

Criminal And Legal Protection Of Information Relations

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Summary

The article analyzes the regulations of current criminal law, which ensures the protection and protection of information relations, offers the optimal model of the system of norms of the Criminal Code of Ukraine, which establishes liability for violation of information. The subject of the article is protected information, which should include information or data, the procedure for access to and distribution of which, regardless of the method of submission, storage or organization, are subject to legal regulation in accordance with laws and regulations. For the purposes of criminal law, information as an object of criminal law protection should be classified on the following grounds: depending on the content: personal or family secrets; information constituting a state secret; data included in the official secret; information that constitutes a professional secret; information that constitutes a commercial, tax, banking secret, and, depending on the medium - documented and undocumented.

Keywords:

Information, Criminal liability, Protection, Confidential information, Information legal relations

1. Introduction

One of the most important characteristics of the modern stage of civilization is the mass informatization of all aspects of life. Information is an integral part of any modern society, which is called "information", and most analysts associate the processes of its globalization with the development of the information revolution.

The development of the rule of law, which is taking place against the background of the transformation of Ukrainian society from post-industrial to information, requires the creation of an effective mechanism for protection and defense of public relations in the field of information circulation. The reliability of such a mechanism is ensured by both technical and legal measures, which are concentrated in the current legislation.

Information social relations are developing rapidly, their quantitative characteristics are constantly growing, qualitative ones are changing. Informatization and computerization have led to an increase in the amount of valuable information processed in automated systems, the quality, reliability and efficiency of which depends on most important decisions made at different levels - from head of state to citizen [1].

Information relations, which are the subject of legal regulation and protection, is the basic category that underlies the definition of the mechanism of their legal regulation and protection by the norms of various branches of law. The fair statement of I.L. Bachylo, who notes that information relations arise as a subject of civil, administrative, criminal law as "derived from information law, because there they arise from liability for those offenses, the source of which is formed in the field of information law." [2]. In this regard, the establishment of the content of information relations, allows you to create an effective mechanism for their regulation and protection.

In the system of legal support of information circulation the institute of criminal responsibility acquires special value which acts as an effective means of protection and protection of information legal relations and is directed on struggle against criminal offenses in the information sphere. Protection of information relations from the standpoint of criminal law was studied by: M.V. Karchevsky (criminal-legal protection of information security), N.A. Savinova (criminal-legal support of information society development), O.K. Tugarova (criminal-legal support of information protection relations) and others.

2. Theoretical Consideration

Mainly informational relations subject to criminal law protection were considered in the context of protection against information leakage. This position reflects the preemptive right of the state to protect information rights, as it is associated with the protection of state secrets. As M.V. Karchevsky rightly notes, this situation does not meet the social trends of informatization and the resulting needs in the legal regulation and protection of public relations [4]. The researcher notes that the subject is in a state of information security when the effectiveness of its activities is provided with complete, reliable and sufficient information for decision-making [4].

Threats of harm to information relations to be neutralized by legal means, in particular criminal law, if there is a sufficient degree of potential public danger of

harm through informational influence or information. Crimes against information security significantly violate the order of interaction of the subjects of information relations (individual, society, state), which leads to socially dangerous consequences (threat of their occurrence) in the form of significant harm to individual interests or state or public interests.

From the point of view of criminal law, information interaction, which is realized within the framework of information relations, involves interaction with the use of information as a means of communication of the subjects of information relations. Based on the above, the category of "information" in the criminal law aspect should be defined not through attributive or objective, but functional-cybernetic definition, when the concept of information is associated only with man (subject), including man-made environment [3].

The defining component of the information sphere is the information relations, which reflect the formed communicative connections of the society regarding the realization of the existing information needs. These needs are aimed at gaining unhindered access to information resources, obtaining quality information services, ensuring proper protection of information.

Information legal relations are a kind of legal relations, due to which they have all the structural elements of the latter: the subject, object and content. However, information relations are a special type of relationship that arises, changes and terminates in the process of implementing the regulated law of information activities: creation, collection, receipt, storage, use, dissemination, protection and defense of information. Violation of the procedure established by law for the implementation of the main types of information activities is the basis for the emergence and occurrence of legal liability, including criminal liability. Criminal law prohibition protects not information but information relations. Under the threat of criminal punishment, a guilty socially dangerous information act related to the circulation of information is prohibited, while the information itself can hardly be characterized as socially dangerous, harmful (harmful), prohibited, illegal. Socially dangerous, harmful, illegal, prohibited is an act committed with the use of information. Moreover, the categories of "public danger" and "harmfulness" of the action are one-order, different in the significance of the damage (damage). Public danger always presupposes the presence of harm, while harm as an opportunity or real task of harm to information relations may not create public danger as a sign of criminal encroachment.

According to paragraph 1 of Article 1 of the Criminal Code of Ukraine, the tasks of the Criminal Code in our

country are defined: ensuring peace and security of mankind, as well as crime prevention.

To accomplish this task, the Criminal Code of Ukraine determines which socially dangerous acts are crimes and which punishments are applied to the perpetrators.

Depending on the content of information protected by the Criminal Code of Ukraine, and the subjects covered by the obligation to ensure their protection and defense, among the grounds of criminal liability are crimes that infringe on the established procedure for state secrets, professional secrets, personal secrets life, banking and trade secrets, investigative secrets and other secrets protected by law. Crimes in the field of circulation of information that constitute a state secret are contained in various sections of the Special Part of the Criminal Code of Ukraine, but common to them is the subject of criminal encroachment - information in defense, economics, science and technology, foreign relations, state security and law enforcement. Disclosure of which may harm the national security of Ukraine and which are recognized in the manner prescribed by this law, a state secret and subject to state protection [5].

In the system of criminal offenses that encroach on the statutory procedure for the circulation of information with limited access, it is necessary to distinguish crimes, the subject of which is information that constitutes the content of professional secrecy. Representatives of certain professions (lawyers, journalists, medical workers, notaries, etc.) are obliged to keep such information. The issue of trust is important in maintaining professional secrecy - a person who needs some professional help agrees to provide sensory for themselves information, waiting to keep it secret. She also expects that the information she provided can only be disclosed with her consent. At the same time, such information is provided during the exercise of a person's rights and freedoms. Therefore, the disclosure of confidential information will have the effect of restricting the rights of persons who will not be able to freely use the services of the relevant professions, if they do not have confidence in the security of information they transmit [6].

Public relations arising in the sphere of circulation information with limited access both in Ukraine and in foreign countries are protected by separate criminal law. Analysis of the legislation of foreign countries, which provides for criminal liability for these encroachments gives reason to believe that crimes, the subject of which is information with limited access, depending on the owner of the information can be divided into two groups. The first group should include crimes, the subject of which is recognized as information that is the property of

the state. The second group will be crimes involving information owned by individuals and non-state legal entities.

State secret is defined as a type of classified information that includes information in the field of defense, economics, science and technology, foreign relations, state security and law enforcement, disclosure of which may harm the national security of Ukraine and recognized in accordance with the Law of Ukraine "On State secret", a state secret and subject to protection by the state. Article 328 of the Criminal Code of Ukraine provides for liability for disclosure of state secrets. One of the main features of the crime provided for in this article is the subject of this crime - information that is a state secret.

The conclusion on whether specific information disclosed is a state secret is provided, in accordance with the law, by a state expert on secrets. It also determines the degree of secrecy of such information and formulates a conclusion on the harm to Ukraine's national security in the event of its disclosure. Thus, it is not the stamp of secrecy that is decisive, but the real content of information - whether or not its disclosure causes harm to Ukraine's national security in one area or another. Therefore, in all cases of encroachment on the protection of state secrets, it is necessary to have the opinion of the State Expert on Secrets, who is personally responsible for the legality and validity of his decision to classify information as a state secret. This conclusion should be clearly stated, avoiding ambiguity, and indicate the degree of confidentiality of the information being assessed, the existence of harm to national security in the event of disclosure of such information, as well as a reference to a specific point of the Code and the relevant detailed list. classification of information as a state secret.

Liability under Article 328 of the Criminal Code of Ukraine arises regardless of the nature of the information constituting a state secret that has been disclosed (except for information in the field of defense in some cases). This is important only to establish the severity of the damage, ie the degree of public danger of the crime and can be taken into account by the court in deciding whether to impose a specific sentence on the perpetrator. Thus, in the definition of state secrets there are the following features:

- 1) limited access to state secrets as a type of secret information, ie information that constitutes such a secret is subject to classification (restriction of their distribution and access to their material media);
- 2) the significance and importance of such information in a certain period of time for the interests of the state, ie in the case of disclosure of state secrets to the national

security of Ukraine may cause significant damage (material criterion);

- 3) a clear definition of areas in which there may be state secrets (defense, economics, science and technology, foreign relations, state security and law enforcement);

- 4) the provision of information constituting a state secret by law, ie establishing a list of such information in a special legal act - the Code, on the basis of and within which detailed lists of information constituting a state secret are created (formal criterion);

- 5) protection of such classified information by the state, ie the establishment on the basis of current legislation of a single procedure for ensuring the protection of such information by state legal means [8].

Therefore, characterizing the characteristics of the subject of disclosure of state secrets, it should be noted that criminal liability for disclosure of state secrets under the direct direction of the law are only those persons to whom specific classified information was entrusted or became known in connection with official duties . In other words, it is a special subject of the crime.

Thus, criminal liability for disclosure of information constituting a state secret is subject to a natural sane person who has reached the age of 16 at the time of the crime and has or had access to a state secret, as well as a written commitment to preserve (non-disclosure) classified information, trusted or known in connection with the performance of official duties.

That is, the subject of the crime, which provides for Art. 328 of the Criminal Code of Ukraine, is a special subject, as it must be a person to whom information was entrusted or became known in connection with the performance of official duties [7]. In addition, servicemen and persons equated to them for disclosing non-military information constituting a state secret entrusted to them or known to them in connection with their service and performance of their duties shall also be liable under Article 328. Of the Criminal Code of Ukraine. Although there is no direct indication of this category of persons in the text of the law, their official position indicates that they are also special entities. However, if a serviceman discloses a state secret of a military nature, his actions in the absence of signs of treason should be qualified under Art. 422 of the new Criminal Code of Ukraine. It is worth agreeing with L.F. Daderko, who notes that discharged or demobilized servicemen for disclosing any information that is a state secret are liable under Art. 328 of the Criminal Code of Ukraine [9]. Disclosure of information constituting a state secret, in the event that such information became known due to violation of the secrecy of correspondence,

additional qualifications under Art. 163 of the Criminal Code of Ukraine is not required.

Crimes in the field of circulation of information constituting the content of privacy are contained in Section V of the Special Part of the Criminal Code of Ukraine and establish responsibility for the disclosure of information that constitutes the content of the secrecy of correspondence (correspondence, telephone conversations, telegraph and other correspondence), the secrecy of adoption, the secrecy of the ballot. The illegal nature of these actions is expressed in the disclosure of certain information, illegal access to information that constitutes the content of the secret, oral or written communication of information, and so on.

In the doctrine of criminal law there is no unity of opinion on the definition of the content of "personal secret". Generalized is the definition proposed by O.V. Sosnina, according to which personal secrecy is legally protected information (information) about the private life of a person who is outside the public interest and which a person wishes to keep unknown to others, to whom he makes confidential. due to the fact that their disclosure may harm its private (personal) interests [10]. In this case, personal secrets in some cases may become professional secrets, as noted by some researchers. Therefore, it seems logical that some of the secrets of private life entrusted to representatives of certain professions in the Criminal Code of Ukraine are protected by independent *corpus delicti*, for example, medical secrecy (Articles 132, 145 of Ukraine).

In view of the above, King I.B. cited generalized features of personal secrecy, in particular:

- 1) it is information about the person, his thoughts and actions;
- 2) the person himself establishes the legal regime of their distribution, they are not subject to general disclosure;
- 3) their disclosure in any case may harm the rights and interests of the person (persons) to whom they relate;
- 4) this information relates to the exercise of personal non-property and property rights that are inextricably linked to the person;
- 5) it is information about a person who can be specifically identified [11].

Finding the subjects of information relations in a safe or secure state are different aspects of their existence. Their security is ensured through their regulation and protection (protection) by organizational, legal and technical means.

The real effectiveness of information relations depends on the extent to which they will be provided with legal remedies in general and criminal law protection in particular [12]. Criminal remedies for such relations are the last "argument" in the mechanism of their legal

protection. The emergence of new opportunities for the use of information in the development of informatization processes entails the need to identify new types of socially dangerous information acts, taking into account the analysis of challenges, risks, threats, dangers in the information sphere, defining criteria for criminalization of information acts. using the possibilities of criminological forecasting [11].

Conclusions

The analysis of the current criminal legislation showed that the institution of criminal liability is an effective legal means of ensuring the protection and protection of information relations, which reflect the existing communication links of society to meet existing information needs. Within the framework of this article, it is impossible to fully consider all the features of the crimes that affect the criminal-legal assessment of this act.

According to the norms of criminal law, it can be concluded that the system of norms on protection of information relations in the current criminal law should be understood as a set of norms established by the Criminal Code to protect the privacy of individuals, privacy of legal entities and public secrecy. order depending on the object of criminal encroachment.

It is inexpedient to allocate a special *corpus delicti* provided for in Article 422 of the Criminal Code of Ukraine, which creates excessive competition in criminal law and does not improve the quality of the Criminal Code of Ukraine and the practice of its application.

Today, domestic criminal law contains a significant number of regulations that determine the grounds for the occurrence and occurrence of liability for violation of the statutory procedure for the creation, collection, receipt, storage, use, dissemination, protection and protection of information.

Finally, it should be noted that the protected information is only a small part of the information resource that is the subject of criminal law regulation. Criminal law is designed to protect both the information itself from unauthorized dissemination, and to protect subjects from "harmful" information.

References

- [1] Zadorozhnia H., Mykhtunenko A., Kuryliuk Y. et al. (2021). Protection of Information Sovereignty as an Important Component of the Political Function of the State. *International Journal of Computer Science and Network Security*. Vol. 21. No. 9. pp.151–154.

- [2] Iasechko S., Kuryliuk Y., Nikiforenko V. et al. (2021). Features of Administrative Liability for Offenses in the Informational Sphere. *International Journal of Computer Science and Network Security*. Vol. 21. No.8. pp. 51–54.
- [3] Kushnir I., Kuryliuk Y., Nikiforenko V. et al. (2021). Current Problems of Criminal Law Protection of Information Relations in Border Sphere. *International Journal of Computer Science and Network Security*. Vol. 21. No. 11. pp. 171–176.
- [4] Karchevskii, M. V. (2012) On the issue of determining information security as an object of criminal law protection. *Fight against organized crime and corruption (theory and practice)*. Issue. 1. pp. 267–272.
- [5] On state secrets: Law of Ukraine of January 21, 1994 № 3855– XII // *Bulletin of the Verkhovna Rada of Ukraine*. - 1994 - № 16. - p. 93
- [6] Golovenko R., Kotlyar D., Nesterenko O. (2012) *Law of Ukraine "On Access to Public Information": Scientific and practical commentary (publication initiated by the Volume of the Verkhovna Rada of Ukraine on Freedom of Speech and Information and recommended for use in administrative and judicial practice) / - K.: Center for Social Media Foundation 335 p.*
- [7] Baulin Y., Borisov V., Tyutyugin B. et al. (2010) *Criminal law of Ukraine: special part: textbook /*. Kharkiv: Pravo. 608 p.
- [8] Shamsutdinov O. (2001) Responsibility for disclosure state secrets under the new Criminal Code Ukraine. *Legal, regulatory and metrological failure to ensure the information protection system in Ukraine*. № 2. p. 21–25
- [9] Daderko L. (2013) Criminal liability for disclosure of state secrets // *Scientific Bulletin of the International Humanities University. Jurisprudence series*. № 6-2. T. 2. p. 82–85.
- [10] Sosnina O. (2015) The concept of the subject of the crime under Art. 182 of the Criminal Code of Ukraine // *Theory and Practice: National Legal Journal*. № 5. Ch. 2. p. 64–68
- [11] Korol I. (2014) Problems of classification of confidential information about a person subject to criminal law protection // *Current issues of state and law*. p. 371–378.
- [12] Tetiana Kronivets, Yelyzaveta Tymoshenko, Oksana Diachenko et al. (2021) Artificial intelligence as a key element of digital education / *IJCSNS International Journal of Computer Science and Network Security*,