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## INTERNATIONAL LEGAL PROTECTION OF CHILDREN'S RIGHTS ON THE INTERNET

**Formulation of the problem.** Improvement of information technologies creates conditions for effective development of modern society. At the same time, the future of every nation and humanity as a whole potentially depends on the growing generation, therefore the issue of ensuring the rights of children on the Internet is one of the most urgent, which requires a lot of attention. To a large extent, the interest in this topic is related to the problem of children's safety in the virtual space, since the Internet is not only a zone of development for children, but also a zone of risk for their mental, physical health and social well-being [1]. New information technologies and communication technologies affect the observance of a large number of children's rights, indicated in the Convention on the Rights of the Child (UNCRC), the European Convention on Human Rights and the European Social Charter. According to the Recommendations given by the UN Committee on the Rights of the Child, all children should have the right to safe access to ICT and digital media, the opportunity to fully participate, express their opinion, seek information and exercise all the rights indicated in the UN CRC and optional protocols without being discriminated against. The world of information technologies provides unlimited opportunities for learning and communication, and at the same time creates truly alarming problems related to the violation of children's rights in the information environment. After all, a child, given its physical and mental immaturity, needs special protection and care, including proper legal protection, both before and after birth [2]. **The aim of the article.** The aim of the article is to study the features of the legal protection of children's rights on the Internet.

**Presentation of the main material.** Therefore, the priority task of every state is the maximum promotion of the realization of children's rights on the Internet, while not depriving young people of free access to the World Wide Web [3]. According to Art. 9 of the Law of Ukraine "On the Protection of Childhood": "Every child has the right to freely express his personal opinion, form his own views, develop his own public activity, receive information that corresponds to his age. This right includes the freedom to seek, receive, use, disseminate and

preserve information in oral, written or other form, by means of works of art, literature, mass media, communication (computer, telephone network and the like) or other means of choosing a child. The child is provided with access to information and materials from various national and international sources, especially those that contribute to healthy physical and mental development, social, spiritual and moral well-being [4].

Thus, to realize these opportunities, one of the basic rights that a child needs is the right to access the Internet. The Guide on Human Rights for Internet Users and the Explanatory Memorandum to it define the right to access the Internet as an important means for the realization of human rights and freedoms, as well as a means for its participation in democratic processes [5]. This right can be understood as broadly as possible: from the use of any device by any person to exercise the right of access to information technologies, assistance by state authorities and local self-government in the implementation of access to the Internet, to the prohibition of discrimination on any grounds in the exercise of this right and deprivation of the specified right only by court decision.

Access to the Internet and computer literacy are components of such child rights as the right to freedom of expression and information, freedom of thought, association, right to education, etc. The right to access the Internet does not depend on the purpose of its use: to the same extent that every person has the right to learn and express political beliefs using the Internet, he has the right to use the Internet for entertainment, communication and other purposes. And this means that the child can receive harmful information, as well as be exposed to other risks. According to the analysis of Internet resources that work in this direction, the following risks can be identified: computer viruses; a program or part of a program designed to cause undesirable effects on a computer or information system; collection of personal data on the Internet; porn sites, photos, videos, etc.; Phishing – Internet scams involving deceiving users with fake web pages or links; spam – unsolicited e-mail messages that are usually sent for the purpose of direct marketing; child pornography; extortion of money by fraud;

hacking – the activity of a person who hacks an organization's information network or system or uses it without permission; conversations about sex, "hooking" on children on the Internet; copyright infringement; child trafficking, recruitment; Internet addiction – an obsessive desire to connect to the Internet and a painful inability to disconnect from the Internet in time; harassment, intimidation and abuse of children online [6]. Therefore, at the same time, the implementation of the right to access the Internet requires ensuring a number of children's rights, such as: the right to privacy and protection of personal data, the right to safe use of the Internet, the right to respect the honor and dignity of the child, the right to seek protection, etc.

The OSCE report on internet access as a fundamental human right emphasizes that the right to freedom of expression should be universal, including the technology that makes it possible. However, the need to take additional measures to ensure the rights of vulnerable groups such as children on the Internet is particularly emphasized [7]. Therefore, the child's right to access the Internet, together with the opportunities provided by this right, is also characterized as the right to special care and help for the child in the Internet environment. In this regard, states and families may take measures to limit or suspend the use of the Internet in order to prevent the violation of children's rights, but such measures should be proportionate and not hinder the free dissemination of information on the Internet. The right to freedom of expression and information is very important for a child who is at the stage of personality formation. Freedom of expression and information is the ability to express oneself freely on the Internet and to have access to information, statements and views of other persons (both political statements, religious beliefs, views and statements that are perceived favorably or considered inoffensive, as well as those that may cause offense, shock or unbalance other persons). Restrictions may be imposed on such expressions, which contain calls for discrimination, hatred or violence. Such restrictions must be lawful, purposeful, and implemented under court control.

Thus, the European Court established that the rights of minors or young people must be protected in all circumstances, taking into account their physical and mental vulnerability and especially because they can easily gain access to information freely posted on the Internet or become the object of sexual harassment on the Internet. The impact of information is increased when it can be found on the Internet, or even when it is displayed on a medium in a public place with a link to a website address on the Internet. Anyone, including minors, will be able to access the relevant site. These two elements should increase the state's interest in taking measures to

limit the right to transfer information. However, the restriction must be commensurate, in accordance with the general principles of interpretation of Article 10 of the European Convention for the Protection of Rights and Fundamental Freedoms (ECHR). The restriction will be even more justified if it does not prevent the expression of opinions through other means of information transmission<sup>1</sup>. In addition to the above, the exercise of the child's rights to free expression of opinion and obtaining information may be limited by law in the interests of national security, territorial integrity or public order in order to prevent disorder or crime, to protect public health, protect the reputation or rights of other people, prevent disclosure of information obtained confidentially, or ensuring the authority and impartiality of justice [8].

The right to freedom of expression and information is related to the child's right to education, as the use of information technology creates a unique opportunity for him not only to obtain additional information, but also to test his knowledge, skills and abilities. The World Wide Web makes it possible to increase the number of sources for finding educational material, to develop the child's skills and abilities in information-search activities, and to objectively evaluate knowledge and skills in a short period of time. Every child should have access to educational, cultural, scientific, educational resources for the purpose of self-development and learning. The right to education is enshrined in Article 2 of Protocol 1 to the ECHR. Recommendation CM/Rec(2007)16 of the Committee of Ministers to member states on measures to increase the value of the Internet as a socially important resource calls for the creation and development of access to educational, cultural and scientific content in digital form, providing opportunities for self-expression of all cultures and access to the Internet for all languages, including languages of indigenous/minorities. Internet users should be able to freely access publicly funded scientific and cultural achievements on the Internet. Access to digital materials in the public domain should also be ensured within reasonable limits [9]. The right to private life and protection of personal data of children needs research due to the fact that young people actively spend their free time in social networks, where this right is often violated. Private life is a concept for which there is no comprehensive definition. The European Court of Human Rights emphasizes that Article 8 of the ECHR covers a wide range of interests, including private and family life, housing and correspondence, mail, telephone conversations [10], activities of a professional or entrepreneurial nature [11], etc.

The best way to ensure inviolability of private life is anonymous access and anonymous use of services,

anonymous means of making payments. Where possible, it is necessary to find out the availability of technical means of ensuring anonymity [12]. However, complete anonymity is not always possible due to the legal restrictions of countries. In such a case, if permitted by law, the child may use a pseudonym, which will allow his or her personal data to be known only to the Internet service provider. Children should be taught that they should be wary of sites that ask for more personal information than is necessary to enter the site or that do not explain why the information is needed.

Children's right to privacy on the Internet has been the subject of consideration in a number of cases at the European Court of Human Rights. The physical and spiritual well-being of children is one of the most important aspects of their right to privacy. Despite the fact that the European Court, in protecting the norms of morality, given the relative nature of the concepts of morality in the European legal sphere, gives states certain limits of discretion [13], regarding the rights of minors, it clarified that a person of young age is in a vulnerable position. This has different consequences when it comes to the Internet. Member states have positive obligations to ensure effective compliance with this right. Thus, in one of the cases, when an advertisement of a sexual nature was placed on a dating site on behalf of the applicant, a 12-year-old boy, without his knowledge, the court ruled that an advertisement of a sexual nature on an Internet dating site concerning a 12-year-old person carries a physical and moral risks for the child, from which it needs adequate protection. This requires states to take measures designed to ensure privacy. The possibility of obtaining compensation from a third party, in this case the service provider, is not an adequate remedy. What is needed is an affordable remedy that can identify and prosecute the actual perpetrator, in this case, the person who placed the ad, and ensure that the victim receives financial compensation from that person.

Although freedom of expression and privacy of communications are of primary importance, and users of Internet communication facilities should have guarantees of privacy and respect for their freedom of expression, such guarantees are not absolute and must yield to other legal requirements, such as averting disorder or crime, or protecting the rights and freedom of other persons. The state also could not argue that it had no opportunity to establish a system to protect children from online pedophile harassment, because the widespread problem of sexual crimes against children and the dangers of using the Internet for criminal purposes were widely known at the time the incident occurred. Thus, legislatively, the state had to establish

a framework for the reconciliation of these competing interests. Since this did not happen at the time of the crime, the court found the state in the case to have violated the boy's right to respect for his private life [14].

Regarding the provision of information about the identity of minors involved in a sexual incident, the court explained that the fact that the person is a minor may limit the freedom of the press. In the case of a non-prosecution offense committed by a minor, the journalist's right to communicate information about a serious crime, which is normally granted to journalists in order to inform the public about criminal proceedings, must yield to the minor's right to effective protection of his private life [15]. Repeated identification in the press of the identity of a minor suspected of committing a violent crime harms his moral and psychological development and his private life. This may justify a civil injunction against a journalist in a defamation suit, even if the personal information was already in the public domain because it was on the Internet.

Thus, the court's position boils down to the fact that minors should be afforded special protection against interference with their physical, mental or moral well-being. Without appropriate protection, it is impossible to ensure such important rights of the child as the right to safe use of the Internet and the right to respect for honor and dignity on the Internet, the right to file complaints about rights violations, their effective protection, etc. Child abuse on the Internet – any form of physical, psychological, sexual, economic or social violence against a child on the Internet (for example, child pornography, zoophilia with the participation of children, harassment of a child for sexual purposes, molestation, cyberbullying, suicide promotion, cruelty to children [16]). The issue of child pornography is particularly acute in this aspect. Children are easily accessible, and child pornography, in turn, is simple and inexpensive to produce, and even more so in conditions where there is a huge consumer demand for it market. The distribution of child pornography is one of the forms of computer crime, which requires not only measures from the state, but also appropriate forms of international cooperation in the investigation, prosecution and punishment of persons who commit such crimes.

According to the provisions of Art. 20 of the Council of Europe Convention on the Protection of Children from Sexual Exploitation and Sexual Violence ratified on 20.06.2012, the term "child pornography" means any material that visually depicts a child involved in real or simulated explicit sexual behavior, or any image of children genitals, mostly for sexual purposes [17]. The

increase in the vulnerability of children to sexual exploitation is the result of an increase in the level of poverty, social and gender inequality, the spread of drug addiction and alcoholism, an increase in the demand for sexual services for children, the deterioration of the environmental condition, the spread of HIV infection and AIDS, an increase in the number of cases of certain forms of sexual exploitation of children and adolescents, including using the Internet and other latest technologies. The position of the European Court on this issue boils down to the fact that the state must establish a legal framework that allows protecting various interests. Upholding the overriding value of the confidentiality requirement is unjustified if it prevents an effective investigation in a case where it was necessary to compel an Internet service provider to disclose the person who posted a sexual ad to a minor [18].

**Conclusions.** At the current stage of integration into the world community, mechanisms for ensuring and protecting the rights and interests of minors on the Internet have not yet been developed in our country. Ukraine's adoption of the Code on the Protection of Children from Abuse on the Internet is to some extent an attempt to control and ensure the realization of certain rights of children on the Internet and is aimed at combating Internet content harmful to children. The main task of the Code is to unite Internet service providers in the fight against the distribution of child pornographic products and materials promoting child abuse. A major role in the implementation and protection of children's rights should be played by parents and teachers, who should help children to use the opportunities provided by the Internet beneficially and creatively. Indeed, it must be recognized that the interactive nature of the Internet provides many opportunities for the development of media literacy, which forms analytical skills and thinking in a child and gives impetus to innovation and creativity. The right to access the Internet and, as a result, the development of information literacy is important for a child to enable him to safely adapt to new technologies that are constantly evolving, and more broadly, to shape his personal worldview. However, all of the above is not possible without protecting children's rights on the Internet and ensuring adequate information security, which is one of the indicators of a child's quality of life factor.

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## Анотація

**Гриб Г. М. Міжнародно-правовий захист прав дітей в Інтернеті. – Стаття.**

У 1959 році на 14-й сесії Генеральна Асамблея Організації Об'єднаних Націй прийняла декларацію про права дитини, що присвячена виключно неповнолітнім. Ця декларація передбачає найважливіші правила, принципи. Декларація прав дитини не є обов'язковою; це рекомендація за своєю суттю. Основна перевага цієї декларації полягає в тому, що вона встановлює рівність прав усіх дітей без винятку, без розрізнення чи дискримінації на підставі раси, кольору, статі, мови, релігії, політичних та інших переконань, національного чи соціального походження, статусу власності, народження чи інші обставини, що стосуються дитини чи його родини. У ньому перераховані права дитини як громадянина (від імені, громадянства, обов'язкової та вільної освіти, первинної медичної допомоги та захисту, особливо проти всіх форм нехтування, жорстокості та експлуатації); Як незалежні, висвітлюються положення щодо його права на освіту в сім'ї. Суспільство та державні органи повинні нести відповідальність за особливу піклування про дітей, які не мають сім'ї та дітей, які не мають достатніх засобів для існування. Відповідно до ст. 1 Конвенції про права дитини – особа визнана дитиною у віці до 18 років. Конвенція про права дитини не лише підкреслює пріоритет інтересів дітей щодо інтересів суспільства, але й спеціально підкреслює необхідність спеціальної державної допомоги для соціально позбавлених груп дітей: дітей, які залишилися без батьківської допомоги, людей з обмеженими можливостями, біженцями та правопорушниками. Європейські норми та стандарти засновані на ідеї найкращого захисту прав дитини: його виживання, здатність розвиватися нормально, бути захищеними та мати можливість (законно) брати участь у суспільстві. Концепція "неповнолітньої" визначається юридично, заснована на психофізичних та соціальних якостях дітей певної нації, країни та держави. В цей час як національне законодавство всіх країн, так і норми договорів, конвенцій та звичаїв формально та юридично цілком повністю фіксують сукупність прав, свобод та законних інтересів неповнолітніх. Однак національна та міжнародна практика їх впровадження сповнена порушень різної тяжкості. Існуючі національні та міжнародні інститути та інститути захисту прав людини в цілому, і, зокрема, дитина здатні захищати людину, однак, низка обставин політичної, військової, економічної, екологічної, геополітичної природи часто заважає цьому (вони не дозволяють розгорнути процедури захисту прав людини, особливо неповнолітніх).

**Ключові слова:** права дитини, Інтернет, інформаційні технології, міжнародне право.

## Summary

**Hryb H. M. International legal protection of children's rights on the Internet. – Article.**

In 1959, at the 14th session, the United Nations General Assembly adopted the Declaration of the Rights of the Child, dedicated exclusively to minors. This Declaration provides for the most important rules of principle. The declaration of the rights of the child is not binding; it is recommendatory in nature. The main advantage of this declaration is that it establishes the equality of rights of all children without exception, without distinction or discrimination on the grounds of race, color, sex, language, religion, political and other beliefs, national or social origin, property status, birth or other circumstance relating to the child or his family. It lists the rights of the child as a citizen (in the name, citizenship, compulsory and free education, primary care and protection, especially against all forms of neglect, cruelty and exploitation); as independent, the provisions regarding his right to education in the family are highlighted. Society and public authorities should have a responsibility to take special care of children who do not have a family and children who do not have sufficient means of livelihood. In accordance with Art. 1 of the Convention on the Rights of the Child – a person is recognized as a child under the age of 18. The Convention on the Rights of the Child not only emphasizes the priority of the interests of children over the interests of society, but also specifically emphasizes the need for special state care for socially deprived groups of children: children left without parental care, people with disabilities, refugees, and offenders.

European norms and standards are based on the idea of the best safeguarding of the rights of the child: his survival, the ability to develop normally, be protected and have the opportunity (legal) to participate in society.

The concept of "minor" is defined legally, based on the psychophysical and social qualities of the children of a particular nation, country and state. At present, both the national legislation of all countries and the norms of treaties, conventions and customs formally and legally quite fully record the totality of the rights, freedoms and legitimate interests of minors. However, the national and international practice of their implementation is full of violations of varying severity.

Existing national and international institutions and institutions for the protection of human rights in general, and the child in particular, are capable of protecting a person, however, a number of extra-legal circumstances of a political, military, economic, environmental, geopolitical nature often interfere with this (they do not allow to deploy procedures for protecting human rights, especially minors).

**Key words:** children's rights, the Internet, information technologies, international law.