INTERNET LAW IN INTERNATIONAL PRIVATE LAW
INTERNETA TIESĪBAS STARPTAUTISKAJĀS PRIVĀTTIESĪBĀS

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Abstract. *The article examines the issues of Internet legal relations and conflicts of jurisdiction between the states when resolving disputes. The interrelation of Internet legislation and private international law is investigated. The application of Russian legislation in Russian Federation in the regulation of human rights activities is analyzed. Judicial practice of the countries of the Anglo-Saxon legal system is considered.*
Keywords*: internet, legal fact, state.*

The Internet space is a complex system of emerging private-law relations, the development of which requires legal regulation and a human rights process. The purpose of the article is to identify the relationship between Internet legislation and private international law. The main tasks are the study of the legal regulation of Internet relations, types of conflicts of jurisdiction between states, legal analysis of the human rights process in the Russian Federation and Anglo-Saxon countries.

The Internet is a global telecommunication data network with a global distribution of the servers around the world. Different parts of the Internet are subject to the jurisdiction of different states, but in general the network is extraterritorial. In the opinion of L.V. Gorshkova Internet relations don't only cross state borders, but in many cases cannot be localized within a particular territory. The territorial principles of the international private law are not applicable to the Internet because of the lack of localization of the legal relationship. Therefore, the legal relationship on the Internet has a transboundary and private legal nature, including the RU segment, which automatically has a foreign element. It is subject to regulation of international private law and "is connected with the rule of law of certain states" *(Горшкова, 2005).*

So, the cross-border mechanism of Internet legal relations is expressed by the fact that an object on the Internet can be placed on an Internet site which domain name indicates its belonging to one state, and the server that supports this site is in the territory of another state. A person can perform commercial activity on the Internet site of his state and sell digital goods from a server in a foreign country. The domain name of the Internet site can be registered in any state, not necessarily at the location of its owner or the web server.

Thus, the parties can enter into a legal relationship regarding an object located on a foreign Internet resource, use the services of a foreign service provider.

L.V. Gorshkova points out that the legal fact serves as the qualification of the Internet legal relations. The connection of the Internet legal relations with the legal order of the certain state reflects a legal fact as the basis for the emergence of rights and obligations, the legal significance of which is attached to the legal order of the respective states, including relation to the human rights process.

Due to the cross-border features of Internet legal relations, the problem of forming a "common Internet law", the so-called "cybersecurity" system of the human rights process, is of interest. At the same time, in the Anglo-Saxon countries (USA, Switzerland, England), "electronic arbitration" is legally fixed *(Леанович, 2000).*

When examining the US judicial practice regarding Internet legal disputes, it is necessary to indicate the speed of development of the US telecommunication market as a leading provider of Internet services.

The main principle of solving legal problems in the US is the so-called "personal jurisdiction". The American court will have the competence to consider a dispute with respect to a person if it is physically present on its territory. The principle of personal jurisdiction is

http://dx.doi.org/10.17770/iss2018.4278

supplemented by the principle of minimal contacts, implying that the defendant's relations with a certain territory may justify the jurisdiction of the court of the territory and the physical presence (domicile / resident status) of the defendant is not a prerequisite for the jurisdiction of the American court.

In legal proceedings, if the defendant is not a US resident, US courts, having taken into account the existence of certain legal relations with the territory of the United States, may recognize the existence of their jurisdiction. For example, simply posting information on goods and services on the website can be considered as a basis for the conclusion that jurisdiction exists.

Thus, in the case of “Playmen”, the defendant, an Italian company, was prohibited to distribute and sell the” Playmen” magazine they published in the United States. The defendant's argument that their server containing illustrations from the magazine was in Italy, was not accepted by the court, as its activity on attracted customers from the US, resulted in distributing, which took place in the United States. Thus, the American court refused to follow the defendant's logic and considered this situation as a distribution in Italy.

If a person restricts access to Internet-based messages to US residents or if the information is not available in English, it is unlikely that it will be possible to find appropriate links with the US that justify the jurisdiction of US courts. Thus, in the McDonough v. Fallon McElligott case, the California Federal District Court ruled that the mere fact of creating a website is not sufficient grounds for deciding whether a court has the competence to consider a dispute. The court concluded it was necessary to ascertain that appropriate contacts were established through the website with the state of the court.

In the case of Maritz, Inc. v. CyberGold, Inc. the defendant provided customers with e-mail services and sent them promotional information about the various services in accordance with their interests. The court also found that the defendant intended to make contact with any users regardless of their geographical location *(Леанович 2000).*

Thus, the jurisdiction of the US courts in cases involving Internet legal relations, where the respondents are non-residents of the United States, does not apply to "passive / non-interactive” character.

In European countries, we can conditionally identify three main systems jurisdiction determination:

- according to the law of citizenship (France);
- according to the law of domicile (Germany);
- on the basis of the factual presence of the defendant in the territory of the country of the court (Great Britain) (*Ануфриева, 2002).*

Judicial practice of European states provides the possibility of judicial proceedings against persons who are not citizens and who are not on their territory, if the disputable legal relationship is in one way or another connected with the state of the court. However, it is difficult to judge how can the specifics of legal relations on the Internet affect the change in the basic rules for determining jurisdiction in European countries and how likely claims by European courts against foreign citizens or persons domiciled in the territory of other states will be tried by the court.

Jurisdictional problems of Internet legal relations cause contradictions in the European law. In particular, the revision of the system of the Brussels Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters. The basic rule of the Brussels Convention is enshrined in Article 2 and states that claims for persons domiciled (permanently or permanently resident) in the member states must be filed in these states. The grounds for bringing an action against persons who do not have domicile in the member states, as well as the criteria for determining the defendant's domicile, are contained in the national law.

In general, in countries of the Anglo-Saxon legal system, the judicial precedent of state jurisdiction dominates the human rights process in the field of the Internet legal relations.

In the Russian law there is a tendency for legal regulation, including through direct impact. In accordance with the regulations of Roskomnadzor, the norms of the law 149-FZ *(Об*

информации, информационных технологиях и о защите информации, 2006), part 4 of article 29 of the Constitution of the Russian Federation, instant messengers such as Vchat, WeChat, BlackBerry Messenger, Imo and Line are blocked, Vchat audio-visual chat, Zello Internet radio, Amazon subnets. The blocking of Zello in Russia was an experiment to effectively degrade the service. It was also necessary to block a number of subnets used by the Internet radio. In particular, telecom operators received a list of 36 subnets, 26 of which belong to Amazon. In total, the subnets containing about 15 million IP-addresses 13.5 million of which belong to Amazon were blocked.

Thus, these measures do not contradict the constitutional principles of citizens of the Russian Federation in the field of the Internet legal relations. At the same time, dominance is the legal regulation, typical for the Romano-German legal system, including France and Germany.

Conclusions and suggestions

In conclusion, it should be noted that cross-border features of the Internet legal relationships have been identified. The human rights process is connected with the rule of law of the countries of the Anglo-Saxon legal system on the basis of judicial precedent. For countries (Germany, France and Russian Federation) of the Romano-German legal system, legal regulation is based on codified norms, including direct influence of the authorized state bodies. In this case, the issue of the human rights process in the field of the Internet legal relations requires a thorough study, the identification of signs of mutual implementation of the norms of legal systems.

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Kopsavilkums

Mūsdienās internetam ir liela ietekme un nozīme cilvēka dzīvē, tādēļ šīs sfēras tiesiskā regulēšana ir svarīga. Attiecības, kas rodas interneta vidē, ir starptautisko privāto tiesību apriora daļa. Neskatoties uz interneta likumdošanas aktualitāti un tās straujo attīstību, interneta vidē radušos strīdu regulēšana joprojām sagādā daudz neskaidrību un ir viens no sarežģītākajiem jautājumiem tiesiskā telpā. Vienkāršākais likumu un jurisdikciju kolīzijas novēršanas veids ir strīdā iesaistīto pušu gribas autonomijas principu ievērošana. Gandrīz visos interneta sakaru gadījumos pusēm ir iespēja izmantot tiesības un izvēlēties sev piemērotāko strīda izskatīšanas vietu.

Rakstā apskatīti interneta tiesisko attiecību un jurisdikciju konfliktu jautājumi starp valstīm, risinot strīdus, pētīta interneta likumdošanas un starptautisko privāttiesību savstarpējā saistība, analizēta Krievijas tiesību aktu piemērošana cilvēktiesību aktivitāšu regulējumam Krievijā. Izskatīta anglosakšu tiesību sistēmas tiesu prakse.