

# Features of Administrative Liability for Offenses in the Informational Sphere

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## Summary

The article is devoted to the study of the features of administrative liability for offenses in the informational sphere, the definition of the concept and features. Based on the examples of implementation of instruments of European legislation into the national legal system and examples of national legal practice, the authors have identified the features of informational and legal sanctions aimed at restricting the rights of access of subjects to information, prohibiting them to disseminate certain information, restricting the rights to disseminate certain information, and suspending informational activities. It has been substantiated that the administrative liability for informational offenses as a protective legal institution is created to contribute to the solution of such acute problems of legal support of human and society interests in the new informational dimensions.

## Key words:

*information, administrative liability, right to information, legal liability, administrative offenses.*

## 1. Introduction

The research of the institution of legal liability in the modern legal understanding is extremely crucial, given its manifestations in relation to the features of the consequences of violation of certain rights and interests or even in relation to the legal status of certain delinquents (offenders) and victims. Scholars rightly believe that there can be no completed research without a study of legal liability [1].

In each specific case, legal liability is determined and implemented taking into account social, historical, economic, ideological, and other objective and subjective conditions, as well as the specific political system. Therefore, legal liability is a special kind of social

connection of the elements of society and one of the most important institutions of the organization of public life.

The issue of administrative liability in the field of information circulation is directly covered in the works of Ch.N. Azimov, I.L. Bachylo, A.V. Vengerov, S.D. Voloshko, V.A. Dozortsev, V.I. Zhukov, V.O. Kalyatin, L.P. Kovalenko, A.T. Komziuk, V.A. Lipkan, D.M. Lukyanets, Yu.Ye. Maksimenko, O.A. Pidoprigora, V.V. Sidorenko, O.O. Tikhomirov, R.B. Shyshka, O.A. Chobota, S.V. Iasechko, and others.

The concept of administrative liability for violations in the informational sphere is quite controversial in scientific circles. The ambiguity of approaches is caused by the lack of clear definition in the legislation of both the concept of administrative liability and the concept of “informational offense”.

The aim of this article is to identify the features of administrative liability for violations in the informational sphere. To identify such features, we need to understand what is meant when the terms “administrative liability” and “feature” are used.

## 2. Theoretical Consideration

For the first time in the history of legal science, the term “liability” was introduced by T. Hobbes, who used it as an abstract liability of fellow citizens united by a “social contract” for the actions of their state. I. Kant, in turn, identified the liability of a person with their duty; G. Hegel – with their reasonable awareness of the need for a certain direction of behavior. Almost two centuries later, T. Hobbes’s compatriot J. Mill first used the term “liability” in a purely prospective (negative) sense [2]. This concept is reflected in the works of A. Ben, F. Bradley, M. Schlick, and a number of other thinkers of the past. But it is J. Mill who can be considered the founder of perspective liability, liability as a punishment

that for many decades and even centuries determined the tendency to look at these problems in jurisprudence.

Usually, when we use the term “liability”, we mean the need, the obligation to be responsible for one’s actions, deeds, and to be responsible for them [3]. Therefore, it is interesting to refer to the etymology of the word “liability”, which has relatively recently appeared in the Ukrainian language. There are similarities between “responsible” and “caring”, “to put on duty” and “put the responsibility (liability)”. For example, in the Ukrainian language dictionary, the word “liability” means “imposed on someone or assumed responsibility for a certain area of work, business, for someone’s actions, deeds, words” [4]. V.A. Khokhlov, studying the historical and linguistic aspect of civil liability, argued that the very term “liability” had appeared in the vocabulary of lawyers approximately by the 20s of the XX century, but its signification for a long time had no special legal meaning. It was used in a derogatory sense, had no clear boundaries [5].

The current legislation does not contain a specific definition of the concept of administrative liability, although in the Code of Ukraine on Administrative Offenses (hereinafter – CoUoAO) there is Chapter 2 on “Administrative offense and administrative liability”. Art. 9 of this Chapter defines an administrative offense (misdemeanor) and states that it is the basis for administrative liability. In the absence of a legislative definition, this legal category is researched and formulated by scholars. The conducted analysis of scientific sources shows the diversity of views of scholars on defining the essence of administrative liability as a legal category.

It should be noted that the current legislation on administrative offenses in the field of information circulation does not have a normative act that would contain an exhaustive list of laws that provide for administrative liability. Therefore, this article will consider some features of administrative liability only for those offenses that are enshrined in the Code of Ukraine on Administrative Offenses, although some offenses in the field of information circulation are contained in other laws. Here are some scientific formulations of the legal category in question.

Administrative liability is a specific response of the state to an administrative offense, which consists of the application of a statutory penalty to the subject of the offense by an authorized body or official [6].

Administrative liability is a type of legal liability, a specific form of the negative reaction by the state in the person of its competent authorities to the relevant category of illegal acts (especially administrative offenses), according to which, persons who have committed these offenses must answer to an authorized state body for their illegal actions and incur administrative penalties for it in the forms and the order established by the law [6].

Administrative liability is a type of legal liability of individuals and legal entities, which consists in the application of a certain type of administrative coercion – administrative penalty (administrative sanction) by state-authorized public bodies (their officials) [7].

As can be seen from the aforementioned definitions, scholars formulate this category differently; all of them mention the connection to an administrative offense or administrative sanction.

All available types of administrative penalties are closely related to each other and form a single system. First of all, they are united by a common goal – protection of law and order, education of persons who have committed administrative offenses a la law enforcement, as well as preventing new offenses by both offenders and other persons. Every penalty is a punishment, a measure of liability for misconduct, and the application of any penalty means the onset of administrative liability and causes adverse legal consequences for the guilty [8].

As for the administrative liability itself, Part 2 of Art. 9 of the CoUoAO states that “administrative liability for offenses under this Code occurs if these violations by their nature do not entail criminal liability in accordance with the law”. Thus, we can conclude that offenses that are not provided by the CoUoAO, do not fall under administrative liability. However, this conclusion is incorrect.

The institution of administrative liability is one of the important institutions of administrative law, which is a necessary means of protecting public order and which has all the features of legal liability. With the help of this institution, not only administrative and legal relations are protected but also relations governed by the rules of financial, environmental, labor, customs, and sometimes civil, law, and procedural areas [6]. There is an administrative liability for informational misconduct.

As noted by O.K. Tugarova, the specific features of the institution of administrative liability in the informational sphere are the following ones:

1. With the help of this institution, not only administrative and legal relations are protected but also relations regulated by the norms of other branches of law, in particular informational, banking, financial, media law, etc.
2. The basis for administrative liability is the commission of an offense (misdemeanor), provided by the norms of the CoUoAO and other laws governing the creation, collection, receipt, storage, usage, dissemination, protection, and defense of information.
3. The list of measures of administrative liability applied to a person who has committed an administrative offense in the informational sphere is somewhat broader and not always enshrined in the Code of Administrative Procedure, but by its legal nature, such measures are administrative penalties and do not exclude the possibility of administrative liability.

4. The powers of bodies that within their competence have the right to apply administrative penalties for administrative offenses in the informational sphere are defined in the regulations of the Code of Administrative Offenses and other regulations governing the creation, collection, receipt, storage, usage, dissemination, protection, and defense of information in Ukraine [9].

M.D. Shargorodsky's approach is shared by V.I. Goiman-Chervonyuk, who believes that legal liability means that the offender suffers certain losses, restrictions on freedom, property losses. Legal liability is always a negative consequence. For the offender, it is a new legal obligation that they did not have before the offense [10].

I.S. Samoshchenko and M.Kh. Farukshin are also the supporters of the concept of coercion, in which "the legal liability is a state compulsion to fulfilling requirements of ... a law that contains condemnation of the actions of an offender by the state and society" [11]. The authors especially emphasize the external character of liability in relation to the offender that "is imposed in case of offense, regardless of the will and desire of the offender" [11]. However, unlike S.M. Bratus, I.S. Samoshchenko and M.Kh. Farukshin allow the possibility of exercising liability in civil law without state coercion. To support it, they refer to the fact that in legal relations governed by civil law, in some cases the creditor themselves may apply the sanction established by law or contract, without resorting to state coercion, to the offender. And at the same time, the offender can sometimes "recognize the illegality of behavior and bear legal liability without the intervention of the relevant state bodies" [11].

The aforementioned concept of legal liability is accompanied by its interpretation as the implementation of sanctions of legal norms. O.E. Leist is a representative of this concept. He believes that legal liability is the application and implementation of sanctions and its main content is the implementation of the "right to punishment, penalty, enforcement", which arises as a result of the offense [12]. O.E. Leist believed that the sanction is a necessary attribute of the legal norm, the measure of state coercion, which is a reaction to illegal behavior, and "the rule of law is identical to the disposition" [12]. However, the question arises: what if a decision is made to bring to legal liability with simultaneous release from the sanction? Therefore, O.E. Leist not in vain wrote in the latest work that there is a direct line between sanction and liability (there is no liability without sanction; the normative construction of the latter is determined by the type of sanction) and rigid feedback: if offenders are not liable, the sanction becomes a declarative, purely abstract threat [12]. The author emphasizes that the concept of "liability" is broader in scope than the concept of "application of sanctions", as it includes such problems as the qualification of the offense, guarantees of objective truth in the case, application of precautionary measures, the

rights of the accused person in the offense, the "state of punishment" in the implementation of penalties, punitive sanctions, and others [12]. In this sense, according to the author, the sanction is a disposition, i.e. a part of the norm in which a specific measure of liability is determined for the offender.

Thus, the correlation between legal liability and sanction lies primarily in the possibility of applying state coercion for an illegal act on the basis of law or the application of incentive measures. According to S.S. Alekseev, the features of legal liability are most clearly expressed in the obligation to sustain the measures of state coercion, i.e. the obligation to be liable for the delict, by the offender [13].

Such an expanded concept of informational offense covers both crimes and misdemeanors in the field of information circulation. It should be noted that "informational offense" is a collective concept, consisting of misdemeanors in the field of information circulation in various branches of law. Information offenses can be in administrative, civil, labor, financial, tax, criminal, and other areas [14-15]. Thus, if we consider informational offenses, for which administrative liability is provided, it is necessary to specify them on a specific basis, i.e. to use the term "administrative and informational offenses (misdemeanors)" [16]. An administrative-informational offense (misdemeanor) should be understood as an illegal, socially harmful, culpable (intentional or negligent) act or omission that may cause or causes harm and encroaches on the statutory public relations in the field of circulation (receipt, usage, dissemination, and storage) information for which the legislation provides for administrative liability.

## Conclusions

Summing up, we can say that the administrative legislation on the regulation of informational relations is imperfect and requires a number of changes and additions that would bring it into line with modern realities, regulate the legal regulation of informational relations, violation of which leads to administrative liability.

Analysis of such allegations regarding the understanding of the concept of legal liability in the informational sphere, as well as the separation of features of legal liability in the informational sphere, is a type of legal liability, which has all the features of legal liability, for an informational offense committed by a natural or legal person in the informational sphere, which is enshrined in law and protected by the state.

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