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# **RECOGNITION OF THE RIGHT TO INTERNET ACCESS AS AN INDEPENDENT RIGHT: INTERNATIONAL LEVEL**

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## **Abstract**

The article analyzes the process of recognizing the right to Internet access at the international level. It examines the Okinawa Charter on the Global Information Society, the Declaration of Principles of the Information Society, the relevant resolutions of the UN Human Rights Council, as well as the recommendations of the Committee of Ministers and the resolution of the Parliamentary Assembly of the Council of Europe. The author analyzes the concepts of "digital divide" and "digital inequality," substantiating their interrelationship.

**Keywords:** International law, United Nations, Council of Europe, digital divide, Okinawa Charter, human rights.

## **INTERNETDAN FOYDALANISH HUQUQINING ALOHIDA MUSTAQIL HUQUQ SIFATIDA TAN OLINISHI: XALQARO MIQYOSDA**

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## **ПРИЗНАНИЕ ПРАВА НА ДОСТУП К ИНТЕРНЕТУ В КАЧЕСТВЕ САМОСТОЯТЕЛЬНОГО ПРАВА: МЕЖДУНАРОДНЫЙ УРОВЕНЬ**

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## **ANNOTATSIYA**

Maqolada Internetdan foydalanish huquqini xalqaro miqyosda tan olish jarayoni tahlil qilinadi. Global axborot jamiyati Okinava xartiyasi, Axborot jamiyati tamoyillari deklaratsiyasi, BMT Inson huquqlari kengashining tegishli rezolyutsiyalari, shuningdek Yevropa Kengashi Vazirlar qo'mitasining tavsiyalari va Parlament Assambleyasining rezolyutsiyasi ko'rib chiqiladi. Muallif "raqamli uzilish" va "raqamli tengsizlik" tushunchalarini tahlil qilib, ularning o'zaro bog'liqligini asoslaydi.

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**Kalit soʻzlar:** xalqaro huquq, Birlashgan Millatlar Tashkiloti, Yevropa Kengashi, raqamli tengsizlik, Okinava xartiyasi, inson huquqlari.

## **АННОТАЦИЯ**

В статье анализируется процесс признания права на доступ к Интернету на международном уровне. Рассматриваются Окинавская хартия глобального информационного общества, Декларация принципов построения информационного общества, соответствующие резолюции Совета по правам человека ООН, а также рекомендации Комитета министров и резолюция Парламентской ассамблеи Совета Европы. Автор анализирует понятия «цифровой разрыв» и «цифровое неравенство», обосновывая их взаимосвязь.

**Ключевые слова:** международное право, Организация Объединённых Наций, Совет Европы, цифровое неравенство, Окинавская хартия, права человека.

## **ANNOTATION**

The recognition of the right to Internet access as a separate human right is developing more rapidly at the international level than at the national level. The reason for this is understandable: since the Internet is a transnational environment, no single state can regulate it effectively on its own. International cooperation is necessary to regulate the transnational environment of social relations. It is likewise natural that the idea of the particular importance of Internet access for human rights originally arose at the international level.

It cannot be said that international agreements impose direct obligations on states. Failure to comply with their provisions may, at most, lead to negative political consequences and loss of reputation. Nevertheless, they are of interest precisely as a factor creating the groundwork for the international recognition of the right to Internet access as an independent right.

The starting point of international efforts was the Okinawa Charter on the Global Information Society, adopted on 22 July 2000 by the leaders of the G8 states[1]. In particular, paragraph 9 states: “every person should be able to access information and communications networks.” Furthermore, “every person should have the opportunity to benefit from information and communications networks.” Paragraph 10 of the Charter expresses this even more clearly: “the core of our strategy must be continued efforts to promote universal access for all.” Paragraph 3 of the Okinawa Charter likewise emphasizes: “...all people everywhere, without exception, should be able to enjoy the benefits of the global information society.”

The principal aim of recognizing the right to Internet access is to eliminate the “digital divide” and “digital inequality.” The term “digital inequality” appears not only in the Okinawa Charter but also in many subsequently adopted documents. However, this document provides no clear definition of what is meant by the “digital divide.” In our view, this term may be regarded as closely related to the term “digital inequality.” They are interconnected as cause and effect, the digital divide being the cause of digital inequality. Such a divide should be understood as referring to various restrictions on Internet access. These restrictions may arise naturally (that

is, not as a direct result of the will of a state, organization, or individual), may be connected with the technology itself, or may arise arbitrarily (as a result of the deliberate intervention of some subject). Although the term “digital inequality” is mentioned in normative documents, it has not received a clear definition there. In our view, this term should be understood as encompassing any inequality existing in the digital space.

The next important stage on the path toward the international recognition of the right to Internet access was the World Summit on the Information Society, held in Geneva on 10–12 December 2003. At this stage, the “Declaration of Principles Building the Information Society”[2] was adopted. A number of provisions of this declaration are consonant with the Okinawa Charter. In particular, paragraph 19 emphasizes the need for “all stakeholders” to work toward expanding access to information and communication infrastructure and technologies, as well as to information and data in general.

In the matter of globally recognizing the right to Internet access as a new human right, the activity of the United Nations must also be specifically noted. The UN has taken upon itself the task of uniting international efforts to resolve global problems. Within the UN, the question of the right to Internet access is periodically raised.

The UN General Assembly called upon states “...to review their procedures, practices, and legislation regarding the surveillance of communications, interception, and the collection of personal data, including mass surveillance practices, in order to protect the right to privacy.” The UN also once again recognized the right to Internet access as a fundamental human right and emphasized that ensuring its unimpeded exercise and protection is an obligation of states[3]. In addition to Frank La Rue's report and the UN resolution, this idea has numerous supporters among well-known scholars, influential politicians, and public figures. Tim Berners-Lee, the founder of the World Wide Web, speaking in 2011 at a symposium at the Massachusetts Institute of Technology, equated the possibility of Internet access with the need for drinking water[4].

The resolution of the UN Human Rights Council of 18 July 2016 “On the Promotion, Protection and Enjoyment of Human Rights on the Internet”[5] serves to support the idea of recognizing the right to Internet access as an inalienable right.

Unfortunately, this resolution did not equate Internet access with fundamental human rights. Nevertheless, it recorded a number of important statements: “The same rights that people have offline must also be protected online. This applies in particular to freedom of expression, which operates regardless of borders [...]” The United Nations “strongly condemns measures deliberately intended to prevent or disrupt access to or dissemination of information online.”

Regional international organizations are also devoting attention to issues connected with the right to Internet access. This can clearly be seen in the example of documents of the Council of Europe's Committee of Ministers. The documents worthy of note include the following:

The Declaration of the Committee of Ministers of the Council of Europe CM(2005)56 of 13 May 2005 “On Human Rights and the Rule of Law in the Information Society”[6]. This document treats the restriction, or complete absence, of the ability to use information and

telecommunication technologies as depriving a person of the opportunity to fully exercise their fundamental rights;

Recommendation CM/Rec(2007)16 of the Committee of Ministers of the Council of Europe “On Measures to Promote the Public Service Value of the Internet”[7]. It emphasizes that Internet access should be regarded as a means of fully exercising human rights and fundamental freedoms within the information society. At the same time, the Internet itself is recognized as a “public service” constituting an important part of daily activity (communication, information, knowledge, commercial transactions);

Recommendation CM/Rec(2008)6 of the Committee of Ministers of the Council of Europe “On Measures to Promote the Respect for Freedom of Expression and Information with Regard to Internet Filters”[8]. Although this document is primarily devoted to restricting Internet access, it also contains provisions on the need to ensure that every user has free and unimpeded access to the Internet in order fully to exercise their human rights and fundamental freedoms, in particular freedom of expression, freedom to receive information, and the right to privacy, as well as to participate effectively in social life and democratic processes (paragraph XI of Section I);

Resolution No. 1987(2014) of the Parliamentary Assembly of the Council of Europe “On the Right to Internet Access,” adopted on 9 April 2014[9]. This resolution is of very great importance in the recognition of the right to Internet access. It devotes attention to both the technical and non-technical subjective factors of access to the global computer network. This document is notable for its attempt to comprehensively cover relations connected with Internet access. In particular, this is confirmed by the following provisions of the resolution: “...the Internet must be open to all, irrespective of age, place of residence, or income level... more resolute action must be taken at the local, national, and European levels to ensure universal access to the Internet” (paragraph 4); “...everyone has the right to Internet access as an important requirement for exercising their rights” (paragraph 5.1); “member states should intensify their efforts to ensure Internet access for persons with special needs and users in difficult circumstances (paragraph 5.10).”

## **CONCLUSION**

The analysis conducted shows that the process of internationally recognizing the right to Internet access is developing considerably more consistently and rapidly than at the national level. The main reason for this lies in the transnational nature of the Internet — no single state is capable of effectively regulating it alone.

A chronological analysis of international documents — beginning with the Okinawa Charter of 2000, the Geneva Declaration of 2003, the 2016 resolution of the UN Human Rights Council, and a number of Council of Europe Committee of Ministers recommendations — demonstrates a consistent evolution. A common idea is repeated throughout all these documents: the possibility of Internet access is a necessary condition for eliminating “digital inequality” and an indispensable means for the full exercise of human rights.

At the same time, the analysis leads to an important methodological conclusion: the majority of international documents are in the nature of “soft law” and do not impose direct obligations on states. Non-compliance with their provisions is limited merely to the risk of losing political standing. Nevertheless, these very documents serve as an important guide for the development of national legislation, since they express the general political will of states and the priority values of the international community.

The author particularly emphasizes the causal relationship between the concepts of “digital divide” and “digital inequality”: the digital divide (the restriction of Internet access due to natural, technological, or arbitrary causes) is, in fact, the direct cause of digital inequality. A clear distinction between these two concepts is of great importance in shaping international and national policy, since each requires different legal and institutional solutions.

In sum, although the international community has not yet formalized the right to Internet access as a fully independent and binding right, the existing soft-law documents represent an important stage along this path. In the future, it would be advisable to raise the question of developing a document with binding legal force, at least at the regional level (for example, within the framework of the Council of Europe). This, in turn, would provide clearer guidance to national states and would raise the level of protection of the right to Internet access.

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