

Implementation of the Right to Privacy in the Context of the Restrictive Impact of Modern Information Technologies

Oleg G. Danilyan*

Yaroslav Mudryi National Law University

Kharkiv, Ukraine

**e-mail: odana@i.ua*

Olexander P. Dzoban

Yaroslav Mudryi National Law University

Kharkiv, Ukraine

Felipe Rodolfo Vergara Lasnibat

University of Playa Ancha

Valparaiso, Chile

Abstract

The relevance of the topic is due to the multidimensionality, relativity, conceptual multiplicity and social and practical significance of the problem of ensuring the human right to privacy in the context of modern social reality. The purpose of the article is to examine the phenomenon of privacy and the socio-cultural conditions for the realisation of the human right to it from a philosophical perspective. Methods used: the dialectical method (for comprehensive knowledge of the nature and genesis of the right to privacy), systemic and structural-functional approaches (for studying the contradictory information impact on a person of complex technical systems), analytical and synthetic method, as well as methods of comparison and analogy (for comparing practical models of the impact of the latest information technologies on the ways of ensuring the human right to privacy). The authors show that the modern socio-cultural reality demonstrates the dichotomy of what is proper and what is in solving the problem of security of the private status of an individual and the human right to privacy. The loss of privacy, which is a trend in modern social life, indicates the ever-increasing risks of alienation of privacy in social reality. The author emphasises that modern technologies can completely violate the human right to privacy, penetrate special places and certain aspects of private life and change the locus of privacy. It is substantiated that modern information and digital technologies, having an ambivalent impact on the freedom and security of personal existence, radically narrow the boundaries of the right to privacy, thereby problematising the structures of human self-identity and generating insecurity of personal life, and the prospects for research in this area are emphasised.

Key words: *right to privacy; identity; self-identity; personal space; information space; cyberspace.*

Реалізація права на приватність в умовах обмежувального впливу сучасних інформаційних технологій

Олег Геннадійович Данильян*

Національний юридичний університет імені Ярослава Мудрого

Харків, Україна

**e-mail: odana@i.ua*

Олександр Петрович Дзьобань

Національний юридичний університет імені Ярослава Мудрого

Харків, Україна

Феліпе Родольфо Вергара Ласнібат

Університет Плайя Анча

Вальпараїсо, Чилі

Анотація

Актуальність теми зумовлена багатовимірністю, релятивністю, концептуальною множинністю і соціально-практичною значущістю проблеми забезпечення права людини на приватність в умовах сучасної соціальної реальності. Мета статті – розглянути з філософських позицій феномен приватності та соціокультурні умови реалізації права людини на неї. Застосовані методи: діалектичний метод (для всебічності пізнання природи та генезису права на приватність), системний і структурно-функціональний підходи (для дослідження суперечливості інформаційних впливів на людину складних технічних систем), аналітико-синтетичний метод, а також методи порівняння й аналогії (для порівняння практичних моделей впливу новітніх інформаційних технологій на способи забезпечення права людини на приватність). Показано, що сучасна соціокультурна реальність демонструє дихотомію належного та суцього у розв'язанні проблеми безпеки приватного статусу особистості, права людини на приватність. Втрати приватного життя, що є тенденцією сучасного соціального життя, свідчать про дедалі стрімкіше зростаючі ризики відчуження приватності у соціальній реальності. Акцентується, що сучасні технології можуть тотально порушувати право людини на приватність, проникати в особливі місця й окремі аспекти приватного життя та змінювати локус приватності. Обґрунтовується, що сучасні інформаційні та цифрові технології, амбівалентно впливаючи на свободу та безпеку особистісного буття, радикально звужують межі реалізації права на приватність, проблематизуючи тим самим структури самоідентичності людини та породжуючи незахищеність особистого життя і наголошується на перспективності досліджень у цьому напрямку.

Ключові слова: право на приватність; ідентичність; особистий простір; інформаційний простір; кіберпростір.

Introduction

According to the socio-cultural experience of mankind, privacy is ontologically irresistible, it is "governed" by necessity. Privacy, rooted in the priority of the personal way of being and autonomous constitution, is a universal human value. Socio-culturally, this is confirmed by the democratisation of political life, the development of civil society, the establishment of the rule of law, etc. However, modern social life demonstrates the dichotomy of the "proper and the real" in solving the problem of security of the private status of an individual and the human right to privacy. The loss of privacy, the private continuum of personal existence, and the confidential principle, which is a trend in modern social life, indicate the growing risks of alienation of privacy in social reality.

The social era of "involvement" clearly demonstrates a pronounced asymmetry in the relationship between the personal and the social, the public and the private, personal and social identities, autonomy and heteronomy of the individual, personal and social control. Privacy as a phenomenon of social life is not given a "worthy" place in contemporary social practice. The reduction of personal status, autonomy, private life, and privacy finds its explanation in the modern society itself, where social rationality is organised according to the criteria of prediction, standardisation, consistency, and diligence of action, where the possibility of autonomy, uncontrolledness, and uncodifiedness of any act is excluded.

Today, the value of personal space and privacy is being devalued. A person is enslaved by virtual reality, lives with an "identity without personality", an anonymous identity, a "profane" body, "sold out intimacy", and Internet socialisation, becoming more and more impersonal and public. This process is accelerated by modern technologies, whose achievements and "products" upset the techno-humanitarian balance of our time. NBIC technologies, including information technologies themselves, are a large-scale and effective means of unauthorised interference in private life and its destruction.

Thus, the problem of ensuring the human right to privacy, given its multidimensionality, complexity, relativity, conceptual multiplicity, as well as personal and social and practical significance in the context of modern social reality, is certainly relevant.

Literature review

The problems of privacy and the human right to it have been addressed by many researchers. The beginning of the scientific discourse on the right to privacy can be considered the article by two Boston lawyers, S. Warren and L. Brandeis, "The Right to Privacy" (1890), where this right is considered as a general category that may include an unforeseen wide range of powers that is constantly expanding. The authors argue that inevitable technical progress and development of technologies will make adjustments to legal regulation in the future. In anticipation of the long-term relevance of their ideas on privacy, the authors noted that the law should be flexible and able to adapt to the needs of the present [1].

In the context of this problem, Z. Bauman rightly believes that any social institution seeks to neutralise the destructive influence of private behaviour, thereby "privatising" morality [2].

E. Giddens reflects on the elimination of the phenomenon of privacy in modern times, believing that the boundaries of secret and overt in social forms of activity are changing and combining in some public spheres [3].

Domestic researcher Yulia Volkova believes that the human right to privacy can act as a humanistic guideline for the development of not only the state as a whole, but also the national security system that has developed in the state. National security is a means of ensuring the personal rights of citizens, including the right to privacy [4, c. 117].

O. Pankevych considers the right to privacy to be one of the most important personal rights and emphasises that in the context of the development of the latest technologies, the right to privacy, which is based on the issue of obtaining and disseminating information about a person, is subject to constant threats of violation [5].

R. Prystai focuses on "privacy by design", a concept of building a state of ensuring privacy throughout the entire life cycle of personal data processing, including technologies, systems, processes, practices and policies, from their early design stage to implementation, use of data and, ultimately, their disposal. It argues that ensuring the human right to privacy should be seamlessly integrated into all levels of data operations, rather than being seen as a compromise or something to be considered after the product, system, service or process is created [6, c. 553].

Y. Razmetayeva emphasises that information technology is gradually changing people's attitudes to privacy. At the same time, people are getting used to bringing personal issues into the public sphere and interpenetration of various spheres of life, giving up privacy for the sake of their own convenience, the capabilities of communication networks, and unimpeded access to cyberspace, which ultimately reduces the level of expectations for the preservation and protection of privacy [7].

S. Bulavina and T. Davidova, through clarifying the nature of privacy, highlighting certain problems of ensuring the right to privacy, conclude that this right, although formed, has not yet been formalised as a fundamental right. The authors argue that the right to privacy is a right of the third generation (the generation of global human and civil rights), which is associated with both the information component and such rights as the right to inviolability, freedom of thought and speech and dignity [8].

Paying tribute to the scientific achievements of domestic and foreign researchers, it should be noted that the philosophical reflection on the problem of the right to privacy in the context of informatisation and digitalisation of society requires clarification and detailing of both individual aspects and the phenomenon as a whole.

Materials and Methods

The purpose of the article is to examine the phenomenon of privacy and the socio-cultural conditions for the realisation of the human right to privacy from the philosophical perspective.

The methodology for studying the issue of the human right to privacy in the context of the dynamics of the information society development involves the consistent application of general scientific, philosophical and special methods and approaches, which allows achieving the above goal.

The initial stage of applying the methodology is a comparative analysis of the most illustrative scientific publications relating to various aspects of the dynamics of the information society, understanding the essence and characteristics of a modern person and his or her rights in the new socio-cultural (information) environment, etc. Particular attention was paid to the coverage of information processes and peculiarities of the use of the latest information technologies in social reality and in the practice of human rights realization.

The next stage is to study the impact of the main attributes of the information society on the realisation of the human right to privacy. The application of the systemic and structural-functional approaches made it possible to investigate the contradictions of such an impact as a consequence of the growing interaction between humans and complex technical systems. The analytical and synthetic method, as well as the methods of comparison and analogy, made it possible to compare practical models of the impact of the latest information technologies on the ways of ensuring human rights in general and the right to privacy in particular.

At the final stage, when substantiating the directions and prospects for the development of the practice of ensuring the human right to privacy in the information (digital) society, the methods of all three levels were comprehensively applied, and as a result, the arguments in favour of the author's hypothesis were generalised, according to which modern information and digital technologies, having an ambivalent impact on the freedom and security of personal existence, radically narrow the boundaries of the right to privacy, thereby problematising the structures of human self-identity and generating the experience of insecurity of personal life.

Based on the complementarity of various methods, there are grounds to conclude that in the context of total social control, the impact of modern technologies, the ontological and axiological "fate" of human existence depends on human reflection on the newest risks of social existence and ensuring the right to privacy.

Results and Discussion

First used in 1890, the concept of "right to privacy" is such a general category that it can include an unforeseen wide range of powers, which is constantly expanding. Modern social reality demonstrates its ambivalent existence, the gap between public and private, personal and social. Private life, privacy rooted in the priority of the personal way of being and autonomous constitution, is a universal human value. However, today the value of personal space and privacy is being devalued.

It is quite obvious that transformations associated with the rapidity of the dynamics of social life, with the "dizzying" speed of change that outpaces natural abilities and possibilities of their reflection and internalisation, require not only philosophical and psychological reflection, but also the development of mechanisms for adaptation to them.

Among those who were among the first to comprehend this situation was the futurist E. Toffler. He pointed out in this regard that in order to survive, to prevent what we have called the shock of the future, the individual must become infinitely more adaptable and knowledgeable than ever before. He must look for entirely new ways to anchor himself, as all old roots - religion, nation, community, family or profession - are already faltering under the hurricane force of acceleration. Before they can do so, however, they need to understand how the effects of acceleration are penetrating their private lives, affecting their behaviour and changing their quality of existence [9].

Polish futurologist S. Lem defines technology as driven by the state of knowledge and social efficiency means of achieving goals left by society, including those that no one had in mind when they started out, due to the state of knowledge and social efficiency.

Any technology, in his opinion, essentially just continues the natural, innate desire of all living things to dominate the environment, or at least not to submit to it in the struggle for existence [10].

The dual meaning and ambivalent social role of modern technologies has been noted by many researchers. The choice to create or expand technology can be seen as a bifurcation point. Right,

freedom, or various forms of coercion stand behind the use of technology. Freedom, which is considered one of the highest values in many cultures, does not always lead to the realisation of rights and security. Thus, it appears that modernity is facing an alternative of freedom or security.

Modern computer technologies make the world more and more "transparent". Many authors use the Baudrillardian metaphor of "transparency" to characterise modernity [11]. The example of E. Snowden serves as a confirmation of the world's "transparency" (openness, accessibility, awareness). He revealed the "secret" that the United States is spying on more than a billion people in more than 50 countries, including presidents, ministers and heads of major corporations, recording their calls and location, emails, SMS messages [12].

Technological and socio-cultural transformations of the semantic field of the right to privacy

According to socio-cultural practice, the transition to a "transparent world" means a revision of many meanings, values, and cultural norms. Therefore, it is possible that in the near future, efforts will be made to "close" certain parts of virtual reality in one way or another and return to people their individual information space.

A striking example of living in a "transparent world" was the information that Apple cooperates with the intelligence services of the world's leading countries and the confirmation that iPhones and iPads take covert photos and send the data to Apple.

Obviously, one of the main goals of any intelligence agency is to obtain intelligence at any cost. Therefore, the ability to "log in" to any phone is an intelligence super-task. As is known, government agencies in many countries allocate a separate budget to their intelligence agencies to "work" with the cipher keys of leading corporations engaged in the development and production of personal computers, smartphones, software and digital content. Technologically, when decrypting a cipher key, you can run special programmes on the device that will search for security vulnerabilities. Then, it is possible to select keys, try hacking methods, analyse the incoming information, and eventually adapt the spyware. For an average user of electronic devices, this situation will mean the ability to "backdoor" an application at any time and gain access to all the data stored in it: passwords, messages, and personal information.

It is known from various information sources that the "resisting identity" is represented by those who fight against illegal intrusion, interference of special services in private life, personal space, private zone. The media has made it known that Apple CEO Tim Cook has spoken out in favour of people's right to privacy and the preservation of private information, and stressed that no one should accept that the government, a company or anyone else has the right to our private information. This is a basic human right. Each of us has the right to privacy. And we should not give up this right. [13].

Cyber threats to the practice of exercising the right to privacy

The cyber threat of owning and using iPhones, iPads and other popular gadgets is that these devices can take photos, shoot videos and transmit these files to the outside world without their owners knowing. Apple's mobile devices, as well as smartphones and tablets on competing platforms, have built-in software that collects and analyses information about the user, his or her movements, with the possibility of connecting a photo and video camera and reading images, and sends all the collected information to the manufacturer. In fact, this is a Trojan horse, as its presence is not declared anywhere, there is no icon or any other indication of its presence on a mobile device.

Another point of contention is the relationship between the legitimate human right to privacy and the legitimate right of the state to protect its security. As an example, in December 2015, the Dutch blog *misdaadnieuws.com* (Crime News) published a document stating that law enforcement agencies in the Netherlands had found a way to recover deleted messages and read encrypted emails on BlackBerry devices. It is known that BlackBerry was "famous" for the security of its smartphones with built-in PKI encryption [14].

Today, the scale of the cyber threat in the form of phone hacking and access to any information is many times greater than the threats from murder, torture, and kidnapping; modern terrorism is extremely active in using information opportunities for its barbaric purposes. For example, in February-March 2024, France suffered from powerful cyberattacks. More than 33 million people - slightly less than half of the French population – were affected by a data breach that included information such as "marital status, date of birth and social security number, name of health insurer and coverage provided by the policy" [15].

It should be noted that the scale of the cyber threat affects the ontological status of human life. The point is that virtual and real space are not identical. They are different realities, and the possibilities in these realities are also different. In virtual space, the boundary between the real and the unreal, the imaginary, is erased, eliminated. This entails the absence of "clarity of consciousness", the criteria of the sane, which is a sign of rationality and rational planning of actions. The priority of the virtual "I" over the real "I" leads to the destruction of the integrity of identity, especially personal identity, to the suppression of critical reflection, and to the violation of the boundaries of law and personal freedom [16-18]. The reason for choosing the value of virtual reality is the following. Due to the intensification of the dynamics of life, there is an instantaneous spatio-temporal reorientation, switching of codes of perception and behaviour, which becomes a condition for life competence.

According to Z. Bauman, privacy is a less concentrated form of freedom, the right to refuse the intrusion of other people (as individuals or as agents of some supra-individual authority) into specific places, at specific moments or during specific activities. With privacy, an individual can "escape from the public eye", confident that he or she is not being watched, and is therefore able to do whatever he or she wishes to do without fear of judgement. Privacy is usually partial - intermittent, limited to special places or certain aspects of life. When it crosses a known boundary, it can turn into loneliness and thus give a taste of some of the horrors of imaginary "complete" freedom. Privacy works best as an antidote to social pressures when it is possible to enter and leave it freely; when privacy truly remains an interlude between periods of social torture and is mainly an interlude for which the timing is up to the individual [19].

We cite this statement by Z. Bauman about privacy to show that it does not quite "adequately" reflect the reality: modern technologies can already violate the human right to privacy, penetrate special places and certain aspects of private life and change the locus of privacy. For example, the key technology of the 21st century – nanotechnology – transforms the boundaries of privacy at the level of the human body.

Thus, the use of nanotechnology in the context of transhumanist goals obviously raises the problem of rethinking the boundaries of law/freedom, internal/external, private/public, secret, and seclusion. Technological programmes for human enhancement, including military projects, are emerging, which is essentially a violent interference in a person's internal affairs. A person, even when agreeing to such interference, is unable to assess the extent of the unforeseen consequences that can lead to the destruction of not only his or her body, but also the personality (for example, through interference with the neurophysiological processes of the brain). This is a disguised form of violence and violation of the human right to privacy, and a problem arises related to the loss of self-identity and blurring of personal characteristics of a particular person, changes in adaptive behaviour, and the emergence of a sense of loneliness.

Another striking example of violation of individual rights, including the rights to freedom, autonomy, and privacy, is the characteristics of health that can be affected by nanotechnology. The functionality of nanotechnology includes the ability to permanently create databases on national health and the health of a particular person based on diagnostics, which can be used in the public sphere by employers or insurance companies. This includes all types of health, from genetic to mental health. Without protection of personal data on private life, it is quite easy to manipulate a person.

The social modus operandi of "involvement" clearly demonstrates a pronounced asymmetry in the relationship between the personal and the social, the public and the private, personal and social

identities, autonomy and heteronomy of the individual, personal and social control. Privacy as a phenomenon of social life and the right to it are not given a proper place in modern times. Z. Bauman sees the reason for the reduction of privacy, autonomy, and private life in modernity itself. The conditions of a technocratic society imply that social rationality is built in accordance with the criteria of diligent behaviour, its predictability, unification and proceduralism. In view of this, social rationality will exclude privacy, uncontrollability, uncodified nature of any action or deed, and every social organisation will seek to neutralise private behaviour. From Bauman's point of view, private actions are actions that do not meet the criteria of purpose or procedural definitions and are declared non-social, irrational. "And the way in which an organisation socialises actions includes, as a necessary consequence, the privatisation of morality" [20].

Giddens discusses the elimination of the phenomenon of privacy in the modern era. Describing modernity in a phenomenological way as dialectically interrelated structures of experience, he distinguishes privacy and involvement as the intersection of pragmatic acceptance and activism. Giddens points out that the boundaries of the secret and the overt are changing, as many forms of activity that did not previously intersect are now combined in the same public spheres [3].

Agreeing with contemporary world sociologists in the importance of social production of the reduction of the phenomenon of privacy, we will reveal those ways of self-defence of this phenomenon, which is crucial for the constitution of human and personal principles, which belong to the socio-cultural imperatives of personal existence, as well as those modes of self-defence of privacy and the right to it initiated by the context of social existence.

Recognition of the problematic existence and constitution of privacy in modern life, the need to protect privacy, private life and personal existence is the best way to overcome this problem. The method of self-defence is understood as a person's self-changing at his/her existential, subjective and personal levels of being.

"Care" as a way of self-defence of the individual and his/her right to privacy

One of the ways in which an individual self-defends his or her right to privacy is through caring. It is a clear expression of the divergence and "convergence" of what is and what is due. The principle of "self-care", expressed in numerous procedures, practices, and regulations, thereby determines social practice, offering a basis for interpersonal communications. According to M. Foucault, this principle has become an icon of activity, a maxim of behaviour, a style and a way of life. In his work "The Hermeneutics of the Subject", M. Foucault argues that self-care is a constitutive feature of the subject, its rationality, responsibility [21].

Caring (care, guardianship) is the founder and a way of self-defence of personal existence. According to M. Heidegger, care is the structure of human existence in its integrity, the beginning of human existence "in the world of being". Care is existential, all ways of being are integrated by care. Caring is the unity of three modes: being in the world, "running ahead" (projecting), and being with the intra-worldly being. Heidegger believes that care as an initial structural integrity lies existentially a priori "before" any Dasein, that is, already in any actual "situation" and "behaviour" as such. Therefore, its phenomenon in no way expresses the priority of "practical" behaviour over theoretical behaviour. Nor does the attempt to reduce the phenomenon of care in its essentially inseparable integrity to special acts or impulses like will and desire or aspiration and craving succeed. Caring is ontologically primary in relation to these phenomena [22].

M. Heidegger saw the true meaning of care in the "inequality of the self", existential preoccupation with the future. Caring is a "concern" for order, care for the other, a function of guardianship, rather, a "preoccupation" or a certain ontological "imbalance", "unequal to oneself", "being-forward-of-itself", ontological groundlessness.

According to the French sociologist and philosopher J. Baudrillard, the mystical meaning of care dominates in the modern consumer society. The principle of "service" applies to the entire consumption system, so everything appears as a personal service, as pleasure [23]. In today's social

realities, pleasure and care are realised through the institutions of social redistribution in the form of social security, numerous benefits, subsidies, insurance, etc. Like everything else, the consumer society continuously consumes care and all the phenomenal ways of expressing it.

J. Baudrillard reveals a total contradiction in the modern social system of care. On the one hand, this system of production lives and depends on the laws of material production; on the other hand, the system of production does not reach the goal of the physical, material world to other (spiritual) relations. Hence the constant distance, disposition, lack of communication, and impenetrability.

According to Baudrillard, the entire system of care of our time is destructive in its purpose, distorted, and distorts its purpose. He notes that a fundamental contradiction is felt in all areas of "functional" human relations, since this new way of living in society, this "radiant" care, this warm "environment" have nothing to do with anything direct, because they are produced institutionally and industrially. It would be surprising if the tone of this care did not reveal its social and economic truth. And it is this distortion that is visible everywhere, the care service is distorted and as if "caught cold" as a result of aggressiveness, sarcasm, "black" humour, everywhere the services provided, kindness is deftly combined with deception, parody. And everywhere you can feel the fragility of the general system of pleasure, which is always on the verge of disorder and collapse, associated with this contradiction [23].

Describing the consumer society through the prism of sign consumption, Baudrillard rightly concludes that the sign replaces reality, and "simulacra" turn life into a simulation, into the manipulation of signs. On the one hand, the sign, the "simulacrum", seems to contribute to the mastery of reality, and, on the other hand, it destroys the authenticity of reality by replacing it with itself. This is fully transmitted into care.

Thus, self-care, expressing the socio-cultural level of a person (social subject, personality), the degree of his/her responsibility to himself/herself and society, the degree of his/her autonomy in decision-making, appears as a way of self-defence of the individual, his/her right to privacy.

Exercise of the right to privacy by a subject as a guarantee of its security

The right to privacy is connoted as a social purpose, a designation, and is translated into certain social functions in order to maintain social cooperation. The Universal Declaration of Human Rights reaffirms the social function of human rights and points to the need for human rights to be protected by the rule of law in order to ensure that individuals are not forced to resort, as a last resort, to rebellion against tyranny and oppression. However, the real situation differs in many ways from the legal, normative model of the right to privacy, as a discrepancy between what is and what is due. Among the reasons for this discrepancy are such radical shifts in the development of modern civilisation as post-industrialism, globalisation, and war, which cannot but affect the private sphere, the redefinition of the boundaries of public and private, and the change in the conceptual vision of the private and the public.

Among the reasons that lead to the reduction of the phenomenon of privacy is the information revolution, which has increased the power of the media's manipulative influence on the public consciousness of citizens, their socio-political behaviour, personal priorities and personal autonomy in politics. The autonomous choice of political position creates the need for each citizen to be able to really comprehend the political situation independently, compare and critically analyse events and develop their own assessment.

Increasingly, the media are reporting on wiretapping of private conversations and other violations of privacy of individuals. This calls for reflection on the limits of social control in the context of information security, personal data protection, and a clear definition and further realisation of the right to privacy.

It is obvious that social control is an instrument of power. The essence of social control is general surveillance, control over the sphere of "taboos", prohibitions, and the fulfilment of duties. On the

one hand, through the mechanism of social control, the ethos of social life is formed, norms of behaviour are sanctioned, and citizens are protected. Social control becomes expansive as social life becomes more complex. However, overly close, "total" surveillance, invasion of personal space and privacy (listening to conversations, visual surveillance, collection of huge amounts of personal data through information technology) have devastating social consequences.

Privacy and secrecy of private life are being devalued. Channels of the information space most clearly demonstrate the negative consequences of violation of the right to privacy. The study of cyber issues allows us to identify specific connotations of the phenomenon of privacy [24-26].

The phenomenon of information security can be called a counter to the violation of the right to privacy, total control over a person. We believe that it fully reflects the risky nature of social reality with its information component and the high degree of vulnerability of personal existence [27-29].

The concept of information security, which "exposes" the problem of the development of the information society with its inherent risks, is important to understand in the socio-cultural context. The security culture is ontologically rooted in the imperative and maxim of "caring for oneself and others". "Self-care" is a way of personal existence. The absence of the ability and imperative attitude to care is evidence of a person's "recklessness" and irresponsibility. At the onto-psychological level, the need for protection and security is determined by the desire for certainty, integrity, reliability, and organisation.

However, the socio-informational reality clearly demonstrates the tendency of "risk-taking". Risk is evidence of the existence of objective and subjective uncertainty of existence [30].

Risk is a characteristic of the objective and subjective side of human activity in conditions of uncertainty, which captures the "ambiguity" of personal and social existence, which does not provide a practical opportunity for social control and the use of security technologies. Ignoring the objective and subjective sources of uncertainty is futile. Satisfaction of the fundamental need for security is associated with a person's desire to avoid risk and regain lost certainty.

Philosophers and psychologists alike have discussed the ontological roots of security and its evolutionary role for humans. Security is the leading need in Maslow's famous pyramid. It implies that a person establishes a reasonable order, as well as a desire to live a better life.

The psychological discourse interprets security as a state of inviolability of individual interests from various threats based on fear of reality. The result of emotional assessments is security from threats.

Sociological and legal discourses understand security as the social context of the subject's existence, which it influences and controls. This situation is called risk conditions. Social activity is a system of interactions between subjects with goal-setting activity and the conditions in which they exist. The goal of the subject is self-realisation and self-reproduction; the goal, understood in the sense of foreseeing the result, means an opportunity. The embodiment of the possibility in reality is carried out under certain conditions, in a certain situation by transferring the subject's activity to the object (subject). The security of activity is ensured by the ability of the subject to control the conditions of its existence in the process of self-realisation and self-reliance.

The political science discourse today emphasises that the modern information sphere consists of two components: information and technical and information and psychological. Information security is defined as the state of security of the information environment, which is achieved through the implementation of an appropriate set of information security management measures, which can be represented by policies, methods, procedures, organisational structures and software functions.

Information protection is considered as an activity related to the prevention of information leakage, as well as the prevention of unauthorised and unintended impacts on it. Information security is the protection of confidentiality, integrity and availability of information. Preservation of information resources and protection of legal rights of individuals and society ensures information security of

social entities (individuals, the state, and society). Information security is a fragment of personal security [29, 31-32].

As a socio-philosophical concept, security is considered in the context of the paradigm of society as a system of laws of its functioning and development, in relation to its specific social, political, cultural and historical realities. In view of this, a comprehensive study of the "individual-society-state" complex, in particular, the protection of individual freedom and private existence in the information space, is a key issue in the study of security. Security is a set of the most favourable conditions for the subject to control his/her own life and values, which allows to ensure the integrity of personal and social existence. The exercise by a subject of freedom and the right to privacy, as the ability to control the conditions of his/her own existence, is a guarantee of his/her security.

However, the modern information reality and the latest information technologies can stimulate violations of individual rights and freedoms, the boundaries of privacy and personal data, which is an additional threat to the existence of the individual and his or her integrity. The phenomenon of information security should act as an "antidote" to these threats.

Thus, the concept of "security", including information security, indicates multidimensionality, ambiguity, contextual "filling" with social content, openness to interpretations of this concept in solving social problems, in particular, the problem of privacy as a sphere of private existence and the right to it.

In the domestic social and legal realities, the ethical and legal problem of personal data protection clearly demonstrates the fact of invasion of the private sphere and violation of the boundaries of social control. This problem goes back to the global problem of denial of traditional ethics, moral pluralism with its "conventions", norms, and prohibitions in the virtual network space. The ethical features of virtual space are based on the escape from morality, from the accepted forms of personal freedom and personal responsibility.

According to well-known sociologists, the problem of protecting civil rights and freedoms, including personal data, became more acute after 11 September 2001, which is associated with the onset of the era of total state surveillance. This problem is fundamentally rooted in the global problem of social mobility as a way of organising modern social life, and when almost every movement is accompanied by tracking and control, and no one can be outside the panopticon, as described in detail by domestic researchers I. Kovalenko and co-authors [33-34].

Indeed, information technologies provoke extensive and intensive "digitisation" of each individual, the growing "distribution" of the individual across various databases. "Digital media", "computer-mediated communications", the Internet with all the sites hosted on it; social networks; virtual reality; computer games and animation; digital photos and videos; artistic interactive installations; human-computer interface; digital books, etc. ensure such a division [35, p. 69]. In such a situation, one of the ways to protect personal privacy is to calculate the risks of maintaining its status and protect personal data. Information protection, as the adoption of legal, organisational and technical measures, is aimed at ensuring the protection of information from unauthorised access, destruction, modification, blocking, copying, provision, dissemination, as well as other unlawful actions in relation to such information; maintaining the confidentiality of restricted information; and exercising the right to access information. In accordance with the above restrictions, it can be stated that the protection of information constituting a state secret is carried out in accordance with, for example, the legislation of Ukraine on state secrets regardless of the owner of information resources, and for personal data, the law should only establish the procedure for access to personal data of citizens (individuals).

In addition, it makes sense to talk about the technological problematisation of information security, which applies to all levels of control, in particular when protecting confidential information.

Conclusions

Privacy is a social representation of individual autonomy. It is identified as the ability of a person to differentiate between internal/external individual and personal life, to distinguish between his/her own/other's, private and public existence, to respond to unauthorised actions of the public (social) environment, as well as the ability to behave reflectively to protect the boundaries of personal existence. The phenomenon of privacy, which exposes the boundaries of personal and social being, balances between the individual and social aspects of human life. The reflection and experience of privacy testify to the process of personalisation of the individual, its autonomous constitution, and the reconciliation of identities.

In the twenty-first century, civilisational fractures, technological and other challenges require a responsible attitude to the risks of social realities of privacy and the development of adequate ways to practically implement the human right to privacy. The right to privacy is constitutionally enshrined in the human being.

Modern information and digital technologies, having an ambivalent impact on the freedom and security of personal existence, radically narrow the boundaries of the right to privacy, thereby problematising the structures of human self-identity and generating the experience of insecurity of personal life.

The social problem of information security and personal data protection demonstrates the violation of the right to privacy, which in the era of ultra-fast development of the latest technologies is based on issues related to the acquisition, storage and dissemination of information about a person; to the extent that other people and public authorities have access to this information, and to the ability of an individual to maintain his or her anonymity.

In the context of total surveillance and unlimited social control, the impact of modern technologies, the ontological and axiological "fate" of human existence depends on the social choice of the individual, his or her reflection on the newest risks of social existence and ensuring the right to privacy.

References

- [1] Warren, S., & Brandeis, L. (December 15, 1890). Right to Privacy. *Harvard Law Review*, *IV*(5), 1-2, 132-153. Retrieved from https://groups.csail.mit.edu/mac/classes/6.805/articles/privacy/Privacy_brand_warr2.html.
- [2] Bauman, Z. (2000). *Liquid Modernity*. Hoboken, NJ: Wiley. John Wiley & Sons, LTD.
- [3] Giddens, A. (1990). *The Consequences of Modernity*. Stanford: Stanford University Press.
- [4] Volkova, Yu.F. (2023). The Right to Privacy in the Context of Globalization. *Analytical and Comparative Law*, *5*, 113-118. <https://doi.org/10.24144/2788-6018.2023.05.18>.
- [5] Pankevych, O.Z. (2017). The Right to Privacy: The Realm of Individual Independence. *Scientific Bulletin of the Lviv State University of Internal Affairs. Legal Series*, *2*, 47-56.
- [6] Prystai, R.A. (2023). Privacy by Design. User-held Data Model as a Basis for Privacy and Personal Dataprotection in Social Networks. *Scientific Bulletin of Uzhhorod National University. Series: Law*, *80*(1), 551-556. <https://doi.org/10.24144/2307-3322.2023.80.1.84>.
- [7] Razmietaieva, Yu.S. (2016). Privacy in the Information Society: Problems of Legal Understanding and Regulation. *Scientific Bulletin of Uzhhorod National University. Series: Law*, *37* (1), 43-46.
- [8] Bulavina, C., & Davydova, T. (2018). The Right to Privacy in the System of Human Rights Generations. *Historiko Legal Magazine*, *1*, 10-14.
- [9] Toffler, A. (1984). *Future Shock*. London: Bantam. Retrieved from <https://readli.net/chitat-online/?b=173330&pg=1>.
- [10] Lem, S. (1964). *Summa Technologiae*. Kraków: Wydawnictwo Literackie.
- [11] Baudrillard, J. (1993). *The Transparency of Evil Essays on Extreme Phenomena*. London: Verso.
- [12] Edvard Snouden – a Person who Revealed Information About a Secret Wiretapping System in the USA. (June 10, 2013). *TEXTY.ORG.UA*. Retrieved from https://texty.org.ua/fragments/46509/Jedvard_Snouden_ludyna_shho_rozkryla_informaciju-46509/.
- [13] Tim Cook asks the US Congress to Strengthen Personal Data Protection Legislation. (January 18, 2019). *MediaSapiens*. Retrieved from <https://ms.detector.media/it-kompanii/post/22329/2019-01-18-tim-kuk-prosyt-kongres-ssha-posylyty-zakonodavstvo-pro-zakhyst-pryvatnykh-danykh/>.

- [14] Steve Jobs' Sacrifice: The Story of the Rise and Fall of BlackBerry. (February 5, 2020). *Investory. News*. Retrieved from <https://investory.news/zhertva-stiva-dzhobsa-istoriya-zletu-ta-padinnya-blackberry/>.
- [15] Data of half the Population of France Stolen in its Largest Ever Cyberattack. This is what we Know. (August 2, 2024). *Euronews*. Retrieved from https://www.euronews.com/next/2024/02/08/data-of-33-million-people-in-france-stolen-in-its-largest-ever-cyberattack-this-is-what-we?utm_source=flipboard&utm_content=curiouscurator%2Fmagazine%2FDigitech+.
- [16] Getman, A., Danilyan, O., Dzeban, A., Kalinovskiy, Y., & Hetman, Y. (2020). Information Security in Modern Society: Sociocultural Aspects. *Amazonia Investiga*, 9(25), 6-14. Retrieved from <https://amazoniainvestiga.info/index.php/amazonia/article/view/1021/946>.
- [17] Bytiak, Y., Danilyan, O., Dzeban, A., Kalinovskiy, Y., & Chalapko, V. (2020). Information Society: the Interaction of Tradition and Innovation in Communicative Processes. *Amazonia Investiga*, 9(27), 217-226. <http://dx.doi.org/10.34069/AI/2020.27.03.23>.
- [18] Getman, A.P., Danilyan, O.G., Dzeban, A.P., & Kalynovskiy, Yu.Yu. (2022). Modern Ontology: Reflection on the Continuity of Cyberspace and Virtual Reality. *Revista de Filosofia*, 39(102), 78-94. <https://doi.org/10.5281/zenodo.7017946>.
- [19] Bauman, Z. (1988). *Freedom*. Minneapolis: University of Minnesota Press.
- [20] Bauman, Z. (2000). *Modernity and the Holocaust*. N.Y.: Cornell University Press.
- [21] Foucault, M. (December 27, 2005). *The Hermeneutics of the Subject: Lectures at the Collège de France 1981-1982*. N.Y.: Picador. Retrieved from <https://www.amazon.com/Hermeneutics-Subject-Lectures-Coll%C3%A8ge-1981-1982/dp/0312425708>.
- [22] Heidegger, M. (1978). *Being and Time*. NJ: Wiley. John Wiley & Sons, LTD.
- [23] Baudrillard, J. (1998). *The Consumer Society: Myths and Structures*. London: SagePublications Ltd. URL: <https://books.google.com.ua/books?id=DdT7cEHke0YC&printsec=frontcover&hl=ru#v=onepage&q&f=false>.
- [24] Skybun, O.Zh. (2022). Modern Ethics as a Practical Philosophy of Cybersecurity. *Modern Information Security*, 4, 66-70. <https://doi.org/10.31673/2409-7292.2022.040011>.
- [25] Soloviov, V.P. (2023). Ethics as a Product of Civilization and the Core of Science and Social Progress: Lessons from the Past and Problems of the Present. *Science and Science Studies*, 1, 102-120. <https://doi.org/10.15407/sofs2023.01.102>.
- [26] Korobko, M.I. (2021). Information Ethics as a Necessary Element of the Regulation of the Modern Information Society. *Ukrainian Cultural Studies*, 1, 46-50.
- [27] Dzoban, O.P., & Zhdanenko, S.B. (2020). Human Rights and National Security: Philosophical and Legal Aspects of the Relationship. *Information and Law*, 2 (33), 9-22. [https://doi.org/10.37750/2616-6798.2020.2\(33\)](https://doi.org/10.37750/2616-6798.2020.2(33)).
- [28] Brovko, O.O., et al. (2022). *Information and Communication Security: Modern Trends*. O.V. Kurban, A.L. Lisnevskaya (Eds.). Kyiv: Borys Grinchenko Kyiv Metropolitan University.
- [29] Getman, A.P., Danilyan, O.G., Dzeban, O.P., Kalynovskiy, Y.Y., & Kalnytskyi, E.A. (2023). *Information Security in Modern Society*. A.P. Getman (Ed.). LAP Lambert Academic Publishing.
- [30] Dzoban, O.P. (Ed.). (2021). *National Security: Worldview and Theoretical and Methodological Principles zasady*. Kharkiv: Pravo.
- [31] Getman, A., Danilyan, O., Dzeban, O., & Kalynovskiy, Y. (2021). *Information Society and Information Security*. A.P. Getman (Ed.). LAP Lambert Academic Publishing.
- [32] Danilyan, O.G., Dzeban, A.P., Kalynovskiy, Yu.Yu., Kovalenko, I.I., Melyakova, J.V., & Danilyan, V.O. (2020). Value Determinants of the Information Security of a Democratic State. *Revista Inclusiones*, 7(2), 457-473.
- [33] Kovalenko, I.I., Meliakova, Yu.V., & Kalnytskyi, E.A. (2022). Digital Panopticon and Media: Features of Control in the Cultural and Communication System of Modern Society. *Bulletin of Yaroslav Mudryi National Law University. Series: Philosophy, Philosophy of Law, Political Science, Sociology*, 3, 47-67. <https://doi.org/10.21564/2663-5704.54.265593>.
- [34] Kovalenko, I., Meliakova, Y., Kalnytskyi, E., & Nesterenko, K. (2023). Postpanopticon: Control and Media in the New Digital Reality. *Filosofija. Sociologija*, 34(3), 219-227. <https://doi.org/10.6001/fil-soc.2023.34.3.1>.
- [35] Dzoban, O.P. (2024). The information-digital continuum as a socio-cultural phenomenon: to the problem of conceptualization. *Information and Law*, 2(49), 62-75.

Oleg G. Danilyan

Doctor of Philosophical Sciences, Professor

Head of the Philosophy Department
Yaroslav Mudryi National Law University
61024, 77 Hryhoriia Skovorody Str., Kharkiv, Ukraine
e-mail: odana@i.ua
ORCID 0000-0001-5308-4664

Olexander P. Dzoban

Doctor of Philosophical Sciences, Professor
Professor of the Philosophy Department
Yaroslav Mudryi National Law University, Kharkiv, Ukraine
61024, 77 Hryhoriia Skovorody Str., Kharkiv, Ukraine
e-mail: a_dzeban@ukr.net
ORCID 0000-0002-2075-7508

Felipe R.V. Lasnibat

Master in Historical, Social and Cultural Studies
Professor Associated at the Philosophy Department, History and Tourism
Academic at the University of Playa Ancha
Avenida Playa Ancha 850, Valparaíso, Chile
e-mail: fvergara@upla.cl
ORCID 0000-0002-3400-6123

Олег Геннадійович Данильян

доктор філософських наук, професор
завідувач кафедри філософії
Національний юридичний університет імені Ярослава Мудрого
61024, вул. Григорія Сковороди, 77, м. Харків, Україна
e-mail: odana@i.ua
ORCID 0000-0001-5308-4664

Олександр Петрович Дзьобань

доктор філософських наук, професор
професор кафедри філософії
Національний юридичний університет імені Ярослава Мудрого
61024, вул. Григорія Сковороди, 77, м. Харків, Україна
e-mail: a_dzeban@ukr.net
ORCID 0000-0002-2075-7508

Феліпе Родольфо Вергара Ласнібат

магістр історичних, соціальних та культурних досліджень
професор-доцент кафедри філософії, історії та туризму
академік університету Плайя Анча
Avenida Playa Ancha 850, Вальпараїсо, Чилі
e-mail: fvergara@upla.cl
ORCID 0000-0002-3400-6123

Suggested Citation: Danilyan, O.G., Dzoban, O.P., & Lasnibat, F.R.V. (2024). Implementation of the Right to Privacy in the Context of the Restrictive Impact of Modern Information Technologies. *Theory and Practice of Jurisprudence*, 2(26), 44-56. [https://doi.org/10.21564/2225-6555.2024.2\(26\).319807](https://doi.org/10.21564/2225-6555.2024.2(26).319807).

Submitted: 02.11.2024

Revised: 11.12.2024

Approved: 19.12.2024

Published online: 30.12.2024