

Modern International Legal Approaches to the Implementation of Human Rights to Information

Nugmanov Nugman Abdullaevich,
Ph.D,

The University of World Economy and Diplomacy, Tashkent, Uzbekistan
e-mail: nugmann@mail.ru

Abstract. This article discusses the formation of human rights in the field of information as the logical consequence of the development of international human rights law and international information law, namely conceptual analysis of concepts of international legal approaches to the human right to information. Necessity of provision of a guaranteed free access of people to information, dissemination and exchange within the institutions of international and national law. The author concludes that the interrelated system of universally recognized rights and freedoms develops in the information sphere in contemporary international law.

Key words: human rights to information, international agreements, freedom of information, restriction of the right to information, international

information law, information space, institute for human rights for information. Contemporary international law is characterized not only and not so much by an extension and an intensification of cooperation of States to address international legal questions, but also by a wide range of economic and social problems. Among these problems, certainly, an important issue about human rights remains which is the focus of the UN, other international organizations and States themselves. It is known that one of the most important directions of development of international cooperation since the adoption of the UN Charter is the development and the adoption of universal standards of human rights and freedoms. Humanity who suffered during the Second World War, could not regard the protection of

human rights and fundamental freedoms of the person as a minor issue. Moreover, not coincidentally, the most important goal of the UN Charter is the determination to reaffirm faith in fundamental human rights, in the dignity and worth of the human, in the equal rights of men and women.

After the adoption of the UN Charter, the process of developing standards and the development of universal instruments for the implementation of the main goals of the UN began. The result was the adoption of the universal Declaration of human rights, the two international covenants and numerous conventions and treaties on specific human rights issues.

The Universal Declaration of human rights of 1948 marked the beginning of "standardization" in the field of human rights and it has become a benchmark for national legislation. However, in this sense, it was only the first step. There is a need to and an inevitability of development, refinements and additions to the

established list of human rights. Subsequently, the universal Declaration was expanded and fleshed out in numerous agreements on human rights.

An extensive regulatory framework for concerted international action to ensure and protect the human rights and freedom have already been developed. Although the process of improving this framework is far from being complete, the international community is going through a period of application of the developed norms in practice to protect the rights and freedom of the person in the interests of human and national progress, in the name and for the sake of the individual.

Sovereign States have embarked on the path of the active search for possibilities of their interests convergence on the basis of universal values. Policymakers, followed by scientists are increasingly aware of the need to address global problems that threaten the future of humanity, including through the approval of the supremacy of the principles of

international law, democracy and respect for the human rights and freedom at the inter-state level.

The protected and consistently implemented human rights and freedom are considered as the main value in a legal state. The highest value for the international community of States should be the interests and rights of every person, respect for the rights and dignity of all and of each individual. In the process of forming a democratic state in Uzbekistan, the issues related to ensuring the rights and freedom of the individual are undoubtedly of high importance. As stated by the first President of Uzbekistan I. A. Karimov, human rights and democracy are entirely consistent with national interests of Uzbekistan, freedom-loving mentality and psychology of our people.

It is generally accepted that human rights are classified on various grounds. Without going into the theory of matter, it can be noted that among the different types of human rights, the

human right to information is to be highlighted because the right to seek and impart information and the right to its protection are shaping the direction of the entire system of human rights.

It is necessary to proceed from the following conceptual positions for the study of international legal approaches to the human right to information:

Firstly, the modern processes of informatization and globalization have a direct impact on the development and improvement of approaches to human rights in the field of information;

Secondly, the right to information is an integral part of the global information space;

Thirdly, human right to freely seek, receive and impart information, enshrined in international treaties and decisions of international organizations, is recognized by the international community and implemented in the national legislation of many States;

Fourthly, the human right in the field of information has become an

interdisciplinary institute of international human rights law and international information law.

In our opinion, at this stage, the increasing importance of information rights of the individual is associated with the modernization and the democratization, the globalization and the regionalization and other processes. In addition, as rightly noted by D.A.Savelyev, "one of the most important guarantees for the development, the observance and the protection of all universal human rights is information and information rights of the individual".

In connection with the development of information and communication technologies, not only mass media, but also means of personal communication become global and no longer divided by borders. A global information space has arisen, which means the opportunity for a person to obtain and disseminate information on a global scale. Because of its cross-border nature, telecommunications

infrastructure is a field for international communication and international relations. In this regard, in the Okinawa Charter on global information society of 22 July 2000, States identified, inter alia, the following main political courses in the field of information technology (IT): ensuring economic and financial stability, sound macroeconomic management facilitating more accurate planning of the business community and the use of priorities of new information technologies; investment in people for meeting needs for specialists in the sphere of IT and different sectors of economy; ensuring global access and participation in this process, improving the degree of accessibility of administration for all citizens.

We believe that with the development of cross-border transfer of information, globalization of the information sector has become a prerequisite to the increasing of the role of international law in regulating information exchange. In this regard,

an issue of studying human rights to information and its varieties and peculiarities of the international and national legal regulation.

A category of human rights to information consists of types of freedom associated with a guaranteed right to receive certain types of information. A common right implies freely to seek, receive and distribute any type of information that is not prohibited by law (the external aspect), as well as the right to secrecy (internal aspect). Among the different types of information, mass information and personal communication are underlined, which are inseparable.

In our opinion, the activities of people on search, receipt or transmission of information, development of information infrastructure, the invention of new types of information transmission, which formed the information space of the international community, are actually considered as the activity on realization of the right to free search,

obtaining and dissemination of information.

An important part of international relations are relations on the information, which develop the global information space, so it is necessary to consider the phenomenon of the information space in international law in order to ensure the human right to information.

Information space existed before the advent of electronic means, but many of its properties such as its cross-border nature appeared with the advent of radio, and the possible anonymity of the participants – with the advent of digital technology.

We believe that the essence of technological and social processes is that due to the combination of transfer standards of different States a single information carrier is created. This makes possible the direct and transboundary implementation of human rights to information.

It is important to emphasize that the concept of information space

should include traditional and new forms of information exchange. Most attention in international instruments is paid to the latest digital and electronic information exchange, as they gradually become the technological basis of traditional information exchange. However, any important opportunity is important for the realization of the human right to information. In this connection, it can be considered that single information space created by technological advances and the needs of people is the common heritage of mankind. For the purposes of its conservation and development, the concentration of efforts of the international community on both internal and external aspects of the issue is required. Therefore, we believe that problems should be resolved based on priority of the universally recognized human rights and freedom.

It can be noted that the human rights to information, first of all, have the international legal roots. It should

be noted that the Universal Declaration of human rights proclaims the human right to freedom of opinion and expression, including freedom to seek, receive and impart information and ideas through any media and regardless of frontiers (article 19). About twenty years the International Covenant on Civil and Political Rights had been prepared, which contains similar rights in article 19 followed by reservation that legal restrictions of this right can be set for respect of the rights or reputations of others and for the protection of national security, public order, health or morals .

In the last decade, the position of the leading countries in the world in relation to human rights became similar. However, to this day, there is ongoing debate about the interpretation of the provisions on freedom of information. First, the debate is going on the volume and means of banning certain categories of information. Indeed, some categories of information carry some harm, but unreasonable

restrictions on information carry no less harm in a variety of areas, up to the mass death of people. In our opinion, it is not enough to state the principles governing the restriction of that freedom for the study of information on human rights. There is a need to focus also on those categories of information, which are encouraged to proliferation in international law and those specific powers that are associated with the implementation of the right to freedom of information.

The general concept of a single category of “informational human rights” is found in the literature, however his understanding is insufficient. In particular, in a general sense, V. N. Monakov highlights two components: "the right to protection of information on private life and on the receipt of public information". In respect of international recognition of these rights, a significant remark was made that "neither in article 19 of the universal Declaration of human rights of 1948, nor in article 10 of the

European Convention for the protection of human rights and fundamental freedoms 1950 the right to information was still not considered independent. It was assumed that it is an element of freedom of expression".

In our opinion, the human rights to information should include those rights and freedoms, the object of which constitutes information in all its forms. All these rights are closely interrelated, which allows speaking about existence of their system. Consequently, international legal norms proclaiming these rights, as well as specifying the individual rights of the individual, restrictions of these rights, the responsibilities of States for their implementation must be viewed as an interrelated system.

At its first session in 1946, the UN General Assembly adopted Resolution 59(1), which declared that freedom of information is a fundamental human right and represents criterion of all kinds of freedom. These lines of Resolution are

given again in the UNESCO Declaration on fundamental principles concerning the contribution of the mass media to strengthening peace and international understanding, to promoting human rights and the fight against racism and apartheid and incitement to war.

Freedom of information is enshrined in many universal and regional international instruments. However, there is a thesis on the right to communication that exists for relatively long time, Jean D'Arcy noted in his scientific report on the UNESCO conference: "...there is a specific need, a biological need of man to communicate, therefore it seems normal to recognize his right to communicate, since the implementation of this activity depends on its very existence". The communication, according to the position of Jean D'Arcy, has a social dimension: "Every society is born from a communication established between its members". Outlining the concept of right to

communicate, he notes that its new content – the right of individuals or groups of individuals to communicate, should replace the old concept according to which the subject of communication could act only States.

From this point of view, it can be argued that the right to communication should be considered as the sum of freedom of expression and freedom of information.

By considering the various types of information and related aspects of international cooperation, detailing the right to information, we find that the real proof is given to the words of the Declaration of 1946 in the different international legal instruments, among which we can highlight the Johannesburg principles which are developed and adopted by a group of 36 experts from Australia, Britain, Zambia, Israel, India, Kenya, Russia, Northern Ireland, Senegal, Council of Europe, the USA, France, Switzerland, Sweden, Yugoslavia, South Africa,

South Korea, chaired by an American specialist in law, Paul Hoffman.

The Johannesburg principles adopted on 1st October 1995 by a group of experts in international law, national security and human rights, gathered at the international center against censorship “Article 19“, in cooperation with the Centre for applied legal studies at the University Witwatersrand in South Africa.

The Johannesburg principles are based on international and regional legal norms relating to the protection of human rights, evolving with the practice of States (including national courts) and the general principles of law recognized by the community of Nations.

The Johannesburg principles recognize the continuing applicability of the Siracusa principles, relevant to the provisions of the International Convention on civil and political rights and the Paris minimum standards of human rights in emergency situation.

The first principle establishes the freedom of opinion, expression and information, including:

(a) Everyone has the right to hold opinions without interference;

(b) Everyone has the right of expression, which includes freedom to seek, receive and impart any kind of ideas, regardless of borders, either orally or in writing or in print, either in the form of art or through any media of communication of their choice;

(c) The exercise of the rights referred to in paragraph (b), may be subject to restrictions on specific grounds and in accordance with international law, including for the protection of national security;

(d) Any limitations on the freedom of expression or information under the pretext of national security cannot be imposed unless the government demonstrate that prescribing the restriction is legal and necessary in a democratic society to protect national security legitimate interests.

The principle 1.2 defines the protection of the legitimate interests of national security, which refers to any restriction of freedom of expression or information, that the government wishes to justify the requirements of national security, must in fact proceed from this purpose, and the evidence to demonstrate that the final result will be protection of the legitimate interests of national security.

The principle 1.3, in turn, introduces the requirement of consistency with the principles of a democratic society, determining that for proving that the restriction of freedom of expression or information is necessary to protect the legitimate interests of national security, the government must demonstrate:

- The expression or information on a particular issue poses a serious threat to a legitimate national security interests;
- Introducing the restriction provides for the least restrictive

measures for the protection of these interests;

- The restriction is consistent with democratic principles.

Thus, the Johannesburg principles introduce a clear framework of human rights to information, the scope of their application and limitations of national competence in this area, and most importantly, the principle of proportionality between the requirements of national security and the right to information.

Conclusion.

Based on the the above-mentioned, we can draw the following conclusions.

First, the information and informational rights of the individual, in addition to meeting the needs of human development, education, culture and communication, are considered as guarantee for the execution of other universally recognized rights and freedoms of the individual.

Second, the interrelated system of universally recognized rights and freedoms in the information sphere is developing in contemporary international law. The human right to information is specified by introducing in international law such rights as the right to environmental, health, cultural, legal information. In the framework of international human rights and international information law, a new functional institution – the institute for human rights for information is under formation.

Third, the ability of the individual to enjoy the right to freely seek, obtain and disseminate information on a global scale is the basis of democracy and the broad integration of Uzbekistan into the world community. The first President of Uzbekistan I. Karimov stressed as, in this regard, "we are convinced that the achievement of the objectives facing the country and objectives to build a prosperous democratic state with a developed market economy is in direct

connection with a wide integration of Uzbekistan into the world community".

Fourth, the global information space is the result of the realization of the recognized rights to information of Nations and people around the world. In this sense, the global information space is the object of international legal regulation. The value of the global information space is not only the realization of the right to information, but also the implementation of other universally recognized rights and freedoms. Its uniqueness in the history of mankind gives the opportunity to call this space as an universal value, the common heritage of mankind. We apply the principle of common heritage of mankind in regard to this space.

Fifth, the limitations of the human right to information in the global information space can be set by the States only for the purposes provided for in international law and in accordance with its principles. The activities of the state should be formed according to the principles of the unity

and indivisibility of information space in the implementation of the legal regulation of information.

Sixth, the implementation of universally recognized human rights to information depends on international and national legal norms regulating information standards and the mode of use of the information infrastructure, media and communications.

Also, it can be noted that according to the basic generally recognized principles of international law, any dissemination of public information should be restricted in the interests of peace and mutual understanding.

High technology in the field of information really turn into a strong factor that influences the development of humanity, as computerization brings with it new opportunities for a person to improve their professional and general culture. Therefore, the priority of human rights and interests is confirmed and strengthened, which is

the fundamental principle of the system of international relations.

Thus, it can be noted that the interrelated system of universally recognized rights and freedoms in the information sphere is developing in contemporary international law. The human right to information is specified by enshrining in international law such rights as the right to environmental, health, cultural, legal and other information. In the framework of international human rights law and international media law, a new functional institution – the Institute for human rights for information.

The formation of human rights in the field of information – a logical consequence of the development of international human rights law and international media law, the feature of democracy and the full involvement of States in the global information space. This should guarantee the easy access to information, its dissemination and exchange within the institutions of international and national law.