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**«THE RIGHT TO BE FORGOTTEN»: THE PRACTICE OF THE ECHR
AND UKRAINIAN REALITY. PROBLEMS AND PERSPECTIVES**

Key words: *human rights, practice of the ECHR, «the right to be forgotten», European Union.*

The growth of the pace of globalization and the unceasing and irrepressible development of IT-technologies are conditioned by the need to expand the guarantees of information rights and their adaptation to the conditions of a real social context. In his time, the world-famous writer George Orwell, in his novel, *Nineteen Eighty-Four* (1984), said that «anyone who controls the past controls the future; and who controls the present, controls the past» [1, p. 44]. This thesis should not be reduced to absolute, since it was written in a different context and related to the historical memory of certain events, whereas information operations can not be totally uncontrolled. Anyone who wants to protect personal data should be given the opportunity to ask for their removal if such a request is justified by sound grounds.

In 2014, the admissibility of such an opinion, which has long been discussed in the family of European nations, was also recognized by the Court of Justice of the European Union in a lawsuit between, on the one hand, Google Spain SL («Google Spain») and Google Inc. on the other hand, Agencia Española de Protección de Datos (Spanish Data Protection Agency, AEPD) and Mr Kosteja Gonzalez regarding the decision of IAZD to support the complaint filed by Mr Kostege Gonzalez against these two companies, which was requested by Google Inc. Take steps to remove personal data related to Mr. Costa Gonzalez to prevent access to data in the future (*Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos, Mario Costeja González*) [2].

The Luxembourg Court stated that «the search engine operator is required to exclude from the list of results displayed after a search made on the basis of a person's name links to web pages published by third parties and containing information relating to that person, even if this name or information is not erased in advance or simultaneously from these web pages, and even, as the case may be, when its own publication on these pages is legal».

Instead, Ukrainian legislation and law enforcement practice do not explicitly recognize the «right to oblivion» among the list of rights protected by the state. However, the analysis of the current normative framework, makes it possible to argue that the legislator at this stage recognizes a slightly modified and limited model of the implementation of such a right.

In particular, Art. 8 of the Law «On Protection of Personal Data» guarantees the person the right:

- to submit a motivated request to the owner of personal data with a denial against the processing of his personal data;
- make a motivated request for the modification or destruction of their personal data by any of their owner and manager, if the data are processed illegally or are false;
- to file complaints about the processing of their personal data to the authorized person or court.

According to Part 2 of Art. 15 of this Law, personal data may be deleted or destroyed, in particular, in the event of legal action by a court to remove or destroy personal data.

That is, it is seen that the Ukrainian legislation guarantees only the right to request the removal of information containing the relevant data to the administrator.

This is also confirmed by the judicial practice of administrative courts. For example, in the case No. 1240/2453/18, the Administrative Court of Appeal stated that there is no evidence that criminal cases No. 0307013801, 0307902601 suspended at the stage of pre-trial investigation on the basis of rehabilitation, or in accordance with the verdicts issued by the court, the court agrees with the conclusion of the court of the first the authorities that the data of the Department of Information Technologies of the Ministry of Internal Affairs of Ukraine AAA No. 0368149 are true. The court also noted that the plaintiff prematurely appealed to the court, since such an appeal may be in the case of information about the closure of criminal proceedings or acquittal sentences, and only after the refusal to remove the controversial information from the database [3].

At the same time, the ECHR in § 97 of its judgment *ML and WW v. Germany* notes that «it is through search engines that information about applicants in the media can be easily found by users on the Internet. However, the initial interference with the applicants' exercise of their right to respect for their private life arose as a result of the decision of the media to publish this information and, in particular, to keep it on their websites, even without the intention of attracting public attention; search engine activity only intensified the scope of intervention. However, due to such an increasing influence on the dissemination of information and the nature of the activity underlying the publication of information about the person concerned, the responsibilities of the search engines for the person who is the information contributor may differ from the obligations of the entity that originally published the information. Consequently, balancing interests can lead to different results, depending on whether the removal request relates to the original information publisher whose activity normally serves as the basis for protecting the freedom of expression or the search engine and whose main interest is not the disclosure of primary information about this person, and, in particular, helping to identify any available information about that person and establish his/her profile» [4].

Although the ECtHR partially recognizes the broad discretion of States and regularly emphasizes the subsidiarity of the Convention's mechanism for the protection of human rights, the red line in the Court's case-law always addresses the question of the State's positive obligation to ensure minimum legal safeguards compatible with the Convention. States can always foresee a higher standard of protection of convention rights, but at the same time have an obligation to implement in the legislation and judicial practice a convention minimum human rights law in the light of the devotion to the common legal heritage envisaged by Art. 1 ECHR.

Therefore, in this aspect, the national legislation of Ukraine contains a lower standard of human rights protection than the corresponding legal provisions contained in the practice of the ECtHR, and therefore the relevant ECHR decisions should become empirical grounds for their direct application to such legal relationships, and they should be implemented in the legal field.

Conclusions. Due to the expansion of the list and scope of information rights in a globalized and digitalized world, Ukrainian legislation and jurisprudence require the implementation of the latest standards for the protection of information rights. In particular, the relevant legal regulation of "the right to be forgotten" by way of its direct legislative recognition and establishment of legal grounds and the procedure for its implementation.

1. Due to the need to distinguish between entities responsible for the dissemination of certain information relating to personal data of a person, it is important to consolidate the pre-trial procedure for resolving the conflict.

First of all, a person must be guaranteed the right to contact the administrator of such information in whose operational possession it is located, with a motivated request to remove such information. When considering such a request, it is necessary to ensure observance of procedural rights of the person, in particular, the right to be heard and to receive a motivated decision of the administrative body. In this context, the approval of the second reading of the Law «On Administrative Procedure», which is currently being considered by the Verkhovna Rada, will be of great importance. This will protect the right to oblivion in the event of objective and indisputable circumstances that give rise to the right to protection. For example, such a procedure may be applicable, as mentioned above, in the event of a cessation of a criminal or disciplinary proceeding against a certain person on grounds not confirming the fact of his onset or lack of evidence. In the case of refusal to remove personal information, a person must be guaranteed the right to sue in court to the administrator of such information about its immediate removal from the information databases of the correspondent of the information manager.

2. Another dimension of this problem is the need to ensure the right to claim information resources that disseminate personal information that, in the opinion of the person, should be protected by the «right to oblivion». Today, this person has no such right. So it is important to guarantee this opportunity by law.

3. Prior to the implementation of appropriate legislative initiatives, the mechanism for implementing such a standard through judicial practice

should be applied, first of all, by informing judges about the existence of the relevant practice of the ECHR, and the possibility of protecting this right in case of claiming similar claims. Such a Supreme Court can participate in the implementation of such a program within the framework of appropriate trainings, roundtables, discussion platforms, which should promote wide awareness among law enforcement subjects of the main trends in the protection of human rights to the attractiveness of the irreversible processes of digitalization and the development of the digital economy.

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PROTECTION OF NATURAL PERSON RIGHTS IN THE INFORMATION FIELD OF A CIVIL SOCIETY

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The experience of some leading countries of the world proves that the informational and legal basis of civil society should be formed providing strict fulfilment of specific rules by all entities and participants of informational processes, as well as applying necessary governmental restrictions thereon to ensure national safety.

The well-developed civil informational society is characterized by, first, the ability of both the society and the state operating to provide for public