

CHAPTER 4. HUMAN RIGHTS AND FREEDOMS IN UKRAINE

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4.1. Relationship between people’s rights to information and right to information

The concept of “information society” entered the scientific community not so long ago. It was coined and actively used by economists and marketers, social scientists and philosophers, programmers and politicians. Nowadays this notion is actively being studied by lawyers, who also form their own understanding of it. This notion is intended to reflect the actual trend of the new stage of civilization evolution associated with the emergence of new information and telecommunication technologies, new needs and a new way of life.

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In particular, D. Bell presented the idea of rebirth of industrial society into postindustrial (informational) one, namely through informatization. In particular, he defined the informational society as a process of shaping new principles of social and technological organization, focusing on such principles as: the leading role of theoretical knowledge forms the basis for technological innovations; new intellectual technology gives the opportunity to find more effective approaches to solving technical, economic and social problems; the decisive role of “knowledge bearers” belongs to the

¹⁹⁹ Tymoshenko E.A. Legal aspect of information society development. *Colloquium-journal*. 2020. № 35 (87). Czesc. 3. P. 44–45.

professors who make up the largest social group; strengthening the role and importance of science in the technological re-equipment of society; the formation of an economic theory of information on the basis of the replacement of the labor theory of value by a theory of value based on knowledge. So, in the center of attention is information²⁰⁰.

Y. Masuda had a different view of this issue and said that innovations in information technology are a tributary force of social transformation, which manifests itself in a progressive increase in the quantity and quality of information, as well as in the growth of the volume of information exchange. He called the information society a society that grows and develops in the amount of information and leads to an overall flourishing state of human intellectual creativity instead of rich material consumption. In his opinion, the information society should be classless and conflict-free²⁰¹.

E. Toffler's concept of informational society is considered a classic one. Toffler, who considers information society as an absolutely new stage of social development in comparison with the previous ones; an important role is given to the tendencies of demasifikatsii production, i.e. the production system is gradually moving away from the traditional mass production to a complex mix of mass and non-mass product.

It is possible to see some critical opinions on the prospects for the development of the information society (as, for example, D. Lyon has connected with the development of the information society). Lyon attributed the development of information technology to the widening of the existing divide between social groups and nations, The expansion of the ability of the state and other institutions to direct and control people's lives and the strengthening of the power of the constantly growing economic interests²⁰².

Therefore, the main characteristic of the information society is the recognition of information as one of the most important resources of society, and the information sector of the economy (production, storage, processing, information transmission and consumption) – one of the most important types of social activities, which creates the information and communication

²⁰⁰ Bell D. *Sotsyalnye ramky ynfarmatsyonnoho obshchestva. Novaia tekhnokratycheskaia volna na Zapade*. Moskva : Prohress, 198b. 514 p.

²⁰¹ Masuda Y. *The Information Society as Post-Industrial Society*. Institute for the Information Society. Washington, D.C.: Pub. WorldFutureSociety, 1981. 171 p.

²⁰² Laion D. *Informatsiine suspilstvo: problemy ta iliuzii*. URL: <http://www.philsci.univ.kiev.ua/biblio/lajon.html> (last access: 20.12.2021).

base for the formation of a global information society and the development of scientific and technological, socio-economic and educational and cultural progress.

The role of information technology in social development today is particularly great. In recent years, the computer network has become the main source of social innovation. It is not just about changes in technological conditions that demand production, communication, education and other kinds of human activity, but about a fundamentally new character of the modern world, a serious redefinition of values and a change in the way people live, the formation of a specific ethos of the information society²⁰³. In the course of large-scale transformations in all spheres of social life, new moral problems emerge and old ones become more acute. As in any other transition period, the opposition between traditional and innovative values intensifies. The problem of indirect communication, computer malice, information security, control over personal life, compliance of an individual's behavior in real and virtual spaces, creation of virtual (pseudo) personalities, etc., is acute.

Modern society is in the process of transition to the informational (postindustrial) period, a changed industrial society. Since the process of value transformation is ambiguous and ambiguous, it is suggested to reveal ethical-philosophical characteristics of global informational society by analyzing values, moral norms and principles developed in the midst of those communities that have further developed through the use of high information technology. Ethnos, formed in the process of Internet communication of such social groups as information workers, IT professionals, representatives of media subcultures, etc., can be regarded as a prototype and the basic model for the formation of the ethnos of information society as a whole.

The formation of the information society generates unique moral problems, including computer malice, informational nervousness and informational safety, the problem of the juxtaposition of copyright and the specifics of functioning of the Internet, the creation of virtual persons, the virtualization of real persons and so on.

Information production and communication are becoming a centralized process. In the end, the main resource of the new postindustrial order is information.

²⁰³ Tymoshenko E.A. Legal aspect of information society development. *Colloquium-journal*. 2020. № 35 (87). Czesc. 3. P. 44–45.

The concepts of “information society” and “knowledge society” are often confused. What is the difference? Which is broader and which includes the other?

Thanks to the rapid development of information technology, which has outpaced knowledge and its comprehension by the masses, a knowledge-based society has emerged. It can be argued that this is the next stage in the development of the information society. Traditional material production, which is not focused on new technologies and scientific knowledge, is not competitive on the body of the knowledge society, thereby depressing it and smoothly replacing it. In such a society, information technology has certain functions: epistemological, cultural and social. As for the cognitive function, its status and relevance in the information society is that the totality of information networks allows to carry out operations that ensure the growth of new knowledge. Cultural – expands knowledge of the traditions and rules of other countries and nations. Social – is manifested plus the mixing of people and the subordination of those who possess and do not possess information. Other subdivisions of society that existed before are being erased. In this way, the knowledge society possesses low signifiers:

1. Availability of modern information technologies.
2. The existence of developed infrastructures.
3. Accelerated automation and robotization of production and management.
4. Radical transformation of social structures, which leads to an increase in the volume of information activities and services.

The process of development of the information society in all countries will be different due to differences in the level of development of the informatization processes between the most developed countries and the countries of the third world with a transitional economy. Moreover, even within a single country one cannot talk about the same level of development and implementation of information technology, readiness of some individuals (or their groups), and state structures to one-step change of traditional processes to more modern ones, which is accompanied by different level of material and technical basis, financing, availability of qualified personnel, etc. Therefore, we can talk about the existence of several types of information society at the same time, where the main thing when determining the type of society will be the level of ensuring equal rights of access to

information for citizens, the ability and desire to obtain new knowledge, information, effectively use them.

Information society should be understood as a modern society with a high level of development of information culture (creation, processing and use of information), which is characterized by:

- the ability to adequately produce all the information necessary for the life of society;
- availability of developed information infrastructure of society;
- high level of accessibility to all members of society of the necessary information;
- a large part of the creative population working in the information sector of the economy.

The information society is characterized by the recognition of information as one of the most important resources of society, and the information sector of the economy (production, storage, processing, transmission and consumption of information) is one of the most important types of social activities, which creates the information and communication base for the formation of a global information society and the development of scientific and technological, socio-economic and educational and cultural progress. In the information and cultural spheres, in the opinion of H. Schiller, it is manifested in the implementation of the concepts of media-imperialism and cultural imperialism. From this point of view, the information and communication activity, led by the interests of transnational corporations (TNCs), leads to negative systemic phenomena in the information and cultural sphere on a global scale. A different opinion in this regard is held by J. Tomlinson, who denies the unambiguity and predetermination of the ideological effects of media-imperialism²⁰⁴.

The end of the XX century and the beginning of the XXI century were marked by tumultuous processes of information and communication revolution on a global, worldwide scale. As a consequence, the traditional in the recent past types of mass communication devices (terrestrial television and radio broadcasting, audiovisuals, cinema. The media were technologically new (satellite, cable television, high-definition television, multimedia networks with improved programming).

²⁰⁴ Bebyk V. Suchasna hlobalistyka: providni kontseptsii i moderna praktyka. Kyiv : Universytet "Ukraina", 2006. 208 p.

The organizational basis of the modern stage of formation of the information society is increasingly becoming a computer multimedia – organizational structures, which combine in themselves the software and technical capabilities of text, sound, graphic, multiplayer and video creation of information. The introduction of multimedia ICT led to the creation of information supermagistries – integral aggregates of global, international, national and local satellite, cable and terrestrial communication networks based on the elements and resources of information infrastructure. The elements of information infrastructures include: computers with multimedia add-ons, databases, including those on flash drives and laser disks, consumer electronics. The resources of information infrastructures include: interactive programming, interactive television, video, games, mobile communication and many other modern technologies of the global information sphere of society. In this connection, the notion of information flows is important, which are considered to be:

- The purposeful flow of information from all segments of the public sphere, which is carried out by all available information and communication channels from the sources to the consumers of information (in the broad sense). This plan includes the following communication channels: mass media, new information technologies, sports, political, economic, cultural, educational exchanges, tourism, migration, personal contacts, etc;

- The direct flow of information, which comes first of all through copper (video-audience and press) and telecommunication (communication, computer systems, etc.) communication channels (high level of understanding). The purposeful impact of information flows contributes to changes in nature and power resources, ideologies and values, perceptions (of individuals, social groups, societies), national and international systems. In particular, information flows influence:

- at the individual level – on the judiciary, culture, education, work, leisure time;

- on the institutional level – on politics, economics, religion;

- on the group level (social, ethnic, professional, age, etc.) – identity, mobilization, participation;

- on the interstate level – on cooperation (conflict), resources, transnational corporations, etc.

The current state of development of information and communication technologies has led to the fact that today it is not necessary to have a computer in order to use the Internet, because it is possible to receive information from the “world wide web” via mobile phone connection or cable or satellite TV system using relatively inexpensive TV set-top boxes. However, in the opinion of anti-globalization scientists, the real consequences of the development of the information society on the basis of new ICT is not so much the creation of a global world as the elitist nature of today’s globalization. The point here is that the Internet is not only becoming the technological basis of the new information society, but is being transformed into a certain barrier (linguistic, educational, material, technological) for the countries that are developing to join it²⁰⁵.

Formation of the global information society, widespread implementation of new information and communication technologies (satellite and cable television and radio, mobile communication, multimedia) have actualized informational power at all levels of global governance. In our opinion, information power is the ability of the owners of information to influence the formation of public knowledge and culture through the acquisition, selection, elaboration, composition, production and dissemination of information, to prompt the subjects of the social sphere (politics, economics, spiritual sphere) to programmed or spontaneous actions in a given direction. Information power can be exercised through specialized means of information transmission, which ensure the uniformity of will, integrity and purposefulness of actions of a large number of people and are called mass media, or CMC. CMCs are specialized institutions for the open, public transmission of beacon information to any individuals through the use of special technical equipment. WBC includes digital, audiovisual, electronic press, mass-media, cinema, video, audio information carriers, satellite, cable, computer networks – everything that can generate and transmit information important for the daily life. Since we are talking about the power potential of mass media, it is impossible to do without such a key concept as freedom of the press. With the appearance of the first newspapers, the problem of press freedom emerged, becoming a subject of controversy, and later becoming more acute in the 18th century during the

²⁰⁵ Bebyk V. Informatsiino-komunikatsiinyi menedzhment u hlobalnomu suspilstvi: psykholohiia, tekhnolohii, tekhnika pablik rileishnz. Kyiv : MAUP, 2005. 440 p.

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French bourgeois revolution. At that time the democratic bourgeois concept of freedom of the press was formulated, which was based on three main theses:

- the separation of news from commentary;
- openness of the state information;
- absence of censorship²⁰⁶.

The informational society is characterized by the recognition of information as one of the most important resources of society, and the information sector of the economy (production, storage, processing, transmission and disposal of information) is one of the most important types of social activities, which creates the information and communication base for the formation of a global information society and the development of scientific and technological, socio-economic and educational and cultural progress.

The basis of the information society is information and communication technology, which leads to the development of information relations, which, in turn, mediate and ensure the interconnection of other social relations. The rights and freedoms of individuals and citizens, which are realized in the sphere of information relations, are indirectly related to the establishment of a democratic society. Because the guarantees of human rights and freedoms in the information sphere are among the most important conditions for the formation of law-based state, because they are integrated into the working mechanism of governance in a democratic society. Realization of fundamental rights and freedoms of citizens in the field of information occupies a special place in the system of national interests of Ukraine, based on the principles of freedom of information and law – everything that is not forbidden by law is allowed. These principles are enshrined in the basic international legal documents, the Constitution of Ukraine and a number of other laws. Thus, it is important to understand the meaning of such deficiencies as informational rights and freedoms of people and citizen.

Since we have identified the context of this issue, let us define the right to information. In Ukraine, this right is enshrined in the Constitution of Ukraine, the Law of Ukraine “On Information”, “On Public Appeals”, “On Access to Public Information”. And also, in the Decree of the

²⁰⁶ Burzhuaznye teoryy zhurnalystyky: krytycheskyi analiz; pod red. Zasurskoho Ya.Y. Moskva : Misl, 1980. 25 s.

Ministry of Justice of Ukraine from May 05.05.2012 “The Right of Access to Information as an Element of the Legal Status of the Individual”.

The right of access to information is a constitutional right of the people envisaged and guaranteed by Article 34 of the Constitution of Ukraine, namely the right of every person to freedom of thought and speech, to free expression of their views and opinions; the right to freely collect, store, use and disseminate information in writing or by other means of one’s choice.

The exercise of these rights may be limited by law in the interests of national security, territorial integrity or public order in order to prevent infiltration or malice, to protect the health of the population, to protect the reputation or rights of others, to prevent the disclosure of information obtained confidentially, or to maintain the authority and integrity of the justice system²⁰⁷.

Information – any information and / or data that can be stored on tangible media or displayed electronically²⁰⁸.

Article 5 of the Law of Ukraine “On Information” enshrines the right of everyone to information that provides the possibility of free retrieval, use, dissemination, preservation and protection of information necessary for the realization of their rights, freedoms and legitimate interests. Realization of the right to information must not violate community, political, economic, social, spiritual, environmental and other rights, freedoms and legitimate interests of other people, the rights and interests of legal entities. Thus, the right to information is a separate right, which is not included in any of the categories of rightP.

There is another category of human rights and freedoms – informational rights. Information rights of people are the state-guaranteed abilities of people to satisfy their needs in obtaining, using, dissemination, protection and protection of the amount of information necessary for life. At first glance, given the similarity in definitions, these two categories should not be confused.

The core of people’s information rights is the right to information, which includes the right to collect, store, use and disseminate information in a timely manner, in writing or in another way – at their own discretion. The basis of the right to information is the right of people to receive infor-

²⁰⁷ Pravo na dostup do informatsii yak element pravovoho statusu osoby. Miniust Ukrainy; Rozziasnennia vid 03.05.2012

²⁰⁸ «Pro informatsiiu» Zakon Ukrainy vid 02.10.1992 № 2b57-XII.

mation. It should be emphasized that the right to information is not absolute and not limited. Instead, the implementation of the right to information by citizens, legal entities and the state should not violate community, political, economic, social, spiritual, environmental and other rights, freedoms and legitimate interests of other people, the rights and interests of legal entities. There is a principle, according to which it is not allowed to collect information, which is a state secret or confidential information of a legal entity. Thus, it can be said that the right of an individual to information ends where the right of another person begins.

Most scientists consider the right to information solely in the scope of the openness of the activities of public authorities, understanding under this right the possibility of a citizen to receive official information from the public authorities, The right of the citizen to receive official information from the state authorities, which the latter have in connection with the exercise of their powers, while others argue that the right to information is derived from freedom of speech.

M. Muratov believes that the right to information encompasses the right to know about the creation and functioning of all specific information systems related to the personal life of a citizen, the right to consent to the collection of information, the right to request information that is personal in nature, the right to verify the authenticity of such information and deny unauthorized information, the right to truthful information about the state of the environment, and so on²⁰⁹.

However, B. Gogol states that such a broad approach to defining the meaning of the right to information leads to the rejection of the notion of “right to information” and “information rights of an individual”. Also, under the right to information the researcher proposes to understand the normatively secured ability of an individual to independently collect, store, The researcher believes that the right to information includes the right to collect, store, disseminate and process information in any way not prohibited by law²¹⁰.

The concept of «information rights and freedoms of people and citizen» is a broader concept because it covers not only the ability to «freely collect,

²⁰⁹ Muratov M.Ia. *Pravo na svobodu slova : ystoria y sovremennost : dys. na soyskanye uch. stepeny kand. yuryd. nauk : spets. 12.00.01. Moskva, 2002. 177 p.*

²¹⁰ Hohol B. *Zmist prava na informatsiiu. Yurydychna Ukraina. 2008. № 5. S. 64–67.*

store, use and disseminate information in any way one chooses» or even «the ability to obtain information freely, use, dissemination, preservation and protection of information necessary for the exercise of their rights, freedoms and legitimate interests,» and all the rights and freedoms of individuals and citizen having informational nature. According to Article 34 of the Constitution of Ukraine the people's and citizen's information rights consist of the right: to collect, store, use and distribute information freely, in writing or in any other way – at their discretion. But this structure of information rights differs from the group of internationally accepted information rights, which is quite understandable, because information rights must guarantee the implementation of the entire cycle of people's information freedom.

In 2013, 22 international organizations and academic centers, in consultation with some 500 experts from 70 countries, prepared the Global Information Society, developed the Global Principles on National Security and the Right to Information (the Zwangs Principles), which contain recommendations for balancing the right to information and the interests of protecting national security. They state, among other things: it is not enough to point out only that the dissemination of information may cause harm to national security. The lawmaker must give specific and substantial reasons for such a decision. In simpler terms, to argue their refusal.

The main ideas of the Tsvansky Principles are the following:

– information must be kept confidential only if its disclosure would entail real and identifiable risks to the legitimate interests of national security (Principle 3);

– information about serious violations of international human rights and humanitarian law must be disclosed in any case (Principle 10A);

– the public must have access to information about the monitoring programmes (Principle 10E);

– no public official shall be categorically prevented from making requests for information disclosure (Principle 5);

– public officials acting in the interests of the public by reporting on abuse by the government should be protected from retaliation (Principle 40). Notwithstanding the fact that in this case it is a matter of «freedom of information», in fact the right of an individual to access information is taken into account.

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As it is stated in the already mentioned Tzvanskiy Principles: «Although sometimes there is tension between the desire of the Government to preserve information in the interests of national security and the right of the public to information, a review of recent history shows that, that legitimate national security interests are most protected in practice when the public is well informed about the activities of the authorities, including those undertaken to protect national security.

Access to information, ensuring public control over the activities of the government, serves not only as a safeguard against abuse by public servants, but also allows the public to take part in determining state policy, thus forming the most important component of true national security, democratic participation and the development of sound policy.

The Constitution of Ukraine contains more than 20 legal norms that are Directly or indirectly establish information rights and freedoms of individuals and citizen or have a different degree of information character, including but not limited to:

- Freedom from censorship (Article 15 of the Constitution of Ukraine).
- Right to privacy of leaves, telephone communications, telegraphic and other correspondence (Article 31 of the Constitution of Ukraine);
- The right to privacy of personal and family life (Article 32 of the Constitution of Ukraine);
- Right to freedom of thought and speech, to free expression of their views and beliefs (art. 34 of the Constitution of Ukraine);
- Right to freedom of opinion and expression (Article 35 of the Constitution of Ukraine);
- The right to own, use and dispose of their property, and the results of their intellectual and creative activity (art. 41 of the Constitution of Ukraine);
- Right to free development of one's personality (article 23 of the Constitution of Ukraine);
- Right to respect for human dignity (art. 28 of the Constitution of Ukraine);
- The right to freedom of association (article 36 of the Constitution of Ukraine);
- The right to take part in the management of state affairs (article 38 of the Constitution of Ukraine);

- The right to assembly (art. 39 of the Constitution of Ukraine);
- The right to appeal to the bodies of state power and local self-government (article 40 of the Constitution of Ukraine);
- Freedom of literary, artistic, scientific creativity (art. 54 of the Constitution of Ukraine);
- The right to know one's rights and duties (art. 57 of the Constitution of Ukraine) and others.

In view of the above, information rights are directly included in the structure of other rights and freedoms of people²¹¹ and citizen, which regulate information processes and create an integral existential phenomenon, which is recognized through the prism of their systemic properties, which is manifested in the presence of rights and freedoms of informational nature in various spheres of life of society²¹². Accordingly, it is possible to speak about informational rights and freedoms of people and citizen in the environmental sphere, economic sphere, political sphere, managerial sphere, etc., which are “correlatively combined and in their integrative totality form a system of informational rights and freedoms”²¹³.

4.2. Mechanism of security of information rights and freedoms of people in Ukraine

At the present stage of development of the world community the problems of protecting people's rights go far beyond the borders of individual states. International norms and principles in the field of human rights have been formed and received general recognition as a standard to be achieved by all stateP. These norms and principles are contained in the most important international legal documents on the protection of human rights. The Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the International Covenant

²¹¹ Danylian O.H., Dzoban O.P. Dialektychna yednist informatsiinykh prav ta informatsiinoi svobody. *Visnyk Natsionalnoho universytetu «Iurydychna akademiia Ukrainy imeni Yaroslava Mudroho»*. 2017. № 1 (32). S. 5–15.

²¹² Vitiv V. Informatsiini prava yak skladova chetvertoho pokolinnia prav liudyny. *Naukovi zapysky Instytutu zakonodavstva Verkhovnoi Rady Ukrainy: Konstytutsiine ta munitsypalne pravo*. 2016. № 6. S. 22–26.

²¹³ Diorditsa I. Klasyfikatsiia informatsiinykh prav i svobod liudyny i hromadianyna. *Pidpriemnytstvo, gospodarstvo i pravo*. 2016. № 7. S. 116–122.

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on Social, Economic, and Cultural Rights (1966)), the Optional Protocol to the International Covenant on Civil and Political Rights (1966) and the International Bill of Human Rights. At the regional level, these norms are contained in the European Convention on the Protection of Human Rights and Fundamental Freedoms (1950) and the European Social Charter (1961). Most of these documents are legally binding for the states that ratified them.

Problematics of the study of the legal mechanism of protection of information rights and freedoms nowadays is extremely relevant, because the analysis and study of the issues of the legal mechanism of protection of information rights and freedoms positively affects the organization of legal protection of the rights and freedoms of people and citizen in Ukraine as a whole.

Normative-legal mechanism of protection of information rights of people and citizen is part of the legal mechanism of protection of all constitutional rights and duties. One of the most important components of the legal mechanism of protection of information rights of people and citizen in Ukraine is their guarantees. The content of legal guarantees of information rights and freedoms of people and citizen, enshrined in international legal acts and in national law is practically the same. But the grounds for their possible limitation and direct limitation, specified in international documents and domestic law, do not always coincide. Therefore, we suggest unification of the list of grounds for restrictions on information rights and freedoms of people and citizen and creation of the list of cases of their direct limitation with their further consolidation in the legislation²¹⁴.

An enlarged system of rights and freedoms of people and citizen, which is enshrined in both international and national legislation, including at the constitutional level, does not always indicate the proper implementation of these rights and freedoms. In general, the mechanism of security of rights and freedoms of people and citizen is often understood as a system of means and mechanisms through which the implementation of rights and freedoms of an individual and their protection by the relevant competent

²¹⁴ Nastiuk V.Ia., Bielievtseva V.V. Pravovy zakhyistinformatsiinykh prav i svobod liudyny v Ukraini: problemy i perspektyvy. *Informatsiia i pravo*. 2015. № 2(14). S. 20–25.

competent subjects of power is carried out²¹⁵, The system of interoperable legal instruments through which the state exerts legal influence on the legal relations between the subjects of law in order to recognize, implement and enforce the fundamental rights of the individual and the citizen²¹⁶. Mechanisms of protection of human rights and freedoms are divided into international and national. International rights protection mechanisms are a system of international (state) bodies and organizations that act in order to implement international standards of human rights and freedoms or their restoration in case of their violation, and the relevant international legal norms.

The constitutional-legal mechanism of protection, which includes, first of all, the constitutional principles that ensure the free development and proper existence of each individual, occupies a special place in the arrangement of the legal part of the mechanism of protection of the rights and freedoms of people and citizen. These include the principles of humanism, equality of rights and duties, freedom of expression and action, guaranteeing rights and freedoms, the universality of rights and freedoms, etc. Thanks to these principles, firstly, the necessary balance of constitutional values is achieved in case of a minor amendment of the current legislation, and secondly – in law-and-order practice, in case of loopholes and contradictions in the current legislation. Thirdly, the existence of these principles is the result of intensification of generally recognized norms of international law in the national legislation, which allows to ensure and protect the rights of people and citizens in Ukraine at the level of civilized world standards.

The legal framework, which determines the status of entities that protect the rights and freedoms of people and citizens, the status of entities that are subject to protection and defense, as well as the legal relations that arise between them, also form the basis of the mechanism for the protection of rights and freedoms of people and citizens, This should include the actions of the authorized subjects of protection and defense, and the actions of the person whose rights have been violated, in relation to the offender with the

²¹⁵ Nikitenko L.O. Zmist mexanizmu zabezpechennia konstytutsiinoho prava na pidpriumnytsku diialnist. URL: <http://pravoznavec.com.ua/period/article/2817/%CB> (data zvernennia 23.12.2021).

²¹⁶ Hasanov K.K. Konstytutsyonnyi mehanyzm zashchyty osnovnyx prav cheloveka. Moskva : Yunyty-dana, zakon i pravo, 2004. 432 s.

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aim of preventing and stopping the violation or restoring the violated rights and freedoms²¹⁷.

In terms of components, the legal mechanism of protection of information rights and freedoms of people and citizen (as well as the legal mechanism of protection of rights and freedoms of people and citizen as a whole) is divided into normative and legal and organizational-legal. Normative-legal form is expressed in the adoption of normative-legal acts or in the introduction of amendments to legal acts, which can contribute to the protection of information rights and freedoms of people and citizen.

Organizational and legal structure of the protection mechanism is expressed in the activity of internal state bodies involved in the process of protection of information rights and freedoms of people and citizen in Ukraine. The main role in the organizational and legal mechanism of protection of information rights and freedoms of people and citizen is played by the President of Ukraine, bodies of executive power, law enforcement agencies, as well as institutions of civil society. The role of the President of Ukraine in the organizational and legal mechanism of protection of information rights and freedoms of people and citizens in Ukraine is determined by the fact that he is the guarantor of the Constitution. The role of public authorities in the organizational and legal mechanism of protection of information rights and freedoms of people and citizen is to ensure the implementation of the Constitution and laws of Ukraine. A special place also belongs to the courts, prosecutors, internal affairs bodies, other law enforcement agencies, lawyers, notaries, who play an active role in the protection of information rights and freedoms of people and citizens.

An important place in the organizational and legal mechanism of protection of people's rights and freedoms is occupied by the ombudsman. Thus, according to Article 101 of the Constitution of Ukraine, the parliamentary control over the observance of constitutional rights and freedoms of people and citizen is exercised by the Human Rights Institution of the Council of Ukraine. The aim of the parliamentary control over the observance of constitutional rights and freedoms of people and citizen,

²¹⁷ Uvarov A.A. Konstitutsyonno-pravovoi mehanyzm ohrany i zashchyty prav i svobod cheloveka. URL: <https://cuberleninka.ru/article/n/konstitutsionno-pravovou-menanzim-onranu-i-zaschnituprav-i-svobod-cheloveka>.

which is carried out by the Unitary Oversight Commission of the Council of Europe for Human Rights²¹⁸, is:

– Protecting the rights and freedoms of people and a citizen, declared by the Constitution of Ukraine, laws of Ukraine and international treaties of Ukraine; Respect for human and civil rights on the part of public authorities, local self-government bodies, associations of citizens, enterprises, institutions, organizations and their officers;

– Preventing violations of the rights and freedoms of people and citizen and encouraging the restoration of violated rights; promoting compliance of the legislation of Ukraine on the rights and freedoms of people and citizen with the Constitution of Ukraine and international standards in this area;

– Improvement and further development of international cooperation in the field of protection of human and civil rights and freedoms; prevention of any forms of discrimination against people for exercising their rights and freedoms;

– Promotion of legal information of the population and protection of confidential information about the person.

The legal structure of the legal mechanism of protection of information rights and freedoms of people and citizen includes the following elements: normative rules that establish the implementation of legal protection of information rights and freedoms of people and citizen;

– legal facts that allow starting the process of legal protection of information rights and freedoms of people and citizen;

The aim of the parliamentary control over the observance of constitutional rights and freedoms of people and citizen, which is carried out by the Supervisory Board of the Council of Europe for Human Rights, is:

– Protecting the rights and freedoms of people and a citizen, declared by the Constitution of Ukraine, laws of Ukraine and international treaties of Ukraine; Respect for human and civil rights on the part of public authorities, local self-government bodies, associations of citizens, enterprises, institutions, organizations and their officers;

– Preventing violations of the rights and freedoms of people and citizen and encouraging the restoration of violated rights; promoting compliance of the legislation of Ukraine on the rights and freedoms of people and citizen with the Constitution of Ukraine and international standards in this area;

²¹⁸ Konstytutsiia Ukrainy vid 28 chervnia 1996 roku. URL: zakon5.rada.gov.ua/laws/snow/254k/9b-vp.

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– Improvement and further development of international cooperation in the field of protection of human and civil rights and freedoms; prevention of any forms of discrimination against people for exercising their rights and freedoms;

– Promotion of legal information of the population and protection of confidential information about the person.

The legal structure of the legal mechanism of protection of information rights and freedoms of people and citizen includes the following elements: normative rules that establish the implementation of legal protection of information rights and freedoms of people and citizen;

– Legal facts that allow initiating the process of legal protection of information rights and freedoms of people and citizen;

– Legal relations for the protection of information rights and freedoms of people and citizen, which entail the existence of rights and obligations corresponding to them;

– The subjects of the legal mechanism for the protection of information rights and freedoms of people and citizen;

– The objects of the legal mechanism of protection of information rights of people and citizen (the objects by which information rights and freedoms of people and citizen arise).

The Constitution notes that everyone has the right to protect their rights and freedoms against violations and unlawful encroachments by any means not prohibited by law²¹⁹.

Therefore, the means of protection of rights and freedoms of people and citizen, including information, can be classified as judicial, administrative and state²²⁰. Thus, the right of citizens to judicial protection is enshrined in Article 10 of the Legal Code of Human Rights and Article 55 of the Constitution. Article 55 of the Constitution of Ukraine²²¹, according to which everyone is guaranteed the right to challenge in court the decisions, actions or inactivity of bodies of government, local authorities, officials and employees. In case of appeal to the court, a person may refer to the

219 Koncyytutsiia Ukraïny vid 28 chepvnia 1996 roku. URL: zakon5.rada.gov.ua/laws/snow/254k/9b-vp.

220 Koncyytutsiia Ukraïny vid 28 chepvnia 1996 roku. URL: zakon5.rada.gov.ua/laws/snow/254k/9b-vp.

221 Zahalna deklaratsiia prav liudyny, pryiniata i proholoshena re3oliutsisiu 217 A (III) Heneralnoi Asamblei OON vid 10 hrudnia 1948 roku. URL: http://zakon0.rada.gov.ua/laws/sno/995_015.

provisions of the Constitution of Ukraine, the norms of which are the norms of law.

Thus, the legal mechanism of protection of rights and freedoms covers all possible actions for protection of information rights and freedoms of people and citizen, which distinguishes the corresponding category from the concept of “the mechanism of exercising the right to protection by people”, In its turn, it means one of the components of the legal mechanism of protection of rights and freedoms, the essence of which lies in the purposeful activity of people to restore the status that existed before the violation of a particular right of an individual²²².

4.3. Implementation of Legal Security of Information Rights and Freedoms of People from European Union Legislation into Ukrainian Legislation

An analysis of restrictions on the right to information found in the Constitution of Ukraine enables us to state that the constitutional norms of Ukraine comply with generally recognized international norms, in particular the norms of the International Covenant on Civil and Political Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms²²³, etc. However, in the list of restrictions enshrined in the Constitution of Ukraine and international legal acts, the notions that have ambiguous interpretation are used. For example, the concept of limitation of the right to information in connection with the need to protect the interests of national security is also discussed.

Thus, it is also about the concept of limiting the right to information due to the need to protect the interests of national security. We recognize that the conceptual domestic legal act that regulates social relations in the field of ensuring national security of Ukraine and determines the basic principles of state policy, The Law of Ukraine “On the Fundamentals of National Secu-

²²² Uvarov A.A. Konstytutsyonno-pravovoi mehanyzm ohrany i zashchyty prav i svobod cheloveka. URL: <https://cuberleninka.ru/article/n/konstitutsionno-pravovou-menanizm-onranu-i-zaschnituprav-i-svobod-cheloveka>.

²²³ Sobkiv Ya.M. Informatsyonnye prava i svobodu cheloveka i hrazhdanyia: osobennosty ukraïnskoho normatyvno-pravovoho rehulyrovanyia. URL: goal-int.org/informacionnye-prava-i-svobody-cheloveka-i-grazhdanina-osobennosti-ukraïnskogo-normativno-pravovogo-regulirovaniya.

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urity of Ukraine” defines the principles of state policy aimed at protecting national interests and guaranteeing safety of individuals, society and the state in Ukraine from external and internal threats in all spheres of life. Such notion as “national security interests” is not enshrined and is not accepted, but now the notion of “national interests”²²⁴ is accepted. At the same time, the content of the concept of national security, as well as the list of the main directions of state policy on national security issues indicate that the concept, and thus the concept of “national security interests” can be interpreted broadly. V. Lipkan and Yu. Maksimenko in this regard are heard to say: “If we analyze the definition of national interests, national security, as well as the list of priorities of national interests, threats to national interests and national security of Ukraine, we can conclude that the exceptions from the rule enshrined in paragraph. 2 of Article 32 of the Constitution of Ukraine prevail over the rule itself”²²⁵.

The level of guaranteeing people’s rights and the means that are used for this purpose are not the same in different countries. The most effective procedures for the protection of human rights are developed within the European legal space. Ukraine wants to become a full member of the European Union, so its legislation in the field of human rights and the practice of its implementation must comply with European legal standards. Comparative legal analysis of legal guarantees of people’s rights provided by European and national law sources will contribute to improvement of the existing mechanism of protection of rights and freedoms of people and citizen in Ukraine²²⁶.

European law includes norms that regulate social relations formed in the course of integration processes within the framework of the European Community and the European Union (EU) based on it. The foundations of the common European standards of human rights were laid by the Con-

²²⁴ Pro osnovy natsionalnoi bezpeky Ukrainy: Zakon Ukrainy vid 19.06.03 r. URL: <http://zakon2.rada.gov.ua/laws/show/964-15>.

²²⁵ Lipkan V.A., Maksymenko Yu.Ie. Prava i svobody liudyny ta hromadianyna v informatsiinii sferi v umovakh provedennia konstitutsiinoi reformy v Ukraini : materialy «kruhloho stolu», prysviachenoho 15-y richnytsi pryiniattia Konstitutsii Ukrainy [«Konstitutsiia Ukrainy : zminy chy nova redaktsiia»], spets. vyp., 24 cherv. 2011 r.; redkol. V.V. Kovalenko (holov. red.) ta in. Kyiv : Yurinkom Inter, 2011. 196 s.

²²⁶ Bohachova L.L. Yurydychni harantii prav i svobod liudyny i hromadianyna v yevropeiskomu ta natsionalnomu pravi. *Derzhavne budivnytstvo ta mistseve samovriaduvannia*. 2011. № 22. S. 56–70.

vention on the Protection of Human Rights and Fundamental Freedoms of 1950 (adopted by the Council of Europe), which became a true “European bill of rights”, a “constitutional document of the European public order. EU law in the past did not have a list of enshrined human rights in writing, and the 1950 Convention on the Protection of Human Rights and Fundamental Freedoms (henceforth European Convention) was not recognized as its direct source. The first step towards solving this situation was the adoption of the EU Charter of Fundamental Rights by the European Parliament, the EU Council, and the European Commission in 2000 (henceforth referred to as the EU Charter). The adoption of the Charter was justified by the need to: protection of people’s rights and freedoms from possible violations by the EU supervisory bodies; filling the EU citizenship institute with a more concrete meaning; reconciliation of legal regimes of social, economic, civil, and political rights; division of competence between the European Court of Justice and the European Court of Human Rights Recognizing the need for interpretation of human rights and freedoms guaranteed on the territory of the EU, in accordance with the principles of interpretation of the European Court of Human Rights rights enshrined in the European Convention ensuring equal application of human rights enshrined in the norms of the directives of the relevant EU bodies on the territory of all member states; shaping a “lawful” worldview of citizens under the jurisdiction of the EU²²⁷.

International mechanisms for the protection of human rights are international legal acts on human rights, as well as specialized international instruments, organizations, institutions, which are directly focused on the protection of human rights and implementation of these actP.

It is necessary to recognize the fact that since the adoption of the Universal Declaration of Human Rights, a certain international regime for the protection of human rights, including informational ones, has developed and continues to develop. This is about the regime of protection of information rights of people, that is a totality of certain mechanisms and procedures, institutions, tools and forms of activity aimed at protecting information rights of people, as the international law does not have those qualities that

227 Pravo Yevropeiskoho Soiuzu: navch. posib. za red. R.A. Petrova. Kyiv : Istyna, 2011. S. 66–68; Khartyia Evropeiskoho Soiuzu ob osnovnykh pravakh: kommentaryi. pod red. S.Yu. Kashkyna. Moskva : Yurysprudentsyia, 2001. 208 s.; Lediakh Y.A. Khartyia osnovnykh prav Evropeiskoho Soiuzu. *Hosudarstvo i pravo*. 2002. № 1. S. 51–58.

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are characteristic of national law²²⁸. The international mechanism for the implementation of international human rights standards includes the activity of non-universal and regional international organizations. The universal level is the UN, its organizations, as well as organizations that act under its aegis through various kinds of international programs and projects. The mechanism of implementation and protection of rights, freedoms and responsibilities at the international and regional levels includes the following structural elements: a) international and regional standards in the sphere of rights, freedoms and duties; b) implementation (incorporation) of the analyzed international and regional standards into national law; c) International and regional forums of human rights and freedoms; d) Ensuring by these forums of international and regional standards of rights, freedoms and responsibilities of people²²⁹.

The system, which ensures the protection of human rights, also includes international courts, such as the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, the International Criminal Court. These organizations, worth emphasizing, do not accept individual applications, unlike the European Court of Human Rights. But the fact that their activity is directly related to the protection of people from the most terrible violations of their rights and freedoms does not cause any doubt. In parallel with the international universal mechanisms in the sphere of protection of human rights and freedoms there are also regional conventions on human rights. The regional systems of human rights protection often include the European (European Council), the Inter-American and African systems of human rights protection²³⁰. It is generally recognized that the most developed and legally effective system of protection of human rights, not only on a regional level, but also on a non-domestic level, is the system of the Council of Europe, at the center of which is the European Convention for the Protection of Human Rights and Fundamental Freedoms and its “monitoring body” – the European Court of Human Rights. Despite the fact that the latter has repeatedly stated that the

²²⁸ Mizhnarodne pravo: ekzamenatsiinyi dovidnyk. O.V. Troianovskiy, Yu.V. Chaikovskiy, N.O. Yakubovska. Odesa : Feniks. 2010. 246 s.

²²⁹ Kolodii A.M., Oliinyk A.Iu. Prava, svobody ta oboviazky liudyny i hromadianyna v Ukraini: Pidruchnyk. Kyiv : Vseukrainska asotsiatsiia vydavtsiv «Pravova yednist», 2008. 350 s.

²³⁰ Kartashkyn V.A. Prava cheloveka v mezhdunarodnom y vnutyhosudarstvennom prave. Moskva, 1995.

Court is not either an appeal court or a “fourth” court, the real role of the decisions of this body is very high. Moreover, in the history of the European Court of Justice there were practically no cases of non-compliance with its decisions, which also testifies to the authority and effectiveness of this mechanism for the protection of human rights. The right of an individual and a citizen to make an individual complaint to the European Court of Human Rights is enshrined in Article 55 of the Constitution of Ukraine. The European Convention for the Protection of Human Rights and Fundamental Freedoms became a consolidated document reflecting the common European values in the sphere of human rights, including information rights. The status of this document, its significance and impact on the national legal systems of the member states of the European Council and the European Union, as well as on the development of international law in general, is difficult to overestimate²³¹.

The European Court of Human Rights and the European Commission of Human Rights have established a significant number of precedents on the application of Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. The Court has repeatedly emphasized that freedom of expression is one of the foundations²³² of a democratic society and one of the basic conditions for the progress and development of every person.

The impact of the decisions of the European Court of Human Rights on the development of international law is significant²³³. Some scholars call its judgments and decisions of international courts precedents, or those that come close to them, emphasizing the importance and extraordinary authority of these courts. As T.M. Anakin rightly points out. The Court of Appeal of the United States of America, in the case of the International Court of Justice (ICJ) and the International Court of Justice of the United States of America (ICJJ), has been the subject of the present study, which has been

²³¹ Klymov O. Pravo prav liudyny yak jus cogens suchasnoho mizhnarodnoho prava. *Pravo Ukrainy*. 2008. № 1. S. 30–34.

²³² Nhuen Kuok Dyn, Patryk Daie, Alen Pele. *Mezhdunarodnoe publychnoe pravo: V 2-kh tomakh*. T. 1: Kn. 1: Formyrovanye mezhdunarodnoho prava; Kn. 2: Mezhdunarodnoe soobshchestvo. Per. s fr. Kyiv : Sfera, 2000. 440 s.

²³³ Yevintov V.I. Zdiisnennia rishen Yevropeiskoho Sudu z prav liudyny u vnutrishnomu pravoporiadku derzhav. *Derzhavotvorennia i pravo tvorennia v Ukraini: dosvid, problemy, perspektyvy*. Monohrafiia. Za red. Yu.S. Shemshuchenka. Kyiv : IDP NAN Ukrainy, 2001. S. 612–626.

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developed in science with reference to the Statute of the United Nations International Court of Justice²³⁴. Decisions of international courts confirm their existence and give concrete expression to the general principles of law and customs²³⁵.

Also important is the interpreting activity of international courts. The decision of an international court is not mandatory for the parties concerned, but they respect it. Moreover, the decision of an international court may serve as a model, an algorithm both for itself and for other courts, taking into account the specific circumstances of the case. Courts may use the conclusions, arguments, and arguments submitted earlier in order to improve their judicial proceedings²³⁶.

It should be noted that the European Court of Justice has developed its own concept of “universally recognized principles of EU law”. According to this concept, the general principles of EU law are derived from different sources, in particular, from EU treaties and legal systems of EU member states. The court believes that it is enough for the principle to be recognized in the legal systems of the majority of the EU member states, or in line with the general trend in the member states, so that it can be recognized as a general principle of EU law. The general principles of EU law are a self-contained source of law, one of which is the principle of respect for fundamental human rights, which include information rights. The European Court of Justice said that not only provisions of national law, but also provisions of EU law that contradict the general principle of EU law about fundamental human rights do not have the right to exist and must be abolished. The European Court of Justice has repeatedly recognized that the basis of fundamental human rights, which are defined by the general principle of EU law, are the rights enshrined in the European Convention on the Protection of Human Rights and Fundamental Freedoms²³⁷. As M.L. Entin rightly

²³⁴ Anakina T.M. Znachennia rishen mizhnarodnykh sudiv dlia rozvytku mizhnarodnoho prava. *Problemy zakonnosti*. 2007. № 89. S. 200–206.

²³⁵ Shchokin Yu. Formuvannia mizhnarodno-pravovykh zvychaiv: rozmezhuвання poniat «praktyka» i opinio juris. *Visnyk Akademii pravovykh nauk Ukrainy*. 2005. № 4 (43). S. 132–143.

²³⁶ Hartley T.C. *The Foundations of European Community Law*. Fourth Edition. Oxford University Press. 1999. P. 130–131.

²³⁷ Rutili, Case 36/75, [1975], ECH 1219; Johnson v. Chief Constable of the RUC, Case 222/84, [1986], ECH 1651; SPUC v Grogan, Case C- 159/90, [1991] ECH I-4685 (Art. 10 (1)); X. v. Commission, Case C-404/92 P, [1994] ECH I- 4737.

points out, the judicial rulemaking transformed into one of the distinctive features of the legal order that emerged on the basis of the treaties on the establishment of the European Commonwealth of Independent States and, later, the European Union. The legal concepts developed by the European Court of Justice became a part of the law of these unions. This very law in its most important characteristics and manifestations was formed to a great extent under the influence of its practice²³⁸.

Therefore, at both the national and international levels there are several parallel systems of protection of human rights. On the one hand, formal mechanisms established on the basis of national law and international treaties (such as the constitutions of relevant states and the European Convention on Human Rights), on the other hand, fundamental principles that do not allow for exceptions or cautions. The progressive recognition of the principles of law as a source of law both in a formal and ideological sense contributes to a wider application of their order with other fundamental sources of law, especially in the sphere of protection of human rights. Therefore, the development of international law, in particular due to the activities of the European Court of Human Rights, is developing in terms of granting the rules of law governing human rights, including information law, the status of a binding international law rule (*jus cogens*)²³⁹.

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²³⁸ Entyn M.L. Sud Evropeiskykh soobshchestv: pravovye formy obespecheniya zapadnoevropeiskoi yntehratsyy. Moskva : Mezhdunarodnye otnosheniya. 1987. 176 s.

²³⁹ Klymov O. Pravo prav liudyny yak jus cogens suchasnoho mizhnarodnoho prava. *Pravo Ukrainy*. 2008. № 1. S. 30–34.

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