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*INTERNATIONAL
CONVENTION
ON PROTECTION
OF INTELLECTUAL
FREEDOM*

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The draft suggests a new version of an entire international law mechanism for legal protection of intellectual freedom in the conditions of democracy and modern legal systems. The project concerns wide scope of creative activities in modern societies, from building new scientific concepts and non-standard approaches in business and finances to creating various symbolic patterns. Using J. Boudrillard and G. Lipovetsky's philosophical vocabulary it may be said that the draft will touch upon the topic of “the spiral of simulation that predetermines reality”.

The text may be interesting for scholars, political scientists, philosophers of law, specialists in a theory of information and all those who are interested in the problems of modern democracy and human rights' protection.

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SUBSTANTIATION OF THE DRAFT OF THE “INTERNATIONAL CONVENTION ON PROTECTION OF INTELLECTUAL FREEDOM”

The draft of the “Convention” envisages the construction of an entire international law mechanism for legal protection of intellectual freedom in the conditions of democracy and modern legal systems. The project concerns a wide scope of creative activities in modern societies, from building new scientific concepts and non-standard approaches in business and finances to creating various symbolic patterns. Using J. Baudrillard and G. Lipovetsky’s philosophical vocabulary, it may be said that the draft will touch upon the topic of “the spiral of simulation that predetermines reality”¹. Something similar can be found in the writings of R. Barthes, whose creative reality looks like an entire economy of “dissipation, prodigality and frenzy”. In other words, a creative process is a genuine “*furor wertherinus*”, opposite to the traditional ethics of accumulation riches.

If, as Z. Brzezinski wrote, debates concerning the social organization and optimal ways of reaching prosperity dominated in the past century, then nowadays we are present at the beginning of grandiose discussion about the personality angle of human life. It is today that a special demand for intellectually free individuals has reason: we

¹ *Baudrillard J.* Seduction. — N.-Y.: St. Martin’s Press, 1990. — P. 151.

need “guides of progress”, whose ideas will transform the surrounding reality. Now, indeed, new types of human behavior and, following them, new types of personalities, new mavericks appear, and a new image of charisma is being shaped. In a certain sense, we observe the approach of the era of gifted figures staying far from the proscenium of the nation-wide popularity with its temptations as well as from being recognized by the selected elite. Such figures come to the foreground quite accidentally. Their appearance puzzles the minority and irritates the majority. Yet, they are the figures who are able to live their lives in the foreground, being obedient to creative impulses of the intimate, not of the common kind.

The suggested topic also touches upon a wide spectrum of questions on the role and significance of the hand-made or synthetic environment, style and specific ideology of the life of ideas, symbols and their systems in the modern world. Human creativity produces artifacts of civilization — sometimes seemingly modest, like dress patterns, cubist canvases, new steps in dancing, new ways of acting, new musical compositions. Later they become so desirable to be possessed that they cost scores of millions. As L. Mumford wrote, genuine value lies in the power to sustain or enrich life: a glass bead may be more valuable than a diamond, a deal table more valuable esthetically than the most tortuously carved one. Nowadays many people consider it correct that products of inspiration are valued so highly. So it stands to reason that many people, such as S. Weil, are greatly interested in the souls of those, who are able to reflect the finest interrelations of subjective and objective reality.

As to political and juridical aspects of the draft “Convention”, they are based on the fact that between creative activities and modern democracy, as a system of taking decisions based on the consensus of the majority, rather complicated relations arise organically. As is known, creative activities are intimately related with the problem of political freedom and unrestricted social communication, with the civil

discourse, the information freedom as a whole. Such relations must be regulated by the “freedom’s law” (R. Dworkin).

Many ways of guaranteeing intellectual activities and freedom are known to exist in modern Western countries. These ways are rooted mainly in the traditions of the Christian civilization, and they are expressed not only in the written law. As to the post-totalitarian countries, such traditions and customs had no time to arise or were for a long time suppressed. The regeneration of institutes of intellectual freedom in this political region is carried on slowly and with harmful mutations. That is why the goal of the planned “Convention” is the codification of the best samples of the written and unwritten norms concerning intellectual freedom with the aim to efficiently spread its standards to a wider political and geographic space.

It is obvious that there exist hundreds of books and other printed matter dedicated to creative activities. Only the psychology of the latter has become a separate branch of the humanities. Another text-abundant branch is the theory of social communication, of the civil society as a whole. There also exists extensive literature on the freedom of information and law theory, on constitutionalism. Yet, up to now, few attempts have been made to link the nature of creative behavior, as a most important manifestation of the organic creativity in human life, with the tools of legal regulation. It seems amazing, but even now “a strained individual deciding his destiny” (M. Mamardashvili) is blatantly disregarded by philosophy of law and legal theory.

As early as on the brink of the 19th and 20th centuries exceptional relations between the industrial (technological) discipline and man’s lively will actually overcome the limits of political expression of the social reality. If in the former times, as J. Ellul wrote, “magic was a bridge connecting fantasy and technology”, then in the industrial society the struggle between the mega-machine of progress and the sphere of intellectual freedom of a personality became an inevitable element among juridical notions on justice. That is why such questions

were repeatedly considered in the constitutional aspect. Yet, nowadays it seems necessary to consider them in the context of peculiarities and possibilities of the international public law regulation. Possessing the key to progress, typical of highly developed countries, must cease to be a cultural monopoly. In the 21st century the law guarantees of intellectual freedom must be represented at the international market of juridical technologies in an adapted form suitable for different nations.

Besides, as the experience shows, in modern Central and East European countries the accumulated contradiction between objective regularities of the spiritual development of the society and the legal regulation of their intellectual and creative sphere becomes more and more noticeable. The redundant regulation of information processes (up to the state's attempts to control the Internet) becomes almost typical. In some countries of this region (Russia, Ukraine) a massive system of laws on information has been written, where information is treated not as especially valuable for the social intelligence "quantity of unpredictable in a report" (A. Mole), but as an important strategic resource of the state.

Formally censorship does not exist in most post-totalitarian countries, but actually attempts to control and to filter information become more and more noticeable, practically everywhere. Sometimes such control is imposed because of the excess of social discipline in technologically super-organized societies, but more often it is a result of the obscurantism of ruling groups, the effect of the "inner editor" of intellectuals. We know, that usually public opinion is completely and resolutely favorable to progress. But it is favorable retrospectively, so to speak. Progress is what we already know. In actual instances, however — in respect to some new discovery — the reaction of the public is not so simple. If a discovery does not concern the public directly, its reaction is generally enthusiastic. But if the public is directly affected, if the discovery may be applied to it, enthusiasm is notably diminished.

Possibly, behind these subjective effects and intellectual prerogatives of the power stands more profound misunderstanding by political elite and even experts of the essence of the processes, which cause the fast advance of modern societies. One must confess that the “free hands” principle in economics, business and finances in many countries is applied too restrictedly. Standardized curricula and government-approved textbooks dominate in higher education. The sphere of science in the countries of Central and East Europe has no efficient market yet, which enables the activity to be indistinguishable as to quality. Such countries as Russia or Ukraine have a hierarchy of scientific and pedagogical staff; this system is notoriously unable to recognize and remunerate really gifted people. All this leads to explicit and implicit information jams on the international scale, lowers the level of the cultural exchange between countries and nations, generates great professional frustration of intellectuals, robs the society of information novelties.

In many post-socialist countries not a single normal bookstore, such as “Chapters”, “Waterstone’s”, “Borders”, has been opened yet, where scientific literature in foreign languages is sold. The translation program financed by Western charity funds is inevitably too weak and slow: it publishes the most selected samples of scientific literature, the value of which is indubitable, but whose peak of actuality has long ago passed. It is here that the state bureaucracy still remains the only manager of economic and financial reforms, whereas non-sanctioned and non-standard intellectual activity is perceived as something marginal. Unfortunately, this attitude is also supported by the national legislation. For example, the Ukrainian Constitution of 1996 has 12 restrictions on the fundamental freedom of speech. Such notions of social solidarity as “interests of society”, “protecting the rights and freedoms of other people”, “social trend of the economy”, “harmful for society”, “motives of public necessity”, “interests of national security”, “information security”, “objective truth” and the like are used too often.

All of them implicitly or explicitly suppress or essentially impinge upon the potential heuristic ability of an individual.

The problem of intellectual freedom reveals itself in a broader sense, since public goals under democratic conditions are selected and pursued spontaneously, on the base of many badly predicted factors, while the traditional legislation reflects rigid values described in the terms of non-metaphorical language. It is assumed that the spontaneity and dynamism must be provided for by the legal category of freedom. Yet, namely this most important guarantor of progress is either absent in many European countries or is fixed without due legal guarantees.

For example, an attempt of independent experts to introduce the category of freedom into the official draft of the Ukrainian Constitution was later rejected consciously by the work group of the National Constitutional Commission. Something similar occurred in other countries. Instead of dynamic elements their legislation was filled with a multitude of immobile concepts. Little applied for the needs of the modern rate of the life of the society, hence little applicable. From the viewpoint of the legal policy this means the rejection of the liberal scheme of legal regulation suggested by J. Rawls: constitutions fixed guarantees of freedom as a superior value, but tactical principles and rights, including economic and distributive ones, were left for the current legislation.

Meanwhile, in highly developed countries the object of the legal impact is the social organism in all variety of its components, not an association of citizens with the same interests. That is why a modern legal system must be a code of social interaction rules of free people, and not a list of articles on individual and collective priorities, for the sake of which these interactions are realized. From the point of view of modern public interests, the Constitution is a procedural and dynamic, not a material and statutory act. Nonetheless, as a result of the conservative inertia and some other reasons, many modern constitutions remain indifferent to the challenges of the new century.

Although the social and economic prosperity assure creative activities and innovations, one must admit that the legal systems of too many countries do not assure such activities in a special well-planned way. Too often they contain preserving and stabilizing guards, thus suppressing “collective imagination” of A. Toffler and the “risk society” of U. Beck. The analysis shows that many basic laws are written not in the paradigm of modernity. Rather often they are impregnated with moderate virtues and are edifying in their political moral. Their external design and internal logic are intended not for supporting social passion of any kind; it suits governments “solicitous as a granny” (T. Green). Yet, social, economic and cultural prosperity are not reached through paternalistic anxiety to protect universal prosperity.

New ideas, cultural samples, innovatory types of professional and other behavior, unique psychological attitudes and approaches to solving problems of the surrounding world are created by sparse elite. The face of the world is transformed by a handful of people, at first unknown and scattered, said E. Ionesco. In its turn, the fact that progress is made by “a few who convince many” (F. Hayek) requires legal protection of the culturally sensitive zones of the society. It is here that the consequences of the legislation expansion of the state and the “press of democratic decisions” is felt most painfully. This is especially true for the former socialist countries, but in the rest of the world the zone where the problems cannot be solved in a democratic manner does exist and is expanding. It is not accidental that in the prognostic analyses made in the USA human imagination is considered as the main strategic resource. Bearing all this in mind, one may say that the main ideas of the given “Convention” are generated by the organic contradiction between the letter of national legislation traditions and the necessity to resist the interference of power into the region of spontaneous creative activities.

Although the prediction of the Marxist theory that the state will wither away appeared, as everybody knows now, somewhat exaggerated,

it becomes more noticeable that in the most advanced countries people want to live predominantly in the sphere of private interests, and they do not identify the surrounding political environment with the state. It becomes more and more noticeable that people in Western Europe and the USA are in charge of their property, cross geographic and political boundaries, work in creative professions somewhat disregarding national frontiers and rules. More and more people realize their interests directly in the civil society and not in the state, outside the sanctions of the national bureaucracy. Thus, if such a tendency really exists, it obviously demands its adequate legal guarantees.

That is why, and by virtue of other above-mentioned arguments, the draft of the “Convention” suggests a variant of the solution of the problem concerning the relation between the idea of progress, as a way and means of a fast advance of the society to the new manner of living, on the one hand, with necessary limitations of the possibilities of the social dynamics provided for by modern democracy and the legal systems existing in most of the European countries, on the other hand. Thus, the idea of the “International Convention on Protection of Intellectual Freedom” is universal since it is based on the recognition of insufficient possibilities of the traditional schemes of the legal regulation of intellectual processes not only in the countries that lived upon the intellectual and moral glacier of totalitarianism.

According to the method of creating the “Convention”, the international public law is considered not as a traditional apex of the law pyramid, but as a unique in its role legal plateau – the guarantor of intellectual freedom and cultural diversity. In this capacity, the regulating potential of the suggested “Convention” must be assessed by its opportunities to generate the “artificial spontaneity”, i. e. some synthetic cast of the organic construction of nature. If one assumes that the vector of social progress is predetermined by intellectual efforts of individuals, who create different kinds of samples and models, styles,

ways of reasoning and other intellectual seductions, then it must substantially differ not only from the vector of state policy, but also from the vector of direct democracy. Upon the whole, all the process looks as if the new samples and patterns of the future are exhibited on the intellectual market, where demand and supply are determined by an uncountable number of factors, including national peculiarities and regional traditions.

On creating various intellectual patterns and attitudes to meet the future, the novelty-bearers “exhibit” their produce for the society to assess and choose. As J. Baudrillard pointed out, “the world’s workings are the result of a mental seduction”. At the same time as L. Mumford wrote, what the new civilization picks up is not the complete forms and institutions of a solid culture, but just those fragments that can be transported and transplanted: it uses inventions, patterns, ideas, in the way that Gothic builders in England used occasional stones or tiles of the Roman villa in combination with the native flint.

Perhaps, animals, having no soul, are seduced by new things by the visible exterior, shell, surface. In the case of people, having consciousness and soul, the seduction goes through the internal, artificial, invented or fancied. Being teased by a novelty, the intellectual temptation becomes unbearably strong for a strong intelligence. One can even say that the stronger the intelligence, the stronger is the temptation. In this sense we may assume that the so-called strong will does not exist in the cultural context. It is more reasonable to speak about the seduction force and the force of intelligence capable to be tempted by novelties.

As is known, even the vector of liberal democracy in modern society is determined, as before, by the majority will. By its properties this will looks as a collective or individual capacity to choose among the samples, models and attitudes created within the framework of progress. Yet, in many countries such a scheme is hardly understood even by experts. On the contrary, the idea of democracy as of the only cause of social

dynamics becomes a typical and more and more dangerous exaggeration on the side of young democratic regimes.

As to the most experienced and politically ripe societies, they demonstrate a strong interest to creating guarantees of non-interference into the intellectual and creative sphere; they made restrictions not only for the direct state agents, but also for representatives of democracy. The main result of these guarantees is the encouragement of providing the society with information, understood as a quantity of the unpredictable in a message. That is why creating and preserving the atmosphere of readiness of the society and its members to accept the unpredictable and novel must be considered the most important organizational, political and legal precondition of progress.

In other words, we must create (or reconstruct) the system of making primary “pre-democratic” decisions of an experimental type, which could later pre-determine secondary democratic decisions of a practical type. Obviously, we mean not a reduction of democracy, but only providing democracy with an efficient market of samples to be used in the future. The gift of democracy is not creative but selective: democracy is capable of selecting out of the created. Certainly, this system in its priorities somewhat withstands the usual functions of the state, such as securing social protection and order, political stability and sometimes even personal safety.

Yet, if we prefer progress, we have no choice. Anyway, every state must be kept on a leash; power, even not very conservative, suffers from the chronic will to regulate all. For instance, it demands science to stay within the bed of the “normal development”. Nonetheless, science, this most organized man’s creative activity, resembles more a collage than a system (P. Feyerabend)¹. This thesis seems to be applicable also to the state attitude to culture as a whole. As ideologists of liberalism reminded,

¹ *Feyerabend P. Killing Time.* — Chicago and London: The University of Chicago Press, 1995. — P. 143.

the state even now continues to be a referee, remaining simultaneously the strongest player, who, to be sure of the positive result, changes rules during the game.

However, even disregarding this angle, innovators, as S. Sontag wrote, must have the right to jump over fences, since it is they who have the duty to perform “seduction of the order of things”. Thus, the cultural progress, as the main dynamic value of modern society, must be protected from too much predicted organized stability by introducing special statutory acts. A model of such an act in the form of an “International Convention on Protection of Intellectual Freedom” is offered to readers’ kindness.

INSTEAD OF A PREFACE OR WHY WE CANNOT CONTENT WITH THE GUARANTIES OF ARTICLE 10 OF “THE EUROPEAN CONVENTION ON HUMAN RIGHTS” OF 1950

We suggest our readers a model draft of the “International Convention on Protection of Intellectual Freedom”, which was created by the expert’s efforts in the Kharkiv Human Rights Protection Group (KHPG) in winter/spring 2000.

This document is a draft version, that is an “open” version of a law. In the future it may and must be improved, corrected, completed or contracted, etc. Thus, it is the first variant of the “Convention” created on the professional basis for further improvement by volunteers and representatives of the public. That is why everyone, who is interested in the further development of the “Convention”, is invited to take part in the discussion. Remarks and propositions may be sent to the KHPG and directly to the author.¹

However, before leaving the reader eye to eye with the text, I would like to give several brief explanations. They are necessary because at the

¹ E-mail addresses: Kharkiv Human Rights Protection Group: khpg@ukr.net; author Vsevolod Rechytskyi: vsevolodrechytskyi@windowslive.com; postal address of the KHPG: POB 10430, Kharkiv-2, 61002, Ukraine.

earliest stage of creating the “International Convention on Protection of Intellectual Freedom” (for example, in February 2000 at the Human Rights Protection International Forum in Rome) some representatives of international NGOs and some experts expressed their doubts as to the need of creating such a document.

Their arguments in the final count may be reduced to one thesis: why shall one create a special convention, if there exists and acts “The European Convention on Human Rights” of 1950, whose Article 10 stipulates “...the right to freedom of expression. This right includes the freedom to hold one’s own opinions and to receive and impart information and ideas without interference by public authorities and regardless of frontiers”.

One should object to this and similar arguments at least in two manners. The first is reduced to the argument that Article 10 of “The European Convention on Human Rights” of 1950 not only proclaims the freedom of expression of one’s opinion and guarantees of this right, but also restrains this freedom with substantial limitations.

Thus, “The European Convention” asserts in particular that... “the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”.

As to the draft of the “International Convention on Protection of Intellectual Freedom”, most such limitations and restrictions are considered principally unacceptable. It is explained by the fact that the “International Convention on Protection of Intellectual Freedom” in its essence obeys the logic *not of the European, but of the American*

approach to the question of acceptability or unacceptability of various restrictions of the freedom of speech. In other words the main concept of the “Convention” is similar in its spirit to the First Amendment to the American Constitution (1791), which affirms, that the freedom of speech *may not be restricted by legal*, to say nothing about administrative limitations.¹ *As is known, this approach was applied in a number of decisions of the US Supreme Court (in which the action of the First Amendment was extended to the freedom of information exchange), as well as in some legal acts in that country (“Freedom of Information Act”, “Sunshine Act”, et).*

Thus, the “International Convention on Protection of Intellectual Freedom” demonstrates a much broader approach to the legal regulation of the freedom of speech, which is traditional in Western Europe. Juridically this means that the draft of the “International Convention on Protection of Intellectual Freedom” serves as a “translation” of the Anglo-Saxon legalistic approach to the protection of the freedom of expression of one’s opinion (freedom of speech) to the language of the European continental law.

Philosophically one may say that the given model draft “does not believe” in the separation of information into bad and good, useful and useless, dangerous and safe, etc. It is indubitable that Eastern and Central Europe differ much from the USA, and so the obvious for an American eye pragmatism of this approach in the post-totalitarian environment needs additional argumentation. It is clear that to give a complete argumentation one would need to write a sizable book. Yet, even without this it is obvious that the technological, informational and innovational advantage of the USA not only over the rest of the world, but even over Western Europe is very impressive today.

Certainly, the high rate of American progress is explained not only by the unique freedom of informational relations achieved in that country.

¹“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances”, Amendment I, the US Constitution.

Nonetheless, the liberality of information exchange, free circulation of various data in this rather unique environment considerably encouraged progress in America. Without introducing juridical separation of information into “bad” and “good”, the intellectual elite in the USA has reached genuine scientific, technological and creative summits. At the same time the moral level of the country has remained traditionally high and there is no tendency to its deterioration.

The second argument makes us resort to more complicated mental constructions. The matter is that Article 10 of “The European Convention on Human Rights” of 1950 guarantees the freedom of expression of one’s opinion (freedom of speech) in the same fashion, as it became conventional in this or that society. At the moment of the adoption of the document, i. e. soon after WW2, elementary freedoms of thought and speech needed protection. At that time nobody was especially interested in preconditions and the very process of shaping free thinking, the development of genuinely free, unprejudiced, non-xenophobic individual and public consciousness.

Thus, that is not surprising that the European document in its modern version is not overcharged with problems typical of the post-totalitarian countries: hypertrophied ethic self-identification, consciousness polluted with mass stereotypes, science and education too much regulated by the state, standardized textbooks and teaching methods, corporative and narrow ethics of intellectuals, seduction of ideological indoctrination, obscurant outlook of the political elite, shortage of access to alternative information sources. All of them are the morbid consequences of the deficit of freedom.

B. Malinowski wrote that the very existence and even the recognition of the necessity of the category of freedom is insufficient for man. In his opinion, freedom in general and intellectual freedom in particular require special guarantees and mechanisms for its preservation and reproduction. That is why, B. Malinowski affirmed, that genuine intellectual freedom exists not when everyone may write and say everything (about everything) he wishes, but when it is

guaranteed freedom. Yet, in order to create conditions for the existence and reproduction of intellectual freedom in any society, it is necessary to fulfill the following main demands:

- a) goals of the intellectual activities of individuals must be chosen by themselves, they must not be indoctrinated from outside;
- b) intellectual activities of individuals and groups on their way to the freely chosen goal must be realized under conditions of autonomous responsibility of the subjects of these activities and not to be controlled by some coercive force;
- c) results of the free intellectual activities must be distributed among its subjects, and not be confiscated by an outer power.¹

Thus, B. Malinowski affirmed, that intellectual activities of individuals must be conducted under conditions maximally free both from any preliminary or following outer control or coercion.

Many of the ideas formulated by B. Malinowski were supported and developed in the works of J. Dewey. It is worth recollecting that it was J. Dewey, who fruitfully investigated philosophical aspects of the preparation of the youth for life in democratic conditions. His works mention the necessity to teach people to overcome their fears of choice under the conditions of the unlimited quantity of life alternatives. Later the problems of intellectual freedom and its guarantees were considered in the works of M. Foucault, G. Lipovetsky, J. Baudrillard, J.-F. Lyotard, E. Ionesco, K. Polanyi, C. Milosz, F. Hayek, S. Veil, S. Sontag, E. de Bono, W. Gombrowich etc.

Almost everything written by B. Malinowski, J. Dewey and other philosophers of the 20th century about intellectual freedom, its mechanisms and guarantees is actual now. Moreover, the well-known and widely spread in Western Europe and the USA philosophical ideas without much noise but imperatively have passed nowadays to the

¹ For more details see: *Malinowski B. Freedom and Civilization*. — London: George Allen, 1947. — P. 170.

agenda of the international public legislation. That is on the base of these ideas and principles, in the framework of this paradigm the given model draft has been written.

Although the “International Convention on Protection of Intellectual Freedom” was planned as a broad international agreement, it should be admitted that its basic normative and philosophical vector is oriented towards the countries that have recently won their freedom and stepped on the route of development.

STRUCTURE OF “INTERNATIONAL CONVENTION ON PROTECTION OF INTELLECTUAL FREEDOM”

PREAMBLE

Part I. COMMON

Article 1. Principles of protecting intellectual freedom

Article 2. Freedom of intellectual self-expression

Part II. THE RIGHT TO FREEDOM OF INFORMATION AS THE FOUNDATION OF INTELLECTUAL FREEDOM

Article 3. Freedom of information as a guarantee of intellectual freedom

Article 4. Definitions of “information” and “new information”

Article 5. Information categories whose reception, use, and storage are exclusively functions of the state

Article 6. Fundamentals of the relationship between civil society and the state in the information field

Article 7. Publishing information of a critical nature

Article 8. Distribution to the public of data regarding elected officials

Article 9. State constraints on secret information

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- Article 10. Prohibition of arbitrary destruction of information
- Article 11. Prohibition of the state's destruction of information held by civil society
- Article 12. Guarantees of journalists' rights to intellectual self-expression
- Article 13. Prohibition of double-loyalty obligations

**Part III. FREEDOM OF INTELLECTUAL SELF-EXPRESSION
IN THE SCIENTIFIC OR ACADEMIC COMMUNITIES**

- Article 14. Scientific or academic organizations and associations
- Article 15. Freedom of scientific or academic convictions
- Article 16. Freedom of scientific or academic strategies and methodologies
- Article 17. Openness of the scientific or academic communities
- Article 18. Constraints on formal assessment criteria

**Part IV. FREEDOM OF INTELLECTUAL SELF-EXPRESSION
IN THE STATE EDUCATIONAL SYSTEM**

- Article 19. Principles of intellectual freedom that apply to a state educational system
- Article 20. General guarantees of intellectual freedom in a state educational system
- Article 21. Freedom of intellectual self-expression in state schools of higher education (universities)
- Article 22. Professors and teachers at state universities
- Article 23. Students at state universities
- Article 24. University libraries and information centers
- Article 25. The minimal-standard rule

Part V. THE INFRASTRUCTURE OF INTELLECTUAL FREEDOM

- Article 26. Books and other printed information sources

Article 27. Sale of foreign books with humanitarian, philosophical, academic, scientific or other content

Article 28. Freedom of information exchange in electronic networks

Article 29. Antennas for television and radio reception

Article 30. Prohibition of jamming television and radio transmissions

Article 31. Prohibition of a monopoly in communication services

CONCLUSIONS

INTERNATIONAL CONVENTION ON PROTECTION OF INTELLECTUAL FREEDOM¹

(draft)

**Adopted and opened for signing,
ratification and joined by the resolution...
of the General Assembly of**

date, month, year

COMING INTO POWER:

date, month, year, according to Article No..

PREAMBLE

Member countries participating in this Convention (hereinafter referred to as “the member countries”),

¹ The idea of creating a draft of the “International Convention on Protection of Intellectual Freedom” appeared as a result of an analysis of the practical monitoring of the observance of human rights in the information sphere that for several years was carried out by the Kharkiv Group for Human Rights Protection (KGHRP) (<http://www.khpg.org>). The idea of creating the Convention was first expressed at the international educational seminar “European Legislation on Wiretapping and Improving Ukrainian Legislation” held in Kyiv, September 22–23, 1999. The intention to draft a document on the international Convention on Protection of Intellectual Freedom was expressed at the Forum of Representatives and Experts of National and International Human Rights Protection Organizations held in Rome, February 21–22, 2000.

COMPREHENDING the need for new ways to creatively inspire people has become more urgent, that law and humanitarian sciences have not worked cooperatively for a long time, that the world of modern knowledge cannot be expressed by one theory or by simple rules, that a symbolic approach to problem solving is becoming more significant, that a bureaucratic constraint on intellectual improvisations destroys spirituality, that scientists and academicians have a special duty before the future, that values of intellectual freedom are determined by unpredictable opportunities, that intellectual freedom may not be subordinated to the majority's dictate, that there exists no single means of cognition, and that the rational person's life and understanding are filled with relativism;

ACKNOWLEDGING that ideas rule the main events of the modern world, that abstract concepts lie at the base of the most valuable achievements, and that symbolic reality is fruitful and useful, that all the diverse forms of consciousness are used as a basis of creativity, that intellectually active individuals provide society examples worthy of imitation, that the 20th century was for many an age of factual dogmatism, that the course of human history is subject to permanent acceleration of social development, that the main factors in social development appear to be information and knowledge, and that the demand for information and knowledge is fast growing, that cultural progress more and more determines the structure of economic activities, that hypothetical constructions invade the sphere of business activities, and that intellectual creativity leads to new rights and freedoms;

AGREEING that social order is mainly determined by human nature and by spontaneous processes of self-organization, that the development of modern technologies demands not hierarchic relations, but a partnership, that the creative self-realization of people is more and more achieved independently of state boundaries,

that the basis of creativity is profound criticism, and that any encroachment on the freedom of self-expression leads to social degradation and deterioration;

NOTING that intellectual factors directly influence the destiny of people, that openness and access to information are protection against paternalism, that modern technologies are based on the mutual interaction of fanciful and objective pictures of the world, that bureaucracy and distributive coalitions threaten society with stagnation, that opportunities of intellectual initiatives are still constrained in a number of regions, that universal problem solving approaches have a smaller range of application, and that innovators demand support instead of surveillance;

HOPING that the search and remuneration of scientists or academicians may be conducted or provided according to principles of civil equality and justice, and that in the new century free scientific creativity and art will show their efficiency;

FEARING that demagogic doctrines can damage free and democratic society, and that creative persons may be compelled to work under the control of politicians;

TAKING INTO ACCOUNT international agreements and conventions on protection of the right of intellectual property, as well as such sources as

the Universal Declaration of Human Rights (1948), European Convention on Human Rights (1950), International Covenant on Civil and Political Rights (1966), International Covenant on Economic, Social and Cultural Rights (1966), Declaration on Social Progress and Development (Resolution 2542/XXIV of the UNO General Assembly, 1969), Helsinki Final Act (1975), Concluding Document of the Madrid Meeting of Representatives of the Participating States of the Conference on Security and Cooperation in Europe (1983),

Declaration on the Freedom of Expression and Information (adopted by the Committee of Ministers of the Council of Europe, 1982); Resolution of the European Parliament on Freedom of Education in the European Community (1984), Declaration on the Right to Development (Resolution 41/128 of the UNO General Assembly, 1986), Concluding Document of the Vienna Meeting of Representatives of the Participating States of the Conference on Security and Cooperation in Europe (1989), Document of the Copenhagen Meeting of the Conference on the Human Dimension on the Conference on Security and Cooperation in Europe (1990), Charter of Paris for a New Europe (1990), Johannesburg Principles on National Security, Freedom of Expression and Access to Information (1995), Resolution 45/76A of the UNO General Assembly on Information at the Service of Humanity (1990), Resolution 428 (1970) of the Parliamentary Assembly of the Council of Europe concerning the Declaration on Mass Media and Human Rights, Resolution 1003 (1993) of the Parliamentary Assembly of the Council of Europe on Journalist Ethics, Recommendation 748 (1975) of the Parliamentary Assembly of the Council of Europe on the role of national broadcasting and its administration;¹ and

BEING CERTAIN that new laws have genuine value only if they extend the rights, freedoms, and the dignity of individuals;

AGREE in what follows.

Part I. COMMON

Article 1. Principles of protecting intellectual freedom

1. Existing social problems must be solved by the free intellectual efforts of all interested members of society; the opinion of the majority has a higher priority only in solving political problems.

¹ The titles of some documents are given in back translation from Ukrainian and Russian.

2. The freedom to express any idea, without any constraints, is regarded as the most important attribute of human intellect, and as a main priority of a state's policy.

3. The organic political structure of a free and democratic society is based on culture.

4. Democratic rule is based on the right of any person to criticize any other person and on the capability of any person to listen to the criticism; the state may not, under any circumstances, grant any person immunity from criticism.

5. Coercion to think a certain way politically is the basis of intellectual non-freedom in all its varieties.

6. Unconstrained freedom of speech, information, and communication is a basic element of democratic rule.

7. Acknowledging the validity of scientific or academic knowledge presupposes an unconstrained freedom to obtain knowledge.

8. Natural social integration presupposes increased individual freedom of self-expression; necessary state planning presupposes a strengthened autonomous status of the individual.

9. The varieties of intellectual freedom can be mutually contradictory, but they must not exclude each other.

10. Intellectual intolerance may not be encouraged politically.

11. Each individual can adapt to unpredictable and novel cultural progress on the basis of his or her own strategies freely chosen from those available.

12. The state, public organizations, social groups, churches, and mass movements have no right to coercive indoctrination and penetration into the public outlook, into the ways of comprehending reality, or into life values and/or behavioral patterns.

13. A person may not be bound by any ontological principle simply because the principle has been adopted or encouraged by the authorities or by democratic institutions.

14. A person may not be bound by, or compelled to accept any method or fashion of comprehending reality, in science, academics, art, politics, or personal taste simply because that method or fashion is officially followed or dominates in public opinion.

15. Any political system that pretends to introduce behavioral or philosophical truths is acknowledged to be more dangerous than useful.

16. The scientific quest for truth and for solutions to existing social problems is free and open for all; it is the state's duty to protect that quest from coercive actions on the part of any authority.

17. Any competition of ideas must not be regarded as dangerous in a free and democratic country.

18. To guarantee the cooperation of the state and of its organizations with individuals, the flow of information must be transparent and accessible.

19. The right to intellectual disagreement with the opinion of a political power, including a democratic power, is an inalienable human right.

20. Because freedom of human imagination is the main reason for creativity, the intellectual efforts of an individual and ideas based on these efforts must not be constrained in any way.

21. Intellectual freedom must be preserved and guaranteed by the state, its organs, and its officers, even if they foresee disadvantages and/or dangers that may follow from the exercise of that freedom.

22. Intellectual freedom presupposes on the part of the state an attitude toward social progress that recognizes that the course of that progress cannot be based exclusively on state programs.

23. In a member country the state or its agents, agencies or officers may not use legal power for the purpose of constraining intellectual activities.

24. Unlike other kinds of freedom, intellectual freedom may not be constrained for the purpose of self-preservation.

Article 2. Freedom of intellectual self-expression

1. Everyone has the right to freedom of intellectual self-expression. This right includes the freedom to search, create, obtain, and spread information of any kind, disregarding administrative and state frontiers, whether the information is in oral, written, or electronic form, or is in the form of art objects, or in any other form of one's own choosing.

2. Juridical, political, administrative, or other prohibitions or constraints may not be imposed on the topic, the object or the matter of intellectual self-expression.

3. The freedom of intellectual self-expression presupposes an actual opportunity of an individual to follow his or her own goals and prospects in life and to act on the basis of individual understanding of the circumstances; this opportunity, as it relates to the action dealt with in the following Paragraphs, can be constrained only to the extent necessary to assure that others can exercise the freedom guaranteed to all persons.

4. No constraint on the freedom of intellectual self-expression may be imposed under the pretext of protecting national security unless an organ of the state or a state officer demonstrates before a competent court that the constraint is based on the demand of Paragraph 6 of this article.

5. A constraint on the freedom of intellectual self-expression can be based only on a direct reference to law that is accessible to everyone and that is formulated in such a manner that anyone can conclude if his or her activity (or inactivity) violates this law.

6. Freedom of intellectual self-expression may be constrained because of a threat to national security only if a state organ or a state officer can prove in court:

- a) That the particular form of intellectual self-expression is in fact an appeal for violent actions;

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- b) That this form of intellectual self-expression may lead to such violent actions;
 - c) That there is a direct connection between this form of intellectual self-expression and actual occurrences of violent actions.

7. A particular form of intellectual self-expression is not a threat to the national security:

- a) Even if it represents an insult to one's own state or criticizes its symbols, its government, its state organs or its officers or represents criticism of, or insult to, a foreign country or its organs, its government, its state organs, or its officers;
- b) Even if it represents an objection to, or support of an objection relative to, religions, morals, or other convictions, for example, convictions against parties to, or participants in, political conflicts and/or convictions against the use of force (or the threat of force) in deciding differences of opinion;
- c) Or even if it conveys or broadcasts to one's compatriots or to the international public information about alleged abuses of constitutional or other norms (including international norms) concerning the protection of human rights and freedoms.

8. Intellectual self-expression that is not a threat to national security may not be limited by the provisions of the preceding Paragraphs.

9. No one may be punished for criticizing or insulting the state, its symbols, its government, its state organs, or its political figures, either regarding one's own country or regarding a foreign country, unless the criticism or insult is intended to directly instigate violent actions.

10. A person exercising intellectual self-expression may not be constrained in his or her actions, or punished, on the basis that the self-expression contains information published by or about

an individual or organization that is regarded by a member country, or by other countries, as threatening interests of national security.

11. When adopting a system of laws or other standards concerning freedom of intellectual self-expression, member countries must consider that the fear of being punished easily destroys the delicate instrument of human reason; that is why the national legislation of member countries must be adopted or enacted in accordance with this Convention.

12. Legislation of member countries concerning unions of citizens (including political and religious ones) must not contain provisions permitting public unions to press ideologically or intellectually on their own members.

13. The right to freedom of intellectual self-expression includes the right to engage in nonconforming behavior; this right presupposes the opportunity for an individual to disagree with official, corporate, or standard behavior concerning any aspect of life in a political union or a cultural sphere.

14. The right to engage in nonconforming behavior shall be protected: each person has the right to not agree with, or to disagree with an official or common opinion without fear of being coerced by psychological and/or physical pressure, or by political, juridical, or administrative coercion.

15. The freedom of intellectual self-expression presupposes that political minorities are given guarantees of social tolerance, guarantees that are sufficient for them to organize their lives in accordance with their own values determined by their own beliefs and convictions.

16. The freedom of intellectual self-expression presupposes that every person has the right to assume creative risk and the opportunity to act on the basis of his or her own knowledge, ideas, and convictions, even if such behavior implies a refusal to accept traditional norms and limitations.

17. The member countries assume obligations to make efforts to provide freedom of intellectual self-expression at the maximum extent possible during martial law or during a state of emergency. The same attempts to provide freedom of intellectual self-expression must be guaranteed on the territory of permanent dislocation of troops (or self-defense forces), in hospitals, sanatoriums, lunatic asylums, prisons, places of incarceration, and other places where individual freedoms are restricted.

Part II. THE RIGHT TO FREEDOM OF INFORMATION AS THE FOUNDATION OF INTELLECTUAL FREEDOM

Article 3. Freedom of information as a guarantee of intellectual freedom

1. Freedom of information is regarded as the main guarantee of intellectual freedom.

2. One's ability to produce, to buy, to transmit, and to distribute any information regarding the events and the circumstances of one's own life is regarded as a basic human right.

3. The freedom of intellectual self-expression, as described in Article 2 of this Convention, is extended also to the mass media.

4. Any state control over publications in the press, by radio broadcasting, by television transmission, or by other forms of the audiovisual broadcasting, except control based on the provisions of Part I, Article 2, Paragraph 6 of this Convention, is forbidden.

5. Independence of the press and other forms of mass information from direct or indirect state interference and control must be guaranteed by law; a temporary restriction on that independence is permitted by a court decision only and must not be imposed by a state or an officer exercising the state's executive power.

6. Mass media must be free not only to inform the public and to provide a tribune for discussion, but also to provide citizens a means of exercising independent supervision and control over the

administrative structures, over state organs, and over state officers and their activity (or inactivity).

7. Freedom of intellectual self-expression in the mass media presupposes an understanding that no informative messages can be completely objective.

8. The influence a journalist's personality or his or her sources may have on the journalist's message must not be restricted.

9. The mass media are guaranteed cooperation in exchange of messages, regardless of state boundaries; to this end, member countries reject the imposition of any restrictions on the distribution of information in one country that originated in the territory of another.

10. It is forbidden to apply any technical, custom, tariff, or other legal standards or rules that inhibit, impede, or restrict the free distribution of information by any kind of information carrier; this prohibition should not be treated as an opportunity to limit the right to set a market price on information technologies and services.

11. The mass media of the member countries have free access to any foreign sources of information and news; citizens of a member country enjoy unlimited freedom in getting information from any national or foreign (i. e., international) sources.

12. State boundaries are open for foreign newsmen; no quotas and/or standards with respect to professional journalists may be applied; requests by the journalists for visas, press identification cards, and other similar documents must be honored as quickly as possible.

13. A member country must offer to foreign journalists the freedom to move around the country, free access to official and nonofficial sources of information, and an unlimited right to import and export materials, and equipment needed to exercise their profession.

14. Member countries will not acknowledge any restrictions on a journalist's activities by way of requiring official licenses, permission, or other certificates related to a journalist's rights; this provision does not restrict a member country's official procedure for getting journalists accreditation.

15. Neither the state nor any of its organs, enterprises, establishments, or organizations established to deal with any form of property shall be permitted to hold a monopoly on the market of information technologies, means, and services; any state monopoly on information, including a monopoly on access to the Internet, to e-mail, or to television or radio broadcasting on the territory of a member country is regarded as illegal.

16. The freedom of intellectual self-expression in the mass media presupposes on the part of every person an unlimited right to debate, criticize, doubt, or contest any activity (or inactivity), or any statements of official representatives of power or of public or religious figures.

17. The member countries guarantee to everyone the right to freely state an unpopular opinion, as well as the right to agree with the majority opinion.

Article 4. Definitions of "information" and "new information"

1. In this Convention the term "information" means any meaningful message, the content of which can be represented as a set of symbols and stored on some material, or held in some repository, other than the human mind.

2. In this Convention the term "new information" means a message (1) qualifying as "information" under the terms of Paragraph 1 above and (2) the main content of which cannot be predicted by the receiver of the message.

Article 5. Information categories whose reception, use, and storage are exclusively functions of the state

1. Information as to which the reception, use, and storage are exclusively functions of the state is that information that is presented to the head of the state, to the organs and officers of the state's executive power (including military and emergency information), by specially empowered organs or agencies with the purpose of providing national security, by the police, by the investigation bureaus, by agencies of diplomatic relations, by military intelligence and counterintelligence, as well as by other specially empowered state bodies and officers.

2. According to its content, the information described in Paragraph 1 may be open or may be classified as state secret.

3. Information coming to the head of the state or to organs and officers of the state's executive power from private sources, either inside or outside the state, is not included in the information described in Paragraph 1 of this Article.

Article 6. Fundamentals of the relationship between civil society and the state in the information field

1. The member countries believe that the most efficient stimulus for political freedom and democracy is information flow that operates free from political control and from ideological filters, a flow based on the freedom of intellectual self-expression and on the principle that the government is not permitted to keep the people in ignorance caused by misinformation.

2. The member countries believe that to ensure the democratic form of rule, a state needs efficient laws and institutions that prevent dangerous errors and haughtiness in the exercise of political power; therefore, the member countries agree that the protection of intellectual freedom must be a top priority in the laws and decisions adopted.

3. The member countries acknowledge that a modern civil society is a sphere of free interests based on self-determination and separate from the sphere of the state bureaucracy; the member countries also acknowledge that the analysis, interpretation, and criticism of state interests and consequent setting of priorities must be a process conducted by the entire civil society, not only by official authorities, political parties, or influential groups and figures, however good their intentions might be.

4. Information regarding activities of the state as a whole, or of its organs and officers, is regarded as open to the public; not a single state decision may be excepted from the sphere of civil criticism and control; decisions adopted by the state that are considered to be state secrets must be dealt with by persons having the proper rights.

5. Civil society and its members have a higher priority in comparison with the state, its organs, and its officers in accepting new information of any content, except that information the obtaining, using or storing of which is related to the exclusive functions of the state.

6. Any state restraints on obtaining, spreading, using or storing new information, the obtaining, using or storing of which does not relate to the exclusive functions of the state, are prohibited.

7. Any constraints imposed by the state, its organs, or its officers on obtaining, spreading, using or storing information whose content is known or is predicted before the imposition of the constraint, may be imposed as an exception but only on the basis of a law adopted by the supreme representative organ of the country.

8. Any constraints imposed by the state, its organs, or its officers on obtaining, spreading, using, or storing information related to the general outlook of society, or to religion, philosophy, science, or art, are forbidden.

9. The state cannot constrain the access of any person not acting as a representative of the state, or of any corporation, organization,

or association not acting as a representative of the state, to the market of paper, typographic equipment, copying equipment, or other e. g., (hardware, systems, services) of processing and distributing information, including equipment used for television and radio broadcasting, or for access to e-mail and the Internet; similar restriction on the state shall also apply to the market for the services of national and foreign (international) information agencies, news services, and other institutions (organs) collecting and spreading information.

10. The state, its organs, or its officers are also forbidden to set quotas, or impose licensing requirements that are directed at non-state judicial or physical persons (i. e., persons, corporations, organizations, or associations that are not acting as representatives of the state) on the commercial or noncommercial use of national and international cables, satellites, or general-purpose networks (systems) carrying computerized information; this prohibition does not apply to the state's use of television and radio frequencies.

11. The total list of the criteria by which state secrets or other secrets are determined to be protected by law must be exhaustively enumerated in popular legislation of the member countries.

12. The total list of categories of information which, by the wish of the owners, may be appreciated as confidential data must be exhaustively enumerated in popular legislation of the member countries.

13. General rules regarding storage of, and access to, information that is regarded as secret by the state or by law, must be exhaustively enumerated in popular legislation of the member countries.

14. The protection of data making up state secrets is always the prerogative of the state, its organs, and its officers; all physical and juridical persons except those who have official access to such data based on obligation not to divulge the secrets, are not responsible for divulging any state secrets in any case.

15. The adoption by any state organs or officers of rules, regulations, or decisions that forbid or constrain access of any interested person to data that the state or the law has not declared to be secret is illegal.

Article 7. Publishing information of a critical nature

1. Publishing trustworthy information of a critical nature compromising the interests of a member country or the authority or prestige of state organs and officers in the eyes of the public may not be a reason for imposing responsibility or liability on any person.

2. Publishing trustworthy information of a critical nature compromising the head of a member country may not be treated as a libel, even if the victim is protected by special constitutional or legal instructions.

3. Public criticism of the activity (or inactivity) of a state, its organs, or its officers may not be a reason for imposing responsibility or liability in any case.

4. If information critical of the state, its organs, or its officers has become known to the public as a result of illegal ways and means, then any demand that it be spread no further is subordinate to the right of the public to have access to this information.

Article 8. Distribution to the public of data regarding elected officials

1. The information on the private (personal) life of public and state figures must be protected except in a case when it could influence public affairs; a journalist has the right to publish information on the private life of people who bring elements of their private life into the sphere of public interests.

2. Information regarding the personality of a citizen pretending to have been elected to a state post or to some other

socially significant post, or regarding the personality a citizen who occupies this post or who has occupied it before, may not be a state secret or other secret protected by law; such information may not be regarded as confidential and may be presented to the public.

3. Citizens who do not execute public or representative functions have more rights to protect their privacy than state and public figures or officers, or individuals who pretend to hold posts with political power or other power, or individuals who pretend or claim to hold other influential public posts.

4. When political speeches or declarations of a head of state or of other leaders or members of government, or of other state figures and officers, are officially published or are transmitted by audio and visual means, those speeches or declarations must, as a rule, be accompanied by comments and responses of independent experts and/or opposition political figures.

Article 9. State constraints on secret information

1. Information the content of which is declared to be state secret, including information obtained as a result of executing exclusive functions of the state, may not be treated as secret for a term longer than 30 years.

2. Information as to which the period of secrecy has ended becomes open for all interested juridical and physical persons; such persons do not need any special permission to access or to distribute this information.

3. Nobody may be prosecuted or punished for divulging state or other secrets in any case in which an independent and competent court has established that the public interest in this information is more significant than the damage that may be caused by divulging the information.

Article 10. Prohibition of arbitrary destruction of information

1. Information obtained through the exercise of exclusive functions of the state may not be destroyed by the decision of organs exercising the state executive power or by the decision of state officers; the destruction of such information must be done only under public control, on the basis of a law or other legal act adopted by the supreme legislative organ of the member country.

2. Information regarding genocide, or political, ethnic, religious, or other massive crimes or repression committed on behalf of the state, or by its bodies and/or officers, as well as any information regarding corruption, bribe-taking, or other misuses of power, may not be classified as secret, and the destruction of such information by state organs and officers is illegal.

3. The state, its organs, or its officers have no right to destroy any information because of ideological and political motives.

Article 11. Prohibition of the state's destruction of information held by civil society

1. Information owned by non-state juridical or by physical persons having the right of property, may not be destroyed on the basis of a decision made by the state or by an officer exercising its executive power.

2. A decision to destroy such information against the will of its owner is a prerogative of a court and must be based on the law only.

3. A coercive sale to the state of information held by non-state judicial or physical person, or other confiscation by the state of such property, is forbidden, unless the coercive sale or confiscation is based on a court decision.

Article 12. Guarantees of journalists' rights to intellectual self-expression

1. The duty of a journalist is to provide to the society news, as complete and accurate as the integrity of the journalist and his or her moral ideals permit; a journalist has the right to speak on any positive or negative aspect of the nature and behavior of humankind and of society even when to do so is not encouraged by his or her audience.

2. In fulfilling their professional duties, journalists are not obliged to sacrifice their convictions for the benefit of personal and/or corporate interests of the state or public figures or state organs, or of publishers or other juridical or physical persons.

3. A journalist has the right to reject outright any direct or indirect interference by state bodies or their officers, or by publishers, editors, or other juridical or physical persons, into the sphere of his or her professional duties.

4. The professional responsibility of a journalist with respect to the public prevails over any responsibility he or she may have to the state, to state bodies and their officers, or to any private juridical or physical persons.

5. A journalist must act exclusively on the basis of his or her professional knowledge and personal convictions; it is information, not the position of a journalist, which can be bargained or exchanged.

6. If in a particular case a journalist's freedom of intellectual self-expression contradicts other rights and freedoms, then an editor, acting jointly with the journalist, has the right to decide which right or freedom has a higher priority.

7. A journalist must not participate in conflicts of editors, department chiefs, and other superior officials; a journalist shall not be coerced to sign some collective editorial or other petition.

8. Even though citizens have the right to obtain maximally complete and many-sided information, a journalist has a duty to respect citizen's right to refuse to divulge some information to journalists or to the public.

9. Opinions of the journalist's potential readers or audience on the reliability (veracity) of the journalist's sources must not constrain the journalist in his or her choice of topics; any official and nonofficial information sources can be equally trustworthy and reliable; in the case that a journalist has promised not to reveal his or her source of information, data regarding the source must not be given to the readers or the audience or to state organs or their officers.

10. The interest of protecting national security must not be regarded as a reason for disclosing a confidential source of information; this source may be disclosed only if an independent and competent court establishes that the disclosure is required by reasons of top state importance.

11. A journalist's freedom of intellectual self-expression does not allow a journalist to deliberately apply means and approaches, that influence or that can influence the subconscious processes of the readers or the audience.

Article 13. Prohibition of double-loyalty obligations

1. A journalist, as a rule, must not work in several places, including state service or local self-government, if doing so would prevent the free exercise of his or her intellectual self-expression.

2. A journalist shall not in any case be coerced to cooperate with police organs or with state security, intelligence, or counter-intelligence organs; such coercion is illegal.

3. If, without interrupting professional ties with the mass media, a journalist changes his or sphere of activities and becomes

a state official, then in the course of accepting employment in the state service and signing the contract, the journalist must avoid any obligations of double loyalty; such separation of journalistic professional duties is an essential guarantee of the society's intellectual freedom.

Part III. FREEDOM OF INTELLECTUAL SELF-EXPRESSION IN THE SCIENTIFIC OR ACADEMIC COMMUNITIES

Article 14. Scientific or academic organizations and associations

1. In creating scientific or academic organizations and/or associations, it is necessary to distinguish between communities uniting scientists or academicians of one branch, where an administrative organization and discipline may be partially admissible, and unions formed on the basis of ideas, where the implementation of administrative principles and discipline is inadmissible.

2. Members of scientific or academic organizations and associations are in their activities, free from state control and from any other subordination, administration, and coercion.

3. Scientific or academic organizations and associations of a member country may include as full-fledged members any foreign scientists or academicians, even if the home country of the foreign scientists or academicians has no diplomatic or other official relations with the member country.

4. Organizational or other corporate interests cannot serve as grounds for restricting the freedom of intellectual self-expression of scientists or academicians; disagreement or displeasure is recognized as an elementary right of scientists or academicians in their self-affirmation, and tolerance of one's disagreement or displeasure is a natural form of cultural or professional esteem.

Article 15. Freedom of scientific or academic convictions

1. The intellectual creativity of scientists or academicians shall not be regimented by any juridical, political, administrative, or ideological rules, regulations, or restrictions.

2. Because exceptional capabilities of people are acknowledged, a scientist's or academician's right to nonconforming behavior is carefully preserved; a scientist or academician may doubt any explanations offered by colleagues, if even his or her position appears illogical and/or unconstructive.

3. The value of scientific, academic, and other professional knowledge, and the convictions of scientists and academicians may not be determined by whether their ideas do, or do not prevail at the moment.

4. Scientists or academicians who are members of some professional, political, or other organization or association are free from any necessity to conform their scientific or academic positions and outlooks with those, that prevail in the political regime, in a particular party, or in the public opinion.

5. Because inquisitiveness, a critical approach, skepticism, and tendency to experiment and to combine different versions are characteristic features of the intellectual self-expression of scientists and academicians, maximal tolerance must be accorded to the convictions and interpretations of scientists and academicians.

6. Any argument based on the conviction of the majority has no advantage in the scientific or academic community and may be applied in a scientific or academic debate or social discourse only in its qualitative aspects.

7. Communication among scientists or academicians may not be related to or restrained by state boundaries or by other juridical, political, or ideological limitations or conditions; the right of

scientists and academicians to communicate independently of state boundaries is acknowledged as fundamental and inalienable.

8. Neither scientists nor academicians may be barred from a mission, probation, education, or work abroad because of political, religious, ideological, or similar reasons; nor may a scientist or academician be denied entry into one of the member countries for any such reason.

9. The work of scientists or academicians may not have as its goal some shaping of the political will; the function of scientists and academicians is to apply scientific methods and approaches for the criticism and revision of existing scientific postulates, to develop scientific methods, and to reevaluate rules for establishing order and other genuine values in society and in the world.

10. Because it is acknowledged that the sphere of science and academics consists of conflicting elements calling for or yielding different strategies, metaphysical principles, and experimental results, objectivity may not be required in the views and positions of scientists and academicians.

11. Because it is acknowledged that scholars work in a sphere of intellectual anomie and unpredictability of conclusions and results, no legal constraints on freedom of thought and speech are applied to their results.

12. Results of intellectual work of a scholar must have the form and attributes of external expression insisted upon by the author; any editing, formatting, or other change of the text, the manuscript, video and audio records, and any other change in the author's self-expression, in whatever form, may be made only with the author's consent.

Article 16. Freedom of scientific or academic strategies and methodologies

1. Neither the institutions of a democratic system, nor state organs or their officials, may be arbiters in the sphere of scientific or

academic ideas; any state expertise exercised in regard to intellectual projects may not be considered final.

2. Scientists and academicians have the right to make intellectual errors; they have no political or juridical responsibility for unreliable or erroneous results of their studies.

3. The burden of decisions made usually by democratic procedures must not be put on scientists or academicians; however, an official appeal to obtain political or other similar recommendations may be made to them.

4. Because scientific or academic problems have their own chronology, direct state planning or other political interference in the sphere of fundamental science or academics is deemed to be a threat to cultural progress.

5. Allocations from the state budget to develop fundamental studies are made under the responsibility of scientists or academicians, not of state organs or their officials; this rule is not extended to privately owned institutes or scientific-productive firms and corporations, or to the other private scientific or academic establishments and institutes.

Article 17. Openness of the scientific or academic communities

1. Since the main guarantee of scientific and academic creativity is unconstrained access of scientists and academicians to modern knowledge and to national and international data banks, communication by scientists and academicians with their colleagues, as well as access by scientists and academicians to any carriers and sources of information, must not be restrained by any political, juridical, or administrative forces; scientists and academicians have freedom of access to any open national or international databanks, libraries, and other information sources and channels (networks) of communication.

2. Scientists and academicians working in corporations or working individually may not claim immunity from external criticism; they must inform the public on the results of their scientific or academic studies, so as to make public their scientifically, academically, and socially significant actions and decisions, and to explain to the public the history of their mistakes and failures.

3. Scientists or academicians working in a sphere of information that does not relate to the category of state or other secrets protected by the law must be guaranteed free international exchange of the results of their studies; such exchange may be made in reports and messages given at international forums and conferences, through the international exchange of publications and of manuscripts still unpublished, through transmission of the texts and other scientific or academic data on any information carriers, through any mail or information-transfer system, including electronic cables and/or satellites.

4. Scientists or academicians, who are invited by state organs or officers to work on officially closed (secret) topics, must be provided explanations of any disadvantages that may attend such work, including any limitation in the free choice of residence or on foreign travel and any restriction that might narrow one's scope of communications in general.

5. No scientist or academician may, against his or her will, e. g., by threats, deception, blackmail, or other physical or psychological pressure, be made to work on a closed (secret) scientific or academic topic.

6. Any restrictions or obligations imposed on a scientist or academician by the state or its organs, connected with participation in studies of closed (secret) topics may be in force not longer than five years after the termination of the scientist's or academician's participation in these studies.

7. The exact date of the termination of the scientist's or academician's work on a secret topic must be mentioned in the contract pursuant to which the work is done; if it is not, then the state releases the scientist or academician from any restrictions or obligations.

Article 18. Constraints on formal assessment criteria

1. To assess the work of scientists or academicians, any methodological standards and criteria may be applied; however, as to any individual studies or work for which a scientist or academician bears personal responsibility, the criteria must follow cognitive approaches and methods, as well as a creative intuition.

2. The professional status and scientific or academic rating of a scientist or academician may not be grounded only on formal data relating to his or her education, official degrees, and positions; a scientist or academician's salary, scholarship, international grants, and other forms of remuneration may not be determined exclusively by formal certificates indicating education and/or scientific qualification.

3. In their scientific careers, an assessment of scientists or academicians must recognize the advantages following from self-education.

4. When given a job on a competitive basis, a scientist or academician must be evaluated by formal criteria only to a limited extent.

5. If the results of open and fair tests and other reviews of actual qualifications clearly show that some scientists or academicians have advantages over others, then the formal assessment criteria must be secondary to informal assessment criteria.

6. The labor and concrete achievements of scientists or academicians may be evaluated by the scientific or academic

communities as quite outstanding; for this reason, scientists or academicians may earn unlimited remuneration on internal and external markets as well as from charitable sources.

7. The member countries shall not impose direct or indirect taxes on national or international prizes awarded to scientists or academicians for their work.

Part IV. FREEDOM OF INTELLECTUAL SELF-EXPRESSION IN THE STATE EDUCATIONAL SYSTEM

Article 19. Principles of intellectual freedom that apply to a state educational system

1. Goals of education, except those related to elementary and secondary education, are selected by students.

2. The content of the educational process in all educational establishments, except elementary and secondary, is free from state control.

3. The choice of information sources in education is free and unconstrained.

4. Graduates of state educational establishments are guaranteed free use of their knowledge.

Article 20. General guarantees of intellectual freedom in a state educational system

1. To guarantee freedom of intellectual self-expression in education is a priority of state policy in the sphere of education.

2. Except for principles of intellectual freedom, no political ideology, scientific or academic doctrine, or religious dogma may be used as a fundamental basis or goal in the system of state education.

3. The creation and functioning of the state system of education must be supported by teachers having the proper level of knowledge

and qualification, not by a standard curriculum prescribing subjects and academic courses; a state prescribed curriculum of subjects and courses may be developed and suggested for implementation but only as a recommendation.

4. Teachers who meet the qualifications for their posts have the right to experiment and the right to practice creative improvisation in the process of education.

5. Teachers' remuneration for their work may not be based exclusively on the prestige of their diplomas of the educational establishment where they work, nor on any official category; exceptionally gifted teachers deserve adequate remuneration without record to their age, experience, or other formal criteria.

6. Teachers working in a state system of education have the right to receive local bonuses according to the decision of the organs of self-government; such bonuses may be paid from voluntary donations of charity centers, sponsors, and other legal sources.

Article 21. Freedom of intellectual self-expression in state schools of higher education (universities)

1. The functioning of state schools of higher education is based on the following principles of academic freedom:

- a) Universities have the right to determine the competitive criteria by which their students are selected;
- b) Universities have the right to determine the academic basis of education;
- c) Students have the right to select their teachers;
- d) Professors and assistant professors have the right to choose freely their methods of teaching.

2. University rectors are elected at university meetings by secret vote; they may not be appointed to their posts exclusively by the administration.

3. The quality of the preparation of specialists at universities is determined by market demand and by practical achievements of the graduates, not by some formal criteria.

4. Goals and priorities of higher education are determined by universities themselves on the basis of their free choice and independent assessment; these goals may not be prescribed to a university by the state or its organs.

5. A university's professors, assistant professors, other teachers, and students are free in choosing textbooks and other information sources for education.

6. Teaching and learning at universities may not be based exclusively on information sources recommended or officially approved by the state or its organs.

Article 22. Professors and teachers at state universities

1. Professors and assistant professors of universities are elected to their posts by secret votes at university meetings: the first election shall be for a term of not less than five years, the second shall be for a term not less than 10 years, and the third election shall provide permanent status.

2. University professors and assistant professors bear personal responsibility for the contents and the quality of the courses and subjects they teach; the specific contents of these courses and subjects may not be developed centrally by some state organ or by the university administration.

3. The salary of a university professor or assistant professor may not be lower than the minimum set by the state or the university; however, its upper boundary is determined for each professor and assistant professor individually.

4. The salary of each university professor and assistant professor is confidential; a professor or assistant professor may apply for a salary increase.

5. Professors and assistant professors may freely choose the method and language of their teaching; however, they bear personal responsibility for their teaching success.

6. All university teachers must have free access to the Internet without time limitations.

7. University professors, assistant professors and other teachers may unite on the basis of their ideas into informal research centers and groups.

Article 23. Students at state universities

1. University students have the right to choose not less than half of their courses and subjects from those offered by the university.

2. University students have the right to choose their professors and assistant professors if similar courses are taught by different teachers.

3. University students have the right to demand the introduction of alternative courses on humanitarian subjects, courses that would be built on principles essentially different from the principles on which the traditional courses are based.

4. University students shall be provided the opportunity to learn foreign languages independently of their specializations; universities are obliged to provide opportunities for students to master at least two foreign languages.

5. All students are guaranteed free access to the Internet for not less than 60 hours per month.

6. A student's paid access to the Internet may not be limited.

7. Each student is guaranteed a personal user's code and password access to the Internet, as well as an individual e-mail address.

8. In regard to library services, a student is entitled to the same access to books and other information carriers as a teacher, and is

entitled to the same level of comfort in the library as provided to teachers.

Article 24. University libraries and information centers

1. Libraries and information centers are recognized as the main scientific or academic and educational units of a university, and financing libraries and information centers from the university budget is a top priority.

2. The administrative structure of a university must be based on the principle that the university consists of a set of departments which satellite a library.

3. Libraries and information centers are autonomous in their free choice of books and other information carriers; books, as well as other information carriers financed through the library fund may not be destroyed by the decision of the university administration.

4. As to the organization of the work of libraries and information centers, university rectors have only financial authority.

5. The director of the university library or information center is, according to this post, the first provost of the university.

6. Libraries and information centers provide equal and open access of their funds to professors, assistant professors, other teachers, and students.

7. A university may not impose as administrative or disciplinary punishment any restriction on use of the library or information center; for the loss or spoilage of books or other information sources or carriers, the university may apply only financial sanctions.

8. Libraries and information centers provide readers with free access to copying equipment; copying equipment must be provided in sufficient quantities to allow anyone wishing to make copies to do so without unreasonable delay.

9. Books and other information carriers must be stored in such a way that readers have free access to them through free access to bookshelves and to other places for storage of information.

10. Limitations imposed on carrying books and other information sources outside the library are restricted to rarities, manuscripts, and other unique items.

11. University libraries and information centers must be open not less than 12 hours a day; their reading halls must be open around the clock.

12. A library or information center's circle of international ties and book exchange is not restricted by the state, its organs, or the university administration; libraries and information centers are independent of the administration and the rector in regard to information exchange.

13. University libraries and information centers are guaranteed access to multi-channel, cable, and satellite TV transmissions; students are guaranteed free access to the library television sets and monitors that transmit international programs by cable and satellite television.

14. Of the total funds allocated by the university budget to stock the library and information centers, not less than half those funds shall be used for stocking the library and information centers with foreign books, magazines, newspapers, and other printed matter.

15. No special privileges are allowed to any category of users of the university libraries and information centers.

Article 25. The minimal-standard rule

New member countries may join this Convention if the conditions presented in Articles 19–24 can be fulfilled by at least 15 percent of the state establishments of higher education (universities) in the country.

Part V. THE INFRASTRUCTURE OF INTELLECTUAL FREEDOM

Article 26. Books and other printed information sources

1. Import, export, and other means of delivering books and other sources of information in the member countries are free.

2. Pre-sale censorship of books and other sources of information, including hidden or indirect censorship, is not permitted.

3. The sale of foreign books, magazines, newspapers, and other sources of information shall not be subject to legal, political, or administrative restrictions.

4. Individual (personal) sending of books and other sources of information by any kind of postal service must not be taxed.

5. Taking books and other sources of information through border customs must not be restricted by any taxes.

6. Book publishing must not be taxed by more than 15 percent of the publisher's total income.

7. In regard to publishing books and other sources of information, copyright protection is guaranteed in accordance with the requirements of national and international law.

Article 27. Sale of foreign books with humanitarian, philosophical, academic, scientific or other content

1. The member countries are obligated to create and extend a network of specialized bookshops with the purpose of providing free trade in foreign books having content on humanitarian, philosophical, academic, or scientific themes.

2. These bookshops may be privately owned or state owned; in any case, maximally favorable conditions in regard to the imposition of customs or other taxes, in regard to the renting of space, etc., must be created for their efficient work.

3. If during one year after a country joins this Convention the market situation in the country does not permit the opening of such

bookshops on a commercial basis, then the member country shall open and operate such bookshops through the state budget.

4. Each member country assumes the obligation to open such bookshops in the ratio of one bookshop for each five million people in the population, and the obligation to permit in each bookshop a selection of at least one thousand titles.

5. The bookshop in the national capital must have not less than ten thousand various titles that are permanently offered for open sale.

6. Buyers must have free access to the bookshelves in each such bookshop.

7. The member countries bear no obligations set in Paragraph 4 and 5 if similar bookshops have already been established.

8. The member countries guarantee that their book-selling network and library collectors shall have access to a system of international order and delivery of books through the help of the catalog 'Books in Print' or through some equivalent system.

Article 28. Freedom of information exchange in electronic networks

1. The member countries acknowledge each individual's right to use any electronic facilities (e. g., cable, satellite, etc.) for transmitting information, whether those facilities exist now or appear in the future.

2. Any facilities and equipment for information that are available on the open international market are permitted for free sale in any of the member countries.

3. Freedom to use the Internet and other general-purpose information systems (networks) and guarantees against interference in that use are provided for all private juridical and physical persons whose use of the Internet and such other systems is entitled to privacy.

4. Freedom to use the Internet and other general-purpose information systems (networks) and guarantees against interference in that use are also provided for state organs and for juridical persons that are not restricted by official obligations to protect state and other legal secrets.

5. Any temporary cancellation of, or restriction on, the freedom and guarantees mentioned in Paragraphs 3 and 4 of this Article as they apply to users may be imposed only on a decision of an independent court and must be based on legal grounds.

6. The member countries agree to permit their citizens and juridical persons free trade in existing national or international markets of informative technologies and facilities for transmitting data, and they agree that this trade shall not be restricted on the basis of national security.

7. Copyright protection in the sphere of information technologies and electronic and other transmitting systems (networks) is guaranteed.

8. Any conflicts between the provisions of this Convention and the rules or standards relating to national and international copyrights shall be resolved in favor of the author's right.

Article 29. Antennas for television and radio reception

1. The member countries guarantee free trade of television and radio antennas of unlimited sensitivity and complexity.

2. The member countries guarantee the use of the equipment mentioned in Paragraph 1, with the aim of receiving information for physical and juridical persons.

3. Any juridical and/or physical persons have the right to uninhibited trade in antennas and similar reception equipment available on the open international market and have the right to carry such antennas and equipment across national borders.

Article 30. Prohibition of jamming television and radio transmissions

1. The member countries accept the obligation to not use jamming facilities against any internal and foreign television and radio transmissions, whether state, private or opposition transmissions.

2. Under conditions of emergency or martial state, a member country may limit the application of Paragraph 1, but not before the emergency or the martial state is declared.

Article 31. Prohibition of a monopoly in communication services

1. The member countries reject any state monopoly in the delivery of postal, telephonic, telegraphic, television, radio, and similar communication services.

2. The prohibition imposed by Paragraph 1 also implies prohibition of granting special privileges or advantages to particular national, international, or foreign corporations, firms, establishments, or organizations that deal in communication services on a commercial or noncommercial basis.

Part VI. CONCLUSIONS

1. The member countries agree to provide the legislative and administrative enactments necessary to implement this Convention and to provide the proper conditions for its implementation.

2. The member countries are obligated to facilitate public access to information on the status of this Convention and on its implementation; each member country guarantees to acknowledge those persons and groups that support the Convention and circulate information to this end.

3. The provisions of this Convention must not be interpreted in such a way as to weaken existing national legal guarantees

concerning issues addressed by this Convention, or in such a way as to weaken provisions that implement better guarantees.

4. The member countries are obligated to promote the provisions of this Convention in the framework of decisions made by international organizations that include the member countries.

5. The member countries guarantee the conditions needed to enable persons or groups to realize their rights and freedoms according to the provisions of the Convention, without any discrimination based on citizenship, place of residence, registration, or place the rights and freedoms stipulated by this Convention are exercised.

Проект передбачає нову версію цілісного механізму міжнародного публічного права для правової охорони інтелектуальної свободи в умовах демократії та сучасних правових систем. Він стосується широкого спектру творчої діяльності в модерних суспільствах — від побудови нових наукових концепцій та нестандартних підходів у бізнесі та фінансах — до створення найрізноманітніших символічних зразків. Використовуючи філософський словник Жана Бодрійара та Жіля Липовецьки, можна сказати, що проект зачіпає тему «спіралі умовного, що передірає реальність».

Текст може бути цікавим для науковців, політологів, філософів права, фахівців з теорії інформації та всіх тих, хто цікавиться проблемами сучасної демократії й захисту прав людини.

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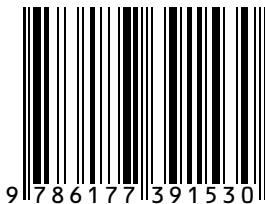
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