

Constitutional Legal Aspects of the Right to Access

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ABSTRACT

In the course of the work, research was carried out on the definition of the concept of the right to information, and also analyzed, with qualitative conclusions, the rights of citizens, in the constitutional context of ensuring citizens' access to information. It is determined that the level of democracy depends on the extent to which the country can fully realize its personal, political, economic, social and cultural rights. It was decided that one of the most important of the personal rights of citizens is the right to information, since free access of citizens to information is one of the classifications of a democratic state. It was investigated that the realization of social, economic and other rights is impossible without the free dissemination of information. The right to information is an independent constitutional right that allows an individual to freely seek, receive, transmit, create and distribute information in any legal way. The article examines and characterizes the distinctive features between the right to information and the right to access information in a democratic state. The purpose of the article is to research and determine the features of the right to information as a constitutional right of a citizen.

Keywords: right, access, society, information, citizen, constitutional right.

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INTRODUCTION

In a legal society, the rights, freedoms and duties of a person and a citizen have always been in the spotlight. In the entire civilized world, not only legal scholars, but also practitioners whose activities are constantly related to solving various issues in the field of ensuring, realizing and protecting human rights and freedoms, develop and implement new effective mechanisms for ensuring human and civil rights and freedoms. Today, one of the central places among the constitutional rights and freedoms of man and citizen is the right to information.

The purpose of the article is to research and determine the features of the right to information as a constitutional right of a citizen.

MAIN TEXT

Today, information has already become an integral part of any activity of a person, society and the state, the theoretical (scientific) understanding of this phenomenon began relatively recently, about a hundred years ago. Thus, this fact can be considered a scientific and technical progress, the development of communication systems and the emergence of cybernetics, and, as a consequence, the emergence of the importance of information in the development of society - and especially commercial information. Therefore, it is not for nothing that today's time has been declared the century of the right to information.

The most common concept of the right to information is the right to receive various data and information necessary for the performance of all vital functions of both each person individually and different groups of people, society as a whole, and its entire structure. Thus, the realization of the right to information is the basis of the process of information support for the economic and

social development of society, a kind of "starting point" of this process and at the same time its ultimate goal [16].

Using and considering Art. 3 of the Constitution of Ukraine, it is difficult to agree with this approach, and we argue about the priority of confidentiality of information rights over its public importance for the development of society. Adopting this approach is more beneficial and favorable for understanding civil liability for violation of subjective rights to information [9].

Until recently, the right to information was not legally formulated and enshrined. Exceptional changes in the social system and civil relations, the transition to a market economy, the humanization of society and the establishment of private property and private interests protected by law have led to the need to legitimize the right to information, to ensure its implementation through certain legal mechanisms, including:

- 1) appearance at the legislative level information law.
- 2) use and worldwide recognition of information law.
- 3) the emergence of the right to classified information.

I would like to add that this process in developed countries began much earlier: in particular, legislation in the field of informatization of society in the United States, for example, began to form in the 20th century, and now has a fairly large array of laws and regulations in this area [15]. The adoption of these amendments has positively influenced the formation of legislation in other countries and has become for them a model for the use of the legal framework.

The main idea of the right to information covers the receipt and dissemination of not only official, but also

unofficial information. The period of the XVIII-XIX centuries was marked by the emergence of powers to obtain information (cultural, scientific) were included in the content of freedom of speech and press. The use of these powers was accepted in most countries, the laws of which enshrined these freedoms and human rights. It is known that such a right was enshrined in the constitutions of Belgium in 1831 [2], the Grand Duchy of Luxembourg in 1868 [3], in the Law on the form of government in Finland in 1919, in the constitutions of Iceland of December 12, 1937 [4], Italy of 22 December 1947 [5] and in other countries [6]. However, in these normative acts the term "information" itself was not used, and the right to receive and disseminate information followed only from other rights. Canadian scientist E. McKay notes that the human right to information belongs to the group of rights that have formed over the past four centuries [13]. Such scientists as V.S. Khizhnyak believes that it was only in the 1980s that some foreign scientists in their work began to allocate the right to information to an independent institution [12]. Summing up, we can state that the idea of the right to information has a solid path of development, and such a right was recently enshrined at the legislative level.

Thus, it is not devoid of certain shortcomings for subjective reasons, including the level of legal awareness or legal obedience of participants in information relations, interest and professionalism in protecting information rights, the activities of courts and executive authorities, and objective reasons, including the state of information infrastructure.

So, one of the keys to the development and protection of human rights to information on an international scale was the adoption and proclamation of the Universal Declaration of Human Rights by the UN General Assembly on December 10, 1948 [17]. Art. 19 of this Declaration establishes that everyone has the right to freedom of opinion and expression; this right includes the freedom to hold opinions without hindrance and the freedom to seek, receive and impart information and ideas by any means and regardless of state borders. So, Art. 12 establishes that no one may be subjected to an unjustified encroachment on the secrecy of his correspondence or on his honor and reputation, Art. 18 establishes that everyone has the right to freedom of thought, conscience and religion. On November 4, 1950 in Rome, the leaders of the Council of Europe adopted the European Convention for the Protection of Human Rights and Fundamental Freedoms (entered into force in September 1953), in which the right to information is protected in a system with other rights and freedoms [18].

In developed countries, as well as in Europe, a number of international acts were adopted that developed the basic rights to information in connection with the intensification of cross-border exchange of information and the use of modern information technologies: Resolution of the European Parliament "On the protection of individuals in relation to the progress of informatics" (1979.), The Council of Europe Convention "On the Protection of Individuals with regard to Automatic Processing of Personal Data" (1980) [7], the Council of Europe Directive "On the Protection of Programs for Electronic Computers and Databases" (1991), etc. Their main provisions coincide, detailing the subjective rights to information from general to specific. It is known that today a stable system of the human right to information has been formed at the international level. Thus, the right to information; the right to privacy, in

particular the protection of information about it; the right to information protection as an element of business security, including financial activities.

The term "right to information" usually encompasses the system of human rights to receive, publish and impart information. In fact, the right to information is now on a par with natural human rights, at least because of the ability to perceive, extract or process information, a person cannot exist in the modern world and be successful.

Exclusively when obtaining information, processing it and generating new information, a person can develop and become a full member of society. In this context, the position of R.B. Shishka, who believes that natural rights are unique and at the same time are an element of the content of legal capacity and subjective civil law [15].

By the concept of a citizen's right to information, this is an independent constitutional right that allows a person to freely seek, receive, transmit, create and distribute information by any legal means [11].

When analyzing the literature, the citizen's right to information is only an integral part of freedom of speech and press. "There are more complicated cases," Y. Dmitriev and A. Zlatopolsky note, "with the correlation between the semantic aspects of freedom of information and freedom of speech and press. The right in question also provides for the possibility of unhindered receipt of information. According to the prevailing understanding of freedom of speech and press, it consists mainly of legality, which covers various forms of dissemination of thought and information.

Thus, it is necessary to move aside the traditional framework of the legal field and reliable information, or to look at the right to information as an independent subjective law. Consider the first option seems more logical. One can come to the conclusion that the right to information is included in the concept of freedom of speech and press" [8].

There are also examples of higher legislative regulation of the right to information, in particular, constitutional.

The context is about the first piece of art. 34 of the Constitution of Ukraine, which enshrines not only the right to freedom of thought and speech, but also the right to information. Considering the opinion of O.V. Malko, the right to information is not fully covered by freedom of speech and press. It is richer, more significant, has its own content and plays a role in meeting certain interests of the subjects. For this reason, the "narrowing" of this "most important right" is not justified [14].

Carrying out a significant analysis of legal norms, in particular the Law of Ukraine "On Information", it shows that the right to information refers to personal non-property rights. The place according to which the right to information includes the right of access to information, the right of limited access to information, as well as the right to refute shameful information [1], which is based on the regime of confidential information, as well as with the norms of civil, civil procedural legislation on protection intangible assets (defamation rules) is quite reasonable. I would like to see: the right to access information cannot be equated with the right to freedom of information, because, although they have the same goal - to ensure the realization of human needs for information, they have a different functional purpose.

Emphasizing that the function of the right of access to information is to provide a person with the necessary information directly from state and local authorities about their activities and information about themselves,

that is, access to official information, as well as to certain information privately owned by subjects, then the purpose of freedom of information is to ensure the possibility of free search and receipt of any information from publicly available sources, obtaining information about the actions of the authorities, but in the interpretation of the media the opportunity to get acquainted with scientific works, works of art, cinema, communication. The main thing that is required of the state for freedom of information is the policy of non-interference, and, conversely, the right of access to information is the obligation of the state to create certain conditions for the implementation of free and unhindered access to information [11].

Referring to the Constitution of Ukraine, the right to information is, so to speak, protected by the universal right to freedom and personal inviolability.

Possibility of information exchange, carried out by means of communication, also has a special constitutional guarantee in the form of secrecy of correspondence, telephone conversations, telegraph and other correspondence (Article 31 of the Constitution of Ukraine) [11]. Thus, an important and necessary component of the mechanism for the realization of the right to information is to ensure proper, free access of citizens to information, as well as clear legal regulation of exceptional cases of its restriction.

CONCLUSION

The article briefly researches and determine the features of the right to information as a constitutional right of a citizen. Thus, as mentioned earlier, in some cases, constitutional rights may be limited. Considering the restriction of the basic information rights and freedoms of a citizen, it is allowed in the case of protecting the foundations of the constitutional order, morality, health, rights and legal interests of others, ensuring the country's defense and security. And also, article 64 provides for the restriction of rights and freedoms with an indication of the limits and duration of their validity under martial law and a state of emergency in accordance with the constitutional law. Article 63 establishes that no one is obliged to testify against himself, his spouse and close relatives, the circle of which is determined by law.

Based on the research conducted, information can be considered as one of the most important development resources, since it actively affects all spheres of society and the state as a whole. Thus, the Constitution of Ukraine provides citizens with a wide range of rights in the field of information relations. The Constitution also provides for a number of guarantees for the protection of these rights, and at the same time, a number of cases where these rights may be restricted. This fact is the reason for the adoption of a number of laws in the field of information law, which determine the rights and cases of their restriction and which require constant improvement in connection with the rapid development of information relations in a modern legal society.

REFERENCES

1. Bachilo I.L. Information law: the basics of practical information technology: a teaching aid. M., Law Center, M.Yu. Tikhomirov, 2001. pp. 26
2. Constitution of Belgium of 7 February 1831 <http://www.countries.ru/?pid=88>
3. Constitution of the Grand Duchy of Luxembourg of October 17, 1868 p.
4. Constitution of Iceland of December 12, 1937 p. <http://www.lawbooks.net.ua/other/akty/294>
5.]Constitution of Italy of 22 December 1947. http://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf
6. Constitutions of the bourgeois states of Europe. M., Izd-vo inostp. lit., 1957. pp. 97. 450, 545, 621, 882
7. Convention of the Council of Europe "On the protection of persons with regard to the automated processing of personal data" № 108 - Stasbourg, 28.01.1981 Series "European Agreements" treaty / en / Treaties / Html / 108.htm
8. Dmitriev Yu. A. Citizen and power. M., Manuscript, 1994. pp. 37
9. Iasechko Svitlana, Zaitsev Oleksii, Viktoriia Kozhevnykova, Kostiantyn Melnyk. (2020). Transactions with the Personal Non-Property Right. International Journal of Advanced Science and Technology, 29(11s), 793 - 798. Retrieved from <http://sersc.org/journals/index.php/IJAST/article/view/20048>
10. Iasechko Svitlana, Viacheslav Puzyrnyi, Natalia Puzyrna, Nataliia Kostyuk, Iryna Bakhnovska and Iryna Litvinova. 2020. The investigation of peculiarities of the occurrence of subjective civil rights in registration of a patent. Journal of Advanced Research in Law and Economics, Volume XI, Issue 3(49) Summer 2020. DOI: <https://doi.org/10.14505/jarle> Available from: <https://journals.aserspublishing.eu/jarle/issue/archive>
11. Komshalyuk I. S. Constitutional right to information in Ukraine. Proceedings of the Second All-Ukrainian Internet Conference "Constitutionalism in Ukraine (ideas, concepts, doctrines): history and modernity" (Lviv, April 25, 2013). <http://historylaw.lp.edu.ua/documents/Materials2.pdf>
12. Khizhnyak V.S. The right of a person to information, The hut. Capital: Publishing house of Capital. Univ., 1998, pp. 24
13. Mackay E. The public right to information. Information law towards the 21st century. Information law series 2. Denver, Boston. 1992. pp. 168.
14. Malko O. The right of a citizen to information. Social Science and Modernity. 1995. No. 5.
15. Shishka R. B. Protection of intellectual property rights (auto-legal aspect), Vid-vo Nat. un-tu vnutp. spav, 2002. pp. 67
16. Tinovitskaya I.D. The right to information and the mechanism of its implementation. Legislative problems of information society: Proceedings of VNIISZ. M., 1992. Works 52. pp.29.
17. The Universal Declaration of Human Rights. http://olexa.org.ua/ukr/law/law01_print.htm.
18. The European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950: The law on the ratification of the Convention of 17 July 1997. № 475/97-ВП // Vidomosti Vephovnoi Pady Ukrainy. 1997. № 40. pp. 263.