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The right to information from the point of view of legal theory, international law and international relations

Право на інформацію з точки зору теорії права, міжнародного права та міжнародних відносин

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Abstract

Taking into account the informatization of public life, the growing role of information, and the development of the information society, the right to information is important not only as a certain set of powers but also as a priority vital interest, the implementation of which has a decisive impact on the life of a modern person. The purpose of the work is the study of information rights in the context of law per se, from the point of view of establishing the researched law at the international level and with regard to international relations regarding information. Research methodology consists of such methods as comparative legal method, inference, hermeneutic method, induction and deduction method, and historical legal method. As a result of the conducted research, it was concluded that the legal regulation of the right of citizens to access public information is one of the most important guarantees of the development of any democratic society. It is concluded that the establishment of the right to information and access to public information at the international level has a positive effect on the realization of fundamental rights by citizens, as well as on the activities of authorities and institutions of public society.

Keywords: information, right to information, access to information, information with limited

Анотація

Зважаючи на інформатизацію суспільного життя, зростання ролі інформації та розвитку інформаційного суспільства, права на інформацію має значення не тільки як певна сукупність правомочностей, а й як пріоритетний життєво важливий інтерес, реалізація якого визначально впливає на життєдіяльність сучасної людини. Метою роботи є дослідження інформаційних прав (права на інформацію, право від інформації, право на доступ до інформації) в контексті права як такого, з точки зору закріплення досліджуваного права на міжнародному рівні та з огляду на міжнародні відносини з приводу інформації. Методологію дослідження складають такі методи, як: порівняльно-правовий метод, умовивід, герменевтичний метод, метод індукції та дедукції, історико-правовий метод. У результаті проведеного дослідження зроблено висновок, що правове регулювання права громадян на доступ до публічної інформації є однією з найважливіших гарантій становлення будь-якого демократичного суспільства. Підсумовано, що закріплення на міжнародному рівні права на інформацію та доступ до публічної інформації позитивно впливає на реалізацію громадянами основоположних прав, а також на діяльність органів влади та інститутів громадянського суспільства.

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access, international standards, international rights.

Introduction

The right to information is a fundamental right that embodies freedom of speech and reflects the principle of democracy. The development of this right characterizes the degree of progress of society and the level of personal freedom of an individual that can be ensured by the state. Recognition and provision of human rights and freedoms is the main duty of the state. Informational rights provide guarantees to citizens that the latter have the opportunity to have beliefs and not be subject to persecution in connection with this, to defend ideas and control the activities of the authorities.

The all-pervasive influence of the information sphere contributed to the transformation of legal opportunities for obtaining information. More and more scientists are considering the concepts of information and information rights. At the same time, with the passage of time, with the understanding of the importance of information rights and their social necessity for each person, the interest in the research only grew, and, as a result, the scientific output was enriched every year (Vakaryuk, 2018). Whereas, the issue of the right to information in the context of law, international law, and international relations is not sufficiently researched, and there are currently no comprehensive studies of this issue.

In today's realities of the information society, the complex of rights and freedoms in the information sphere is considered inviolable and inalienable. The right to information itself is multifaceted and includes such powers as the need to know about the creation of certain information resources that relate to the sphere of a person's social or personal life, the ability to request and receive publicly significant or personal information from entities authorized to dispose of it entities, distribute it freely and require confidentiality in cases established by law.

Information communication plays an equally important role: obtaining information, protecting information, and obtaining access to information with limited access. In this context, international standards are important. In accordance with international standards that regulate the procedure for access to public information, the

Ключові слова: інформація, право на інформацію, доступ до інформації, інформація з обмеженим доступом, міжнародні стандарти, міжнародні права.

right to freedom of thought and speech, to the free expression of one's views and beliefs, to the collection, storage, use, and dissemination of information orally, in writing or in any other way - at one's own discretion - is guaranteed. At the same time, it is noted that the exercise of these rights may be limited by law in the interests of national security, territorial integrity, or public order in order to prevent riots or crimes, to protect public health, to protect the reputation or rights of other people, to prevent the disclosure of information, received confidentially, or to maintain the authority and impartiality of justice. In view of the above, the right to information is an important right and needs to be researched in the context of law, international law, and international relations.

The object of research is the right to information in the context of law, international law, and international relations. The subject of the study is social relations that arise during the exercise of the right to information, as well as those that influence the exercise and provision of this right within the framework of the national and international context.

Theoretical Framework or Literature Review

International legal standards of the right to access to public information are analyzed in the work of Ablyakimova (2013). As a result of the research, the author concluded that in modern conditions, the right to access public information can be considered an independent right of a person and a citizen, which ensures the satisfaction of his information needs, participation in state affairs, the realization of other rights, in particular the right to freedom of speech. According to the author, the meaning of the right of access to information has increased precisely in modern society, and this is connected with those political, social, and economic transformations that accompany the processes of globalization and informatization and are integral features of the information society. On the basis of these processes, the formation of international legal standards in this field took place, which has been rapidly developing in the last decade. Currently, access to information is one of the important criteria of a democratic society, and, accordingly,

ensuring access to information becomes the duty of the state in the context of ensuring democracy and the realization of human rights and freedoms.

Thus, Barabash and Yatskiv (2021) analyzed information rights as a component of the fourth generation of human rights. The authors drew attention to the fact that the increase in the volume of information belonging to a person puts forward new requirements for legal methods of protecting the human right to information. Timely response to changes in the information sphere, including in the field of electronic interaction between the citizen and the state, will make it possible to develop new ways of ensuring the human right to information, the implementation of which can accelerate the legal development of Ukraine in the conditions of the information post-industrial society and the rule of law, which protects the information sphere every person has no less than other, more traditional rights and freedoms.

The main approaches to understanding the concept of "human information rights" were studied by Vakaryuk (2018). The author concluded that information rights are an opportunity, not an obligation of a person, and a person determines the scope and extent of the realization of his right at his own discretion. From the analysis of the researcher's work, it was concluded that the legal regulation of the right to information and other informational rights is not limited to the norms of constitutional law, but is an interdisciplinary institution and includes the norms of administrative, civil, financial, environmental, criminal and other legislation. The author provides the following definition of human information rights, namely, as certain human capabilities necessary to meet the informational needs of his life and development in specific historical conditions, which are objectively determined by the achieved level of development of society and information and communication technologies, are provided by socially determined obligations of other subjects and are protected by public authorities.

International law on access to information was studied by Guivan (2019). The author noted that access to information that is of public interest is one of the main tools for increasing the openness of government. Obtaining the specified information significantly affects the expectation and determination of the legal status of a person, and gives him the opportunity to plan changes in his personal life and the life of society. Therefore, in the opinion of the author, it is important to establish clear and understandable

rules of conduct in the field of access to information. Thanks to the study of international legislation, it becomes possible to direct national efforts in the field of ensuring proper access to information to the priority of its openness. At the same time, the refusal should be an exception based exclusively on legal grounds.

Conceptual approaches in international law to freedom of information are outlined in the work of Zabara (2021). The author draws attention to the conditions for the implementation of freedom of information, means of implementation, and forms of such implementation. The general conditions for the realization of freedom of information (freedom to seek, receive, and disseminate information), in accordance with the provisions of international legal acts, are as follows: the freedom to seek information enables a person to search for information independently and without restrictions not only on the territory of the state but also outside its borders; freedom to receive information provides an opportunity to independently and without restrictions receive information from any national and foreign natural and legal persons and states; freedom to disseminate information provides an opportunity to independently and without restrictions disseminate information on the territory of the state and beyond. The author noted that the conditions for implementing freedom of information should not depend on the means and forms of its implementation. The means of implementing freedom of information define a set of methods for its implementation. In general, international law does not restrict a person from using the means of implementing freedom of information to search, receive, and disseminate information. Such media include printed publications, broadcast (radio and television), and digital media. Forms of implementation of freedom of information determine the types and methods of techniques for its implementation. Universal international legal acts provide a wide list of forms of implementation of freedom of information. It was noted that the implementation of freedom of information is also associated with certain restrictions.

In Zaduvaylo's article (2017) the issue of implementing the right to access information containing state secrets in global practice is analyzed. Attention is drawn to the fact that in the European Convention on Human Rights, the rights defined in it are formulated in general terms, and the right is filled with the specific content already in the decisions of the European Court of Human Rights. There is no right to access to information per se in the Convention,

instead, Art. 10 of the Convention enshrines the right to freedom of expression, which includes the freedom to hold one's views, to receive and transmit information and ideas without interference from state authorities and regardless of borders. Therefore, the recommendations of the Council of Europe "Global principles of national secrecy and the right to information" were additionally developed, which try to solve the issue of reasonable limitation of the scope of state and official secrets. The author is convinced that the necessary actions must be taken to resolve the issue of secrecy practices that still prevail in the public sector of our country.

Certain aspects of the right to access to information are analyzed in the work of Yesimov (2016). The author analyzed the regulation of access to information, according to the norms of international legislation, which makes it possible to formulate several principles that the domestic legislator should take into account when regulating this issue. One of them is the presumption of openness, which means that the authorities are obliged to provide the requested information unless there are legal grounds for refusing to provide the necessary information. When refusing to provide information, the authorities are obliged to indicate the reason for the refusal and its legality. Mandatory disclosure of information means bringing information to the public and other dissemination by authorities of information of public interest. The publication of key information about the activities of authorities should become a regular and widespread practice. For this form of dissemination, all possible ways should be used, in particular, information technologies. Additionally, the study noted that an exhaustive list of exceptions to the presumption of openness of information should be established. One of the main criteria for refusal to provide information should be damage or a threat to the security of the state.

Kashka (2018) drew attention to the problematic issues of the implementation of the right to information. It was concluded that access to information is the foundation of democratic development, a tool for ensuring the openness and control of the government, a means of increasing the activity of citizens, their consciousness, and political culture, and a form of realizing the rights of citizens to receive complete and objective information. According to the author, the government should be interested in its openness, because without it there is no trust in the measures and reforms that it initiates and carries out. However, even the creation of the best possible legislation will not

allow to ensure openness until certain changes occur in the mass consciousness of civil servants and society as a whole. As a result, it was concluded that the right to information is one of the most important human rights, the realization of which has social significance and is a criterion for the functioning of a legal, democratic state.

Practical issues of implementing the right to information in the conditions of martial law are disclosed in the article by Lubinets (2023). Human rights commissioners have noted that quite often information managers refer to the legal regime of martial law as a sufficient reason for applying the postponement, without justifying the specific existing obstacles to fulfilling their duty to ensure the information rights of citizens. In addition, it was noted that information rights are limited during wartime, but this does not mean that administrators should refrain or find reasons for delay.

The issue of international legal protection of the right to information and the right to information is considered in the work of Tsymbaliv (2014). The author concluded that the legal regime of the right to information is provided for in various aspects in the national legislation of the EU countries, but it corresponds to the general European principles reflected in the acts of international law regarding the right to information in relation to the right to information.

The international experience of implementing citizens' right access to public information was studied in the work of Shyshko (2016). Summarizing the research, the researcher concluded that a characteristic feature of a number of countries of the world is that the process of access to public information from its carrier (owner) to the user can occur both directly and with the help of information intermediaries. The role of such an intermediary is most often performed by mass media. Journalists, using various sources of information, perform a number of social functions. They carry out search, analysis, selection of informational materials, and issue a finished product to the consumer of information. However, the advent of the Internet has significantly changed traditional information consumption. Users in this system have come much closer to the primary sources of information, sometimes having the opportunity to contact its creators directly. However, this does not mean that the role of information intermediaries will decrease in the future. On the contrary, it will only increase. As shown by the foreign experience, in the author's opinion,

establishing direct or indirect control over mass media for the government, which is guided in its activities by principles far from democracy and freedom of speech, does not seem difficult. However, forms of restricting access to information on the Internet by any authority cannot be too effective.

Finally, Yurchenko and Kostova (2021) paid attention to the study of EU international standards on access to public information. It is noted that the national legislation of Ukraine in the field of access to public information, according to criteria such as systematicity, consistency, and compliance with international standards, is at a level that can be compared with the level of EU legislation. However, the corresponding laws of some EU countries are more successful from the point of view of detailing certain aspects of the process of dissemination and publication of public information, contain in some places broader interpretations of the very concept of "public information", connect it with the problem of the functioning of public information within the limits of the entire set of legal relations, arising in this area.

Methodology

The methodological basis of the research is a complex of philosophical and worldview approaches and general scientific and legal methods.

During the analysis of the right to information in the context of international law, law, and international relations, the comparative legal method was used. This method is used when comparing concepts, phenomena, and processes within one historical section or a clearly defined theoretical model and in the context of a historical retrospective. As for the topic of the study, the comparative legal method was used to compare the international legal establishment of the right to information as international law, national law, and the object of international legal relations, to compare legal regulation from a retrospective point of view and to compare the understanding of the researched law in different countries.

The research methodology provides for the use of "conditional inference" as a methodological form of thinking, as a result of which a new judgment containing new knowledge is formed from one or several judgments. In this research, the method is used to move from judgments regarding the issue of regulation of the right to

information in certain countries and in the analysis of individual international legal acts establishing provisions on information rights, information protection, and public access to information. In addition, on the basis of the inference, the conclusion was formulated that the right to information is ensured by international legal guarantees and is an international standard that affects its regulation by the national legislation of states.

The use of the hermeneutic method made it possible to decipher the content of the right to information. The specified method is a special method of interpreting a legal norm, which involves not only the literal interpretation of the text of the norm subject to interpretation but also taking into account the legal situation in which the norm is implemented. The application of this method in the research made it possible to interpret such legal categories as "law", "information", "right to information", "access to information", "restrictions", "international standard", "ensuring information rights", as well as use the official explanation of the content of these legal norms.

The application of the induction method was used to formulate conclusions regarding the right to information based on individual private observations. This method is based on the fact that the logic of thinking develops from specific to general. For example, one of the stages of our research was the accumulation of empirical facts regarding the regulation of the right to information at the international level and the place of such consolidation in national legislation, as a result of which an inductive conclusion and proposals were formulated on ways to improve the provision of the right to information and its regulatory and legal consolidation.

When applying the deduction method, in contrast to induction, general judgment was taken into account. In particular, with the help of deduction, the general provisions on the establishment of the right to information in international and national acts are analyzed, with further highlighting of the features of such establishment and the actual possibility of realizing this right.

It is impossible to trace the development of modern sources of international law without researching the historical and legal aspects of this issue. Thus, the formation of law is significantly influenced by the historical factor, and therefore legal phenomena must be studied in relation to the history of the country. Therefore, the

historical-legal method was applied in the process of addressing the genesis of the subject of research and analysis of the varieties of sources of international law in the context of the right to information in chronological order. Due to this method of research, the trend of the development of international standards of the right to information has been determined.

Results and Discussion

The right to information, which is usually understood as the right to access information that is at the disposal of state bodies, is now widely recognized as a fundamental right of every person. In today's realities, there is a trend towards legal recognition of this right, as various countries of the world striving for democracy have either already adopted or are preparing laws on freedom of information for adoption.

The right to access requested information held by public authorities is the main aspect of the right, but it is quite clear that it is not limited to it. Another equally important aspect, which is included in most freedom of information laws, is the obligation of public bodies to publish, even in the absence of requests, key information, for example, regarding their work, policies, opportunities for public participation in their work and how to make a request for information (Zaduvaylo, 2017).

Information and access to it is an important component at different levels. The key principles of the right to information are established at the international level. Let's consider the international legal acts establishing the provisions on the right to information in more detail.

Table 1.
International legal regulation of the right to information.

Regulatory Act	Key provisions
Universal Declaration of Human Rights (United Nations, 1948)	Enshrines the right of every person to freedom of beliefs and to their free expression. In particular, this right includes the freedom to hold one's beliefs without hindrance and the freedom to seek, receive, and impart information and ideas by any means and regardless of national boundaries.
Right to freedom of opinion and expression Commission on Human Rights resolution (Commission on Human Rights, 1995)	The act affirms the right of every person to freely hold his beliefs, as well as the right to freedom of expression, and declares that the exercise of the right to freedom of expression imposes special duties and responsibilities and therefore may be subject to certain limitations, which, however, are prescribed by law and are necessary to respect the rights and reputation of other persons, to protect state security, public order, health and morals of the population or to ensure public health and morality.
International Covenant on Civil and Political Rights (Council of Europe, 1966)	Establishes the general obligation of States Parties to take the necessary measures, in accordance with their constitutional procedures and the provisions of this Covenant, to take such legislative or other measures as may be necessary for the realization of the rights recognized in the Covenant. But this duty of the state, again, to a greater extent has the character of prohibition of intervention. The very right to free expression of one's opinion (according to paragraph 2 of article 19 of the 1966 Covenant) includes the freedom to seek, receive, and disseminate any information and ideas, that is, freedom of information.
Convention against Corruption (United Nations, 2003)	The UN Convention against Corruption stipulates that member states must provide the public with real opportunities for effective access to information, and take measures to identify, encourage, and protect the freedom to seek, publish, and disseminate information about corruption. Participating States shall take measures necessary to increase transparency in public administration, including the adoption of procedures or provisions allowing the general public to obtain, when necessary, information on the organization, operation, and decision-making processes of public administration, with due regard to the protection of privacy and personal data about decisions and legal acts that concern members of the public. Art. 13 of the UN Convention against Corruption provides for the need to apply measures aimed at strengthening transparency and promoting the involvement of the population in the processes of making administrative decisions; ensuring effective access to information for the population; carrying out measures to inform the population, which contribute to fighting corruption, as well as the implementation of public education programs, including curricula in schools and universities. In addition, Art. 10 provides for the need to adopt procedures and rules that allow members of society to receive, in appropriate cases, information about the organization, functioning, and decision-making

<p>Convention on the Protection of Human Rights and Fundamental Freedoms (Council of Europe, 1950)</p>	<p>processes in the public sector and, with due consideration, to provide the necessary conditions for the protection of private life and personal data, about decisions and legal acts that violate the interests of the population.</p> <p>Defines that everyone has the right to freedom of expression. This right includes freedom to hold opinions and receive and impart information and ideas without interference from public authorities and regardless of frontiers. According to this norm, state authorities are mentioned only in the context of the prohibition of interference in the exercise of the right to receive and transmit information, and there are no imperative obligations to facilitate such actions.</p>
<p>On data protection and freedom of information: Recommendations (Council of Europe, 2002)</p>	<p>In accordance with the Recommendations, member states must guarantee every person, after making a request, the right of access to official documents that are at the disposal of state authorities. This principle should be applied without any discrimination, including on the basis of state affiliation. At the same time, it is noted that member states can limit the right of access to official documents. Restrictions must be clearly defined in legislation, be necessary in a democratic society, and be proportionate to the purpose of protection: national security, defense, and international relations; protection of public order; prevention, search, and investigation of criminal activity; private life and other legitimate private interests; commercial and other economic interests, such as private, and state ones; equality of parties in court proceedings.</p>
<p>Fair trial issues in criminal cases concerning espionage or divulging state secrets (Resolution 1551, 2007)</p> <p>The Global Principles on National Security and the Right to Information (The Tshwane Principles) (Open Society Foundations, 2013)</p>	<p>The document recalls the importance of freedom of expression and information in a democratic society, in which it should be possible to freely expose corruption, human rights violations, environmental destruction, and other abuses of power.</p> <p>The principles are based on international (including regional) and national legislation, standards, best practices, and works of experts. They relate to national security, not all reasons for withholding information. All other public grounds for restricting access must at least meet these standards.</p>

Data provided by United Nations, 1948; Commission on Human Rights, 1995; Council of Europe, 1966; United Nations, 2003; Council of Europe, 1950; Council of Europe, 2002; Resolution 1551, 2007; and Open Society Foundations, 2013.

Considering the above-mentioned international legal acts, it can be concluded that informational rights and freedoms, like other human rights, are declared in a general, declarative form in international legal acts and conventions. Therefore, the practice of applying and protecting human information rights at the universal and regional level is of great importance for the practical exercise of information rights by a person.

However, there are many aspects to the issue of the right to information. In particular:

- the general right of the public to have access to information of public interest from various sources;
- rights of mass media to access information;
- the rights of individuals to request and receive information of public interest and information that may affect their personal rights (Zabara, 2021).

A feature of the realization of the right to information is that the right to freedom of opinion and free expression is an activator of other rights. Therefore, the proper and proportionate development of society constantly

requires the appropriate acquisition, analysis, and dissemination of true information.

Regarding the understanding of freedom, taking into account the provisions of international legal acts, the main elements of the concept of freedom are "freedom of access to the state" and "freedom from the state". The first element concerns the individual's participation in state affairs. There is an additional shade of "collectivity" in it, and the rights of the individual to assemble and to create their own organizations follow from it. The second element concerns the personal life of an individual and provides for its comprehensive protection from any unlawful external interference. In this case, the state, in principle, is not obliged to ensure this right by applying positive measures.

In today's conditions of information activity, the search, acquisition, and dissemination of information continue to play an important role in the realization of the right to free expression of one's opinion in the latest conditions of large-scale use of information and communication technologies and, in addition, contribute to the formation of new views, approaches, and concepts. The conditions of realization of Freedom of Information provisions provide

prerequisites and circumstances that condition its observance. According to the general conditions, the implementation of freedom of information (freedom to search, receive, and disseminate information), in accordance with the provisions of international legal acts, should take place regardless of state borders.

At the same time, issues related to access to information are regulated both at the international and national levels. Regarding foreign entities, it is important to pay attention to the fact that each country in the EU has its own law on access to public information of citizens, which in different ways interprets the process of obtaining public information more broadly than the general rules of the EU. Thus, in a number of countries, not only are the rights of requesters, managers of information, and the duties of the latter prescribed, but also social relations related to the right of access to public information, its reuse in the public sector, are defined. In a number of countries, a comprehensive definition of public information is provided, which includes any information related to public life, which enables citizens to form their own opinions on the activities of relevant bodies in accordance with the legislation (Shyshko, 2016).

Thus, it can be concluded that in different countries, the relationship between citizens and authorities in the field of access to information is regulated differently. In the broadest sense, the principle of public access to information means that citizens and mass media have the right to receive information about state and municipal laws and measures. From a theoretical point of view, this principle is closely related to the principle of freedom of the press, which means the right to the free dissemination of truthful information, that is, information can be withheld from the public only when it is necessary to prevent damage to the legitimate interests of citizens and the state.

Conclusions

As a result of the study of the right to information in the context of law, international law, and international relations, the following conclusions were made:

1. The modern concept of the freedom of information institute has been developing over the past seventy years. At the same time, general conceptual provisions were formulated within the framework of the United Nations Organization and define freedom of information, its basic principle,

the role of the institute, and the importance of the institute in the development of modern international relations.

2. The transformation of the freedom of information institute takes place within the framework of international legal regulation of the protection of human rights and fundamental freedoms. At the same time, the state of international legal regulation of the Institute of Freedom of Information is influenced by the development of information and communication technologies and the content of disseminated information.
3. An important role in ensuring the right to information is the real provision of the right to access to information. The publication of information about the activities of authorities and the performance of public functions by them indicates the priority of protecting the informational rights and interests of a specific person.
4. With regard to international relations, it is noted that the world community's common vision of the key conceptual provisions of the right to information is based on a generally recognized understanding of freedom of information, as well as an understanding of its importance for the international legal regulation of current and future international information relations. It consists of the fact that the general concept of freedom of information is defined, the category is assigned to fundamental human rights; freedom of information was defined as a criterion for all types of freedom to be protected. In addition, the content of freedom of information and the conditions for its implementation are defined, namely the right to collect, transmit, and publish information everywhere and without hindrance.

Regarding further scientific research, we consider it necessary to investigate the issue of international legal provision of access to information as a component of the right to information.

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