

Information relations as an object of criminal law protection in the information society

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Abstract: The rapid development of information and communication technologies and communication networks leads to an intensification of the circulation of information, an increase in the possibilities of its use for destructive purposes and an increase in the level of dangerous information acts. New threats are subject to identification and analysis to develop effective legal mechanisms to counter it. There is a need to criminalize new types of information acts, the social danger of which is due to the possibility of using digital or network technologies. Cyberstalking, cyberbullying, broadcasting an act containing signs of a crime on the Internet, promoting life-threatening and health-threatening behavior, including suicidal acts, are required to be established. There is a need to address the issues of correlation between digital reality and the content of the principles of operation of the criminal law in a circle of persons, in space and in time, and the development of the institution of complicity in a crime.

Keywords: information relations, object of criminal law protection, information society, information act.

1. Introduction

One of the relevant issues of combating crime in the modern globalizing information society is the question of determining effective means and methods of ensuring information security of the individual, society and the state. Information and communication technologies cause changes in the content of existing information relations and their development. Therefore, “the transformation of society into an information society generates new risks, challenges and threats that directly affect the issues of ensuring national security, including the security of the information space, information infrastructure, information systems and resources”².

Legal regulation of information relations should ensure its development, taking into account the needs of various subjects of these relations (individuals, legal entities, society, state, international community). Legal protection of information relations is aimed at preventing violations of the legal status of their subjects. Risks and challenges in the field of information relations should be

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² Resolution of the Security Council of the Republic of Belarus adopted 18.03.2019, No. 10 "Concept of information security of the Republic of Belarus [Electronic resource]", access date 09/04/2021.

prevented through the use of regulatory mechanisms, and threats should be blocked by legal means, including the possibility to use criminal legal means of prevention.

It is necessary to create effective legal guarantees for the implementation of human and civil rights and freedoms in the information sphere, on the one hand, and on the other, guarantees for ensuring the rights and freedoms of other persons, legal corporate, public interests in the exercise of information rights and freedoms by subjects of information relations. Accordingly, two groups of criminal law means can be distinguished that ensure free and safe information circulation: means creating guarantees for the implementation of human and civil rights and freedoms in the information sphere; means creating guarantees of ensuring the rights and freedoms of other persons, legal corporate, public interests in the exercise of information rights and freedoms by subjects of information relations. Criminal legal means of ensuring the first and second components of free and safe information circulation, which we spoke above, are the most repressive in the arsenal of the system of legal means, capable of significantly influencing the social and legal status of the subjects of information relations. They are an extraordinary tool for achieving socially useful goals through the establishment of bans under the threat of criminal law.

O. Makarov and A. Bankovskiy point out that „a lot of norms regarding responsibility for committing acts in the information sphere are not provided with positive norms that determine the rules of conduct, including prohibitions”³. An assessment of the public danger of prohibited acts in the information sphere and clear definition of the criteria for its criminalization, taking into account the general grounds for establishing criminal-legal prohibitions is required.

2. Main part. The analysis of information relations as an object of criminal law protection

In order to protect the interests of subjects of information relations, it is necessary to ensure the criminalization of new types of information acts, the public danger of which is projected or potentiated precisely through the use of digital or network technologies (for example, cyberstalking, cyberbullying, promotion of life-threatening and health-threatening behavior, including suicidal acts, organization trash streams with elements of violence, bullying of a person⁴ and other broadcasts on the Internet of committing an act containing signs of a crime). However, it should be noted that the establishment of criminal law prohibitions should be not only timely, but also scientifically grounded, ensuring the consistency of criminal legislation, as well as the consistency of criminal law with

³ О. Макаров, Концептуальные направления правового регулирования в сфере информационной безопасности Республики Беларусь, ЭТАЛОН. Законодательство Республики [ETALON. Legislation of the Republic of Belarus], Minsk, 2021.

⁴ See more [Online] at <https://kurer-sreda.ru/2021/01/22/649542-predlagayut-sazhat-v-tyurmu-na-shest-let-organizatorov-tresh-strimov>. Accessed on 09/04/2021.

the norms of regulatory branches of law. Scientifically unfounded criminalization or decriminalization of certain acts gives rise to insurmountable difficulties associated with the correct and fair criminal-legal assessment of information acts.

In the context of the development of digital reality, the definition of the object of criminal law protection in the information sphere is of great importance. It is quite clear that it is not limited only to information and technical security, but also covers information and psychological security of the individual and society, corporate and national interests in the information sphere. The qualitative characteristics of the object of criminal law protection in the information sphere are predetermined by the content of relations arising in the implementation of information processes (information relations), which are a complex subject of information law. The subject of regulation (topic area) of information law is public relations that are associated with information (arise in relation to this subject - subject-matter -and are mediated by the processes of circulation of information)⁵. In accordance with the Law of the Republic of Belarus N 455-3 "On Information, Informatization and Protection of Information", information relations are understood as relations arising from the search, receipt, transfer, collection, processing, accumulation, storage, distribution and (or) provision of information, use information, information protection, as well as when using information technology⁶. Information interaction, realized within the framework of information relations, from the point of view of criminal law, involves interaction with the use of information as a means of communication of subjects of information relations. Based on the above, it is more expedient to define the category „information” in the criminal-legal aspect not through an attributive or objective, but a functional-cybernetic definition, when the concept of information is associated only with a person (subject), including the technogenic environment of his habitat⁷. N. Wiener defined information that has form and content as the content of relations and, accordingly, attributed it to relative categories⁸. The information used in the system of social relations influences the social and legal status of their subjects. The social significance of information is predetermined by the possibilities of its use for transforming the mechanism of individual or social activity or passivity, not only in a positive, but also in a negative aspect. The producing and transforming properties of information in the system of social relations create the grounds for introducing its category into the scope of law.

⁵ G. Vasilevich, Информационное право: учебник / Адукацыя і выхаванне [Education and upbringing], Minsk, 2015, p. 65.

⁶ Law of the Republic of Belarus N 455-3 „On Information, Informatization and Protection of Information”.

⁷ See more [Online] at V. Sedyakin, Информация и знания, Научные ведомости [Scientific statements], 8/2009. pp. 180-187; V. Sedyakin, Проблема Л. Флориди и классификация информационных наук, Прикладная информатика [Applied Informatics], 3/2012, pp. 125-131.

⁸ N. Wiener, Кибернетика или управление и связь в животном и машине, 2nd ed., 1968, p. 326.

Information relations, which are a complex object of criminal law protection, are constantly being transformed in connection with the development of information and communication technologies. Already today, questions arise about the possibility of recognizing the owner, developer, owner or user of a technical device with artificial intelligence (robot) and capable of performing acts of activity, controlled or autonomous from a person, as a subject of a crime or criminal liability. The problems of empowering a robot (digital person, digital subject) with legal personality are the subject of heated scientific discussions of both practicing lawyers and legal scholars. The issue of ensuring the criminal legal protection of the legitimate interests of the subjects involved in the circulation of digital financial instruments has appeared on the agenda. The solution to these issues is possible after the development of a regulatory mechanism for the use of artificial intelligence, digital assets (in particular, cryptocurrency, tokens), determination of the legal status of the subjects of the Internet space and, in general, various subjects of information relations. The development of a digital, networked society requires solving the issues of correlating digital reality and the content of the principles of operation of the criminal law in a circle of persons, in space and in time (in connection with the emergence of an open global information space and unlimited in time opportunities for committing a crime in an uninterrupted duty). There was a need to develop the institution of complicity in a crime and “complicity” in reckless infliction of harm (negligent participation in harm inflicted). The classical understanding of complicity in the commission of a crime with the use of digital technology, when individual participants may not even be aware of the joint criminal activity, is unlikely to ensure that everyone's contribution to the common harm is taken into account, which would not have occurred without the cooperation of their efforts. The solution to the problem of determining the time and place of the crime, the circle of subjects and victims determines the solution to the problem of establishing jurisdiction, determines the procedure for crediting the proceeds of crime and property penalties, including the decision of the question of which state budget should go to these receipts.

Moreover, one can show courage and predict the most global problem: the problem of transforming classical approaches to understanding the paradigm of crime as a phenomenon of real, objective reality, taking into account the emergence of virtual reality and possible threats of its use to cause harm (primarily economic) to already existing and new objects of criminal law protection that may appear in the future.

There are two possible ways to improve the legal regulation of social relations in connection with the development of informatization processes: the adaptation of existing norms to new relations or the development of new norms. Let us note that it is unlikely that it will be possible to get by with only a minor revision of the current system of criminal law, taking into account the global challenges of modern reality. Despite the fact that today the criminal legislation, which is essentially the most conservative, is in a standby mode (as A. Zhalinsky

rightly noted - in anticipation of changes⁹), the search for new statutory concepts to ensure a balance and respect the interests of various subjects of information relations is a crucial task. Prospects for the development of information relations already pose and will continue to pose new tasks for the law, and criminal law is no exception!

3. Conclusions

The clearly defined criminal-legal boundaries of a forbidden information act have the task of forming social attitudes, that will allow directing the social practices of information communications in a safe direction, ensuring its progressive development, and prevention of negative social impact. A. Kuznetsov rightly points out that “the real effectiveness of information relations depends on how much they will be provided with means of legal protection in general and criminal law protection in particular”¹⁰.

The mechanism of criminal law protection of information relations should be used when committing socially dangerous information acts that cause significant harm or create a threat of such harm to the peace and security of mankind, man, his rights and freedoms, property, legal entities, natural environment, public and state interests, state constitutional order, public order protected by criminal law. The social conditionality of criminal law prohibitions in the information sphere is associated with the needs of ensuring human rights and freedoms, the interests of society and the state, while maintaining a balance of interests of all subjects of information relations, as well as the need to ensure their safe existence in conditions of digital objective reality.

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⁹ See more [Online] at A. Zhalinsky, Уголовное право в ожидании перемен: теоретико-инструментальный анализ, 2nd ed., Проспект [Prospect], Moscow, 2013, p. 400.

¹⁰ A. Kuznetsov, Правовое обеспечение информационных отношений в России, Бизнес в законе [Business in law], 2/2007, p. 168.