

ABSTRACT

The scientific article deals with study of certain issues of the methodology of investigation of criminal offenses against morality. The authors emphasize the mandatory inclusion in this structure of such an element as the preventive activities of authorized persons.

It is noted that the preventive function should be performed regardless of the service where a law enforcement officer works and his position. Emphasis is placed on the fact that previously the Criminal Procedure Code of Ukraine directly obliged the investigator to take a number of measures to eliminate the causes and conditions of illegal actions. Unfortunately, at the moment there is no such rule. The authors point out that, in their opinion, the authorized persons conducting the pre-trial investigation should find opportunities to do at least a minimum to prevent this category of criminal offenses. After all, the position of morality is the basis for both the legal support of the state and the normal functioning of society as a whole.

It is pointed out that the criteria for the effectiveness of criminal law of the investigated acts is the correct definition of social need, which passes different levels as a result of the analysis of the effectiveness of a number of rules on liability. Yes, it can range from random single facts of criminal offenses to objective necessity, as well as an adequate understanding of the social need to correctly determine the nature of public relations subject to criminal protection.

The most characteristic measures of prevention of the investigated category of illegal actions by divisions of National police of Ukraine are defined, in particular: realization of educational influence by divisions on minors and minors by propaganda of nonviolence and observance of public morality; implementation by units of preventive influence on citizens; organization of discussions in the print media on topical issues of morality.

Keywords: *criminal offense, prevention, morality, investigative techniques, investigative (search) actions, planning of the investigation.*

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ADMINISTRATIVE AND LEGAL MECHANISMS OF RESTRICTION OF CITIZENS' RIGHTS TO INFORMATION IN THE INTEREST OF NATIONAL SECURITY

Сергій Кудінов, Тетяна Шинкар. АДМІНІСТРАТИВНО-ПРАВОВИЙ МЕХАНІЗМ ОБМЕЖЕННЯ ПРАВ ГРОМАДЯН НА ІНФОРМАЦІЮ В ІНТЕРЕСАХ НАЦІОНАЛЬНОЇ БЕЗПЕКИ. Зроблено висновок, що завдяки прийняттю закону «Про санкції» ми можемо казати про існування поряд з судовим порядком обмеження прав громадян на інформацію, через анулювання ліцензії на мовлення, адміністративно-правового механізму. Для визначення адміністративно-правового механізму обмеження прав громадян на інформацію в інтересах забезпечення національної безпеки потребують вивчення такі його елементи як організаційно-

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правовий та нормативно-правовий. Визначено, що нормативно-правова складова включає нормативно-правові акти міжнародного та національного рівня, які обмежують право особи на інформацію, а організаційно-правова – систему державних органів, що мають повноваження обмеження права особи на інформацію і мають право застосовувати відповідні правові форми, засоби та методи обмеження. Нормативну основу механізму адміністративно-правового обмеження прав громадян на інформацію в інтересах національної безпеки становлять закони, що встановлюють порядок обмеження доступу до інформації та підзаконні акти, які їх реалізують. Організаційно-правовий елемент механізму адміністративно-правового обмеження прав громадян на інформацію в інтересах національної безпеки включає діяльність уповноважених органів державної влади, які за допомогою своїх владних повноважень здійснює обмеження прав громадян на інформацію в інтересах національної безпеки. Визначено, що це такі державні органи як Рада національної безпеки та оборони України, Верховна Рада України, Президент України, Кабінет Міністрів України, Національний банк України, Служба безпеки України. Правовою формою реалізації адміністративно-правового механізму обмеження прав громадянина на інформацію в інтересах національної безпеки виступають укази Президента України. Адміністративно-правове обмеження прав громадян на інформацію в інтересах національної безпеки можливе і в умовах воєнного або надзвичайного стану та при виникненні кризових ситуацій, що загрожують національній безпеці України. Виникнення такої кризової ситуації можна назвати спеціальним адміністративно-правовим режимом, який потребує застосування адміністративних заходів схожих до тих, що використовуються в умовах надзвичайних та воєнних ситуацій. Зроблено висновок, що впровадження адміністративно-правового механізму обмеження прав громадянина на інформацію в інтересах забезпечення національної безпеки, створює тонку межу між зловживанням державою правом на обмеження прав громадян та можливістю громадян повноцінно реалізувати свої права.

Ключові слова: механізм, механізм обмеження прав громадян, національна безпека, право на інформацію, адміністративно-правовий механізм обмеження прав на інформацію, санкції.

Relevance of the study. According to the Law of Ukraine «On National Security of Ukraine» of June 21, 2018 and the National Security Strategy of Ukraine «national security» is considered today as defining the protection of state sovereignty, territorial integrity, democratic constitutional order and other national interests of Ukraine from real and potential threats [1]. Currently, the main threat to national security is posed by the Russian Federation, especially in the information sphere. This forced the National Security and Defense Council of Ukraine to take a number of decisions on the application of personal special economic and other restrictive measures (sanctions), which are put into effect by the President of Ukraine. These decisions, in particular by the state, apply such sanctions as the restriction or termination of the provision of telecommunications services and the use of public telecommunications networks. Thus, along with the judicial restriction of the human right to information by public authorities, an administrative-legal mechanism is applied, which requires a detailed study of both theoretical and practical aspects.

Recent publications review. It is important to note that, despite the exceptional importance and urgency of national security, domestic and foreign science has not paid enough attention to the development of administrative and legal mechanisms to restrict citizens' rights to information in the interests of national security, which indicates significant gaps in current legislation.

At the same time, in the legal scientific literature of theoretical and methodological nature, many ideas and well-founded provisions related to this issue are concentrated. Theoretical aspects of the essence of the mechanism of restriction of human and civil rights are devoted to the works of such legal scholars as O. Andrievska, A. Ashikhmyna, K. Volynka, O. Dubov, O. Kuznetsova, L. Letnyanchyn, A. Marushchak, A. Mernyk, S. Pchelintsev, I. Savenkova, M. Savchyn, B. Sydorets, O. Skrypniuk, V. Sorokun, T. Slinko, E. Tkachenko, O. Todyka, S. Shevchuk, V. Shelomentsev and others.

Despite the significant theoretical basis for the study of national security activities, the essence of the administrative and legal mechanism of restricting the rights of citizens to information in the interests of national security is insufficiently disclosed. Therefore, this issue requires further research.

The research paper's objective based on the relevance and significance of the problem, is to determine the administrative mechanisms for restricting the rights of citizens to information in the interests of national security.

To achieve this goal, the following tasks were set:

– to define the essence and normative content of the concept of the mechanism of administrative and legal mechanism of restriction of citizens' rights to information in the

interests of national security; citizens' rights to information in the interests of national security,
– to analyze the types of information and legal mechanisms for restricting the rights of citizens to information in the interests of national security;
– to identify ways to improve administrative and legal mechanisms information in the interests of national security.

Discussion. The Law of Ukraine «On Sanctions» of August 14, 2014 № 1644-VII, provides that in order to: protect national interests, national security, sovereignty and territorial integrity of Ukraine, counter terrorist activity, as well as prevent violations; special economic and other restrictive measures may be applied to restore the violated rights, freedoms and legitimate interests of the citizens of Ukraine, society and the state. Sanctions may be applied by Ukraine against a foreign state, a foreign legal entity, a legal entity under the control of a foreign legal entity or a non-resident individual, foreigners, stateless persons, as well as entities engaged in terrorist activities [2]. Due to the adoption of such a law, we can talk about the existence along with the court of restrictions on the rights of citizens to information through the revocation of the broadcasting license, the administrative and legal mechanism.

If we talk about the mechanism of restricting the rights of citizens to information in the interests of national security in general, it is a statutory regime of temporary general or individual suspension or narrowing of human and civil rights to information, which is carried out by specially authorized subprojects to protect state sovereignty, territorial integrity, democratic constitutional order and other national interests of Ukraine from real and potential threats and organizational and legal principles of restriction of human and civil rights are also provided by the norms of various branches of law, we can talk about the existence of sectoral mechanisms to limit the rights of citizens to information. In the information and legal sphere, it is an administrative and legal mechanism for restricting citizens' rights to information, an economic and legal mechanism for restricting citizens' rights to information, a civil law mechanism for restricting citizens' rights to information, and so on.

In order to define more broadly the administrative-legal mechanism of restricting the rights of citizens to information in the interests of national security, it is necessary to study such elements as organizational-legal and normative-legal. The normative-legal component includes normative-legal acts of international and national level, which limit the person's right to information, and organizational-legal – the system of state bodies that have the authority to restrict the person's right to information and have the right to use appropriate legal forms, means and restriction methods. Thus, to determine the mechanism of administrative and legal restriction of citizens' rights to information in the interests of national security requires the study of each of these elements.

Establish a single procedure for regulating public relations in the field of restricting the rights of citizens to information in the interests of national security by creating, amending or repealing legal norms.

The normative basis of the mechanism of administrative and legal restriction of citizens' rights to information in the interests of national security is such legal acts as the Constitution of Ukraine, Laws of Ukraine «On Access to Public Information» of January 13, 2011 № 2939-VI, «On Information» of 2 October 1992 № 2657-XII, «On Sanctions» August 14, 2014 № 1644-VII, «On the Legal Regime of the State of Emergency» March 16, 2000 № 1550-III, «On the Legal Regime of Martial Law» May 12, 2015 № 389-VIII, «On Television and Radio Broadcasting» of December 21, 1993 № 3759-XII, etc.

Due to the fact that along with the judicial method of restricting the rights of citizens to information in the interests of national security, the Law of Ukraine «On Sanctions» provided in parallel an administrative and legal mechanism implemented by the National Security and Defense Council of Ukraine and are put into effect by a decree of the President of Ukraine. Therefore, a number of bylaws were adopted, such as Presidential Decrees «On the decision of the National Security and Defense Council of Ukraine of March 19, 2019 «On the application, abolition and amendment of personal special economic and other restrictive measures (sanctions)» № 82/2019, «On the decision of the National Security and Defense Council of Ukraine of June 18, 2021 «On the application of personal special economic and other restrictive measures (sanctions)» № 266/2021, «On the decision of the National Security and Defense Council of Ukraine of May 14, 2021 «On the application of personal special economic and other restrictive measures (sanctions)» №203 / 2021, «On the decision of the National Security and Defense Council of Ukraine of June 18, 2021 «On the application of personal special economic and other restrictive measures (sanctions)» № 265/2021, «On the decision of

the National Security and Defense Council of Ukraine of March 19, 2021 «On the Application and Amendment of Personal Special Economic and Other Restrictive Measures (Sanctions)» № 151/2021, etc. Under martial law, the decree of the President of Ukraine «On the Imposition of Martial Law in Ukraine» on November 26, 2018 № 393/2018.

Thus, the normative basis of the mechanism of administrative and legal restriction of citizens' rights to information in the interests of national security are the laws establishing the procedure for restricting access to information and by-laws that implement them.

The organizational and legal element of the mechanism of administrative and legal restriction of citizens' rights to information in the interests of national security includes the activities of authorized public authorities which, through their powers, restrict citizens' rights to information in the interests of national security and have the right to apply legal forms, means and methods of restriction.

Administrative and legal restriction of citizens' rights to information in the interests of national security is possible under certain conditions: 1) restriction of citizens' rights to information in the interests of national security can not be absolute, and therefore should have chronological, substantive and absolute boundaries; 2) restriction of citizens' rights to information in the interests of national security is possible only in a manner clearly defined by law; 3) restriction of the rights of citizens to information in the interests of national security is carried out only by subjects authorized to do so by law; 4) restriction of citizens' rights to information in the interests of national security should always be a temporary measure imposed in exceptional cases, such as martial law or state of emergency and in the event of crisis situations threatening Ukraine's national security.

Thus, administrative and legal restriction of citizens' rights to information in the interests of national security is possible both in a state of war or emergency, and in the event of crises that threaten the national security of Ukraine. In conditions of martial law or state of emergency, certain restrictions on rights and freedoms may be established, indicating the term of these restrictions. The rights and freedoms provided for in Articles 24–25, 27–29, 40, 47, 51–52, 55–63 of the Constitution of Ukraine may not be restricted [3].

The subjects that have the authority to impose a state of emergency are the Verkhovna Rada of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine, the National Security and Defense Council of Ukraine. Decrees of the President of Ukraine are the legal form of conducting a state of emergency and martial law. Thus, a state of emergency in Ukraine or in certain localities is imposed by a Decree of the President of Ukraine, which is subject to approval by the Verkhovna Rada of Ukraine within two days from the date of the President of Ukraine. Proposals for the imposition of a state of emergency in Ukraine or in certain localities shall be submitted to the President of Ukraine by the National Security and Defense Council of Ukraine. If it is necessary to introduce a state of emergency on the grounds provided by the Law of Ukraine «On State of Emergency», proposals for its introduction are submitted by the Cabinet of Ministers of Ukraine [4]. Proposals to impose martial law in Ukraine or in certain localities shall be submitted to the President of Ukraine for consideration by the National Security and Defense Council of Ukraine. In case of a decision on the need to impose martial law in Ukraine or in certain localities, the President of Ukraine issues a decree on the imposition of martial law in Ukraine or in certain localities and immediately applies to the Verkhovna Rada of Ukraine for approval and simultaneously submits a draft law [5].

During the introduction of special administrative and legal regimes, public authorities are allowed to additionally apply administrative measures in the form of banning or restricting the broadcasting of television and radio channels. Thus, the legal regime of the state of emergency in connection with mass violations of public order, provides for the application of such additional measures as regulating the work of civilian TV and radio centers, banning amateur radio and radio emitting devices for personal and collective use and special rules for communication and transmission of information via computer networks [4]. Measures of martial law provide for the use of the following means of restricting the right of access to information: the media, as well as the use of local radio stations, television centers and printing presses for military purposes and outreach to the military and the public; prohibit the operation of radio transmitting and transmitting stations for personal and collective use and the transmission of information via computer networks; 2) in case of violation of the requirements or non-compliance with the measures of martial law in the manner prescribed by the Cabinet of Ministers of Ukraine, to seize from enterprises, institutions and organizations of all forms of ownership, individual citizens telecommunications equipment, television, video and audio

equipment, computers and if necessary, other technical means of communication; 3) take additional measures to strengthen the protection of state secrets [5].

Along with special administrative and legal regimes during the state of emergency and martial law, in peacetime there are crisis situations that threaten the national security of Ukraine. According to the Law of Ukraine «On National Security of Ukraine» threats to national security of Ukraine are phenomena, trends and factors that make it impossible or difficult or may make it impossible or difficult to implement national interests and preserve national values of Ukraine [1]. The emergence of such a crisis situation can also be called a special administrative and legal regime, which requires the application of administrative measures similar to those used in emergencies and military situations.

Revocation of a broadcasting license shall be carried out by the National Council on Television and Radio Broadcasting in the cases provided for by this Law. Sanctions for violation of the legislation on television and radio broadcasting are applied by a court decision or, in cases established by this Law, by a decision of the National Council [6]. In case of violation of the legislation on television and radio broadcasting by other legal or natural persons, the National Council shall apply to a court or other public authorities to eliminate these violations in the manner prescribed by law. The National Council may apply the following sanctions to broadcasters and program service providers: announcement of warnings; collection of a fine; revocation of the license on the basis of a court decision at the suit of the National Council [6].

The measure of responsibility and appropriate sanctions for violations of the legislation on television and radio broadcasting shall be established by a court. The National Council revokes the broadcasting license on the basis of a court decision revoking the broadcasting license. The National Council may apply to the court for revocation of the broadcasting license on the basis of: a) the fact of transferring the license to another legal or natural person-non-licensee for the purpose of conducting information activities; b) the fact of late submission of the application for renewal of the license in connection with organizational changes in the status and conditions of the licensee; c) the fact of non-compliance with orders to eliminate violations of the law and licensing requirements; d) the fact of the licensee's refusal to inspect its activities by the employees of the National Council in accordance with the requirements of the legislation of Ukraine; e) the fact of non-compliance of the licensee with the requirements of Article 12 of the Law «On Television and Radio Broadcasting» requirements for the establishment of television and radio organizations, limitation of ownership of foreign individuals and legal entities in the share capital of the television and radio organization. After the adoption of the Law of Ukraine «On Sanctions», a mechanism of administrative and legal restriction of the right to information appeared due to the closure of broadcasting of television and radio companies that threaten national security. According to the Law of Ukraine «On Sanctions», proposals for the application, lifting and amendment of sanctions are submitted to the National Security and Defense Council of Ukraine by the Verkhovna Rada of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine, the National Bank of Ukraine, the Security Service of Ukraine [2]. The decision to apply, lift and amend sanctions against a foreign state or an indefinite number of persons of a certain type of activity (sectoral sanctions) is made by the National Security and Defense Council of Ukraine, enacted by decree of the President of Ukraine and approved within 48 hours. resolution of the Verkhovna Rada of Ukraine. The relevant decision enters into force upon adoption of the resolution of the Verkhovna Rada of Ukraine and is binding [2].

Thus, the organizational and legal element of the mechanism of administrative and legal restriction of citizens' rights to information includes such state bodies as the National Security and Defense Council of Ukraine, the Verkhovna Rada of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine, the National Bank of Ukraine, the Security Service of Ukraine.

The legal form of implementation of the administrative and legal mechanism for restricting the rights of citizens to information in the interests of national security are decrees of the President of Ukraine, which impose such sanctions as: 1) revocation or suspension of licenses and other permits; a condition for carrying out a certain type of activity, in particular, revocation or suspension of special subsoil use permits; 2) ban on the use of radio frequency resources of Ukraine; 3) restriction or termination of the provision of telecommunications services and the use of public telecommunications networks [2].

Conclusions. The practice of applying the administrative and legal mechanism of restricting

the rights of citizens to information in the interests of national security in Ukraine is only being developed, including through its critical analysis, in particular by the UN Human Rights Monitoring Mission in Ukraine, which concluded that the decision to close three news channels that are perceived as pro-Russian does not meet international human rights standards [7].

The introduction of an administrative and legal mechanism to restrict the rights of citizens to information in the interests of national security, creates a fine line between the state's abuse of the right to restrict the rights of citizens and the ability of citizens to fully exercise their rights. As the Constitutional Court of Ukraine has rightly pointed out, such restrictions must be exceptions provided by law, pursue one or more legitimate aims and be necessary in a democratic society. In case of restriction of the right to access information, the legislator is obliged to introduce such legal regulation, which will allow to optimally achieve a legitimate goal with minimal interference in the exercise of this right and not to violate the essential content of such right [8]. Only an in-depth study of this issue will help achieve one of the goals of the National Strategy in the field of human rights, namely: to ensure freedom of the media, including, inter alia, freedom of editorial policy, transparency of information on media ownership and funding [9].

One of the directions of development of the legal institute of administrative-legal mechanism of restriction of citizens' rights to information is introduction of criminal-legal restrictions of citizens' rights to information due to adoption of one of bills on collaboration (bills № 2549 from 06.12.2019, № 5144 from 24.02.2021, № 5135 from 23.02.2021), public and expert discussion of which is still ongoing.

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ABSTRACT

It has been concluded that along with the court procedure there is a restriction of citizens' rights to information due to the revocation of the broadcasting license, an administrative and legal mechanism. The normative basis of the mechanism of administrative and legal restriction of citizens' rights to information in the interests of national security is determined. The organizational and legal element of the mechanism of administrative and legal restriction of citizens' rights to information in the interests of national security is represented through the activities of authorized state authorities, which with the help of their powers restrict citizens' rights to information in the interests of national security.

Administrative and legal restrictions on the rights of citizens to information in the interests of national security are considered in a state of war or emergency and in the event of crises that threaten the national security of Ukraine.

Keywords: *mechanism, mechanism of restriction of citizens' rights, national security, right to information, administrative-legal mechanism of restriction of rights to information, sanctions.*

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ПРО МОДЕЛЬ ОБІГУ ЦИВІЛЬНОЇ ЗБРОЇ В УКРАЇНІ

Стаття присвячена актуальній проблемі – вибору моделі обігу цивільної зброї в Україні. Розглянуто важливі питання теперішнього стану правового регулювання окремих відносин дозвільної системи. Пропонуються основні критерії поділу відповідних моделей та власне визначення «цивільної зброї». Перелічені головні обставини, що впливають на вибір конкретної організаційної конструкції обігу зброї в нашій країні. Обґрунтовується необхідність запровадження в Україні дозвільної моделі обігу цивільної зброї з домінуванням імперативного методу впливу.

Ключові слова: *зброя, адміністративне право, цивільна зброя, модель обігу зброї, суспільні відносини, дозвільна система, імперативний метод.*

Постановка проблеми. Уся історія людства свідчить про існування його невід'ємного та безперервного зв'язку зі зброєю. Спочатку, у первісні часи, у якості неї використовувалося усе, що можна знайти під ногами, насамперед це палиця чи каміння, потім були відповідні вироби із бронзи, далі – залізні мечі, списи, наконечники для стріл тощо. Кардинальні зміни відбулися після винаходу пороху, наприкінці Середньовіччя

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