In the Court's opinion, it includes the right of everyone to participate in the information society and the duty of the state to guarantee everyone access to the Internet: “as a whole, such general guarantees of freedom of expression constitute a sufficient basis for recognizing the right to unimpeded access to the Internet”²⁵.

Before making such a conclusion, the European Court of Human Rights reviewed the international obligations of Internet access. Among them, the European Court of Human Rights, in particular, referred to the Council of Europe

²⁵ «Case of Ahmet Yildirim v. Turkey» (Application no. 3111/10) 18/03/2013 // Reiestr sudovykh rishen / European Court of Human Rights. Available at: <http://hudoc.echr.coe.int/eng?i=001-115705>.

Declaration on Human Rights and Rule of Law in the Information Society of 2005, recognizing that “limited access or lack of access to information and communication technologies may deprive people of their ability to exercise their rights in full”; the Council of Europe’s Freedom of Communication in the Internet (2003); the Recommendation CM/Rec (2007)16 to Member States on measures to promote the public service value of the Internet; the Recommendation CM/Rec (2007)11 of the Committee of Ministers to Member States on promoting freedom of expression and information in the new information and communication space; the Recommendation CM/Rec (2008)6 of the Committee of Ministers to Member States on measures to promote respect for freedom of expression and information in connection with Internet filters; the CM Recommendation/Rec (2012)3 of the Committee of Ministers to Member States on the protection of human rights with regard to searching systems, among others.

The European Court of Human Rights also applied the reasoning from the case of *Ahmed Yıldırım v. Turkey* to the case *Cengiz and Others v. Turkey* of 2016, concerning a court order that blocked access to YouTube in Turkey because ten videos posted on the site had violated national laws. The European Court of Human Rights concluded that there was a violation of the right to freedom of expression, as the YouTube blocking was “not lawful”. It noted that the relevant law does not allow to completely block access to a website on account of the content of one of its web pages. The European Court of Human Rights also stated that the authorities should have taken into account the fact that an event blocking access to a large amount of information significantly affects the rights of users of the Internet and has significant “side effects”. Accordingly, it constituted a violation of Article 10 “Freedom of Expression” of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950²⁶.

In Turkey, the administrative body responsible for regulating Internet content has been criticized for measures that have blocked public access to Twitter, Facebook and YouTube. The Turkish Press Council, the body responsible for the self-regulation of the press, has noted that “as it is illogical and inappropriate to shut down the entire library because it contains several prohibited books, it is useless to prohibit access to social networks containing billions of useful documents and information for the entire Turkish people only because there is some inappropriate content there.”

In 2014, the Constitutional Court of Turkey found that blocking YouTube and Twitter violates the constitutional right to freedom of expression. In its decisions, the Court emphasized the importance of using the Internet for the

²⁶ Case of *Cengiz and others v. Turkey*» (Applications nos. 48226/10 and 14027/11) 01/03/2016 // European Court of Human Rights. Available at: <http://hudoc.echr.coe.int/eng/?i=001-159188>.

exercise of the right to freedom of expression and established that the implementation of blocking measures is not provided for by law²⁷.

The issue of access to the Internet, in particular, physical and content access, is analyzed in detail by the European Court of Human Rights in the case *Jankowskis v. Lithuania* of 2017. Having a desire to enter the university to obtain a degree of law and serving the sentence at the same time, the applicant requested the necessary information on the possibility to enter the university with the assistance of the Lithuanian Ministry of Education. He was informed that all information was posted on the website. The applicant requested the administration of the prison to provide him with access to the Internet. The prison authorities informed the applicant that the prison rules did not provide for the possibility of access to the Internet for prisoners. After reviewing the provisions governing the detention, the Kaunas County Administrative Court rejected the applicant's complaint. While the Court noted that the prison rules did not explicitly prohibit the use of the Internet by prisoners, phones and radios were included in the list of prohibited items. These restrictions were determined by the need to establish preventive measures to further limit crime rates. In addition, the court concluded that the prohibition of access to the Internet was one of such measures, indicating its binding nature. The Supreme Administrative Court left the decision unchanged. It was noted that the use of the Internet by prisoners was not regulated by law, that providing such access was an abuse of the powers by the prison authorities. The Supreme Administrative Court found the refusal to grant the prisoner access to the Internet to be justified and lawful. Having examined the case file, the European Court of Human Rights ruled that the prison authorities did not provide sufficient evidence to substantiate the applicant's refusal.

The judges have pointed out that all the websites, to which *Jankowskis* asked for access, were governmental. The European Court of Human Rights has also stated that the prohibition of access to the Internet violates the right to freedom of expression, guaranteed by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. According to the decision of the European Court of Human Rights, the Lithuanian authorities shall grant the prisoner access to the sites related to education and educational programs, as it corresponds to the purpose to acquire education²⁸.

²⁷ *Obmezhenia svobody Internetu v Ukraini: shcho tut ne tak / Internet svoboda*. 10/10/2017. Available at: <https://netfreedom.org.ua/obmezhenia-svobody-internetu-v-ukraini/>.

²⁸ «Case of *Jankovskis v. Lithuania*» (Application no. 21575/08) 17/04/2017 // European Court of Human Rights. Available at: <http://hudoc.echr.coe.int/eng?i=001-170354>.

CONCLUSION

Summing up the material, we can conclude that the problem of access to the global computer network of the Internet does not reduce the level of its topicality. Confirmation of this fact is provided in the study by the statistics of international agencies, the decisions of the European Court of Human Rights, and the background reports on some countries, which restrict and block access to the Internet. The obvious consequence of such a gap in the use of the Internet is a global socio-political problem that the international community is trying to solve by the efforts of international organizations, governments, telecommunication companies and Internet providers.

The right of access to the Internet should be separated from the freedom of expression on the Internet and the right of free access to information since although these rights are closely connected, the right of access to the Internet should exist separately. Against the backdrop of our reality, the global Internet computer network serves only as a key means that allows people to exercise their right to freedom of expression in the network. A characteristic feature of the Internet is not only a communication medium and an important source of information but also a modern public infrastructure that allows each person to access cultural, educational, public, political and other resources, as well as various services, etc.

However, it should be noted that the development of the Internet has raised the issue of legal regulation of relations between Internet users, providers and states as a whole. States should realize that the unique value role the global Internet computer network plays in the exercise of other human rights, recognized internationally, is an important factor when considering the need to ban or restrict access to the Internet.

At the same time, we agree that there is a need to protect “vulnerable” types of information, such as personal data, as well as the need to create preventive measures to limit crime rates. Therefore, at the current stage of development of the information society, one of the priorities is to find the optimal balance between the interests of Internet users and the state.

Analyzing the views on this issue of the United Nations, the Council of Europe and the European Court of Human Rights, we conclude that the right of access to the Internet is recognized as one of the inalienable human rights, as it is fundamental to ensure dignified existence to all and social development under the conditions of formation and development of the information society. The states are then required to refrain from any violation of human rights concerning the Internet. They have a positive obligation to ensure the right to the Internet and to create a safe and favorable online space for all.

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