

РОЗДІЛ 4 ГОСПОДАРСЬКЕ ПРАВО, ГОСПОДАРСЬКО-ПРОЦЕСУАЛЬНЕ ПРАВО

UDC 342.72/73

DOI <https://doi.org/10.32782/2524-0374/2020-8/47>

SUBJECTIVE RIGHT TO INFORMATION IN THE SYSTEM OF RIGHTS AND FREEDOMS OF A PERSON AND A CITIZEN IN UKRAINE

СУБ'ЄКТИВНЕ ПРАВО НА ІНФОРМАЦІЮ В СИСТЕМІ ПРАВ І СВОБОД ЛЮДИНИ ТА ГРОМАДЯНИНА В УКРАЇНІ

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The article examines the right to information in the system of human and civil rights and freedoms in Ukraine. It is emphasized that the right to information is one of the most relevant in the era of digital and information development. Every day every ordinary citizen uses the legal opportunities associated with the free receipt, use, distribution, storage and protection of information necessary for the implementation of their rights, freedoms and legitimate interests. The purpose of this article is to clarify and theoretically generalize scientific knowledge about the place and role of the right to information in the classification of human and civil rights and freedoms on various grounds. To achieve this goal, the following tasks were identified: to summarize the current state of scientific thought regarding the concept of the right to information; provide a constitutional and legal characteristic and argue the place of the right to information in the system of rights and freedoms in Ukraine, taking into account various grounds for the classification of rights and freedoms. The research methods were chosen taking into account the purpose of the research; they were the formal-logical method, the method of theoretical generalization, the method of system-structural analysis, the anthropological method, etc. The concept of the right to information as a subjective human right was highlighted. Modern cataloging of human rights is inextricably linked with the genesis of these rights, the emergence of new rights and freedoms. Thus, the article examines the place of the human right to information in the classification of the rights and freedoms of man and citizen on the following grounds: by content; by the time of positive consolidation; by the method of positive consolidation; by subjects; depending on the type of subject (or subjects of implementation); by the degree of absolutization; depending on the form of consolidation; depending on their social significance (or by the nature of formation); depending on the civil status of the person; depending on their significance for a person; by functional purpose. The definition of the "catalog of human rights" was further developed. The right to information is one of the fundamental human and civil rights, and therefore requires close attention from scientists and practitioners in order to further improve various aspects of its regulation in the current legislation of Ukraine.

Key words: human rights, classification of human rights, human rights system, subjective rights, right to information.

У статті розглядається право на інформацію у системі прав і свобод людини та громадянина в Україні. Наголошується на тому, що право на інформацію виступає одним із найбільш актуальних в епоху цифрового та інформаційного розвитку. Щодня кожен пересічний громадянин використовує правові можливості, пов'язані з вільним одержанням, використанням, поширенням, зберіганням і захистом інформації. Метою статті є з'ясування та теоретичне узагальнення наукових знань щодо місця та ролі права на інформацію у класифікації прав і свобод людини та громадянина за різними підставами. Для досягнення поставленої мети були виділені такі завдання: узагальнити сучасний стан наукової думки щодо поняття права на інформацію; надати конституційно-правову характеристику й аргументувати місце права на інформацію у системі прав і свобод в Україні з огляду на різноманітні підстави для класифікації прав і свобод. Методи дослідження були вибрані з огляду на мету дослідження; ними виступили формально-логічний, метод теоретичного узагальнення, системно-структурного аналізу, антропологічний тощо. Висвітлено поняття права на інформацію як суб'єктивного права людини. Сучасна каталогізація прав людини нерозривно пов'язана із генезою цих прав, появою нових прав і свобод. Так, у статті досліджено місце права людини на інформацію у класифікації прав і свобод людини та громадянина за такими підставами: за змістом; за часом позитивного закріплення; за способом позитивного закріплення; за суб'єктами; залежно від виду суб'єкта (або за суб'єктами реалізації); за ступенем абсолютизації; залежно від форми закріплення; залежно від соціальної значущості (або за характером утворення); залежно від громадянського стану особи; залежно від значення для людини; за функціональним призначенням. Розвинуто визначення поняття «каталог прав людини». Право на інформацію є одним із основоположних прав людини та громадянина, а тому потребує прискіпливої уваги з боку науковців і практиків з метою подальшого удосконалення різноманітних аспектів його унормування у чинному законодавстві України.

Ключові слова: права людини, класифікація прав людини, система прав людини, суб'єктивні права, право на інформацію.

Introduction. The XXI century is a time of rapid development of human and civil rights and freedoms, characterized not only by the emergence of new rights, but also by the expansion of the content of existing ones. According to the Constitution of Ukraine, the content and direction of the state's activities are determined precisely by human rights and freedoms (part 2 of article 3). It is difficult to overestimate the need for full and comprehensive legal regulation of human rights and freedoms, their realization, implementation of international legal standards into domestic legislation, etc. The right to information is one of the most relevant in the era of digital and information development. Every day, every ordinary citizen uses the legal opportunities associated with the free receipt, use, distribution, storage and protection of information necessary for the implementation of their rights, freedoms and legitimate interests (i.e. in the definition of the Law

of Ukraine "On Information" from 02.10.1992 № 2657-XII with appropriate changes and additions).

It should be noted that it is rather difficult to clearly and unambiguously determine the place of the human right to information in the system of rights and freedoms. This is explained by a number of factors, among which one can note insufficient theoretical research, the lack of a unified view of scientists and practitioners on the concept and content of this right, as well as the corresponding gaps and contradictions in the current legislation of Ukraine. That is why an attempt at theoretical generalization with the aim of further defining the right to information in the classification of human rights and freedoms on various grounds seems appropriate.

The right to information – subjective human right

First of all, it should be noted that the right to information should be considered precisely as a subjective right. Scientists

have different understandings of the concept, content, signs of subjective rights. As noted by I.V. Venediktova, the implementation of subjective law presupposes the presence of three possibilities: 1) the ability of an authorized person to carry out unilateral actions within the limits of his/her right; 2) the ability to require the obligated person to perform certain actions; 3) the ability to apply to state authorities for the protection of the violated right [1, p. 113].

A slightly different theoretical position is that subjective human rights are considered as: 1) the ability to enjoy a certain social benefit (to satisfy their interests and needs); 2) the opportunity to act (the right to their own behavior of a person with legal capacity); 3) opportunities to demand (the right to decent behavior of others); 4) the possibility of protection (the right to appeal to the competent authorities of the state and activate the coercive mechanism if the right is violated [4, p. 46].

Let's refer to part 2 of art. 34 of the Constitution of Ukraine, which proclaims that everyone has the right to freely collect, store, use and disseminate information orally, in writing, or in any other way – of his choice [6] and part 1 of art. 5 of the Law of Ukraine "On Information", which states that everyone has the right to information, which provides for the possibility of free receipt, use, dissemination, storage and protection of information necessary to exercise their rights, freedoms and legitimate interests [11].

As you can see, the abovementioned norms already make it possible to characterize the human right to information as subjective, since they fix the list of legal opportunities that this or that person uses. Such opportunities can be called «active», since for their realization a person needs to perform certain actions. By carrying out these actions, a person can satisfy his own interests and needs.

The current legislation of Ukraine details the given basic fundamental provisions, securing the system of guarantees of the right to information (in particular, in article 6 of the Law of Ukraine "On Information"). Among these guarantees, there are also norms according to which the right to information is ensured by the creation of an appropriate implementation mechanism (clause 1 of part 1 of article 6); creating opportunities for free access to statistical data, archival, library and museum funds, other information banks, databases, information resources (clause 2, part 1, article 6); the consolidation of the duties of the subjects of power: to inform the public and the media about their activities and decisions made (clause 3, part 1, article 6); determine special units or responsible persons to ensure access to information for those who request it (clause 4 of part 1 of article 6); implementation of state and public control over the observance of legislation on information (clause 5 of part 1 of article 6), as well as establishing responsibility for violation of legislation on information (clause 6 of part 1 of article 6). As you can see, the legislator clearly indicates the legal possibilities to "demand", in particular, from certain officials to act in a certain way, satisfying the legal possibilities enshrined in the law that correspond to the content of the human right to information.

Considering the abovementioned, it is impossible not to agree with the opinion of E. Chernykh that subjective law in comparison with law in the objective sense is distinguished by a sign of greater concreteness in the context of personalization [13, p. 217].

The right to information in the classification of human rights

As M.M. Matskevich rightly notes, human rights and freedoms are a category that is constantly evolving, its content, legal content and wording change [8, p. 61]. From the most fundamental right – the right to life, the list of human and civil rights and freedoms has expanded significantly, which allows scientists and practitioners to talk about the "catalog of human rights".

The catalog of human rights should be understood as the entire set of rights and freedoms guaranteed by international standards and the internal legislation of the state. The presence of a large number of human rights, in addition to combining them into the so-called "catalog", makes it possible to carry out classification on various grounds. The classification of human rights should be understood as the division of the entire set of human rights into separate groups (categories), depending on separately defined criteria.

Why is this important from a practical point of view? Human rights, like any sphere of human activity, requires its own logical ordering, without which it is impossible to comprehend their entire totality. Human rights are heterogeneous in their content, characterized by varying degrees of consolidation and provision by the state. That is why the determination of the place of each separate right in the complex and multifaceted system of human rights undoubtedly serves as a definite guideline for both scientists and practitioners, and also, first of all, for the legislator. At the same time, it is extremely important to clearly define the criteria (grounds) for classification, since incorrectly defined criteria are the basis for the incorrect distribution of human rights into groups, which, in turn, distorts the idea of human rights. The greatest practical importance for determining the place of each individual human right in the system of rights and freedoms is in the adoption of the Basic Law of the state, the development of current laws, etc., which, as N.A. Elnikova notes, can help to ensure the completeness and validity of the sequence of presentation of such rights in legislation [3, p. 81]. The opinion of I.L. Litvinenko is quite efficient in this regard: "the classification of human rights is not an end in itself. The task of such a species distribution is to optimize the system of human rights and freedoms in order to increase the efficiency of their implementation" [7, p. 63]. To determine the human right to information, developed and already known to the science of constitutional law, the classification of human rights and freedoms will be applied.

The most common is classification of rights *by content*. According to it, human rights are allocated in accordance with the spheres of public life into personal, political, economic, social and cultural. The ability of an individual to freely, at his own discretion (i.e., without the intervention of others), to determine his behavior in the sphere of his private life is, as it is known, the content of personal moral rights (A.A. Odintsova, E.V. Dergachev, 2013).

According to the time of the *positive consolidation* of human rights and freedoms, they are divided into three generations:

- the rights of the first generation – inalienable personal (civil) and political rights, enshrined as a result of bourgeois-democratic revolutions;
- the rights of the second generation – socio-economic rights enshrined as a result of the struggle of workers to improve their economic situation and improve their cultural status)
- the rights of the third generation – collective (or solidary) civil and political rights enshrined after the Second World War – for example, the right to peace, the right to self-determination of peoples, etc.); and now we are talking about the formation of the fourth generation of human rights, which include biological rights or rights in the field of information technology.

The place of the right to information is determined in different ways by scientists in this classification. Several approaches can be distinguished:

1) the right to information applies to all generations [2, p. 119; 9, p. 116];

2) the right to information is attributed only to the third generation of human rights, taking into account the time frame of their consolidation [10, p. 20; 12].

According to the method of *positive consolidation*, human rights are divided into positive and negative. The right to infor-

mation should be attributed specifically to positive rights, since for its implementation it is necessary to take appropriate active actions by the state (for example, subparagraph 1 of paragraph 3 of article 10 of the Law of Ukraine “On Access to Public Information” enshrines the obligation of information managers who own information about the person, to provide it freely and free of charge at the request of the persons to whom it concerns, except in cases provided by law).

Depending on the *subject*, the rights are divided into rights of a person and the rights of a citizen. In order to determine the place of the right to information in this classification, it is necessary to refer, first of all, to the text of the Constitution, part 1 of art. 34 of which stipulates that this right belongs to “everyone”. The category “citizen” is narrower in its content and is included in the category “everyone” used in the Basic Law. That is why the right to information is classified as a right of a person.

Depending on the *type of subject* (or on the subjects of realization), human rights are divided into individual and collective rights. The current legislation establishes that information requestors can be individuals and legal entities, as well as associations of citizens without the status of a legal entity (except for subjects of power) (subparagraph 1 of paragraph 1 of article 12 of the Law of Ukraine “On Access to Public Information”, 2011).

According to the *level of absolutization*, there are absolute rights (that is those that are not subject to limitation) and rights that can be limited. The constitutional right to information belongs to the second group. According to part 2 of art. 34 of the Constitution of Ukraine, the human right to information may be limited by law in the interests of national security, territorial integrity or public order in order to prevent disorder or crime, to protect public health, to protect the reputation or rights of others, to prevent the disclosure of information received in confidence or to ensure authority and impartiality of justice (Constitution of Ukraine, 1996). Restrictions on the realization of the right to information are also enshrined in part 2 of art. 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, 1950. At the same time, the Constitutional Court of Ukraine in its decision in case № 3-154/2019 (3522/19) dated January 22, 2020 noted that the right to access to information is not absolute and may be limited. Moreover, such restrictions must be of an exceptional nature, pursue a legitimate aim, be necessary in a democratic society, and at the same time, most importantly, be provided by the law of Ukraine.

Depending on the *form of consolidation* or on the *source of law* in which the right is enshrined, rights are distinguished

on those, which are fixed in the Basic Law; rights enshrined in international acts; rights enshrined in the laws of Ukraine. The right to information is reflected in all three categories. Among international acts, the Universal Declaration of Human Rights of 1948, the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the International Covenant on Civil and Political Rights of 1966, etc. should be noted. The right to information is directly enshrined in the text of the Constitution of Ukraine in art. 34, 50. With regard to the laws of Ukraine, it is worth noting here the Law of Ukraine “On Information” 1992, the Law of Ukraine “On Access to Public Information” 2011, the Civil Code of Ukraine 2003, etc.

Depending on their *social significance* (or by the character of formation/depending on their significance for a person), basic (fundamental) and complementary rights are distinguished. Basic (fundamental) rights reflect the most significant interests of a person; therefore, the right to information should be classified as a fundamental one.

Depending on the *civil status of a person*, human rights are divided into the rights of a citizen, the rights of a foreigner and the rights of a stateless person. In this case, all three of the above categories have the right to information.

According to the *functional purpose*, rights are divided into material and procedural. Since the material norms provide for the rights and obligations of subjects of law in the field of material and intangible benefits; fix the legal facts that create, change and terminate the legal relationship of the definition; contain an indication of the possibility and limits of using material, socio-political, ideological, organizational and legal means of ensuring the effectiveness of law enforcement acts (A.N. Dudnik, 2008), then the right to information should be attributed to material rights.

Conclusions. Subjective rights are a dynamic category. They change, evolve and expand their content and scope over time. At the same time, we have the opportunity to observe a controversial situation in which the subjective rights and freedoms of a person, on the one hand, are constantly in the focus of the state and society, and on the other hand, they are constantly criticized and to a certain extent leveled out. Taking into account the versatility and meaningfulness of the right that is being investigated, it is not always possible to refer it to one of the groups within the known classifications, since, as one can see, it can be simultaneously assigned to several categories. At the same time, the right to information is one of the fundamental human and civil rights, and therefore requires close attention from scientists and practitioners in order to further improve various aspects of its regulation in the current legislation of Ukraine.

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