



MONITORING OF DIGITAL RIGHTS VIOLATIONS

Analytical report
May 2020

1. GENERAL VIOLATIONS OF DIGITAL RIGHTS (VIOLATIONS AFFECTING AN UNLIMITED NUMBER OF INDIVIDUALS)

1.1. Access to the Internet

The Decree of the President of Ukraine of May 14, 2020 № 184/2020 entered into force the decision of the National Security and Defense Council of Ukraine On the Application, Lifting and Amendment of Personal Special Economic and Other Restrictive Measures (Sanctions). This Decree continues blocking websites on the basis of two Decrees of the President of Ukraine of 15 May 2017 and 14 May 2018 that was criticized more than once.

A legal analysis of the Decree of the President of Ukraine of 2018 prepared by FreeNet Ukraine Coalition, revealed a number of problems indicated as digital rights violations that were not eliminated by the Decree of the President of Ukraine of May 14, 2020 № 184/2020¹.

Among the main:

- the sanction, as a way of restricting human rights and freedoms does not meet the constitutional standards and requirements and reflects an unrestricted discretion of the government;
- the sectoral nature of the sanction requires a positive vote in the Verkhovna Rada of Ukraine for a sanction to be enforced;
- the mechanism in the part of websites blocking does not comply with the national law and violates the fundamental constitutional rights of citizens;
- the practice of blocking hundreds of websites in the manner applied by the government does not meet the criterion "prescribed by law" in the light of international treaties and the European Court of Human Rights case law;
- such blocking does not meet the criterion of the "necessity in a democratic society" and is disproportionate to the defined legitimate aim

¹ <https://www.ppl.org.ua/yuridichnij-analiz-ukazu-prezidenta-pro-blokuvannya-sajtiv.html>

In sum, during the reporting period 1 violation of digital rights was spotted in the form of restrictions on access to the Internet and information published online, covering 240 web resources.

1. 2. Violation of right to privacy online

1) Dmytro Dubilet posted on his Facebook page that his project on collecting statistical data for business started tracking mobility of users of the mobile company Kyivstar and equipment of the Apple. Due to the new dashboard the information about how Ukrainians obey the self-isolation rules became available. The dashboard uses the data of the Kyivstar, Apple as well as credit cards of banks to track mobility of Ukrainians².

2) In May 2020 there was found the channel UA Baza Bot, in which personal data of people is sold. The database includes about 148 millions of mobile phone numbers with owners' names, information about cars, almost 3 millions of social network accounts, ID, and other personal information. The criminal proceeding was opened, however, the channel is still working and offers unlimited access to the data for \$100³.

In sum, 2 (two) cases of general violation of the right to privacy online took place in the digital environment during May 2020.

To sum up, there were a total of 3 (three) general violations of digital rights, of which: **1 (one)** violation of digital rights appeared in the form of restrictions on access to the Internet and online information covering 240 web resources; **2 (two)** facts of violation of the right to privacy online.

2. INDIVIDUAL VIOLATIONS OF DIGITAL RIGHTS (INFRINGEMENTS AFFECTING INDIVIDUAL RIGHT-HOLDERS AND WITH NO DIRECT IMPACT ON WIDE AUDIENCE)

2.1. Violations of the right to freedom of expression

1) *Internet and dissemination of rumors*

In March 2020, due to the announcement of a coronavirus pandemic the quarantine was introduced on the territory of Ukraine⁴. In this context, many different kinds of messages, including false ones, were spread in social networks, in particular on Facebook. With a view to counteract fakes, the law enforcement agencies began to actively draw up protocols on administrative offenses under the Article 173-1 of the Code of Administrative Offenses (spreading false rumors), which led to the emergence of a new and, in some cases, ambiguous punishment practice for spreading rumors on the Internet.

²<https://internetua.com/dubilet-rasskazal-kak-otslejivauat-peremesxenie-ukraincev-na-karantine-cserez-kievstar-i-apple>,
<https://news.ukrainianwall.com/38151-dubilet-osharashil-vlast-sledit-za-peredvizheniyami-ukraincev-cherez-kievstar>,
<https://www.facebook.com/dubilet/posts/10158549936418552>,

https://q.rating.zone/?fbclid=IwAR0JjWhHu_MHQVR2w0tFsXloTiJjEizF06R5XBfsiNkwXx7e0gOXTD_aDI0

³https://lb.ua/society/2020/05/12/457281_sbu_nachala_rassledovanie_izza_bota.html,

https://mvs.gov.ua/ua/news/30644_Nacpolicija_rozpochala_kriminalne_provadzhennya_za_faktom_vitoku_informacii_pro_personalni_dani_gromadyan.htm,
<https://internetua.com/baza-danih-vikradenih-nomeriv-ta-dokumentiv-ukrayinciv-vse-sxe-pracuaye-u-mereji-kiberalyans>

⁴<https://www.kmu.gov.ua/npas/pro-zapobigannya-poshim110320rennyu-na-teritoriyi-ukrayini-koronavirusu-covid-19>

HRP' experts analyzed 48 court decisions on administrative cases. Almost all the cases were related to Covid-19.

A total of 11 (eleven) facts of violations of general digital rights, related to the right to freedom of expression were detected during analysis:

a) Incomplete establishment of circumstances: courts do not study full text of messages, which become reasons for starting the proceeding. So, having a court decision, it is impossible to understand what information the court analyze (and whether it analyze the information at all), whether information is true, and whether the available information can lead to panic or disturbance.

b) Lack of evidence: there are no evidence of someone's intent to cause panic or disturbance.

For instance, the person re-posted on Facebook page that quarantine restrictions had been eased. The court decided that the post could cause panic or disturbance and the person was found guilty of dissemination of false rumors despite the fact that the person explained that it was the repost of the information, source of which she\he had considered reliable.

c) Lack of assessment of reliability of messages, which would be carried out by courts: courts do not provide analysis of the text of messages and it is impossible to understand why judges make a particular decision.

d) Lack of rationale for someone's intent to cause panic or disturbance.

For instance, the Kherson District Court found a person guilty for dissemination of false rumors and at the same time did not provide text of message, which was reason for the proceeding, did not give reason why the message could cause panic, and why the maximum amount of the fine should have been imposed⁵.

All in all, **11 (eleven)** cases of violation of digital right related to Internet and dissemination of rumors were spotted in May 2020.

2) Other violations of right to disseminating and getting information

a) The Center of Journalistic Investigation, referring to American The Wall Street Journal, reported that Google had removed dozens of critical articles about Ukrainian officials and businessmen from its search system due to fake complains, including the publications of the Center. After the Center found out that, it filed counterclaims on copyright with Google. As a result, all publications removed have been restored⁶.

b) National Commission for the State Regulation of Communications and Informatization imposed fine on Netasist Ltd (internet provider company) for non-fulfilment of the Decree of the President of Ukraine regarding blocking websites. The Netasist sued the Commission,

⁵ <http://reyestr.court.gov.ua/Review/89027625>.
<http://reyestr.court.gov.ua/Review/89095322>; <http://reyestr.court.gov.ua/Review/89257229>

⁶ https://nikcenter.org/newsItem/58371?fbclid=IwAR2s_2nVFH-XYS8F8-AlwpurAaTO5NPTlpqdXhyhEt-Nd79r2nldlqL48yI, <https://imi.org.ua/news/google-cherez-fejkovi-skargy-vydalyy-publikatsiyi-ukrayinskogo-sajtu-tsentru-zhurnalistykh-i33147>

emphasizing that there is no legal ground to block websites, however, the court did satisfy the company's claim. The court did not provide any clarification⁷.

3) Access to public information for online media

a) The Head of Mykolaiv Local Council did not grant access to information to online media Prestupnosti.NET⁸.

b) The Head of the Security Service of Ukraine of Mykolaiv region did not grant information agency Ukrainian Media Group access to information about renovation in his office, indicating that the requested information is information with limited access⁹.

c) The Head of communal enterprise of Mykolaiv region refused to grant online media NikVesti access to information about salaries, saying that there is no legal obligation to do that. Moreover, he pointed out that the journalist had not specified why he needed the information¹⁰.

d) April 27, 2020 the journalists working for online media were not allowed to attend the session of the Kryvyi Rih City Council without thorough explanations¹¹.

4) Recognition of information inaccurate, imposition of a duty to refute / delete it without observing the requirements of the law and European standards in the field of freedom of expression

a) The Rivne court found controversial information defamatory in the case of local deputy v local media Rivne Vechirne. The court decision ordered to publish a refutation on the website of media and to pay moral damage¹².

b) The District Court of Kryvyi Rih satisfied a claim on protection of honor, dignity, and business reputation on April 7, 2020¹³.

In both cases the courts did not analyze what information was defamatory which could violate rights of the plaintiffs. The decisions ordered to acknowledge the whole articles to be untrue.

5) Pressure on journalists and bloggers that cause chilling effect on freedom of speech

a) On May 7, it became known that the National Police called for questioning the editor-in-chief of the investigative journalism agency Slidstvo.info as a witness due to the request for public information sent to the deputy. The request was about the case on the impeachment of the US President Donald Trump, in particular the information about his possible meetings with Rudolph Giuliani¹⁴.

⁷ <http://reyestr.court.gov.ua/Review/89350804#>

⁸ <https://imi.org.ua/news/prestupnosti-net-povidomlyaye-shho-golova-mykolayivskoyi-oblrady-proignoruvala-yihnij-zapyt-i33062>

⁹ <https://imi.org.ua/news/nachalnyk-usbu-na-mykolayivshhyni-vidmovyv-zhurnalistu-u-zapyti-shhodo-remontu-u-vlasnomu-kabineti-i33171>, <https://www.facebook.com/chubachenko/posts/2708261205941974>

¹⁰ <https://imi.org.ua/news/dyktor-mykolayivskogo-aeroportu-vidmovyv-nykvesty-u-zapyti-shhodo-zarplatni-i33269>

¹¹ <https://detector.media/community/article/177485/2020-05-27-nizku-zmi-vdruge-za-chas-karantinu-ne-dopustili-na-zasidannya-miskradi-krivogo-rogu/>

¹² <http://reyestr.court.gov.ua/Review/89018874>

¹³ <http://reyestr.court.gov.ua/Review/89041467>

¹⁴ <https://www.slidstvo.info/news/golovnu-redaktorku-slidstva-info-vyklykaly-na-dopyt-u-natspolitsiyu/>

b) On May 11, after online media Novoe Vremya published the article about Ukrainian official Andriy Portnov the phone number of the editor-in-chief of the media was posted on the internet with free access and the editor-in-chief received threatening messages. There was also information that the phone numbers of journalists working for Novoe Vremya were also posted on the internet with free access¹⁵.

6) Physical attacks on journalists and bloggers, and ineffective investigations of the attacks

The State Bureau of Investigation closed the criminal proceeding on interference in journalists' professional activities opened against Deputy Oleksandr Ponomaryov for attacking two journalists Ivan Marusenko and Mykhailo Kruvoruchkina¹⁶.

All in all, 22 (twenty two) cases of violation of the right to freedom of expression in the digital environment were spotted in May 2020.

2.2. Privacy and Data Protection

1) Selling personal data.

According to media reports, hackers sold half a million Zoom accounts via Telegram.

2) Disclosure of personal data of a victim of a criminal offense without her permission and in the absence of public interest in this person

In May 2020, the media released photos of a woman, who was a victim of sexual assault committed by two police officers. The woman's lawyer said that she had not granted permission to do that¹⁷.

In sum, 2 (two) cases of violation of the right to privacy and data protection took place in the digital environment during May 2020.

A total of 24 (twenty-four) individual violations of digital rights were spotted in May 2020, of which: 22 (twenty-two) cases of violation of the right to freedom of expression and 2 (two) violations of the right to privacy and data protection in the digital environment.

3. POTENTIAL THREATS TO FREE SPEECH AND THE RIGHT TO PRIVACY ON THE INTERNET IN UKRAINE:

1) Hacking of email accounts

a) On May 14-15 Facebook and Instagram accounts of the journalist working for Institute Mass Information in Volyn region Maya Holub were hacked¹⁸.

¹⁵<https://www.facebook.com/sych.vitaly/posts/3039041099485489>, <https://imi.org.ua/news/golovred-nv-povidomyv-shho-pislya-novyny-pro-portnova-jogo-nomer-telefonu-vyklaly-v-merezhu-i33055>, <https://detector.media/community/article/177109/2020-05-13-u-merezhu-vyklali-nomeri-telefoniv-sedletskoj-bigusa-babinets-ta-sicha/>

¹⁶<https://www.facebook.com/photo.php?fbid=3183297585028349&set=a.336046009753535&type=3&theater>, <https://detector.media/community/article/177451/2020-05-26-dbr-zakrilo-spravu-pro-pereshkodzhannya-zhurnalistu-tsenzoranet-nardepom-ponomarovim/>

¹⁷[https://hromadske.ua/posts/u-zmi-oprilyudnili-foto-j-imya-divchiny-yaku-zgvaltuvali-v-kagarliku-yiyi-advokat-kazhe-do-zvolu-na-ce-ne-davali](https://hromadske.ua/posts/u-zmi-oprilyudnili-foto-j-imya-divchiny-yaku-zgvaltuvali-v-kagarliku-yiyi-advokat-kazhe-dozvolu-na-ce-ne-davali)

b) The spyware developer ran a web domain disguised as the Facebook security team's website to force users to click malicious links and install cell phone hacking software¹⁹.

b) During the cyber attack on one of the biggest airline EasyJet emails and personal data of its customers (nine millions of people) were disclosed as well as details of credit cards of more than 2200 customers²⁰.

2) *Hacking of web resources*

a) According to the information provided by the Security Service of Ukraine its workers counteracted 103 cyber-attacks on the web resources of state bodies during the first quarter of 2020²¹.

b) On May 13, Liudmyla Denysova posted on her Facebook page that the official website of the Ukrainian Parliament Commissioner for Human Rights was attacked²² and on May 18, she reported that due to the attacks the website was not able to resume its operation²³.

c) The State Service for Special Communication and Information Protection of Ukraine reported that during May 6-12 18 DDoS-attacks were counteracted (the website of the Office of the President was attacked the most)²⁴.

3) *Dissemination of fake news*

a) According to the information posted on the Facebook page of the Security Service of Ukraine, fake news about operation of allegedly American military biological laboratories in Ukraine are being disseminated in media and social networks in latter days²⁵.

b) Fake information about allegedly Ukrainian "greedy farmers", who destroy products was found on the Facebook. There were many comments posted by the accounts, which had signs of being fake²⁶.

b) According to the information posted on the Facebook page of the Ministry of Internal Affairs, fake news about operation of International Center of National Guard of Ukraine appeared on the internet²⁷.

¹⁸ <https://imi.org.ua/news/nevidomi-namagayutsya-otrymaty-dostup-do-akauntiv-volynskoyi-predstavnytsi-imi-i33108>

¹⁹ <https://internetua.com/razrabotcsik-shpionskogo-po-maskirovalsya-pod-facebook-dlya-pomosxi-klientam>

²⁰ <https://news.sky.com/story/easyjet-nine-million-customers-details-accessed-by-hackers-11990962>,
<https://www.ukrinform.ua/rubric-technology/3028702-hakeri-zlamali-osobisti-dani-devati-miljoniv-klientiv-easyjet.html>

²¹ <https://ssu.gov.ua/ua/news/1/category/21/view/7559#.Sfy5jVNT.dpbs>

²² <https://www.facebook.com/denisovaombudsman/photos/a.708811965858222/3761948003877921/?type=3&theater>,
<https://zmina.info/news/denisova-poprosyla-sbu-znajty-hakeriv-yaki-atakuyut-sajt-ombudsmana/>

²³ <https://www.facebook.com/denisovaombudsman/photos/a.857267731012644/3786004838138904/?type=3&theater>,
<https://www.ukrinform.ua/rubric-society/3027702-denisova-zaavlae-so-ii-sajt-atakuvali-hakeri.html>

²⁴ <http://www.dsszzi.gov.ua/dsszzi/control/uk/publish/article;jsessionid=389B01CEE6E24FF68D6F7D51558E867A.app>
1?art_id=320846&cat_id=317163

²⁵ <https://www.facebook.com/SecurSerUkraine/photos/a.1539443172952349/2688461481383840/?type=3&theater>,
<https://ms.detector.media/manipulyatsii/post/24645/2020-05-08-u-sbu-sprostovuyut-feik-pro-isnuvannya-amerikanskikh-biologichnikh-laboratorii-v-ukraini/>

²⁶ <https://ms.detector.media/manipulyatsii/post/24655/2020-05-12-u-merezhi-rozkruchuyut-feik-pro-zhadibnikh-ukrainskikh-fermeriv-yaki-znishchuyut-produkti/>,
<https://www.facebook.com/behindtheukrainenews/photos/a.245587652932042/669520713872065/?type=3&theater>

4) *Creation of fake accounts and channels*

a) Online media KyivVlast reported that they found the Telegram channel, which used its name KyivVlast and distributed political ads and fake news. The online media was not affiliated to that channel at all²⁸.

b) TV channel 1+1 warned that number of fake accounts, which use names, photos, and videos of TV presenters working for the TV channel for the purpose of discrediting, fraud as well as manipulations, has increased²⁹.

5) *Sharing of personal data of users without their permissions*

Ulrich Kelber, the German government data protection officer, warned federal ministries and departments against using the WhatsApp application to share information³⁰.

6) *Internet fraud*

In May, the new scheme for stealing money using the application Privat24 was found³¹.

7) *Social media failures*

In May, cases of malfunctioning of social networks, in particular Facebook, Instagram, Twitter, Youtube, were repeatedly observed³².

8) *Including of Ukrainian web-portal in the registry of web-resources, which cooperate with the Federal Security Service and Roskomnadzor*

On May 21, Ukrainian company META was included in the registry of those companies that disseminate information. According to the federal law, internet service has to store and provide information about users' actions to responsible state bodies.

Representatives of the META convince that the company has agreed to cooperate with neither the Federal Security Service nor the Roskomnadzor and it is not going to share the information about users with them.

²⁷ <https://www.facebook.com/mvs.gov.ua/posts/2977063955713609>, <https://internetua.com/v-internete-nacsali-rasprostranyat-feiki-o-nacgvardii-mvd>

²⁸ <http://kievvlast.com.ua/news/zhuliki-v-telegram-pod-ukradennym-nazvaniem-kiev-vlast-rasprostranyayut-domysly-i-fejki>, <https://detector.media/community/article/177359/2020-05-22-kievvlast-namagayutsya-kupiti-i-klonuyut-u-telegram-spivvlasnik/>

²⁹ <https://detector.media/infospace/article/177411/2020-05-25-11-poperediv-shcho-shakhray-nezakonno-vikoristovuyut-brend-ta-oblichchya-kanalu/>

³⁰ <https://www.dw.com/uk/whatsapp-%D0%B2%D1%96%D0%B4%D0%BA%D0%B8%D0%B4%D0%B0%D1%94-%D0%B7%D0%B0%BA%D0%B8%D0%B4%D0%B8-%D1%84%D1%80%D0%BD-%D1%83-%D0%BF%D0%B5%D1%80%D0%B5%D0%B4%D0%B0%D1%87%D1%96-%D0%B4%D0%B0%BD%D0%B8%D1%85-%D0%BA%D0%BE%D1%80%D0%B8%D1%81%D1%82%D1%83%D0%B2%D0%B0%D1%87%D1%96%D0%B2-%D1%83-facebook/a-53474994?maca=uk-Twitter-sharing>

³¹ <https://internetua.com/sberejeniya-v-privat24-pod-ugrozoi-dengi-kradut-daje-u-specialistov-po-kiberbezopasnosti>, <https://internetua.com/snbo-nacsal-rassledovanie-o-vozmojnom-vzlome-bazy-dannyh-privatbanka>

³² <https://www.ukrinform.ua/rubric-technology/3019923-u-roboti-facebook-stavsya-masstabnij-zbij.html>, <https://www.ukrinform.ua/rubric-technology/3021536-u-roboti-instagram-stavsya-masstabnij-zbij-akij-vidculi-i-v-ukraini.html>, <https://www.ukrinform.ua/rubric-technology/3023322-u-roboti-twitter-stavsya-globalnij-zbij.html>, <https://www.ukrinform.ua/rubric-technology/3029971-masstabnij-zbij-u-roboti-youtube-zacepiv-ukrainu.html>, <https://www.ukrinform.ua/rubric-technology/3035474-masstabnij-zbij-roboti-facebook-zacepiv-ukrainu.html>

In sum, in May 2020, 8 (eight) potential threats to the freedom of speech and the right to privacy on the Internet were identified in Ukraine.

Summarizing the above, it is worth noting that the monitoring of digital rights violations in Ukraine in May 2020 revealed:

- **3 (three) facts of the general violation of digital rights, in particular:**

- 1 violation of digital rights in the form of restrictions on access to the Internet and online information covering 240 web resources;

- 2 violations of right to privacy online.

- **24 (twenty-four) facts of individual violation of digital rights, specifically:**

- 22 cases of violation of the right to the freedom of expression in the digital environment;

- 2 cases of violation of the right to privacy and data protection in the digital environment.

Also, **8 (eight) potential threats** to the freedom of speech and the right to privacy on the Internet have been identified in Ukraine.