THE GENESIS OF THE RIGHT TO INFORMATION IN THE PERIOD OF DIGITALIZATION

Rustam Xursanov
Doctor of Philosophy in Law, Tashkent State University of Law
hursanov.rustam75@gmail.com

ABSTRACT

The present article is theoretical in nature, while it is aimed at forming a holistic view of information in the system of domestic public law regulation. An important feature of the scientific work is that a comprehensive presentation on information and information activities is formulated and analyzed taking into account the development of sectoral legislation. The study takes into account the trends of digital transfer of society. Digitalization does not involve the study of information without taking into account the possibilities of its search, receipt, transfer, production and distribution with the use of information technologies.

The author's motivation for choosing the direction of research is due to the complexity of the categories and phenomena under consideration, as well as the uniqueness of the subject area of scientific research – information in digital form.

Keywords: information, internet, digital law, digital rights, the right to information, information technologies, digitalization, digital objects.

Information is a significant category for building an actual system of legal regulation, but in its current understanding (through the prism of objective and subjective rights of the individual), the need for normative consolidation was first discovered in the middle of the XX century. This period coincides with the time of the birth and consistent strengthening of the concept of generations of human rights [1].

The so-called rights of the third generation [2], being the result of achieving an international understanding of the commonality of challenges above national interests and the need to respond to the dynamics of accelerated strengthening and development of global problems of mankind, form the basis for a whole range of new sectoral rights. Prior to the period under review, they did not have not only a normative consolidation, but also any definite understanding. Among the rights of this generation, a special place is occupied by the right to information and related rights, which are being

actively transformed today and give rise to new legal phenomena in order to meet a variety of both existing and emerging information needs of the individual.

The set of rights of the third generation is often considered as a set of collective rights. The consistent normative consolidation of the right to information by the international community and States separately is considered in inseparable connection with the political and social agenda of the end of the XX century. At the same time, the context of the development of rights related to information is determined not only by the political and social agenda, but also by the possibilities of information and technological development of society in the context of the widespread spread of digital communication channels and the introduction of information technologies into everyday life and the professional sphere of human information activity.

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The prerequisites for the formation of a set of rights related to information, including the right to information, in our opinion, are of a public nature and are related to the social value of the rights in question. It is the socially significant nature of the right to information, expressed primarily in the possibility of access to information by an unlimited number of people, that allowed the category under consideration to be transformed. Thus, the subjects of the right to information, having information of value to them, subsequently began to use them for various purposes, which, for example, allowed information to find a well-defined place in matters of private turnover, as well as in commercial, financial, labor and other economic relations.

The study of the facts of the normative consolidation of the right to information in its original form reveals not the consistency, but the randomness and situativeness of such legal regulation. For example, in the sources of law, there is a consolidation of information in the context of certain types of activities of subjects of legal relations (most often in business

activities at various historical stages). Similar examples can be found most pointwise in individual monuments of law, testifying to the consistent history of the development of private turnover.: as in domestic acts [3], and in regulatory legal documents of foreign states [4].

The circumstances under consideration do not at all indicate a systematic goal-setting and the sequence of the development of regulation, nor do the noted examples of real connections with the complexity of the formation of normative predetermination in order to possibly legally consolidate the right to information and its many variable manifestations in the dynamics of the development of public relations.

Having studied the peculiarities of the emergence of the right to information, including the specifics of its legal consolidation, several prerequisites were identified for the emergence of the need for legal regulation of information, which are primarily of a public legal nature. In many ways, the public nature of such regulation is predetermined by the sphere of public relations – the socially significant purpose of the adoption of normative legal acts and historical features of the development of legal systems.

Firstly, foreign and domestic practices of legal regulation of information demonstrate (in historical retrospect) that the first normative legal acts in relation to information were aimed at gaining access to information that reflects the dynamics of the general state of affairs in the state and enshrines the features of the national legal system. In other words, they provide access to regulatory legal acts and official documents that contain certain kinds of information, which allows the right of access to information to contribute to the satisfaction of both public and personal interests [5].

It is worth noting that it is possible to find even earlier "roots" of the right to information in legal acts, which was expressed in the consolidation of the right to express opinions and beliefs, which consisted in the transmission of information of a personal nature and a subjective assessment of events. This right was extended exclusively to certain categories of persons in the exercise of their official powers. For example, the Bill of Rights of 1689 provided for members of the English Parliament the right to express an opinion through debate during hearings [6]. Such a right made it possible to actually transmit information that, taking into account the level of thinking, beliefs of the individual and social regulators in society, reflects the subjective perception of reality by an established and well-known person. Detailed information gets the status of official, and it is mandatory to take into account.

Returning to the issues of the sequence of reflection in the normative field of the category "information", it can be noted that the full right of access to information in national legislation was first formalized in Sweden in 1766 [7]. The range of subjects who had access to official state information at that time was limited to members of the national Parliament, who sought to obtain information about the ruler's activities in foreign policy, i.e., diplomatic relations of the state. Gradually, similar norms appear in some other European states.

As the practice of the development of legislation shows, in national regulation, a full-fledged normative formalization first of all receives the right to access information, which is then transformed, grows with new content and acquires larger forms of expression due to the development of freedom of speech in the media. The strengthening of the role of mass media in society and the need for information that has arisen over time have formed, in a certain sense, the basis for the perception of the right to information in its modern sense.

The right to information is broader than the right to access information. The right to access determines the opportunity to get acquainted and receive information, whereas the right to information is a multi-component category that reflects the possibility not only of obtaining, but also of subsequent use, processing of information and performing other actions with it, including through the use of technology. A distinctive feature of the digitalization period is that there are grounds to consider the right to information even more broadly – in the plane of not only the actual transfer of information, but also the implementation of actions with them in a virtual environment, namely in information systems.

The right of access to information, in our opinion, is of the most important importance for the emergence of a comprehensive view of the right to information, since it most obviously expresses the interest of an individual in obtaining information, with which he can exercise a set of other rights, including subjective ones. The right of access to information acted as a catalyst for the emergence of a full-fledged individual need for information, allowed the category "information" to reach a new level in the context of social perception and the system of human values, as well as to form an awareness that there are virtually no boundaries for the dissemination of information.

Legislative acts on access to information on the activities of public authorities and regulatory legal acts have been adopted in more than 90 countries around the world [8]. It is noteworthy that such acts can be considered relatively new for national legal systems, since their adoption occurred at the turn of the XX-XXI centuries. According to

researchers, by 2025, more than 80% of states in the world will have regulations on the freedom of dissemination of official information [9].

Secondly, the emergence of international regulation of the right to information is due to the socio-political situation of the second half of the XX century. It is during this period that the forms of international cooperation of states undergo significant changes, the UN appears, and in accordance with the provisions of the UN Charter, the goals and objectives of the organization are determined, in fulfillment of which other international organizations of the supranational level arise [10]. The importance of international cooperation for the entire human civilization is dictated by the need to preserve the rule of law, as well as to create favorable conditions for sustainable development and the realization of human rights, including subjective rights having a property and personal non-property character. As L.S. Yavich noted, objective and subjective law complement each other, ensuring the effectiveness of legal mediation of public relations [11].

Information that has or acquires value if there is a need to obtain it is certainly important for the development of a system of private regulation. It is important to understand that it is not the value of information itself that determines the possibilities of turnover development, but the interest of the subjects and the beneficial effect of its use for the parties. In the absence of legal grounds for the use and transfer of information, including under a contract, it cannot be the subject of private regulation. We believe that such grounds should find a comprehensive consolidation in legislation, because they exist in a fragmented form, being reflected in a large number of regulatory legal acts with different industry affiliation.

Given the importance of the Internet, researchers propose that the right to access the Internet can be directly enshrined in legislation [12]. The question of the need for recognition and regulatory registration of this right is ambiguous. It can be considered to some extent as a result of the development of the right to information in the context of the use of information technologies. Initially, the purpose of the Internet was (and in many ways remains so) to transmit information. This process made it possible to form the prerequisites for the development of the digital economy, as well as noticeably transform a person's work activity, partly transferring the commission of actions to a virtual environment.

Realizing the significant impact of the Internet on human life and the dynamics of social processes occurring with it, it should be noted that technology only ensures the realization of rights, i.e. expands opportunities for their development in the context of access, search, use, dissemination of information, but does not reflect a certain right in itself. The

right, which fixes a certain value in human life, is characterized by a stable perception and position in the system of reference points, whereas the Internet is a technology that may be replaced by another technology over time [13]. It is possible that such information technology will have a completely different nature, but at the same time it will allow for the availability of information and the possibility of its exchange in similar or more advanced ways.

It is also important that the availability of the Internet depends on the conditions created, primarily the infrastructure plan. Thus, access to the network is carried out using technical devices – specially designed physical objects that provide connection to the global system via wired and wireless communication. In this case, the material factor is important, which is that, unlike other rights, the creation and existence of technical conditions are required for the implementation of this right. It is physically possible to gain access to the global data exchange network, but it is simply impossible to do this without the presence of special technical devices. Thus, access to the Internet in a broad sense can be considered as an individual interest, the implementation of which may require, first of all, the creation of certain factual conditions, and only then – the development of legal guarantees.

International cooperation is of particular importance in the development of the right to access the Internet. In 2000, the Okinawa Charter of the Global Information Society was adopted, which provides for the need to create conditions for connecting and using the Internet by citizens of States [14]. Later, in 2011, a special UN report noted the need for universal access to the Internet, as well as the need to ensure it in order to respect and realize human rights [15]. The document emphasizes that it is unacceptable to disconnect the territories of states from access to the Internet, and the dissemination of information should be free, but not allow human rights violations.

Gaining access to the Internet consistently leads to the emergence and development of other phenomena that somehow acquire normative consolidation. Today, the Internet contributes to the active production and exchange of information. Such activity is due to the opportunities that appear when accessing the Internet, and with it to new information used to produce other information. In this regard, there are relations that allow the development of the right to produce information on the Internet [16]. Taking into account the possibilities of information production, the existence of needs for its transmission and dissemination is understandable. At the same time, the detailing of restrictions on the creation of information, which in one way or another could form risks for the violation of various rights having both private and public nature of expression, becomes particularly relevant.

The problems of ensuring the inviolability of private life, the circulation of personal data of citizens and the protection of user content should become those areas that it is advisable to settle primarily to ensure private interests. Currently, this information is being used especially actively and is being processed uncontrollably due to the use of information technologies. Certain aspects are gradually being regulated, for example, the so-called "right to oblivion", which provides for the removal of information about a person at his request from the output of search services.

Nevertheless, the protection of public interests arising from the right to information receives protection and continues to develop, although some aspects of regulation can be criticized. At the same time, another area – the sphere of private relations is in anticipation of specific legal measures that can protect the rights and interests of citizens in the conditions of rapid development of information technologies in the information society.

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