

**THE LEGAL REGULATION
OF SOCIAL NETWORKS
IN THE REPUBLIC OF
KAZAKHSTAN**

At the present stage of social development activities in social networks have a crucial significance in the using of Internet resources. Social networks are widely applicable among Internet – users. In particular, the popularity of social networks is growing among young people. In social network analysis we have a field with a long history. It began in the late 1930s. And it emerged again and again in different social science disciplines and in various countries [1].

The well-known researcher D. Boyd defines social networks as network services that allow individuals:

- 1) To build a public or semi-public profile within the restrictions imposed by the system;
- 2) To determine the list of other users, with whom they can communicate and share information;
- 3) To view and associate their contacts list with other users within the system [2].

Currently, the Internet is one of the dominant sources of information, as well as the main possibility of communication and self-realization of humanity. The chairman of the Norwegian Working Group on Cybercrime Schjolberg S. claims, that the cyberspace, where, in fact, social networks are functioning, can be considered as one of the main areas of life, along with the land, water, air and space [3]. Of course, this sphere needs an urgent legal coordination, based on the international cooperation.

The area of social networks itself is a way of the realization of fundamental human rights. These rights include: the right of association (online communities in social networks), the right to freedom of thought and speech (one of the reasons for the attractiveness of online social networks for users is the ability to express their opinions, judgments, and point of view on any issue), and information rights connected with the distribution of information [4].

At the same time social networks can have a destructive impact on the ideology of society, being a simple instrument to promulgate extremist policy and pernicious habits, to distribute pornographic materials, etc. Social networks are a popular platform of the violation of human rights.

The most common violations of human rights in social networks

First of all, we would prefer to stress the violation of the right to respect of private life. This right includes not only the ability of the individual to determine the moral and physical aspect of his personal life, but also correspondence, the protection of reputation, honor and dignity. Mainly social networks can be considered as the area of the violation of this legal rule. First of all, the secrecy of correspondence is often violated. The practice of the information leakage from e-mail is quite widespread among Internet users. Also the «hacking» of the accounts results in the leakage of personal data. Unfortunately, our legislation does not regulate the procedure for establishing the facts of hacking emails and pages in social networks. In this regard, the process of prosecution is not determined. It is not clear, whether the responsibility for insufficient protection can be imposed on the provider of the site, moderator or the user, who selected too simple password. Moreover, the personal data, saved in the accounts, are often available to the organizers of unwanted information distribution. Sometimes the Internet resource is a space of personal desecration, based on revenge or envy. As a result, social networks become a source of defamation.

The practice of using social networks demonstrates the growth of the cases of discrediting the honor and dignity of a person. It worth mentioning in this context the sensational group, created in the frameworks of the social network Vkontakte. The main purpose of this Internet community is to discuss and to denigrate the honor of girls. The members of the group discussed the girls, leading, in their opinion, promiscuous sexual lifestyle, in a very unpleasant way. They also published the names and surnames of the girls, as well as posting photos. Such social resonance resulted in a series of lawsuits for the creators and members of the community. Moreover, this situation led to several cases of a suicide.

The events of so-called Arab Spring, when social networks have played a significant role in the organization of mass civil unrest in the countries of Asia, Africa and the Middle East, demonstrate the growing power of the resource [5]. Terrorist and extremist organizations find their companions in social networks. The notion of so-called electronic jihad (cyber terrorism) was extended in this resource [6].

Sometimes it is complicated to identify the real user, who is responsible for the violation of law, as the personal data of the numerous accounts are ficti-

tious. But at the same time it is not really justified to deny the possibility of Internet users to leave their real personal data in secret, as the Internet itself – is a part of a virtual reality, where you can express your inner world without excessive restriction. I.L. Bachilo indicates that the Internet is a special area, where many aspects of social life are becoming virtual, and relationships are realized in the so-called zero space [7].

Secondly, business activities are developing actively in social networks. Despite the optimal provision of goods and services, fraud and the circumvention of tax law are thriving in social networks.

At last, some activities in social networks lead to the violation of copyright. It's worth noting, that the posting of pleasing image in social networks without notifying the copyright owner can be qualified as copyright infringement. The main reason of these consequences is the formation of the content by users.

National normative and legal base

In general, the national legislation of the Republic of Kazakhstan includes the legal rules, which regulate the activities in the global communication networks. Paragraph 4 of Article 1 of the Law of the Republic of Kazakhstan «On the Media» (23 July 1999) states: «The media is a periodical printed edition, television, radio, cinematographic documentaries, audio-visual recording and some other forms of periodical or continuous public distribution of information, including Internet resources» [8]. According to this legal provision, Internet resource can be attributed to the media.

Also Internet-relationships are regulated by the laws of the Republic of Kazakhstan «On Telecommunications» (July 5, 2004), «On informatization» (January 11, 2007), «On Personal Data» (May 21, 2013) and others.

However, these legal acts do not contain any legal regulation of social networks. Social networks are not once mentioned in the Concept of information security of the Republic of Kazakhstan until 2016 (approved by the decree of the President of the Republic of Kazakhstan on November 14, 2011). The text of the concept contains the following: «Fundamental changings, which have occurred recently in the countries with different economic and political conditions, indicate a key role of the new technologies in the control of masses. The mentioned technologies also include the use of such information and communication technologies, as social networks, the mass distribution of Short

Message Service (SMS) via mobile phones and special Internet sites» [9]. In other words, the Concept reflects the high importance and the power of social networks in accordance with modern realities.

The concept also emphasizes: «The lack of competitiveness of domestic content carries a serious threat. Its quality is insufficient in the aspect of competition with foreign information and entertainment products. The accessibility of the national information space leads to the low popularity of our content» [9]. It is appropriate to add, that social networks can be determined as a powerful resource of promoting not only a negative attitude, but the most important priorities of state policy. By means of social networks (Facebook, Vkontakte, Twitter, Instagram, etc.) it is possible to increase the popularity of national content and to create a strong competitive information base.

It should be stressed, that at the present stage of our legal system development the crimes, committed in social networks, are also criminalized. Thus, Article 274 («the spreading of false information») of the new Criminal code, which came into force on 1 January 2015, provides: the commission of the crime by means of information and communication networks is indicated as an aggravating circumstance [10]. So, the crimes in social networks can be automatically referred to the competence of Criminal law.

However, despite the abundance of problems, related to the functioning of social networks, such benefit of civilization has a number of positive aspects. We would like to stress, that the members of social networks have the opportunity to be heard, and to discuss all the events. Social networks practically implement the motivation of each person to be involved into the management of society [11].

Paragraph 2 of Article 20 of the Constitution claims: «Everyone has the right to receive and disseminate information in a way, not prohibited by the law» [12]. Social networks, in turn, can't be defined as a forbidden means of receiving and disseminating information. Moreover, this resource helps to maintain and promote democracy, being a real platform for public debate.

The lack of adequate legal regulation is the main reason for progressive violations of rights and freedoms in social networks. Russian lawyer V. Sazonov noted, that the mechanism of the state control of the Internet is still too weak to stop a «rushing train» [13]. The legal systems of the vast majority of countries in the world regulate Internet relationships fragmentally, disseminating the rules of the global communication networks to the various

legal acts. The codification of social networks legal regulation is a rare phenomenon.

In March 2015 in the Republic of Kazakhstan under the leadership of Ph.D Yerjanov T.K. was started a project «The legal regulation of the activities in social networks as a factor of national security and the implementation of the priorities of state policy», which won the competition for grant funding. The main objective of the study is to create a draft law, regulating the activities in social networks.

In order to achieve this purpose a list of suggestions for concrete changes in the current legislation of the country, which is aimed at the regulation of the relationships among the users of global information and communication networks, will be developed. The main way to achieve this goal is to organize the empirical studies of judicial and administrative practice of the Republic of Kazakhstan, as well as a comparative analysis of the legal position of foreign and international authorities and law enforcement practice of the Republic of Kazakhstan with the identification of existing conflicts of law.

Conclusion

The significance of the project in international scope is determined by a certain lag in the legislative regulation of the global information and communication networks on the contrast with the development of modern information technology. In different countries the level of this lag varies greatly. According to the concept of information security of the Republic of Kazakhstan, the risk of cyber terrorism and information warfare is increasing dramatically. The countries, where the regulation of the Internet is at the proper level, have a significant advantage in the information warfare. The researchers intend to offer a holistic normative legal act. The main goal of this document is to codify legal rules, regulating the activities in social networks. The Act will reflect not only the substantive rules, governing the operation in social networks, but also the mechanism of users control and rapid reaction to the determined violations of the law of the Republic of Kazakhstan. This problem has not been widely discussed in the Republic of Kazakhstan before. But the growth of the popularity of social networks requires legislative innovations. The main goal is to turn the social networks into the instrument of the implementation of state priorities, as well as to search a fair balance between the right to the freedom of expression and the right to respect for private and family life.

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