

COMPARATIVE ANALYSIS OF THE EXPERIENCE OF FOREIGN COUNTRIES ON THE REGULATION OF RELATIONS IN VIRTUAL SPACE

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Abstract

Despite the fact that the virtual space is borderless and uniform, the traditional differences existing in the management and legal systems of individual states also affect the regulation of relations formed in the virtual space. Thus, the legal regulations of the states with the Anglo-Saxon system differ from those of the countries belonging to the Roman-Germanic system by giving priority to democratic elements. In addition, the formation of information communication infrastructure and the development of the information economy also have an impact on the practice of legal regulation of virtual space. Therefore, regulation was formed and improved faster in technically and economically developed countries of the world. In the article, such issues were investigated on the basis of comparative analysis and advanced practices were distinguished and their advantages were determined.

Keywords: *virtual space, protection of human rights, legal regulation, Anglo-Saxon system, Romano-Germanic legal system, national legislation.*

I. Introduction

In order to analyze the experience of foreign countries on the regulation of new relations formed in the virtual space, we consider it appropriate to use three development models presented by Azerbaijani authors. European, Anglo-American and Asian models [1, p. 154]. The main reason for the differentiation of these models is that if European countries pay more attention to the protection of economic rights, in the Anglo-American countries the protection of political rights and freedoms in the virtual space and the development of e-democracy have been brought to the agenda. Despite the fact that Asian countries are characterized by more technical developments, the stereotypes prevailing in public administration continue to influence the regulation of virtual relations.

II. European experience

The European Union's (EU) interest in legal regulation of the Internet and virtual space has a relatively short history. Although relevant intellectual property and data protection laws existed earlier, specific e-commerce initiatives can be traced back to the mid-1990s. Historically, the first document showing an interest in Internet law and influencing the EU's subsequent approach to the Internet is the European Initiative on Electronic Commerce from 1997 [10]. Although the main purpose of the document was to promote the development of e-commerce, it was based on a special interest, such as the desire of the Commission to create a relevant regulatory framework.

Four guiding principles have been developed for the framework. The first is related to technology: the EU must promote the technological and infrastructure necessary to ensure competitiveness. The second is related to regulation: the EU should ensure a coherent regulatory framework based on the Single Market. The third is about promotion: consumers and industries had to be made aware of the opportunities that

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electronic commerce allowed. The last was related to the international dimension: the EU had to ensure an effective international presence.

At the same time, the four principles were supposed to provide an adaptable and appropriate framework for legislation:

- There should have been no regulation for regulation's sake;
- Full and comprehensive regulation based on Single Market freedoms should have been preferred;
- All arrangements had to take into account business realities;
- It had to be possible to obtain all interests efficiently and objectively.

The initiative of a new policy on Information Technologies under the Council of Europe was proposed at the Strasbourg Summit in 1997 and was developed in 1999. Digital technologies, especially freedom of expression, transparency, pluralism, etc. While highlighting its significant potential for issues like The Declaration mentions an output that is particularly important for any potential success of information technology [17].

The third historic step was taken with the Lisbon Declaration and the e-Europe initiative. The main priority of the initiative was to make Europe the most dynamic knowledge-based economy in the world by 2010. It was thought necessary for the Internet to become more widespread and for better acceptance of e-commerce. Both problems were directly related to the need to liberalize the telecommunications sector in the member states. Following this, work was started on a number of Directives, including the Electronic Commerce Directive. In addition, self-regulation was encouraged, such as the creation of a separate .eu domain name.

The practical plans for the regulation of the Internet were two action plans: eEurope 2002 and its sequel eEurope 2005. The 2002 Action Plan, which set the main task of penetrating the Internet, made a significant contribution to the 2002 revision of the regulation of the telecommunications sector [13]. In addition to services such as e-health, e-government, e-education and e-business, the 2005 Action Plan focused on connectivity. The 2005 plan was revised in 2009 [14].

We can also mention I2010: European Information Society for Growth and Employment, an information society initiative launched in June 2005 as a new strategic framework defining rather broad policy guidelines for the information society and media. It has three objectives:

- Creation of the Single European Information Space;
- strengthening investments in innovation and information technologies;
- Improvement of public services and quality of life through better use of ICT [7].

In essence, this document is just a continuation of the previous initiative.

In Europe today, within the framework of the Europe 2020 strategy [15], the Digital Agenda for Europe is a key action plan aimed at helping to deliver a digital Single Market [9]. This document is based on seven pillars: Digital Single Market, interoperability and standards; ICT standards setting and interoperability; trust and security; fast Internet access; improved ICT research and innovation; improved digital literacy and digital skills; Social benefits enabled by ICT. The agenda also includes a list of 101 action plans that must be implemented to achieve these goals. In 2015, the digital single market strategy further developed the digital agenda with three pillars:

- 1) Providing better access to digital goods and services in Europe;
- 2) creation of optimal conditions for digital networks and services;

3) strengthening the growth potential of the digital economy.

Aiming to shape Europe's digital future, the 2020 strategy focuses on technologies that benefit people, a competitive economy and an open, democratic society. In 2021, this strategy was supplemented by a digital compass for 2030, which details the EU's digital goals for the decade [8].

Today, the Council of Europe is an important European and world information provider. Therefore, the Council decided to set an example by developing an information policy based essentially on two pillars: declaring transparency as a principle (for example, confidentiality is lifted only one year after the release of restricted documents) and using the website as a spearhead for disseminating information (including creation of a common and comprehensive network for various websites developed over time, which will greatly simplify the tasks of both users and content providers: www.coe.int) [17].

An interesting experience of the Council of Europe in the field of information provision is the Internet library LOREG (Local and Regional Government) [23]. This database not only offers very powerful and user-friendly search tools, but also takes on the difficult task of creating a real network between different information providers in the field of local and regional democracy. This multi-level networking service from LOREG includes several features:

- LOREG works as both a database and a meta-database, the search results are both documents hosted by LOREG and documents hosted by official national websites and databases;

- creates a physical network of editors representing different European countries, responsible for entering and updating information referring to their countries;

- LOREG is designed to communicate with other databases so that research in one database can bring information from another database. In addition, the Council of Europe Conventions database provides not only the texts and explanatory reports of the current 185 Council of Europe Conventions, but also real-time information on signatures, ratifications. The case law database of the European Court of Human Rights [18], the Council of Europe Web Directory [22], which offers online access to the document library of the Council of Europe, should also be mentioned among the main and reliable sources of information.

With human rights and democracy at the core of its interests, the Council of Europe has launched a series of activities to help find standards, tools and instruments that will help maximize the benefits of new technologies for democracy. These activities explore the impact of new technologies in general, and e-democracy in particular, on the role, functioning and means of action of both central and local/regional governments. Following the results of a comprehensive study of the situation in Europe, they try to put forward proposals to help states meet the challenges of tomorrow's democracy [17]. Let's take a closer look at the experience of several European countries.

Germany. Germany is the first European Union member state to resolve legal issues related to the Internet. On June 13, 1997, the Law on Television Services classified three groups of users as access providers, service providers and content providers, and their criminal liability was also regulated in this context [6, p. 74].

In Germany, Internet users' obligations regarding Internet content are governed by the Telecommunications Media Act of 2007. According to this law, service providers

are not responsible for the content of data transmitted on their servers. In Germany, two main issues regarding censorship have been accepted. The first is the promotion of racial hatred against minorities, and the second is the denial of the Jewish holocaust. The Federal Children's Network Authority has the authority to regulate various pornographic and violent content. In fact, in 2009, the German Federal Parliament adopted the Law on Combating Child Pornography in Communication Networks, which mandates service providers to block access to sites that contain child abuse [6, p. 74].

Italy. Italy was the first country in Europe to publish a declaration on the Internet. Thus, although the Declaration of Internet Rights published in 2015 does not have legal force, it is considered an important document for Internet freedom in Italy. The right to access the Internet, data protection, Internet neutrality, anonymity and the right to be forgotten as regulated in this declaration are important regulations for Internet freedom. In Italy, blocking or censorship of Internet access is generally not practiced on social, political or religious topics. There are legal regulations and barriers to entry related to gambling, child pornography, anti-terrorism, and copyright. Recently, there have been many requests to Google to remove content in Italy, especially on topics such as defamation, hate speech, privacy and security, violence, harassment and copyright. The highest requirement for content removal is defamation. Internet is free in Italy [12].

France. France is a country that supports freedom of the press and access to online content. According to the current report of Freedom House, the Internet is free in France. In France, the main law dealing with illegal content and actions on the Internet is the LCEN (Law on Confidence in the Digital Economy) on copyright. According to this law, service providers will not be liable if they are not aware of illegal content and remove that content as soon as they become aware of the content. However, if there is a court order sent to them regarding illegal content, they are also obliged to check whether this content has been re-uploaded. In France, terrorism and child pornography websites are blacklisted by the Information and Communication Technology Crime Center, which is updated monthly. After the terrorist attack on Charlie Hebdo magazine in January 2015, two decrees were issued by the prime minister allowing access to terrorist websites to be blocked without a court order. Parliament has passed a law that gives intelligence agencies the power to intercept electronic communications and demand user data from service providers without first obtaining a court order. The rationale for this law is public safety, terrorism and crime prevention.

After the terrorist attack in Paris in November 2015 and the terrorist attack in Nice in July 2016, the request of the French authorities to block access to websites with terrorist content has increased significantly. In 2017, President Macron's proposal to give discretion to the courts to prevent access to fake news sites to prevent disinformation during the elections was the subject of debate, and after the bill was approved by the parliament, the senate rejected the bill [19].

III. Anglo-American experience

The Communications Decency Act (CDA), which entered into force in the United States on February 8, 1996, is one of the first legal texts designed to solve the problems caused by the Internet in the world [5, p. 176]. This law was enacted as part of the Telecommunications Law. According to the Communications Ethics Act, the publication and transmission of obscene images, text and similar content shared on the Internet, and the sharing of violent content, is regulated as a crime. To enforce the said

law, authorities were given the ability to monitor people's e-mail correspondence and chats on the Internet. Later, an opposition movement against this law began under the leadership of the American Civil Liberties Union. Based on this, in the lawsuit opened in the Philadelphia Court, it was stated that the word "obscene" is ambiguous and contradicts the principle of determinacy of criminal norms, and it was decided that this law contradicts the freedom of expression established in the Constitution. The US Supreme Court approved this decision in 1997 and justified that the Internet as a means of mass communication should be protected from government interference. The lack of regulation of online publishing has certainly created chaos, but it shouldn't have. It should not be forgotten that the power of the Internet also originates from this chaos [6, p. 73]. This decision of the Federal Supreme Court is very important in terms of Internet freedom.

In the United States, a number of laws have been passed regarding Internet content, especially child pornography. However, there is still some conceptual debate between freedom of expression and Internet freedom. For example, it is up for debate whether to regulate issues such as gambling and cyber security, or to what extent the regulations interfere with freedom of expression. In the United States, the Federal Communications Commission declared the Internet a public property by its decision dated February 26, 2015. In addition to all this, it is noteworthy that in 2014 Reporters Without Borders added America to the list of Hostile Countries of the Internet [12].

England. In terms of Internet access restrictions, the British Defamation Act, the Copyright Act and legislative provisions related to the fight against terrorism and child pornography are at the fore in the country. In the UK, the filtering system is generally applied to matters such as dating sites, drugs, alcohol and tobacco, gambling, pornography, violence, terrorism, suicide and cyberbullying. Filtering is removed only when subscribers indicate that they do not require filtering. In other words, some content is automatically prevented from reaching users by the government. This idea was first brought to the agenda in 2010 during the coalition government and later started to be implemented. Filtering is also implemented in most schools and libraries. However, this system is criticized due to insufficient filtering software. For example, when all sites containing a word are blocked, it can be seen that the corresponding content is also blocked [6, p. 78].

IV. The experience of the Republic of Turkey: approximation to the European experience and strict legal regulations specific to Asia

In some paragraphs, information on the level of individual rights and freedoms has been provided regarding the regulations carried out by Turkey in the virtual space. The leading legislative act in this field in Turkey is Internet Law No. 5651, adopted on May 4, 2007. The main purpose of this Law is to define the entities related to the Internet and to determine the responsibilities and sanctions against them.

The European Commission emphasized that Law No. 5651 contains content that violates the freedom of expression, and stated that this law should be revised within the framework of the proportionality of the interference with rights and freedoms and Turkey's international obligations. The law has been heavily criticized in the European media by the NGO European Digital Rights (EDRI) [21].

In general, the analysis of Turkey's judicial experience shows that Internet freedom is not fully protected here, and in many cases access is blocked. In the decision of the Constitutional Court No. 2014/5552108 Ali Kızılkaya, the conversation refers to the

claim that the decision to block access to articles and some news on the Internet news site violates the freedom of expression and press. The applicant is the owner and editor-in-chief of the website *airporthaber.com*. On the said website in April 2014, the name of O.Y., who was the president of the Turkish Aviation Authority (THK) at that time, was mentioned. Thus, five separate articles were published about him. On the basis of the complainant's (O.Y.) application, the first-instance courts made a decision to prohibit access to the articles that are the subject of the complaint. According to the Constitutional Court, Internet journalism should be evaluated within the framework of freedom of the press as long as it fulfills the main function of the press. From the point of view of the press, the freedom of the Internet, which is considered within the framework of the freedom of opinion and expression, is considered as the freedom to obtain news or opinion, which is protected by the Constitution and constitutes the basis of freedom of expression. For those who access the Internet, freedom of expression and freedom of the press are valid for everyone and are vital to the functioning of a democracy. Freedom of expression and the press refers not only to the content of information, but also to the means of dissemination of this information. Therefore, any restriction imposed in the form of blocking access to websites or news on websites violates the freedom to receive and impart information. It should not be forgotten that the freedom of the press provides one of the best means for conveying various ideas and attitudes to the society and forming an opinion about them. In the mentioned decision, the Constitutional Court stated that the concept of Internet freedom should be considered within the framework of freedom of expression, and the restrictions in the form of blocking access have the nature of interfering with Internet freedom. According to the Constitutional Court, other rights and freedoms related to Internet freedom, especially freedom of expression and press, are vital in a democratic society. Authorities exercising state power regarding the Internet must be very sensitive. In this regard, blocking access to the Internet should be a last resort. If it is possible to combat harmful content on the Internet by other means, or if the interests protected by blocking access will be more harmed, then the decision to block access is a violation of freedom of expression [2, para. 43, 82]. Similarly, *Medya Gündem Dijital Yayıncılık Tic. in the Inc.* decision, the Constitutional Court stated that Article 10 of the European Convention protects not only the content of opinions and opinions, but also the method of their delivery and noted that in the case of interference with the freedom of expression and the press, there were relevant and sufficient grounds to justify the interference in local court decisions. - absence, as well as whether there is a reasonable balance between the purpose of the restriction and the means, should be evaluated in terms of the requirements of the democratic social structure [2, para. 41].

As can be seen, the Constitutional Court of Turkey refers to the connection of the Internet with freedom of expression in most of its decisions. However, despite all these decisions, there is an increase in the number of websites blocked in Turkey and the number of people convicted for their statements shared on the Internet. In this regard, the blocking of access to Wikipedia can be mentioned in particular. According to the interpretation of the Constitutional Court, if access to the entire site is blocked due to the content shared by the user, even if there is a precautionary measure, it becomes impossible for all individual users to benefit from the site, and this constitutes a violation of the law [2, para. 39, 40]. Therefore, the decision to block access to Wikipedia should be revoked immediately. Although interferences with Internet content are often

carried out within the framework of Law No. 5651, it seems that the decisions of the Constitutional Court always give importance to Internet freedom and specifically mention that the restriction is exceptional [6, p. 216].

V. Conclusion

As existing laws in nations around the world do not cover behaviors that have the harmful effects of virtual reality, legal systems in the real world are taking steps to combat these new forms of crime. For example, Korea passed laws in 2007 prohibiting the use of hacking software [16]. In January 2024, virtual sex crime was investigated by the police for the first time in Great Britain, which has been planning to develop legislation to combat crime for virtual worlds since 2007 [20]. So right now, police are investigating the first rape case in the metaverse after a child was assaulted in a virtual reality video game. A 16-year-old girl is said to be left distraught after her avatar - her digital character - was raped by people online. Even if the victim wearing headphones was not injured because there was no physical assault, police officers said she suffered the same psychological and emotional trauma as someone who was raped in the real world. Because the virtual reality experience is designed to be completely immersive [11].

New technologies allow states to be more accountable to the will of the people, to work and to make democracy work better than ever before. This is one of those exciting moments in history when leaders and authorities are called to action. New challenges require new coordinated responses. Networks do not stop at national borders, so states must cooperate to take advantage of new opportunities and limit the risks they pose. Thanks to more than 50 years of experience in international cooperation, the Council of Europe is ready to help state bodies and citizens maximize their capabilities in the international arena, both as a standard-setting body and as a service provider [17].

At the same time, the American experience in this field is not far behind. Anglo-Saxon countries, which use virtual space as a convenient space for the realization of political rights and freedoms, are also trying to resolve disputes related to intellectual property rights.

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