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OFFICIAL INFORMATION AS OBJECT OF LEGAL REGULATION

The article is devoted to clarifying the concept of «official information» in the information law. Current legislation regulating the concept of official information is analyzed. The proposals about definition of kinds of public information, namely, official information and administrative information are given. Conclusions and proposals for the legal recognition of official information are formulated.

Key words: public information, official information, administrative information, authority, right of citizens to official information.

Statement of the problem. Development of information legislation in Ukraine is exercised through the improvement of legal norms and the development of effective mechanisms for their implementation. The right to information is one of the key conditions for the existence of a democratic society, which ensures transparency of activity of bodies of state power and local self-government. The degree of openness of the state bodies, the willingness to provide information to citizens on issues of public interest characterizes the level of democracy in the country.

Nowadays, the legislation in the field of information law has many shortcomings and gaps. Among the large number of unsolved problems a special place is occupied by the issues of implementation the right of citizens to official information in Ukraine. Thus, the Law of Ukraine «On access to public information» establishes the concept of public information, pointing to a fairly large number of managers of this type of information. Among them considerable attention is paid to authorities, which control the official information.

In the world of integration processes, public authorities are trying to implement the rights of citizens to information, however there are no clear mechanisms for implementation of rights of citizens to information which is in the possession of public authorities. However, despite the great practical significance, the problem of legal regulation the rights of citizens to official information is one of the least studied in the science of information law. Modern information legislation also does not contain a categorical apparatus according to official information, there are no effective mechanisms that would allow to solve this problem.

Analysis of recent researches and publications on the topic. Despite the fact that the problem of realization of the rights of citizens to official information is one of the most complex but least studied in theory of information law, certain aspects of it caused a particular interest among scholars at different times. Study of the problems

of information relations in the Ukrainian society was carried out by such scholars as I. Aristova, V. Havlovskiy, V. Hritsenko, R. Kaliuzhnyi, P. Melnyk, M. Shvets etc. The concept of «official documented information» was analyzed by T. Kostetska; research of official state and official legal information was carried out by O. Yaremenko. A. Maruschak suggested the concept of «state information»; problems of determining the legal nature of the proprietary information were highlighted in the works of T. Tkachuk, V. Marchuk. Considerable attention is paid to legal information in studies of O. Tykhomyrov. The research of M. Denkova, V. Zydetska, O. Korniiievskiy and others is dedicated to public information. Attempt of classification of information was made by O. Seleznova. However, in the works of these researchers, the theoretical legal bases of the concept of «official information» are not defined, that, obviously, requires to study the legal content and nature of this concept, because authorities, in the process of activity which the official information is formed, based on social, normative, regulatory, security functions.

Purpose of the article. The purpose of this article is to clarify the concept of «official information» and the development of proposals for the consolidation of this concept at the legislative level. Tasks have been allocated to achieve this goal: to analyze the concept of official information, to identify the entities that determine the scope of this type of information, to identify the main features of the data subjects, to provide suggestions to distinguish concepts of official information into separate type the public information.

Presentation of the basic material. With the adoption of the law of Ukraine «On access to public information» in the legislation a new type of information – public is introduced, however, the list of persons, who dispose public information, includes not only authorities and other bodies specified by the Law of Ukraine «On access to public information» of 13.01.2011 № 2939-VI. Controversial is the fact that informational legislation of Ukraine

does not distinguish a special type of information which is at the disposal of the authorities; however, modern problems of citizens' distrust of the bodies of state power and local self-government, officials of these bodies, require the differentiation of the concept of «public information» into certain type official information.

The participation of citizens in implementation of public administration, ensuring transparent functioning of public authorities, decentralization of power, distribution of powers between the branches of government, strengthening the control authorities need, in our opinion, the use of harmonized concepts and definitions.

Despite the ambiguity of different points of view regarding the definition of «official information» considered by us in previous studies [1], we believe that revealing the contents of official information, significant attention should be paid to the legislation in force, examining the basic design of this concept, it is necessary to examine terms such as «information» and «official».

In general, the concept of «information» has a very complex meaning and multidimensional interpretation of it in Social Sciences. P. Orlov notes that information is a fundamental object of the information society, while reflecting the reality that affects all areas of state activities [2, p. 8]. Significant research in the scientific literature was conducted regarding the etymological origin of the contents of this concept, key features, peculiarities, etc.

However, the general concept of «information» is enshrined in regulatory legal acts of Ukraine, namely the Law of Ukraine «On information», the Civil code of Ukraine. According to article 1 of the Law of Ukraine «On information» information is any information and/or data that may be stored on tangible media or is available in electronic form [3]. A similar notion of «information» is provided in article 200 of the Civil code of Ukraine, however, our interests extend to information which is in disposal of public authorities, so the research contains the analysis of the legal regulation of public relationships, not private.

Investigating the term «information», scholars came to the conclusion that a comprehensive and unambiguous definition does not exist [4, p.18], the content of the term is constantly changing, being transformed to the conditions and patterns of existing society. This, in turn, requires from a state of constant movement to create new forms of cooperation between the state and the citizen. However, modern scholars pay little attention to the classification and structure of scientific knowledge «on information» in jurisprudence, although it has of great importance for the development of legal science [5, p. 4 – 5].

O. Kokhanovska believes that information can be divided into two kinds: theoretical (scientific) and legal, which is also called legal [6, p. 78].

Information law defines the types of information according to content (p.10 of the Law of Ukraine «On information») [3]:

- information about an individual;
- information of reference and encyclopedic nature;

- information on the state of the environment (ecological information);
- information about the goods (work, service);
- scientific and technical information;
- tax information;
- legal information;
- statistical information;
- sociological information;
- other types of information.

The previous version of the Law of Ukraine «On information» contained information about activities of government bodies and local self-government, which today is regulated by the Law of Ukraine «About the order of coverage of work of state power bodies and local self-government in Ukraine by mass media», which means official information of public authorities and local self-government as official documented information, that is created during activities of state bodies and local self-government, that is promulgated in the manner prescribed by the Constitution of Ukraine, Laws of Ukraine «On information», «On access to public information» and this Law [7].

The Law of Ukraine «On access to public information» introduced the concept of public information that is defined as information that is reflected and/or documented by any means and in any media and which was received or created in the process of executing by authorities of their obligations under applicable law, or which is in the disposal of authorities, other managers of public information determined by the Law of Ukraine «On access to public information» [8].

The term «official» is found in public life, economic, legal sciences, namely, in constitutional, administrative, civil, economic, information and other fields of law. The etymology of the word comes from the Latin «officialis» [9, p. 306], which means official.

The term «official» is interpreted in different meanings. The big dictionary of Ukrainian language gives such meanings to the word «official»: 1. Introduced, regulated by the government, a government agency or an official. 2. Sustained according to established rules [10, p. 450]. Thus, it can be concluded that, in legal science, the term «official» should be used concerning the activities of authorities. Thus there is a need to disclose the definitive concept of «the authority».

The code of administrative procedure of Ukraine article 3 introduces the concept of the subjects of power as an authority, local government body, their titular persons or officials, the other subject; power managerial functions of which are exercised on the basis of legislation, including the execution of delegated powers [11]. The legislation has a general notion of authority, expanding the concept of titular persons or officials of state power bodies and local self-government and entities that have been granted delegated powers.

V. Spivak emphasizes «necessary and the only sign of an authority is the implementation by this subject power management functions» [12]. In the modern legal literature such signs of the authority are allocated [13, p. 2]:

- formed by the state or the people according to the law;

- performs on behalf of the state tasks and functions, stipulated by the Constitution of Ukraine and normative-legal acts;

- endowed with public authorities, which are implemented by publication of normative legal acts, regulating the execution of those acts;
- created from the officials who hold positions;
- has certain material base;
- operates within a clearly defined territory.

Proceeding from above stated, we can say that the authority is represented in specific organizational components:

- the public authority;
- local authority;
- officials of state authorities and local self-government;
- civil servants who are subjected to the Law of Ukraine «On state service» dated 10.12.2015 № 889-VIII [14];
- other subjects that the public authorities granted delegated power managerial functions, which are exercised by them on the basis of legislation.

So, the official information can only be create by an authority in a result of executing its powers and duties stipulated by the current legislation.

The Law of Ukraine «On access to public information» in article 3 defines the list of entities that may be managers of information according to this law. Among them are: the authorities, legal entities financed from the state and local budgets, budget of the Autonomous Republic of Crimea – with respect to use of budget funds; persons, if they perform delegated powers of the authorities according to law or contract, including the provision of educational, health, social or other public services – for information related to the performance of their duties; the entities that occupy a dominant market position or they are endowed with special or exclusive rights or which are natural monopolies. The state also requires entities to publish and provide information as requested, if they have: information about state of the environment; information about the quality of food and household items; information about accidents, catastrophes, dangerous natural phenomena and other extraordinary events that have happened or may happen and that threaten the health and safety of citizens; other information of public interest [8].

More appropriate, in our view, it is the distinction of entities with public information into two groups: 1) authorities; 2) other bodies or persons who dispose of public information envisaged by article 13 of the Law of Ukraine «On access to public information».

Delineate the list of subjects, we will solve the problem of normative regulation and a clear division between the state bodies and bodies of local self-government authority, regarding the implementation of management functions relating to the regulation of the right of citizens to information, which is formed in the process of implementation of the respective public authorities of their duties and management functions. I.Skvirskyi believes that addressing the authorities with an information request where there is a requirement to provide public information, individuals can control all aspects

of the functioning of the latter [15, p. 225 – 226], which is very important for the realization of the right of citizens to information.

The increased interest of the public to information that is available or created by those with authority due to the new societal standards for the construction of the Ukrainian society. However, for the definition of official information in the context of the law is useful to distinguish the legal characteristics of information as object of legal regulation [16, p. 34], namely:

- intangible nature;
- subjective nature;
- the need of objectification for inclusion in legal turnover;
- quantitative certainty;
- responsible, the possibility of multiple usage;
- storing information by a subject, that it conveys;
- the ability to reproduce, copy, preservation and accumulation.

After analyzing the areas of distinction between official and public information, we consider it is appropriate to pay attention to the following: public information is a broader concept that includes a larger list of those who dispose information and creators of it, therefore it is necessary to introduce the concept of types of public information, namely: official and administrative. This eliminates misunderstandings concerning the legal status of official information and its legal binding and it will form the appropriate legal institution of official information, the study of the legal regulation which should be continued in subsequent scientific works.

Conclusion

The results of the review of the concept and essence of official information, analyzing issues of legal regulation the concept of official information, allow us to make a number of conclusions and proposals, namely:

1. The official information is a kind of public information, which requires differentiation with the concept of public information.

2. Definition of official information requires legal enforcement and the establishment of clear borders of its legal regulation.

3. The following amendments to the Law of Ukraine «On access to public information» of 13.01.2011 № 2939-VI must be adopted, in particular, to complement the Law with articles 11 – 13 of the following content:

«Article 11 the Types of public information

The major types of public information include:

- official information;
- administrative information.

Article 12 official information

Official information is documented information on any tangible medium, created and/or provided by the authority when performing the tasks and functions at the expense of the state budget.

Article 13 administrative information

Administrative information is documented information on any tangible media containing the quantitative characteristics of phenomena and

processes, that cause public interest, and it is the result of activity of those who, specified by article 13 of this Law, except p.1, dispose of information».

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Стаття присвячена уточненню поняття «офіційна інформація» в інформаційному праві. Проаналізовано чинне законодавство, що регулює поняття офіційної інформації. Надано пропозиції щодо визначення видів публічної інформації, а саме: офіційна інформація й адміністративна інформація. Сформульовано висновки та пропозиції, спрямовані на юридичне закріплення офіційної інформації.

Ключові слова: публічна інформація, офіційна інформація, адміністративна інформація, суб'єкт владних повноважень, право громадян на офіційну інформацію.

Статья посвящена уточнению понятия «официальная информация» в информационном праве. Проанализировано действующее законодательство, регулирующее понятие официальной информации. Даны предложения по определению видов публичной информации, а именно: официальная информация и административная информация. Сформулированы выводы и предложения, направленные на юридическое закрепление официальной информации.

Ключевые слова: публичная информация, официальная информация, административная информация, субъект властных полномочий, право граждан на официальную информацию.

