

REGULATORY AND LEGAL ENSURING THE ADMINISTRATIVE PROCEDURE FOR THE PROTECTION OF PERSONAL DATA ABOUT A DECEASED PERSON

НОРМАТИВНО-ПРАВОВЕ ЗАБЕЗПЕЧЕННЯ АДМІНІСТРАТИВНОЇ ПРОЦЕДУРИ ІЗ ЗАХИСТУ ПЕРСОНАЛЬНИХ ДАНИХ ПРО ПОМЕРЛУ ОСОБУ

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The article highlights the regulatory and legal support of the administrative procedure for the protection of personal data about a deceased person. It has been established that the processing and dissemination of information about the deceased is of great importance to society and can affect various aspects of citizens' lives. The importance of observing the ethical, legal and social aspects of personal data protection under normal conditions, as well as under martial law, is emphasized. It was determined that the implementation of administrative procedures for access to information that may contain personal data should be carried out in compliance with the requirements of confidentiality and protection of personal information of deceased persons. It is established that the dissemination of information about a deceased person must be done with respect for the memory and dignity of deceased persons and their families, avoiding discrimination or improper use of information; human rights to inviolability and personal freedom. It was determined that one of the requirements for the implementation of the administrative procedure of access to personal data with the preservation of information for scientific, historical and journalistic purposes, subject to compliance with ethical and legal standards. It was concluded that access to information about a deceased person requires a balance between the rights and interests of various parties, as well as respect for the dignity of the deceased and their families. It was established that there is no regulation by the current legislation (in particular, the Laws of Ukraine "On Burial and Funeral Matters" and "On Information") of a specific administrative procedure for obtaining information about a deceased person. The article also differentiates between a request for information about a person (a request for access to personal data) and receiving information about a deceased person upon request. The conditions under which a request for obtaining information about the deceased also concerns the personal data of another person are defined.

Key words: confidential information, information about the deceased, personal data, processing of personal data, Human Rights Commissioner of the Verkhovna Rada of Ukraine, information legislation of Ukraine, access to information, administrative procedure.

У статті висвітлено нормативно-правове забезпечення адміністративної процедури із захисту персональних даних про померлу особу. Встановлено, що обробка та поширення інформації про померлих має важливе значення для суспільства та може впливати на різні аспекти життя громадян. Підкреслено важливість дотримання етичних, правових та соціальних аспектів захисту персональних даних в звичайних умовах, а також в умовах воєнного стану. Визначено, що здійснення адміністративних процедур із доступу до інформації, що може містити персональні дані, має поширюватися з дотриманням вимог конфіденційності та захисту особистої інформації померлих осіб та їхніх родин, уникання дискримінації чи недостойного використання інформації; права людини на недоторканість та особисту свободу. Визначено, що однією із вимог здійснення адміністративної процедури доступу до персональних даних із збереженням інформації для наукових, історичних та журналістських цілей за умови дотримання етичних та правових стандартів. Зроблено висновок про те, що доступ до інформації про померлу особу вимагає балансу між правами та інтересами різних сторін, а також поваги до гідності померлих та їхніх родин. Встановлено відсутність врегулювання чинним законодавством (зокрема, Законами України «Про поховання та похоронну справу» та «Про інформацію») конкретної адміністративної процедури отримання інформації про померлу особу. У статті також розмежовано відмінності між запитом щодо отримання відомостей про особу (запит щодо доступу до персональних даних) та отриманням на запит інформації про померлу особу. Визначено умови, за яких запит щодо отримання інформації про померлого також стосується персональних даних іншої особи.

Ключові слова: конфіденційна інформація, інформація про померлого, персональні дані, обробка персональних даних, Уповноважений Верховної Ради України з прав людини, інформаційне законодавство України, доступ до інформації, адміністративна процедура.

Formulation of the problem. The issue of the processing and dissemination of information about the deceased by subjects of power, as a component of the exercise of the right to access to information, is extremely important for scientific, historical and journalistic purposes, but at the same time it causes considerable ethical and legal dilemmas. The issue of disseminating information about the deceased is particularly acute in the context of the Russian Federation's full-scale invasion of Ukraine and active military operations on the territory of our country.

The right to access information is a constitutional right of a person and a citizen. According to Article 34 of the Constitution of Ukraine, everyone is guaranteed the right to freedom of thought and speech, to the free expression of their views and beliefs. Everyone has the right to freely collect, store, use and disseminate information orally, in writing or in any other way – at his choice [1; 2].

At the same time, Article 40 of the Basic Law enshrines the right of everyone to send written appeals or to personally address state authorities, local self-government bodies and officials and officials of these bodies, who are obliged to consider appeals and give a reasoned answer within the time limit established by law. The Law of Ukraine "On Information"

[3; 4; 5; 6] regulates relations regarding the creation, collection, receipt, storage, use, dissemination, protection, and protection of information. However, this law does not contain specific effective legal mechanisms for the implementation of the established constitutional right of everyone to access information and is mostly declarative. Taking into account the objective need to improve the existing state-legal practice of implementing the information rights of citizens, taking into account the need to democratize the tools of access to information, since the adoption of the declarative law in 1992, the legislator over the past two decades has developed and adopted special normative legal acts.

The state of scientific development of the problem. Separate issues of civil law regulation of the dissemination of information about a deceased person were considered in the studies of such scientists as I. Romanyuk [7], O. Dmytrenko [8], O. Radkevich [9] and others. Within the framework of administrative and legal publications, the issue of personal data protection was considered fragmentarily, in particular, in the dissertation of M. V. Rizak on the topic "Administrative and legal provision of relations of circulation and processing of personal data in Ukraine" [10], dissertations of K. S. Melnyk on the topic "Legal and organizational principles of personal

data protection in the conditions of the European integration of Ukraine" [11], dissertations of A. P. Petrytskyi on the topic "Legal and organizational principles of personal data protection" [12] etc. But at the same time, comprehensive studies of the issue of personal data protection from the point of view of compliance with the principles of administrative procedure were not carried out.

The purpose of the work is to characterize the regulatory and legal support of the administrative procedure for the protection of personal data about a deceased person.

Presenting main material. Article 34 of the Constitution of Ukraine enshrines the right of everyone to freedom of thought and speech, to the free expression of their views and beliefs. This right can be exercised, among other things, by addressing subjects of authority, as well as by taking active actions to collect, store, use and disseminate information, which is established in the relevant system of acts of the current national legislation of Ukraine.

The special procedure for exercising the right to access to information is regulated, first of all, by the Laws of Ukraine "On Access to Public Information", "On Protection of Personal Data", "On the National Archive Fund and Archival Institutions", "On Appeals of Citizens", "On Access to Archives of Repressive bodies of the communist totalitarian regime of 1917–1991" and other normative legal acts [6].

Article 7 of the Law of Ukraine "On Burials and Funeral Matters" also specifies that the provision of such information is carried out in accordance with the Law of Ukraine "On Information" and states that the state guarantees the confidentiality of information about the deceased [5]. At the same time, neither the Laws of Ukraine "On Burials and Funeral Matters" and "On Information" nor any other regulatory legal acts regulate the issue of defining detailed guarantees for ensuring the confidentiality of information about the deceased. Moreover, a specific procedure for obtaining information about the deceased has not been defined (except for the general grounds for obtaining information by subjects of authority when exercising their powers defined by current legislation).

It is worth noting that legal relations related to the processing of personal data and, in particular, their provision in response to the request of third parties are regulated by the Law of Ukraine "On the Protection of Personal Data", according to which personal data is defined as information or a set of information about a natural person, which is identified or can be specifically identified.

It should be noted that a person as a participant in civil relations, in accordance with Article 24 of the Civil Code of Ukraine, is considered a natural person. The civil legal capacity of a natural person, that is, the ability to have civil rights and obligations, arises at the moment of his birth and ceases at the moment of his death, and therefore the mechanism for submitting a request for access to data provided for in Article 13 of the Law of Ukraine "On the protection of personal data" cannot be applied when receiving information about the deceased.

At the same time, the procedure for ensuring everyone's right to access information in the possession of, in particular, state authorities and local self-government bodies, other entities that perform authoritative management functions in accordance with legislation and whose decisions are binding (hereinafter referred to as information managers or subjects of authority) defined by the Law of Ukraine "On Access to Public Information" [6].

Public information, in accordance with Article 1 of Law No. 2939, is information displayed and documented by any means and on any media, which was received or created in the process of the subjects of authority performing their duties provided for by the current legislation, or which is in the possession of subjects of power [6].

From the analysis of the above norms, it can be seen that information about a deceased person, in the case of its receipt, creation or stay in the possession of a subject of power, is public.

At the same time, the possibility of classifying information about a deceased person as public within the meaning of Law No. 2939 is not an indisputable sign of its openness and does not constitute grounds for its provision by information administrators, in particular, without applying the restrictions defined by this law.

At the same time, the right to freely collect, store, use and disseminate information, guaranteed by the provisions of Article 34 of the Constitution of Ukraine, may be limited exclusively by law in the interests of national security, territorial integrity or public order in order to prevent riots or crimes, to protect public health, to protect reputation or rights of other people, to prevent the disclosure of information obtained in confidence, or to maintain the authority and impartiality of justice.

The grounds for restricting access to information, in accordance with Law No. 2939, in particular, are the restriction of access to information in response to a request in accordance with the procedure specified in Part 2 of Article 6 of the Law and Clause 2 of Part 1 of Article 22 of Law No. 2939.

Thus, when providing such information, its administrator, in accordance with the requirements of Part 2 of Article 6 of Law No. 2939, has the obligation to remove from the volume of all requested information – information with limited access, namely confidential, secret and official information.

Accordingly, in the case when the requester of information about the deceased person is a family member, close person or relative, the application of Law No. 2939 does not ensure the achievement of the ultimate goal of the requester – obtaining access to the full amount of information.

In the absence of regulatory and legal regulation of the issue of dissemination of information about the deceased and taking into account the implementation, based on Article 17 of the Law of Ukraine "On Access to Public Information", functions of parliamentary control over the observance of the human right to access to information and implementing the provisions laid down in the Law of Ukraine "On the Protection of Personal Data" authority regarding the provision of recommendations regarding the practical application of legislation on the protection of personal data, the Human Rights Commissioner of the Verkhovna Rada of Ukraine made an attempt to provide an assessment of the legal aspects of disseminating information about the deceased in response to the request of persons who were her close relatives or family members.

As stated in the explanatory letter of the Commissioner for Human Rights of the Verkhovna Rada of Ukraine dated January 25, 2018 No. 2/9-K306655.17/26-131, information about the deceased person who was a family member, a close relative of the person, which requests information about the deceased, can be simultaneously considered by the subject of authority as personal data of the person requesting information about the deceased person [13; 14].

The Human Rights Commissioner of the Verkhovna Rada of Ukraine comes to this conclusion, in particular, on the condition that the requested information about the deceased person actually relates to joint personal property or non-property relations or is related to events that occurred in the joint life of such persons.

Among other things, the corresponding explanation of the Commissioner of the Verkhovna Rada of Ukraine for human rights contains a condition regarding the mandatory confirmation by the requester of the fact of family relations. Yes, information about a deceased person can be provided to his family members, relatives and relatives, provided they provide copies of documents that confirm their family relationship, as well as if such information is necessary for them to exercise their rights, freedoms and legitimate interests.

The mechanism proposed by the Human Rights Commissioner of the Verkhovna Rada of Ukraine for providing information about the deceased in response to a request, given

the absence of a direct prohibition to provide such information to the above-mentioned list of persons in the provisions of the Law of Ukraine "On Information", the Civil and Family Codes of Ukraine, is logical and such, which corresponds to established state legal practice in an extrajudicial way of realizing the information rights of citizens, despite the fact that the Law of Ukraine "On the Commissioner of the Verkhovna Rada of Ukraine on Human Rights", the Ombudsman is not endowed with legislative powers, does not have the right to interpret legislation or form legal positions, mandatory for the subjects to exercise their authority.

In the context of the above, the provision of additional information for the purpose of identifying a citizen (in particular, the provision of documents confirming family relations with a deceased person) complies with the provisions of Article 7 of the Law of Ukraine "On Burials and Funeral Matters" and is conditioned by the provision of guarantees of confidentiality of information about the deceased.

This also excludes the scope of Law No. 2939, the norms of which do not provide for the obligation of the manager of information to identify the person of the requester.

In addition, according to the first part of Article 7 of Law No. 2939, confidential information is information, access to which is restricted to a natural or legal person, except for subjects of authority, and which can be distributed in the order determined by them at their will, in accordance with the conditions stipulated by them.

At the same time, the definition of confidential information, which is different in scope, is enshrined in the second part of Article 21 of the Law "On Information", according to which information about a natural person is confidential, regardless of the corresponding expression of his will. Confidential information is a type of information with limited access, it also includes secret and service information, which are interconnected (Kovalenko, 2016: 78).

In view of the above, it is possible to come to the conclusion of the legality of providing data about a deceased person to an unlimited number of persons, in the event that the administrator of information applies the requirements for the removal of information with limited access from documents in accordance with the requirements of Law No. 2939.

At the same time, the provision of information about the deceased to her family members, relatives or relatives should be applied in case of their identification (in particular, their provision of documents confirming family relations).

In order to eliminate gaps in the legislation, establish a uniform practice of providing access to information about deceased persons, the specified issue needs to be resolved at the legislative level by determining the procedure for obtaining access to information about the deceased; the circle of subjects who have the right to access it (with the establishment of a list of documents confirming the corresponding right); the terms of obtaining access to such information from the moment of applying to the subject of authority; the procedure for appealing the denial of access to information, etc.

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