

TOPICAL PROBLEMS OF ADMINISTRATIVE LIABILITY FOR VIOLATIONS OF THE INFORMATION LEGISLATION IN THE BORDER AREA

PROBLEMAS ATUAIS DA RESPONSABILIDADE ADMINISTRATIVA POR VIOLAÇÕES DA LEGISLAÇÃO EM MATÉRIA DE INFORMAÇÃO NA ZONA FRONTEIRIÇA

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Abstract: The article considers administrative violations of the information legislation in the border area. Specific features of liability in this field have been defined. The analyzed norms of administrative legislation and scientific works made it possible to outline the problems of legal regulation in this field and to determine directions for their improvement. The article also analyzes modern informational relations in the border area. Relationships regarding the creation, collection, receipt, storage, usage, distribution, preservation, and protection of information in the field of state border protection have been investigated and disclosed. It has been determined that they relate to the interests of neighboring states, individuals, and legal entities that cross the state border or carry out various activities along or directly on the state border of Ukraine.

Keywords: Informational relations, Information, Border area, State Border Guard Service of Ukraine, state border

Resumo: O artigo analisa as infrações administrativas à legislação em matéria de informação na zona fronteiriça. Foram definidas as características específicas da responsabilidade neste domínio. As normas analisadas da legislação administrativa e os trabalhos científicos permitiram delinear os problemas da regulamentação jurídica neste domínio e determinar as direções para a sua melhoria. O artigo analisa também as modernas relações de informação na zona fronteiriça. Foram investigadas e divulgadas as relações relativas à criação, recolha, recepção, armazenamento, utilização, distribuição, preservação e proteção da informação no domínio da proteção das fronteiras do Estado. Foi determinado que estão relacionadas com os interesses

dos Estados vizinhos, dos indivíduos e das entidades jurídicas que atravessam a fronteira estatal ou que realizam várias atividades ao longo ou diretamente na fronteira estatal da Ucrânia.

Palavras-chave: Relações de informação, Informação, Zona fronteiriça, Serviço Nacional de Guarda de Fronteiras da Ucrânia, Fronteira estatal

1. Introduction

The issue of preserving and protecting information as an object of informational relations is quite important today in all spheres of public and private legal life, especially when it comes to the activities of public administration bodies that are managers of information entrusted to them by the state and citizens (as the implementation of direct democracy) in the sphere of legal regulation. The State Border Guard Service of Ukraine (hereinafter SBGS) carries out informational activities in the interests of the protection of the state border and the realization of the right of every person related to the free crossing of the state border (Kushnir, I.P., 2018). Along with the expansion of the boundaries of information openness and freedom in modern society, the issues of compliance with informational rights, their preservation, and protection of all subjects of informational relations in the border area are actualized. The protect of the right to information is provided for by the current legislation, including the one created during the activity of the SBGS. One of the effective means of protecting informational rights is the application of administrative liability in case of violation or non-compliance.

The problem of informational relations connected with the circulation, preservation, and protection of information, as well as ensuring information security, is definitely quite relevant in modern society. In addition, the rapid implementation of informational systems and technologies, as well as the informatization of the activities of state administration bodies, require their theoretical generalization and scientific justification of ways to improve organizational and legal support in certain spheres of public and private life. These and other important questions, taking into account the specifics of the activity of the State Border Guard Service of Ukraine, are raised in the provided research. The fulfillment of the tasks assigned to the State Border Guard Service of Ukraine to ensure the inviolability of the state border and the protection of the sovereign rights of Ukraine in its adjacent zone and exclusive (maritime) economic zone is inextricably linked with the progressive development of informational relations, the growing value of departmental informational resources in ensuring border security of the state and the need to ensure the protection of privacy of all subjects of these relations.

The complex and dynamic security environment around Ukraine and the introduction of European standards of integrated border management make it necessary to improve the informational component of the activities of the units of the State Border Guard Service. The significant development of scientific research on both informational and border relations now requires the generation of previously obtained knowledge (in already existing studies) on qualitatively new patterns of informational relations development within the scope of the implementation of forms of operational and service activity of the SBGS. Therefore, the purpose of the article is the analysis of scientific works that form the methodological basis of the study of informational relations in the activities of the SBGS.

2. Literature Review

The issue of administrative liability is highlighted in scientific works from different angles: as a type of legal liability in the informational sphere, violation of informational rights, encroachment on informational relations, and ensuring informational security, in particular by such scientists as I.V. Arystova, A.M. Blahodarnyi, L.P. Kovalenko, V.A. Lipkan, Yu.Ye. Maksymenko, A.I. Marushchak, V.V. Sydorenko, O.V. Stoietskyi, O.O. Tykhomyrov, O.V. Chupryna, and others. Norms of information legislation, as well as liability for their violation, are not clearly systematized due to the complex nature of this field and the imperfection of law-making processes. Therefore, in this article, we will try to synthesize the normative consolidation and scientific approaches regarding the coverage of the features of administrative liability for violation of information legislation in the border area, which until today has not been given due attention in this context. As for information relations in the border area, these issues have not yet been comprehensively investigated at the scientific level, so the purpose of our research is to clarify their essence and features. When clarifying the content of informational relations in the border area, it should be noted that the concept of “informational-legal relations” has been repeatedly studied in the theory of informational law. Still, a unified approach to its understanding has not yet been developed. Although the Law of Ukraine “On Information” specifies that it regulates relations regarding the creation, collection, receipt, storage, usage, distribution, preservation, and protection of information. Information is any statement and/or data that can be stored on physical media or displayed in electronic form (Aristova I. V., 2002).

3. Methods and materials

The methodological basis of the study is a set of general and special methods of scientific knowledge, the usage of which allowed for ensuring a systematic approach to the disclosure of content, the specifics of administrative liability for violations of information legislation on the border area, opportunities for development and improvement of legal regulation in Ukraine.

4. Results

Legal consolidation, regulation, and expansion of the boundaries of information relations require legal protection mechanisms in case of encroachment on the relevant information, violation (non-compliance) of the information rights of citizens or SBGS. One of the guarantees of the right to information is the establishment of liability for violations of information legislation. Competent state bodies use disciplinary, civil, administrative, or criminal means of influence on grounds established by law. Protective norms of administrative law form the legal foundation for countering threats in the information sphere, and taking into account the topic of our research, counter threats in the border area as well (Tykhomyrov, O.O., 2014). Yu.Ye. Maksymenko emphasizes that for a long time, informational offenses were considered through the prism of threats to the information security of Ukraine, and notes that today offenses in the information field relate to the dissemination of facts of illegal collection and usage of information, unauthorized access to information resources, illegal copying of the information in electronic systems, theft of information from databases, violation of information processing technologies, launch of virus programs, Trojan viruses, phishing programs, destruction and modification of data in information systems, interception of information in the technical channels of its leakage, manipulation of public and individual consciousness, etc. (Maksymenko, Y., 2014).

As noted by L.P. Kovalenko, the Code of Ukraine on Administrative Offenses (hereinafter CUAO) provides for administrative liability for violation of the right to certain types of information, refusal to provide information, provision of incomplete or inaccurate information, loss of information, etc. (Kovalenko L. P., 2013). The scope and nature of such offenses are constantly expanding with the development of the information society and information resources and require timely identification and application of liability for their commission,

particularly in the border area. The basis for the application of administrative-tort norms and the imposition of administrative liability for non-compliance with the information legislation is the commission of an informational offense (Kushnir I., Kuryliuk Y., Nikiforenko V. et al., 2021).

The presence of informational components in their composition stands out as a legal feature that distinguishes informational offenses from all others:

1) As the object of the offense - if the illegal act is directed against informational relations, or as the object of the offense - if the illegal act is directed against information and its carriers, information systems;

As an element of the objective side of the offense, which indicates the method, the way of committing the illegal act - in the case of its commission using informational technologies and means. All other legal features of an informational offense correspond to the traditional construction of an offense in the theory of law, but may have certain features due to the nature of information.

O.V. Stoietskyi proposes to divide administrative offenses that encroach on public relations in the field of gathering information, information storage, usage of information, and distribution of information (Stoetskyi O.V., 2013).

L.P. Kovalenko has a similar opinion (Kovalenko L. P., 2013). Such approaches reflect encroachments on certain types of information activity, enshrined in Article 9 of the Law on Ukraine "On Information" (creation, collection, receipt, storage, usage, distribution), and therefore, in this case, administrative offenses encroach on the order of informational activity. A.V. Shapka points out that information offenses in the activities of the SFS of Ukraine encroach on law and order established by legislation in the tax or customs spheres of the state regarding the processing of personal data, access to information, its protection, and also encroach on the functioning of informational technologies and informational resources of the SFS of Ukraine, for which the law provides for legal liability (Shapka A. V., 2016).

A common feature of offenses in the informational activities of the SFS bodies of Ukraine, as emphasized by N.A. Lytvyn, is the connection with informational processes - information circulation, informational resources, informational technologies, information and telecommunication systems, etc. (Lytvyn N. A., 2018). In general, the scientist proposes to separate the following types of offenses for which administrative liability for violation of the norms of information legislation arises: offenses against information, informational resources that encroach on relevant legal relations (confidentiality, integrity, accessibility, observation);

offenses against the informational space that encroach on certain legal relations related to the quality and value of information (its completeness, objectivity, timeliness, harmlessness, etc.); offenses against informational infrastructure that encroach on legal relations that arise in the field of usage of informational infrastructure objects (information and telecommunication systems, computers, servers, their software, etc.); other information crimes, which are characterized by the usage of information, informational space, informational infrastructure in the implementation of illegal acts that encroach on other legal relations (regarding private property, public and state security, etc.) (Lytvyn N. A., 2018).

An information offense is characterized by the fact that it causes damage (danger) to the informational rights or freedoms of a person and citizen, the informational infrastructure of the state, or is committed with the help of information and telecommunication technologies or means of communication (Maksimenko Y., 2014). The information offense in the border area, in addition, harms border security and can be committed using an official position. Therefore, the general characteristic features of an administrative information offense in the field of activity of the SBGS are the damage to informational relations that are under the protection of the norms of the CUAO, violation of the order of informational activity, namely creation, collection, receipt, storage, usage, distribution, analysis, etc.; usage of informational resources to violate the norms of information legislation or cause another damage; connection with the sphere of protection of state borders (Kuderska N., Ksenziuk A., Kuryliuk Y. et al., 2022).

Considering the peculiarities of the border area in case of violation of the information legislation, the consequence which is the onset of administrative liability, it is worth focusing on the characteristics of the subject composition of the offense. In this regard, A.I. Marushchak draws attention to the fact that both guilty officials (in unjustified refusal to provide information, violation of the established deadline for its presentation without valid reasons, groundless refusal to share certain information, etc.) and citizens (who have a desire and interest in obtaining certain information and who in their desire may go beyond the limits of permissible lawful behavior) are liable (Marushchak A.I., 2007).

According to the CUAO, the subjects of an administrative offense are persons who reached the age of sixteen at the time of committing the administrative offense, and officials for non-compliance with established rules, the enforcement of which is part of their official duties. So, for the studied variety of administrative offenses in the border area, both a general and a special subject are characteristic.

The general subject of investigated offenses in the border area can be a citizen of Ukraine, a foreign citizen, and a stateless person, who may be subject to administrative liability per Articles 204-1 “Illegal crossing or attempted illegal crossing of the state border of Ukraine” and 204-4 “Violation of the procedure for entering or exiting the area of an anti-terrorist operation” of the CUAO, in the part of crossing or attempting to cross the state border of Ukraine at checkpoints through the state border of Ukraine (at entry-exit control points) using a forged document or documents containing false information about a person.

Taking into account the concept of “passport document” defined by the Law of Ukraine “On border control”, which is the basis for crossing the state border of Ukraine, a forged document may contain false information about a person crossing the state border regarding their citizenship, confirmation of the bearer’s identity, valid right to enter or leave the state, etc. Therefore, administrative liability arises for the submission of false and unreliable information about a person and for the existing reason for crossing the state border per Articles 204-1 and 204-4 of the CUAO.

Officials of the SBGS are special subjects. According to Art. 14 of the Law of Ukraine, “On the State Border Service of Ukraine”, the staff of the SBGS of Ukraine consists of servicemen and employees of the SBGS. As for the SBGS employees as subjects of administrative liability, they are subject to general grounds regarding officials who have violated the information legislation taking into account the SBGS powers for the following offenses:

- Illegal usage of information that became known to a person in connection with the performance of official or other legally defined powers (Article 172-8 of the CUAO);
- Violation of the procedure for submitting or using data of state statistical observations (Article 186-3 of the CUAO);
- Violation of legislation in the field of personal data protection (Article 188-39 of the CUAO);
- Violation of legislation on state registration of normative legal acts (Article 188-41 of the CUAO);
- Illegal storage of special technical means of secretly obtaining information (Article 195-5 of the CUAO);
- Violation of legislation on state secrets (Article 212-2 of the CUAO);
- Violation of the right to information and the right to appeal (Article 212-3 of the CUAO);

- Violation of the order of accounting, storage, and usage of documents and other material carriers of information containing official information (Article 212-5 of the CUAO);
- Illegal access to information in informational (automated) systems, illegal production or distribution of copies of databases of informational (automated) systems (Article 212-6 of the CUAO).

In general, the CUAO contains more than 20 articles that directly relate to the informational sphere, and in its composition contains several offenses, although, as noted by A. Blagodarnyi, there are significantly more offenses than articles (Blagodarnyi A. M., 2009). For instance, only Part 2 of Art. 212-3 of the CUAO (“Violation of the right to information and the right to appeal”) establishes liability for seven different administrative offenses in the field of information circulation. Committing an informational offense provided for by the CUAO in the border area encroaches on public informational legal relations in general and undermines the foundations of state informational security (Lytvyn N. A., 2018). Part 1 of Art. 212-2 of the CUAO (“Breach of legislation on state secrets”) contains nine items, most of which establish liability for several different administrative violations in the field of informational security.

The subject of an informational offense, according to Art. 212-6 of the CUAO (illegal access to information in informational (automated) systems, illegal production or distribution of copies of databases of informational (automated) systems) can be any person who has reached the age of administrative liability, encroaching on the established procedure for processing and storing information in the SBGS databases. Thus, both a general and a special entity (SBGS officials) are subject to administrative liability in this case (Manzhai O., Kuryliuk Y., Miroshnykov I. et al., 2022).

Regarding military servicemen as subjects of administrative liability, there are peculiarities defined in Article 15 of the CUAO, according to which servicemen as officials who have committed an administrative offense are liable under disciplinary statutes. An exception to informational offenses is the violation of rules, norms, and standards related to the commission of offenses related to corruption; implementation of illegal storage of special technical means of secretly obtaining information; violation of legislation on state secrets; violation of the procedure for accounting, storage, and usage of documents and other material carriers of information containing official information. In these cases, the SBGS military personnel bear administrative liability on general grounds for violation of information legislation. For the commission of

military administrative offenses, they bear the liability provided for in Chapter 13-B of the CUAO, provided that these offenses do not entail criminal liability. According to A.F. Mota, such normative regulation was inherited from the time of the existence of Soviet administrative and military legislation and was explained by the fact that in the interests of the country's defense capability and the maintenance of discipline in the troops, the jurisdiction of civil authorities had to extend to military personnel only for certain administrative offenses (Mota A. F., 2003).

In accordance with Article 15, administrative responsibility may be applied to servicemen and officials of the State Board Guard Service for violation of information legislation under the following articles of the CUAO:

172-8 (illegal usage of information that became known to a person in connection with the performance of official or other legally defined powers);

195-5 (illegal storage of special technical means of secretly obtaining information);

212-2 (violation of legislation on state secrets);

212-5 (violation of the order of accounting, storage, and usage of documents and other material carriers of information containing official information).

For the commission of other informational offenses provided for in Art. 188-39, 188-41; 212-3, 212-6 of the CUAO, military personnel bear disciplinary liability.

Therefore, taking into account the development of the informational society, informational relations in the border area, and the requirements of the time, we consider it necessary to make amendments to Article 15 of the CUAO in the part that administrative liability for military personnel on the general grounds provided for in the CUAO arises in violation of information legislation. We believe that military personnel should not be subject to disciplinary sanctions but to measures of administrative liability, for the type of administrative offenses outlined above.

Administrative informational offenses can be committed with a combination of other offenses, as evidenced by judicial practice. For instance, the considered cases for illegal usage of information that became known to a person in connection with the performance of official powers No: 297/1691/16-p, dated November 10, 2016, of the Berehiv district court of Zakarpattia region regarding the inspector of the border service of category 1 of the 2nd department of border inspectors service of the Air Force "Vilok" of the SBGS of category 3 (type B) and No. 503/2299/15-p Kodymsky District Court of Odesa Region, dated April 8, 2016, in relation to the deputy head of the border service department "Tymkove" from the SBGS personnel, according to Art. 172-8 of the CUAO were related to corruption practices.

In addition to the gaps characteristic of the border area, there are also general problematic issues in the CUAO, the solution of which will contribute to increasing the effectiveness of administrative measures of a protective nature for informational relations. Taking into account the analysis of the content of the CUAO, it is worth emphasizing the lack of systematic norms for violations of information legislation, which significantly complicates the search for information on the composition of administrative offenses of this type (Kushnir I. P., 2019).

Having studied the foundations of the formation of informational delictology, V.A. Lipkan and Yu.Ye. Maksymenko emphasize the lack of systematization of administrative torts of an informational nature in a separate section and the dispersion in different sections (chapters) of the CUAO (Lipkan V. A., Maksimenko Yu. Ye., 2013). In this regard, O.A. Zaiarnyi notes that under such conditions of the formation of legislation on administrative informational offenses, the effectiveness of prevention of this type of torts is significantly reduced, the legal and functional connection between misdemeanors and the administrative penalties established for their commission is lost (Zaiarnyi O. A., 2014). In addition, the problem in this area, as noted by O.V. Stoietskyi, is that the norms of the CUAO that establish responsibility in the field of information security are duplicated by the norms of other nominative legal acts, which, in turn, sometimes even directly contradict its norms (Stoyetsky O.V., 2013).

5. Discussion

The issue of the lack of systematization in the CUAO of the norms providing for liability for the commission of informational offenses is a cornerstone in the theory of information-legal thought. Based on such legal positions, it is possible to support a scientific point of view, according to which the composition of administrative informational offenses provided for in the norms of the administrative-tort legislation should be consolidated in a separate section of the project of the Administrative-Tort Code of Ukraine “Administrative offenses in the informational sphere”, the provisions of which should be divided into chapters by types of informational activities (Zaiarnyi O. A., 2014).

On his end, A. Blagodarnyi concluded in his research that the introduction of a logically complete, effective legal regulation of administrative liability for offenses in the informational sphere should be provided for in the current CUAO, which would contain offenses in the field of information circulation, and also enshrined in the current CUAO (or in the new Code of

Ukraine on Administrative Misdemeanors) a norm that would provide for the administrative liability of legal entities for committing offenses in the informational sphere (Blagradnyi A. M., 2009). V.Yu. Baskakov and O.V. Stoietskyi propose to create a single balanced system of administrative and legal norms that ensure the protection of public relations in the field of informational security, to combine the articles providing for administrative liability for violations of certain aspects of informational security into a separate section “Administrative offenses in the field of informational security of Ukraine” of the special part of the CUAO, the general object of which will be the informational security of Ukraine (Baskakov V.Yu., Stoetskyi O.V., 2014). G. Pysarenko considers it justified to create a single law, for example, the Informational Code of Ukraine, with a complete list of informational offenses (Pisarenko G., 2017).

Therefore, it is obvious that there is a need to streamline the administrative-tort informational norms within a separate section of the current CUAO or the new Code on administrative misdemeanors and liability for their commission, which would meet the requirements of modern society. In our opinion, it would be appropriate to take into account O.A. Zaiarnyi’s proposal and name this chapter “Administrative offenses in the informational sphere”, which laconically and generally covers the scope of the investigated offenses.

Thus, the following features are characteristic of administrative liability for violation of the information legislation in the field of operation of the State Border Guard Service:

is a type of administrative liability provided for the commission of offenses contained in various sections of the CUAO and other normative legal acts that regulate information activities and ensure the right to information (laws of Ukraine “On Information”, “On State Secrets”, “On Protection of Personal Data”, “On Access to Public Information”, “On Information Protection in Information and Telecommunication Systems”, etc.);

persons crossing the state border of Ukraine are subject to administrative liability; the SBGS officials (military personnel and employees); any person within the limits of Art. 212-6 of the CUAO;

the application of both disciplinary and administrative sanctions is provided for the SBGS servicemen (Article 15 of the CUAO) (Kushnir I. P., 2019).

6. Conclusion

Summarizing what has been stated, it is worth noting that the theoretical basis of information relations in the activity of the SBGS is determined by the interdisciplinary character of a wide theoretical array of research on these relations in the best achievements of the theory of informational, administrative law and a set of scientific studies, which reveal the characteristic features of the regulation of border relations (legal, military, technical etc). As for the object of our research, scientific explorations are spontaneous and fragmentary in this field. In general, the analyzed home works make it possible to come to the conclusion about the lack of an unambiguous understanding not only of informational relations but also of its content, structural elements, information, informational activities, and informational security. Within the framework of this study, the authors focused on fundamental and conceptual works due to the impossibility of covering all the literature on the topic of the work within the scope and scale of modern informational relations.

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