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FORMATION AND DEVELOPMENT OF INTERNATIONAL LEGAL REGULATION OF PUBLIC MORALS PROTECTION IN THE INFORMATION SECTOR

Article is devoted to analysis of legal regulation of public morals protection in EU. It analyzed the international legal framework of right on information limitation. In addition, we studied the positive aspects of EU obligations on prohibition of creation and circulation of illegal information (propaganda of war and/or violence, incitement to racial violence, propaganda of national, religious hatred, propaganda of terrorism, incitement to genocide, child pornography etc.). Special attention was given to protection of right of youth on information that is free from materials that can harm their morals. It is assumed that censorship is prohibited in EU legal acts but the freedom of information isn't limitless and absolute. The most important above all are the three criteria created by European Court on Human Rights: any limitation of freedom of information must have legal aim, made in legal way and is necessary for democratic society.

Key words: information sphere, public morals protection, international legal acts, freedom of speech.

One of the main problems that slows the entry of Ukraine into EU is improper fulfillment of obligations to the Council of Europe in the implementation of information rights. Our state use the European Convention on the Protection of Human Rights and Fundamental Freedoms (4 November 1950), which is one of the most popular documents in Europe and the most effective instrument to protect the rights and freedoms in the world.

Among the fundamental studies that analyzed the European standards and norms of state regulation of information sphere it is worth mentioning the works of scholars like M. Lytvyn, V. Pavlyk, I. Pryphan.

Especially it is worth to mention the work of V Kostytsky that reveals problems of legal regulation of public morals protection in Ukraine and abroad, analyzes the practical aspects of public morals protection and justify the thesis that public morality protection is a function of a modern democratic state¹.

However, these researchers examined the problem partially, ie, raising the question of freedom of information, freedom of journalism they do not pay attention to citizens' right to safe information space and the protection from information products that harms public morals.

From a legal point of view the constitutional right on freedom of speech and freedom of expression and opinion is the ability of each person to determine for themselves a system of moral, spiritual and other values freely and to publish their thoughts without any ideological or other control using any means of expression, including through the dissemination of information in the form of opinion on various issues of political, economic, cultural and spiritual life of society and state².

Freedom of information should be distinguished from permissiveness which received its ideological justification in the philosophy of anarchism. The sign of permissiveness is the lack in social consciousness of national interests' priority. Such society is not protected from the destructive communicative effects. As a result, it is controlled from outside, resulting in the absence of an independent policy. This communication dependence is the result of economic and political dependence³.

One of the most important documents, where made significant emphasis on human and civil rights, including the right to freedom of opinion and expression, is the Universal Declaration of Human Rights, declared and approved in 1948⁴. As for the restrictions of freedom of expression and information, this document contains only a general rule. Specifically, Article 29 states that in the usage of his rights and

¹ Костицький, В.В. (2013). *Захист суспільної моралі як функція сучасної держави*. Дрогобич: Коло.

² Шемшученко, Ю.С. (ред.). (2008). *Конституційні права, свободи і обов'язки людини і громадянина в Україні*. Київ: Юридична думка.

³ Волков, А.Г. *Политический текст и свобода слова*. <http://www.nbuv.gov.ua/Articles/KultNar/knp50_2/knp50t2_96-99.pdf> (2016, May, 03)

⁴ *Загальна декларація прав людини* (1948). *Офіційний сайт Верховної Ради України*. <http://zakon2.rada.gov.ua/laws/show/995_015> (2016, May, 23)

freedoms, everyone must be subject only to such limitations that are prescribed by law solely for securing the recognition and respect for the rights and freedoms of others and ensuring the morals, public order and the general welfare in a democratic society.

In 1966, the UN had adopted the International Covenant on Civil and Political Rights, which is a fundamental international legal instrument in the field of international protection of human rights. In Article 19 was proclaimed the right of everyone to freedom of expression; this right includes freedom to seek, receive and impart information and ideas regardless of frontiers, either orally, in writing or in print, or a form of art, or other media of his choice, however these rights impose special obligations and a special responsibility. In addition were clearly defined restrictions on freedom of speech: respect for the rights or reputations of others; for protection of public safety, order, health or morals. It should be noted that the International Covenant established the prohibition of war propaganda, advocacy of national, racial or religious hatred or violence¹.

The right to information is a fundamental right that has great importance in the practice of the European Commission and the European Court of Human Rights under Article 10 of the European Convention on Human Rights; it recognized under Article 9 of the European Convention on Transfrontier Television, as well as in all democratic constitutions. The owner of the rights is a person, who also has the right that the information he receives, conveyed truthfully, in the case of a message, and honestly, when it comes to reasoning. In accordance with Article 10 of the European Convention on duties and responsibilities, the implementation of these rights is may be subject to formalities, conditions, restrictions or penalties that are prescribed by law and are necessary in a democratic society for the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of confidential information or for maintaining the authority and impartiality of the judiciary².

On Session 70 of the Council of Europe was adopted a Declaration on the Freedom of Expression and Information³, in which freedom of expression and information identified as fundamental element of the principles of genuine democracy, rule of law and respect for human rights and confirmed that the free circulation and free flow of any information over borders is an important factor of international understanding, which contributes to the unity of people and mutual enrichment of cultures. Also we believe that, in addition to the statutory measures referred to paragraph 2 of Article 10 of the European Convention on Human Rights, professional organizations in the media voluntarily developed and use codes of ethics. Noted that despite the long list of tasks, in this Declaration it is almost no attention paid to the protection of information products that may harm public morals.

In 1984 the Council of Europe adopts Recommendation № R (84) 3 on the principles on television advertising⁴ which defines the general principle of preparation of advertising as the responsibility to society with paying particular attention to the moral values that are the foundation of every democratic society and are common to all Member states e.g., personal freedom, tolerance, respect for the dignity and equality of all persons. Also attention should be paid to possible harmful consequences that may arise after the advertisement of tobacco, alcohol, pharmaceutical drugs and medical treatment and the possibility to limit or even ban the advertising in these areas. Specific requirements are set for the advertising that is directed to children or advertising that involves children. In particular, it should avoid anything that could harm the interests of children, respect their physical, mental and moral personality.

In addition, we found that the Council of Europe pays attention to the need to prepare humans to perceive information and offers in the Guidelines on the cultural dimension of broadcasting in Europe to introduce school courses to teach critical attitude to the media and to inform adults on developments in the media field that could harm the moral health of society. Also this document recommended to European

¹ Міжнародний пакт про громадянські і політичні права (19 жовтня 1973 року). Офіційний сайт Верховної Ради України. <http://zakon3.rada.gov.ua/laws/show/995_043> (2016, Мау, 23)

² Конвенція про захист прав людини і основоположних свобод (4 листопада 1950 року). Офіційний сайт Верховної Ради України. <<http://zakon3.rada.gov.ua>> (2016, травень, 23)

³ Декларація Комітету міністрів Ради Європи (Про свободу вираження поглядів та інформації) (Ухвалена Комітетом міністрів 29 квітня 1982 року на 70-й сесії). Офіційний сайт Бюро інформації Ради Європи в Україні. <www.coe.kiev.ua>(2016, Мау, 20)

⁴ Рекомендація Комітету міністрів Ради Європи № R (84)3 (Про принципи телевізійної реклами) (367 засідання заступників міністрів 28 лютого 1984 року). Офіційний сайт Бюро інформації Ради Європи в Україні. <www.coe.kiev.ua> (2016, Мау, 20)

Council of Ministers to accelerate and intensify efforts to develop national legislation aimed at reducing of violence, brutality and pornography in the field of broadcasting and other media products.

Despite to the principle on freedom of expression and the free flow of information and of ideas that have been particularly highlighted in the Declaration of 29 April 1982, Council of Europe adopts Recommendation on principles on the distribution of videograms having a violent, brutal or pornographic content¹. Its objective was to consolidate operations against the distribution of violent videos, abuse and pornographic content, as well as against drug use, including the protection of youth. Another aspect of this legal act is that Member States should encourage the creation of classification and control systems by the professional sector within the framework of self-regulation or through public authorities. These systems can be created before or after the video spread, which, in our opinion, is an element of censorship and self-censorship.

The main source of information for citizens is the mass media. Public opinion about certain events or facts can be shaped through the media so citizens have the right to demand that the information supplied by journalists is conveyed truthfully, in the case of a message, and honestly, when it comes to reasoning. Therefore, the Council of Europe regularly pays attention to the media and organizes Conference of Ministers on Mass Media Policy that emphasizing that freedom of expression, including Media freedom, is one of the most important foundations of a genuine democratic society. Also it proves commitments that Member States of the Council of Europe have undertaken under Article 10 of the European Convention on Human Rights and Fundamental Freedoms, and in particular under paragraph 2 of this Article, and the political commitments made by Member States under the Declaration on freedom of expression and information of 29 April 1982.

In 1993, was adopted the Resolution on The Ethics of Journalism² where noted that journalists have moral responsibility towards citizens and society, so the media should submit to ethical principles guaranteeing freedom of expression and the fundamental right of citizens to receive truthful information and honest opinions. Also the media have a moral obligation to protect democratic values, respect for human dignity, promote solving problems peacefully and in a spirit of tolerance and consequently to oppose violence, hatred and confrontation and to destroy all forms of discrimination based on culture, gender or religion. Quite interesting for Ukraine is the norm on the creation of self-regulation mechanisms or public bodies that must include publishers, journalists, associations of media users, experts from academia and the judiciary in order to monitor the observance of ethical principles by journalists. They are responsible for issuing resolutions on respect for ethical norms in journalism after prior agreement with the media to publish the relevant resolutions. This will help the citizen, who has the right to information, to pass either positive or negative judgment on the journalist's work and credibility of information submitted.

In 1994, was the 4th European Ministerial Conference on Mass Media Policy «Media in a democratic society» that approved The Resolution of Journalistic Freedoms and Human Rights. One of principles declared in this legal act is the principle of non-contributing to any violence, hatred, intolerance or discrimination based on race, gender, sexual orientation, language, religion, politics or other opinion, national, religious or social origin.

For current study of restrictions on freedom of information to protect public morals is quite valuable the Recommendation 1276 (1995) on the power of visual images³. In particular, the Council of Europe recognized that the visual imagery is so powerful that we are now faced with the phenomenon of «virtual reality», which raises the risk of manipulation with images that illustrate the news and information that accompanies them. Most of people don't know how to «read» images, and this can lead to misinterpretation and manipulation. Interpretation of images is also part of literacy, although it is still ignored. Much attention in this document has been given to children because television screens have become the «electronic nannies» as a large number of children spend too much time in front of them.

Unlike other resolutions adopted by the Council of Europe on freedom of expression, in this clearly

¹ Рекомендація Комітету міністрів Ради Європи № R (89) 7 (Про принципи поширення відеозаписів насильницького, жорстокого чи порнографічного змісту). (425 засідання заступників міністрів 27 квітня 1989 р.). *Офіційний сайт Бюро інформації Ради Європи в Україні*. <www.coe.kiev.ua> (2016, Мау, 23)

² Резолюція № 1003 (ухвалена 27 квітня 1993 року) Парламентською асамблеєю Ради Європи. *Офіційний сайт Бюро інформації Ради Європи в Україні*. <www.coe.kiev.ua> (2016, Мау, 23)

³ Резолюція № 1276 (ухвалена на 29 грудня 1995 року) Парламентською Асамблеєю Ради Європи. *Офіційний сайт Бюро інформації Ради Європи в Україні*. <www.coe.kiev.ua> (2016, травень, 20)

and even harshly stated that freedom of expression, which is a fundamental right stated in Article 10 of the European Convention on Human Rights, should be provided together with the associated responsibilities. In some cases, restrictions on freedom of expression can be justified with the need to protect other rights and freedoms, especially the rights of children.

The Assembly also called on the Committee of Ministers to monitor the implementation of measures against the portrayal of violence on television (in close cooperation with broadcasters) and of educational activities in the field of media awareness. Unfortunately, most of these requirements are not met in Ukraine, although it is extremely important.

Twenty years ago the Council of Europe raised the important question for modern Ukraine on media manipulation and recognized the seriousness of the threat to the moral health of society by imposing visual images.

Globalization processes in the information sector and increasing number of electronic media forced the Council of Europe to adopt the Recommendation № R (97) 19 on The Portrayal of Violence in Electronic Media¹. Recommendations concern the gratuitous portrayal of violence in the various electronic media at national and international levels. In this document was given definition to the term «gratuitous portrayal of violence». Also was prepared Appendix in which were designed parameters necessary for determining whether the portrayal of violence in the electronic media is justified.

Members of the Council of Europe expressed the belief that further development of information and communication technology should offer a possibility, regardless of frontiers, to express, to seek, to receive and to impart information and ideas regardless of their source, and was approved the European Convention on Transfrontier Television². Although the purpose of this convention is to facilitate the transfrontier transmission and retransmission of television program services, it contains a clear requirement for broadcasters, which limits freedom of information to protect public morals.

Earlier the Internet could not be managed as a public media like radio, television or print media. But now the Internet journalism has become an essential component of the information industry in the world, and online media is an influential source of information for users. In 2011, the United Nations (UN) has made the right of access to the Internet to inalienable individual rights. Unreasonable deprivation of the right to seek, receive and impart information through the network is a violation of the law³.

Declaration on freedom of communication on the Internet establishes a set of principles for Member States to support the efforts of service providers to cooperate with law enforcement agencies when faced with illegal content on the Internet. In particular, the third principle states, on the one hand, the absence of prior state control, and on the other, ensuring that the guarantees from paragraph 2 of Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, measures may be taken to enforce the removal of clearly identifiable content or to block access to it, if the competent national authorities have taken a provisional or final decision on its illegality.

We note that in the legal acts in the EU censorship is prohibited, however, this does not mean that freedom of information is absolute. The most important are the three criteria developed by the European Court of Human Rights: any restriction of freedom of information must pursue a legitimate aim; it must be done within the law and it is necessary for a democratic society.

Ukraine should focus on international and European Union documents that also require the care of information security of kids and youth. Article 22 of EU Directive Television without Frontiers commits to establish a national body to ensure the protection of youth from abuse of mass media freedom. If Ukraine wants to join the European Union, we must also establish such Council⁴. Undoubtedly, free access to

¹ Рекомендація Комітету міністрів Ради Європи № R (97) 19 (Про показ насильства електронними ЗМІ) (340 засідання заступників міністрів 30 жовтня 1997 року). *Офіційний сайт Бюро інформації Ради Європи в Україні*. <www.coe.kiev.ua> (2016, May, 20)

² *Європейська конвенція про транскордонне телебачення* (17 жовтня 2008 року). *Офіційний сайт Верховної Ради України*. <http://zakon1.rada.gov.ua/laws/show/994_444> (2016, May, 20)

³ Бочарова, Н.В. (2013). Сучасні тенденції розвитку законодавства країн Європейського Союзу в галузі авторського права. *Порівняльно-аналітичне право*, 3-4, 19.

⁴ Куницький, В.В. (2010). *Захист неповнолітніх в інформаційному просторі як об'єкт гуманітарної експертизи: український та зарубіжний досвід*. <<http://www.academy.gov.ua/ej/ej14/txts/Kunitskiy.pdf>> (2016, May, 03); Кузнєцова, О. (2009). *Правовий захист малолітніх і неповнолітніх від шкідливого впливу ЗМІ в Україні та за кордоном*. <http://www.lnu.edu.ua/faculty/jur/publications/visnyk26/Statti_Kuznecova.htm> (2016, May, 08)

information is a prerequisite for democratic development. However, abuse of the right of freedom of information can lead to inefficiency of democratic system, i.e. it can cause the national danger, the public disorder, promote violent change of government, incitement to ethnic, religious, regional, racial hatred, limiting the human right to privacy. Therefore, every citizen should be responsible for distributed information in the form of certain restrictions.

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