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THE ROLE OF DIGITAL RIGHTS IN THE MODERN STATES STABLE DEVELOPMENT: PROBLEMS OF RECOGNITION AND LEGALIZATION

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Калаченкова К.О., Михайліна Т.В. Роль цифрових прав у стабільному розвитку сучасних держав: проблеми визнання та легалізації.

Метою наукової статті є критичний аналіз доцільності визнання цифрових прав та їх легалізації у контексті теорії сталого розвитку.

Наукова стаття присвячена висвітленню формування цифрових прав як детермінант сталого розвитку сучасної держави. Висвітлюється проблема правової регламентації цифрових прав. Підкреслюється, що формування цифрового середовища визначає актуальність досліджень щодо виявлення проблем, умов та інструментів реалізації концепції сталого розвитку під впливом формування глобального інформаційного суспільства та використання інформації як пріоритетного ресурсу для досягнення цілей сталого розвитку.

У дослідженні аналізуються позиції вітчизняних і зарубіжних вчених щодо формування цифрових прав як детермінант сталого розвитку сучасної держави. Розглянуто досвід законодавчого закріплення та охорони цифрових прав.

Аналіз міжнародного досвіду регламентації цифрових прав дозволив виділити два способи регулювання: 1) конституционализация цифрових прав, за якої текст Конституції змінюється з метою регулювання цифрових прав на найвищому конституційному рівні; 2) цифровізація прав, за якої права, закріплені у законодавстві, отримують оновлену інтерпретацію або врегулювання на рівні рішення органів конституційної юрисдикції, у практиці Європейського суду з прав людини або у відповідному законодавстві.

Зроблено висновки: 1) у сучасному світі інформаційні ресурси Інтернету відіграють важливу роль у повсякденному житті людини. Таким чином, питання про правове регулювання цифрових прав виникає не тільки на міжнародному рівні, а й на національному рівні шляхом конституціоналізації основних цифрових прав або включення цих прав у відповідне законодавство. Крім того, важливо розробити ефективні механізми для реалізації та захисту цих прав; 2) цифрові права повинні стати не декларативними і розрізненими в багатьох нормативних актах, а концептуалізованими і закріпленими в одному акті (і бажано закріпити їх на наднаціональному рівні, в такому акті, як Конституція про цифрові права або аналогічному); 3) цифрова доступність залишається однією з головних перешкод на шляху подолання цифрової нерівності; 4) у контексті розвитку інформаційного суспільства цифрова грамотність повинна бути на тому ж рівні, що і загальна освіта.

Ключові слова: сталий розвиток, цифровізація, інформаційне суспільство, digital суспільство, цифрові права, права людини, забезпечення прав людини, права людини четвертого покоління, інформаційна нерівність.

Kalachenkova K.O., Mikhailina T.V. The role of digital rights in the modern states stable development: problems of recognition and legalization.

The purpose of the scientific article is to critically analyze the feasibility of recognizing digital rights and legalizing them in the context of sustainable development theory.

The scientific article is devoted to highlighting the formation of digital rights as determinants of sustainable development of the modern state. The problem of legal regulation of digital rights is highlighted. It is

emphasized that the formation of a digital environment determines the relevance of research to identify problems, conditions and tools for implementing the concept of sustainable development under the influence of the formation of the global information society and the use of information as a priority resource for achieving sustainable development goals.

The study analyzes the positions of domestic and foreign scientists on the formation of digital rights as a determinant of sustainable development of the modern state. The experience of legislative consolidation and regulation of digital rights is considered.

Based on the results of the study, conclusions were drawn: the need for legal regulation of digital rights not only at the international level, but also at the national level by constitutionalizing basic digital rights or including these rights in relevant legislation, as well as the development of effective mechanisms for the implementation and protection of these rights; digital accessibility remains one of the main obstacles to overcoming digital inequality; in the context of the development of the information society, digital literacy should be at the level of general education.

Analysis of the international experience of digital rights regulation makes it possible to distinguish two ways of regulation: 1) constitutionalization of digital rights, in which the text of the Constitution is changed in order to regulate digital rights at the highest constitutional level; 2) digitalization of rights, in which the rights enshrined in the legislation acquire an updated interpretation or settlement based on decisions of constitutional jurisdiction bodies, the practice of the European Court of human rights or in relevant legislation.

Key words: sustainable development, digitalization, information society, digital society, digital rights, human rights, ensuring human rights, fourth-generation human rights, information inequality.

Introduction. Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs [1]. As stated in paragraph 15 of the resolution "transforming our world: the agenda for sustainable development until 2030", adopted by the General Assembly on September 25, 2015, today the world has enormous opportunities, significant progress has been made in solving many problems: hundreds of millions of people have emerged from extreme poverty; access to education for both boys and girls has significantly expanded; the spread of information and communication technologies and global interconnectedness in various fields have huge potential to accelerate human progress, bridge the "digital divide" and develop a knowledge-based society [2]. However, the current conditions indicate the need to make changes to the concept of sustainable development.

The concept of sustainable development, the goals formulated to ensure its achievement, defined by the UN, are the subject of research by scientists around the world. In this context, research to identify problems, conditions and tools for implementing the concept of sustainable development under the influence of the formation of the global information society and the use of information as a priority resource for achieving the sustainable development goals is becoming particularly relevant.

The purpose of the scientific article is to critically analyze the feasibility of recognizing digital rights and legalizing them in the context of sustainable development theory.

Processing status. It is worth noting that the problem was the subject of research by a large number of both domestic and foreign scientists. Among the scientists, various aspects were investigated: Golovko O.M., Gracheva S.A., Cheremisynova M.E., Kalachenkova K., Tytova O., Ulashkevich L.A. and a number of others. However, the studies of the above-mentioned scientists do not exhaust the problem of the issue. Therefore, further scientific investigations in this direction will be mandatory.

The **purpose** of the article is to study the essence and features of the role of digital rights in the stable development of modern states: to study the problem of recognition and legalization.

Analysis and discussion. It's no secret that the pace of development of information technologies and the digital space is so fast that people simply do not have time to master all the innovations. Today, it is common to be able to access the Internet, transfer to virtual space, especially for fans of computer games, and robot machines are present in almost all spheres of life. Accordingly, a person's consciousness changes, which leads to the emergence of a new circle of social relations, and this requires the modernization of classical legal guidelines. However, to what extent the new processes will affect the law is still unknown. In order to answer this question, it is necessary to study what development trends are inherent in the IT sphere today and what is their direct connection with the law [3, p.173]. The pace of social development shows that the list of information rights, and therefore the rights of the fourth generation, will expand (in the future, the fifth, sixth generation of human rights, etc.). Every day, computers and other technical devices are being improved more and more, but artificial intelligence is

actively progressing, which is now used in various fields: from household appliances to nuclear power plant management [4, p.8].

One of the challenges on the way to achievement of sustainable development goals is to ensure public access to information. Information has become the basis of social and informational development, the main resource nurturing social and economic relations, its value has already equated to that of traditional resources, and is also an important element in the process of individual and society development [5, p. 155]. The information oriented society, according to most scientists, has made information its basic operational tool. Moreover, the spread of information and communication technologies has not only the potential for communication and mutual assistance in society [5, p.155; 6, p. 276].

At the same time, it should be noted that the COVID-19 pandemic has exacerbated the problem of the right to receive information, since in fact the only channel for this is access to the Internet, as well as restrictions or impossibility of exercising other rights, such as the right to education, the right to participate in the management of public affairs, etc.

So, today it is almost impossible to imagine your life without using digital technologies. They provide new tools for the promotion, protection and implementation of human rights and affect all categories: civil, political, cultural, economic and social rights. Digital technologies determine how people access and exchange information, form their opinions, conduct debates, conduct leisure activities, join forces, and so on.

The development of information and communication technologies and the incredible growth of various databases, the introduction of more and more digital technologies in all spheres of society, which set the direction for the development of this sphere, as well as form new social relations, in addition, the public space is changing to digital. Consequently, as our world becomes more dependent on the digital space, there is a growing need to respect our rights not only offline, but also online (so-called digital rights). As a result, a new category arises - "digital rights". Therefore, there is now a need to consolidate digital rights both at the national and international levels, creating additional guarantees for the implementation and protection of this type of rights. Since the adoption of international, regional and national fundamental documents took place without taking into account the impact of the development of digitalization on all spheres of life of people and society as a whole.

In the scientific literature, the term "digital rights" is a relatively new legal category and does not have a single approach to the definition. Some scientists note that digital rights are a separate independent category of rights – the fourth generation of human rights [7], while others define it as a subcategory of information rights. Some researchers consider digital rights to be derived from information rights, but not identical, and note the need to separate them into a new group [8].

In addition, there is an opinion that the concept of "digital rights" should be considered not as a separate group of human rights, but as a conditional category covering the specifics of the implementation and guarantees of the protection of fundamental human rights on the Internet, in particular freedom of expression and the right to privacy online [9, p. 6]. Digital rights are also understood as the rights of people to access, use, create and publish digital works, the right to free access to the internet (other communication networks) using computers and other electronic devices [10, p. 35-36].

There is also no clear definition of the category of "digital rights" at the international level. Thus, the UN Human Rights Council in 2018 noted that the same rights as a person has offline should be protected in the online space [11].A resolution with a similar thesis was adopted by the Council in 2015 [12] and 2016 [13], it is also noted in the speech of the UN High Commissioner for Human Rights Michelle Bachelet in October 2019 [14]. Regional international organizations whose mandate includes the protection of human rights have also spoken out on this issue. The Parliamentary Assembly of the Council of Europe, in recommendation CM/Rec(2014)6 to member states on the use of the Human Rights manual for Internet users, noted that the obligations of the member states of the Council of Europe to ensure to everyone within their jurisdiction the rights and fundamental freedoms enshrined in the European Convention for the protection of human rights also apply to the scope of use of the Internet [15]). This position of international organizations means that the allocation of digital rights as a separate category of rights in the modern world is inappropriate [16, p. 13].

Given the huge role that the Internet and information technologies in general play in modern life, we must agree that digital rights should be considered not as a separate group of human rights that can be distinguished into a separate generation, but as a conditional category for the designation of human rights that have been transformed or can be implemented in a digital environment and thanks to the digital environment [16, p. 13]. Therefore, it is now of great importance to study the needs for the protection of human rights in the online environment, some guarantees of which are now scattered in recommendations, resolutions and other

acts of international institutions [9]. This is also confirmed by the practice of the European Court of Human Rights. So, in the decision on the case Ahmet Yildirim v Turkey the court noted that "the Internet has now become one of the main means for citizens to implement their right to freedom of expression and information, thus providing them with the necessary tools to participate in activities and discuss political and other issues of public interest." [17; 16, p. 13].

In a general sense, the term "digital rights" is used to refer to the rights that people have in connection with the use of the latest information technologies, including the Internet.

Under the European Convention on Human Rights, the contracting parties guarantee to everyone within their jurisdiction rights and freedoms, namely: the right to a fair trial (Article 6); the right to respect for private and family life (Article 8); the right to freedom of thought, conscience and religion (Article 9); the right to freedom of expression (Article 10); the right to freedom of assembly and association (Article 11); the right to an effective remedy (Article 13); prohibition of discrimination (Article 14 and Article 1 of Protocol XII); protection of property (Article 1 of Protocol I); right to education (Article 2 of Protocol I) [18] and so on.

However, it should be noted that in the process of reforming and developing the digital environment, certain rights in international documents and constitutions of different countries are implemented in the context of digitalization, and, accordingly, are subject to protection in the digital environment. This is also confirmed by the resolution adopted on July 6, 2012 by the UN Human Rights Committee Resolution on the Promotion, Protection, and Enjoyment of Human Rights on the Internet [19].

Thus, the Internet is an unprecedented tool for the implementation of human rights and freedoms, for example, in relation to the rights to: freedom of thought, freedom of expression, freedom of assembly and association, as it allows online to create platforms for broad participation of citizens to communicate, express their views, exchange opinions, search, receive and disseminate information, as well as take part in democratic processes. The Internet, with its own capabilities, allows to create effective tools for democracy. This makes it possible for citizens to independently choose and use any services, websites or applications to create, join, mobilize and participate in social groups and associations to manage public affairs.

In addition, everyone has the right to privacy and protection of their personal data. Personal data protection is a way to protect the individual by enabling them to defend their independence and dignity on an equal basis with others. Also, the right to personal data protection is one of the important factors contributing to the development of the individual in democratic societies, and is at the heart of the existence and functioning of a democratic society. This means that there should be legislation at the national level that will protect a person's personal data and privacy online. Norms in this area should provide guarantees for the enjoyment of fundamental human rights, as they establish means to protect privacy, dignity, equality and, ultimately, individual freedom. The specified legislation must comply with international standards regarding users' control over their own data, namely: the collection and processing of personal data must be carried out with the consent of the data owner or on other grounds that are clearly defined in the legislation; the data owner has the right to request the correction or deletion of their personal data; personal data should be collected to an extent that corresponds to the purpose of processing, which should be both legal and justified; the storage of personal data should be safe; and the data owner has the right to compensation in case of violation. The purpose of applying these standards is to promote the development of controlled personal data flows and the development of commercial structures and relationships.

Today, the European Court of human rights is increasingly faced with cases regarding the right of an information subject to the further processing of his/her personal data, and the obligation of the data operator to delete information immediately after it ceases to be necessary for processing purposes [20].

Right to be forgotten is interpreted as a human right that allows him to demand, under certain conditions, the removal of his/her personal data from public access through search engines, that IS, links to those data that, in his opinion, can harm him. This applies to outdated, inappropriate, incomplete, inaccurate or redundant data or information whose legal grounds for storage have disappeared over time [21]. For the first time a person's exercise of the right to oblivion was the subject of a trial in the case of a complaint by Mario Costeja Gonzalez against Google Inc and a Publishing House La Vanguardia Ediciones SL, which was considered by the highest court of the EU – the European Court of Justice, which on May 13, 2014 ruled that European law gives citizens of EU countries the right to contact any search engines with a request to remove links related to personal information about the applicant. Inappropriate outdated data, as well as those that are excessive in relation to the purposes for which they were posted on the Internet, are subject to deletion [22]. This decision is a kind of precedent that forces us to reconsider and rethink human rights, taking into account the possibilities of their digital implementation.

So, now there is a process of updated understanding of the content of human rights in the context of digitalization, that is, a certain transformation of them. This indicates the need to develop a system of guarantees and mechanisms for the protection of human rights in the context of digital transformation.

Given the complexity of regulating digital rights within a national framework, it is seen that legal regulation should be transnational and regulated by international acts. So now, the European community has developed a charter of digital rights [23]. In addition, there are proposals in the legal literature regarding the need to develop and adopt a digital Constitution [24].

It should also be noted that certain countries have taken some steps to regulate digital rights. Thus, Greece has supplemented Article 5A of the Constitution with a provision that establishes the right of all persons to participate in the information society and simplify access to information transmitted electronically [25]. Georgia, in paragraph 4 of Article 17 of the Constitution, defined the right of all to access and free use of the Internet [26]. In Germany, digital rights are mostly regulated by decisions of the Federal Constitutional Court of Germany, since in the absence of regulatory consolidation in the relevant legislation, legal rights are regulated by decisions of the Federal Constitutional Court of Germany [27]. Thus, regulation occurs gradually as necessary when resolving a legal conflict. At the same time, the essence of these rights does not change, but is only interpreted through the prism of digital transformation.

France, while implementing a gradual interpretation of digital rights by a body of constitutional jurisdiction, came to the conclusion that it was necessary to adopt a codified normative legal act. Thus, the French Constitutional Council recognized Internet access as a fundamental human right in 2009 [28], and in 2016, the law "On the Digital Republic" was adopted [29]. In Italy, in 2015, the parliament approved the Declaration on Internet Rights, which defines access to the Internet as a basic human right and a condition for its full-fledged individual and social development, and also establishes that everyone has an equal right to access the Internet on equal terms with technologically adequate and modern methods that eliminate any economic and social obstacles [30]. New Zealand passes Digital Communications Act in 2015 [31]. Brazil adopted the Law "On the Procedure for Using the Internet" in 2014 [32].

Analysis of the international experience of digital rights regulation makes it possible to distinguish two ways of regulation:

– constitutionalization of digital rights, in which the text of the Constitution is changed in order to regulate digital rights at the highest constitutional level;

– digitalization of rights, in which the rights enshrined in the legislation acquire an updated interpretation or settlement based on decisions of constitutional jurisdiction bodies, the practice of the European Court of human rights or in relevant legislation.

The next point to pay attention to is that digital rights are not absolute and may be restricted, and in some cases cause the need to develop and regulate digital responsibilities and liability for violations of the relevant digital rights.

One way to restrict digital human rights is to impose unnecessary digital services, such as spam. According to the Convention on Cybercrime, Internet users must be protected from interference with computer data, in particular, from the use of malicious codes and sending large volumes of emails to the recipient in order to block the communication functions of the system [33].

There are digital responsibilities for social media companies that control the Internet space, including responsibilities for encryption, content moderation, algorithmic reinforcement, and so on.

Violations of digital rights also include the collection and dissemination of confidential information about subscribers by the mobile operator, in particular, the regularity of their visits to the doctor, their lifestyle, habits, income level, and so on. At the request of the Liga.Tech company Vodafone Ukraine explained how mobile operators create behavioral portraits of customers based on their "digital footprints" and how they monetize this data. So, mobile operators' data on movement will allow to determine the subscriber's lifestyle [34], this means a violation of the right to privacy, personal data, and so on.

In China, law enforcement officers install numerous surveillance cameras with facial recognition function in private places, such as residential buildings, karaoke halls, restaurants, hotels, etc. All data received from the cameras is stored on government servers. In addition, Chinese authorities are using mobile phone tracking devices such as Wi-Fi detectors and IMSI interceptors to link people's virtual activity to real life, allowing police to track their movements and exploit security loopholes to obtain personal information. There was a case where the Public Security Bureau in Guangdong province identified a person as a Uyghur by detecting an app with a Uyghur dictionary installed on his mobile phone. All Uighurs in China are under strict control of the authorities. Chinese authorities also collect large-scale genetic data from people unrelated to crime,

including DNA samples, Iris prints, and voice recordings. Also, state security agencies receive data on the Y chromosome of men, which is equivalent to receiving information about their family members on the paternal line [35].

These actions are a manifestation of totalitarianism and violate the basic rights of people: privacy, personal data, etc., and therefore should be restricted.

The implementation of any activity in the global information society requires correct and legitimate processing of information aimed at ensuring the vital interests of entrepreneurs, consumers and society in the information sphere, overcoming the risks of using information and communication technologies. This can be successfully achieved in the era of informatization by forming a global sustainable partnership between the state and society, establishing close cooperation between the state and business entities and public organizations.

In order to increase the effectiveness of CSR tools, extra attention should be paid to the need of a purposeful, comprehensive solution instead of separate on-the-spot decisions formulated on the basis of the functional subsystems for sustainable development promotion already available in the legislation [6, p. 281]. But so far there is no effective international act that would take into account all aspects of the implementation and protection of digital human rights.

Given how Internet technologies can serve as a means of exercising human rights, it is essential that states close the digital divide and ensure safe access to the Internet for their populations. The ability to connect to an accessible Internet and have a computer or smartphone are essential prerequisites for an inclusive digital society, where the digital rights of citizens are properly protected and protected [16, p.19]. However, most digital platforms and digital services are not tailored to the needs of people with visual or auditory disabilities. Since the number of visually impaired people is very large, adapting digital platforms and services should be an urgent priority. Thus, digital accessibility remains one of the main obstacles to overcoming digital inequality. The reason for this is low awareness on this issue and the lack of effective legislation and regulations. To achieve accessibility, web platforms must meet the availability criteria of the international WCAG consortium. The latest WCAG criteria (WCAG 2.1) provide recommendations for Web page structure, colors, images, audio, and video. What's more, available web platforms generally improve the overall user experience, not just for users with disabilities [16, p.21].

Therefore, the right to access the Internet is a fundamental human right, thanks to which he can exercise his rights. Moreover, the use of the Internet and the web space encourages the development of society as a whole, and therefore each state should be responsible for the availability of the Internet for every citizen.

Conclusions.

Based on the above the following conclusions can be drawn:

– in the modern world, Internet information resources play an important role in a person's daily life. Therefore, the issue of legal regulation of digital rights arises not only at the international level, but also at the national level by constitutionalizing basic digital rights or including these rights in relevant legislation. In addition, it is important to develop effective mechanisms for the realization and protection of these rights;

– digital rights should become not declarative and scattered in many regulatory acts, but conceptualized and enshrined in one act (and it is desirable to fix them at the supranational level, in an act such as the Digital Rights Constitution or similar);

– digital accessibility remains one of the main obstacles to overcoming digital inequality;

– in the context of the development of the information society, digital literacy should be at the same level as general education.

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