

CONSTITUTIONAL AND LEGAL PROVISION OF THE RIGHT TO ACCESS INFORMATION IN UKRAINE AND THE COUNTRIES OF THE EUROPEAN UNION

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Abstract: The article considers some theoretical and applied aspects of the modern legislation of Ukraine in the field of ensuring constitutional information human rights. Attention is paid to the main scientific approaches to defining the essence of the concept of "information human rights". The role and significance of the norms of the Constitution and other constitutional laws that make up the relevant legal institutions are revealed. The article proposes to consider some institutional provisions of the right to information in the legislation of individual countries of the European Union and the feasibility of determining them in the codification of Ukrainian legislation on information.

Keywords: information, international principles, standards, access to information.

1 Introduction

The right to information is a fundamental right that ensures the comprehensive development of the individual, the full functioning of the rule of law and democracy, the formation of civil society. In the modern world, the presence or absence of this right in a person is an indicator of the level of democracy of the state, civilization of society, observance and protection of universally recognized rights and freedoms of man and citizen. Ukraine is currently on the path of forming and developing an information society, the existence of which is possible in a democratic, legal state, where the rule of law prevails and the realization of human rights is ensured as much as possible. The right of access to information is one of the inalienable rights of man and citizen, and therefore is enshrined both at the international level and in national law.

At the moment, Ukraine is on the path of integration into the transnational information and legal space, first of all to such a segment of it as the European Union (hereinafter - the EU). In this regard, the need to implement in the legislation of Ukraine special European information and legal standards developed in the EU is urgent.

The Constitution of Ukraine, embodying the international legal standards of the constitutional status of man, established that human rights and freedoms and their guarantees determine the content and direction of the state (Article 3 of the Basic Law). The implementation of this principle should be carried out by having an effective organizational and legal mechanism to ensure constitutional rights and freedoms, which is in fact a fairly extensive system that covers its regulatory influence all major areas of human life: personal (private), political, social, economic, cultural, etc. The science of constitutional law contains a stable classification of human rights, and legally priority in the system of national law constitutional law determines the general principles, directions of development of legal regulation of various types of social relations arising from their implementation, protection. This fully applies to information relations, which are a relatively new object of legal support. It is generally accepted that the emergence and development of such relations is due to a significant increase in the role of information, information: resources, products, technologies; formation of the information society, globalization

of information processes, other important factors. International legal norms define the right of a person, a citizen as one of the fundamental and enshrined in the constitutional acts of many foreign states.

2 The initial presuppositions

The purpose of the article is to clarify the constitutional and legal regulation of the right to information in the constitutions and legislation of some foreign member states of the European Union and to conduct a comparative analysis with the Ukrainian legislation on the right to information. Elucidation of the existing approaches of scientists to define the concept of "information rights", the separation in the system of constitutional rights and freedoms of man, citizen conditionally independent group of information rights; analysis of the state, features of constitutional and legal regulation of their provision; identification of problematic issues of normative definition of fundamental categories and concepts in this field in order to improve the legislative technique of their presentation.

3 Methods

The methodology of the chosen problem is a systematic approach, as well as dialectical, formal-logical and structural-functional methods and other general scientific research methods, as well as special legal methods: comparative law and formal law. The methodological basis of the study is theory cognition, its general method of materialist dialectics. The following were used as general scientific research methods: formal-logical and systematic methods.

4 Results and discussion

The right to information enshrined in Article 34 of the Constitution of Ukraine and other articles is considered by some authors to be a political right as a consequence of the ideology and worldview formed during the Soviet era. They consider the right to freedom of the press and information to be the political rights and freedoms of the citizens of Ukraine. That is, Article 34 of the Constitution sees two different rights, according to the first and second parts of this article.

The Universal Declaration of Human Rights is the main generally accepted document for the proclamation of human rights, binding on all member states as a document belonging to the case law of international law. St. 19 of the Declaration of Human Rights guarantees not only the right to freedom of expression, but also the right to access information; this provision is worded as follows: "... Everyone has the right to freedom of opinion and expression; this right includes the right to freedom of expression and to collect, receive and impart information and opinion through the media, regardless of frontiers ...". These freedoms may be restricted in the cases specified in Art. 29 of the Universal Declaration, when "it is established by law in order to ensure proper recognition and respect for the rights and freedoms of others, to meet the just requirements of morality, public order and general welfare in a democratic society". The International Covenant on Civil and Political Rights, ratified by Ukraine in 1973, guarantees access to information similar to the Universal Declaration of Human Rights, namely: "... Everyone should have the right to freedom of thought and speech: this right includes freedom to assemble, receive and disseminate information and opinions of various kinds orally, in writing or in print, regardless of borders ...".

Freedom of speech and thought is also ensured by the Convention on Human Rights, ratified in Ukraine in September 1997, by two regional systems of human rights protection, Art. 13 of the American Convention on Human Rights and Art. 9 of the Charter of Human Rights and the Peoples of Africa.

At the level of the European Union, since the entry into force of the Treaty establishing the European Union (Maastricht Treaty) on 1 November 1993, every EU citizen, as well as any natural or legal person resident or registered in an EU Member State, has the right to apply a petition to the European Parliament in the form of a complaint or a request on matters falling within the scope of the European Union. Petitions are considered by the Parliamentary Committee on Petitions, which decides on their admissibility and is responsible for dealing with them. The legal basis for this is Articles 20 and 227 of the Treaty on the Functioning of the European Union (the Treaty on the Functioning of the European Union (TFEU)) and Article 44 of the Charter of Fundamental Rights of the EU. Thus, in European Union law, the term "petition" is used in a broad sense: it includes such types of appeals as proposals, complaints and actually electronic petitions. Thus, according to Article 227 of the Consolidated Version of the Treaty on the Functioning of the European Union, "any citizen of the Union, or any natural or legal person residing or having its registered office in a Member State, has the right to address individually or together with other citizens a petition to the European Parliament on a matter which falls within the scope of the Union's activities and which concerns the subject of the application directly." The right to submit an electronic petition is specifically enshrined in Article 44 of the EU Charter, which states that "every citizen of the European Union, natural or legal person residing or having his or her officially registered residence in one of the Member States is entitled to submitting a petition to the European Parliament". All petitions, in accordance with the European Parliament's Rules of Procedure, must relate to the activities, treaties and legislation of the European Union. Petitions may concern the application of these provisions by both EU and national authorities of the Member States of the European Union. Individuals may submit petitions to the European Parliament both in matters of a public nature, such as those affecting the economic, political or social spheres, and of a personal nature. In this case, according to Article 41 of the Charter, the petition can be sent in any official language of the Community.

It is believed that the first country in the world to adopt special legislation on the right to information was Sweden. Institutionally, this right was formulated in this country in the category of "rights to freedom of information." The right to freedom of information is enshrined in one of Sweden's four basic laws, which constitute its Constitution. Swedish law contains a number of provisions relating to the right to information in the content of the right of access to government documents. It should be noted that the basic laws of Sweden pay considerable attention to the legal basis of the right to information, putting in the first place the issue of this right along with other fundamental rights of citizens (subjects) in their relations with public authorities. According to one of the fundamental laws, namely the Act on the Form of Government (Chapter 2, Article 1, paragraph 2), among rights and freedoms, every citizen is guaranteed the right to information in his relations with state institutions: that is, the right to acquire, obtaining information and getting acquainted with the statements of others.

Swedish legislation in the context of the exercise of the right to information contains precise definitions in the content of the understanding of such a category as "official documents" and the regulation of procedures in the sense of "documentation" as a function of public administration. The definition of an official document and the right of citizens to access official documents are presented in another basic law of Sweden: the Freedom of the Press Act, where in Chapter 2, in Art. 1 states that "every Swede has the right to free access to official documents in order to facilitate the free exchange of views and the availability of comprehensive information." Hence the institutional feature of the right to information: restriction of the right to information according to subjective criteria - only for citizens of the country. The second paragraph of this article defines discretionary exceptions to the right to information, including: protection of national security and external relations; financial policy, inspection and supervisory functions of public authorities; crime

prevention; state economic interests; protection of privacy; and conservation of flora or fauna. It is noted as a constitutional and legal principle: that all exceptions for public access to official documents must be prescribed at the level of state laws.

Finland also has a history of legislation on the right to information, which has been harmonized over time in the light of new realities and trends in EU information policy. The regulation of the right to information in Finland is cited by a number of researchers as an example of successful practice of national information law in Europe. Reference is made to the Council of Europe's Anti-Corruption Commission, which noted that effective legislation on the right to information in Finland is one of the key factors in the country's low level of corruption.

Finland is one of the countries where computer information technology is widely and successfully used to access public information in the content of the category "public official information". The basis of Finnish special legislation on the right to information was laid in 1951, with the adoption of the Finnish Law on Publicity of Official Documents. This law was in force until 1999, when it came into force The Finnish Law on Openness of Government. Among other things, the latest law comprehensively guarantees citizens the right to access official documents that do not contain personal data and state secrets. The law also contains a positive experience in the management of information relations, which is not entirely typical of the legislation of other EU countries. Thus, one of the features of the Finnish legislation on the right to information is the combination of institutional features of freedom of access to information and norms on state secrets in one legal act.

Under Finnish law on the right to information, decisions to refuse to provide official information can be appealed not only directly to the administrative court, but also to the Chancellor of Justice and the Parliamentary Ombudsman. Against the background of the legislative reflection of EU standards on the right to information, it is suggested to pay attention to the fact that in 1999 Finland adopted the Law on Data Protection. According to this law, individuals have the right to access and correct personal data held by public and private organizations. Control over data protection, its implementation in all authorities is carried out by a special government official - the Ombudsman for Data Protection.

The term "information rights" is widely used in legal science. Today, this term is widely used in the literature, some steps are being taken to understand the essence and content of this category. This fact is quite positive in the qualitatively new conditions of modern legal understanding, as relevant is not only the development of legal science of relevant basic concepts, categories, but also their application in regulations, official documents of conceptual and other nature, educational literature and more Iasechko S., Ivanovska A., Gudž T., et al (2021).

As I.L. Bachilo rightly points out, information is an essential condition of human life and activity, the subject of his attention and development, it exists as much as man and himself, and his own destiny. This is a kind of environment that ensures the existence of man and is no less important than the air, land, water, the whole biosphere. If this is the case, then the right to information must be managed quite effectively, and in the event of his attempt to recover, and the offenders must be held accountable.

If the function of the right of access to information is to ensure that a person receives information directly from public authorities and local governments about their activities and information about themselves (ie access to official information), as well as certain information held by private legal entities, the appointment freedom of information is to ensure the ability to freely search for and obtain any information from publicly available sources, obtain information about the actions of the authorities, but already in the interpretation of the media, the opportunity to get acquainted with scientific works, works of art, communication, cinema and more.

The only thing freedom of information requires of the state is a policy of non-interference. On the contrary, the right of access to information represents the obligation of the state to create certain conditions for the realization of access to information. That is, if freedom of information is a negative right, then the right to access information is a positive right Kokhanovskaya O.V. (2015).

But not only listed in Art. 50 of the Constitution of Ukraine, information is needed by individuals to exercise their rights and is a matter of public interest. For example, according to many scholars, in the twentieth century. The media, and in particular television, have become monopolistic organizations that try not so much to fulfill their main function as to shape and manipulate public opinion Seleznyova O.M. (2014).

The world of most modern people is a world created by television. Therefore, in order to be able to assess the accuracy of the information provided by the media and cover various aspects of the problem, it is necessary to know who was the founder and who is currently the owner of the broadcaster. Other information that citizens should have direct access to is information on expenditures by non-profit organizations of state funds if legal entities perform delegated powers of the state or local governments in accordance with law or contract, such as providing educational, health, social or other public services, - in relation to information related to the performance of their duties, and similar information.

Thus, according to an integrated approach, the right of access to information is seen as the right of everyone to receive directly from public authorities, local governments, their officials and officials, as well as organizations, enterprises, public associations that perform specific functions and / or fully whether they are partially financed from the budget, information about their activities, including the right to receive official documents and get acquainted with information about themselves Zadorozhnia H., Mykhtunenko A., Kovalenko H. et al. (2021).

The structural right to access information can be represented as follows: 1) the right to access information on the activities of public authorities and local governments; 2) the right to acquaint information with oneself; 3) the right to receive information about the activities of private legal entities.

Previously, the right to freedom of thought and speech, the free expression of one's views and beliefs, and the right to information were largely classified as political rights; other scholars have noted that these rights and freedoms are cultural (spiritual), and attributing them to political rights is excessive politicization. Personal rights and freedoms include, first of all, the right to life, respect for one's dignity, freedom and personal integrity, freedom of movement, etc., but at the same time freedom of thought and speech, worldview and religion. It is also emphasized that the right to information is enshrined in the Constitution for the first time, and its exercise may be limited by law in the interests of national security and in cases provided for in part three of Art. 34 of the Constitution.

Thus, in the science of constitutional law there is a certain evolution of views on the place of the constitutional human right to information in the human rights system. The right to self-expression, which includes the right to information, can be interpreted not only as a political right of a citizen, but also as a personal human right, as well as his right to life, freedom of movement and cultural rights, because the right to self-expression is inherent in man from birth, and not only in the context of citizen participation in political life Iasechko S., Kuryliuk Y., Nikiforenko V., et al (2021).

The right to information is an independent constitutional right other than freedom of speech and of the press. This position is substantiated by A.V. A little. This right is not fully covered by freedom of speech and press, but is richer, more meaningful and has its own substance Kokhanovskaya O.V.

(2015) According to N.Yu. Korchenkova, the right to information is not limited to freedom of speech and press, but provides the right to objective information about what is happening in public life, while freedom of speech is aimed at free circulation of evaluative information, opinions and positions of individuals, the exchange of views with on public affairs, and the right to information - to obtain meaningful information from public resources Yaremenko O.I. (2011).

As rightly written by M. O. Travnikov, in the field of information human rights issues of certainty, balance of concepts are particularly relevant. Establishing the relationship of related legal structures that form the rights of the individual in the information sphere, plays a positive role in forming the unambiguity of the rule of law Teplyuk M.O. (2008).

5 Conclusion

As a result, it should be assumed that the lack of a coherent conceptual and categorical apparatus is a consequence, in particular, the relatively low level of legislative technique for the formation of norms aimed at regulating relations, including in the field of information human rights. To some extent, this situation is due to the insufficient level of constitutional and legal regulation of these relations. Among the problems that need doctrinal interpretation in the context of constitutional reform is the justification of the expediency of separating the constitutional right to information as independent. The constitutional right to access public information is a legally provided and secured by the relevant responsibilities of public authorities and other legally defined entities method of guaranteed acquisition of public information necessary for the acquisition and exercise of human rights to information and other rights, legitimate interests and obligations languages.

Trends in the development of information law in the European format, in particular in terms of standards of its legal regulation, mostly show the unity of national and European socio-political and legal ideas on its functional purpose and serve as an additional argument in favor of the Ukrainian legal model of constitutional law. Consolidation of the right to information is an integral part of the European legal tradition of its understanding as a tool of communicative interaction between the individual and the state in public decision-making, a form of state control by civil society, and one of the effective mechanisms for protecting rights, freedoms and legitimate interests persons.

Thus, the right to information belongs to universal human rights, which must be guaranteed to everyone, not to members of a social group or a particular part of society. This conclusion is confirmed, in particular, by the Declaration on Freedom of Expression and Information, adopted by the Committee of Ministers of the Council of Europe in 1982. It emphasizes that freedom of information is necessary for the social, economic, cultural and political development of every person, it is a condition for the harmonious development of social and cultural groups, nations and the international community.

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