

нуждена применить слезоточивый газ и резиновые пули. В городе была временно размещена Национальная гвардия и введен комендантский час.

Количество дел, касающихся проблемы расизма, не уменьшается. Это можно объяснить ростом уровня политической культуры граждан США, которые с полной осведомленностью о своих правах готовы их защищать. С одной стороны, рост количества дел, затрагивающих проблему расизма, говорит о ее нерешенности, но с другой стороны, это говорит нам о том, что, возможно, в дальнейшем наметится тенденция к уменьшению количества дел именно из-за того, что их количество повлияет на качество их решения и, в дальнейшем, поможет искоренить саму проблему.

Таким образом, можно говорить о нерешенности проблемы расизма, но определенно можно сделать вывод об усердных попытках борьбы с ней с помощью права, в первую очередь.

### **Литература**

1. Фридмэн, Л. Введение в американское право / Л. Фридмэн. – М., 1993. – 286 с.
2. Desegregation as a Two-Way Street: The Aftermath of United States v. Fordice [Electronic resource]. – Mode of access: <http://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=1654&context=clevstlrev>. – Date of access: 13.04.2017.
3. Domino's Pizza v. McDonald [Electronic resource]. – Mode of access: [https://www.law.cornell.edu/supct/cert/04-593\\_0](https://www.law.cornell.edu/supct/cert/04-593_0). – Date of access: 13.04.2017.
4. Firefighters Local Union No. 1784 v. Stotts [Electronic resource]. – Mode of access: <https://www.law.cornell.edu/supremecourt/text/467/561>. – Date of access: 13.04.2017.
5. Firefighters Local Union No. v. Stotts (1784) – Significance [Electronic resource]. – Mode of access: <http://law.jrank.org/pages/24203/Firefighters-Local-Union-No-1784-v-Stotts-Significance.html>. – Date of access: 13.04.2017.
6. Keyes v. School District No. 1, Denver, Colorado [Electronic resource]. – Mode of access: <https://www.law.cornell.edu/supremecourt/text/413/189>. – Date of access: 12.04.2017.
7. The Plessy Decision [Electronic resource]. – Mode of access: <http://www.uscourts.gov/educational-resources/educational-activities/history-brown-v-board-education-re-enactment>. – Date of access: 12.04.2017.
8. Ward's Cove Packing Co., Inc. v. Antonio [Electronic resource]. – Mode of access: <https://www.law.cornell.edu/supremecourt/text/490/642>. – Date of access: 13.04.2017.

## **PRIVACY: THE LOST RIGHT**

### **A. A. Селюн**

The missing link between humans and apes? It's certainly those brutes who haven't yet learned to respect privacy.

Raheel Farooq

According to Article 17 of the International Covenant on Civil and Political Rights (hereinafter ICCPR), no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation [1]. Since ICCPR has an imperative force,

states must follow this rule without any objections and if they are not doing so, they must be subject to the responsibility under international law.

But the problem arises here with the definition of the word «privacy». Do we have a uniform definition for this word? How should this concept be construed? Is it legally regulated yet? Or do some gaps in the legal field which may lead to serious problems with the regulation of «privacy» still exist in our modern world? Do modern means of communication, such as social networks and messengers contradict the concept of privacy? These and many other questions need clarification, therefore this paper is aimed at reviewing and discussing these issues.

What does privacy mean? The etymology of the word derives from privation and deprivation – two decidedly negative concepts. But the words we normally associate with privacy are independence, freedom, autonomy, liberty, dignity, and the absence of intrusion. However, we should be conscious that just because something is protected by «privacy» does not automatically mean that it is good and universally supported. Privacy can shield bad acts. Feminist writers note that privacy was used to cloak abuses by husbands in «disciplining» their wives. So, privacy can be, and has been, used to cover up abuses [2, p. 4]. However, it does not mean that privacy is something bad, it just shows us one more time how our misbehaviour may change the attitude to personal rights of people, so that they will be considered as some evil.

Privacy as a legal concept originates from ancient natural-law principles of individual freedom and liberty. These principles were articulated by philosophers from Aristotle and Cicero to Thomas Aquinas. The principles of imposing limitations on the government and the sanctity of individuals are further described in the writings of John Stuart Mill, John Locke, and Thomas Hobbes [2, p. 4]. All philosophers proposed their own definitions of privacy, but the problem is that all of these definitions are out of date and we need something new that will take into account not only old ideas but also modern approaches to this conception. Also, we can find further development of these ideas in modern conventions such as ICCPR, Universal Declaration of Human Rights (hereinafter UDHR), European Convention on Human Rights (hereinafter ECHR), etc. [3; 4].

The most preferable definition of privacy was proposed in the Report of the Special Rapporteur of Human Rights Council, Frank La Rue: «Privacy can be defined as the presumption that individuals should have an area of autonomous development, interaction and liberty, a “private sphere” with or without interaction with others, free from State intervention and from excessive unsolicited intervention by other uninvited individuals. The right to privacy is also the ability of individuals to determine who holds information about them and how is that information used» [5].

As mentioned above, the idea of privacy concerned people from ancient times. And it concerns us even more nowadays with all the treaties and documents regulating it.

The most famous binding treaties regulating the right to privacy are ICCPR (1966) (articles 17 to 19), ECHR (1950) (articles 8 to 10), the Charter of Fundamental Rights of the European Union (2000) (articles 7, 8, 10, 11), Budapest Convention, also known as the Council of Europe Convention on Cybercrime (2001) (articles 2 to 6). Also, there are treaties of non-binding nature which are complied with by states because of their universal nature such as the UDHR (1948) (articles 12,18,19) and European Union Directive concerning measures for a high common level of security of network and information systems across the Union (2016) which shows the way of developing the legislation of state-parties to the European Union [6; 7; 8].

Unfortunately, not all the states follow the rules set forth in these Conventions. For example, Texas installed 29 surveillance cameras along the Texas-Mexico border (one camera for every 41 miles) and allowed anyone with an internet connection to monitor the border and alert the authorities about alleged illegal immigrants and drug traffickers. The website, powered by the social network BlueServo, allows people from all over the world to become «Virtual Texas Deputies» [9]. Government do not want to think that this information may be used by some racist squads against people of other nationalities crossing the border, that these people may be caught and racists may even kill them.

And that is why we need to emphasize the importance of privacy as a separate, particular right of an individual. Privacy is important, from a number of different perspectives.

Philosophically, the concepts of human dignity and integrity play a significant role, as do the notions of individual autonomy and self-determination.

Psychologically, people need private space. We need to be able to perform actions that are potentially embarrassing, such as jumping for joy, behind closed doors and drawn curtains.

Sociologically, people need to be free to behave and to associate with others but without the continual threat of being observed. Otherwise, we reduce ourselves to the inhuman context that was imposed on people in the countries behind the Iron Curtain and the Bamboo Curtain.

And finally, politically, people need to be free to think and argue, and act. Surveillance chills behaviour and speech, undermines democracy [10].

All of these are treasured concepts. But, unfortunately, nowadays we face more and more problems concerning our privacy, and one of the most unexplored of them is social networks.

One of the most dangerous (to the concept of privacy) social networks is Facebook. In 2009 Facebook changed its policy so that lists of friends and affili-

ations were made public and no longer subject to people's private controls. The repercussions, which were felt around the world [9, p. 5], are a normal reaction because these actions of Facebook contradict the definition of privacy, especially the ability of individuals to determine who holds information about them and how that information is used. Facebook is acting in its own interests, giving personal information about people to advertisers and getting money from them.

Not only does Facebook make the private public, it makes the public private. Now government officials can monitor Facebook postings and Google searches to gain access to intimate and revealing information about people. Law enforcement officials troll public profiles for clues to crimes or to anticipate emergency situations [9, p. 6]. Such actions violate the provisions of article 19 of ICCPR and must also be prohibited and punished, because every person has the right to hold opinions without interference and without a fear to be punished for the freedom of expression.

Both unintentionally and through conscious decisions, Facebook and other social networks have put private information, including medical test results, credit card numbers, and sensitive photos into the wrong hands.

If to speak about other social networks, 4chan (one of the internet's most trafficked sites) is also worth mentioning. When 4chan users discovered a video in which a teenager seemed to be abusing a cat, they decided to track him down and have him arrested. The 4chan users matched the background room details to a photo found on a social network site. The online manhunt continued to search for the boy on various social networks and finally found his Facebook page. They traced the boy to Lawton, Oklahoma, and reported him to the local police [9, p. 8]. As we see, 4chan is the nicest example of uncontrolled resource which may collect information about people and then use it both for good and for evil deeds. And it shows that the area of the Internet is uncontrolled because of social networks collecting and disseminating personal information without any permission from their users.

Apart from Facebook and 4chan, there exist a lot of other companies which collect personal data and intimate information people post online. One of them is Spokeo, a search technology that pulls together information about millions of identifiable individuals from social networks. By entering a person's name on the Spokeo website, you can view the person's address, home phone number (even if unlisted), age group, gender, ethnicity, religion, political party, marital status, family members, and education for free. Spokeo also often includes a Google Maps image of the person's residence.

To conclude, I would like to say that nowadays we face many more problems concerning our natural rights than ever. To my mind, we need to show our government that we know that they are spying on us and we must make it clear that it is not appropriate. We should make them create clear legal regulation of this sphere,

so that we can be aware of our own rights and governmental obligations and only then, after all these steps, the real individual freedom will be available to everyone and the privacy of everyone's life as a fundamental goal will be achieved.

### **Литература**

1. Интернет-адрес: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.
2. *Mills, J.L.* Privacy: The Lost Right / J.L. Mills; Oxford University Press. – Michigan, 2008. – 391 p.
3. Интернет-адрес: <http://www.un.org/en/universal-declaration-human-rights/>.
4. Интернет-адрес: [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf).
5. Интернет-адрес: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.40\\_EN.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.40_EN.pdf).
6. Интернет-адрес: [http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf).
7. Интернет-адрес: [http://www.europarl.europa.eu/meetdocs/2014\\_documents/libe/dv/7\\_conv\\_budapest/7\\_conv\\_budapest\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2014_documents/libe/dv/7_conv_budapest/7_conv_budapest_en.pdf).
8. Интернет-адрес: [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L\\_.2016.194.01.0001.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2016.194.01.0001.01.ENG).
9. *Andrews, Lori B.* I Know Who You Are and I Saw What You Did: Social Networks and the Death of Privacy / Lori B. Andrews; New York: Free Press. – New York, 2012. – 260 p.
10. Интернет-адрес: <http://www.rogerclarke.com/DV/Privacy.html>.

## **ПОДСУДНОСТЬ МЕЖДУНАРОДНЫХ КОММЕРЧЕСКИХ СПОРОВ ПО МЕСТУ ИСПОЛНЕНИЯ ОБЯЗАТЕЛЬСТВА, ЯВЛЯЮЩЕГОСЯ ПРЕДМЕТОМ СПОРА, В СНГ И ЕС**

**Е. Ю. Стрельченко**

Как только в суд поступает исковое заявление по международному коммерческому спору, первый вопрос, который необходимо разрешить – это определить, суду какого государства данный спор подсуден. В СНГ одним из основных соглашений, регулирующих, помимо прочего, аспекты подсудности международных коммерческих споров с участием лиц из стран СНГ является Соглашение о порядке разрешения споров, связанных с осуществлением хозяйственной деятельности от 20 марта 1992 г. (далее – Киевское соглашение). В ЕС таким документом является Регламент Европейского Парламента и Совета Европейского союза «О юрисдикции, признании и приведении в исполнение иностранных судебных решений по гражданским и коммерческим делам» от 12 декабря 2012 г. № 1215/2012 (далее – Регламент).

Базовый критерий, закрепленный в обоих документах, для определения подсудности международного коммерческого спора, – место жительства (нахождения) ответчика (ст. 4 Регламента; ст. 4 Киевского соглашения). Однако, как отмечает А.И. Щукин, наличие у ответчика преимуществ в части подсудности по месту его нахождения предполагает существование альтер-