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1. ЮЛДАШЕВ Жаҳонгир

СТРАТЕГИЯ РАЗВИТИЯ ПРЕДПРИЯТИЯ ПРИ ОСУЩЕСТВЛЕНИИ КОРПОРАТИВНОГО
УПРАВЛЕНИЯ: ВОПРОСЫ ПРАВОВОГО РЕГУЛИРОВАНИЯ 8

2. КАНЬЯЗОВ Есемурат Султамуратович

ВОПРОСЫ ПРАВОВОГО РЕГУЛИРОВАНИЯ ТЕХНОЛОГИЙ ИСКУССТВЕННОГО
ИНТЕЛЛЕКТА В СФЕРЕ ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ 14

ФУҚАРОЛИК ПРОЦЕССУАЛ ҲУҚУҚИ. ИҚТИСОДИЙ ПРОЦЕССУАЛ ҲУҚУҚИ. ҲАКАМЛИК ЖАРАЁНИ ВА МЕДИАЦИЯ

3. САИДОВ Мақсудбек Норбоевич

ЎЗБЕКИСТОН МИЛЛИЙ ҚОНУНЧИЛИГИДА СУД ҲУЖЖАТЛАРИНИНГ ЮҚОРИ
ИНСТАНЦИЯ СУДЛАРИДА ҚАЙТА КЎРИЛИШИ (ИҚТИСОДИЙ ПРОЦЕССУАЛ
ҚОНУНЧИЛИК МИСОЛИДА) 19

СУД ҲОКИМИЯТИ. ПРОКУРОР НАЗОРАТИ. ҲУҚУҚНИ МУҲОҒАЗА ҚИЛИШ ФАОЛИЯТИНИ ТАШКИЛ ЭТИШ

4. РУЗИНАЗАРОВ Шухрат Нуралиевич

РАҚАМЛИ СУД ИШ ЮРИТУВИ ЖАРАЁНИГА ЎТИШНИНГ
ЗАМОНАВИЙ ТЕНДЕНЦИЯЛАРИ 28

5. OBLOKULOV Munis Musinovich

MANSABDOR SHAXSLARINING QARORLARI, HARAKATLARI (HARAKATSIZLIGI)
YUZASIDAN KELIB CHIQUADIGAN NIZOLARNI MA'MURIY SUDLARDA KO'RIB CHIQUISHNING
ISHLARNING O'ZIGA XOS JIHATLARI 40

6. JUMAYEV Shohjahon Begimqul o'g'li

QONUNLAR IJROSI USTIDAN PROKUROR TEKSHIRUVI MAQSADI, PREDMETI, VOSITALARI
HAMDA AHAMIYATI 48

ЖИНОЯТ ҲУҚУҚИ, ҲУҚУҚБУЗАРЛИКЛАРНИНГ ОЛДИНИ ОЛИШ. КРИМИНОЛОГИЯ. ЖИНОЯТ-ИЖРОИЯ ҲУҚУҚИ

7. ESHNAZAROV Murodqosim Hamzayevich

JINOYAT PROTSESSIDA EKSPERT XULOSASIDAN FOYDALANISH: ANGLO-SAKSON HUQUQ
OILASI DAVLATLARI MISOLIDA 54

8. БУРАНОВА Разия

ИСПОЛЬЗОВАНИЕ ГЕОИНФОРМАЦИОННЫХ ТЕХНОЛОГИЙ ЗАРУБЕЖНЫМИ СТРАНАМИ
В ПРОГНОЗИРОВАНИИ ПРЕСТУПНОСТИ 63

ЖИНОЯТ ПРОЦЕССИ. КРИМИНАЛИСТИКА, ТЕЗКОР-ҚИДИРУВ ҲУҚУҚ ВА СУД ЭКСПЕРТИЗАСИ

9. ИМОМНАЗАРОВ Алишер Хасанович КЎЗДАН КЕЧИРИШ ТЕРГОВ ҲАРАКАТИ ОБЪЕКТЛАРИ ВА ТУРЛАРИ	70
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ХАЛҚАРО ҲУҚУҚ ВА ИНСОН ҲУҚУҚЛАРИ

10. АЪЗАМХУЖАЕВ Умидхон МЕСТО ИНСТИТУТА МЕЖДУНАРОДНЫХ ТРАНСПОРТНЫХ КОРИДОРОВ В СИСТЕМЕ МЕЖДУНАРОДНОГО ПРАВА	78
11. SULAYMANOV Odiljon HUMAN RIGHTS IN THE DIGITAL AGE: CHALLENGES, THREATS AND PROSPECTS	87
12. ИСОҚОВ Луқмонжон Холбоевич МИГРАЦИЯ ВА НОГИРОНЛИКНИНГ ҲУҚУҚИЙ НИСБАТИ.....	92
13. РАҲМОНОВА Сабрина РЕАЛИИ XXI ВЕКА: ПОЛИТИЧЕСКИЕ ПРАВА ЖЕНЩИН В МИРЕ.....	102

ЮРИДИК ХИЗМАТ, АДВОКАТУРА, НОТАРИАТ

14. ФАЙЗИЕВ Хайриддин Сирожиддинович ЎЗБЕКИСТОНДА ЮРИДИК ХИЗМАТ ИНСТИТУТИНИНГ ТАШКИЛ ЭТИЛИШИ ВА РИВОЖЛАНИШ БОСҚИЧЛАРИ	107
--	-----

ҲУҚУҚИЙ АМАЛИЁТ ВА ХОРИЖИЙ ТАЖРИБА

15. ШАКУРОВ Рафик Равильевич КОРРУПЦИЯГА ҚАРШИ КУРАШДА СИНГАПУР ТАЖРИБАСИ	115
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ЮРИСТ АХБОРОТНОМАСИ ВЕСТНИК ЮРИСТА LAWYER HERALD

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HUMAN RIGHTS IN THE DIGITAL AGE: CHALLENGES, THREATS AND PROSPECTS

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ANNOTATION

In the modern period of development of information technologies, mankind has entered into active communicative relations through the global Internet, which, in turn, has raised an acute question about the need to ensure effective protection of human and civil rights and freedoms in the process of interaction via the Internet while maintaining a high level of guarantees for the realization of these rights and freedoms, as required by fundamental international legal acts. Actual problems of realization of human rights and freedoms on the Internet require the development of the most effective mechanisms for their protection in the new conditions, rather than their complete abandonment under the pretext of their protection.

Keywords: human rights and freedoms, digital transformation, new technologies, society, “the right to the Internet”, freedom of speech and thought, international law.

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РАҚАМЛИ АСРДА ИНСОН ҲУҚУҚЛАРИ: МУАММОЛАР, ХАВФЛАР ВА ИСТИҚБОЛЛАР

АННОТАЦИЯ

Ахборот технологиялари ривожланишининг замонавий даврида инсоният глобал Интернет тармоғи орқали фаол коммуникатив муносабатларга киришди, бу эса, ўз навбатида, дунёда инсон ва фуқаронинг ҳуқуқ ва эркинликларини самарали ҳимоя қилишни таъминлаш зарурати ҳақидаги долзарб саволни кўтарди. асосий халқаро ҳуқуқий ҳужжатлар талабига биноан ушбу ҳуқуқ ва эркинликларни амалга ошириш кафолатларининг юқори даражасини сақлаб қолган ҳолда Интернет орқали ўзаро ҳамкорлик жараёни. Интернет тармоғида инсон ҳуқуқ ва эркинликларини рўёбга чиқаришнинг долзарб муаммолари уларни ҳимоя қилиш баҳонасида улардан бутунлай воз кечишни эмас, балки янги шароитларда ҳимоя қилишнинг энг самарали механизмларини ишлаб чиқишни тақозо этмоқда.

Калит сўзлар: инсон ҳуқуқлари ва эркинликлари, рақамли трансформация, янги технологиялар, жамият, “интернетга бўлган ҳуқуқ”, сўз ва фикр эркинлиги, халқаро ҳуқуқ.

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ПРАВА ЧЕЛОВЕКА В ЦИФРОВУЮ ЭРУ: ВЫЗОВЫ, УГРОЗЫ И ПЕРСПЕКТИВЫ

АННОТАЦИЯ

В современный период развития информационных технологий человечество вступило в активные коммуникативные отношения посредством глобальной сети Интернет, что, в свою очередь, поставило острый вопрос о необходимости обеспечения эффективной защиты прав и свобод человека и гражданина в процессе взаимодействия через интернет при одновременном сохранении высокого уровня гарантий реализации указанных прав и свобод, как того требуют основополагающие международно-правовые акты. Актуальные проблемы реализации прав и свобод человека в сети Интернет требуют выработки наиболее эффективных механизмов их защиты в новых условиях, а не полного отказа от них под предлогом их защиты.

Ключевые слова: права и свободы человека, цифровая трансформация, новые технологии, общество, «право на Интернет», свобода слова и мысли, международное право.

Introduction

With the development of technology and the Internet, people increasingly realize their constitutional rights through information and communication technologies, through remote submission of applications to public authorities, remote participation in elections, referendums and other forms of direct expression of will, as well as receiving certain services in the field of social services, healthcare, without leaving home. It is here that there are many unsolved problems, including insufficiently deep and detailed legislation in the field of implementation of human rights and freedoms on the Internet.

Every day, the Internet is becoming not only an increasingly familiar tool for transmitting messages, but also the most acceptable and popular of such tools. One of the main principles in the field of human rights is that rights and freedoms should always take precedence over the interests of the State. Freedom of speech, opinion, and privacy are the highest values, and the Internet is no exception in this case. New problems caused by the peculiarities of the realization of these values on the Internet require the development of the most effective mechanisms for their protection in the new conditions of their realization, rather than a complete rejection of them under the pretext of their protection.

Already today, the Internet provides wide opportunities in the areas of education, healthcare, obtaining state and municipal services, exercising voting rights, etc. At the same time, it is necessary to take into account the risks existing in this area, including threats to people's lives and health.

Main body

In studies devoted to the protection of human rights on the Internet, scholars pay attention to the changes taking place in the system of human rights and freedoms. Particular interest is paid to the new concept of “the right to the Internet” or “the right to access the Internet”, which not every person can realize for objective technical reasons, and if it is realized technically, it is often restricted by the state through censorship or bans.

It is emphasized that the Internet is a place open to everyone to express their opinions. At the same time, at present it is necessary to increase public legal awareness of society, legal culture, information culture of network users. It is not by chance that the expression “supreme value” is applied to human rights and freedoms, as this is not only a legal, but also an inherently moral category. That is why a reasonable combination of legislative regulation and self-regulation of the Internet space is proposed. The human right to information, limitedly recognized at the stage of formation of the modern state, acquires a new meaning in the conditions of formation of the information society. Moreover, it is the right of access to information, which requires the state to further regulate the mechanism of access, i.e. affirmative action, that has influenced the revision of attitudes to the nature of the right to information in general.

It seems that at present it is important to formulate definitions of these phenomena and consider them in the system of human rights, and the problems of realization of human rights and freedoms on the Internet should be considered in close connection with international law.

The problem of the legal mechanism of regulating the right of citizens to access information through the use of the Internet is relevant, because today there is no clearly developed law enforcement practice on this issue, which often leads to unlawful court decisions to block certain Internet resources and violates the constitutional rights of citizens. The introduction of amendments to legislation that would clearly regulate the conditions and procedure for blocking sites on the Internet would help to solve this problem.

According to F.Khamdamova, “Digital transformation has an impact on both the theory and practice of human rights. It promotes the emergence of new concepts and concepts in the field of human rights, new institutions and mechanisms, enriching human rights theory and expanding the range of research and training programs on human rights issues. Of course, this is consolidated in international standards and in national legislation, which should reflect existing trends”[1].

Any analysis of the impact of new technologies on rights, as Jacopo Coccoli points out, is extremely complex and requires the prior consideration of two aspects. The first is due to the evolutionary time interval that separates the achievements of technological progress and their legal registration. Most often, the adaptation of both national and international rules to the innovations of science and technology, in particular to digital technologies, is perceived as too slow and, therefore, inappropriate. The second one reflects the trend of their development at the international level. Taking into account these aspects, the objectives of human rights law are determined: first, there is a need to reinterpret traditional human rights in the light of scientific and technological development; Secondly, new human rights are emerging, which can be defined as the *sui generis* generation of digital rights [2, P. 224-225].

At the World Summit on the Information Society, more than 180 governments have reaffirmed the unconditional applicability of the Universal Declaration of Human Rights to the Internet. For its part, the UN Human Rights Council has repeatedly emphasized the importance of protecting fundamental human rights and the free flow of information on the Internet.

The International Covenant on Civil and Political Rights of 1966, in article 19, enshrines the right of everyone to freedom of expression, including freedom to seek, receive and disseminate all kinds of information and ideas, regardless of State borders, orally, in writing, through the press or by other means of their choice [3, P. 36-54]. These rights come with special duties and responsibilities, but the law establishes limitations in order to respect the rights and freedoms of others, national security, public order, or public health or morals.

In addition, attention should be paid to one of the most pressing problems at the moment - the problem of the relationship between the Internet and freedom. Freedom itself is expressed in preserving the human right to autonomy, freedom of expression, and confidentiality. In this regard, it is important to find a balance between a free Internet and human rights.

The United Nations and regional international organizations pay considerable attention to the problem of protecting human rights and freedoms [4, P.84]. Thus, the UN General Assembly in 1946 adopted Resolution A/RES/59 (I) “Convening an international conference on freedom of information”, in which freedom of information was considered a fundamental human right,

consisting in the ability to freely collect, transmit and publish information [5].

In addition, almost every year the UN General Assembly, UNESCO and other international organizations adopt regulations [6, P.1–4] that provide basic principles and norms for the protection of human rights and freedoms in the information and communication network, in particular the UN General Assembly Resolution of November 10, 1975 “On the use of scientific -technological progress in the interests of peace and for the benefit of humanity” [7], dated 12/23/2003 “Creating a global culture of cybersecurity and protecting critical information infrastructures” [8], dated 12/13/2013 “Advances in the field of information and telecommunications in the context of international security” [9].

The Council of Europe Convention of 04.10.2001 “On Information and Legal Cooperation concerning Information Society Services” [10] and Recommendation CM/Rec(2011)7 of the Committee of Ministers of the Council of Europe to member states on the new concept of media (adopted by the Committee of Ministers of the Council of Europe on 21.09.2011 at the 1121st meeting of the Permanent Representatives of Ministers) [11], etc. were also adopted.

In 2016, the ECHR prepared the document “New Technologies” — an overview of the cases of the European Court in the Internet sphere [12]. Currently, the court has considered more than 2.5 thousand cases related to the Internet. All of them are mainly related to Articles 8 and 10 of the Convention, in particular the right to respect for private and family life, which does not allow interference by the authorities in the exercise of this right, except in certain cases. Article 10 of the Convention provides that everyone has the right to express his or her opinion freely.

In connection with the analyzed practice, we can conclude that states need to make decisions regarding any restriction of human rights and freedoms on the Internet exclusively in accordance with the norms of international law and, most importantly, with the norms of national law, which in turn comply with international standards.

In connection with the study of the process of realization of rights and freedoms by citizens on the Internet, it seems logical to also consider the problem of censorship on the Internet, which is increasingly attracting the attention of researchers. On the one hand, the very nature of virtual space complicates the organization of full control over information, and on the other hand, the ever-growing importance of the Internet in the life of not only each individual, but also the state as a whole implies a clear need for legal control of communications carried out in this information network.

Conclusion

The “right to the Internet” is not regulated by such universally recognized international acts as the Universal Declaration of Human Rights, international covenants and other documents, since the Internet arose after their adoption. At the same time, the Internet environment is interesting because in a fairly short time it has turned from a means of storing and distributing information into a tool with which a person can realize a number of constitutional rights and freedoms.

The constitutional framework that guarantees the realization of the rights and freedoms of citizens in the field of access to information, its acquisition and dissemination, as well as the right to access the Internet, is one of the elements of the formation of a democratic state based on the rule of law. That is why it is advisable to establish such legal mechanisms that would act in a balanced manner and would not violate the legitimate rights and interests of citizens.

In our opinion, in order to achieve the goals of informatization of the state and society it is necessary to intensify legislative processes in the field of information law. At the moment, information legislation contains contradictions and gaps in legal regulation in the field of realization of citizens’ rights on the Internet. It seems necessary to adopt a single codified legal act that would eliminate or at least minimize the existing inaccuracies and gaps.

Along with the principles of international law, it implements basic human and civil rights (for example, the right to receive, transmit and disseminate information in any lawful way), presupposes freedom of speech and thought. These provisions also apply to the Internet space, since a person implements them in this world. Thus, the most important strategic task of the

state in the new technological conditions should be to ensure the protection of human and civil rights and freedoms, regardless of the conditions for their implementation.

Most international instruments in the field of human rights protection were adopted long before the rapid digitalization of all areas of human life began. This necessitates the development of new human rights standards, taking into account digital transformation. At the same time, it is important to take into account that the pandemic accelerated digitalization and aggravated some of its consequences. This is especially true for bridging the digital divide, because otherwise the economic gap will deepen.

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