

Impact Factor:

ISRA (India) = 6.317
ISI (Dubai, UAE) = 1.582
GIF (Australia) = 0.564
JIF = 1.500

SIS (USA) = 0.912
PIIHQ (Russia) = 0.126
ESJI (KZ) = 9.035
SJIF (Morocco) = 7.184

ICV (Poland) = 6.630
PIF (India) = 1.940
IBI (India) = 4.260
OAJI (USA) = 0.350

SOI: [1.1/TAS](#) DOI: [10.15863/TAS](#)

International Scientific Journal Theoretical & Applied Science

p-ISSN: 2308-4944 (print) e-ISSN: 2409-0085 (online)

Year: 2021 Issue: 08 Volume: 100

Published: 26.08.2021 <http://T-Science.org>

QR – Issue



QR – Article



Oleksandr Stovpets

Odessa National Maritime University
Doctor Hab. in Philosophical Sciences,
Professor of the Criminal and Administrative Law
department, & Philosophy department, Ukraine.
ORCID: <https://orcid.org/0000-0001-8001-4223>
SSRN (Elsevier) ID: 4341369
Scopus Author ID: 57216182414
Web of Science ResearcherID: AAK-5150-2020



Olga Kukshynova

Odessa National Maritime University
PhD in Legal Sciences, associate Professor,
head of the Criminal and Administrative Law dpt.,
Ukraine.
<https://orcid.org/0000-0003-0470-6863>



Vasyl Stovpets

Odessa National Maritime University
PhD in Philological Sciences, Professor
of the Criminal and Administrative Law dpt.,
director of the Educational services centre, Ukraine.
<https://orcid.org/0000-0002-2354-2852>

CONTEMPORARY CONSTITUTIONAL PRINCIPLES AND MECHANISMS OF REALIZATION OF HUMAN RIGHTS AND FREEDOMS IN THE INFORMATION REALM IN UKRAINE

Abstract: The article draws an attention to the analysis of specific juridical mechanisms that exist in the Ukrainian legislation, in relation to different types of information rights and freedoms, and the possibilities of their realization. The spectrum of informational rights and freedoms in Ukraine, and their fixation features in the Ukrainian legislation are studied. There are contradictory aspects in the mechanisms of realization of informational rights, and such contradictions may arise at the intersection of liberal freedoms and national security issues. The general conclusion is that it's not enough to make a list of rights and freedoms regarding information, its circulation, use, consumption, managing, protection, and so on. There's an obvious need to provide a set of appropriate mechanisms, in order to make all these rights available. Judicial protection is defined in the constitutional legislation of Ukraine as a self-sufficient mechanism for ensuring human rights and freedoms. Simultaneously, it is only one of the elements in the system for ensuring these rights. Taking into account the need of implementation of constitutional guarantees, it's impossible to ignore the primary role of the state executive bodies and local self-government. Everyday activities of these bodies must create necessary conditions for citizens to fulfill their rights and legal interests in the information realm. The realization of human and civil rights and freedoms takes place through the channels of executive power, in cooperation with civil institutions. And the judicial protection is applied in cases where a violation of the law has already occurred, while the main task of the executive branch of state power is to create conditions under which such violations will not occur, or will be minimized.

Key words: information, law, Ukraine, constitutional principles, human rights and freedoms, legal mechanisms.
Language: English

Impact Factor:

ISRA (India) = 6.317	SIS (USA) = 0.912	ICV (Poland) = 6.630
ISI (Dubai, UAE) = 1.582	PIIHQ (Russia) = 0.126	PIF (India) = 1.940
GIF (Australia) = 0.564	ESJI (KZ) = 9.035	IBI (India) = 4.260
JIF = 1.500	SJIF (Morocco) = 7.184	OAJI (USA) = 0.350

Citation: Stovpets, O., Kukshynova, O., & Stovpets, V. (2021). Contemporary constitutional principles and mechanisms of realization of human rights and freedoms in the information realm in Ukraine. *ISJ Theoretical & Applied Science*, 08 (100), 267-272.

Soi: <http://s-o-i.org/1.1/TAS-08-100-49>

Doi:  <https://dx.doi.org/10.15863/TAS.2021.08.100.49>

Scopus ASCC: 3300.

Introduction

The Constitution of Ukraine, defining a set of human rights in the field of information, is based on international legal standards in this field and reproduces relevant provisions conceptually and substantively. The Constitutional provisions of Clauses 32 and 34 are key points to defining human rights and freedoms in the field of information in Ukraine. Particularly, the Constitution of Ukraine defines the right to freedom of beliefs, freedom of speech, and the right to information itself, according to which everyone is guaranteed the right to freedom of thought and speech, to free expression of their views and beliefs. Everyone has the right to freely collect, store, use and disseminate information orally, in writing or otherwise at their discretion. Part 3 of Clause 34 of the Constitution contains an exhaustive list of grounds for restriction of this right.

Abovementioned right, which is established by the Clause 34 of the Constitution, may be deemed as "active" in its content, as it determines a certain degree of behavior. To implement it, a person should take an active action. This human right can be understood as an opportunity to act in any way, and in any form, to become a participant in the realm of information relations, except when there are direct prohibitions by law. Another group of human rights in the field of information, established by the Constitution, are aimed at limiting information interference in the private affairs of a person by the state or third parties. These norms are mainly protective in relation to specific legal relations in the information sphere.

Along with that, in any state there should be provided all the necessary legal mechanisms to make all these rights and freedoms real enough, to make them workable and available. The term "ensuring the constitutional rights and freedoms of man and citizen" implies the existence of a certain system of their guarantee by state institutions. I.e. it is a question of existence: officially defined legal statuses of subjects of civil and administrative relations (including relations in the information sphere), competences of the corresponding power structures, institutions of public influence on the state power and other subjects, as well as tools of securing and protection, and other conditions for the actual realization of human rights and freedoms. In this aspect, all such means and institutions should be divided into so-called 'jurisdictional' (including law enforcement, administrative, judicial - all those, which should be directly involved in protection and defense on the basis of substantive and procedural law), and 'organizational' - aimed at creating the necessary

conditions in the working process of public authorities, to be able to perform the functions assigned to them.

The purpose of the study

The main objective of this research article is to achieve an understanding of the content of 'information rights and freedoms', which are declared by the Constitution of Ukraine, and to study what kind of legal mechanisms are existing to make these freedoms real in Ukraine, what features do they have in the information realm nowadays.

Theoretical and methodological framework

Methodology of the research is based on formal logical methods of analysis and synthesis, on a legal-comparative method, and an axiological approach. Also it's widely used a juridical-dogmatical method in the analysis of main categories of the information law.

Methodologically important, to clarify the common and different in the functioning of information relations in various societies and legal systems, is to draw some attention to previously published works dedicated to issues of 'new information order' inherent to current technological era. Among them it could be mentioned the works, which focused on contemporary social technologies of making consent (Bernays & Cutler, 1969), and the conscious and intelligent manipulation of the organized habits and opinions of the masses as an important element in democratic society (Bernays, 2005), (Lippmann, 2019). Among classical works we also find some approaches useful for this research, for instance, the reflections on state's nature (Hobbes, 2010) and basic human freedoms (Locke, 2006). The works of mentioned authors have found further reconsidering in such aspects as 'frontiers of justice' (Nussbaum, 2006), stability and social contract theory (Moehler, 2019), the status of Civil Society in the context of extraordinary powers implemented by the State (Stovpets, 2021), phenomena of freedom and justice in classical conservative and liberal interpretations (Borinshtein, Stovpets et al., 2021).

It's also important to take into consideration an experience of some countries and societies with a long history of building mass communications from ancient times to nowadays (Stovpets, 2019), their success in integrating the state into the complex of social relations (Stovpets, 2020), and accelerating effect of such integration on the way to global scientific and technological leadership (Svyrydenko & Stovpets, 2020). Another side of this research is connected with the analysis of important legal

Impact Factor:

ISRA (India)	= 6.317	SIS (USA)	= 0.912	ICV (Poland)	= 6.630
ISI (Dubai, UAE)	= 1.582	PIHII (Russia)	= 0.126	PIF (India)	= 1.940
GIF (Australia)	= 0.564	ESJI (KZ)	= 9.035	IBI (India)	= 4.260
JIF	= 1.500	SJIF (Morocco)	= 7.184	OAJI (USA)	= 0.350

sources, which contain profound principles and mechanisms of realization of human rights and freedoms in the information realm in Ukraine (Constitution, 1996), and gives a juridical classification of information itself (On Information, 1992), and defines the principles of international relations between Ukraine and European Union members on various matters of cooperation, including modern information sphere (Association Agreement, 2014). In this relation, as methodologically important there could be considered also those works, which pay attention to organizational and legal bases of Information security policy of Ukraine (Kormych, 2003), to the legal regulation of access to 'open information' (Kukshynova, 2012), to the legal-philosophic problems of state policy in respect of information society in Ukraine (Stovpets, 2012), to constitutional mechanisms of regulation of information relations that existed a decade ago (Kormych, 2013), to the bright and the dark sides of a new Information Reality (Stovpets & Stovpets, 2020).

The presentation of main ideas, results and discussion

Guarantees of the human right to non-interference in private life are based on Constitutional provisions, which in particular stipulate that: no one may be interfered with in his personal and family life, except in cases provided by the Constitution of Ukraine. The collection, storage, use and dissemination of confidential information about a person without his / her consent is not permitted, except as provided by law, and only in the interests of national security, economic well-being & human rights protection (Constitution, 1996: clause 32). The same article's norms determine the basic mechanisms for ensuring this right. The first of them is the right of a citizen to get acquainted in public authorities, local governments, institutions and organizations with information about himself, in case it's not a state or other secret protected by law. This right makes it possible to establish the very fact of collecting information about a person by public authorities and their officials, to determine their content, and to establish on this basis the degree of legality of such actions. Another mechanism is to guarantee judicial protection of informational rights: to refute inaccurate information about yourself and your family members; to claim the removal of any information about yourself and your family members; to demand compensation for material and moral damage caused by the collection, storage, use and dissemination of such inaccurate information.

Derived from the right to privacy is the right to secrecy of correspondence, as in fact this right establishes an additional guarantee of non-interference. In the Constitution of Ukraine this right is defined by a separate article, according to which everyone is guaranteed the secrecy of correspondence,

telephone conversations, other correspondence (Constitution, 1996: clause 31). The main mechanism for ensuring this right is the rule that exceptions to the right to privacy, telephone conversations, correspondence can be established only by the court in order to prevent crime or find out the truth during a criminal investigation, if otherwise impossible to obtain information. In other cases, public authorities may not violate the human right to respect for private and family life. The above-mentioned basic human rights in the information sphere are supported and extended by a number of other constitutional provisions. In particular, the political and ideological diversity of public life is guaranteed, and a censorship is prohibited (Constitution, 1996: clause 15). The inalienability and inviolability of human rights and freedoms in Ukraine are guaranteed (Constitution, 1996: cl. 21); the human right to respect for one's dignity is enshrined (Constitution, 1996: cl. 28).

However, certain preconditions for the emergence of contradictions are laid down in Section II of the Constitution, in its terminology. This is due to the fact that Ukrainian legal science practically does not accept the existing classification of terms in Western constitutional law to define "human rights". Thus, in English terminology the following concepts are used: 'rights' - to define the inalienable human rights (to life, liberty, etc.); 'freedoms' or 'liberties' - to define civil and political rights and freedoms; the term 'entitlements' - covers the economic and social rights granted by the state. In Ukrainian law, a single term "human rights" is used to cover all these notions (Kormych, 2003: 117). Thus, together with the already mentioned information rights and freedoms, the Constitution of Ukraine defines a number of rights that are informational in their object, but economic or social in their content. Above all, this is the rules, which guarantee the freedom of literary, artistic, scientific and technical creativity, protection of intellectual property, copyright, moral and material interests arising in connection with various types of intellectual activity (Constitution, 1996: clause 54). Every citizen has the right to the results of his / her intellectual and creative activity; no one may use or distribute them without his consent, except as provided by law.

Unlike many other categories of human and civil rights, the implementation of human information rights may well be ensured by the judiciary (Constitution, 1996: cl. 55). Information rights mostly belong to civil and political rights and freedoms (i.e. freedom of speech, right to receive information, right to privacy, right to secrecy of correspondence, prohibition of censorship). For the realization of civil and political rights it is sufficient to use only such legal mechanisms, as the correct application of constitutional norms by the courts, and well-developed sectoral legislation, combined with the adoption of a lawful court decision and its timely

Impact Factor:

ISRA (India)	= 6.317	SIS (USA)	= 0.912	ICV (Poland)	= 6.630
ISI (Dubai, UAE)	= 1.582	PIHII (Russia)	= 0.126	PIF (India)	= 1.940
GIF (Australia)	= 0.564	ESJI (KZ)	= 9.035	IBI (India)	= 4.260
JIF	= 1.500	SJIF (Morocco)	= 7.184	OAJI (USA)	= 0.350

implementation. Moreover, according to Part 3 of Clause 8 of the Constitution of Ukraine, constitutional norms are the norms of direct action. That means everyone is guaranteed to go to the court to protect the constitutional rights and freedoms of man and citizen directly on the basis of the Constitution of Ukraine.

Instead, the realization of many social and economic rights depends not only on legal regulations, but also on the provision of appropriate material conditions. The latter is not the competence of the judiciary, but primarily of the executive branch of government and local self-government. For example, a court decision is not enough to ensure the development of science or the preservation of cultural heritage, including the preservation of historical monuments and other objects of cultural value (as mentioned in Clause 54 of the Constitution), because such tasks require specific material support.

What is the real danger caused by the lack of a clear division of civil rights and freedoms, and socio-economic human rights, in the Constitution? There are two danger factors here: in the field of legal consciousness, and in the field of law enforcement practice. Both of these factors are interrelated. The content of the first dangerous factor is an attempt to replace political problems with socio-economic and, accordingly, reduce public attention to the protection of inalienable rights and freedoms. The results of many sociological studies show that the attention of the population to socio-economic aspects - as living standards, employment, wages level, economic status in general - significantly outweighs people's attention to political ones, in particular, to freedom of speech, the problems of transparency of government. This state of affairs has its negative consequences. In fact, it shuts down such an important tool of democracy as public control over power, which is the main possible mechanism for overcoming most problems in the relationship between government and society.

Now it is necessary to pay attention to the analysis of separate legal mechanisms existing in the Ukrainian legislation concerning possibilities of realization of various types of information rights. It is about directly obtaining information on the initiative and in the interests of a particular person through his independent actions, and the obligation of the state to bring information to society, make it accessible and widely known (first of all, we mean such types of information as legal, environmental, political - during the election process, statistical, and others). The Constitution of Ukraine defines 'the right to make applications' as a mechanism by which a person can fulfill his / her rights and legitimate interests in relations with public authorities, in particular with regard to access to and receipt of information from these administrative institutions. Under this provision, everyone has the right to send individual or collective written appeals, or to make personal appeals towards public authorities, local governments, and to officials,

who are obliged to examine the appeal and give a reasoned response within the statutory period (Constitution, 1996 : clause 40).

The issues of practical realization by citizens of their right to appeal granted to them by the Constitution of Ukraine are also covered in the Law of Ukraine "On Citizens' Appeals". According to this Law, citizens of Ukraine have the right to apply - to public authorities, local governments, associations of citizens, enterprises, institutions, organizations (regardless of ownership), media, officials in accordance with their functional responsibilities - with comments, complaints and proposals concerning their statutory activities, with a statement or request for the realization of their socio-economic, political and personal rights and legitimate interests, and a complaint about their violation. Citizens' appeals should be understood as proposals (comments), statements (petitions) and complaints set forth in writing or orally. Public authorities, local governments, enterprises, institutions, organizations regardless of ownership, associations of citizens, and officials consider citizens' appeals without charging a fee (On Citizens' Appeals, 1996: clause 21).

The answer based on the results of consideration of applications (petitions) must be given by the administrative body that received these applications and which is responsible for resolving the issues raised in the applications (petitions), signed by the head or the person performing his duties. The decision to refuse from the satisfaction the requirements set forth in the application (petition) shall be brought to the notice of the citizen in writing with reference to the Law and stating the reasons for refusal, as well as with an explanation of the procedure for appealing the decision (On Citizens' Appeals, 1996: cl.15 pt.3-4). The law provides for the possibility of citizens to apply to certain government entities by submitting electronic petitions. Thus, citizens can make an application to the President of Ukraine, the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, and local administrations with electronic petitions through the official website of the body to which it is addressed, or the website of a public association that collects signatures in support of electronic petitions.

Conclusions

Summarizing this study, we note that it's not enough to make a list of rights and freedoms regarding information, its circulation, use, consumption, managing, protection, and so on. We obviously need a set of appropriate mechanisms to make all these rights *available*. Despite the fact that judicial protection is defined in the Constitution of Ukraine as a self-sufficient mechanism for ensuring human rights and freedoms, it is only one of the elements in the system for ensuring these rights. Thus, considering the implementation of constitutional guarantees, one cannot ignore the primary role of executive bodies and

Impact Factor:

ISRA (India) = 6.317
ISI (Dubai, UAE) = 1.582
GIF (Australia) = 0.564
JIF = 1.500

SIS (USA) = 0.912
PIIHQ (Russia) = 0.126
ESJI (KZ) = 9.035
SJIF (Morocco) = 7.184

ICV (Poland) = 6.630
PIF (India) = 1.940
IBI (India) = 4.260
OAJI (USA) = 0.350

local self-government. The day-to-day activities of these bodies must create appropriate conditions for citizens to fulfill their rights and legitimate interests. After all, the realization of human and civil rights and freedoms takes place through the channels of executive power in cooperation with civil institutions. As for judicial protection, it is applied in cases where a violation of the law has already occurred. But the main task of the executive branch is to create conditions under which such violations will not occur, or will be minimized.

The important role of administrative-legal relations in guaranteeing the human right to information is determined by the Law of Ukraine "On Information", in which 'the guarantee' is considered as the creation of necessary conditions. The law stipulates that the right to information is ensured by:

- creation of a mechanism for satisfying the right to information;
- creating opportunities for free access to statistical data, archival, library and museum funds, other information banks, databases, information resources;
- the duty of the subjects of state power to inform the public and the media about their activities and decisions;

- the duty of the subjects of state power to determine special units or responsible persons to ensure access of inquirers to public information;
- implementation of state and public control over compliance with information legislation;
- establishing liability for violation of information legislation.

An equally important constitutional mechanism is the control by institutions of the civil society. Moreover, a specific interdependence is realized on the example of the right to freedom of speech. On the one hand, the observance of this right is impossible without effective public control, on the other - in the absence of this right, public control itself will be ineffective. The development dynamics of the human rights institutions shows that at all times, unfortunately, the greatest oppression, violations and restrictions of information rights and human freedoms have been experienced due to the state (its bodies, departments, leaders and officials at various levels). This is explained by the tendency of state power to "self-concentration and self-growth." In a developed democratic society, such dangerous tendencies must be offset by a system of separation of powers, checks and balances, and limited with the control by civil society institutions and the international community.

References:

1. Bernays, E.L. (2005). *Propaganda*. New York, Ig, 168 pages.
2. Bernays, E.L., & Cutler, H.W. (1969). *The engineering of consent*. Norman, University of Oklahoma Press, 246 pages.
3. Borinshtein, Y., Stovpets, O., Kukshynova, O., Kisse, A., & Kucherenko, N. (2021). Phenomena of freedom and justice in the interpretations of T. Hobbes and J. Locke. *Amazonia Investiga*, 10 (42): 255-263. DOI: <https://doi.org/10.34069/AI/2021.42.06.24>
4. (2014). EU-Ukraine Association Agreement. *Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part*. International treaty signed on 27.06.2014. Agreement ratified by the Law of Ukraine № 1678-VII on 16.09.2014. The Official Bulletin of Ukraine. 26.09.2014. № 75, vol. 1, p. 83, cl. 2125 (the valid current edition on 30.11.2015).
5. Hobbes, T. (2010). *Leviathan: Or the Matter, Forme, and Power of a Common-Wealth Ecclesiasticall and Civill*. Edited by Ian Shapiro. New Haven, Yale University Press, 583 pages.
6. Kormych, B.A. (2003). *Organizational and Legal bases of Information security policy of Ukraine. Organizacijno-pravovi zasadi politiki informacijnoi bezpeki Ukraïni*. The monograph. Odesa, Juridical literature (Jyridichna literatura), 472 pages.
7. Kormych, B. (2013). Constitutional and legal regulation of information relations. *Konstitucijno-pravove reguluvannja informacijnih vidnosin. Law Herald (Jyridichnij visnik)*, 3/: 46-51.
8. Kukshynova, O.O. (2012). *Legal regulation of access to open information. Pravove reguluvannja dostupu do vidkritoï informacii*. Dis. kand. urid. nauk (12.00.07). Dissertation of PhD in Legal Sciences. Kyiv, V.M. Koretsky Institute of State and Law, National Academy of Sciences of Ukraine, 211 pages..
9. Lippmann, W. (2019). *Public opinion* (reprint). CPSIA, 375 pages.
10. Locke, J. (2006). *Political Essays*. Edited by M. Goldie. Cambridge, Cambridge University Press, 409 pages.
11. Moehler, M. (2019). Diversity, stability, and social contract theory. *Philosophical Studies*,

Impact Factor:

ISRA (India) = 6.317
ISI (Dubai, UAE) = 1.582
GIF (Australia) = 0.564
JIF = 1.500

SIS (USA) = 0.912
PIHII (Russia) = 0.126
ESJI (KZ) = 9.035
SJIF (Morocco) = 7.184

ICV (Poland) = 6.630
PIF (India) = 1.940
IBI (India) = 4.260
OAJI (USA) = 0.350

- 176: 3285–3301. DOI: <https://doi.org/10.1007/s11098-018-1174-8>
12. Nussbaum, M.C. (2006). *Frontiers of Justice. Disability, Nationality, Species Membership*. Cambridge, MA, The Belknap Press of Harvard University Press, 487 pages.
 13. (1992). On Information. *The Law of Ukraine*, 02.10.1992, № 2657-XII. Vidomosti Verkhovnoyi Rady Ukrainy. 1992. № 48. Clause 650 (the valid current edition on 16.07.2020).
 14. Stovpets, O.V. (2012). Legal-philosophic problems of state policy in respect of information society. *Filosofs`ko-pravovi problemi derzhavnoi politiki u sferi formuvannya informacijnogo suspil`stva*. Naukovi zapiski NaUKMA. Jyridichni nauki (NaUKMA Research Papers. Law), 129: 84-88.
 15. Stovpets, O.V. (2019). Chinese legal-philosophic syncretism and its influence to value orientations of the Chinese society. *Skhid (Cxið)*, 1 (159): 55-60. DOI: [https://doi.org/10.21847/1728-9343.2019.1\(159\).157856](https://doi.org/10.21847/1728-9343.2019.1(159).157856)
 16. Stovpets, O. (2020). Sinitic civilization's worldview features and their system-forming role in the complex of social relations in modern China. *Interdisciplinary Studies of Complex Systems*, 17: 59-72. DOI: <https://doi.org/10.31392/iscs.2020.17.059>
 17. Stovpets, O. (2021). Legal-philosophic reflections on the status of Civil Society in the context of extraordinary powers implemented by the State. *Filosofs`ko-pravovi rozdumi shhodo statusu gromadjans`kogo suspil`stva v umovah zastosuvannya derzhavou ekstraordinarnih povnovazhen`*. Chasopis Kiïvs`kogo universitetu prava. (*Law Review of Kyiv University of Law*), 1 (2021): 31-37. DOI: 10.36695/2219-5521.1.2021.04
 18. Stovpets, O., & Stovpets, V. (2020). The Bright and the Dark sides of a new Information Reality (in the context of the Intellectual Property protection). *Svitli j temni storoni novoi informacijnoi real`nosti (u konteksti ohoroni prav intelektual`noi vlasnosti)*. Chasopis Kiïvs`kogo universitetu prava. (*Law Review of Kyiv University of Law*), 1 (2020): 229-233. DOI: <https://doi.org/10.36695/2219-5521.1.2020.46>
 19. Svyrydenko, D., & Stovpets, O. (2020). Chinese Perspectives in the “Space Race” through the Prism of Global Scientific and Technological Leadership. *Philosophy and Cosmology*, 25: 57-68. DOI: <https://doi.org/10.29202/phil-cosm/25/5>
 20. (1996). The Constitution of Ukraine. *The Law of Ukraine*, 28.06.1996, № 254к/96-BP. Verkhovna Rada of Ukraine. 1996. № 30. Clause 141 (the valid current edition on 01.01.2020).