

ON THE LEGAL RESPONSE TO THE CONSEQUENCES OF PERSONAL BEHAVIOR IN VIRTUAL SPACE

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The article deals with a new phenomenon for the legal science - the legal response to the consequences of human behavior in the virtual space.

The subject of the research is the relations arising in the process of such response.

The aim of the study is to analyze the legal response to the consequences of personal behavior in virtual space, including in the Russian Federation.

The methodological basis of the study are logical and systematic methods of scientific knowledge, as well as methods of analysis and synthesis of legal phenomena

Foreign and domestic experience of legal response to the consequences of human behavior in virtual space is studied.

The peculiarities of legal response from the point of view of consequences for the person for malicious actions in virtual space, connected with leaving a digital footprint, are analyzed. Particular attention is paid to such characteristic of virtual space as the possibility of using its properties to implement the interest of the user, as well as consideration of virtual space through the prism of legal construction and digital sovereignty. It is stated that the legal construction, characterizing the essence of legal response to the consequences of behavior of an individual in the virtual space, should have the following meaning – "if there are harmful actions associated with the use of virtual space, it is necessary to provide a form of legal response, neutralizing such actions, otherwise the network functioning and use of electronic information resources will be accompanied by socially dangerous manifestations". At the same time the legal response to the relevant relations is considered through the prism of law enforcement results – conclusions are made about the peculiarities of such a response. Attention is focused on the peculiarities of legal response to the consequences of actions of an individual in virtual space in Russia and in China. It is noted that at the national level there is currently no universal model of legal response mechanism to the consequences of a person's actions in virtual space. It is concluded that this problem has a multidimensional nature, which is largely determined by the level of legal awareness of network users. Particular attention is paid to the need to use the potential of techniques and methods of special legal, social and psychological mechanism of law, which are considered to be an important factor in the development of law enforcement practice. The research shows that unlawful behavior in the virtual environment is closely related to various types of deviant behavior related to the use of Internet, which from the category of violating non-legal social norms (primarily, morality and ethics) turns into unlawful behavior, as it violates the requirements of law. Attention is drawn to the fact that at the national level there is currently no universal model of legal response to the consequences of human behavior in virtual space – each state goes its own way, the legal impact is often exposed to those relations which are recognized as the most important and relevant at the moment. Such a response, as a rule, is situational, often pursuing several goals (political, economic, ideological). Further study of the problem involves the need to develop a system of theoretical ideas about the forms of legal responsibility for the negative consequences of behavior in such a space.

1. Introduction

One of the signs of modern society is the virtualization of people's life activities, which consists in the transfer of significant phenomena and events into electronic form through the potential of the Internet. This circumstance allows us to talk about the parallel development of real and virtual spheres of personality functioning, which interact and influence each other, shaping its behavior. At the same time, the boundary between such spheres of a person's activity is often quite mobile and is determined by how much time he/she used to spend in the network.

2. A new legal construct

Taking into account that law is designed to ensure the ordering and regulation of actions (inaction) of a person in network interaction, it is interesting to consider the point of view of N.N. Teleshina, who proposes to consider virtual space as a new legal construct associated with technical, technological and social relations arising, changing and terminating in the process of using a computer or other electronic technical network in relation to information, information resources, information services, and cf.

It should be taken into account that earlier three main approaches to the understanding of legal construction were identified: the method of cognition of law; the model of public relations regulated by law; the method of interpretation of law [3, p. 68; 4, p. 7]. The most widespread is the point of view, according to which the legal construction should be considered as an ideal model of public relations regulated by law [5, p. 28; 6, p. 131].

In this regard, it seems possible to present the following legal construction characterizing the essence of legal response to the consequences of personal behavior in virtual space: "If there are harmful actions related to the use of virtual space, it is necessary to provide a form of legal response neutralizing such actions, otherwise network functioning and use of electronic information resources will be accompanied by socially dangerous manifestations". Based on such a

construction, the state by its prohibitions and threat of sanctions, on the one hand, is designed to encourage the individual to appropriate behavior related to the use of opportunities of virtual space, and on the other hand - in case of detection of behavior contrary to the law, to establish and apply measures to influence the individual [7; 8; 9].

Consideration of virtual space through the prism of the presented legal structure suggests the expediency of taking into account the category of "digital sovereignty", which is understood as the ability of the state to conduct (form and implement) an independent political course in the digital sphere (to defend interests, ensure security, etc.) within the country and in international relations. In this case, the development of digital sovereignty in Russia implies the most rapid response to new types of threats and improvement of its cyberspace [10].

At the same time, along with the digital sovereignty of the state, it is necessary to distinguish the digital sovereignty of the individual, which denotes the degree of independence of a person from the state and from other people in the sphere of information relations [11-18].

3. Legal realities of preventing negative consequences in virtual space

In the Internet, the law regulates only the most significant from the point of view of the state and society relations, as a rule, arising on the border of real and virtual spaces. Therefore, the degree of freedom of personal behavior in the virtual space, for the most part, is not determined by the norms of law. This situation is due to the implementation of Internet management based on the principle of multistakeholderism and the combination of state-legal regulation and self-regulation [19]. Through the legal consciousness of users, legal matter is manifested in their behavior in virtual space, which becomes legal [20]. Consequently, lawful behavior of a person creates the basis for safe functioning and development of not only real, but also virtual space, and its unlawful behavior - generates risks associated with negative material and other consequences, both in virtual and real space.

Thus, on November 3, 2022, two Russian citizens,

A. Napolsky and V. Ermakova, were arrested in Argentina at the request of U.S. law enforcement agencies. They are suspected of running the largest shadow library of scientific, technical and popular science literature Z-Library, which has been operating since 2009 and contains 11 million e-books. The U.S. government seized and disabled a complex network of 249 interconnected web domains related to Z-Library, and the detainees were charged with fraud (unlawful enrichment by publishing other people's works), copyright infringement and money laundering¹.

It should be noted that for several years now the Ministry of Internal Affairs of the Russian Federation has been registering an increase in the number of crimes committed with the use of information and telecommunication technologies or in the sphere of computer information. The most common such crimes are fraud (article 159 of the Criminal Code), theft (article 158 of the Criminal Code) and the illegal production, sale or transfer of narcotic drugs or psychotropic substances, as well as the illegal sale or transfer of plants containing narcotic drugs or psychotropic substances (article 228.1 of the Criminal Code). The number of crimes committed with the use of information and communication technologies and registered by the Ministry of Internal Affairs of Russia in 2019 increased by 68.5% compared to 2018. In 2020, the growth amounted to 73.4%, and in 2021 - 1.4%. At the same time, despite a slight increase in crime using information technologies in 2021 (this year the Ministry of Internal Affairs of Russia changed the rules for the formation of statistical reporting, which, as you can see, was reflected in the final figures), the total number of crimes committed amounted to a significant figure - 517722 (almost 26% of the total number of registered crimes)².

Various types of deviant behavior associated with the use of the Internet are closely related to

illegal behavior in the virtual environment. Often deviant behavior from the category of violating non-legal social norms (first of all, morality and morality), turns into illegal behavior, because it violates the requirements of legal norms. The most vivid example of such behavior is cyberbullying [21].

At the national level, there is currently no universal model of legal response to the consequences of personal behavior in virtual space - each state goes its own way, and the legal impact is more often subjected to those relationships that are recognized as the most important and relevant at the moment. The relevant response is usually situational, often pursuing several goals (political, economic, ideological, etc.).

At the same time, it is important to agree with the statement that "legal provision of inviolability and effectiveness of protection of personal rights can be considered with good reason as one of the priority directions of development of legislation, at the same time being an indicator of its maturity...". [22, c. 173].

In recent years, the Russian Federation has adopted a number of normative legal acts related to responding to the consequences of personal behavior in virtual space.

First of all, we are talking about the Federal Law of July 27, 2006 № 149-FZ "On Information, Information Technologies and Information Protection" (hereinafter - Federal Law № 149-FZ)³, which has paid considerable attention to responding to the behavior of individuals in virtual space. This Federal Law established the rights and obligations of persons possessing information; granted the rights of access to information and dissemination of information to all citizens and organizations; established the obligations of the organizer of information dissemination in the Internet, the operator of a search engine, the owner of an audiovisual service, the owner of a website and (or) a page of a website in the Internet, and much more.

It should be noted that Federal Law No. 149-FZ has recently undergone significant changes. Thus, in the spring of 2019 it was supplemented with Article

¹ The Russians behind the world's largest pirate Internet library have been arrested / https://www.cnews.ru/news/top/2022-11-18_arestovany_rossiyanepo_mneniyu.

² Official website of the Ministry of Internal Affairs of the Russian Federation. Statistics and analytics. URL: <https://xn--b1aew.xn--p1ai/dejatelnost/statistics> (accessed on: 26.12.2022).

³ Federal Law of 27.07.2006 No. 149-FZ "On Information, Information Technologies and Information Protection". Collection of Legislation of the Russian Federation. 2006. № 31 (1 ч.). Art. 3448.

15.1-1, in late 2020. - In the summer of 2021 - Article 15.1-2, in December 2021 amendments were made to Article 15.3. These changes were aimed at prohibiting the dissemination on the Internet of various types of information that pose a threat to the normal functioning and development of a number of public and state institutions in Russia, as well as determining the procedure for restricting access to it.

It should be noted that the prohibiting norms of Federal Law No. 149-FZ are quite actively applied. Thus, according to the Safe Internet League, in 2020, 1,560 pages with child pornography and 1,845 pages with information on the sale of narcotic drugs were removed from social networks. In total, by the end of January 2024, more than 146,000 resources with dangerous content were blocked or removed⁴.

Of great importance in terms of legal response to the consequences of personal behavior in virtual space is the Federal Law of July 27, 2006, No. 152-FZ "On Personal Data"⁵. This legislative act, among other things, regulated relations related to the processing of personal data carried out by legal entities and individuals on the Internet.

Violation of the legislation of the Russian Federation related to responding to the behavior of an individual in virtual space entails bringing the guilty person to legal responsibility, primarily administrative and criminal. For example, article 13.15 of the CAO RF establishes administrative responsibility for dissemination, including through the Internet, of prohibited information. Administrative liability for dissemination of inaccurate information is provided for in part 10.1 of Article 13.15 of the CAO RF. Special liability is stipulated by the CAO RF for violation of the procedure for restricting access to information and information resources, access to which is subject to restriction, and (or) the procedure for deleting such information (Article 13.41 of the CAO RF). The

introduction in December 2020 of liability for insult committed in public using the information and telecommunication network "Internet", or in relation to several persons, including those not individually defined, is intended to have a significant impact on the behavior of individuals in virtual space⁶.

The Criminal Code of the Russian Federation also establishes liability for dissemination of certain types of information in virtual space. For example, part 2 of Article 205.2 of the Criminal Code of the Russian Federation provides for criminal liability for public calls to carry out terrorist activities, public justification of terrorism or propaganda of terrorism, committed with the use of the Internet. And the so-called "Law on Military Censorship"⁷, adopted in March 2022, establishes criminal liability for public dissemination of knowingly false information on the use of the Armed Forces of the Russian Federation (Art. 207.3 of the Criminal Code of the Russian Federation), and calls for the introduction of restrictive measures against the Russian Federation, citizens of the Russian Federation or Russian legal entities (Art. 284.2 of the Criminal Code of the Russian Federation).

Thus, the placement of information prohibited for dissemination in virtual space may entail administrative and criminal penalties for the subject. For example, if a person posts prohibited information on his/her page in social networks or reposts such information posted by another user of a social network, it may lead to, at a minimum, blocking of the page, as well as to administrative or criminal liability.

Thus, according to the data of the Ministry of Internal Affairs of Russia, in the period from January to November 2023, 515 acts qualified as public calls for terrorist activity, public justification of terrorism or propaganda of terrorism (Article 205.2 of the

⁴ Information and legal portal "GARANT.RU". URL: <https://www.garant.ru/article/1444081/> (accessed on: 26.01.2024); Safe Internet League website. <https://ligainternet.ru/o-nas/> (date of access: 26.01.2024).

⁵ Federal Law of 27.07.2006 No. 152-FZ "On Personal Data". Collection of Laws of the Russian Federation. 2006. № 31 (1 ч.). Art. 3451.
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⁶ Federal Law of 30.12.2020 № 513-FZ "On Amendments to the Code of the Russian Federation on Administrative Offenses". Collection of Legislation of the Russian Federation. 2021. No. 1 (Part I). Art. 52.

⁷ Federal Law of 04.03.2022 № 32-FZ "On Amendments to the Criminal Code of the Russian Federation and Articles 31 and 151 of the Criminal Procedure Code of the Russian Federation". Collection of Legislation of the Russian Federation. 2022. № 10. Art. 1389.

Criminal Code of the Russian Federation) and 360 acts falling under Article 280 of the Criminal Code of the Russian Federation - public calls for extremist activity - were committed with the use of information and telecommunications technologies⁸.

On November 1, 2019, the main provisions of Federal Law No. 90-FZ of May 1, 2019 "On Amendments to the Federal Law "On Communications" and the Federal Law "On Information, Information Technologies and Information Protection" (hereinafter - Federal Law No. 90-FZ)⁹ came into force. This legislative act has already managed to get a number of its own names: "Law on Sovereign Internet", "Law on Sovereign Runet", "Law on Sustainable Functioning of the Russian Segment of the Internet", etc., which emphasizes its importance. At the same time, the content of Federal Law No. 90-FZ goes beyond the limits of only legal regulation of relations in the sphere of communications and information. This legislative act indicates a change in the legal policy and ideology of the Russian state in relation to the information and communication network "Internet".

Federal Law No. 90-FZ supplemented the Federal Law "On Communications" with the concept of "traffic exchange point". The powers of the Russian Ministry of Communications were expanded, which was granted the right to establish requirements for the functioning of communication network management systems in the event of threats to the stability, security and integrity of the functioning of Internet and communication networks. Telecommunications operators were charged with the obligation to install special technical means of countering threats to the functioning of the Internet and communications and to bring this information to

the attention of Roskomnadzor. In addition, this Federal Law was supplemented by Chapter 7.1 "Ensuring sustainable, secure and integral functioning of the Internet on the territory of the Russian Federation", which set out the specifics of the activities of telecommunications operators, the Government of the Russian Federation, Roskomnadzor and other entities, as well as their interaction in order to ensure sustainable, secure and integral functioning of the Internet on the territory of Russia. Finally, the Federal Law "On Communications" was supplemented by Article 65.1, which established the specifics of managing communication networks, including the Internet, in the event of threats to their operation.

The Federal Law "On Information, Information Technologies and Information Protection" was also amended to ensure stable operation of the Internet under conditions of threats to its functioning. Some of them were related to the innovations introduced into the Federal Law "On Communications" and were of a correlative nature, while some of them had independent significance. For example, the said Federal Law was supplemented with Article 14.2, which regulated relations in the field of sustainable and secure use of domain names in Russia.

In fact, after the Federal Law No. 90-FZ came into force and appropriate technical measures were taken, the Russian segment of the Internet could become fully autonomous in case of necessity (deliberate disconnection from the World Wide Web; failure of equipment providing traffic; cyberattacks on telecom operators, etc.). And if, for example, domestic telecom operators will be denied access to foreign servers and communication lines, critical services, primarily the websites of government agencies, will continue to function, and the country's management system will not be paralyzed. Internet banking, online shopping, social networks and other familiar virtual services will also remain operational.

In addition, the implementation of legislative provisions is aimed at limiting the access of Russians to prohibited resources, and their traffic with foreign servers will be controlled; owners of communication networks and other entities related to the functioning of the Internet will participate in exercises aimed at ensuring its safe and stable

⁸ Official website of the Ministry of Internal Affairs of the Russian Federation. Statistics and analytics. URL: <https://xn--b1aew.xn--p1ai/reports/item/45293174/> (accessed on: 26.01.2024).

⁹ Federal Law of 01.05.2019 № 90-FZ "On Amendments to the Federal Law "On Communications" and the Federal Law "On Information, Information Technology and Information Protection". Collection of Legislation of the Russian Federation. 2019. № 18. Art. 2214.

operation; the state will be able to independently disconnect the Russian segment from the global Network.

In the scientific community there are different points of view regarding these innovations of Federal Law No. 90-FZ [23]. For example, it is noted that the comparison of Russian and Chinese legislation, as well as the practice of its implementation, allows us to conclude that there are certain similarities between the processes currently taking place in Russia and China. However, taking into account the peculiarities of responding to the behavior of an individual in virtual space in the PRC [24-27], it should not be unambiguously stated that Russia is following the path of the PRC towards total censorship of the Internet and the media [28], since the goals of legal response to the consequences of personal behavior in virtual space can be achieved not only through prohibitive norms that establish legal responsibility for their violation, but also through the implementation of rules (guidelines) of a recommendatory nature, which are designed to shape the behavior of an individual in virtual space.

4. Conclusions

Thus, the problem of legal response to the consequences of personal behavior in virtual space has a multidimensional nature. This fact implies a radical restructuring of the law enforcement and judicial system, as well as the conduct of scientific research on the recording and digitalization of the evidence base, on the application of new technologies by law enforcement agencies and courts, on the presentation of evidence in digital form in courts. In addition, further research of the problem implies the need to develop a system of theoretical ideas about the forms of legal responsibility for the negative consequences of behavior in virtual space.

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