

THE IMPACT OF THE COVID-19 PANDEMIC ON THE RIGHT TO ACCESS THE INTERNET AS A HUMAN RIGHT

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Abstract: *The Covid-19 pandemic changed the functioning of states, international organizations and brought enormous changes to people's daily lives. During the pandemic, the realization of many human rights, such as the right to education, the right to work, the right to freedom of expression and access to information, was only possible through internet. In the period before the Covid-19 pandemic, there were certain acts and initiatives that define the right to access the internet as a human right. Estonia, Finland, France, Costa Rica, Mexico, Spain and Greece are among countries that recognized the right to access the internet as a basic human right through various mechanisms- constitution, laws, and court decisions. The United Nations adopted non-binding resolutions in 2016 and 2021 defining the right to access the internet as a human right. The paper examines whether the Covid-19 pandemic can influence the right to access the internet in order to become a globally accepted human right. The pandemic has shown that the access to the internet is necessary for the realization of large number of other rights. In addition, the pandemic period highlighted the so-called digital divide, that is, the gap between those who have and those who do not have the internet access. The obstacles that stand in the way of the right to access the internet becoming human right are also discussed. The author emphasizes the lack of economic resources and the absence of political will of a large number of countries as the most complex obstacles. The list of human rights is subject to change and expansion. The paper concludes that the pandemic indicated the necessity of the internet and opened numerous questions regarding the further development of the right to access the internet as a human right. Bearing in mind the previous properties of the internet as a means of social criticism, the resistance and lack of interest of states can be expected as the biggest obstacles on the way to the right to access the internet to be recognized as human right.*

Key words: *internet, human rights, legal access to the internet, Covid-19, the United Nations, digital divide.*

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1. INTRODUCTION

The internet had become an integral part of the daily life of the majority of the world's population. We use the internet on a daily basis to check our emails, to read the most actual news, to communicate with our friends and family, etc. Internet access is an important mechanism that facilitates our life and activities. It is reasonable to wonder: What is the situation when it comes to the right to access the internet as a human right?

The right to access the internet is closely connected to the freedom of expression, right to education, right to work, freedom of assembly, the right to access information, etc. There are a lot of different opinions regarding the right to access the internet as a human right. Some theorists consider internet access as a tool that makes easier fulfilment of other human rights. On the other side, some theorists consider that the internet has developed the capacity to become an independent human right.

The paper analyses the position of the right to access the internet in international law and reviews national legislation of countries that have recognized some aspects of the right to access the internet as a human right. Some major historical events pointed out the power of the internet access and showed that the internet has a lot of potential and capacities in the area of human rights. The paper points out the impact of the Covid-19 pandemic on accessing the internet and emphasizes that enjoyment of the majority of human rights during emergencies was possible thanks to the internet access. The author concludes that the Covid-19 pandemic and post-pandemic period have created new perspectives and possibilities regarding the right to access the internet as a human right.

2. DEVELOPMENT OF HUMAN RIGHTS AND THE INTERNET ACCESS

Human rights belong to a dynamic and developing category. In the time of the establishment of the United Nations, there has been a division on first generation- civil and political rights, and the second generation of human rights- economic, social and cultural rights. With time, the third generation of human rights emerged. This generation of human rights implies collective rights introduced in the Stockholm Declaration (1972), Rio Declaration (1992), and other international documents of declaratory character. The rights of the third generation include right to self-determination, economic and social development, a healthy environment, natural resources, and participation in cultural heritage. The division into three generations of human rights is the so called Vašák's generations of human rights, named after Karel Vašák, who in the late 1970s, offered this concept of three generations of human rights. But, since the late 1970s the world had changed drastically. Numerous new issues, including migration, terrorism, global warming, and the rise of science and technology, had made theorists wonder whether Vašák's generations of rights are still valid.²

2 Spasimir Domaradzki, Margaryta Khvostova and David Pupovac, "Karel Vasak's Generations of Rights and the Contemporary Human Rights Discourse", *Human Rights Review*, XX, (2019): 424. 423–443.

The development of science and technology causes changes not only regarding the daily life of people but also regarding the development of human rights. At one point in time, the printing press was one of the greatest technological advancements in the history of humankind. It gained so much importance, that the concept of the “freedom of the press” was born. After the press, the radio was invented, followed by television. All these mechanisms of communication have been protected under the right to freedom of expression. The next step in the technological evolution has been the internet. Theorists consider that the internet “has already revolutionized all the previous modes of communication to the extent that they are all converging into a singular medium, that of the Internet.”³

By the end of the 20th and the beginning of the 21st century the fourth generation of human rights emerged. This generation of human rights is strongly related to technological development and the use of digital technologies. Theorists consider that human rights connected to digital technologies are intended to ensure free access to the use, creation, and publication of digital works, as well as access to the use of electronic devices and communication networks, including the Internet. The most famous among them are the rights to access the electronic network, the right to use virtual reality, the right to communicate freely and express opinions on the Internet, and the right to privacy of personal data.⁴ The list of the fourth generation of human rights is not final yet. Technology is constantly developing and perhaps very soon we might have some new rights listed as the fourth generation of human rights.

Until the late 1990s internet has not been widely used. But, early and mid-2000s had made the use of the internet popular. The growing popularity of the internet raised a question regarding its nature, potentials and possibilities of becoming recognized as a human right.

3. INTERNET ACCESS AND THE INTERNATIONAL LAW

The root for internet access as a human right can be found in Article 19 of the Universal Declaration of Human Rights which states that “everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”. Also, the basis for the internet access as a human right can be found in International Covenant of Economic, Social and Cultural Rights. Article 11 of the Covenant states that “the States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”, as well as the Article 12 which “recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”

The internet has been recognized as a part of Sustainable Development goals. It is marked as a Goal 9.c, which aims to “significantly increase access to information and communications

³ Kartik Chawla, “Right to Internet Access - A Constitutional Argument”, *Indian Journal of Constitutional Law*, 7 (2017): 87.

⁴ Serhii Perepolkin, Danylo Perepolkin, Milena V. Averianova M, “Typology of the fourth generation of human rights”, *Journal of International Legal Communication*, 1, 1(2021): 94. 91-101 <https://doi.org/10.32612/uv.27201643.2021.1.pp.91-101>

technology and strive to provide universal and affordable access to the Internet in least developed countries by 2020.”⁵ The Internet will also be the essential tool for the implementation and monitoring of the other sustainable development goals.

Also, the internet had been a part of the scope of the UN Human Rights Council. This body adopted two resolutions on the promotion, protection and enjoyment of human rights on the Internet.

The first resolution was adopted in 2016.⁶ It affirms that the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one’s choice, in accordance with article 19 of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights.⁷ Also, it points out that quality education plays a decisive role in development, and calls upon all States to promote digital literacy and facilitate access to information on the Internet. This can be an important tool in facilitating the promotion of the right to education.⁸ The Resolution encourages member states to promote the use of the internet and technology among persons with disabilities, considering the internet as a mechanism to provide them inclusion in normal life.⁹ Having in mind the importance of human rights online, the Resolution condemns measures to intentionally prevent or disrupt access to or dissemination of information online in violation of international human rights law and calls upon all States to refrain from and cease such measures.¹⁰

The second resolution of the UN Human Rights Council (Resolution 47/16 from 2021) on the promotion, protection and enjoyment of human rights on the Internet, recognizes the importance of the Internet in the context of the Covid-19 pandemic and the exceptional measures adopted in response to it, and the need for States to ensure, in accordance with their international human rights law obligations, that any such measures do not restrict access to the Internet and, wherever possible, expand access to it, especially for persons in marginalized and vulnerable situations.¹¹ It calls upon all stakeholders in the information and communications technology sector, state and non-state actors, to promote affordable and reliable connectivity, digital access and digital inclusion, and the expansion of accessible and inclusive public services, distance-learning solutions, and digital health services.¹² The UN Human Rights Council is dedicated to continuing its consideration of the promotion, protection and enjoyment of human rights, including the right to freedom of expression, on the Internet and with other information and communications technology, and of how the Internet can be an important tool for fostering citizen and civil society participation.¹³

In the literature regarding the right to access the internet, often is mentioned the Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion

⁵ Food and Agriculture Organization of the United Nations. Sustainable Development Goals- 17 goals to transform our world. Accessed from <https://www.fao.org/3/CA3121EN/ca3121en.pdf> 27. 09. 2022.

⁶ United Nations Human Rights Council. A/HRC/RES/32/13. The promotion, protection and enjoyment of human rights on the Internet. 1 July 2016 Accessed from <https://digitallibrary.un.org/record/845728?ln=en> 29. 09.2022.

⁷ *Ibidem*, paragraph 1.

⁸ *Ibidem*, paragraph 4.

⁹ *Ibidem*, paragraph 7.

¹⁰ *Ibidem*, paragraph 10.

¹¹ United Nations Human Rights Council. A/HRC/RES/47/16. The promotion, protection and enjoyment of human rights on the Internet. 13 July 2021. Accessed from <https://digitallibrary.un.org/record/3937534?ln=en> 29. 09. 2022.

¹² *Ibidem*, paragraph 6.

¹³ *Ibidem*, paragraph 19.

and expression, Frank La Rue. The Report is focused on key trends and challenges to the right of all individuals to seek, receive and impart information and ideas of all kinds through the Internet. The Special Rapporteur believes that “the Internet is one of the most powerful instruments of the 21st century for increasing transparency in the conduct of the powerful, access to information, and for facilitating active citizen participation in building democratic societies.”¹⁴ It might play a key role in mobilizing the population to call for justice, equality, accountability and better respect for human rights. Having in mind its potential, facilitating access to the Internet for all individuals, with as little restriction to online content as possible, should be a priority for all States.

All acts above are soft laws and soft laws are not formal sources of international human rights law. Neither the Special Rapporteur nor the United Nations Human Rights Council has yet expressed their opinion as to whether to treat internet access as an independent human right or not.¹⁵ Resolutions of the Human Rights Council and Report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression are showing that the internet is a part of the international community's interest. It is an issue that needs to be discussed and developed more in the future.

4. THE RIGHT TO ACCESS THE INTERNET IN NATIONAL LEGISLATIONS

Despite the lack of international regulation regarding the right to access the internet as a human right, some states have recognized certain aspects of access the internet as a human right.

Estonia was one of the first countries to do so. In February 2000, the Estonian Parliament enacted the new Telecommunications Act which defines Internet access as a human right essential for life in the 21st century.¹⁶

Finland declared broadband access a basic right. The right was proclaimed via an amendment in the Communications Market Act, which states that universal service also included a functional Internet connection. Finnish officials consider that a high-quality broadband Internet connection at a reasonable price is an essential right. Providers in Finland are able to connect any facility with a *download* speed of 1 megabit per second. Finland has become the first country in the world to *make broadband internet access a legal right*.¹⁷

Internet access is defined as a human right in Greece as well. Greece amended its Constitution in 2001 with the introduction of Article 5A which states that “all persons have the right to participate in the Information Society. Facilitation of access to electronically transmitted information, as well as of the production, exchange and diffusion thereof, constitutes an obligation of the

¹⁴ United Nations Human Rights Council. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, A/HRC/17/27, 16 May 2011, p. 4. Accessed from <https://digitallibrary.un.org/record/706200?ln=en> 30. 09. 2022

¹⁵ Liu Huawen, Yan Yuting, “Interpretation of the Concept of the Right to Internet Access from the Perspective of International Law”, *The Journal of Human Rights*, Vol. 15, 1 (2016): 151.

¹⁶ Stephen Tully, “A Human Right to Access the Internet? Problems and Prospects”, *Human Rights Law Review*, Vol. 14, 2 (2014): 178.

¹⁷ Tommaso Edoardo Frosini, “Access to Internet as a Fundamental Right”, *Italian Journal of Public Law*, Vol. 5, 2 (2013): 231.

State, always in observance of the guarantees of articles 9, 9A and 19.”¹⁸ The same article emphasizes that all persons have the right to information, as specified by law. Restrictions to this right may be imposed by law only if they are absolutely necessary and justified for reasons of national security, combating crime, or of protecting the rights and interests of third parties.¹⁹

The development of internet access as a human right has been interesting in France. This country adopted an online copyright infringement law (Haute Autorité pour la diffusion des œuvres et la protection des droits sur Internet (HADOPI)) which empowered a government agency to disconnect Internet users if they continued to illegally download material following two warnings. Constitutional Council declared HADOPI as invalid considering that “the current state of the means of communication and given the generalized development of public online communication services and the importance of the latter for the participation in democracy and the expression of ideas and opinions, this right (to freedom of expression) implies freedom to access such services.”²⁰

Broadband access had been declared a human right in Spain as well. Law 2/2011 on Sustainable Economy added broadband access to its universal service, and stipulated that broadband connection at a speed of 1Mbit per second is to be provided through any technology. Article 52 (1) of the Law states that “The Government (...) will establish the conditions for broadband access to the public network and may update this speed in accordance with social, economic and technological evolution taking into account the services used by the majority of users.”²¹ The Delegate Commission of the Government for Economic Affairs (...) will guarantee the affordable nature of the prices of the services included in the universal service.”²²

In 2015, Italy adopted a Declaration of Internet Rights. This document is non-binding, but it recognizes access to the Internet is a fundamental right of all persons and a condition for their individual and social development.²³

When it comes to Latin America, Costa Rica declared internet access as a human right. Unlike previous states, Costa Rica recognized it by the decision of the Constitutional Court in July 2010.²⁴

The right to access the internet requires two necessary steps - accessing content online and the presence of the necessary infrastructure to access the internet. When it comes to the necessary infrastructure, there arises a positive obligation on the state. The state should take the necessary steps to provide the infrastructure. The positive obligation of the state regarding the issue of the internet infrastructure can be divided into two aspects- to ensure that those who do not have internet access get this access and to ensure that there is meaningful access. For the first aspect, States would have a duty to provide internet access, and not doing so would lead to a violation of

18 The Constitution of Greece as revised by the parliamentary resolution of May 27th 2008 of the VIII Revisionary Parliament, Article 5A (2) Accessed from <https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf> 30. 09. 2022.

19 Ibidem, Article 5A (1).

20 Stephen Tully, “A Human Right to Access the Internet? Problems and Prospects”, 178.

21 Spain Law 2/2011, of March 4, on Sustainable Economy, Article 52(1). Ley 2/2011, de 4 de marzo, de Economía Sostenible Jefatura del Estado. Accessed from https://www.boe.es/diario_boe/txt.php?id=BOE-A-2011-4117 30. 09. 2022.

22 Ibidem, Article 52(2).

23 Kunal Bilaney, Gauri Thamp, “Internet Access as an Independent Human Right: A Palpable Consequence of the Covid-19 Pandemic?”, *Kathmandu School of Law Review (KSLR)*, VIII, 2 (2020): 90. pp 82-97

24 Nicola Lucchi, *The Impact of Science and Technology on the rights of the Individual* (Switzerland: Springer, 2016), 89.

the right. For meaningful access, States have to ensure that the internet has a wide reach without manipulation, restrictions, or limitations regarding the access.²⁵

5. THE COVID-19 PANDEMIC AND THE RIGHT TO ACCESS THE INTERNET

The Covid-19 pandemic hit the world unexpectedly. Its consequences affected all countries and international organizations. The pandemic did not only cause a health crisis. It has also caused many social, economic, political, legal, and strategic implications. Some countries like China and Russia used a pandemic as a strategic opportunity as a goal to improve their soft power and influence worldwide. They have used vaccine diplomacy and donations of medical supplies. On the other side, some important global actors didn't handle the pandemic very well. The global reputation of the US has been damaged in the first phase of the pandemic due to ignorance of the virus, slow response and the withdrawal from the World Health Organization. Within the EU, Covid-19 had caused not only a health crisis, but also a crisis of European integration, European identity, and European unity.²⁶

Pandemic had strongly affected the daily life of people. Due to government restrictions, the whole world has been quarantined. As a consequence, most the activities have been transferred online. Technology had become an instrument that enables us to work, communicate, shop, access important services and information, etc. During the Covid-19 pandemic, access to the internet becomes an essential tool for protecting people's health as well as a range of other human rights, including numerous social and economic rights. For example, in Latin America, the use of the internet network increased on average by 25% during the first week of the pandemic as a result of online learning, teleworking, personal communications, entertainment, and e-commerce. This kind of incensement in the use of the internet was documented in other parts of the world as well. This was an alarm for a potential collapse of network worldwide.²⁷

The right to access the internet as a human right can be considered an issue of growing importance. Usually, when it comes to issues of growing importance, emergency situations, like the Covid-19 pandemic, point out their importance and necessity. Regarding the internet, the Covid-19 pandemic opened many questions, considerations, and future debates regarding further development of the right to access the internet.

The Covid-19 pandemic pointed out questions: Can access to the internet exist as an independent human right? Is access to the internet more than just a mechanism to achieve other human

25 Anamika Kundu and Anshul R. Dalima, "A Case for Recognition of the Right to Internet Access in the Age of Information", *Journal of Indian Law and Society*, XI, 2(2020): 14.

26 Jelica Gordanić, "Impact of the covid-19 pandemic on the global role of the US", *Međunarodni problemi*, LXXIV, 2(2022): 245.

27 María Soledad Segura and Ana Bizberge, "Digital Rights During the Covid-19 Pandemic in Latin America", *Comunicação e Sociedade*, 39 (2021): 129.[https://doi.org/10.17231/comsoc.39\(2021\).2852](https://doi.org/10.17231/comsoc.39(2021).2852)

rights? Some theorists consider that an argument for the elevation of the right to internet access as an independent right is directly proportional to the growing dependence on the digital world.²⁸

In the period before the pandemic internet might be considered as a luxury and a mechanism for more quality achieving of other rights. The pandemic had transformed computers and mobiles phone into schools, offices, hospitals, supermarkets, gyms, etc. The internet is no longer a mechanism for more quality enjoyment of other rights. Covid-19 emphasized that the internet had become the only mechanism for the realization of numerous economic, social, political, and cultural human rights. Except the internet, there is no other mechanism which could provide enjoyment of numerous human rights during the pandemic. Some people were able to work thanks to the internet. Students were able to attend classes thanks to the internet. Without the internet, at least two generations of students would be lost when it comes to schooling and knowledge. Even isolated in their homes, people were able to receive information, again thanks to the internet. They were able to protect their health. The Covid-19 pandemic had caused a lot of panics, a lot of life losses, as well as economic losses both for people and states. But, the consequences of the pandemic could be more tragic without access the internet. The pandemic pointed out the necessity of the internet. The internet has become *conditio sine qua non* in the life of people during the pandemic.

Of course, the internet had great contributions in countries and households that have internet access. The Covid-19 pandemic had shown that still there are a lot of people who do not have internet access and numerous disadvantages in their daily lives.

5.1. The Digital Divide

The number of internet users has been growing through the years. Internet users worldwide numbered 10 million in 1993, 40 million in 1995, 1.97 billion by 2010, and presently over 3,5 billion.²⁹ This means that more than 4 billion people worldwide don't have internet access. Alongside the internet exists a phenomenon of the digital divide. This term had been used to describe economic, educational, and social inequalities between those who have computers and online access and those who do not. Digital divide had been drastically emphasized during the Covid-19 pandemic.

The situation has been difficult in Africa. In some African countries, the number of internet users is extremely small. Democratic Republic Congo's internet coverage is estimated to be less than 20%, and only 8% of households have internet access. The average mobile phone penetration In Africa rates are only 26% compared to 43% in the region as a whole, and only 9% of individuals across the country use the Internet.³⁰ Due to poor internet connectivity, the right to education during Covid-19 completely failed in Africa. States are not obligated to provide internet access, and monthly costs of the internet are too high for the majority of the African population. Due to lack of internet access, people were not able to use the internet in order to work, educate, receive information, etc. It is possible to use free internet in some African schools, Universities, and certain

²⁸ Bilaney and Thamp, "Internet Access as an Independent Human Right: A Palpable Consequence of the Covid-19 Pandemic?", 94.

²⁹ Tully, "A Human Right to Access the Internet?", 188.

³⁰ Bukola Faturoti, "Online learning during COVID19 and beyond: a human right based approach to internet access in Africa, International Review of Law", International Review of Law, *Computers & Technology*, 36, 1(2020): 72.

public places. During the time of the Covid-19 pandemic the approach to these facilities was not possible due to government restrictions.

The situation was similar in Latin America where 33% of the people lack internet access. In 11 countries in the Latin American region, 77% of rural homes, 42% of people under 25 years old and 54% of people over 65 years old do not have internet access at home.³¹ Unlike Africa, whose people have been left alone during the pandemic, the Governments of many Latin American countries took some positive measures regarding internet access. Measures had the aim to provide the accessibility, availability and affordability of telecommunication services, to improve the efficiency of networks and to allow free access to certain applications and websites. In Mexico, the continuity of telecommunication services has been guaranteed as part of the measures to prevent and mitigate the risks of the pandemic. Brazil declared that telecommunication services and access to the internet are essential and must be guaranteed during the pandemic. The National Telecommunications Agency signed agreements with different companies to hold Brazil connected. In Argentina, fixed and mobile services, access to the internet, and pay TV have been declared essential services since the beginning of the pandemic, and suspension and disconnection of these services for lack of payment have been banned until August 31, 2020.³²

When it comes to developed countries, the digital divide during the pandemic has been noticeable between urban and rural areas and between young and old population. In highly developed countries like the US and Canada, healthcare and technology are centralized in urban areas, while rural and remote communities are facing disparities in access to essential health services. The pandemic pointed out these inequities, especially for people with disabilities, people needing medical treatment, the elderly, and people in need of housing or facing food insecurity. In Canada, one more problem pointed out the digital divide even more. Shortly after the pandemic started, urban internet speeds increased by nearly 25 megabits per second (Mbps), while rural internet speeds plateaued at 5.5 Mbps.³³ Public health safety measures for the pandemic focused on encouraging people to go online for basic activities such as work, food, healthcare, and social connections. The lack of equitable internet speed made these activities difficult and impossible for rural residents.

In developed countries, Covid-19 pandemic also pointed out the digital divide between young and older people. Older people mostly live alone, away from their families, and often have more than one chronic disease. Theorists consider that “supporting older people’s participation in the development of technology interventions will further ensure that older people are recognized as individuals (...) It is a necessity to significantly improve the inclusion of older people in the design of technological interventions to support social connectedness.”³⁴

31 Segura and Bizberge, “Digital Rights During the Covid-19 Pandemic in Latin America”, 129.

32 For more information on this issue see: Segura and Bizberge, “Digital Rights During the Covid-19 Pandemic in Latin America”, 129-131.

33 Sarah J. Dow-Fleisner, Cherisse L. Seaton et al. Internet access is a necessity: a latent class analysis of COVID-19 related challenges and the role of technology use among rural community residents”, *BMC Public Health*, XXII, 1 (2022): 2. <https://doi.org/10.1186/s12889-022-13254-1>

34 Louise McCabe et al. “Using Technology the Right Way to Support Social Connectedness for Older People in the Era of COVID-19”, *International Journal of Environmental Research and Public Health*, 2021, XVIII, (2021): 16. <https://doi.org/10.3390/ijerph18168725>

6. ADVANTAGES OF THE ACCESS THE INTERNET AS A HUMAN RIGHT

The lack of internet makes people unequal. The ones who have the internet access are able to provide their rights. The ones who don't have internet access are not able to enjoy some of the basic human rights such as the right to work, the right to health, the right of education, the right to information etc. The Covid-19 pandemic pointed out the seriousness of the necessity of internet as a provider of basic human rights. But, even in times without pandemic, internet provides more possibilities and opportunities for people. It has a potential to improve the quality of life. In this context, internet is an important tool for enjoyment of the other human rights.

Besides people, the internet is also an issue of great significance for the states. Increased penetration of technology is an important mechanism to provide countries with opportunities for economic development. Improved internet access allows people with low income to access a wide variety of financial services, which is not possible in some other way. The internet has the capacity to popularize online trading and e-commerce. Every 10% increase in the use of the internet, brings in a rise of about 1.28% to 2.5% in the GDP of developing nations. The internet also has the potential to bridge the digital divide between rural and urban regions. This can bring more harmony and development in the functioning of the country and communication between the regions.³⁵

The concept of the right to access the internet as a human right has received a lot of support from influential politicians worldwide. For example, in 2008, then the New Zealand Minister of Justice considered that Internet connectivity was almost a human right, similar to water and electricity. A very similar view on the internet had former US president Barak Obama who stated that the internet is not a luxury but a necessity.³⁶ Internet access is closely connected to the freedom of assembly. In the traditional sense, freedom of the assembly is considered as assembly in a physical public area. The internet had transformed the meaning of assembly and it had become some kind of new assembly area. The former US Secretary of State Hilary Clinton said cyberspace "has become a new assembly area for people in the 21st century."³⁷

So far, there is no international legal act that explicitly recognizes internet access as a human right. Having in mind this fact, states are not obligated to provide the infrastructure necessary for internet access, and they are not obligated to do that for free. If internet becomes recognized as a human right, that would make an obligation for states to provide the necessary resources and infrastructure for its use. As a human right, the internet would provide more quality access and enjoyment of other human rights. It would also contribute the equality of people. The data regarding the digital divide and inequality caused by it can be important input for states regarding the recognition of internet access as a human right.

³⁵ Kundu and Dalima, "A Case for Recognition of the Right to Internet Access in the Age of Information", 23.

³⁶ Tully, "A Human Right to Access the Internet?", 179.

³⁷ Huawen and Yuting, "Interpretation of the Concept of the Right to Internet Access from the Perspective of International Law", 144.

7. THE RIGHT TO ACCESS THE INTERNET- MAIN OBSTACLES

There are a lot of discussions, dilemmas and obstacles regarding access the internet as a human right. Vinton Cerf (2012), one of the internet inventors, made a public claim that technology is an enabler of rights, not a right itself. He argued that in ancient time people might need a horse to make a living, but it would be absurd to consider the right to own a horse as a human right. Cerf considers that it is better to shift our focus from the technology to the outcomes it tried to ensure. In his opinion, the concept of the Internet as a human right is excessive. And that is a mistake to regard the internet as a human right.³⁸

The major obstacle regarding the internet as a human right is the lack of international legislation. States are not obligated to provide the necessary infrastructure. On the other side, states should allow their citizens to access the content on the internet, without unreasonable or illegal restrictions. This is the so-called negative aspect of the right to access the internet. This aspect of the internet is based on the existing jurisprudence on the close rights of freedom of speech, the right of freedom of opinion and expression, freedom of information, freedom of the press, the right to association, etc.³⁹

Sometimes there are some limitations regarding the use of internet which can be justified. The motivations of states for Internet restricting practices range widely, from concerns over national security, cultural sensitivities, and protection of social values, to rent-seeking and the protection of economic monopolies.⁴⁰ For example, the Constitution of Greece states that the restrictions to the right to information may be imposed by law only insofar as they are absolutely necessary and justified for reasons of national security, of combating crime or of protecting the rights and interests of third parties.⁴¹ The European Court of Human Rights (ECHR) in the case *Yildirim vs Turkey* (2012) para. 30 quotes the United National Human Rights Committee: „Permissible restrictions generally should be content-specific; generic bans on the operation of certain sites and systems are not compatible with paragraph 3. It is also inconsistent with paragraph 3 to prohibit a site or an information-dissemination system from publishing material solely on the basis that it may be critical of the government or the political social system espoused by the government.“⁴²

There are a great majority of states that are using different forms of internet censorship, filtering, and control on the internet.

Typically, China has been used as an example of internet censorship. This country has sophisticated filtering mechanisms which block access to certain websites. Internet users in China don't have access to some of the most popular social networks like Facebook, Youtube, Instagram, Google, Yahoo, or Twitter. Some countries, like India, Brazil, Indonesia, and Turkey undermine internet access *through censorship*, harassment, or surveillance. Countries like Rwanda, Venezuela, and

³⁸ More information on this problem see at: Xiaowei Wang, “Time to think about human right to the internet access: Beitz’s approach”, *Journal of Politics and Law*, VI, 3(2013): 68.

³⁹ Kartik Chawla, “Right to Internet Access - A Constitutional Argument”, 61.

⁴⁰ Alisa Shishkina and Leonid Issaev, “Internet Censorship in Arab Countries: Religious and Moral Aspects”, *Religions*, IX, (2018): 1. doi:10.3390/rel9110358, p. 1-14.

⁴¹ The Constitution of Greece as revised by the parliamentary resolution of May 27th 2008 of the VIII Revisionary Parliament, Article 5A (1) Accessed from <https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggllo.pdf> 30. 09. 2022.

⁴² European Court of Human Rights, *Case of Ahmet Yildirim v. Turkey*, (Application no. 3111/10), Strasbourg 18 December 2012. Accessed from [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-115705%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-115705%22]}) 15. 10. 2022.

Pakistan have established institutions for Internet censorship. Numerous user arrests occurred in Bahrain, Ethiopia, and Tunisia. In Vietnam, there is a practice of imprisonment for internet activists.⁴³

Many forms of internet filtering have been used in Arab countries. Theorists consider that there are three basic prerequisites for filtering web pages in the Arab world: - to maintain political stability, to strengthen national security and to preserve traditional social values. Religion and morals have been determining factors when it comes to internet filtering in Arab countries. The main sites that are subject to censorship are those with content that contradicts the existing values and norms of morality, as well as encroaching on Islam.⁴⁴ The power of the internet had been pointed out during the Arab Spring. In this case, the internet had shown its potential to change governments and to become an important mechanism for achieving democracy.

During the Covid-19 pandemic, there have been a lot of attempts by governments to restrict the content on the internet. For example, the Argentine minister of security announced that, in the context of the pandemic and isolation, they were carrying out “cyber-patrolling” of information publicly available on social networks in order to monitor “the social mood”. This announcement caused a lot of controversies. As a consequence, at least five people were reported to have been arrested in connection with their expressions on social networks just during April 2020. This kind of government practice violates numerous aspects of human rights. It violates the presumption of innocence, it threatens freedom of expression, reduces citizen participation, and imposes a problem for democracy.⁴⁵

From all the examples above, it is clear that numerous states consider internet as a threat. Internet has a potential to make social changes, which was the case with the Arab spring. It also has a tendency to point out the violation of human rights, corruption of the state officials, and dissatisfaction of citizens. It also has a potential to affect negatively the image and reputation of the country. On social networks, even one word or one sentence might have a capacity to cause a revolution or significant political changes. The more authoritarian the state is; the more resistance it has regarding the internet as a human right. Internet censorship had become a usual practice of the most powerful states worldwide. The use of internet provides numerous benefits. On the other side, the use of internet as a human right might be a threat for states. The lack of political will of states is one of the most important obstacles standing on the way of internet as a human right.

The other obstacle related to the internet as a human right is the nature of internet. Despite the fact that some states have declared internet access as a human right and despite the support of influential politicians, there are still many difficulties regarding this issue. First of all, there is no consent what means the right to access the internet? Is that access to a computer? The possession of necessary infrastructure? The ability to receive information on a computer/mobile phone without restrictions? Can internet be considered as a human right by itself or it is just a tool which helps providing other human rights. The use of internet is closely connected with the other human rights. It is linked with the right to education, the right to work, the freedom of assembly, the right to information etc. In context of human rights, it is not unusual to consider internet as a tool; a

⁴³ Tully, “A Human Right to Access the Internet? Problems and Prospects”, 180.

⁴⁴ More on this topic: Shishkina and Issaev, “Internet Censorship in Arab Countries: Religious and Moral Aspects”, 7-8.

⁴⁵ Segura and Bizberge, “Digital Rights During the Covid-19 Pandemic in Latin America”, 128.

very helpful tool, but still a tool. The lack of independence of internet is another significant circumstance standing on its way to be recognized as a human right.

8. CONCLUSION

Even if it is not recognized yet as a human right, internet access is a subject of interest in the international community. The right to access the internet is a vivid area of international law. The internet had changed daily life, habits and functioning of majority of people. Before the Covid-19 pandemic internet has been considered a mechanism for more quality enjoyment of other human rights. The Covid-19 pandemic had changed the way internet might be perceived. The pandemic pointed out that the internet is not just a helpful tool. It showed that the internet is the only mechanism to enjoy basic human rights. Thank the internet, people worldwide were able to work and receive information, children and students were able to attend classes. The internet had become a provider of human rights during the pandemic.

Time is changing. Technology is developing. The list of human right should not be limited. Perhaps the Covid-19 pandemic can contribute to some hard laws regarding internet access or it might motivate more states to declare internet access as a human right. The most important obstacle standing in the way of access the internet as a human right is a lack of political will of states. Internet censorship is a practice many states like to use.

Perhaps the right to access the internet is not going to become an individual human right in recent years. But, the Covid-19 pandemic had shown that the internet is necessary for daily life and human rights. It is no longer a luxury; it had become a basic need. In the period after the Covid-19 pandemic, it will be interesting to observe further developments regarding access the internet as a human right. It is certainly an issue worth the attention of the international community.

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UTICAJ PANDEMIJE COVID-19 NA PRAVO PRISTUPA INTERNETU KAO LJUDSKOM PRAVU

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Apstrakt: *Pandemija Covid-19 promenila je funkcionisanje država, međunarodnih organizacija i donela ogromne promene u svakodnevni život ljudi. Tokom pandemije, ostvarivanje mnogih ljudskih prava, kao što su pravo na obrazovanje, pravo na rad, pravo na slobodu izražavanja i pristup informacijama, bilo je moguće samo putem interneta. U periodu pre pandemije Covid-19 postojali su određeni akti i inicijative koje definišu pravo na pristup internetu kao ljudsko pravo. Estonija, Finska, Francuska, Kostarika, Meksiko, Španija i Grčka su među zemljama koje su priznale pravo na pristup internetu kao osnovno ljudsko pravo kroz različite mehanizme – ustav, zakone i sudske odluke. Ujedinjene nacije su 2016. i 2021. usvojile neobavezujuće rezolucije koje definišu pravo na pristup internetu kao ljudsko pravo. U radu se ispituje da li pandemija Covid-19 može uticati na pravo na pristup internetu kako bi postalo globalno prihvaćeno ljudsko pravo. Pandemija je pokazala da je pristup internetu neophodan za ostvarivanje velikog broja drugih prava. Pored toga, period pandemije je istakao takozvani digitalni jaz, odnosno jaz između onih koji imaju i onih koji nemaju pristup internetu. Razmatraju se i prepreke koje stoje na putu da pravo na pristup internetu postane ljudsko pravo. Kao najsloženije prepreke autor ističe nedostatak ekonomskih resursa i odsustvo političke volje velikog broja zemalja. Lista ljudskih prava je podložna promenama i proširenjima. U radu se zaključuje da je pandemija ukazala na neophodnost interneta i otvorila brojna pitanja u vezi sa daljim razvojem prava na pristup internetu kao ljudskog prava. Imajući u vidu dosadašnja svojstva interneta kao sredstva društvene kritike, otpor i nezainteresovanost država mogu se očekivati kao najveće prepreke na putu da pravo na pristup internetu bude priznato kao ljudsko pravo.*

KLjučne reči: *internet, ljudska prava, legalan pristup internetu, Covid-19, Ujedinjene nacije, digitalni jaz.*

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