

## **INTERNATIONAL AND NATIONAL LEGAL BASES OF THE REGULATION OF THE HUMAN RIGHT TO PERSONAL PRIVACY**

*Paper analyzes the international legal norms regulating human right to privacy. The content and meaning of the law as a fundamental human right is clarified. General characteristics of the legislative ensurance of a privacy in Ukraine.*

**Keywords:** *private life, right to privacy, international standards and national legal acts, human rights.*

Everyone has the right to privacy. This right means given to person and guaranteed by the State the ability to control information about itself, prevent the disclosure of information is a personal, intimate character. The right to private life is a part of the value of a person's autonomous being. It is enshrined in many international legal instruments, the norms of which are standard for the formulation of such norms of national law. However, the lack of a uniform interpretation of the right to privacy in the national legislation does not define its borders and conflicts of international norms on the right to respect for private life of Ukrainian legislation lead to violations and false limitations specified human rights. Because the research and protection of the right to privacy both on the international and national level is of great content and relevance.

It should be noted that some aspects of the regulation and implementation of the right to privacy were highlighted in the works: V. Blotsky, V. Bobrik, V. Brizhko, K. Kalashnikova, L. Krasavchikova, P. Krug, M. Maleyina, N. Mamedov, G. Matcukova, S. Mishurovska, L. Opryshko, I. Petruhina, G. Romanovsky, F. Rudinsky, V. Sivuhina, I. Smolkova, V. Tertishnik, A. Tertishnik, R. Topolevsky and other scientists. However, despite the presence of a large number of scientific papers

that are of great theoretical and practical significance, many issues and aspects of these problems still remain insufficiently studied. In view of the above mentioned, the purpose of the article is to reveal the content of the human right to privacy in accordance with international legal standards and agreements that contain this right; determine the features follow their implementation in national legislation, as well as outline the main directions of improving provision of this law in Ukraine. To achieve this goal it is necessary: to reveal the meaning and essence of the human right to privacy on the basis of international and national legal acts; appreciate the modern level of observance of international legal norms of the right to privacy in the legislation of Ukraine; formulation of suggestions and recommendations for implementation in Ukrainian law of international legal norms on the human right to respect for private life.

It is common knowledge that international legal standards as the most progressive international legal principles and norms define the content and scope of the right to privacy, guarantee its implementation, as well as the obligations of States and forms of co-operation between Member States to ensure the rights within the national legal order and international relations. Turning to ascertain the nature of the right to privacy, note that for the first time at the international level, this right received a legal snake in the Universal Declaration of Human Rights. So, in the art. 12 it is noted: no one may be subjected to supply intervention in personal and family life, protection against assault on the integrity of his dwelling, mystery correspondence or on his honour and reputation. Everyone has the right to protection of the law against such interference or attacks "[1]. Despite the fact that the Universal Declaration of Human Rights is not a legally binding document, however, the rights and freedoms enshrined in it are universal standards, initial statements for international law and for the development of national systems of human rights. Subsequently, the statements of the Universal Declaration were expanded and fleshed out in numerous agreements with human rights. In particular, the International Covenant on Civil and Political Rights in part 1. art. 17 almost literally repeats the relevant article of the Universal Declaration, however, prevent not only system still

exists, but also illegal interference in private and family life of the individual, illegal encroachment on the privacy of his home, the mystery of his correspondence, illegal encroachment on his honour and reputation. Part 2 of art. 17 the Covenant provides for the right to protection by law from arbitrary interference or illegal infringement on privacy. Given this State are parties to the Covenant must take active measures to ensure such protection to all persons.

In turn, in the art. 8 of the European Convention for the protection of human rights and fundamental freedoms States that "everyone has the right to respect for his private and family life, his home and correspondence; authorities could not intervene in the exercise of this right, except for the cases when intervention is carried out in accordance with the law and is necessary in a democratic society in the interests of national and public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others"[2].

The right to privacy is enshrined in many international human rights instruments, but for most there is a mechanism to protect the rights that prevailed in the Council of Europe. Ukraine, having ratified in 1997 the European Convention on human rights, adopted not only the text of the Convention, but also the entire practice of konvencijnih bodies, which develops and provides an interpretation of the provisions of this document. The most important body in the aspect of this activity is the European Court of human rights. After reviewing a number of cases examined by this Court, we can conclude that privacy is the significant category, which it is impossible to give an exhaustive definition. It is obvious that this category is broader than the right to privacy, and it relates to the following areas, within which every man is free to develop this concept and fill its specific content. It covers areas such as: a) the physical and psychological integrity of persons, including medical care, psychiatric, mental health; b) aspects of the physical (the functional properties of the organism – age, health status, reaction speed, height, strength, etc.) and social personality of man (as a member of society, which is in the sphere of influence of different relations in the process of production and consumption of wealth,

nationality, marital status, occupation, etc.), including the confiscation of documents necessary for identification of the person; in her last name), reputation; g) photograph; d) gender identification (individual awareness of his sexuality, reliving it their masculinity/femininity and willingness to perform certain sexual role), transsexuality sexual orientation, sexual life; e) right to personal development (the process of the formation of personality in the areas of adaptation, individualization and integration in society) and the establishment and development of relations with other people and the outside world; same) right to self-determination (guaranteed the possibility of self-development and self-realization of the person) and personal autonomy; with professional and business activities), as well as restrictions on the enjoyment of a professional activity; f) dossier or data, consisting of security services or other public authorities; g) information about the risks to human health; h) searches and seizures; i) tracking communications and telephone conversations, etc [4, 15]. Privacy can include not only the means of its conservation in the home or other private premises, but also relate to the environment of interaction with others. Thus, in 1992 the European Court stated: "it would be nedozvolennim to limit the notion of private life "inner circle"which can live a private man to his personal life, which he chooses, and to exclude therefrom entirely the outside world, not part of this circle. Respect for private life must also comprise a specific set of rights for the establishment and development of relations with other aspects of human life [3, p. 90]. Thus, the notion of privacy with the need to include the right to establish and develop relationships with other people and the outside world. Regarding the concept of "family life", the European Court comes from the fact that question the presence or absence of family life is a question of fact that depends on the reality of the existence in practice of close personal ties. To the sphere of "family life" it includes: natural bond between mother and child; child and close relatives; the question of guardianship; adoption, immigration, child; cohabitation without marriage registration; relationships in marriage, that the prisoner is not in accordance with national legislation, etc.

As you can see, the practice of the European Court of human rights attests to

what legitimate reason for intervention in the sphere of private life should provide an opportunity to interpret this base according to the law, it must be sufficiently precise and specific in describing the method, target, the moment of beginning and end, as well as defining the boundaries of such intervention. At the same time establishing a European Court general principles legal limitation has practical value lies in the fact that these principles will serve as the criterion of legitimacy limitation human rights to privacy in the legislation and enforcement of states-members of the Council of Europe. Along with this, and taking into account the need for coordination of the fundamental values of the respect for privacy and the smooth exchange of information between nations in terms of continued growth of transborder flow of personal data that are amenable to automated processing, the Council of Europe has defined in the Convention on the protection of individuals with regard to automatic processing of personal data and in the additional protocol to it, the procedure of collecting and processing data about a person principles of storage and access to such data, methods for physical data protection. In addition, the Convention ensures the observance of human rights when collecting and processing personal data, principles of storage and access to these data, ways to physical data protection, and also prohibits the processing of data concerning racial origin, political and religious beliefs, health, without proper legal grounds. She is so far from the only international Convention specifically devoted to the issue of ensuring the right to non-interference in private life, more precisely the information aspect of this right. According to art. 2 the Convention under "personal information" means any information relating to specifically defined the person or entity that can be specifically defined. It is worth noting that Ukraine ratified in 2010 called the Convention and additional Protocol thereto [5].

You must also focus on the fact that scientific and technological progress, especially in the field of information technology, puts new requirements concerning protection of the right to privacy. And the Council of Europe responds to the challenges of the time, the Committee of Ministers of the Council of Europe Member States adopted many special guidelines on the use and protection of personal data in

the various sectors of society and the State, which set guidelines for the collection, storage, use and dissemination of information of a personal nature. Separately, it is worth to stop at the Council of Europe Recommendation No. R (99) 5, which contained guidelines to protect privacy online [6]. The document specifically states that respect for privacy is a fundamental right of each individual, which may be protected by the legislation on protection of personal data. It is recommended to use legally available encryption for confidential emails, passwords, be careful with credit cards and account numbers that are used on the Web because they can be easily abused. Says that anonymous access (which due to legal restrictions may not be complete) to the offered Internet services is the best protection of the private life. Thus, by analyzing the content of pinned in international instruments of human rights to privacy, we can say that the norms of international laws are broad, generic and advocating a model for the wording of similar provisions of national law in the field of human rights in all the democratic countries of the world. At the same time in a single rulemaking under the auspices of this law are the following separate, though similar in content, right, as: the inviolability of dwellings; secrecy of correspondence; respect the honour and dignity. Such a Union can be explained by historical tradition, when in the absence of direct regulation fixing the latest output from these rights. Because the inviolability of dwelling, mystery correspondence, respect for honour and dignity are separate manifestations of personal life, and therefore the right of man and of the citizen on non-interference in their personal and family life is common on these rights [3, p. 96–97].

Thus, the content of the right to privacy is the fact that every person is free, at its sole discretion, determines its behavior in his personal and family life and the opportunity to introduce him to other people, and also has the right to keep secret the circumstances of his personal life. Private (personal) life of the party is its behaviour in the sphere of personal, family, household, intimate, friendly, professional, business and other relationships outside the public service. The right to personal and family life is part of the value, necessary for the full realization of individuals in a democratic society, it is its right to independent existence independently from other

people and the State.

With regard to national legislative regulation mentioned human rights, it is worth to say that in accordance with parts 1 and 2. 32 of the Constitution of Ukraine [7] no one may be subjected to interfere in his personal and family life, except of the cases stipulated by the Basic Law of the State; do not allow the collection, storage, use and dissemination of confidential information about a person without her consent, except in cases specified by law, and only in the interests of national security, economic welfare and human rights. The specified requirements of the Constitution of Ukraine correspond dispositions of the legislation, which provides that: collection, storage, use and dissemination of information about the personal life of an individual without his consent is not permitted, except of the cases specified by law, and only in the interests of national security, economic welfare and human rights (par. 2 part 1 article 302 of the Civil Code of Ukraine); dissemination of personal data without the consent of the subject of personal data or the authorized persons are permitted in cases determined by law, and only in the interests of national security, economic welfare and human rights (part 2 of article 14 of the Bill of Ukraine "About the Protection of Personal Data"); confidential information can spread if desired (consent) the appropriate person prescribed his the order in accordance with the conditions stipulated by it, as well as in other cases defined by law (part 2 of art. 21 of the Bill of Ukraine "About Information"); stewards of information, which possess confidential information can spread her only with the consent of the individuals who have limited access to information, and in the absence of such consent only in the interests of national security, economic welfare and human rights (part 2 of article 7 of the Bill of Ukraine "About Access to Public Information").

At the same time an information about personal and family life of a person is any information and/or data on the relationship of non-property and property of character, circumstances, events, relationships, etc., related to the person and the members of his family, except pursuant to the laws of information concerning implementation of the person who occupies the position associated with the performance of the functions of State or local governments, official or authority. This

information about a person is confidential [8]. As you can see, including art. 32 of the Constitution establishes the limitations of information activities with data about the identity and other sensitive information concerning the private life of a person, and according to part 2 of art. 22 of the Basic Law of Ukraine, the law, like other rights and freedoms are inalienable and inviolable and protected by a court or other legal ways. Along with this, for violation of privacy provided administrative and criminal responsibility. So, art. 188-39 of the Code of Administrative Offences provides for administrative liability for violations of the legislation on personal data protection, and art. 188-40 – for failure to comply with lawful requirements of officials of the specifically authorized central body of the Executive power on the protection of personal data. Criminal compliance for breach of privacy is provided by art. 182 of the Criminal Code of Ukraine [9].

However the responsibility regarding illegal collection, storage, use, destruction, dissemination of confidential information about a person or illegal changes of such information occurs only under the following conditions: 1) to the State service of Ukraine for the protection of personal data (should be sent to the complaint of the citizen of Ukraine (in this case the complaint must be supported by documents confirming the violation in the sphere of protection of personal data); 2) on the basis of the complaint will be audited volodil'civ and (or) authorize personal data bases concerning the observance of requirements of legislation in the sphere of protection of personal data, which will be given instruction on Elimination of violations; 3) in the case of non-prescription is an administrative Protocol, which is then transmitted to the Court; 4) on the basis of administrative Protocol is hearing and the decision about imposing of administrative penalty, prescribed in the code of Ukraine on administrative offences, on the basis of which personal database owner paid the fine.

The State Service of Ukraine for the protection of personal data, provides an implementation of State policy aimed at the protection of human rights not to be subjected to interference in his personal life, in part by ensuring the lawful processing of personal data, and carries out State supervision and control over the observance of

the legislation on protection of personal data. Separately, it is worth to emphasize, that in a number of normative acts is defined the legal bases for legal intervention in personal life in the process of investigating criminal cases and implementation of operative investigation activity, particularly in the Criminal procedural code of Ukraine, bills of Ukraine «About Operative and Search Activities", "Organizational and Legal Bases of the Struggle against Organized Crime, decrees of the President of Ukraine “About Urgent Measures to Strengthen the Fight against Crime», «About Measures to Further Strengthening the Law, the Protection of the Rights and Freedoms of Citizens", and others. At the same time procedural legislation lays the procedural guarantees that information about personal life, obtained during the investigation of a criminal case or a civil case retrial will not be publicly declared, except when they relate to criminal actions. Failure to comply with certain procedural legislation limits interference in private life, the interference in personal life without proper justification, disclosure obtained in the course of the investigation or conducting operatively-search measures of information privacy or other violations of law made by arbitrary interference in personal life, creates a basis for civil liability of the relevant State bodies or officials according to art. 176 of the Civil Code of Ukraine, law of Ukraine "About the Procedure for Compensation of Damage inflicted by Citizen Illegal Actions of the Organs of Inquiry, Preliminary Investigation, Prosecution and Trial" and the regulation on the application of the Bill of Ukraine «About the Procedure for Compensation of Damage Inflicted by Citizen Illegal Actions of Organs of Inquiry, Preliminary Investigation, Prosecution and Trial", approved by joint order of the Ministry of Justice, the General Prosecutor, the Ministry of Finance of Ukraine from 04.03.1996 [11].

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To summarize the above mentioned , you can make the following conclusions:

1) norm of international acts are General in nature and are a model for the wording of similar provisions of national law in the field of ensuring and protection of human rights to privacy; 2) right to privacy, as well as other human rights, are the subject of adjacent (within the country and internationally-legal) Regulation; 3) the basic principle from which comes the European Court of human rights during consideration of cases of violations of the right to respect for private and family life, and that has to be laid at the basis of the national legislation in this field, is the principle of

proportionality between the interest of individuals in preserving their own "private space" and the need to ensure public interests and the interests of other persons, between the desire for individual privacy and its desire to receive services, the provision of which requires the disclosure of personal data; 4) specified the right unites such independent, although similar in content, right as: inviolability of dwelling, mystery correspondence, respect the honour and dignity, because under the "right to privacy" should understand the system guarantees the protection of the human rights, which includes the provision and protection of confidential personal and intimate family life, way of existence; secret phone conversations, personal written documents and correspondence, the prohibition regarding the collection, storage and dissemination of information about the private (personal) life without her consent; opposition to any invasion of the forbidden zone of private (personal) life, irrespective of intentions, forms and ways of invasion; 5) person, who applies to confidential information, according to the legal regulation of the rights to the collection, storage, use and dissemination of confidential information only himself has a right freely, in its sole discretion to determine the order of introducing him to other people or to maintain it in secret; 6) currently urgent is not only legally binding and forming mechanism of the realization of the right to privacy, but also changing social consciousness, understanding of the importance and the value of privacy in a democratic society.

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