

THE MECHANISM OF ADMINISTRATIVE AND LEGAL FRAMEWORK OF THE RESTRICTED INFORMATION CIRCULATION, SECURITY

The paper deals with theoretical aspects of the mechanism of administrative and legal framework of the restricted information circulation, security. The author specified the content and the structure of this definition. In this paper it is defined the essence of procedures, tools and techniques by which the rule of law in the formation, security and protection of the restricted information is transformed into an ordered relationship.

Key words: restricted information, mechanism of administrative and legal framework, regulatory legal framework, legal relationship, legal means, legal fact.



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I. Introduction

There can be traced the lack of systematic research in the realities of the contemporary doctrine on the mechanism of administrative and legal framework of the restricted information circulation, security. This situation leads to the urgency of the chosen subject matter, makes it necessary to identify the legal nature and purpose of the mechanism of legal regulation in the system of means of the restricted information security and protection.

The restricted information will be considered in this study as the structure and the volume of the official information that was overhead created or received on a legal basis in the performance of one's duties, the access to which is restricted by the public authorities and other subjects of law in accordance with the law, the disciplinary statutes due to the service needs and which is not a subject to external or internal disclosure and use for one's own interest or the interest of others in the form of advice or recommendations (before, during the execution of the duty of service and after-service).

General theoretical problems of the mechanism of legal regulation and its components are analyzed in the scientific research of the scholars, such as R. Avdiuhin, S. Alekseev, E. Burlai, A. Denysova, A. Dudin, V. Isakov,

V. Nevolia, Yu. Tolstoi, R. Khalfina and others. The range of problems concerning the mechanism of administrative and legal framework (regulation) and its components is examined by K. Afanasiev, O. Yeshchuk, D. Holosnichenko, R. Zuev, Yu. Kozlov, M. Koziubra, T. Kolomoiets, Ya. Lazur, S. Lekar, V. Seregina and others. Special features of the mechanism of administrative and legal framework of the restricted information (in the internal affairs of Ukraine) are researched by H. Shloma.

The objectives of the paper are to define the essence of the mechanism of administrative and legal framework of the restricted information circulation, security, to identify its structure, to analyze its basic elements and the features of their implementation in the system-functional communication.

II. The essence of the mechanism of administrative and legal framework of the restricted information circulation and security

S. Alekseev interpreted the mechanism of legal regulation as taken in its unity the whole set of legal means by which legal impact is ensured on social relations (mechanism to ensure the effectiveness of legal regulation concerning the objective of borders, the “psychological mechanism” and the lawmaking, the implementation of law, in particular, the enforcement of the precepts of law; certain legal means and their specific functions). It is necessary to add that the organizational side of legal regulation covers lawmaking and law enforcement activities of the competent authorities the stages of which are the regulation of social relations, the effect of precepts of

law and legal relationship, the exercise of subjective legal rights and the performance of obligations [1, p. 30-31, 33, 34]. On the other hand, S. Lekar defines a state legal mechanism as an ordered set of interrelated elements of the state functions execution [2, p. 16].

R. Zuev explains that the mechanism of administrative and legal framework can be considered in the broad sense (the process of administrative and legal ensuring the rights and freedoms by the public administration) and in the narrow sense (structured interrelated set of legal and institutional means that are regulated by the public administration) [3, p. 50]. According to the position of O. Yeshchuk, the mechanism of administrative and legal regulation of security activities forms an integral set of administrative and legal means aimed at regulation of social relations, satisfaction of public legal interests of natural persons and legal entities, the subjects of public administration [4, p. 257]. The approach of H. Shloma on the mechanism of administrative and legal framework of the restricted information (in the internal affairs) is that the latter can be considered as a dynamic system of legal forms, means and measures to influence the behavior of subjects of law through the establishment of their rights and obligations with regard to the creation, transmission, using, storage, altering, destruction of confidential official information, action and interaction of which are aimed at preventing the breach of restricted information mode and/or its restoration in case of violation [5].

Hence, the mechanism of administrative and legal framework of the restricted information circulation, security

can be understood in the broad sense as the process of administrative and legal ensuring the rights, freedoms and lawful interests of individuals and the public, the rights and legitimate interests of legal entities by the public administration with regard to the creation, capturing, storage, using, transmission, altering, destruction of the restricted information (applies to lawmaking and law enforcement activities of the competent authorities the stages of which are the regulation of social relations, the effect of precepts of law and legal relationship, the exercise of subjective legal rights and the performance of obligations); in the narrow sense, as a set of techniques (ways and means), procedures (measures) and tools (legal forms, acts), and methods inter-, action of which is aimed at preventing the breach of restricted information mode and/or its restoration in case of violation by which the rule of law in the scope of formation, security and protection of the restricted information is transformed into an ordered relationship.

Furthermore, the functional purpose of the elements of the mechanism of administrative and legal framework of the restricted information circulation, security is that the public authorities and other subjects of law because of a need restrict the access to the appropriate structure and volume of the official information received on a legal basis in the performance of the official duties in accordance with the law, the disciplinary statutes, and instrumental purpose (structurally organizing) refers to the fact that the restricted information as an information with restricted access (a form of expression of intellec-

tual analytical-synthetic and/or heuristic human activities during the execution of the duty of service and after-service in the form of data, signals, messages, etc.) is not a subject to external or internal disclosure and use for one's own interest or the interest of others in the form of advice or recommendations.

III. The structure of the mechanism of administrative and legal framework of the restricted information circulation and security

S. Alekseev points out that the components of the mechanism of legal regulation which form the integral unity are the basic terms (precepts of law, legal acts, acts of the exercise of subjective legal rights and the performance of obligations) and also normative legal acts, legal awareness and legal culture; additional terms (individual provisions aimed at casual regulation of social relations, acts of the government and the public aimed at power compulsory performance of legal obligations covering jurisdictional acts and acts of state bodies) [1, p. 34–38]. S. Lekar identifies the functional structure of the state and legal mechanism as the mechanism of realization, protection, defense and recovery [2, p. 16].

In accordance with the approach of H. Shloma, the components of the mechanism of administrative and legal framework of the restricted information (in the internal affairs) are: 1) precepts and acts of law; 2) individual legal documents; 3) legal facts; 4) information environment in which there is a legal relationship; 5) goals and the objectives that reflect the interests of Ukraine to provide police restricted information;

6) principles of the mechanism; 7) subjects that enter into the relations; 8) subjective rights and legal obligations; 9) items covered by the restricted information mode (storage media); 10) means, ways and methods to maintain the restricted information which are determined by the threats; 11) responsibility in the scope of compliance with the restricted information mode [5].

O. Yeshchuk takes the view that the constituent components of the above-mentioned mechanism are the administrative precepts of law, administrative and legal principles, administrative and legal relationship (covering subjects and objects of law, legal facts), administrative and legal regime (mode), individual acts, legal forms and means [4, p. 257–258].

Therefore, the basic components of the mechanism of administrative and legal framework of the restricted information circulation and security are the regulatory legal framework of this mechanism; the legal relationship in the scope of formation, security and protection of the restricted information; the legal means of formation, security and protection of the restricted information.

IV. The components of the mechanism of administrative and legal framework of the restricted information circulation and security: content

It is necessary to outline the regulatory legal framework of the relevant mechanism with regard to doctrinal approaches. For instance, E. Burlai states that target standards of social actors (state, political parties, corporations or organizations, etc.) to meet the social interests are expressed through the precepts of law [6, p. 30].

Consequently, the regulatory legal framework of the restricted information circulation, security within the aforementioned mechanism is a set of techniques (ways and means in its unity) by which legal interaction and legal status of subjects of a legal relationship are regulated through contained in the normative legal acts, compulsory, formally defined rules of conduct, and the prevention of the breach of restricted information mode and/or its restoration in case of violation is guaranteed.

The legal relationship in the scope of the restricted information circulation, security can be considered as administrative in essence because the public authorities and other subjects of law restrict the access to the appropriate structure and volume of the official information and establish a procedure for the circulation of such information and means to achieve it through a set of regulatory rules (mandatory requirements) and procedures (start the rules).

Regarding the respective legal relationship, Yu. Tolstoi believes that it is an intermediary link between the precepts of law and actual social relations that underpin them, performing a service role for the regulation of the latter [7, p. 22]. The researcher also highlights the prerequisites of the legal relationship as the precepts of law, legal capacity, legal fact [7, p. 87]. According to the approach of R. Khalfina, legal relationship represents the implementation of the precepts of law and the unity of manner and matter [8, p. 349]. Particularly, Ya. Lazur relates the subjects of the legal relationship (parties, participants), the content (subjective legal rights and obligations), the object, and the grounds for

legal relations (legal facts) to the structure of the legal relationship [9, p. 35].

Thus, the legal relationship in the scope of formation, security and protection of the restricted information is to be understood as a the intermediary link between the precepts of law and actual social relations, performing a service role for the regulation of the relationship in which public administration ensures the rights, freedoms and lawful interests of individuals and the public, the rights and legitimate interests of legal entities on the basis of specific legal facts concerning the creation, capturing, storage, using, transmission, altering, destruction of the restricted information with regard to the subjective legal rights and obligations of the subjects of the legal relationship.

Yu. Kozlov emphasizes that this administrative and legal relationship is primarily administrative, governmental, referring to the categories of power-subordination, centralism, interaction of the authorities with other subjects of law [10, p. 21, 76, 107, 108]. In addition, the position of K. Afanasiev on the current format of administrative and legal relationship concerns the categories of law and order, discipline, legitimacy, the constitutional principle of priority rights and freedoms of human and citizen [11, p. 23, 25].

In the scope of the restricted information circulation, security, the aforementioned legal relationship is the object of administrative and legal regulation concerning the creation, capturing, processing, storage, transmission, retrieval, security, destruction of the relevant official information as well as the formation and use of the information re-

sources that contain or use such information regarding the categories of law and order, legitimacy, discipline, the principle of priority of human and public rights, freedoms and lawful interests, rights and legitimate interests of legal entities.

Regarding the definition of the legal means of formation, security and protection of the restricted information, it is necessary to apply to general theoretical papers. R. Avdiuhin notes that legal means which are synthetic “compromise”, create common, guaranteed by the state and the public opportunities to strengthen positive regulatory factors and which also contribute to removing obstacles (negative factors) that occur during the ordering of social relations [12, p. 9]. A. Denysova interprets the relevant concept through the category of legal ways as legal phenomena that are reflected in the tools (provisions of law) and actions (technologies) [13, p. 190]. V. Nevolia identifies licensing, certification, control (supervision) and the actual supervision, legal liability among administrative and legal means [14, p. 75–76].

As a consequence, the legal means of formation, security and protection of the restricted information are the procedures (measures) and the tools (legal forms, acts) restricting access to the appropriate structure and volume of the official information by the public authorities and other subjects of law that establish a procedure for the circulation of such information and the means of its legal ensuring, namely, acts of public authorities and local self-government aimed at power compulsory performance of legal obligations; individual provisions aimed at casual regulation of social

relations; means of certification, licensing, security; punishment applied for the infringement of the legislation on the restricted information.

V. Final remarks

In conclusion, the mechanism of administrative and legal framework of the restricted information circulation, security applies two levels of understanding: in the broad sense, the process of administrative and legal ensuring the rights, freedoms and lawful interests of individuals and the public, the rights and legitimate interests of legal entities by the public administration with regard to the creation, capturing, storage, using, transmission, altering, destruction of the restricted information; in the narrow sense, a set of techniques (ways and means), procedures (measures) and tools (legal forms, acts), and methods inter-, action of which is aimed at preventing the breach of restricted information mode and/or its restoration in case of violation by which the rule of law in the scope of formation, security and protection of the restricted information is transformed into an ordered relationship.

The components of the mechanism of administrative and legal framework of the restricted information circulation, security are the following: the regulatory legal framework of this mechanism (a set of techniques, i.e. ways and means which are implemented through the precepts of law as a kind of social regulations); the legal relationship in the scope of formation, security and protection of the restricted information (legal facts, objects, subjects of the legal relationship, subjective legal rights, obliga-

tions and their implementation); the legal means of formation, security and protection of the restricted information (the procedures (measures) and the tools (legal forms, acts) to secure the restricted information, namely, acts of public authorities and local self-government aimed at power compulsory performance of legal obligations; individual provisions aimed at casual regulation of social relations; means of certification, licensing, security; punishment applied for the infringement of the legislation on the restricted information).

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Барікова А. Механізм адміністративно-правового забезпечення обігу, охорони службової таємниці.

У статті висвітлено теоретичний аспект механізму адміністративно-правового забезпечення функціонування й охорони службової таємниці. Автором з'ясовано зміст і структуру цього поняття. У роботі визначено сутність процедур, інструментів і прийомів, за допомогою яких норми права у сфері формування, охорони та захисту службової таємниці трансформуються в упорядковані правовідносини.

Ключові слова: службова таємниця, механізм адміністративно-правового забезпечення, нормативно-правове забезпечення, правовідносини, правові засоби, юридичний факт.

Барикова А. Механизм административно-правового обеспечения обращения, охраны служебной тайны.

В статье освещено теоретический аспект механизма административно-правового обеспечения функционирования и охраны служебной тайны. Автор установлено содержание и структуру этого понятия. В работе определена сущность процедур, инструментов и приемов, с помощью которых нормы права в сфере формирования, охраны и защиты служебной тайны трансформируются в упорядоченные правоотношения.

Ключевые слова: служебная тайна, механизм административно-правового обеспечения, нормативно-правовое обеспечение, правоотношения, правовые средства, юридический факт.

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