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PROTECTION OF INFORMATION RIGHTS OF CITIZENS AS A DIRECTION OF LEGAL SCIENCE

Abstract. This article analyses the reasons for updating the protection of citizens' information rights in modern conditions. Informatization, and then digitalization, allows the state to collect all the necessary information to ensure effective management and protect national and public security. However, information security issues of an individual person remain not fully protected from all sides: technological, technical, procedural, legal, etc. Based on the analysis of the structure of information rights, conclusions are drawn about the need to rethink the content of the human right to information protection. Based on the study of modern problems of information security of an individual, the author offers a number of recommendations in the field of constitutional and information law. In particular, amendments to the classical theory of human rights have been proposed. Namely, it is proposed to single out information rights, namely, the whole complex of individual rights into a separate generation of rights. Such an approach, according to the author, will ensure a comprehensive approach by the world community to solving problems of legal protection, the development of international conventions and ensure control over their implementation at all levels.

Key words: information, information rights, protection of information rights, information security, protection of individual rights.

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Азаматтардың ақпараттық құқықтарын қорғау заң ғылымының бағыты ретінде

Аңдатпа. Мақалада қазіргі жағдайда азаматтардың ақпараттық құқықтарын қорғауды жаңарту себептері талданады. Ақпараттандыру, содан кейін цифрландыру мемлекетке тиімді басқаруды қамтамасыз ету және ұлттық және қоғамдық қауіпсіздікті қорғау үшін барлық қажетті ақпаратты жинауға мүмкіндік береді. Алайда, жеке тұлғаның ақпараттық қауіпсіздігі мәселелері барлық жағынан толық қорғалмаған: технологиялық, техникалық, процедуралық, құқықтық және т.б. Ақпараттық құқықтар құрылымын талдау негізінде адамның ақпаратты қорғауға құқығының мазмұнын қайта қарау қажеттілігі туралы қорытынды жасалады. Жеке тұлғаның ақпараттық қауіпсіздігінің заманауи мәселелерін зерттеу негізінде автор конституциялық және ақпараттық құқық саласындағы бірқатар ұсыныстар ұсынады. Атап айтқанда, адам құқықтарының классикалық теориясына түзетулер ұсынылды. Дәлірек айтсақ, ақпараттық құқықтарды, атап айтқанда жеке құқықтардың бүкіл кешенін жекелеген құқықтар ұрпағына бөлу ұсынылады. Автордың пікірінше, мұндай тәсіл әлемдік қоғамдастықтың құқықтық қорғау, халықаралық конвенцияларды өзірлеу мәселелерін шешуге жан-жақты қатынасын қамтамасыз етеді және олардың барлық деңгейде орындалуын бақылауды қамтамасыз етеді.

Түйін сөздер: ақпарат, ақпараттық құқықтар, ақпараттық құқықтарды қорғау, ақпараттық қауіпсіздік, тұлғаның құқықтарын қорғау.

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Защита информационных прав граждан как направление правовой науки

Аннотация. В статье проводится анализ причин актуализации защиты информационных прав граждан в современных условиях. Информатизация, а затем и цифровизация позволяют государству собирать всю необходимую информацию для обеспечения эффективности управления и защиты национальной и общественной безопасности. Однако, вопросы информационной безопасности отдельно взятой личности остаются не до конца защищенными со всех сторон: технологической, технической, процессуальной, правовой и др. На основе анализа структуры информационных прав сделаны выводы о необходимости переосмысления содержания права человека на защиту информации. На базе исследования современных проблем информационной безопасности личности автором предложен ряд рекомендаций в области конституционного и информационного права. В частности, предложено внесение дополнений в классическую теорию прав человека. А именно, предложено выделить информационные права, а именно весь комплекс прав личности в отдельное поколение прав. Такой подход, по мнению автора, позволит обеспечить комплексный подход мировой общественности к решению проблем правовой защиты, разработки международных конвенции и обеспечить контроль за их исполнением на всех уровнях.

Ключевые слова: информация, информационные права, защита информационных прав, информационная безопасность, защита прав личности.

Introduction

Huge achievements in almost all areas of the natural and technical sciences led to the fourth industrial revolution. In 2011, the term «Industry 4.0» was born at the Hanover Fair, which outlined the process of fundamentally transforming global value chains.

It was about creating «smart plants», where «virtual and physical production systems flexibly interact with each other on a global level».

This is only one of the sides of this stage of industrial transformation. Today we are talking about high genetic engineering, modern nanotechnology, renewable energy sources, quantum calculus, etc., which in the process of synthesizing these technologies and their interaction is the fundamental difference between the nascent fourth industrial revolution from all previous revolutions.

In 2015, at the World Economic Forum in Davos (Switzerland), Klaus Schwab announced that we are at the origins of the fourth industrial revolution and noted that «The uniqueness of the fourth industrial revolution, in addition to the pace of development and wide coverage, lies in the growing harmonization and integration of a large number of different scientific disciplines and discoveries. Material innovations resulting from the

interdependence between different technologies are no longer a scientific fantasy. For example, today, digital manufacturing technologies can interact with the biological world. To do this, they create (and even «grow» objects that are constantly changing and adapting).»

The transition to «industry 4.0» will make significant adjustments to the social, financial, economic, and political life of the whole world, which will be determined mainly by the deep introduction of science in all spheres of the life of society and the state, through the formation of the so-called innovative infrastructure. A vivid example of this is the introduction of digital technologies, which already represent a certain platform for public administration, business and human everyday life. At the same time, the 5th information revolution is being put at the state level, an indicator of which are a number of state program documents adopted by many states, including Kazakhstan. Information technology, software, the latest technical support and much more is nothing more than a transition to a new level – cyber. It is the level of cyber that introduces smart homes, offices, control systems, and much more, including its negative manifestations – the need to ensure cyber security, etc.

Innovative infrastructure covers many other areas – innovative medicine, biophysics, nanotechnology,

robotics, etc. All this is based on modern scientific research, which is everywhere introduced into our life.

Informatization, and then digitalization, allows the state to collect all the necessary information to ensure effective management and protect national and public security. However, information security issues of an individual person remain not fully protected from all sides: technological, technical, procedural, legal, etc.

Such widespread introduction into human life has both positive and negative sides. On the one hand, making human life more comfortable, modern technologies make it possible to penetrate deeper and deeper into the innermost aspects of his life, practically depriving him of the possibility of preserving and not disseminating personal information.

Information security in the current legislation is considered mainly at the state level. Thus, the Law of the Republic of Kazakhstan «On National Security» of January 6, 2012, by information security means «the state of security of the information space of the Republic of Kazakhstan, as well as the rights and interests of a person and citizen, society and the state in the information sphere from real and potential threats, which ensures sustainable development, and informational independence of the country» (<https://online.zakon.kz/>). This concept, given in the context of the Law «On National Security», namely in the context of the regulation of «legal relations in the field of national security of the Republic of Kazakhstan and the definition of the content and principles of ensuring the security of man and citizen, society and the state, the system, goals and directions of ensuring national security Of the Republic of Kazakhstan» (<https://online.zakon.kz/>) understands personal security in the information sphere only as an integral part of the security of society and the state.

Currently, the situation is such that the informational interests of the state, their provision prevail over the interests of both society and, moreover, of an individual person. It is information that becomes the object of the information interests of the state itself and commercial structures. Accordingly, ensuring the informational interests of the individual is becoming one of the most important issues of our time.

Main part

The concept of «informational interest» is sufficiently studied in the theory of modern

informational law. The interests of the individual in the information sphere are «the realization of the constitutional rights of a person and a citizen to access information, use information in the interests of carrying out activities not prohibited by law, physical, spiritual and intellectual development, as well as protect information that ensures personal security» (Chebotareva A.A., 2010: 38-40).

Accordingly, the following components of informational interest should be distinguished, namely:

- access to the information;
- use of information;
- protection of information.

Only with all of these components you can talk about ensuring information security.

The first two components, to one degree or another, cover the concept of «information need», which can be considered as the objective need of a person for the reliable information that interests him in full. Mrochenko L.V. and Pirogov A.I. giving a characterization of the concept of informational need, they note that «A person needs this information for orientation in the surrounding reality, clarification of the existing social status, for choosing a line of behavior and overcoming difficult life situations, for achieving internal balance and coordination with the social environment» (Mrochenko L.V., Pirogov A.I.: <https://cyberleninka.ru/>).

If the vast majority of information systems and technologies are aimed at ensuring the process of obtaining information in the modern world, then information protection is no less complex and versatile process.

The world community has developed a huge arsenal of tools and programs to combat the illegal access and use of information. However, practice shows that the development of technology and programming allows you to achieve the desired result – access to information, especially since in the vast majority of cases information systems containing information are not properly protected.

Regarding Kazakhstan, it should be noted that it lags behind the world community in the field of quality of information support. State information systems are constantly hacked, according to the Central Communications Service, National Information Technologies JSC informed 142 million hacker attacks on state websites (<https://ru.sputniknews.kz/>). At least 10 thousand account credentials of Kazakhstan accountants were put up for sale at a closed hacker forum and the price of lots with the necessary logins and passwords on average varies between 3-4 thousand dollars (<https://>

ru.sputniknews.kz/). According to TSARKA, analysis of the quality of information systems of banks of the Republic of Kazakhstan showed that «employees inadvertently created gaps in the protection of their institutions by revealing malicious links in e-mail messages. Although Kazakh banks lost a lot of money as a result of the aforementioned attacks, they reported almost nothing about it, being afraid to tarnish their reputation », and concluded that that «the Kazakh authorities do not see this problem as an increase in crime and do not fight it accordingly. Instead, their strategy is to protect the country's network resources with semi-traditional military means» (<https://profit.kz/news/50821/>).

Only these data show that the protection system of information systems is not a guarantee of the complete safety and secrecy of the stored information.

Another problem is the safety of information by individuals on personal computers, which inherently do not have proper cybersecurity systems.

Clause 2 of the Article 16 of the Law of the Republic of Kazakhstan «On Informatization» establishes that the owner of objects of informatization is obliged to take measures to protect objects of informatization (<https://online.zakon.kz/>). Accordingly, citizens who have any information systems in both electronic and other formats are required to independently take measures to protect their integrity and security. In the vast majority of cases, citizens are not even aware of the existence of threats in the relations of their personal data and information, the dissemination and use of which can bring substantial harm to their interests, both property and mental.

But the biggest problem, in our opinion, is the fact that information about citizens, their personal and personal data is a commercial interest and an object of sale for many commercial entities. So, according to MetricLabs «Fraudsters buy and sell stolen personal data of users on the shadow Internet. This is not just credit card information. This includes profiles on various online services and social networks that also have access to your personal information. At the time of writing, the cost of personal data on the darknet can cost about \$ 1,200 ... From the study it can be seen that the aggregate data of one average American will cost about 1,170 dollars» (<https://goodlucker.ru/>).

Information on personal data is owned by government agencies, banks, mobile operators and other organizations that serve individuals. And in all cases, the recorded sale of personal data by unscrupulous employees of these structures, which

casts doubt on the effectiveness of the safety of information at any level.

Another important problem of information security of a person is the security of consciousness – a problem which, in our opinion, is no longer achievable. A person is constantly exposed to external informational influences emanating from the media, etc.

Modern man needs information already at the level of neutron bonds. So, according to psychologists, «information, being the basis of human life, is a kind of catalyst for mental activity and a social toxin that causes addiction, which is thereby a factor of increased danger.

The informational dependence of a person can be explained on the basis of psychophysiology. The psychological reason for any human activity is the «inclusion» of one or another of his needs. Indeed, for no reason, we do not lift a finger. The need “turns on” when the biological balance in the functioning of the body is disturbed. It is information that allows us to satisfy every level of need. In addition, it may be interesting to analyze neurohumoral indicators of the functioning of the body in the absence of positive information (or vice versa information that causes negative emotions and asthenic conditions) ... The uncomfortable feeling of lack of information is due to the fact that these hormones are not enough in the body. A chemical imbalance forms in the brain, which leads to the most deplorable consequences: a person is in the grip of depression, neurosis, panic states, various phobias and mania (Ivanova E.V.: <https://labipt.com/569/>).

A huge amount of information created and distributed by human society itself, which turned it into the most profitable commercial project. The buildup of information exchange poses a threat to untrained human consciousness. Psychologists have not yet developed a unified approach to protecting the personality consciousness from negative information impact, which in our opinion is explained by a number of reasons, the most important of which are that the level of consciousness and intelligence of all people is different and that modern people constantly absorb information and can't live without them. Modern man himself, purposefully receives information, which is his professional and personal need. And accordingly, he voluntarily goes to the informational «litter».

This analysis of the relevance of the problem of personal information security shows that all these aspects should be followed, require special, close attention from the world community, the state, society and the citizens themselves.

In the age of information and information technology, the issue of information interests and information security should be put at the forefront and brought to the level of human rights.

Information rights, namely the right to receive, disseminate and protect information, are guaranteed by the constitutions of a number of states, especially the young constitutions. However, practice shows that problems arise precisely at the application stage. Information legislation guaranteeing the implementation of this system of rights in almost all countries of the world is moving in a single direction, namely in the process of ensuring that citizens can participate in the circulation of information. At the same time, all countries, in spite of the economic, social and legal level of development, face the same problems – the complexity of the practical realization of the human right to information security.

This is largely due to the fact that the receipt, as well as the dissemination of information, is carried out for the most part via the Internet, which is poorly amenable to control and legal regulation. The main reasons for the complexity of legal regulation are quite clearly defined by R. Azizov, who in his dissertation study notes that «the Internet is a world of users (subjects of legal relations), for the most part identified, who «go through» various networks without a clearly defined owner, and carry out their functions thanks to the message protocol in order to search for the necessary information. It is this logic of queries that forms the sociology of the Network and allows it to go through evolution from a closed community of specialists and experts to a large global collective public user and the world of trade» (Azizov R.F., 2017: 5).

Analyzing the specifics of European Internet law, the researchers note that «modern European law has a small set of legal means used in this area, which nevertheless allows us to provide the necessary legal guarantees. Thus, we cannot talk about the lack of legal regulation in the EU countries, but rather, we can talk about the existence of general legislation on communications, communications and electronic commerce, which are used today in the Internet» (Baturin Yu.M., 2000: 112). Approximately the same situation has developed in other continents, that is, with the development of communication and commercial Internet law, one cannot talk about the existing effective system of Internet law to protect individual rights.

Such a situation, in our opinion, is unacceptable.

The basic laws of developed countries, as well as international conventions and declarations, establish that human rights and freedoms are

recognized as the highest value. Whereas one of the most important blocks of individual rights is not provided with the legal mechanism of protection to an adequate degree.

Accordingly, we believe that the importance and multifaceted nature of information rights and, first of all, the right to information security should be equipped with legal regulation and an effective mechanism for ensuring fully. Practice has shown that this is difficult to do at the state level. It is necessary to bring these issues to the global level. and, first of all, by raising the status of this right – bringing the complex of information rights to the level of the next generation of human rights.

The concept of three generations of human rights introduced in 1977 by Karel Vasak includes:

1. civil and political rights («freedom rights»);
2. economic, social and cultural rights («equality rights»);
3. collective rights («solidarity rights»).

However, today we are already talking about the fourth and fifth generation of law.

The content of these generations of rights is completely different. So, according to Russian researchers, whose opinion was formed at the end of the twentieth century: the fourth generation is the spiritual and moral rights and freedoms of man and citizen, who proclaimed and proclaim the spiritual and moral values of the individual, and the fifth is Love, information and energy. The fifth generation of rights includes such rights as the right to Love, Faith and love of God, unity with the Creator, the right to be born in Love, the right to information and energy management, the right to Co-creation and perfection of the world, and other rights arising from Love and Divine energy (Iventiev S.I., 2010: 60).

Whereas representatives of European legal science have a different opinion. This category includes the so-called «rights related to genetic engineering», rights that are in doctrinal discussion regarding their recognition or prohibition of certain actions. Rights related to genetics can be classified as belonging to this last generation of rights, but even if the fourth generation itself is disputed as being. At the same time, rights have been identified that ensure the inviolability of human rights and the inaccessibility of the human body from the point of view of the development of medical science, genetics. The study of the human genome, genetic manipulation, in vitro fertilization, experience with human embryos, euthanasia and eugenics are actions that can create complex legal issues, ethical moral and even religious, the reason public opinion prompted states to tackle the regulation of these

problems. The European Council recommends that Member States adopt principles that will regulate the relationship between genetic engineering and human rights so that the right to life and dignity are understood as the right to human genetic characteristics. (Recommendation 934/1982) (Adrian V., 2009: <https://www.law.muni.cz/>). Then, as the fifth generation of human rights not yet considered in the scientific community of Europe and America.

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Then, as the fifth generation of human rights not yet considered in the scientific community of Europe and America.

Conclusion

At the same time, we propose to single out information rights, namely the whole complex of individual rights, into a separate generation of rights.

Only such an approach, in our opinion, will ensure a comprehensive approach by the world community to solving the problems of legal protection, development of international conventions and ensure control over their implementation at all levels.

The lack of uniform mechanisms for protecting personal information rights is an important obstacle to ensuring their implementation. Each country moves in its own directions. The globalism of information exchange requires the adoption of adequate measures both at the level of international communities, individual states, society and an individual person.

In addition to normative and procedural regulation, in our opinion, attention should also be paid to the need to educate and prepare people to protect their rights and freedoms in the context of ever-increasing informatization and digitalization.

Only an integrated approach to solving the problem is able to provide a certain framework for protecting individual rights from negative information impact and from unlawful use of information about citizens. This task is today, in our opinion, before legal science and before the constitutional, informational, procedural and other branches of law.

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