

SECTION 2.

DIGITAL TECHNOLOGIES, HUMAN RIGHTS AND THE RULE OF LAW CRISIS

KIVALOV S. V.

President of the National University «Odesa Law Academy»,
Doctor of law, Professor, Academician

SILENCING HUMAN RIGHTS IN DIGITAL ERA

Key words: *digital technologies, empowerment, human rights.*

A month ago former UN High Commissioner for Human Rights Zeid Ra'ad al-Hussein being warned about the moral collapse of global leadership has told NY Times that world leaders are weak, shortsighted and mediocre, and no longer willing or able to defend human rights. Abuses used to be called out and stopped, and human rights offenders had something to fear. Today, they are met with silence instead [1].

On the contrary, while economic crisis, mass atrocities, violence, hate speech, acts of terror and armed conflicts harming the whole world with paying minimum attention to them, the silent war against human rights existed without any suggestion up to 2018.

The case is about misuses and abuses of law in information sphere.

Digital technologies interfere all elements of human life: personality, socialization, economic status on different levels of social interaction. Due to that, the less response we pay to human rights abuses in digital sphere, the maximum chance that they will be increasing drastically.

Information is the frontier of civilization development.

It affects judiciary and judicial process too. Artificial Intelligence and Internet of things, mass surveillance and social control, digital technologies in jurisprudence and future legal aid are of great significance to European civilization and the whole world. Every day we are faced upon new challenges in a queue to neutralize imbalance between digital development and legal protection. This May US president has signed an executive order which effectively bars US companies from using foreign telecoms believed to pose national security risks [2].

A GB company Privacy International has won its five-year legal battle with the Investigatory Powers Tribunal (IPT), with the UK Supreme Court ruling that the IPT can be subject to judicial review. The decision guarantees that when the IPT gets the law wrong, its mistakes can be corrected, Privacy International claimed after the Court revealed its decision, adding that it ensures that the UK's "spying tribunal" remains subject to the rule of law [3].

The role of individual empowerment over personal data, and in particular the right to erasure personal information with balance between privacy and freedom of expression when evaluating right to be forgotten claims was the key point of some judgements of ECHR.

Regarding abuse of powers and mass surveillance we knew the position of the Court in «Big Brother watch and others v. the United kingdom» due to which bulk interception and processing of metadata by the State interferes with Article 8 of European Convention as it can «reveal the identities and geographic location of the sender and recipient and the equipment through which the communication was transmitted. In bulk, the degree of intrusion is magnified, since the patterns that will emerge could be capable of painting an intimate picture of a person through the mapping of social networks, location tracking, Internet browsing tracking, mapping of communication patterns, and insight into who a person interacted with that» [4].

Balancing of fundamental rights in digital sphere as usual is a matter of national law, and the ECtHR will give deference to the national balancing as long as it stays within the limits of the ECtHR case law.

To respect, protect and fulfil human rights in the digital environment we should ensure the role and significance of the ECHR case law and its guaranties [5] towards harmonizing European legislation and modern practice.

I have to point that this aim is focused on the position that human rights should be strengthened in digital environment but not polluted.

«Ensuring that human rights are strengthened and not undermined by artificial intelligence is one of the key factors that will define the world we live in», says Council of Europe Commissioner for Human Rights, Dunja Mijatović, in a Recommendation «Unboxing artificial intelligence: 10 steps to protect human rights». It provides a number of steps which national authorities can take to maximize the potential of artificial intelligence systems and prevent or mitigate the negative impact they may have on people's lives and rights. COE headquarters said that this document focuses on 10 key areas of action:

- human rights impact assessment;
- public consultations;
- human rights standards in the private sector;
- information and transparency;
- independent oversight;
- non-discrimination and equality;
- data protection and privacy;
- freedom of expression, freedom of assembly and association, and the right to work;
- access to remedies; and
- the promotion of artificial intelligence literacy [6].

It stresses that Member states should establish a legal framework that sets out a procedure for public authorities to carry out human rights impact assessments on AI systems acquired, developed and/or deployed by those authorities. State use of AI systems should be governed by open procurement

standards, applied in a transparently run process, in which all relevant stakeholders are invited to provide input. In order to comply with their positive and procedural obligations under the European Convention on Human Rights, member states should apply such measures as may be necessary to protect the human rights of individuals against violations by AI actors throughout AI systems' entire lifecycle. Member states should specifically ensure that their legislation creates conditions that are conducive to the respect for human rights by AI actors and do not create barriers to effective accountability and remedy for AI-related human rights violations. Systems that cannot be subjected to appropriate standards of transparency and accountability should not be used. Member states should establish a legislative framework for independent and effective oversight over the human rights compliance of the development, deployment and use of AI systems by public authorities and private entities. This legislative framework may include mechanisms that consist of a combination of administrative, judicial, quasi-judicial and/or parliamentary oversight bodies effectively cooperating with each other. Member states must refrain from using AI systems that discriminate or lead to discriminatory outcomes and, within their jurisdiction, protect individuals from the consequences of use of such AI systems by third parties. The development, training, testing and use of AI systems that rely on the processing of personal data must fully secure a person's right to respect for private and family life under Article 8 of the European Convention on Human Rights, including the «right to a form of informational self-determination» in relation to their data. In the context of their responsibility to respect, protect and fulfil every person's human rights and fundamental freedoms, member states should take into account the full spectrum of international human rights standards that may be engaged by the use of AI. Freedom of assembly and association: Special attention should be paid to the impact the use of AI systems in content moderation can have on the freedom of assembly and association, especially in contexts where these freedoms are difficult to exercise offline. The use of facial recognition technology should be strictly regulated by member states, including through legislation setting out clear limitations for its use, and public transparency to protect the effective exercise of the right to freedom of assembly. Right to work: The potential of AI to accelerate automation and thereby negatively impact the availability of work should be carefully monitored. AI systems must always remain under human control, even in circumstances where machine learning or similar techniques allow for the AI system to make decisions independently of specific human intervention. Member states must establish clear lines of responsibility for human rights violations that may arise at various phases of an AI system lifecycle. Responsibility and accountability for human rights violations that occur in the development, deployment or use of AI Systems must always lie with a natural or legal person, even in cases where the measure violating human rights was not directly ordered by a responsible human commander or operator. The knowledge and understanding of AI should be promoted in government

institutions, independent oversight bodies, national human rights structures, the judiciary and law enforcement, and with the general public [7].

Hope that proper analysis of this key areas must be of great interest to practitioners and Academia while finding the proper balance in formatting new paths of jurisprudence in Digital era. Due to overcome these challenges a Faculty of Cybersecurity was created in our structure in order to seize, analyze and prevent future risks of human rights violations.

References:

1. Zeid Ra'ad al-Hussein. I Will Not Stay Silent. Our Leaders Are Failing Human Rights URL: <https://www.nytimes.com/2019/05/06/opinion/united-nations-human-rights.html>
2. <https://www.bbc.com/news/world-us-canada-48289550>
3. <https://www.computing.co.uk/ctg/news/3075829/privacy-international-ipt-investigatory-powers-supreme-court>
4. CASE OF BIG BROTHER WATCH AND OTHERS v. THE UNITED KINGDOM URL: [https://hudoc.echr.coe.int/eng#%22itemid%22:\[%22001-186048%22\]](https://hudoc.echr.coe.int/eng#%22itemid%22:[%22001-186048%22])
5. Kivalov Sergey. Ensuring the viability of the Strasbourg Court: structural deficiencies in States Parties” (Report of the Committee on Legal Affairs and Human Rights), Strasburg 7 January 2013, Doc. 13087
6. <https://www.coe.int/en/web/commissioner/-/unboxing-artificial-intelligence-10-steps-to-protect-human-rights>
7. Unboxing Artificial Intelligence: 10 steps to protect Human Rights URL: <https://rm.coe.int/unboxing-artificial-intelligence-10-steps-to-protect-human-rights-reco/1680946e64>

TULIAKOV V. O.

Vice-Rector on International Relations, Corresponding Member
of the National Academy of Legal Sciences of Ukraine,
Judge of the European Court of Human Rights ad hoc, LL.D, Professor

VIRTUAL IDENTITY AND JURISPRUDENCE

*Let sea-discoverers to new worlds have gone,
Let maps to others, worlds on worlds have shown,
Let us possess one world, each hath one, and is one.*
John Donne

Key words: *supersystem, human development, metadata, alter ego.*

Since John Donne has written these words in «The Good Morrow», as a proof of new spiritual world formatting, a new era begins three hundred years after. Era of Matrix, era of Digital world, of Information society.