

LEGAL REGULATION OF INTERNET RESOURCES: THE PRINCIPLES OF A HUMANISTIC APPROACH

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The introduction of new information and communication technologies is the basis of socio-economic and scientific and technological progress – the informatization of society [1]. In particular, in the Law of Ukraine «On Basic Principles of Information Society Development in Ukraine for 2007-2015» it is recognized that one of Ukraine's main priorities is the desire to build a people-centered, open to all and development-oriented information society in which everyone can create and accumulate information and knowledge, have free access, use and share it, in order to enable everyone to realize their full potential, promoting social and personal development and improving the quality of life.

Instead, the development of the information society not only opens up great opportunities, but at the same time creates serious problems, in particular: standardization of information dissemination activities on the Internet; formation of legal conditions to ensure the objectivity and reliability of information; improving the legal requirements for compliance with professional ethical standards by journalists working on the Internet, etc [2, 3 and others].

Interest in this topic is becoming particularly acute given the great potential of information networks to influence the basic institutions of the state and society, in particular, information security [2, 4 and others]. Thus, in the Information Security Strategy of October 15, 2021, which (Strategy) was approved by the Decree of the President of Ukraine dated December 28, 2021 No. 685/2021, determined the purpose of the Strategy: to strengthen the capabilities to ensure the information security of the state, its information space, support with informational means and measures of social and political stability, state defense, protection of state sovereignty, territorial integrity of Ukraine, democratic constitutional system,

ensuring rights and freedoms every citizen. Achieving the specified goal will be carried out, in particular, by introducing effective mechanisms for detecting, fixing, restricting access and/or removing from the Ukrainian segment of the Internet information, the placement of which is restricted or prohibited by law.

It is clear that in a democratic state governed by the rule of law, where the priority of human and civil rights and freedoms is recognized, any restrictions are subject to denial. For example, most online media outlets and their professional associations strongly oppose mandatory online media registration due to warnings about potential threats to free speech [5]. However, it should not be forgotten that the rights and freedoms of some end where they begin to harm the rights and freedoms of others. Thus, the French Declaration of the Rights of Man and of the Citizen of 26.08.1798 refers to the inalienable and sacred human rights to freedom of opinion, opinion, speech and the press, which, at the same time, are protected by «the threat of responsibility for the abuse of this freedom». Well-known American scientist and Nobel laureate M. Friedman quotes a judge of the Supreme Court of the United States: «My freedom to wave my fists must be limited by the proximity of your chin» [6]. The European Network and Information Security Agency (ENISA) has been established within the European Union (EU), and the Council of Europe Convention on Cybercrime (2001), the Privacy and Telecommunications Directive (2002), the Network and Telecommunications Directive information security (2016) [4, p. 116].

So, sooner or later the problem of regulatory regulation of information dissemination on the Internet will have to be solved [7]. For example, in the fourth paragraph of item 12 of the resolution of the Plenum of the Supreme Court of Ukraine of 27.02.2009 № 1 «On judicial practice in cases of protection of dignity and honor of an individual, as well as business reputation of an individual and legal entity» unreliable information that tarnishes the dignity, honor or business reputation, posted on the Internet on an information resource registered in the manner prescribed by law as a media outlet, the courts should be guided by the rules governing the activities of the media.

The textbook «Hybrid Warfare and Journalism» emphasizes that the traditional means of disseminating information (print media, radio and television) have recently been joined by the Internet, which has supplemented them with blogs and social networks, ensuring prompt response to events and interactivity. It is natural that the Internet is gradually becoming a leader and a leading place among popular sources of information, because searching for data online is simple, convenient and takes much less time than going to the library, reading newspaper archives or even watching TV. Due to the constant development of information computer technology, the society has formed a positive public opinion about the usefulness of the Internet, and the rapid expansion of its technical capabilities and audience has led to the emergence of many information services and resources. Searching for information via the Internet has become the prerogative not only of ordinary users, but also of government officials, businessmen and commercial organizations. After all, timely receipt of information can bring considerable profits and tangible benefits [8, p. 97]

O. Vergolyas [9] points out that the on-line social network, in terms of information and communication technologies, creates the conditions for the use of much more tools of information and psychological influence than off-line due to

technological capabilities for placement and delivery of audio and video information to the addressee. On-line networks have a much wider range of options for placing and delivering information to the recipient of various kinds (video, pictures, photos, text, audio). The speed of information dissemination in the on-line network is much higher than in the off-line network due to the simplicity of transmission and broadcasting. In addition, it is worth noting that the production, distribution and delivery to the recipient of information products (content) for distribution in the on-line network requires much less human and material resources than in the on-line network, especially for due to the speed of distribution and extremely low costs for the animation of information materials [9].

At the same time, many authors, especially those dealing with information security issues, pay attention to the dangers that create informational influences on the Internet on the individual, society, state [10-25 and others].

So, M.B. Kubyavka notes that humanity receives information from the Internet, press, radio and television every day. Being for a long time in the world of symbols detached from reality, a person can even go against their own interests, because reality is pushed to the background, playing a subordinate role [14, p. 34].

G. Pocheptsov is of a similar opinion, pointing out that man is really becoming more and more defenseless, because he remains the same as before, and the technologies of influence are constantly moving forward. The mass man, who was generated by the consequences of mass communication and mass culture, is exposed today to such volumes of influence as never before. The Internet has not created a preserve free from such technologies, but simply new technologies of influence [18].

I.M. Sopilko emphasizes that information progress has become a tool for enslaving people with information technology. In fact, in the information society there is an absorption of personality by information technology, in which people for the sake of material benefits obtained from participation in various network systems, lose spiritual freedom and personality in general [22].

In the same regard, M. Borshchev warns that the hidden danger of the Internet and similar interactive cybernetic systems is that, unlike the TV viewer, the network user is subjectively confident in the freedom of information choice, in the uncontrollability of their behavior by other entities. network. Unlike the print media and television, the Internet allows the use of an unusually wide range of informational stimulation of the consciousness and subconscious of the individual.

Given these positions, many authors draw attention to the possibilities of using the Internet in information and information-psychological wars. So, M.B. Kubyavka points out that there are currently many uses of the global computer network Internet in the interests of information conflict [14, p. 38]. Today, the Internet, the scientist continues, is being used more and more actively and in the interests of information confrontation between the parties to various conflicts. It creates ample opportunities for the formation of public opinion; influence on political, economic and military decisions; actions on the information resources of the enemy and the dissemination of specially prepared information (misinformation) [14, p. 40].

The Internet allows us to use the enormous potential of the network to transform public consciousness. Waging an information network war has become

more convenient than ever: there is a possibility of uncontrolled posting of negative and, anonymous messages that will quickly spread on the network. In the traditional media, it has always been possible to identify the author of defamatory material, as well as to prove, by obtaining a refutation through the court, that the information posted is false. It will not be possible to do this on the Internet, or the process will take a disproportionate amount of time, which will benefit the enemy in the information war. It is well known that for many subjects the Internet has long become the only way to obtain information, therefore the organizers of any information war do not pass by such a powerful tool and widely use it for their own purposes. Moreover, a number of specific features of the Internet make it especially attractive for organizers of information battles.

In particular, R. Khardel and V. Vyzdryk study the possibilities and effectiveness of the use of mass media and mass media on the global Internet as a tool to influence historical consciousness in the course of information confrontation between the Russian Federation and Ukraine. The authors conclude that modern online media, both traditional (online publications, TV channels) and non-traditional (video hosting, social networks) are widely used in the process of information confrontation to influence public consciousness, including such a component, as historical consciousness. Such influence is carried out by careful selection, dosing of information and stereotypes of its perception, which are brought to certain target groups, and at mass and long influence pass to the category of beliefs [24, p. 100, 106].

At a time when Russia's military aggression against Ukraine continues, countering the information attacks that accompany it is especially important. The mass distribution of fakes by the Russian media and Internet trolls belongs to the arsenal of the struggle against the former Soviet republics, and now independent states, in order to return them to the status of Russian colonies [25, p. 296].

V.F. Zagurska-Antonyuk emphasizes that one of the mechanisms for resolving the issue of counteracting information threats is restricting access to information or distorting it in the process of «information warfare», which has become a «terrible» reality in modern Ukraine-Russia geopolitical relations. But here this author points out that such restrictions may «be unacceptable in civilized democratic societies that strive for democratic values» [26].

Thus, in modern conditions the problem of normative regulation of information dissemination on the Internet becomes especially urgent.

Individual issues of legal regulation of Internet resources were considered by the authors in a monograph [27].

According to Article 34 of the Constitution of Ukraine, everyone is guaranteed the right to freedom of thought and speech, to free expression of their views and beliefs. Everyone has the right to freely collect, store, use and disseminate information orally, in writing or otherwise – at their discretion. The exercise of these rights may be restricted by law in the interests of national security, territorial integrity or public order in order to prevent riots or crimes, to protect public health, to protect the reputation or rights of others, to prevent the disclosure of confidential information or to maintain authority and impartiality of justice.

In general, this approach is fully in line with the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms of 1950

(hereinafter – European Convention). In particular, Article 10 of the Europe Convention «Freedom of expression» formulates a «European standard» of guarantees of freedom of expression and their restrictions:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

These formulations reflect the dualism of rights and responsibilities in the field of freedom of expression, according to which (dualism) these rights are guaranteed, but may be subject to certain restrictions.

According to Part 1 of Art. 2 of the Law of Ukraine (hereinafter – the Law) «On Information», the basic principles of information relations in Ukraine, in particular, are defined: the reliability and completeness of information; legality of receiving, using, disseminating, storing and protecting information; protection of a person from interference in his personal and family life. According to Part 1 of Art. 3 of the Law «On Information», one of the main areas of state information policy is to ensure information security of Ukraine.

According to paragraph 13 of the Basic Principles of Information Society Development in Ukraine for 2007-2015, approved by the law of the same name dated 09.01.2007 № 537-V, information security – a state of protection of vital interests of man, society and the state, which prevents harm due to: incompleteness, untimeliness and unreliability of the information used; negative information impact; negative consequences of the use of information technology; unauthorized dissemination, use and violation of the integrity, confidentiality and availability of information.

In the above-mentioned in the Information Security Strategy of October 15, 2021, information security is also associated with blocking and removing from the information space of the state, in particular from the Ukrainian segment of the Internet, information that threatens the lives and health of Ukrainian citizens.

Thus, information security in a democratic state is considered in the unity of interests of protection of human and state security, therefore, the relevant restrictions for some directly enhance the security of others.

The general rule for handling information is set out in Part 2 of Art. 302 of the Civil code of Ukraine: *«The physical person who disseminates the information, is obliged to be convinced of its authenticity. An individual who disseminates information obtained from official sources (information of public authorities, local governments, reports, transcripts, etc.) is not obliged to verify its authenticity and is not responsible in case of refutation. An individual who disseminates information obtained from official sources is obliged to refer to such a source».*

Therefore, information obtained through official sources from the authorities, in particular, the official pages of such authorities on the Internet, is considered reliable, and the individual should not be responsible for the consequences of the dissemination of such information. In all other cases, it is the individual who disseminates the information who is responsible for its dissemination. This applies even in cases where an individual disseminates information already created by someone else, in particular through the Internet [28].

Thus, these rules provide an expanded list of grounds for release from liability for disclosure of unverified information: both by sources of information and by the circle of distributors – not only received from officials of the authorities, but also received from other media, and not only by distributors – individuals, but also directly to the media. Let's call these norms the presumption of reliability of information. In the context of widespread practice, when many media outlets, including print media, distribute (reprint) materials from Internet resources, in such media, in the case of claims to the authenticity of such materials, there is a temptation to refer to Art 302 of the Civil code of Ukraine, equating materials reprinted from the Internet resource to those received from the media and/or news agencies.

Thus, in the decision of 05.05.2011 of the European Court of Human Rights (hereinafter – the ECHR) in the case «The newspaper "Pravoe Delo" and Shtekel v. Ukraine» considered the situation when this newspaper (editor-in-chief – Shtekel L.I.) reprinted information materials from the Internet, which later turned out to be unreliable. The newspaper was prosecuted for this. In their appeal to the ECHR, the applicants referred to the above under Art. 42 of the Law «On print media (press) in Ukraine» presumption reliability of information.

Having considered this situation, the ECHR (according to the text of the decision – the Court) came to the following conclusions (highlighted by the authors):

«60. The Court observes that the publication at issue was a verbatim reproduction of material downloaded from a publicly accessible internet newspaper. It contained a reference to the source of the material and comments by the editorial board, in which they formally distanced themselves from the content of the material.

61. Ukrainian law, specifically the Press Act, grants journalists immunity from civil liability for verbatim reproduction of material published in the press. The Court notes that this provision generally conforms to its approach to journalists' freedom to disseminate statements made by others.

62. However, according to the domestic courts, no such immunity existed for journalists reproducing material from internet sources not registered pursuant to the Press Act. In this connection, the Court observes that there existed no domestic regulations on State registration of internet media and that, according to the Government, the Press Act and other normative acts regulating media relations in Ukraine did not contain any provisions on the status of internet-based media or the use of information obtained from the Internet.

64. Nevertheless, having regard to the role the Internet plays in the context of professional media activities (see paragraphs 29-32 above) and its importance for the exercise of the right to freedom of expression generally, the Court considers that the absence of a sufficient legal framework at the domestic level allowing journalists to use information obtained from the Internet without fear of incurring sanctions seriously hinders the exercise of the vital function of the press as a «public watchdog». In the Court's view, the complete

exclusion of such information from the field of application of the legislative guarantees for journalists' freedom may itself give rise to an unjustified interference with press freedom under Article 10 of the Convention».

(https://zakon.rada.gov.ua/laws/show/974_807 – text in Ukrainian

https://www.menschenrechte.at/orig/11_3/Pravoye.pdf – English text)

Thus, according to the ECHR, the legal regulation of Internet resources as a media should be, and this not only does not restrict the freedom of information, but, conversely, increases the level of guarantees for users of this information. At the same time, the level of responsibility of such electronic media for violating the legislation in the field of media is increasing. At the same time, this issue in Ukraine is still unresolved [5], and the lack of such regulation allows Internet resources, even those who consider themselves respectable, to completely ignore any rules of journalistic and publishing ethics [29].

Given the legal unresolved issue of registration of Internet publications, the Center for Democracy and the Rule of Law considers it most optimal to obtain additional guarantees of journalistic activity for employees of such publications by registering Internet publications as an information agency, which facilitates access to recognition of agency employees as journalists [29].

At the same time, it should be directly emphasized that the alleged «confusion» with the information disseminated with reference to sources on the Internet is not in fact a particular confusion. Such schemes are purposefully used to legalize unreliable (fake) information.

In particular, G. Pocheptsov [16] reports that Gleb Pavlovsky, presented by «Komsomolskaya Pravda» as a «veteran of information wars», pays special attention to various Internet projects, considering them as an ideal tool for launching the necessary stories into the mass consciousness. He says: «Traditional media are responsible for the information they disseminate. Rumors transmitted via the Internet are anonymous. But then newspapers and television get the opportunity to link to the Internet. That is, there is a real laundering of so-called "black" information. Previously, this "black" information could only be made "gray" – to distribute it on the sidelines, no more. Now it is possible to launder any "misinformation" completely».

O. Mitenko also emphasizes that the lack of mechanisms of state control over the dissemination of information through Internet sites causes a rapid increase in the volume of socio-political content (anonymous, the authenticity of which is questionable, provocative and openly illegal), which are duplicated by traditional domestic media with a link to the Internet [15].

O. Golub reports that many experts emphasize the danger of using social networks as a source of information, because the so-called new media is one of the most common ways of spreading false information and fakes. It is noted that in recent years, more and more classic media use social networks as primary sources. The responsibility lies with journalists who are lazy or inexperienced and do not check the accuracy of information. Then this unverified information gets on television and spreads to a mass audience. There is no doubt about the danger of spreading false information in the context of the information war, which is part of the hybrid war that Russia is waging against Ukraine. This affects not only the civilian population of Ukraine, but also demobilizes the military defending their country. All these technologies have long been tested. Research shows that people

consider the most important topics and issues that are actively covered and discussed in the media. In this way, it is possible to purposefully adjust the perception of society – in fact, to form a new reality [30].

According to the StopFake website, false news is spread primarily by the Russian media. Ukrainian media, on the other hand, can spread lies if they inadvertently check the source of the information. That's why journalists should be especially careful to check information from social networks, so as not to become carriers of fakes. It is the journalist's responsibility to verify and process the information received. In fact, this is how traditional media should differ from social networks and aggregator sites [30].

A. Bely conducted a study of the sources of fake ratings of Ukraine on economic reliability or security and/or residence. For example, initially the site «Numbeo» published «information» about the allegedly extremely low rating and stalemate criminogenic situation in Ukraine against the background of all European countries. And some cities, such as Odessa and Dnipro, take 12th and 13th place in this anti-rating of cities. The «news» received quite a serious response in the media.

However, the study showed that the published ranking lacks data sources and their verification. There are no calculation criteria and quantitative indicators.

It is reasonable to assume, says the author of the study, that the reason for such fake news is the artificial creation of the idea of investment unattractiveness of Ukraine, because investment, especially long-term, in a country with low security and stability is unlikely. The biggest risks in Ukraine, in terms of financial stability, took place in 2015. At the same time, according to generally accepted world ratings, Ukraine has a positive development trend. So, authoritative rating agencies show that despite the ongoing armed aggression and destabilizing influence by the Russian Federation, the related arms trafficking, the COVID-19 pandemic and the associated economic recession, thanks to the efforts of the Ministry of Internal Affairs and other law enforcement agencies 65 % of the population considers Ukraine a safe place to live. This is not much worse than the United Kingdom (70 %), Italy and France (71 %), Bulgaria (72 %). In 2017, the EU average was 82 %. We should not forget, the author of the study points out, that the involvement of some media outlets that reproduce fake ratings with dubious sources is one of the key factors in waging a fierce hybrid war against Ukraine [31].

Thus, in conditions when supporters of freedom of speech oppose attempts to introduce legal regulation of information dissemination on the Internet and consider it an attack on these freedoms, it is proposed to «softly» introduce legal regulation of media on the Internet in Ukraine, when state registration of Internet media carried out on a voluntary basis, but the absence of such registration deprives such unregistered disseminators of benefits and preferences inherent in registered media.

In addition, the issue of liability for the comments of third parties, which (comments) are distributed on web resources, remains unresolved by law. In this regard, it should be noted that in the decision of 05.09.2016 in the case «Delfi AS v. Estonia» (Application № 64569/09) the ECHR recognized the lawfulness of the national courts of Estonia to prosecute the information portal for offensive comments from readers under the article . In particular, the ECHR has identified the following (reverse translation from the Ukrainian language):

«110. The Court notes, first of all, that the opportunities that the Internet provides for users to express themselves through the content they create are a unique platform for them to exercise their right to freedom of expression. This fact is indisputable and the Court has recognized it in its previous judgments. However, along with these benefits, there are also certain risks. Defamatory and other statements of a clearly illegal nature, including hostile statements, and those that incite violence can spread like never before worldwide in a matter of seconds, and sometimes remain steadily present on the Internet...

Given the need to protect values, which underlie the Convention, and equal respect for the rights guaranteed by Articles 10 and 8 of the Convention, a balance must be struck which preserves the essence of both rights. Thus, while the Court recognizes the possibility of obtaining important benefits for the exercise of the right to freedom of expression via the Internet, the Court also takes into account that prosecution for defamatory and other unlawful statements must, in principle, remain an effective remedy in the event of violation of personal rights...

162.... having regard to... the extremely harsh nature of the comments in question, the fact that they were left in response to an article published by the applicant company on its professionally managed information internet portal on a commercial basis, the lack of action taken by the applicant company to remove, without delay after their publication, these comments, which contained hate speech and calls for violence, and to ensure a real possibility of bringing the authors of such comments to justice, as well as the moderate nature of the sanction applied to the applicant company. conclusion that, in imposing liability on the applicant company, the domestic courts had relied on appropriate and sufficient grounds, taking into account the discretion given to the respondent State. Therefore, the sanction applied did not constitute a disproportionate restriction on the applicant company's right to freedom of expression. There has accordingly been no violation of Article 10 of the Convention».

(<https://cedem.org.ua/library/delfi-as-proty-estoniya-delfi-as-v-estonia/> – text in Ukrainian)

The arguments and proposals presented in this article are embodied by the authors in the draft law «On Amendments to Certain Legislative Acts of Ukraine Concerning the Protection of the Rights of Citizens and the State in the Sphere of Information Relations» developed by them. The purpose of the bill is to amend some legislative acts of Ukraine on the protection of the rights of citizens and the state in the field of information relations. Adoption of the bill should create conditions for «soft» introduction of legal regulation of mass media on the Internet in Ukraine, when state registration of Internet media is carried out on a voluntary basis, but the lack of such registration deprives such unregistered disseminators of benefits and preferences inherent in registered media. In particular, the proposed to predict reservations that the presumption of accuracy of information applies only to information obtained from registered Internet media. We believe that this will increase interest in such voluntary registration.

In addition, we believe that the level of trust in the disseminated information can be increased by the mandatory placement on the main Internet page of the Internet media of the source data of the publication: 1) the name of the edition; 2) founder (co-founders); 3) surname and initials of the editor (editor-in-chief); 4) addresses of the editorial office, publisher; 5) series, number and date of issuance of the state registration certificate; 6) publisher (co-publishers).

At the same time, it is proposed to increase the level of guarantees for persons against whom information is disseminated that violates the rights and interests of such persons, namely: to establish that such persons have the right to respond even if information is reproduced from other media. This will help to reduce such negative manifestations, when many media outlets are conspired to carry out information attacks on certain individuals or institutions with mutual reference to each other.

As currently in Ukraine there is a practice of registration of Internet media according to the model of news agencies, it is proposed to regulate the registration of Internet media according to the model to News Agencies (taking into account the peculiarities of information dissemination on the Internet).

In addition, in order to increase the level of information security of the state, it is proposed to introduce a provision on the inadmissibility of promoting or promoting the aggressor state and its authorities, representatives of the aggressor state and their actions that create a positive image of the aggressor state, justify or recognize legitimate occupation. Ukraine, in the Laws of Ukraine «On Information» and «On Information Agencies», where these rules do not currently exist.

Conclusions. The above study leads to the following results.

1. The European Court of Human Rights does not consider the adoption of national regulations on the state registration of online publications to be a violation of freedom of expression. Provided that it is properly regulated (in accordance with the requirements of the Convention for the Protection of Human Rights and Fundamental Freedoms), such registration, on the other hand, strengthens journalists' guarantees and expands the range of information, to which the presumption of authenticity can be applied, – while increasing the responsibility of such Internet distributors for disseminating inappropriate information.

2. It is proposed to legislate "soft" registration of Internet media, when state registration of Internet media is carried out on a voluntary basis, but the absence of such registration deprives such unregistered disseminators of benefits and preferences inherent in registered media. In particular, it is proposed to supplement the Law of Ukraine "On Media" with caveats that the presumption of authenticity of information applies exclusively to information obtained from registered Internet mass media. We believe that this will increase interest in such voluntary registration. A corresponding draft of the Law is proposed.

3. It is recommended that registered Internet mass media post information about their official registration as a news agency on their own website, which will increase the level of trust in the information they disseminate.

4. The European Court of Human Rights recognized that the owners of web portals can be responsible for the comments of third parties, which (comments) are spread on web resources and contradict the principles of protecting the dignity and honor of an individual, as well as the business reputation of an individual and a legal entity. In this regard, it should be noted that in the decision dated September 5, 2016 in the "Delfi AS v. Estonia" case, the European Court of Human Rights found the national courts of Estonia to hold an information portal liable for offensive comments of readers under the article. Therefore, the dissemination of false

information through the Internet media may lead to its responsibility even if this Internet media is not its author.

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