

# INTERNATIONAL LEGAL STANDARDS FOR IMPLEMENTING THE RIGHT TO ACCESS TO INFORMATION

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## ABSTRACT

*The paper considers freedom of access to information as one of the fundamental human rights. This right is enshrined both at the international level and the national legislation of all countries.*

*This right is defined as an opportunity for everyone to require the provision of government information and receive it from government agencies or officials. The relevant information regarding the actions and decisions of public officials goes into the public domain.*

*Information is an important part of our life, and therefore access to reliable and timely information provided by the government and the media is a key element in building the rule of law and civil society. Today, information easily transcends the boundaries of one state, which highlights importance to have international legal standards to implement the right to access information.*

*The authors of the paper were guided by the goal of conducting a comprehensive comparative analysis of the legal regulation of the implementation of the right to access information in accordance with national legislation and international standards.*

*The conclusions drawn from the results of the study will help to identify the main problems associated with the protection of the right to access information in the Republic of Kazakhstan. Analysis of foreign legislation and international standards will help to take a fresh look at the information rights of the Republic of Kazakhstan and suggest new ways to improve them.*

**Keywords:** International Law, Information, Information Security, Access to Information, International Standards.

## INTRODUCTION

Today, with the growth of new technologies, the increasing role of the media in the world arena, the issue of access to information for each person remains relevant. The second important issue is the regulation of the right to information that we can receive from various sources, be it

the press or telecommunications. Information is an important part of our life, and therefore access to reliable and timely information provided by the state, the media and other organizations is the key to shaping the rule of law and civil society.

Moreover, freedom of information, which also means freedom of access to information, lies at the heart of the very concept of democracy and is an absolute prerequisite for effective respect for human rights (Lor & Britz, 2007). Obviously, lack of respect for freedom of information, the right to seek, receive and disseminate information and ideas makes it impossible in practice to fully exercise the right to vote, publicize human rights violations and expose corrupt and ineffective governments. The central condition for ensuring the free flow of information and ideas is the recognition of the principle that state bodies do not store information for themselves, but in the interests of society and on its behalf. Governments hold vast amounts of information, and keeping it secret is a serious violation of the right to freedom of expression, guaranteed by international law, as well as most constitutions.

For comprehensive study of the implementation of the right to access information the works of national and foreign scientists were thoroughly analyzed.

The study found that the exercise of the right to access information is regulated both at the international level and by national legislation. Moreover, in the constitutions of many countries, this right is enshrined as one of the fundamental freedoms of man and citizen.

Among all types of information, data on the activities of government bodies according to the criterion of high social significance and demand are of particular interest. This is due to the very specifics of the functions assigned to these bodies. The state apparatus processes and circulates a significant amount of information for its rulemaking, managerial and control functions. This information lays the basis for preparing, adopting and implementing state decisions.

The right to information stems from the right to express an opinion, in accordance with a concept that explains the need to be well informed so that a person can freely express ideas, opinions and thoughts and therefore formulate them. The Right to Information (RTI) (Yannoukakou & Araka, 2014) movement focuses on the fact that government information is collected for the good of society, not the good of the organizations themselves, and forms the basis of a democratic regime. On the other hand, open government data (OGD) refers to data created or commissioned by the government or government-controlled entities that can be freely used, reused and distributed by anyone.

The importance of the right to access information on the activities of state bodies is obvious, since transparency and openness in the activities of state structures reduces the possibility of abuse on their part, and therefore increases the level of protection of human rights and freedoms.

However, despite this, countries impose certain restrictions on the exercise of the right to access information, such as restricting access to information about the national defense and security of the state, confidential personal, commercial or financial information, information straightforwardly prohibited by law, by the court order and information that could be dangerous for publication.

Thus, despite the widespread establishment of the right of everyone to access information, there are differences in approaches to this issue in different countries, as well as a number of restrictions on what information we have the right to request. Therefore, the authors

set a goal to study the main provisions of the right to access information and determine how legislative acts regulate the protection of this right.

## RESEARCH METHODOLOGY

To conduct a comprehensive analysis of the implementation of the right to access information, we studied the legislation of the Republic of Kazakhstan and the legislation of a number of foreign countries, international norms, as well as research materials of Kazakhstani, German and specialists in international and information law from different countries. Thus, the methodological basis of the research includes system analysis, comparison, theoretical and legal forecasting.

First, the authors of the study proceeded from the fact that today the implementation of information rights is an urgent topic. However, due to the widespread war on terror, strengthening national security and globalization trends, information laws and politics often go further than necessary and affect citizens' information rights.

It is important to note that the comparative analysis focuses on the current legislation of Kazakhstan and foreign countries; the draft laws or concepts under consideration were not taken into account.

## RESEARCH OBJECTIVES

The authors of the paper were guided by the goal of conducting a comprehensive comparative analysis of the legal regulation of the implementation of the right to access information in accordance with national legislation and international standards.

## DISCUSSION

Constitution is the basis for legal regulation of the information sphere in almost all countries. The right to information is an independent constitutional right of a citizen. Article 20 of the Constitution of the Republic of Kazakhstan (1995) states that *“everyone has the right to freely receive and distribute information in any way not prohibited by law”* (Constitution of the Republic of Kazakhstan, 1995). Thus, the constitutional right to information allows a person to freely receive and disseminate information. In addition, Article 18 states that *“state bodies, public associations, officials and the media are obliged to provide every citizen with the opportunity to get acquainted with documents, decisions and sources of information affecting his rights and interests”*.

The constitutions in number of other states also provide for similar norms. So, according to Art. 24 (Part 2) of the Constitution of the Russian Federation (1993): *“State bodies and local self-government bodies, their officials are obliged to provide everyone with the opportunity to familiarize themselves with documents and materials directly affecting his rights and freedoms, unless otherwise provided by law.”* Also Art. 29 states that *“Everyone has the right to freely seek, receive, transmit, produce and disseminate information in any legal way. Federal law determines the list of information constituting a state secret.”* A similar provision is contained in Art. 50 of the Constitution of the Republic of Azerbaijan: *“Everyone has the freedom to seek, acquire, transfer, compose and disseminate information in a legal way”*. Freedom of the media is

guaranteed. State censorship is prohibited in the media, including the press. According to Art. 33 of the Constitution of the Republic of Belarus (1994) *“everyone is guaranteed freedom of opinion, belief and their free expression. No one can be compelled to express or renounce their beliefs. Monopolization of mass media by the state, public associations or individual citizens, as well as censorship is not allowed”*. Art. 34 states that *“Citizens of the republic are guaranteed the right to receive, store and disseminate complete, reliable and timely information about the activities of state bodies, public associations, about political, economic and international life, the state of the environment. State bodies, public associations, officials are obliged to provide a citizen of the Republic of Belarus with the opportunity to familiarize with materials affecting his rights and legitimate interests. The use of information may be limited by law in order to protect the honor, dignity, personal and family life of citizens and the full exercise of their rights”*.

In accordance with Art. 24 of the Constitution of Georgia (1995) *“everyone has the right to freely receive and disseminate information, express and disseminate their opinions orally, in writing or in any other form. The media are free. Censorship is prohibited. Law may limit the exercise of these rights in order to ensure state or public security, territorial integrity, crime prevention, protection of the rights and dignity of others, prevent the dissemination of information recognized as confidential, or ensure the independence and impartiality of justice”*.

The Art. 34 of the Constitution of the Republic of Moldova (1994) stipulate, *“the right of a person to access any information related to public affairs cannot be restricted. The authorities, in accordance with their competence, are obliged to provide reliable information to citizens about public affairs and personal matters. The right to information should not prejudice measures aimed at protecting citizens or national security. The media, both public and private, are obliged to provide reliable information to the public. The media are not censored”*.

In accordance with Art. 29 of the Constitution of the Republic of Uzbekistan (1991) *“everyone has the right to freedom of thought, speech and belief, the right to seek, receive and disseminate any information, except for that directed against the existing constitutional order. Freedom of opinion and expression may be restricted by law for reasons of state or other secrets”*.

According to Art. 25 of the Constitution of the Republic of Lithuania (1992) *“everyone has the right to their beliefs and their free expression. No one should be hindered from seeking, receiving and imparting information and ideas. Freedom to express beliefs, receive and disseminate information may not be limited otherwise than by law, if it is necessary to protect health, honor and dignity, privacy, morality of a person or the constitutional order”*.

Art. 44 and 45 of the Constitution of the Republic of Estonia (1992) provide that *“everyone has the right to freely receive information disseminated for public use. All state institutions, local governments and their officials are obliged, in accordance with the procedure established by law, to provide an Estonian citizen, upon his request, with information about their activities, with the exception of data prohibited to share by law, as well as data intended exclusively for internal use. An Estonian citizen has the right, in accordance with the procedure established by law, to familiarize himself with the data concerning him, stored in state institutions, as well as in state and municipal archives. Based on the law, this right may be limited in order to protect the rights and freedoms of other people and the secrecy of the child's origin, as well as in order to suppress a crime, arrest a criminal or find out the reasons in the course of criminal proceedings. Unless otherwise provided by law, citizens of foreign states and stateless persons staying in Estonia enjoy these rights equally with Estonian citizens”*.

The US constitutional guarantees for the right to information derive from the First Amendment (Bill of Rights, which entered into force on December 15), which states: *“Congress cannot pass laws restricting freedom of speech or freedom of the press, or the right of the people: apply to government with a complaint for damages”*. The US Supreme Court has indicated that the *“main focus”* of the amendment is to *“guarantee the freedom of exchange of information on issues related to the activities of the authorities”*. Having set a precedent, the US Supreme Court partially contributed to the emergence of special legislation regulating the activities of state bodies in relation to individuals and legal entities, ensuring openness and transparency of their activities.

According to the Basic Law of the Federal Republic of Germany (Law, 1949), the right to freedom of expression is a fundamental constitutional right guaranteed in Art. 5. According to Clause 1 of Art. 5 on freedom of speech: *“Everyone has the right to express and disseminate his opinion in the form of statements, writing and in the form of illustrations, as well as freely receive information from publicly available sources. Freedom of the press and the transmission of information through television and radio broadcasting and films is guaranteed (there will be no censorship). Freedom of the press may be limited by the provisions of general laws, legislative provisions on the protection of young people; the right to the honor of a person (clause 2, article 5); laws on military and substitute service for persons related to military or its substitute service (Art. 17a); in the case of using freedom of speech and press to fight against the foundations of the democratic system (Article 18)”*.

Most modern states, declaring freedom of the media and the right to information, conclude that there is a need for a further broad interpretation of the content of these categories in a special law.

For example, the Law of the Republic of Azerbaijan *“On Freedom of Information”* (Law, 1998) and *“On the Mass Media”* (Law, 1999) stipulate that *“in accordance with Art. 50 of the Constitution of the Republic of Azerbaijan everyone has the freedom to seek, receive, transfer, produce and disseminate any information in a legal way, and that restriction of freedom of information is allowed only in cases stipulated by the Constitution of the Republic. The procedure for using freedom of information is determined by the Constitution and the relevant laws of the Azerbaijan Republic”*.

The Laws of the Republic of Armenia *“On Freedom of Information”* and *“On Mass Communication”* (both were adopted in 2003) provide that *“everyone has the right to get acquainted with the information he is looking for and / or to receive it in the manner prescribed by law, apply with a request to the information manager and receive this information”*.

With regard to foreign law, the US Freedom of Information Act also addresses the issue of providing citizens with government information. The essence of this Act is in full openness to citizens of all documents of the US Federal Government bodies, except for those cases that are stipulated in this Act. The legislator delegated control over the classification of documents to the judiciary and effectively prohibited the publication of secret government decisions. Freedom of access to information is achieved by publishing documents in the Federal Register bulletin, as well as by granting citizens the right to be acquainted, copy documents, and create conditions for their quick search through the regular publication of indexes.

This law provides for eight possible exceptions to the rule of openness of documents, according to which certain types of information are not subject to disclosure. For example, information on national security, internal rules and regulations relating only to employees of

public institutions, information of a geological and geophysical nature and other information, which violate privacy and trade secrets in a case of the disclosure. The interpretation of these clauses under American law is very strict, with the presumption in favor of disclosure. Public authorities that refuse to disclose information must prove that its disclosure falls under one of the listed clauses.

It should be noted that the experience of the United States, a country that undoubtedly ranks first among countries with developed, on the one hand, information rights, freedom of speech and press, and on the other, with a sufficiently developed strong emphasis on information security issues is essential for our study. Therefore, in matters of regulation of the right to access information, it is very important to analyze the US legislation within the framework of this article.

As noted by Birkinshaw, the issues of restricting access to information in the United States are especially relevant in matters of national security, in the light of the war on terror and countering the threat of terrorist attacks (Birkinshaw, 2010).

Currently, the legislation of this state contains about 500 normative legal acts regulating information security issues, including:

1. Freedom of Information Act (USA);
2. Law "On the Right to Financial Secrecy";
3. Law On the security of computer systems;
4. Law On access to information on the CIA activities;
5. Law On secrecy;
6. Law On computer abuse and fraud;
7. Law On the Protection of Electronic Communication Systems;
8. Law On ensuring the safety of computers;
9. Nation's roadmap for ensuring emergency communications;
10. Executive Order on National Security Information;
11. Presidential Policy Directive On the protection of communications systems;
12. Presidential Policy Directive National policy of the United States in the field of security of communication systems of automated information systems.

It is worth noting the example of the United States, where laws are in place to regulate the information transparency of government agencies. These laws are called "*sunshine laws*".

The Freedom of Information Act, passed by Congress in 1967 in the United States, can be considered one of the main federal laws of the "*sunshine laws*" governing the relationship arising from the provision of information to third parties about the activities of government agencies. This law "*despite criticism of certain restrictions contained in it, provided sufficient transparency in the activities of the executive branch*" (Gadzhieva, 2015)

Pursuant to the Freedom of Information Act, all individuals wishing to obtain information from federal authorities as well as from federal government agencies can formally request it in the form of an information request. In response to such a request, the relevant authorities (institutions) and their officials are obliged to provide the relevant individual or legal entity with the information of interest, unless they are included in the list of information types with exceptions (personal data, personal medical information, other personal information, information constituting a state or commercial secret, official information about management decisions not yet taken, etc. (Article 551 of the Law)). Under this law, a citizen or legal entity is not required to explain the reasons for requesting information. Citizens, in accordance with the law, have the

right to appeal in court against the institution's refusal to provide information. In this case, legal costs may be reimbursed to the plaintiff if he wins in court. The institution is obliged to provide, at the request of representatives, documented information in a short time, and create conditions for the fastest possible search for the requested documents.

The reasons why citizens and public organizations request information from public authorities can be different. Moreover, it can be argued that through the exercise of the right to access information, US citizens can exercise control over the activities of government bodies. The exercise by US citizens, as well as foreigners in the US, of the right to access information enables active participation in the life of society, challenging the actions and decisions of government agencies.

The Freedom of Information Act makes exceptions to the open document rule. For example, the exceptions are:

1. National defense and state security, the activities of law enforcement agencies;
2. Confidential personal, commercial or financial information;
3. Information that may allow users to circumvent the implementation of laws;
4. Information, the disclosure of which is expressly prohibited by law;
5. Documents, prohibited to access based on a court decision;
6. Information, that may cause damage if published;
7. Documents containing geophysical and geological information about oil wells and gas fields.

Other countries have also introduced restrictions. There have been major changes in the UK legislation governing the exercise of the right to information by subjects of various kinds. The Law on Freedom of Information was adopted in 2000, which aimed to provide access to information held by public authorities or by persons providing services to them. This Law also amended Law "*On Protection of Information*" and the Law "*On State Archives*". The main emphasis was placed on the procedures for obtaining information and on the grounds for refusing to provide it. As in the United States, the information in this document is referred to as "*government information*".

It should also be noted that even before the adoption of the Freedom of Information Act in the UK, thanks to numerous precedents, a system for ensuring freedom of information (including the media), as well as the implementation of the right to information, was developed. At the same time, it seems that the adoption of this Law became the basis for building a system to ensure the implementation of the right to information throughout the UK, which indicates a deep crisis in the previously created system based on the precedent legislative framework. At the same time, as some researchers note, there are problems in different approaches to the implementation of freedom of information at the central government and local levels (Worthy, 2013).

Similar laws in many European countries are structured in the same way. They are aimed at solving the problem of citizens' access to information on the activities of state authorities. These laws contain up to one and a half dozen restrictions on free access to this category of information, restrictions related to the need to ensure national and state security, as well as guarantees of the priorities of national and state interests.

In Germany, § 4 of the Hamburg State Press Act, adopted in 1965, states that state institutions are obliged to provide information to representatives of the press and radio (television), if such information serves the purpose of fulfilling its public tasks by the press. The

provision of information may be refused if: a) this may hinder or threaten to disrupt the conduct of the current trial; collection of a fine or disciplinary process; b) there are orders to keep this topic in secret or not to disclose official matters; c) this would cause damage to other public or private interests that claim to be protected by the state.

As for the right to access information in the Republic of Kazakhstan, the Law of the Republic of Kazakhstan “*On Access to Information*” states that “*the right to access information can be limited only by laws and only to the extent that it is necessary for protection of the constitutional order, public security, human rights and freedoms, health and morality of the population*”. That is, as we can see, there is open and closed information. According to our legislation, access to information on emergencies and disasters that threaten the safety and health of citizens is not subject to restrictions. This also relates to information on the state of health, sanitation, demography, migration, education, culture, social protection, economy, agriculture, crime; facts of committing terrorist acts; on the state of the environment, as well as on the radiation situation, food safety; facts of violation of human and civil rights and freedoms; facts of violation of the law by information owners, their officials; about mass repressions for political, social and other reasons and a number of other information.

In its turn, information with limited access, by its legal nature, is also divided into two types: information constituting state secret and confidential information (which includes a large number of types of secrets).

In accordance with Kazakhstani legislation, state secrets are understood as “*information of a military, economic, political and other nature, the disclosure or loss of which inflicts or may harm the national security of the Republic of Kazakhstan*”.

With regard to confidential information, in paragraph 1 of Article 126 of the Civil Code of the Republic of Kazakhstan, the concept of “*commercial secret*” is combined with the concept of “*official secret*”. It has the following wording: “*Civil law protects information that constitutes an official or commercial secret when the information is valid or has potential commercial value due to the fact that it is unknown to third parties. There is no free access to it on a legal basis and the owner of the information takes measures to protect its confidentiality*”. The difference between the two “*secrets*”, if both have commercial value, is that official secrets are held by government agencies, and commercial secrets are held by individuals and legal entities engaged in entrepreneurial activities.

From all of the above, we can conclude that the legislation of the Republic of Kazakhstan contains the concepts of various categories of information; in particular, the definition of confidential information, commercial secrets, etc. is given.

It is important to note that the Concept of Legal Policy of the Republic of Kazakhstan for the period from 2010 to 2020, approved by the Decree of the President of the Republic of Kazakhstan dated August 24, 2009 No. 858, recognizes the existence of a problem: “*It is also necessary to improve the legal regulation of information issues. In general, this activity and its legal regulation mechanisms should be aimed at guaranteeing freedom of speech, free receipt and distribution of information in any way not prohibited by law, taking into account the observance of constitutional rights to privacy, personal and family secrets, secrecy of correspondence, telephone conversations and other messages, as well as compliance with the requirements of the legislation on state secrets*” (subsection 2.1). The Concept also emphasizes: “*Society is interested in full, objective and impartial coverage of the activities of the judiciary. To this end, it is necessary to increase the level of openness and transparency of the judicial*



*system, in particular by providing wider access of the population to information on the activities of the courts”.*

Also, the “*Informational Kazakhstan – 2020*” State Program, approved by the Decree of the President of the Republic of Kazakhstan dated January 8, 2013 No. 464, provides for the expansion of the list of public information provided by the Government of the Republic of Kazakhstan and state bodies to citizens and business through the portal of “*electronic government*”.

The Nur Otan Party Anti-Corruption Program for 2015-2025 (approved by the Resolution of the Nur Otan Party Political Council No. 1 dated November 11) declares the principle of transparency, openness and accountability of the state to society: “*The Constitution stipulates that the only source of state power is the people who delegate the exercise of their power to state bodies. Every citizen has the right to freely receive information in any way not prohibited by law, and state bodies are obliged to provide such information, ensuring free access*”.

As we can see, many regulatory legal acts are devoted to the issue of the right to information, to receive, distribute, protect and implement it. This problem remains relevant because legal regulations are often violated when carrying out information activities. In particular, this can be observed in the work of the media. In addition, today, information easily goes beyond the boundaries of only one state and it is important to have international documents aimed at regulating this area.

Among the main international acts regulating the right to information, the Declaration on Freedom of Expression and Information, a number of UN resolutions and recommendations, for example, Resolution 1636 Indicators for media in a democracy, Resolution 1003 “*Ethics of Journalism*”, Resolution 1142 on parliaments and the media, etc.

The right to information is fully recognized by Article 19 of the Universal Declaration of Human Rights (1948), which states, Everyone has the right to freedom of opinion and expression. This right includes the freedom to freely adhere to one's convictions and the freedom to seek, receive and impart information and ideas by any means and regardless of state borders. In addition, Article 19 of the International Covenant on Civil and Political Rights stipulates, “*Everyone has the right to freedom of expression. This right includes the freedom to seek, receive and disseminate all kinds of information and ideas, regardless of state borders, orally, in writing or through the press or artistic forms of expression, or by other means of their choice*”.

In 2011, the UN Human Rights Committee issued a general policy comment defining the subject matter and boundaries of the right to information. This document establishes that article 19 of the Pact guarantees the right to information held by public authorities. It requires states to make government information of public interest widely available as a matter of priority, and that access to it should be “*easy, fast, effective and practical*” (General comment No. 34, 211). The Comment also highlights that states should establish “*necessary procedures*” to allow the public to access information, for example through legislation on freedom of information, and that fees for access to information should not unduly impede access to information. It also said that the authorities should justify any refusal to provide access to information. It is necessary to create a mechanism for processing applications for refusal to provide information, as well as for unanswered requests.

The European Court of Human Rights finds that several provisions of the European Convention on Human Rights provide for the right to access information and Fundamental Freedoms (1950), Article 10 of the Convention stipulates that “*... freedom to receive and impart*

*information and ideas without any interference from public authorities and regardless of state borders”.*

Since 2009, the ECHR has affirmed the existence of a broader fundamental right than the right to freedom of expression itself, within the framework of the same Article 10 of the Convention - the right to access information from state bodies as a means of participation in the free exchange of opinions and ideas, as well as effective and correct administration of public policy. The court also stressed the importance of ensuring access to information for public observers, including the press, NGOs and any individuals planning to bring information to the public (Okremrova, 2020).

It should be noted that the right to information, by its very nature, is a tool for securing other rights, such as the right to freedom of expression, the right to health, education, etc. The right to access information enables people to exercise their rights to the fullest. The right to information is also mentioned in numerous international treaties and agreements, including on pollution, climate change, disability and migrants.

In 2009, the Council of Europe adopted the Convention on Access to Official Documents. As stated in the introduction to this document, *“this Council of Europe Convention is the first legally binding international legal instrument that recognizes the general right of access to official documents held by public authorities”.*

This Convention enshrines the right to access official documents. Restrictions on the right to access official documents may only be imposed to protect individual interests such as national security, defense or privacy.

The importance of this document is indisputable, since the right of access to official documents has a great influence on strengthening the authority of state bodies in the eyes of the public, contributes to the growth of trust in them. With regard to the restrictions referred to in the Convention, they must be clearly established by law, needed in a democratic society and proportionate to the objectives of protection: a. national security, defense and international relations, b. public safety, c. prevention, investigation and prosecution of criminal activities, d. disciplinary investigation, e. inspection, control and supervisory functions of public authorities, f. privacy and other legitimate personal interests, g. commercial and other economic interests, h. economic, monetary and foreign exchange policy of the state, i. equality of parties in legal proceedings and effective administration of justice, j. environment, or k. confidentiality of discussions in the course of preparation of any issue within a public authority or between such bodies.

The Convention contains the minimum standards to be applied when processing requests for access to official documents (request form and fees in connection with access to official documents), as well as a procedure for reviewing decisions taken and additional measures.

Information is also subject to regulation in sectoral international agreements. For example, the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (*“Aarhus Convention”*) establishes the concept of *“environmental information”*. This means *“any information in written, audiovisual, electronic or any other material form about the state of environmental elements (air, water, soil, earth), about substances such as energy, noise and radiation, about the health and safety of people, their living conditions, the state of cultural objects, buildings and structures, as well as state activities or measures, including administrative measures, environmental agreements, policies,*

*legislation, plans and programs that have or may have an impact on elements of the environment”.*

Thus, the Convention enshrines the right to access information concerning the environment in any form. It is important that, in accordance with the provisions of the Convention, states must promote “*environmental education and public awareness of environmental problems*”, which is achieved directly by providing access to environmental information.

Other international documents in the field of ecology also enshrine information as an object to which their action is directed. For example, the Stockholm Declaration on the Human Environment contains Principle 20, which states that “*the free flow of modern scientific information and the transfer of experience must be maintained and facilitated in order to advance the resolution of environmental problems*”. The Rio Declaration on Environment and Development, in its principle 10, states that governments are obliged to provide everyone with appropriate access to “*information relating to the environment held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes*”. States develop and encourage public awareness and participation through the widespread provision of information. Any scientific information, information owned by government agencies, if it concerns environmental issues, must be accessible to humans. Besides these are very important principles, since today environmental problems are coming to the fore, in society and on the world stage there is an understanding that environmental protection and the solution of global environmental problems are not just relevant, but vital issues. It is the access to environmental information and its exchange that plays an essential role in solving such problems.

Thus, the Convention enshrines the right to access information concerning the environment in any form. It is important that, in accordance with the provisions of the Convention, states must promote “*environmental education and public awareness of environmental problems*”, which is achieved directly by providing access to environmental information.

Information is subject to regulation by international agreements affecting various parties in the dissemination of information, such as the International Convention on the Use of Radio Broadcasting for Peace, the Agreement on Facilitating International Exchanges of Visual and Sound Materials of an Educational, Scientific and Cultural Nature, the Agreement on the Importation of Materials of educational, scientific and cultural nature, the Convention on the International Exchange of Publications, the Convention on the Exchange of Official Publications and Government Documents between States, the UNESCO Declaration on Guidelines for the Use of Broadcasting via Satellite for the Free Dissemination of Information, Development of Education and the expansion of cultural exchanges, the United Nations Convention on the Use of Electronic Communications in International Agreements, the Declaration on the Principles of Cyber Stability and Cyber Peace and a number of other international agreements.

When considering the implementation of the right to access information, one cannot but mention the practice of the European Court of Human Rights.

In the case of the Youth Initiative for Human Rights vs. Serbia (Application no. 48135/06) on 25 June 2013, the European Court of Human Rights confirmed that non-governmental organizations, like the press, have the right to access relevant information in the

interests of society. The essence of the case was that the applicant organization had requested information from the Serbian intelligence as to how many citizens were being electronically monitored. Despite the decision of the Information Ombudsman, (a special body established by national legislation and vested with jurisdictional powers to resolve disputes related to the exercise of the right to access information), the Youth Initiative did not receive access to the requested data.

It is important that the Court considered it possible to award the applicant not pecuniary compensation, as is usually the case, but to oblige the authorities of the respondent State to finally provide the long-requested information to young Serbian human rights defenders.

It is also worth mentioning another very interesting case, which enshrines the human right to access information of public interest. The basic decision of the European Court of Human Rights on a dispute between two subjects on access to information on state structures' activities was issued in November 2013 (Complaint No: 39534/07. Court Chamber statement was published on November 28, 2013). An Austrian organization received a refusal from the Tyrolean Land Commission to their request of information on land transactions in Tyrol over the past 6 years. The appeal commission also refused them on the grounds that in order to maintain the confidentiality of personal data, hundreds of documents need to be processed, removing the identifying information of the participants in the transactions. On the one hand, the Court emphasized that the Article 10 of the Convention does not yet mean that all decisions of all authorities should be published online.

At the same time, it noted that the requested information concerned a socially significant issue and the applicant-organization required it not to satisfy its own curiosity, but to conduct research. The research results could be useful for formulating proposals during the legislative process.

Thus, if public authorities have publicly significant information at their disposal, they should organize their work in such a way as to ensure access to it for interested citizens and organizations.

Realization of the right to access information contributes not only to the development of other fundamental human rights, but also to a better understanding of the activities of state bodies, democratization of society, improved decision-making, and also plays a significant role in the fight against corruption.

The United Nations Convention against Corruption, ratified by the Law of the Republic of Kazakhstan dated May 4, 2008 No. 31-IV proclaims in Article 10 the following: Taking into account the need to combat corruption, each State Party shall adopt, in accordance with the fundamental principles of its national legislation, such measures as may be required to enhance transparency in its public administration, including those one related to its organization, operation and, as appropriate, decision-making processes. Such measures may include, inter alia, the following: a) the adoption of procedures or policies to enable the public to obtain, as appropriate, information on the organization, functioning and decision-making processes of the public administration and, with due regard to privacy and personal data protection considerations, decisions and legal acts affecting the interests of the population; (b) Simplification of administrative procedures, where appropriate, to facilitate public access to competent decision-making authorities; and c) publishing information, which may include periodic reports on the dangers of corruption in public administration. Article 13 of the Convention also states: Each State Party shall take appropriate measures, within its capabilities

and in accordance with the fundamental principles of its national law, to facilitate the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations to prevent and combat corruption and to enhance public understanding of the existence, causes and dangerous nature of corruption and the threats it poses. This participation should be strengthened through measures such as: a) increasing transparency and promoting community involvement in decision-making processes; b) ensuring effective access to information for the population; (c) Carrying out public awareness activities that foster an atmosphere of intolerance against corruption, as well as public education programs, including curricula in schools and universities; d) respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information on corruption. Certain restrictions may be imposed on this freedom, but only such restrictions as are provided by law and are necessary: i) to respect the rights or reputation of others; ii) to protect national security, or public order, or to protect the health or morals of the population.

From the above, it becomes obvious that the exercise of the right to access information acts as a kind of tool in the fight against corruption, which today remains a very urgent issue for many states, including Kazakhstan (Kassen, 2017).

At the level of documents of the CIS countries, one can distinguish the Model Information Code for the CIS member states (part one) (adopted at the thirty-eighth plenary session of the Interparliamentary Assembly of the CIS member states by Resolution No. 38-6 of November 23, 2012). Chapter 2 of Section IV in this document reviews access to public information and restricted information in Chapter 3. As well as the Model Law "On the Right to Access to Information" (adopted at the 23<sup>rd</sup> plenary session of the Interparliamentary Assembly of CIS Member States by Resolution No. 23-14 of April 17) also plays an important role in the development of national legislation. In particular, it contains the concept of "public interest" defined as "the interest of any person (persons) associated with ensuring the well-being, stability, security and sustainable development of society". It should be noted that according to Kazakhstani legislation, the definition of "access to information", as well as the list of information free from restrictions are similar to the specified Model Law within the CIS.

In the integration processes, the activities of the Eurasian Economic Union are of interest, in particular the decision of the Council of the Eurasian Economic Commission dated September 18, 2014 No. 71 "*On the Procedure for Working with Documents of Restricted Distribution (Confidential and for Official Use) in the Eurasian Economic Commission*".

It contains the following definitions: "*restricted information*" is confidential information (contained in confidential documents) or proprietary information (contained in documents for official use); "Confidential information" is all types of information (including commercial, banking, tax, notarial, medical, personal, lawyer's secrets) with limited access (confidentiality is established) in accordance with the regulatory legal acts of the Member States and international treaties. There is a mandatory requirement for the person who has gained access to this information not to transfer (not to disclose) such information to third parties without the written consent of its owner. "*Official information*" is information initiated in the course of the Commission's activities within the powers provided for by international treaties, decisions of the Supreme Eurasian Economic Council. In relation to this information there is the need for protection in view of the possible infliction of various kinds of damage as a result of illegal treatment of it.

## CONCLUSIONS

As a result, the comparative analysis of the legislation of Kazakhstan and foreign countries, as well as an analysis of international standards in the field of the implementation of the right to access information led the authors to the following conclusions:

Majority of modern states have enshrined the right to information as the basic freedom of man and citizen in the basic laws. Indeed, today the right to information, to access information about the activities of state bodies is one of the main and demanded in every country for every person.

Most modern states, declaring freedom of the media and the right to information, conclude that there is a need for a further broad interpretation of the content of these categories in a special law. It is increasingly recognized that governments do not hold information for themselves, but rather on behalf of the public, and that, as a result, public authorities must provide access to this information. This recognition is reflected in the rapid growth in the number of access to information laws enacted around the world, as well as in numerous authoritative international statements on this issue. Today, nearly 100 countries have laws that provide individuals with a general right to access information held by government agencies and impose a duty on government agencies to actively disclose key types of information. Moreover, most international financial institutions, including the World Bank and all regional development banks, as well as a growing number of other intergovernmental organizations, have adopted disclosure policies.

Generally recognized in this direction is the principle of maximum openness of information, stating that any official information should be available to citizens, except for cases when the restriction of this information is necessary to ensure public interests (Mendel & Unesco, 2008).

However, despite the legislative consolidation of the right to access information, there are certain restrictions in all national legislation. Restricted information includes data containing government secrets, confidential information and other information, strictly prohibited to disseminate by law.

There is a variety of regulatory legal acts are devoted to the issue of the right to information, to its receipt, distribution, protection and implementation. This problem remains relevant due to frequent violation of legal regulations in informational activities, in particular, in the work of the mass media. In addition, today, information easily goes beyond the boundaries of only one state and it is important to have international documents aimed at regulating this area. At the international level, information rights issues are governed by a large number of documents of both a universal, regional nature and in accordance with branches of law.

On the basis of the conducted research, it can be concluded that the problems of access to legal information are not caused by legal regulation, but exclusively by the level of interpersonal relations. At the legislative level, there are no significant gaps and problems. The main difficulties arise with the interaction of subjects of international law, as well as the application of norms in practice. The authors of the presented paper share the positions of other scientists (Birkinshaw, 2006) who consider access to information as a fundamental human right.

## RECOMMENDATIONS

Thus, from all of the above, it becomes obvious that both at the international level and at the national level, the issue of exercising the right to access to information is very relevant, as evidenced by a number of reviewed international documents and Kazakhstani legislation. The right to information is very specifically designated in international law as a human right related to freedom of expression, as well as an important mechanism for the realization of other rights and goals, including the goals of combating corruption. In addition, the right to access information includes the right of everyone to freely seek information and the right to receive it from persons who have this information on legal grounds. It should be noted that the right to access information could be limited only by laws and only to the extent required to protect the constitutional order, defend public order, human rights and freedoms, health and morality of the population. In general, the right in question is not subject to restrictions, since its implementation is closely related to the implementation of other fundamental human and civil rights, which, of course, is the basis for building a democratic and legal state.

The conclusions drawn from the results of the study will help to identify the main problems associated with the protection of the right to access information in the Republic of Kazakhstan. Analysis of foreign legislation and international standards will help to take a fresh look at the information rights of the Republic of Kazakhstan and suggest new ways to improve them.

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