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Проф. др Славко Царић“
„ОДГОВОРИ ПРАВНЕ НАУКЕ НА ИЗАЗОВЕ САВРЕМЕНОГ
ДРУШТВА“**

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RIGHT TO BE OFFLINE: TO BE OR NOT TO BE?

Abstract:

It is generally accepted that we are experiencing an era in which our ability to do essential daily tasks and enjoy our fundamental human rights depends extensively on access to the internet. In a world where digital technologies dictate the performance of most daily activities, can an individual choose not to be online? According to estimates from the United Nations International Telecommunication Union, 2.6 billion people, or one-third of the world's population, do not use the Internet.¹ Should we consider this data as an exclusive reflection of the number of people who do not have the opportunity to use the internet, or at least a small percentage is a reflection of someone's choice to stay offline? The goal of the paper is to try to contribute to ongoing discussion on the mentioned dilemmas from the law perspective by exploring whether there is a right to be offline under the current human rights framework or stated differently, is it possible for the government or private entities to force individuals to use the internet against their will?

Keywords: *right to be offline, access to internet, right to privacy, personal data protection*

“So that's the telephone? They ring, and you run.”

Edgar Degas

¹ United Nation's International Telecommunication Union Development Sector, Measuring digital development, Facts and Figures 2023. Available at: https://www.itu.int/hub/publication/d-ind-ict_mdd-2023-1/ Visited: 11.6.2024.

1. INTRODUCTION

It is generally accepted that we are experiencing an era in which our ability to do essential daily tasks and enjoy our fundamental human rights depends extensively on access to the internet.² The right to internet access has long been the focus of a human rights doctrine.³ There is no consensus among scholars on whether it should be considered a human right. While one theoretical approach argues that access to the internet is a fundamental human right, based on the idea of equal opportunity for all members of society,⁴ the other one believes that the internet "is not a right, but an enabler of rights".⁵ Although the affirmative requirement to establish this right has yet to be recognized, the understanding that illegal limits or arbitrary denial of internet access may affect or constitute a breach of other protected rights is evolving. Therefore, a state's negative obligation not to interfere with or obstruct an individual's access to the internet has been acknowledged.⁶

In the landscape of the previous discussion, a new topic has emerged. Do we have a right to be offline?

According to estimates from the United Nations International Telecommunication Union, 2.6 billion people, or one-third of the world's population, do not use the Internet.⁷ Should we consider this data as an exclusive reflection of the

² Wong, W. H. (2023). *We, the data: Human rights in the digital age*. MIT Press, 1-3.

³ See: Gosztonyi, G. (2020). The European Court of Human Rights: Internet Access as a Means of Receiving and Imparting Information and Ideas, *International Comparative Jurisprudence* 6 (2), 134-140.

Qerimi, Q. (2017). Bridge over Troubled Water: An Emerging Right to Access to the Internet, *International Review of Law* 1, 1-22; Stephen, T. (2014). A human right to access the internet - problems and prospects, *Human Rights Law Review* 14 (2), 175-196; Szoszkiewicz, Ł. (2018). Internet Access as a New Human Right? State of the Art on the Threshold of 2020, *Adam Mickiewicz University Law Review* 8, 49-62; Reglitz, M. (2020). The Human Right to Free Internet Access, *Journal of Applied Philosophy* 37(2), 314-331. Mladenov, M., Kouroupis, K., & Serotila, I. (2023). Can we make the Internet "forget" something about us?: CJEU and ECtHR Approach. *Evrigenis Yearbook of International and European Law*, 5, 205-213.

⁴ Mladenov, M., & Staparski, T. (2022). Human Rights Approach to Internet Access with a Special Emphasis on the Case-Law of the European Court of Human Rights. *Revija za evropsko pravo*, 24(1), 25.

⁵ Oyedemi, T (2015). Internet access as citizen's right? *Citizenship in the digital age*, *Citizenship Studies*, 19(3-4), 2.

⁶ Mladenov, M., & Staparski, T. (2022). Human Rights Approach to Internet Access with a Special Emphasis on the Case-Law of the European Court of Human Rights. *op.cit.* 34. See: ECtHR, Ahmet Yildirim v. Turkey, Application no 311/10, 18 December 2012; ECtHR, Akdeniz v. Turkey, Application no. 20877/10, 11 March 2014; ECtHR, Cengiz and Others v. Turkey, Applications no 48226/10 and 14027/11, 1 December 2015; ECtHR, Elvira Dmitriyeva v. Russia, Application no. 60921/17 and 7202/18, 30 April 2019; ECtHR, Kablis v. Russia, Application no. 48310/16 and 59663/17, 30 April 2019; ECtHR, Vladimir Kharitonov v. Russia, Application no. 10795/14, 23 June 2020; ECtHR, Engels v. Russia, Application no. 61919/16, 23 June 2020.

⁷ United Nation's International Telecommunication Union Development Sector, *Measuring digital development, Facts and Figures* 2023. Available at: https://www.itu.int/hub/publication/d-ind-ict_mdd-2023-1/ Visited: 11.6.2024.

number of people who do not have the opportunity to use the internet, or at least a small percentage is a reflection of someone's choice to stay offline?

In a world where digital technologies dictate the performance of most daily activities, can an individual choose not to be online? How often have you heard that people who do not use the internet may be left behind? Is there a way to answer these questions other than by choosing to believe that there is a possibility of being offline in a society where artificial intelligence and other technology are becoming more and more integrated into our daily lives?

Providing a comprehensive response to these questions goes beyond the limits of this paper. Rather, our goal is to try to contribute to ongoing discussion on the mentioned dilemmas from the law perspective by exploring whether there is a right to be offline under the current human rights framework or stated differently, is it possible for the government or private entities to force individuals to use the internet against their will?

2. TO SET THE SCENE: THE CONCEPT OF THE RIGHT TO BE OFFLINE

The development of the concept of the right to be offline is influenced by the tendency of international law to address the different needs of modern society through an adaptable human rights framework. The human rights instruments are "living instruments" and their interpretation can be modified to accommodate new circumstances.⁸ Therefore, do we need an autonomous right to disconnect from the internet? Should it be considered an independent right, apart from the extensive catalog of fundamental rights that are already guaranteed?

To define the right to be offline we could follow the theoretical approach according to which it is possible to consider this concept "*as the potential fundamental right of a person to choose not to directly and actively participate in the online environment, without facing negative consequences or discrimination, ensuring the freedom to manage their own digital presence and protect their personal privacy*".⁹

According to the provided definition, at least basic services and basic infrastructure, such as healthcare or mobility, should be available for everyone,

⁸ See: Mowbray, A. (2005). The Creativity of the European Court of Human Rights. *Human Rights Law Review*, 5(1), 57-79.

⁹ Popa Tache, C. E. & Miço (Bellani), H. (2024). „Some Reflections on Two of the Most Visible Developments: The Right to Refuse Internet Use and the 'Chilling Effect'", in Pajuste, T, Bellani Miço (Bellani), H. & Maslo Cerkić, S. (eds.), *Legal Perspectives in the Modern Era of Technological Transformations*, ADJURIS – International Academic Publisher, Bucharest, Paris, Calgary, 2024, 18.

regardless of the possibility or the choice concerning internet use. Devices we are already familiar with are rapidly becoming equipped with networking capabilities. We acquire "smart" automobiles, televisions, or refrigerators.¹⁰ Many individuals simply choose to continue with the practice of using some previous offline models.¹¹ Perhaps the lack of financial means prevents them from keeping pace with technological advancements or they prefer to protect their privacy. The significance lies not in the reason itself, but rather in the possibility to either join a new digital reality or continue existing in the offline world. Forced online engagement may lead to a variety of negative consequences. All these arguments support the approach of establishing the general right to be offline.

On the other hand, disconnecting from the internet has numerous implications, most of which are sociological and psychological. However, we are not talking about forcing someone to be online or offline, but rather about providing a choice that does not result in any form of discrimination. To determine whether this is possible, the following chapter will focus on the international framework for human rights protection.

3. RIGHT TO BE OFFLINE WITHIN THE HUMAN RIGHTS FRAMEWORK

The European Declaration on Digital Rights and Principles for the Digital Decade, which was recently adopted, states that digital transformation has an impact on all aspects of people's lives and presents substantial opportunities for improved quality of life, economic growth, and sustainability.¹² Therefore, it is imperative to undertake a thorough digital transition that guarantees inclusion for everyone. Article 10 addresses the concept of choice, but it specifically refers to the ability of individuals to freely and effectively select the online services they wish to use. Nowhere is it explicitly mentioned that membership in the digital society should be without costs and that as a result, there should exist the option to stay offline.

¹⁰ Karaboga, M., Matzner, T., Obersteller, H., Ochs, C. (2017). Is There a Right to Offline Alternatives in a Digital World?. In: Leenes, R., van Brakel, R., Gutwirth, S., De Hert, P. (eds) Data Protection and Privacy: (In)visibilities and Infrastructures. Law, Governance and Technology Series, vol 36. Springer, Cham. 35.

¹¹ We have witnessed many situations in which individuals, due to specific conditions such as elderly status or financial difficulties, were unable to use digital technology. It would be unfair and, in this particular scenario, potentially unlawful to exclude them from society on this basis. See: Helsper, E. (2021). The digital disconnect: The social causes and consequences of digital inequalities, London : SAGE Publications Ltd.

¹² European Declaration on Digital Rights and Principles for the Digital Decade 2023/C 23/01, OJ C 23, 23.1.2023, p. 1–7.

According to a positivist approach, no human rights agreement explicitly recognizes the right to be offline. Furthermore, at the European level, the concept of this right is not clearly defined or addressed in legislative frameworks, regulatory processes, or rulings from the European Court of Justice (ECJ) or the European Court of Human Rights (ECtHR).¹³

Even though the right to be offline is not specifically named within the human rights framework, it can be derived from the provisions that guarantee the right to privacy and data protection. This right can be understood as a manifestation of personal autonomy, considered a component of the right to privacy.¹⁴ The issue of privacy is as important today as it was in 1890 when authors Warren and Brandeis published their famous article “The Right to Privacy”. They draw attention to the potential privacy issues posed by emerging technology and business models:

*“The intensity and complexity of life, attendant upon advancing civilization, have rendered necessary some retreat from the world, and man, under the refining influence of culture, has become more sensitive to publicity, so that solitude and privacy have become more essential to the individual; but modern enterprise and invention have, through invasions upon his privacy, subjected him to mental pain and distress, far greater than could be inflicted by mere bodily injury.”*¹⁵

The context has surely changed, but the issue still exists.¹⁶ Warren and Brandeis probably had in mind the telegraph, telephone, and chemical photography, which were state-of-the-art technologies. They might not have been able to predict the numerous modern risks to privacy made possible by smartphones, personal computers, the internet, and a wide range of other information and communications technologies, such as the digital footprints left by widespread electronic communications.¹⁷

Therefore, the right to be offline corresponds closely to an official and comprehensive acknowledgment of the right to privacy in international laws and treaties such as the UN Universal Declaration of Human Rights (UDHR), the European Convention on Human Rights (ECHR), and the Charter of Fundamental

¹³ Karaboga, M., Matzner, T., Obersteller, H., Ochs, C. (2017). Is There a Right to Offline Alternatives in a Digital World?. *op.cit.* 43.

¹⁴ Popa Tache, C. E., Săraru, C. S., & Kouroupis, K. (2024). Different perspectives concerning the right not to use the internet and some analogies with education| Diverse prospettive sul diritto a non usare internet ed alcune analogie con l'istruzione. *European Journal of Privacy Law & Technologies*, 5.

¹⁵ Warren, D. S., Brandeis, L., D., (1890). The Right to Privacy, *Harvard Law Review* 4 (5), 196.

¹⁶ Mladenov, M. (2013). Zaštita prava na privatnost u praksi Evropskog suda za ljudska prava, [Protection of the right to privacy in the jurisprudence of the European Court of Human Rights], *Zbornik radova Pravnog fakulteta u Novom Sadu* 47(3). 576.

¹⁷ Isom, D., (2015). *Google Search and the “Right to Be Forgotten”*, Master thesis, University of California, Los Angeles, 1. See: Kouroupis, K.; Serotila, I. (2022). “Privacy and Security in light of the European Digital Agenda”, *Nomiki Bibliothiki*.

Rights of the European Union (CFREU). The provisions of the ECHR and CFREU regarding the right to privacy are generally based on Article 12 of UDHR.¹⁸

ECHR protects the right to respect for private life, family life, home and correspondence under Article 8.¹⁹ There can be no interference in this right by a public authority unless three conditions are fulfilled: prescription by law, necessary in a democratic society and achieving certain legitimate interests.²⁰

The word "private life" has been interpreted broadly by the European Court of Human Rights, to include not only physical but also psychological and ethical integrity. This right allows people to choose to actively remove themselves from the internet world due to moral decisions, values, or security concerns.²¹

In addition, Article 8 ensures that personal information, such as official records, photographs, and medical data, must be kept securely and cannot be shared without permission, except in specific situations. As stated before, both the right to privacy and family life and the right to personal data protection are not absolute rights. Therefore, the processing of personal data is permitted only if specific requirements are fulfilled. Data minimization and purpose limitation—two fundamental principles of data protection, as outlined in the Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data²² and other international instruments²³, can be summed up as a requirement to uphold the principle of proportionality.

As stated by Karaboga et al., in light of the advancing processing capabilities of current technology, it can be argued that there is no longer any data that can be considered "insignificant" or "irrelevant."²⁴ Therefore, it may be concluded that the right to privacy in relation to the processing of personal data might be understood as

¹⁸ UN General Assembly. (1948). "Universal declaration of human rights" (217 [III] A). Paris.

¹⁹ Council of Europe. "Convention for the Protection of Human Rights and Fundamental Freedoms." Council of Europe Treaty Series 005, Council of Europe, 1950.

²⁰ See: Tubić, B., Toroman, A. (2023) "Derogations of Article 8 of the European Convention for the protection of human rights and fundamental freedoms during a state of emergency." *Zbornik radova Pravnog fakulteta u Novom Sadu* 57(2): 415-41. European Court of Human Rights. Guide on Article 8 of the European Convention on Human Rights: Right to respect for private and family life, home and correspondence. 2022. ECtHR, F.O. v. Croatia, App No. 29555/13, 6. September 2021.

²¹ Popa Tache, C. E., Săraru, C. S., & Kouroupis, K. (2024). Different perspectives concerning the right not to use the internet and some analogies with education | Diverse prospettive sul diritto a non usare internet ed alcune analogie con l'istruzione. *op.cit.* 5.

²² Council of Europe. "Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data." Council of Europe Treaty Series 108, Council of Europe, 1981.

²³ Such as Article 5 of GDPR. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance). (2016). Official Journal, L 119, 1-88.

²⁴ Karaboga, M., Matzner, T., Obersteller, H., Ochs, C. (2017). Is There a Right to Offline Alternatives in a Digital World?. *op.cit.* 45.

the right to be offline. If the vast majority of data is considered personal data and the individual has the authority to determine the manner, extent, and purpose of data processing, then the individual has the option to choose not to have any data collected or processed.²⁵ In a similar manner, the right to be offline can be derived from Article 7 (respect for private and family life) and Article 8 (protection of personal data) of the CFREU.

The notion of the right to be offline does not have an explicit recognition in legally binding texts. However, it seems that even if the right was formally recognized, at a European level, it would not have any additional legal implications beyond an individual's right to refuse or contest the automated processing of their personal data. Moreover, the freedom to not be connected to the internet might be limited in practice whenever the defense of society interests demands such a limitation.²⁶

4. CONCLUSION

Avoiding using the internet can serve as a means for individuals to protect their privacy and minimize the potential risks associated with online security. This approach is adopted by certain individuals who choose to keep their personal information and activities apart from the digital realm. Offline lifestyles entail individuals choosing to live in a more conventional manner, prioritizing in-person interactions and traditional activities over those conducted online.

The right to be offline is not explicitly recognized in any legally binding text. There is no explicit provision for either the requirement to use the internet or the freedom to abstain from using it. However, it might be argued that the concept of this right combines conventional notions of privacy and data protection to form a novel concept that is specifically designed for the digital era. Within this context, the right to be offline summarizes a collection of privileges linked to specific actions in the digital realm. It seems that this right should be considered as the expressions of personal autonomy, which have important impacts on privacy, personal growth, and the ability to make choices freely.

The intent of this article is to offer ideas that will encourage analytical thinking and spark scientific interest. The paper starts with a quote by Edgar Degas, who articulates the irony associated with the development of technology. Technology is an outcome of scientific advancements and, thus, it should be used to benefit us rather than work against us. Hence, the dilemma within the context of online or offline

²⁵ Ibid. 46.

²⁶ Ibid.48.

presence is not a matter of existence or non-existence, but rather a matter of choosing a way of life. After all, we do exist, even if we are offline. The international human rights framework does not raise any objections to this issue. Therefore, it's up to you to decide whether you should run.

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PRAVO DA SE BUDE *OFFLINE*: BITI ILI NE BITI

Sažetak:

Opšte je prihvaćeno da živimo u vremenu u kojoj naša sposobnost da obavljamo osnovne dnevne zadatke i uživamo osnovna ljudska prava u velikoj meri zavisi od pristupa internetu. U svetu u kome digitalne tehnologije diktiraju obavljanje većine svakodnevnih aktivnosti, može li pojedinac izabrati da bude *offline*? Prema procenama Međunarodne unije za telekomunikacije Ujedinjenih nacija, 2,6 milijardi ljudi, ili jedna trećina svetske populacije, ne koristi internet. Da li ove podatke treba posmatrati isključivo kao odraz broja ljudi koji nemaju priliku da koriste internet, ili je bar mali procenat odraz nečijeg izbora da ostane *offline*? Cilj rada je da pokuša da doprinese kontinuiranoj diskusiji o pomenutim dilemama iz pravne perspektive tako što će istražiti da li postoji pravo da bude da se bude *offline* u sadašnjem okviru ljudskih prava ili drugačije rečeno, da li država ili privatna lica da primoraju pojedince da koriste internet protiv svoje volje?

Ključne reči: *pravo da se bude offline, pristup internetu, pravo na privatnost, zaštita ličnih podataka*

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