ISSN 2617-4162
E-ISSN 2617-4170

Соціально-правові студії

Науково-аналітичний журнал

Том 6, № 1

Львів
2023

УДК 33 + 34 + 159.9](051)

Рекомендовано до друку та розміщення
в електронних сервісах ЛьвДУВС Вченою радою
Львівського державного університету внутрішніх справ
(протокол № 9 від 29 березня 2023 р.)

Свідоцтво про державну реєстрацію
друкованого засобу масової інформації
Серія: КВ № 25025-14965ПР від 19.11.2021 р.

Журнал входить до переліку фахових видань України категорії «Б»:

з юридичних наук за спеціальностями 081 – Право та 262 – Правоохоронна діяльність
(наказ Міністерства освіти і науки України № 1412 від 18.12.2018 р.);

з економічних наук за спеціальностями 051 – Економіка, 072 – Фінанси, банківська справа та страхування, 073 – Менеджмент (наказ Міністерства освіти і науки України № 1301 від 15.10.2019 р.);

із соціальних та поведінкових наук за спеціальністю 053 – Психологія
(наказ Міністерства освіти і науки України № 1643 від 28.12.2019 р.)

Журнал представлено в наукометричних базах даних, репозитаріях:
Національна бібліотека України ім. Вернадського, Index Copernicus International Journal Master List, Інституційний репозитарій Львівського державного університету внутрішніх справ

Соціально-правові студії: науково-аналітичний журнал / гол. ред. О. Балинська. Львів: ЛьвДУВС, 2023. Т. 6, № 1. 64 с.

Адреса редакції:
Львівський державний університет внутрішніх справ
79007, вул. Городоцька, 26, м. Львів, Україна
тел.: +380 (32) 233-20-80
E-mail: info@sls-journal.com.ua
www: https://sls-journal.com.ua/uk

ISSN 2617-4162
E-ISSN 2617-4170

Social & Legal Studios

The scientific and analytical journal

Volume 6, No. 1

Lviv
2023

UDC 33 + 34 + 159.9](051)

Recommended for printing and posted in the electronic services of LvSUIA
by the Academic Council of Lviv State University of Internal Affairs
(Minutes No. 9 of March 29, 2023)

Certificate of state registration of the print media
Series: KV No. 25025-14965PR of 19.11.2021

The journal is included in the list of professional publications of Ukraine of category "B":
legal sciences in the fields of 081 Law and 262 Law enforcement
(Order of the Ministry of Education and Science of Ukraine No. 1412 of 18.12.2018);
economic sciences in the fields of 051 Economics, 072 Finance, Banking and Insurance, 073 Management
(Order of the Ministry of Education and Science of Ukraine No. 1301 of 15.10.2019);
social and behavioral sciences in the field of 053 Psychology
(Order of the Ministry of Education and Science of Ukraine No. 1643 of 28.12.2019)

The journal is presented at scientometric databases, repositories:
Vernadsky National library of Ukraine, Index Copernicus International Journal Master List,
Institutional repository of Lviv State University of Internal Affairs

Social & Legal Studios: The scientific and analytical journal / O. Balynska (EIC). Lviv: Lviv State University of Internal Affairs, 2023. Vol. 6, No. 1. 64 p.

Publishing Address:
Lviv State University of Internal Affairs
79007, 26 Horodotska Str., Lviv, Ukraine
tel.: +380 (32) 233-20-80
E-mail: info@sls-journal.com.ua
www: https://sls-journal.com.ua/en

Соціально-правові студії

Том 6, № 1
2023

Науково-аналітичний журнал
Засновано у 2018 р.
Періодичність випуску: чотири рази на рік

Редакційна колегія

Social & Legal Studios

Volume 6, No. 1
2023

The scientific and analytical journal
Year of establishment: 2018
Publication frequency: Four times a year

Editorial Board

ЗМІСТ

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UDC 316.752.4:005.95
DOI: 10.32518/sals1.2023.09

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Conflict of Ukrainian Generations X and Y: Ways to overcome it in the context of the war in Ukraine

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Abstract. In the conditions of war, the problem of maintaining a comfortable psychological climate in professional teams and society in general is acutely felt because Ukrainians are in a depressed psychological state. Conflicts among people of different ages are also escalating, as representatives of the baby boomer generation are gradually being replaced by Generation Y, and therefore most Ukrainian companies are teams of representatives of Generations X and Y. The purpose of this study is to find ways to overcome the problem of conflict between different generations. Among the key scientific methods of this study is M. Rokeach's model, which was used to rank the terminal and instrumental values of representatives of Ukrainian generations X and Y, and the method of canonical correlations, used for comparative analysis of the value structure of the analysed generations. The main results of the study indicate that the aggravation of relations and the emergence of misunderstandings among Ukrainians is a consequence not only of the influence of war, but also of the conflict of the most economically active generations – X and Y. This conflict is caused by differences in the perception of life (i.e., in values), a large difference in the socio-political conditions of formation and belonging to different archetypes of generations according to the Strauss-Howe generational theory. Ukrainian generation X is a recessive generation of "nomads", while generation Y is a dominant generation of "heroes". The results of a comparative analysis of the dominant terminal and instrumental values of these generations indicated that 50% of the dominant values are common terminal and only 33% are common instrumental. It was found that the Ukrainian Generation X has more post-materialistic values, while Generation Y prefers materialistic values, which was a consequence of socio-political events in Ukraine, under which these generations were formed. The practical significance of the results obtained lies in the fact that the proposed recommendations for overcoming the conflict of Ukrainian Generations X and Y by factoring in the most important values for each of these generations will help not only to overcome the conflict of generations, but also to increase the effectiveness of their interaction

Keywords: Millennial generation, unknown generation; generation culture level; terminal values; instrumental values

Introduction

The war that is currently taking place on the territory of Ukraine requires increased attention to relationships in such difficult times for Ukrainians, since the general emotional state of people, as noted by O. Pyshchulina *et al.* (2022), is rather depressing and the number of conflicts and misunderstandings within society, specifically in the collectives of various organizations, has increased considerably over 2022. One of the sources of such conflicts is generational change, as baby boomers gradually retire, and Generation Y increasingly enters the workforce. This is why emerging misunderstandings and generational differences can adversely affect employee productivity, efficiency, and satisfaction (Smith & Nichols, 2015; Jemima & Kusumadmo, 2019). Therefore, B.A. Kaifi *et al.* (2012); C. Bhayana *et al.* (2021) point out that managers need to learn more about their employees' job satisfaction, their expectations, and their outlook, precisely at a time when new generations are merging with previous ones. One of the ways to overcome such conflicts among

Suggested Citation

Article's History: Received: 19.11.2022 Revised: 04.02.2023 Accepted: 29.03.2023

Blyznyuk, T., & Maistrenko, O. (2023). Conflict of Ukrainian Generations X and Y: Ways to overcome it in the context of the war in Ukraine. *Social & Legal Studios*, 6(1), 9-16. doi: 10.32518/sals1.2023.09.

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personnel is precisely to investigate and analyse the dominant values of these generations.

The problem of generational interaction and overcoming intergenerational conflicts has been relevant for scientists in various fields (psychology, sociology, political science, marketing, and management) for many years. Over the past three decades, scientists in cross-cultural management have been investigating the value profiles of modern generations in different countries to improve the quality of management of representatives of these generations who can simultaneously work in the team of one company. Thus, the modern theory of generations, which was developed by N. Howe & W. Strauss (2007), and is the theoretical basis for such cross-cultural studies, is based on the fact that pertinence to the corresponding generation is determined by the dominance of values that are most inherent in the given generation. As K.W. Smola & C.D. Sutton (2002), S. Lawati (2019) note, a generation is a group that can be defined by the following common features: year of birth and age, place of birth and socialization, and major events that shaped them as a person.

The impact of key life events, such as wars, the emergence of innovative technologies or considerable economic and political changes in society, is also vital for the emergence and formation of generations. Because scientists S. De Hauw and A. De Vos (2010), V. Singh *et al.* (2020) point out that it is precisely such events that shape the personality, the dominant values of a generation, and the expectations of this generation.

The process of intergenerational interaction also occurs constantly, as adjacent generations constantly interact: the previous generation (usually parents) influences the next generation (children) through upbringing and other progressive or regressive actions and forms their worldview and values that will be inherent in this generation.

The basis of generational conflict (conflict of "parents and children"), as defined in the research of N. Howe and W. Strauss (2007), is not the difference in age, but the difference in the dominant values of different generations. This means that the key factor in uniting people into one generation is the same values that are laid down on the subconscious level of everyone during education and socialization of this generation.

In the past two decades, two generations have dominated Ukraine – Generation X (born in 1966-1986) and Generation Y (born in 1987-2005) (Blyznyuk, 2017).

The purpose of this study was to analyse and compare the dominant values of the most economically active modern generations of Ukrainians: generation X and generation Y, to overcome the problem of conflict between representatives of these generations during their interaction as personnel of a Ukrainian company.

Literature review

As it was proved in (Blyznyuk & Lepeyko, 2016), Generation X (unknown generation, 13th generation) in Ukraine was born in the Soviet Union and was already formed during its collapse. The worldview of the Ukrainian Generation X was influenced by such important economic and political changes in the country as perestroika, total deficit, and Ukraine's independence. The most significant event that led to the end of the birth period of Generation X in Ukraine was the Chernobyl disaster (1986). Therefore, the Ukrainian Generation X differs from the representatives of Generation X in the United States and Western European countries in the list of dominant values.

According to the classification of generational archetypes, Generation X is a "nomad" who is characterized by a global perception of the world, pragmatism, and a tendency to migrate to other countries. According to the study results of N. Howe & W. Strauss (2007), in the United States, Generation X consists of the largest number of immigrants in the 20th century. The specific feature of this recessive generation is its readiness for change and flexibility due to the impact of political and social instability, which was noted during their formation. Members of this generation are also the largest entrepreneurial generation in U.S. history.

In Ukraine, Generation X is currently undergoing a period of maturity, which is usually the most successful period in the life cycle of "nomads", while this always coincides with a crisis in society and the country (Blyznyuk, 2017), which is currently happening in Ukraine and was initially caused by the pandemic, and then the start of the war on the territory of Ukraine.

The propensity for migration of the Ukrainian generation X is actively manifested, especially in 2021-2022, since it is the representatives of this generation who are the largest part of the adult population of Ukraine (approximately 35%) (Ministry of Economy…, 2022) of the total number of people who left the territory of Ukraine after February 24, 2021 due to the war. T. Blyznyuk and T. Lepeyko (2016) proved that the Y generation (Millennial generation, Why generation, Next generation, Zero generation) in Ukraine was born and grew up under the influence of terrorist attacks, military conflicts, epidemics, and the development of digital technologies. And the process of socialization of this generation and the formation of representatives of this generation as individuals is ending right now. Therefore, the events that are currently happening on the territory of Ukraine have a direct impact on the dominant values and expectations of this Ukrainian generation.

In earlier studies of T.P. Blyznyuk (2017), it was noted that the key event that most influenced the formation of the Ukrainian Generation Y was the beginning of the anti-terrorist operation in the Donbas in 2014. However, now it can be argued that the war in Ukraine has become exactly the key factor that has the greatest impact on this generation and its worldview. That is why the Ukrainian Generation Y can also become a generation that differs from the representatives of Generation Y in the United States and Western Europe.

According to the classification of archetypes of generations, Generation Y are "heroes" who grow up in the conditions of increased security created by their parents (generation X), relying on their own hard experience, protecting them from the influence of aggressive and dangerous external environment, which is inherent in the period of socialization and formation as individuals (childhood period) of Generation Y. According to the study results of N. Howe and W. Strauss (2007), Generation Y is the dominant generation of confident and active fighters who stand up for family values, and events such as the September 11 terrorist attacks have helped further strengthen the importance of personal life and family compared to career aspirations (Ng, *et al.*, 2010; Dimock, 2019; Shiju, 2022). A. Adamou *et al.* (2018) proved that this generation is considered the most protected children in world history, since even when the war broke out in Ukraine, the Ukrainian Generation Y almost completely passed into the period of youth, and became part of the labour force in Ukraine, replacing the baby boomer generation.

Specialists R. Deyoe & T. Fox (2011), Y. Zhang & W. Wiebe, (2022) found that due to differences in values and expectations, conflicts among staff become commonplace when Generation Y becomes the workforce, and if these differences in values are not addressed or identified, the company's management can only expect such conflict to increase. The study of values at various levels, such as personal, organizational, generational, and national, has been the subject of various studies for more than fifty years (Tuulik *et al.*, 2016). Many theoretical studies focus on values as a basis for understanding social behaviour. M. Rokeach (1973), K. Smola & C. Sutton (2002), R. Deyoe & T. Fox (2011) viewed values as deep motivations that guide, justify, and explain attitudes, norms, thoughts, and actions. Therewith, values can reflect major social changes in society and beyond (Rokeach, 1973; Schwartz, 2012).

K. Tuulik *et al.* (2016) noted that the concept of values is multifaceted, and the study of values has many layers of values: instrumental and terminal; professional, organizational, generational, and national; real and imposed. G. Hofstede *et al.* (2010) noted that these different layers of values show precisely which individual values coincide with those at the organizational, generational, and national levels. Therefore, there are many models of values developed by scientists to investigate and analyse these layers of values. Thus, the model by M. Rokeach (1973) includes eighteen terminal values (goals) and eighteen instrumental values (means); the model by S. Schwartz (2012) is based on fifty-six values that are combined into ten types of values-motives; the model by D. Jaffe & C. Scott (1998) includes forty values in six categories; the model by G. Hofstede *et al.* (2010) describes thirty-six values.

A distinctive feature of this study was to determine the basis for the emergence of conflicts and misunderstandings, which is a consequence of the conflict between Ukrainian Generations X and Y, and to develop practical recommendations for overcoming this conflict in the context of the war in Ukraine.

Materials and methods

In this study of generational values, the model of M. Rokeach (1973) was used to determine the values of Ukrainian generations X and Y, since this model is one of the principal models used to investigate values at the generational level (Smola & Sutton, 2002; Blyznyuk, 2017; Farcane *et al.*, 2019), and the validity of this model for value research was proven in (Vauclair *et al.*, 2011).

Representatives of Ukrainian generations X and Y were interviewed using a questionnaire developed based on the model by M. Rokeach (1973), where the respondents had to rank (determine the place in life in terms of importance) terminal and instrumental values from the proposed list. Then, the resulting arrays of values (terminal and instrumental) were analysed using the method of canonical correlations (Abdi *et al.*, 2018), which was chosen because it allows determining the maximum correlations between two groups: explanatory features and resulting features that accumulate the effects of influence explanatory signs. Elementary attributes are terminal values that affect instrumental values (performance attributes).

Within the framework of the study, in 2020-2021, an anonymous online survey of representatives of Ukrainian Generations X and Y was conducted using a questionnaire developed based on the model by M. Rokeach (1973) in Google Forms format. The questions were formed into three blocks: general information about the respondent (age, gender, place, place of birth and socialization, religion, profession and field of activity), a list of terminal values for alphabetical ranking, and a list of terminal values for alphabetical ranking. The survey was conducted pursuant to the code of professional ethics of the Simon Kuznets Kharkiv National University of Economics (Code of professional ethics, 2008).The respondents were teachers and students of the Simon Kuznets Kharkiv National University of Economics and Kharkiv National University of Radio Electronics. A total of 295 respondents took part in the survey, of which 144 people were representatives of Generation X and 151 people were representatives of Generation Y. Among the surveyed representatives of Generation X, 69.1% were women, 30.9% were men. Among the surveyed representatives of Generation Y, 54.5% were women, and 45.5% were men. According to the survey results, the ranked lists of terminal and instrumental values of representatives of Ukrainian Generations X and Y were analysed using the canonical correlation method.

Results and discussion

Based on the analysis of the survey of representatives of Ukrainian Generations X and Y using the canonical correlation method, the following results were obtained, which are presented in Tables 1 and 2.

Table 1. Significance of terminal values based on the results of determining canonical variables

Terminal value	Generation			
	X		Y	
	coefficient	location	coefficient	location*
Active (interesting) and busy life	6.0591	1	0.0062	8
Inner harmony	5.7449	3	0.2024	5
Life wisdom	5.4689	7	-0.1046	11
Health	3.9657	18	0.4055	1
Interesting work	5.4038	9	-0.0787	10
Love	4.6845	16	0.2143	4
Financially secure and comfortable life	5.0578	4	0.0791	6
True friendship	5.5608	5	0.3765	2

Table 2, Continued

Terminal value	Generation			
	X		Y	
	coefficient	location	coefficient	location*
Productive life	4.7072	15	-0.3471	16
Development	4.9443	12	0.0708	7
Freedom	6.0417	2	-0.1124	12
Pursuit of beauty	5.4126	8	-0.4435	18
Happy family life	4.8880	13	0.0619	9
Happiness of others	4.0937	17	0.3026	3
Creativity	4.9543	11	-0.2914	15
Pleasure	5.3673	10	-0.2520	14

Notes: * the place of anti-values is determined in reverse order
Source: the result of the authors' own research

Table 2. Significance of instrumental values based on the results of determining canonical variables

Instrumental value	Generation			
	X		Y	
	coefficient	location*	coefficient	location*
Neatness (tidiness)	-7.2768	16	0.3349	6
High demands	-6.9749	14	0.1114	12
Good manners and politeness	-6.9057	13	0.3981	4
Vivacity	-6.8917	10	0.6260	2
Intelligence and education	-5.5163	1	0.1438	11
Diligence	-6.9003	12	0.1074	13
Independence	-6.6782	9	0.0980	14
Intransigence to shortcomings in oneself and others	-6.0277	3	0.0264	15
Responsibility	-5.6886	2	0.4601	3
Rationalism	-7.3264	17	0.1601	10
Self-control	-6.4952	7	0.2380	8
Courage in defending own opinions and views	-6.6580	8	-0.0169	17
Strong will	-6.2503	6	0.3236	7
Tolerance	-6.0978	4	0.1817	9
Honesty	-6.1965	5	0.8431	1
Open-mindedness	-7.1959	15	0.0010	16
Efficiency in business	-6.9001	11	0.3518	5
Compassion	-8.3796	18	-0.0708	18

Notes: * the place of anti-values is determined in reverse order
Source: the result of the authors' own research

Tables 1 and 2 indicate the coefficients of linear combinations of new canonical quantities, which are determined on the terms of the maximum (highest) correlation between these combinations, which has a confidence of 95.0%.

According to the values of the obtained coefficients presented in Table 1, it can be determined that in the Ukrainian Generation X, all terminal values are positive for the generation's perception of their social significance for this generation and the consequences of their implementation. For the Ukrainian Generation Y, such terminal values as life wisdom, interesting work, public recognition, knowledge, creativity, and pleasure are anti-values (negative values) for this generation. Since anti-values are patterns of unacceptable behaviour, their significance in general in the life of this generation should be determined in reverse order. Because they belong to the values that the representatives of

the generation consider unimportant, or those that should be avoided altogether, and therefore have the least importance in the life of this generation (the highest places).

In addition, Tables 1 and 2 determine the significance of each of the values in the life of Ukrainian Generations X and Y according to the place of this value in the life of the generation under study, which is determined and based on the coefficients of linear combinations of new canonical values (a set of ranked terminal and instrumental values of representatives of these generations).

According to the values of the obtained coefficients presented in Table 2, it can be determined that in the Ukrainian Generation X, all instrumental values are perceived as anti-values in relation to their social significance for this generation and the consequences of their implementation. It is also determined that in the Ukrainian Generation Y, such instrumental values as courage in defending own opinions, views, and compassion for this generation are anti-values.

Thus, the dominant values of Ukrainian Generations X and Y, i.e., the values that are key in the lives of these generations (places 1 to 6), which were revealed as a result of the analysis of the values of representatives of these generations using the method of canonical correlations, are presented in Table 3.

Table 3. Dominant values of Ukrainian Generations X and Y

Location	Generation X	Generation Y
	Terminal values	
1	Active (interesting) and busy life	Health
2	Freedom	**True friendship**
3	**Inner harmony**	Happiness of others
4	**Financially secure and comfortable life**	Love
5	**True friendship**	**Inner harmony**
6	Public recognition	**Financially secure and comfortable life**
	Instrumental values	
1	Intelligence and education	**Honesty**
2	**Responsibility**	Vivacity
3	Intransigence to shortcomings in oneself and others	**Responsibility**
4	Tolerance	Good manners and politeness
5	**Honesty**	Efficiency in business
6	Strong will	Neatness (tidiness)

Source: the result of the authors' own research

As a result of a study of the dominant values of the most economically active modern generations of Ukrainians, Generation X and Generation Y, it was determined that the conflict between Generation X and Generation Y really exists, since only 50% of the dominant terminal values coincide, which is related to pertinence to one national culture – the Ukrainian culture.

Therewith, among the dominant terminal values of Generation Y, which do not coincide with the dominant terminal values of Generation X, one value is post-materialistic (happiness of others), and the other two terminal values are materialistic (health and love). In Generation X, on the contrary, the two dominant terminal values that do not coincide with the dominant terminal values of Generation Y are post-materialistic (freedom and social recognition), and one terminal value is materialistic (active and busy life). In Generation X, all terminal values are positive for the generation's perception of their social significance and the consequences of their implementation, and in Generation Y, such terminal values as life wisdom, interesting work, public recognition, knowledge, creativity, and pleasure are anti-values (negative values) for this generation, i.e., they belong to values that are considered unimportant, or should be avoided altogether. Generation X prefers post-materialistic values among terminal values, while Generation Y is more focused on achieving materialistic values related to well-being, physical and psychological security.

Among the dominant instrumental values of Generations X and Y, only 33% coincide, which indicates that these generations form entirely different paths to achieve their life goals. Therewith, among the dominant instrumental values of Generation Y, which do not coincide with the dominant instrumental values of Generation X, the four instrumental values are materialistic (vivacity, good manners and politeness, efficiency in business and neatness (tidiness)). Whereas in Generation X, among the dominant instrumental values that do not coincide with the dominant instrumental values of Generation Y, there is one post-materialistic value (tolerance).

The results of this study in the form of a list of dominant terminal and instrumental values of Ukrainian Generations X and Y allow providing the following practical recommendations for overcoming the conflict between these generations:

1) It is necessary to clearly distinguish between representatives of each of the analysed generations and, accordingly, use different methods of motivation for each of these generations. Thus, for the Ukrainian Generation X, non-material motivation will be the most effective, and for Generation Y – material motivation.

2) To increase the effectiveness of interaction between representatives of these generations in one team, it is necessary to clearly distribute the roles of each of its members, factoring in both the individual characteristics of a person

and pertinence to the corresponding generation. Thus, it is necessary to consider that Generation X is a generation of entrepreneurs, and this can be used as an advantage of this generation, since this generation is always focused on results. While Generation Y is a generation that has prominent digital skills, which is also an advantage of this generation.

The results of studies of the values of representatives of generations X and Y in countries such as Singapore and Sri Lanka (Rafiki & Hartijasti, 2021; Helmi *et al.*, 2021; Weerarathne *et al.*, 2022) also indicate a considerable preference in the structure of values of Generation X for immaterial values, and Generation Y – for material values. The study by M. Rafiki & Y. Hartijasti (2021) found that Indonesian Generation Y members, when ranking the values associated with their work, prefer external (material) values that focus on the results of their work in the form of material rewards, income, learning opportunities, and career growth. Whereas representatives of the Indonesian Generation X, on the contrary, choose internal values (immaterial), which are associated with intangible rewards and are manifested through a considerable interest in work and the search for opportunities to show a creative approach when performing work. A. Helmi *et al.* (2021) determined that immaterial values such as achievement, self-respect, family values, and social interaction are key for Indonesian Generation X, while material values such as pleasure, entertainment, friendship, and appreciation of others are dominant for Indonesian Generation Y. R.S. Weerarathne *et al.* (2022) found that Generation Y in Sri Lanka demonstrates the dominance of material values (success, career growth, and purposefulness), while Generation X – immaterial values (family relations, creative fulfilment, and relationships with others).

The results of studies of the values of representatives of Generations X and Y in the countries of Western Europe (Lauterbach & De Vries, 2020), the USA (Egri & Ralston, 2004; Zhang & Wiebe, 2022), the UAE (Al-Marri *et al.*, 2018), on the contrary indicate that in these countries, Generation Y is considered to be the bearer of post-materialistic values, while Generation X – of materialistic values. Thus, F. Lauterbach & S.E. De Vries (2020) determined that the younger generation of Europeans are interested in social interaction and self-fulfilment, which indicates the dominance of immaterial values among the life goals of Generation Y in Western Europe. Y.B. Zhang & W.T. Wiebe (2022) note that the basis of the conflict between representatives of Generations X and Y in the United States is precisely the persistent dominance of material priorities in the life of Generation X in comparison with the more social position (non-material priorities) of Generation Y. Egri & D. Ralston (2004) notes that members of Generation X in the United States pay considerable attention to financial independence and financial stability. M. Al-Marri *et al.* (2018) note that for the younger generation of employees of companies (Generation Y) located in the UAE, values such as social interaction, stability, and freedom are vital, while older employees (Generation X) prefer material values.

Such a difference in the values of the representatives of the Ukrainian and Asian generations X and Y in comparison with the representatives of the same generations in the countries of Western Europe, the USA, and the UAE is connected with the fact that the conditions in which these generations grew up in Western Europe, the USA, and the UAE significantly differ from Ukraine, Sri Lanka, and Singapore. Thus, the Ukrainian Generation X was formed as individuals in the context of the collapse of the USSR, which opened new opportunities. Whereas Generation Y grew up in Ukraine in an aggressive and dangerous external environment, which formed this generation's need for materialistic values related to well-being, physical and psychological security, and now the influence of war on the formation of the Ukrainian Generation Y is even stronger.

Conclusions

It was found that one of the sources of conflict among Ukrainians in recent times, and a considerable factor that affects the overall emotional state, apart from the adverse impact of the war, is precisely the change of generations, which is the result of the transition of the baby boomer generation to retirement age and the increasing activation of the adult Generation Y. Therefore, it is necessary to consider these differences between representatives of Generation X and Generation Y when choosing tools for motivating these generations.

It is proved that during interaction between representatives of Ukrainian Generations X and Y, conflicts and misunderstandings can escalate, which is a consequence of the conflict of Ukrainian Generations X and Y. Therewith, Generation X is in the period of maturity, while Generation Y completes the process of socialization. Therefore, the war in Ukraine has become exactly the key factor that has the greatest impact on Generation Y and its worldview.

It was found that Ukrainian Generations X and Y have different dominant terminal values, only 50% of the dominant terminal values coincide, which is explained by the influence of Ukrainian national culture. In general, the structure of terminal values of Generation X is characterized by a positive perception of values regarding their social significance and the consequences of their implementation, while Generation Y has negative values, i.e.is, those that are considered unimportant, or those that should be avoided altogether.

It was found that Ukrainian Generations X and Y have different dominant instrumental values, where only 33% of these values coincide. Generation X perceives all instrumental values as anti-values, while Generation Y recognizes only such instrumental values as courage in defending own opinion, views, and sensitivity as anti-values.

Practical proposals for overcoming the conflict between Generations X and Y were proposed, which relate to the specifics of the motivation of these generations and the competitive advantages of each of these generations.

Areas of further research can be the development of practical recommendations for personnel management of a Ukrainian company, where employees are representatives of Generations X and Y, considering the value structure of each of these generations.

Acknowledgements

None.

Conflict of interest

None.

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Конфлікт українських поколінь X та Y: шляхи його подолання в умовах війни в Україні

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Анотація. В умовах війни гостро відчувається проблема підтримання комфортного психологічного клімату в професійних колективах і суспільстві загалом, адже українці перебувають в пригніченому психологічному стані. Також загострюються конфлікти серед людей різного віку, оскільки відбувається поступова заміна представників покоління бебі-бумерів на покоління Y, а тому більшість українських компаній – це колективи представників саме поколінь X та Y. Мета цього дослідження – знайти шляхи подолання проблеми конфлікту різних поколінь. Серед ключових наукових методів роботи модель М. Рокіча, яку використано для ранжування термінальних та інструментальних цінностей представників українських поколінь X та Y, і метод канонічних кореляцій, застосований для порівняльного аналізу структури цінностей проаналізованих поколінь. Основні результати дослідження свідчать, що загострення взаємин та виникнення непорозумінь серед українців – наслідок не лише впливу війни, а й конфлікту найбільш економічно активних поколінь – X та Y. Цей конфлікт спричинено відмінностями в сприйнятті життя (тобто в цінностях), великій різниці в соціально-політичних умовах формування та приналежності до різних архетипів поколінь за класифікацією Н. Хоува та В. Штрауса. Українське покоління X – рецесивне покоління «кочівників», а покоління Y – домінантне покоління «героїв». Результати порівняльного аналізу домінантних термінальних та інструментальних цінностей цих поколінь показали, що 50 % домінантних цінностей – спільні термінальні і лише 33 % – спільні інструментальні. Визначено, що українське покоління X має більше постматеріалістичних цінностей, а покоління Y надає перевагу матеріалістичним цінностям, що стало наслідком соціально-політичних подій в Україні, під впливом яких формувалися ці покоління. Практичне значення отриманих результатів полягає в тому, що запропоновані рекомендації щодо подолання конфлікту українських поколінь X та Y шляхом врахування найбільш важливих для кожного із цих поколінь цінностей допоможуть лише подолати конфлікт поколінь, а й підвищити ефективність їхньої взаємодії

Ключові слова: генерація Міленіум; невідома генерація; рівень культури генерації; термінальні цінності; інструментальні цінності

UDC 334.722
DOI: 10.32518/sals1.2023.17

Соціально-правові студії. 2023. Т. 6, № 1
Social & Legal Studios. 2023. Vol. 6, No. 1

Economic legal and psychological aspects of the introduction of social entrepreneurship in Ukraine

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Abstract. The relevance of this study was to determine the importance of development of social entrepreneurship during the epidemiological crisis and during the war period, which has a significant impact on both the economic and sociological situation, especially for socially vulnerable population groups, internally displaced people, youth, as it solves the problem of unemployment, and social and psychological adaptation. The purpose of this study was to analyse the formation and development of the "social entrepreneurship" category, to identify its main economic, legal and psychological problems, as well as to provide recommendations to promote the further development of social entrepreneurship in Ukraine. The key methods used in the study included historical, dialectical, abstract-logical, methods of systematization and generalization, economic, statistical, and comparative analysis, as well as the graphic method. Special characteristics of social entrepreneurs were formulated. It was found that social entrepreneurship concentrates a creative approach, innovativeness, planning and risk-taking. The authors established that national culture and public attitudes influence individual decisions regarding the distribution of entrepreneurial talents in the activities of social enterprises. Furthermore, it was also substantiated that the vagueness of the clear formulation of the category "social entrepreneurship", the absence of separate legislation in the field of its regulation causes the lack of targeted national support for such enterprises, although it does not limit social entrepreneurs in choosing the optimal legal form of their social entrepreneurship. To improve the situation, it is recommended to focus on opportunities to stimulate social entrepreneurship, especially at the local level. The theoretical significance of this study lies in the emphasis on the economic, legal, and psychological factors of the development of social entrepreneurship in Ukraine under the conditions of crisis and war. In practice, the results of this study can be used by enterprises, united territorial communities, regional and state authorities, non-governmental organizations

Keywords: social sphere; legislative framework; national support; characteristics of a social entrepreneur; business models

Introduction

The crisis in the country, caused first by the COVID-19 epidemic and then by the military invasion, has a massive impact on the political, economic, and social spheres, causing crisis phenomena in each of them. Therefore, the state has limited opportunities and many issues in the social sphere are still unresolved. And their number is becoming even greater now during the active phase of the Russian-Ukrainian war, as there is a daily increase of people who have suffered from military operations, lost their homes and jobs, displaced persons. And therefore, the need, relevance, and importance of social entrepreneurship is growing. The urgent solution of the problems of the social sphere requires significant funds;

Suggested Citation

Article's History: Received: 22.12.2022 Revised: 14.02.2023 Accepted: 29.03.2023

Hora, A., Kalinin, A., & Lebedev, O. (2023). Economic legal and psychological aspects of the introduction of social entrepreneurship in Ukraine. *Social & Legal Studios*, 6(1), 17-24. doi: 10.32518/sals1.2023.17.

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however, there is a growing number of volunteers ready to make significant monetary and non-monetary contributions to help other people in need, thereby helping their country to achieve victory as soon as possible, recovery and prosperity. And only now came the realization of the importance of the spread and development of social entrepreneurship throughout the country as a whole, of the importance of achieving a scaling effect. What proves the rapid pace of its development: 2013 – 41 social enterprises, 2017 – 150, 2020 – at least 1,000 social enterprises (Nazaruk, 2016).

By combining socially important goals with an entrepreneurial spirit, social enterprises solve issues of inclusivity and many other problems in our lives. Notably, there is no official generally accepted definition of social entrepreneurship in Ukraine, and there is none at the legislative level, and it has not been defined by the Ukrainian scientific community.

The purpose of this study was to determine the essential features and factors of the development of social entrepreneurship in the context of psychological and legal factors that have a direct impact on the use of opportunities and resources to solve socially significant problems. The main tasks were to determine the socio-psychological aspects of social entrepreneurship and its impact on public welfare; to investigate and compare the legislative regulation of the functioning of social entrepreneurship entities, the relevant principles and principles of their practical activity (specifically, national and public support, financing) in individual EU countries and in Ukraine, as well as consider the tools of financial support for their activities. The scientific originality of the obtained results lies in the investigation of the impact of social entrepreneurship on the solution of social problems and the in-depth study of the problems of the economic, legal, and psychological aspects of the implementation of social entrepreneurship.

Quite a few government and business representatives, scientists, specialists, and public figures were engaged in the study of theoretical aspects and practical experience of social entrepreneurship in Ukraine. Problems of the formation and development of social entrepreneurship were studied by such Ukrainian scientists as H. Belovolchenko (2017), which considered the development of the definition of "social entrepreneurship". A.A. Svynchuk *et al.* (2017) noted that social entrepreneurship is an impetus to increase the environmental culture of the population. A. Kornetskyy (2019), V. Nazaruk (2016) believed that social entrepreneurship is a business and it does not matter what it is, the main thing is to be profitable, A.A. Svynchuk *et al.* (2017), V. Smal and V. Kokot (2017) and others in their works determined the prospects for the development of social entrepreneurship in Ukraine and formed practical directions for its support. Foreign researchers J. Kickul and T.S. Lyons (2020) argued that the solution of social problems is very important for a social entrepreneur and are of great importance to society; M.F. Kamaludin *et al.* (2021) classified four dimensions by categories of impact on social entrepreneurship and sustainability, C.K. Lee *et al.* (2022) believed that informal institutions significantly influence the profit-making strategy of social entrepreneurship; K. Cagarman *et al.* (2020) studied the development of social entrepreneurship in European countries, J.G. Dees (2001) highlighted the principles according to which the process of implementing social entrepreneurship should be clearly aimed at studying the needs of the community, and only then at the realization of the social mission and others. These scientists made an important contribution to the development and analysis of social entrepreneurship problems and others.

The theoretical and methodological framework of this study included the fundamental provisions of economic science on the development of social entrepreneurship. To fulfil the purpose of the study, general scientific and special methods of scientific cognition were used, namely: historical – to consider the evolution of the theory of the development of social entrepreneurship; dialectical – for generalization and systematization of theoretical provisions regarding the development and organizational and economic socialization of entrepreneurship; system analysis and synthesis, deductive and inductive methods, the method of analogies and generalization were used during the study of the essence of the concept of social entrepreneurship; methods of comparison and generalization – studying foreign practices; graphic – for building logical schemes and visual representation of the development of social entrepreneurship; the method of formalization – to determine measures for the formation of motivational priorities and the mechanism for stimulating the development of social entrepreneurship; determination of proposals for the prospective development of social entrepreneurship in Ukraine.

Socio-psychological aspects of the development of social entrepreneurship

Social entrepreneurship is a derivative of business activity, which arose from the understanding that it is urgent and important to combine economic or financial results with social ones. According to the opinion of M.R. Kuts (2015), who studied the ideas of J.G. Dees (2001), social entrepreneurship is the next stage of the development of business activities carried out by non-profit organizations. It is also considered a mechanism of social changes that affect the standard of living, is a tool for solving social problems, contributes to the development of energy efficiency, increases the level of environmental culture of the population, decreases the unemployment rate of vulnerable population groups, and is also a factor in the formation of social well-being (A.A. Svynchuk *et al.*, 2017).

According to the definition of J.G. Dees (2001), social entrepreneurs are true agents of change in the social sphere because:

1. They create social (not private) values.
2. They find non-standard opportunities to get the maximum effect from their activities.
3. Take part in continuous innovation and continuous learning.
4. They act decisively, despite the limited available resources.
5. Are responsible for the results of their activities.

As H. Ford (2015) believed in his book "My Life and Work", the best use of all available capital is not only to earn increased profits, but to earn and spend these profits to improve the social level life. Until we solve the social problems in our lives, we will not do our main work. We will not be able to serve as much as possible.

During the panel discussion "Intro 2017: The man of the future" at the Lviv Business School of the Ukrainian Catholic University, T. Arctedius, founder of the Center for Social Entrepreneurship, emphasized that social entrepreneurship is more likely to be more successful than conventional

business. “The reason for this is people. It is good to have an idea, but it is important to implement it, because you must believe in it. Under such conditions, social enterprises have an advantage because it is easier to work when you have passion and enthusiasm” (Belovolchenko, 2017).

The global economic downturn has greatly increased the pressure on the leadership of non-profit organizations (NPO). Therefore, given that executive leadership is an important component of the success of these institutions, F. Adro and C. Fernandes (2022), in their study emphasize the strengthening of the relationship between the entrepreneurial behaviour of management and the activities of public NPO, the creation of social value and the entrepreneurial orientation of NPO. This gave impetus to the emergence of such hybrid organizations as social enterprises.

The manager of the social investment program “Western NIS Enterprise Fund” V. Nazaruk (2016) is convinced that social entrepreneurship is becoming a fashionable trend in Ukraine, as it is discussed at various events and attracts many initiative groups of NGOs or simply active people. The use of entrepreneurial approaches to the solution of social problems allows less dependence on the state budget, which is extremely insufficient, and ensures a fairly sustainable development for vulnerable sections of society. This brings the development of social entrepreneurship in Ukraine to a new level.

In the emerging field of academic research on social entrepreneurship, studies linking social entrepreneurship to sustainable development are gaining interest because of the importance of combining these two definitions. M.F. Kamaludin *et al.* (2021) identified four key dimensions of social entrepreneurship: social, economic, behavioral and managerial. These four dimensions were categorized by impact on social entrepreneurship and sustainability. In addition, the theory of change and logic model are identified business processes that are extended to measure social impact using a social return on impact approach or a balanced scorecard approach to complete the conceptual framework.

At the same time, A.A. Al-Qudah *et al.* (2021) found that there is a positive relationship between social entrepreneurship and sustainable development and that there is a positive relationship between innovation and sustainable development.

A social entrepreneur chooses a certain problem precisely because its solution is particularly important to him or her and is of immense importance to society. Businesspeople also attach importance to their products but focus their attention exclusively on satisfying the client’s needs and making a profit (Kickul & Lyons, 2020). Nevertheless, agreeing with this, it is important to emphasize that the effectiveness of social entrepreneurship should be considered from the standpoint of determining the relationship between the invested funds and the degree of solving social problems. However, it is worth noting that in the psychological aspect, a social entrepreneur has special characteristics (Fig. 1).

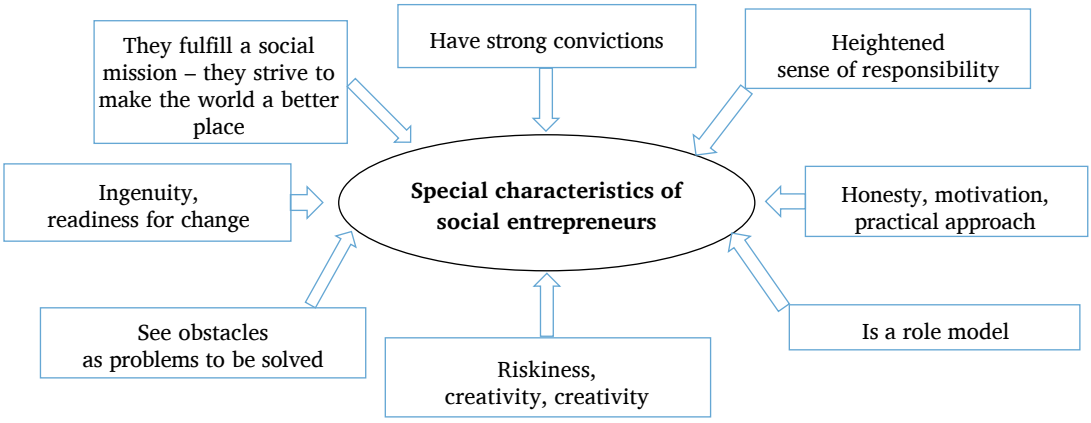

Figure 1. Special characteristics of social entrepreneurs
Source: developed by the authors based on Kickul & Lyons (2020)

In general, there is no separate law in Ukraine that would regulate the development of social entrepreneurship. Therefore, the choice of its legal form is carried out following the current legislation. Which has its own certain advantages, because it does not limit social entrepreneurs in choosing the most optimal legal form, both from the side of choosing a business model, tax features and the level of responsibility of the founders.

The authors of the study support the opinion of O.V. Fedorov *et al.* (2022), which believes that entrepreneurship involves creativity, innovation, intelligent risk-taking, and the ability to plan and manage projects. This too. Ability to solve problems, teamwork, creative approach, which thereby forms the character and personality of an entrepreneur.

For example, from a multilevel analysis of 29,175 Global Entrepreneurship Monitor respondents from 16 countries, it was investigated how national culture and public attitudes influence individual decisions regarding the allocation of entrepreneurial talent in for-profit and non-profit social enterprises. In their paper, Moderating Effects of Informal Institutions on Social Entrepreneurship Activity, the authors found that the stigmatization of business failure is positively related to the likelihood that people will invest their entrepreneurial talents in a social enterprise. It was also found that in both performance-based and social support cultures, the positive effect of business failure stigma on social entrepreneurship initiation was reduced. These results indicate that informal institutions significantly influence the profit-making strategy of social entrepreneurship (Lee *et al.*, 2022).

The option of entrepreneurial activity can also be quite interesting for young people, because thanks to their energy, enthusiasm, creativity, and care, they will be able to organize social enterprises with the aim of solving social problems in the community, engaging in employment of socially

vulnerable population groups, attracting youth volunteers, etc. (Podolyaka *et al.*, 2021).

Social entrepreneurship can also become important for the development of rural communities, where entrepreneurs were engaged in stimulating efficiency, energy conservation, the formation of renewable economic systems, and ensuring the socio-economic well-being of a person (Diuke, 2020).

Social entrepreneurs have a lot in common with classic business, namely, they usually focus on the best and most efficient use of all opportunities and all resources, set a goal and persistently go for it. And the difference is that they are focused not so much on their profit, but on creating social welfare, positive changes in society (Fig. 2). Usually, social entrepreneurs reinvest their income in the further activities of their social enterprise, while classic businesspeople distribute the profit among the founders, and there is also a difference from charitable organizations, whose activities are not intended to make a profit, only donations from patrons take place (Diuke, 2019).

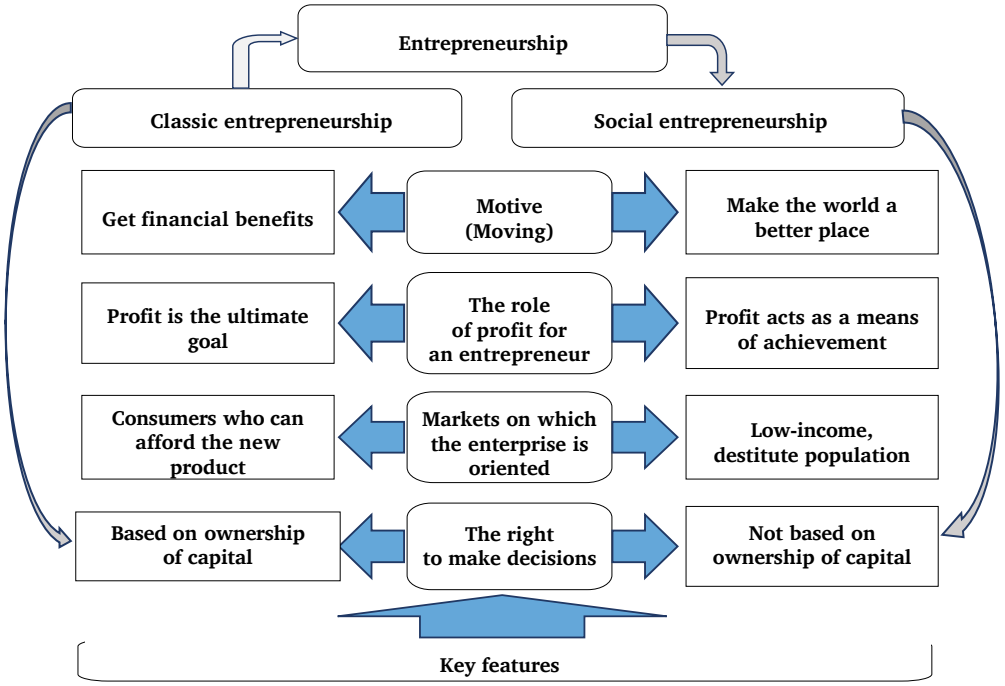

Figure 2. The main differences between entrepreneurship and social entrepreneurship
Source: developed by the authors based on A.A. Diuke (2019)

The priority spheres of life that attract the attention of social entrepreneurs are education, the medical sphere, the ecological sphere, energy efficiency and energy saving, social research, the safety of livelihoods, social and food aid to socially vulnerable segments of the population, inclusion, etc.

Legal regulation of social entrepreneurship

In general, there is no separate law in Ukraine that would regulate the development of social entrepreneurship. Therefore, the choice of its legal form is carried out following the current legislation. Which has its own certain advantages, because it does not limit social entrepreneurs in choosing the most optimal legal form, both from the side of choosing a business model, tax features and the level of responsibility of the founders. However, back in 2013, the Draft Law "On Social Enterprises" was submitted to the Verkhovna Rada of Urkraine Committee for consideration, which introduced the concept of a social enterprise and determined the criteria by which an enterprise could receive the status of "social". It was also proposed that an Interdepartmental Commission on Support of Social Enterprises be created at the state level, which would also determine the "social" status of the enterprise and its compliance with the conditions for receiving tax benefits (Draft Law "On Social Enterprises", 2013).

Also submitted for consideration was the draft law "On Amendments to Article 154 of the Tax Code of Ukraine (Regarding State Support of Social Enterprises)" (2013), which proposed the exemption of social enterprises from taxation of profits received from the sale (supply) of goods and the performance of social works and services.

Admittedly, the activities of social enterprises are still regulated at the legislative level, but these are separate provisions of the Economic Code of Ukraine (2003), the Law "On State Registration of Legal Entities and Individual Entrepreneurs" (2003), the Law "On Joint-Stock Companies" (2008), and the Law "On Cooperation" (2003).

Therefore, the choice of the legal form of a social enterprise is carried out following the current legislation. This also has certain advantages, because it does not limit social entrepreneurs in choosing the most optimal legal form, both from the side of choosing a business model, tax features and the level of responsibility of the founders.

To create a social enterprise, the most common legal forms are public organization, limited liability company, charitable organization, individual entrepreneur, or their combinations, as well as private enterprise, partnership, cooperatives, religious organization, public organization, open joint stock company.

But the development of social entrepreneurship can be even more effective if it is stimulated at both the state and local levels, giving preference to new and existing social enterprises. Worthy of attention is the comparison of the

characteristics of types of business such as: social enterprise, charitable organization, and conventional business according to such basic criteria as the purpose of activity, sources of financing, distribution, and use of profit (Table 1).

Table 1. Comparative features of types of business

Criteria	Social enterprise	Charitable organization	Traditional business
Purpose of activity	Solving social problems	Provision of support and aid to vulnerable sections of the population	Profit
Sources of funding	Funds of social entrepreneurship participants, profit from own activities, grants, microcredit	Grants from international funds and organizations, donations	Does not depend on external sources of funding
Distribution and use of profits	The profit is reinvested or financed in certain social projects	Does not make a profit	Profit is distributed among founders, investors, shareholders

Source: developed by the authors based on A.A. Diuke (2019)

More than half of all social enterprises are registered as non-profit organizations, and about 82% of them cooperate with public organizations under the terms of concluded contracts or memoranda and jointly implement many social projects.

Such collaboration is mutually beneficial for both parties, because for social enterprises it is an opportunity to improve their own financial and economic stability, it is also less dependent on direct donors, but at the same time it ensures obtaining added sources for the implementation and financing of their own projects. For public organizations, these are tax benefits, expansion of one's own client and partner base, formation of sustainable marketing for public projects, involvement of qualified specialists, etc. (Kamenko, 2020).

As scientists N. Horishna (2016) and A.A. Diuke (2019) note in their works in European countries, social entrepreneurship is most commonly organized in the form of cooperatives, as partnership structures. For example, if we analyze the legal regulation of social entrepreneurship in the countries of the European Union, then in Italy, which was the first country to propose the term "social entrepreneurship", the form of social cooperative was approved as the legal form for the activity of social enterprises. These cooperatives are divided into two groups. The first is those that provide social, educational, and medical services to needy categories of the population. The second is those that create opportunities for employment and social integration of socially vulnerable sections of the population, considering that at least a third of their employees must work in their production. In Great Britain, there is no single legal model for social entrepreneurship. Its status can be granted to enterprises of various forms of ownership, which must belong to non-profit organizations and act in the interests of a separate local community. In Germany, social enterprises run in the form of cooperatives, foundations, associations, and limited liability companies since a separate legal form for social enterprises is not established in the legal framework. In Greece, the legislation supports three categories of social enterprises. The first is integration social cooperatives, which must solve the task of social and labor integration of people who find themselves in a difficult life situation. The second is social care cooperatives, which must produce goods and services for people with disabilities, the elderly, people with specific diseases, etc. The third is cooperative enterprises of social production, which work in their region in the field of culture, ecology, housing and communal services, maintenance of local traditions, etc. In Poland, at the legislative level, there are also three forms of establishing a social cooperative: institutional, through the Center for Social Integration; founded by a non-profit organization and individual. At the same time, the founder of such a social enterprise can receive a one-time specified financial aid from the state (Holubka & Bilanych, 2016).

In Ukraine, admittedly, it is worth taking into account the experience of the EU countries, since the lack of separate legislative regulation of the activities of social enterprises, although it does not cause obstacles to their creation and functioning, however, since there are no separately adopted legislative acts regarding social entrepreneurship, there is also a lack of targeted state support for them (Holubka & Bilanych, 2016).

Support and financing of social entrepreneurship

Despite the actual absence of separate legislation in the field of social entrepreneurship, several grants were awarded as early as 2006 within the framework of the implemented project "Social Action Network in Ukraine" (UCAN) with the support of the USA. In 2010, the consortium "Supporting social entrepreneurship in Ukraine" was created, and in 2012, the project "All-Ukrainian resource center for the development of social entrepreneurship "Social initiatives" began to be implemented.

Also, the International Renaissance Foundation in collaboration with the European Union within the framework of the "EU4USociety" project is implementing the "Crowdfunding for Social Entrepreneurship" competition, which aims to strengthen the activities of existing social enterprises, popularize social entrepreneurship in general and use crowdfunding platforms to attract financial resources for the creation and the organization of expanding the activities of existing enterprises (International Renaissance Foundation, 2020).

Many other well-known funds encourage and finance social entrepreneurs with the help of grants, such as: "Eastern Europe Fund", Ukrainian Social Venture Fund, USAID, "Innovation Development Fund", UNDP, British Council, "Social Investment Fund", Child Fund Deutschland, East Europe Foundation, and other foundations of international and Ukrainian level.

The use of crowdfunding platforms, where joint efforts collect funds for socially significant ideas and social projects,

has achieved significant development in Ukraine. The main ones are Splinkokosht, Na-Starte, KUB, RAZOMGO, Startera, GoFundEd.

An important positive factor would be state support for social enterprises, such as, for example, in the Czech Republic. Based on the research conducted by the Czech scientist O. Potluka (2021), the effectiveness of the Operational Program Human Resources and Employment (OP HRE) revealed the positive impact of the social entrepreneurship program on employment. The supported group is 19.3% more likely to be employed 1 year after support compared to the comparison group. Thus, OP HRE's investment in social enterprise support programs is effective. According to estimates, state budget investments will be fully repaid in 11 years (Potluka, 2021). From this point of view, state financing of social enterprises can have positive consequences for public sector bodies.

The development of social entrepreneurship and its research in Germany, for example, is very multifaceted, as Germany has its own history and perception of social entrepreneurship, and in addition very specific government programs. First of all, the very concept of social entrepreneurship has become an integral part of entrepreneurship. In the 2015 GEM Special Issue on Social Entrepreneurship, Germany ranks 21st for the prevalence of nascent social entrepreneurship in the cluster of innovation-driven economies (0.8%) and 19th for the prevalence of individuals actively working after starting a social entrepreneurship (1.5%). In this survey conducted in 2019, Germany ranked 21st as the "Best Country for Social Entrepreneurship" (Cagarman *et al.*, 2020).

Despite the desire and motivation of entrepreneurs to create and develop social enterprises, there are a number of obstacles that prevent this sector from developing in a strategic and standardized manner. Among them is an imperfect legal framework; lack of transparency and corruption; saturation of the market with donor funds, which are often limited and limited to initial funding; and insufficient access to credit, investment and funds from private companies. Donors cite the lack of strong teams, social entrepreneurs' lack of communication skills and financial literacy, managers' reluctance to invest in the development of their teams' business skills, lack of systems for measuring results and social impact.

But according to the authors of this study the social entrepreneurship ecosystem in the country continues to grow and develop. There are many opportunities for new and existing participants to engage and improve collaboration in the ecosystem.

The main identified by the authors gaps are the lack of systemic interaction and communication between subjects and insufficient knowledge of each other. The ecosystem will be more effective if supported by a platform designed to enable regular interactive face-to-face communication and networking, continuous peer-to-peer learning, experience sharing and meetings between donors/investors and social entrepreneurs. There is also a need to engage with the business community, which can mentor social enterprises to help them grow and scale. It is worth noting that a qualitatively new level of development of social entrepreneurship in Ukraine will depend on established cross-sectoral cooperation of key partners: state authorities and local self-government (legal and legal support, the main mechanism of financial support), business (mentoring, grant support), mass media (popularization activities), educational institutions (educational courses on social entrepreneurship), public organizations (direct work with the population in order to explain the basic principles of social enterprises). Another important gap that needs to be addressed is the lack of impact metrics tracking and regular measurement. Both social enterprises and funders need to be able to assess the results achieved through the lens of the business model and measure the social return on investment (SROI) if they are to attract and justify further investment in the sector.

Finally, the popularization of social entrepreneurship will help to overcome the paternalistic perception of social problems; involve the population and business in a more active solution; achieve more targeted interaction between government, civil society and business; and form a "target business".

Conclusions

To determine the essence of social entrepreneurship at the scientific and methodical level in order to establish it as the basis of legislative documents. A significant difference of modern social entrepreneurship is the implementation of entrepreneurial activity, which is not aimed at obtaining the maximum profit for its owners, but primarily at solving or reducing social problems, transforming changes in communities, etc.

The special characteristics of social entrepreneurs are that they consider obstacles as problems that need to be solved; their innovativeness, ingenuity, readiness for changes; fulfillment of a social mission for society, striving to make the world a better place; have strong convictions; have a heightened sense of responsibility; honesty, motivation, practical approach; is a role model; have risk-taking, creativity, creativity

In Ukrainian legislation, there is no basic law on social entrepreneurship, and therefore there is no legal framework in this area. Therefore, it will be expedient to use the positive European experience of regulating the legal field in the field of social enterprises.

The governments of many European countries have legislated and legally established the activities of social enterprises in the form of cooperatives, which are based on the democratic and mandatory distribution of shares of the enterprise among the founders, volunteers and beneficiaries. Other countries took as a basis the form of public non-commercial association.

A support mechanism should be established that enables, rather than restricts, social entrepreneurship. There is no one-size-fits-all approach to developing a support mechanism, as different local conditions must be considered. In addition to the economic, social, and cultural traditions of the country or region, existing laws and policies, as well as the needs of the industry, must be considered.

Support for the development of social entrepreneurship is necessary at all levels: benefits can be provided at all levels and sectors. The mechanism of public support at the national level can function well to provide financial support and promote recognition of social enterprises among the general public. Support at the local level can complement such a mechanism at the national level and better respond to the needs of the sector in a particular region or region. All benefits should be easy to implement and not create an added burden for stakeholders – local social enterprises. It is important that the chosen mechanism provides clear and easy-to-implement opportunities for stimulating the development of social entrepreneurship.

Opportunities to collaborate with traditional companies should be explored: Collaboration with traditional companies

can be an interesting avenue to explore to stimulate social entrepreneurship, especially at the local level. It can be useful to study the experiences of social enterprises from various parts of Europe and the lessons they have learned in building relationships with traditional companies. The country context and regulatory/policy framework should also be considered.

Use of mixed models of cooperation. Multi-stakeholder collaboration models are designed to achieve positive impact and benefit for all parties, as well as society as a whole. They usually involve public and private entities interested in supporting social entrepreneurship with shared resources or activities. They can take many forms, including social impact bonds, public-private funds, special credit systems, and others. The aim and objectives of the study have been achieved. Prospects for further research are related to the study of ways to effectively combine social entrepreneurship and the business environment in Ukraine, as well as a comparative analysis of models and mechanisms of the functioning of social entrepreneurship in countries with a transition economy, European countries, and establishing possible methods of using such experience in all regions of Ukraine and its adaptation in crisis and war conditions.

Acknowledgements

None.

Conflict of interest

None.

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Економіко-правові та психологічні аспекти впровадження соціального підприємництва в Україні

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Анотація. Актуальність дослідження полягає у визначенні важливості розвитку в період епідеміологічної кризи та у воєнний період соціального підприємництва, яке здійснює вагомий вплив як на економічну, так і на соціологічну ситуацію, особливо для соціально вразливих верств населення, внутрішньо переміщених осіб, молоді, оскільки вирішує проблему безробіття та соціально-психологічної адаптації. Мета статті полягає в аналізі становлення та розвитку категорії «соціальне підприємництво», визначенні його основних економічних, правових та психологічних проблем, а також у наданні рекомендацій для сприяння подальшому розвитку соціального підприємництва в Україні. Ключові методи, які застосовано в дослідженні, – історичний, діалектичний, абстрактно-логічний, методи систематизації та узагальнення, економічного, статистичного та порівняльного аналізу, а також графічний метод. Сформульовано особливі характеристики соціальних підприємців. Визначено, що соціальне підприємництво зосереджує в собі творчий підхід, інноваційність, планування та ризиковість. Виявлено, що національна культура та суспільне ставлення впливають на індивідуальні рішення щодо розподілу підприємницьких талантів у діяльності соціальних підприємств. Обґрунтовано також, що невизначеність чіткого формулювання категорії «соціальне підприємництво», відсутність окремого законодавства у сфері його регулювання спричиняє відсутність державної адресної підтримки таких підприємств, хоча водночас не обмежує соціальних підприємців у виборі найбільш оптимальної організаційно-правової форми їхнього соціального підприємництва. Рекомендовано з метою покращення ситуації звернути увагу на можливості для стимулювання соціального підприємництва, особливо на місцевому рівні. Теоретичне значення роботи полягає в акцентуванні уваги саме на економіко-правових та психологічних чинниках розвитку соціального підприємництва в Україні в умовах кризового та воєнного стану. На практиці результати дослідження можуть використати підприємства, об'єднані територіальні громади, регіональні та державні органи влади, неурядові організації

Ключові слова: соціальна сфера; законодавча база; державна підтримка; характеристики соціального підприємця; бізнес-моделі

UDC 343.1
DOI: 10.32518/sals1.2023.25

Examination of evidence at the initiative of the court of appeal in criminal proceedings

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Abstract. Today, the combined chamber of the Criminal Court of Cassation as part of the Supreme Court is trying to solve the problem of the appellate court's initiative in the examination of evidence, since the approaches of individual court chambers, namely the First and Third ones, differ. The purpose of this study was to identify those cases when the appellate authority is entitled to investigate the evidence proactively, without encroaching on the components of the principle prescribed in Article 22 of the Criminal Procedural Code of Ukraine. The formal-logical method helped generalize that the content and form of such a review must comply with the principles of criminal proceedings, including equality before the law and the court, as well as competition between the parties (it has been proven that their absence may indicate a violation of both constitutional and convention rights), freedom in presenting their evidence to the court and in proving their persuasiveness before the court. The results of the deductive method helped formulate the following theses: the legislator, understanding the equality of procedural rights not as their uniformity, normalizes it in the Criminal Procedural Code as equality in terms of the possibilities of exercising the granted rights; the legislator also determines such equality of rights from the functions that a certain participant in criminal proceedings is endowed with. The combination of prosecution, defence, and justice in one guise contradicts the adversarial nature of the judicial procedure. The study revealed that the passivity of the parties forces the court to choose its activity within the limits of the function of justice defined for it, and its initiative is aimed at examining the evidence to make a legal, well-founded, and fair decision. It is proved that these features of judicial proceedings are a priori inherent in the appeal review, along with its inherent features, including the determination of the amount of evidence to be examined, as well as compliance with the limits of judicial review, which are normalized by Article 404 of the Criminal Procedural Code of Ukraine. It was found that the initiative of the court of appeal to examine evidence and their further investigation in this court is permissible in situations where such evidence became known after the adoption of the appealed court decision. Compliance with this rule will protect the court from possible violations of the requirements of Article 22 of the Criminal Procedural Code of Ukraine, and scientific developments in this area are designed, among other things, to pave the way for the unity of judicial practice through doctrinal recommendations

Keywords: activity of the court, proactiveness of the court; judge's discretion; limits of review by the appellate court; deterioration of the situation of the accused

Introduction

As for the problems declared in the title of this paper, doctrinal approaches, as well as judicial practice, are far from an unambiguous answer. And the prerequisite for this state of affairs, evidently, is not quite successful legislative positions, which, according to different initial situational data, are interpreted by participants in criminal proceedings in their own way.

The purpose of this study was an attempt to comprehensively describe the state of affairs in this area, using the existing practice of both the Supreme Court and the European Court of Human Rights (the ECHR), to compare those conventional, constitutional, and criminal procedural arguments that make it possible to prevent possible judicial violation of

Suggested Citation **Article's History**: Received: 27.12.2022 Revised: 20.02.2023 Accepted: 29.03.2023

Drozdov, O., & Basysta, I. (2023). Examination of evidence at the initiative of the court of appeal in criminal proceedings. *Social & Legal Studios*, 6(1), 25-32. doi: 10.32518/sals1.2023.25.

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the principles of criminal proceedings defined by Article 22 of the Criminal Procedural Code (hereinafter – the CPC) of Ukraine (2012), and to confirm the thesis that only "evidence that was not examined by the court of first instance and that became known after the adoption of the disputed court decision", can be investigated in the appeal proceedings without the corresponding requests of the participants.

It is also worth pointing out that the components of the declared dilemma have repeatedly been in the field of view of procedural researchers and, as already shown, the existing judicial practice has developed its own, albeit different, approaches to solving it. Thus, Article 129 of the Constitution of Ukraine (1996) mentions the equality of all participants in the legal process before the law and the court among the fundamental principles of the judicial process. The Constitutional Court of Ukraine, especially its Grand Chamber, has already established the fact that the procedural rights and obligations of participants in criminal proceedings differ, which is conditioned upon different procedural functions (Judgment of the Constitutional Court…, 2020). Therewith, equality of the parties and their adversarial nature is the cornerstone. Analysis of the practices of the ECHR, which researchers investigated in the context of various existing issues (Petryshyn *et al.*, 2021), and understanding of its decisions (Yanovska, 2020; Shchur & Basysta, 2021), as well as their meaning (Kaplina & Tumanyants, 2021; Nadybska *et al.*, 2020) makes it possible to once again make sure of the indisputable truth that a fair trial is impossible without the equality of the parties. The lack of certain criminal procedural rules in the legislation can be a threat to the equality of the parties (Coëme and Others v. Belgium, §102) (European Court of Human Rights, 2022). And it is precisely such rules and features that are covered by separate, analysed norms of the CPC of Ukraine, and their perception and approaches to application were covered by such researchers as V.V. Vapnyarchuk (2014) (considered the commonalities and differences of the active and proactive activity of the court, which the author distinguishes and gives successful arguments, using an activity-based approach, while not focusing his attention on the declared issues in the appellate instance), V.A. Zhuravel and A.V. Kovalenko (2022) (a study of evidence from a forensic perspective, which is very intriguing, but the issues of proactive research of evidence by an appeal from a certain standpoint did not fall into the range of interests of these scientists), O.V. Lytvyn (2016) (substantiated aspects of evidence at the trial stage, which are partly general, but the details and nuances of evidence by appeal are not specified), I.B. Malekh (2022) (analysed judicial discretion, which is inherent in all instances), V.I. Maryniv (2020a; 2020b) (in-depth coverage of the interpretation of appeal proceedings and their limits, which helped continue these reflections from the standpoint of an initiative study of evidence by appeal), O.Z. Khotynska-Nor and M.A. Pohoretsky (2020) (various interpretations of the judge's discretion are proposed, which helped develop the idea of the judge's proactive activity), O.O. Torbas (2020) (examined discretion in criminal proceedings, which is the starting point for the proactiveness, including when reviewing court decisions), M.I. Shevchuk (2015) (investitaged the limits of judicial initiative, but attention is not focused on the study of evidence by the appellate instance without petitions previously submitted by the parties). However, none of the researchers formulated an answer to the complex question, which is decided by the combined chamber of the Criminal Court of Cassation as part of the Supreme Court and declared in the title of this study – the validity and limits of the appeals court's own initiative in the examination of evidence.

Materials and methods

Using systemic analysis, an attempt was made to identify those procedural and other components that are important for the existence of the judge's initiative as such. The deduction identifies the judge's discretion, the principles of criminal proceedings (equality before the law and the court, as well as the adversarial nature of the judicial process), and the limits of appellate review. The formal-logical method was used to formulate the conclusion based on the thesis that the content and form of such review should correspond to the principles of criminal proceedings. To develop the idea of understanding the equality of procedural rights, not as their sameness, the deductive method was also applied. To show the causal relationship between the predicted existence of a quasi-complex process, if incompatible functions, such as justice and prosecution, etc., are combined in one hypostasis, prediction is used. The system analysis helped generalize the belief about the relationship between the passivity of the parties and the court's choice of its own active position. Sampling and modelling contributed to the development of that extreme recommendation, which should protect the appellate instance from violations of Article 22 of the CPC of Ukraine (2012), when it decides the issue of proactive investigation of evidence.

Sampling, comparison, and generalization helped to work with those court decisions that are available in the Unified State Register of Court Decisions and to divide them according to two opposite positions.

Methods of formal logic (analysis and synthesis of legislative provisions, judicial positions and interpretations, as well as author's thoughts and conceptual understandings) helped single out five basic components, which ultimately allow concluding on a single situation, when the appellate court is entitled to examine the evidence without requests from the parties.

The components that belong both to the current criminal procedural legislation and to the constitutional and conventional requirements and help formulate the final answer to the question of the validity and limits of the appellate court's initiative in the examination of evidence are combined in the text into the following three blocks: 1) Article 2 of the CPC of Ukraine sets general tasks before the criminal proceedings, which, among other things, include proceedings for the review of court decisions in the appellate procedure, which should also be focused on in court proceedings; 2) adversarial nature of the parties, especially in court proceedings, is the basic one among the principles of criminal proceedings, and its non-compliance will have corresponding procedural consequences (section No. 1 "Tasks and principles of appeal proceedings"); 3) violation of the balance of the parties and their equality will also have corresponding procedural consequences (such as recognition of the trial as unfair) (chapter No. 2 "Equality of the parties as a guarantee of a fair trial"); 4) in the current CPC of Ukraine, the legislators make the equality of procedural opportunities for the exercise of granted procedural rights dependent on the functions assigned to a certain participant in criminal proceedings; 5) the court does not belong to any party, but implements the function of justice. Its activity and, to some extent,

initiative are necessary, but the CPC of Ukraine also sets the limits of initiative (chapter No. 3 "Impartiality of the court and its initiative, specifically of the appellate instance").

Results and discussion

Tasks and principles of appeal proceedings

Today, the joint chamber of the Criminal Court of Cassation of the Supreme Court is considering the cassation appeals of three defenders in the interests of the three convicts, respectively, and the cassation appeal of the victim against the verdict of the Poltava Court of Appeal dated May 18, 2022. The appeals, among other things, contain an indication that the appellate court violated the principle of criminal proceedings, such as the adversarial nature of the judicial process, and as a result, there were significant violations of the requirements of the criminal procedural law, since, according to the complainants, in the submitted appeal the prosecutor did not request the examination of the evidence, and therefore, from their arguments, it should be understood that the court of appeal examined the evidence on its own discretion. On October 19, 2022, the panel of judges of the Third Judicial Chamber of the Criminal Court of Cassation of the Supreme Court stated in its decision that one of the arguments used by the defenders in their cassation appeals is the non-observance of the principle of competition by the judges during the review in the appellate instance, which is further interpreted by the defenders as substantial procedural violation. Because the court, without receiving a request from the prosecutor, decided on an initiative investigation of the evidence, and as a result of such an investigation, the situation of the accused worsened (according to a separate episode) (Judgment of the panel of judges…, 2022). In addition, the panel of judges of the Third Judicial Chamber of the Criminal Court of Cassation of the Supreme Court summarized in its decision that the prosecutor did not submit a request for the court to examine the evidence during the appeal (Judgment of the panel of judges…, 2022).

As of today, there is a legal position of the Supreme Court regarding the possibility of an appellate court examining evidence at its own discretion without a corresponding request from a party to the proceedings, which is set forth in the Judgment of the First Judicial Chamber of the Criminal Court of Cassation of the Supreme Court in the case No. 183/2033/21. (2022). In turn, the panel of judges of the Third Judicial Chamber of the Criminal Court of Cassation of the Supreme Court did not agree with the stated approach of their colleagues (Judgment of the panel of judges…, 2022), and therefore, by the decision dated October 19, 2022, the criminal proceedings were referred to the joint chamber of the Cassation Criminal Court within the Supreme Court. Based on this state of affairs, the Court appealed to the Scientific Advisory Council (Appeal from the judge of the Criminal Court…, 2022), so the authors of this publication offer the scientific community, as well as practising lawyers, their approaches to solving the declared problem, which formed the basis of that joint scientific conclusion (Drozdov & Basysta, 2023), which was sent to the Supreme Court in response to the aforementioned judge's appeal. Considering all the above, we can trace both the relevance of the declared issue and its practical significance.

Review of court decisions in the appellate procedure must, among other things, fulfil the tasks set before it by Article 2 of the CPC of Ukraine (2012), and the principles of criminal proceedings are decisive for its content and form (Part 1 of Article 7). This conclusion follows from the fact that criminal proceedings are "pre-trial investigation and court proceedings", which, among other things, include "appellate review of court decisions" (items 10, 24, part 1 of Article 3 of the CPC of Ukraine). Criminal proceedings are not implemented in any way, without clearly defined tasks and purpose, which in no way depend on the qualification, jurisdiction, priority of the crime, or the reaction of society to the committed illegal act. The main "pillars" of any criminal proceedings are, first of all, to protect a certain society, individual, and the state from illegal, criminally punishable and socially dangerous behaviour. Criminal proceedings generally serve as a guarantor to establish the truth under the conditions of a committed criminal offence, since in its course it should be established, although not all scientists and practitioners share this purpose: there is a position that establishing the truth cannot be the purpose of the proceedings because there is a contradiction to the philosophical understanding of the purpose as a result, since the activity is not a purpose (Nor *et al.*, 2021). It is designed to ensure an impartial investigation, and as a result, only a certain legal procedure should be applied (Article 2 of the CPC of Ukraine, 2012). Due to encroachment on one of the principles of criminal proceedings, such as the adversarial nature of the judicial process, as well as due to incorrect approaches and understanding of the equality of the parties, as well as other components of the principles of criminal proceedings, which are prescribed in Article 22 of the CPC of Ukraine, there were, are, and will be grounds for appeal in the final as a result of court decisions before the ECHR.

Equality of the parties as a guarantee of a fair trial

"Procedural rights and obligations of participants in criminal proceedings differ, which is conditioned upon different procedural functions" that must be performed by these participants during criminal proceedings (Judgment of the Constitutional Court…, 2020). Therewith, the legislator gives participants in criminal proceedings "equal rights and equal obligations (but not the same) to take part in criminal proceedings and defend their position" (Judgment of the Constitutional Court…, 2020).

Only the Constitution and laws of Ukraine determine the grounds, boundaries, method of their activity and powers for officials of state bodies (Article 19 of the Constitution of Ukraine, 1996). It is evident that these requirements apply equally to courts and judges. In turn, Article 129 of the Constitution of Ukraine (1996), among other principles of judicial proceedings, makes provision for such a basic one as the fact that "all participants in the judicial process are equal before the law and the court". Therewith, by presenting their arguments before the court, the parties thus compete and prove their positions. The Constitutional Court of Ukraine emphasizes that it is not necessary to equate "equal rights", "equal duties" with "identical rights", "identical duties" (Judgment of the Constitutional Court…, 2020). The procedural status and functions performed by law determine a set of certain rights and obligations, so they cannot be identical for different participants in criminal proceedings. The legislation defines a particular list of rights and obligations for the procedural status of a participant.

Article 10 of the CPC (2012) mentions equality before the law and the court in procedural rights, but, again, it does

not refer to their identity. The law prohibits any privileges or restrictions in this regard.

Violation of the equality of the parties may create grounds for doubting the fairness of the trial: Article 6 of the European Convention on Human Rights (1950) defined the right to a fair trial. The established lack of equality of the parties may indicate a violation of both constitutional and conventional rights. Therefore, it is worth taking care of the procedural equality of the parties, establishing a balance (Shapovalova & Rohalska, 2020).

In fact, the ECHR stated that there cannot be a fair trial without the equality of the parties, the parties must be given the same favourable position ("Ocalan v. Turkey", "Fouchet v. France", "Bulut v. Austria", "Faig Mammadov v. Azerbaijan", "Brandstetter v. Austria", "Borgers v. Belgium", "Ibrahim and others v. United Kingdom", "Coeme and others v. Belgium" (European Court of Human Rights, 2022). Admittedly, the defence party is the most vulnerable (European Court of Human Rights, 2022).

Instead, the lack of certain criminal procedural rules in the legislation can serve as a threat to the equality of the parties, e.g., in the case of Coëme and Others v. Belgium, § 102) (European Court of Human Rights, 2022).

Impartiality of the court and its initiative, specifically the appellate instance

The court, exercising the function of justice (deciding on the case), does not belong to any of the parties to the criminal proceedings. The principle of adversariality has as its purpose "the construction of criminal proceedings wherein the function of justice (deciding on the case) is separated from the function of the parties (prosecution and defence), which compete in the legal field" (Nor *et al.*, 2021). The court, among other things, is responsible for providing the parties with equal opportunities to defend their legal positions. The adversarial nature of the judicial process means a strict distinction between these three functions (Nor *et al.*, 2021). Therewith, the court is assigned a guiding position and is charged with the duty to verify the evidence submitted by the parties, and it is for this purpose that it is endowed with initiative in understanding the conduct of judicial actions not only at the request of the parties (but it does not have the obligation to collect additional evidence of guilt or innocence). The activity of the court is necessary to establish the circumstances of the criminal offence, and in the end – to make a legal, justified, and fair decision (because partly the passivity of the parties does not allow this) (Nor *et al.*, 2021).

In turn, one of the features of appellate proceedings is the determination of the amount of evidence to be examined (Maryniv, 2020a). In addition, Article 404 of the CPC of Ukraine (2012) establishes "the limits of review by the court of appeal", compliance with which is necessary.

Parts 1, 2, 3, 6 of Article 22 of the CPC of Ukraine (2012) regulate "the competitiveness of the parties and their freedom in presenting their evidence to the court and in proving their persuasiveness before the court". Therewith, equal rights relate to "collecting and submitting to the court things, documents, other evidence, motions, complaints, as well as to the realization of other procedural rights prescribed by the CPC of Ukraine". It also focuses on differentiating the functions of prosecution, defence, and trial. Furthermore, Article No. 26 (Dispositivity) of the current CPC of Ukraine states that it is the parties who submit issues to the court for consideration, and the court, if it has the authority to do so, decides them (part 3). It is evident that if the court manipulates and makes its own innovations on this issue, it will obviously not adhere to these requirements of the CPC of Ukraine.

In turn, the question arises about the limits and possibilities of activity and initiative of the court, including the appellate instance. It is worth emphasizing that in the criminal procedural doctrine, some studies are devoted to the issues of activity and initiative. The corresponding analysis and synthesis helped track a situation when two opposite trends have developed. The first is that quite often both scientists and practitioners, when discussing the activities of the court, use adjectives such as "active" and "proactive" in relation to it, using them as synonymous words. The second trend is argued by its supporters by the fact that the concepts of "active" and "proactive" activity cannot be considered synonymous. And this is given a corresponding substantiation, the essence of which is logical and boils down to the fact that any "proactive activity is active" (Vapnyarchuk, 2014), but we cannot apply the adjective "proactive" to every active activity. The dispositive method of regulation implies the possibility of proactiveness. "The form of implementation of the court's initiative powers in criminal proceedings is judicial discretion (or court discretion)" (Vapnyarchuk, 2014).

A separate dissertation is devoted to the issues of the court's initiative and its limits in clarifying the circumstances of a criminal offence. Based on its results, M.I. Shevchuk (2015) suggests what exactly should be understood as the proactive activity of the court. And what is most relevant is its approach to such a situation that if we consider the proactive activity of the court through the lens of legislative regulation, then it is necessary to understand direct and indirect terminological indications of it in the CPC of Ukraine; therewith, the right of the court to take procedural actions on its own the initiative should not be prescribed by "other norms of the criminal procedural law as its duty". Direct instructions on the proactive activity of the court in the CPC of Ukraine should be interpreted as the following "phrases of a terminological nature": "on the initiative of the court", "the court on its initiative", "the court on its own initiative". The CPC of Ukraine also uses indirect terminological instructions for "proactive activity of the court", which should be interpreted as follows: "the court is entitled", "the court can" (Shevchuk, 2015). The thesis candidate also quite reasonably claims that the role of the court in the study of evidence has changed from relatively active to relatively passive. When finding and establishing the optimal limit of the court's activity in the examination of evidence, both the factor of inverse interdependence between the court's activity and the parties' passivity in general, as well as the correlation of the court's powers and the capabilities of the participants in the court proceedings, who are not endowed with powers, must be considered at the stage pre-trial investigation. To neutralize the inequality in the possibilities of forming the evidence base of the prosecution and the defence, this researcher offers some relevant initiatives, which he supplies with a certain justification. Specifically, the aforementioned scientist brought to the attention of the scientific community the issue of regulating in the criminal procedural law of Ukraine some procedural provisions that would allow the defence party to feel more confident in the adversarial process (favor defensionis), forming an evidence base (Shevchuk, 2015). It appears that the proposals themselves are conceptually

noteworthy, and it is worth having a closer look at the procedural structures themselves. Other scientists also provide their recommendations on this issue, considering the existence of a defence petition and an unambiguous (having satisfied it) and timely response of the court to it to be fateful and decisive in their own project norms (Lytvyn, 2016).

For the correct perception of the court's initiative and its possible manifestations, it is impossible to do without clarifying the issue of the judge's discretion. In the science of criminal procedure, the discretion of a judge (judge's discretion, judicial discretion) is a complex, collective concept that depends on the subject of investigation and can appear as "an element of the law enforcement activity of the court, which consists in choosing an option for solving a legal issue that arises during judicial review of the case, within the limits established by the rule of law…"; "the starting principle of the administration of justice…"; "the legislatively prescribed ability of a judge to evaluate the situation from the perspective of his or her own judgment…"; "intellectual-volitional activity of the judge" or "an element of procedural independence of the judge…" (Khotynska-Nor & Pohoretskyi, 2020). Other researchers advise operating only with the term "judicial discretion" and offer their variation of its understanding, which is generally close to one of the components of the complex encyclopedic approach defined above. Therewith, the author focuses on "judge's own will to choose from several equally legitimate alternatives" (Vapnyarchuk, 2014). The researchers also proposed a term "judicial discretion" (Malekh, 2022). Therewith, scientists are not unanimous in the benefits of the described intellectual and volitional activity. For instance, it is not a priority for criminalistics, because it gives preference to algorithmization trends (Konovalova, 2007). Scientists also focused on the permissibility of discretion when subjects implement the norms of procedural law, including criminal procedure. As a result, noteworthy conclusions were formed, specifically, that algorithmization of any activity, including criminal procedural activities, reduces the probability of discretion. As a positive result of this state of affairs, unjustified discretion of the subjects of criminal proceedings is minimized (Kasapoglu, 2018). In this area, the subject matter of the body that administers justice also plays a certain role (Horodetska, 2022). In turn, speaking of the discretion of the court, O.O. Torbas (2020) concludes that it is endowed with extensive capabilities in this area. However, such discretion concerns either the procedure for examining evidence or the actual procedure for conducting the trial. Along with the fact that the court is granted the right to determine the amount of evidence to be examined; however, it is limited to the set of evidence that was provided by the participants in the criminal proceedings. Scientists consider the discretion of the court from several other positions, namely, as a discretion in the course of judicial law-making. And here an interesting warning is expressed about excessive discretion when the prerequisites for the creation of a new norm arise, e.g., by the Supreme Court (Kopytova, 2020).

It is also necessary to factor in cases when the question of insufficient impartiality of the court may arise. There are two of them – see the case of Kyprianou v. Cyprus (Judgment of the European Court… 2005), and considering the question raised, such a case as the performance of various functions is of practical interest. Because here it will be, pursuant to Article 6 § 1 of the Convention, among other things, a violation of the requirement of impartiality, as in the case "Karelin v. Russia" (European Court of Human Rights, 2022). The court, unlike the parties (Nor & Kryklyvets, 2017), does not compete in the course of legal proceedings.

One of the features of appellate proceedings is the determination of the amount of evidence to be examined (Maryniv, 2020a). In addition, Article 404 of the CPC of Ukraine (2012) establishes "limits for review by the court of appeal", compliance with which is necessary.

In general, according to the rule regulated by Part 1 of Article 404 of the CPC of Ukraine (2012), "the appellate court reviews the court decisions of the first instance court only within the scope of the submitted appeal". This approach has been repeatedly reflected in the practice of the Supreme Court; the latest example is the Decision of the Supreme Court of Ukraine in the case No. 720/1277/20 (2022). "The limits of review by the appellate court are understood as the scope wherein the challenged court decision is reviewed. If the consideration of an appeal gives grounds to decide in favour of individuals in whose interests appeals were not received, the court of appeal is obliged to make such a decision" (Kaplina & Shylo, 2018).

"That is, the court of appeal first of all considers the claims of the person who filed the appeal, and their justification, indicating what is the illegality or groundlessness of the court decision" (Maryniv, 2020b). Notably, the court of appeal does not have a mandatory link between them. Therefore, following the instructions of the CPC of Ukraine, observing the rule on non-violation of the legal status of the accused and fulfilling the tasks of criminal proceedings, the court of appeal is entitled to "verify the relevant decision of the court of first instance in full", even going beyond the requirements of the appeal when making its own decision (Maryniv, 2020b). This conclusion is also confirmed by judicial practice. Thus, there is a court decision dated January 21, 2016, where the judicial chamber in criminal cases found a list of violations, the essence of which was the refusal of the "appellate court to hear a witness, contrary to the lawyer's request in this regard, and another assessment of the testimony of this and another witness without their direct interrogation, which substantially limited the accused's right to defence" (Decision of the Judicial Chamber…, 2016).

If we analyse the problems of the court's examination of evidence in general, then as early as 2018, I.I. Shepitko stated that not enough attention has been paid in the legal literature to this issue, as well as to its components, such as the volume of such evidence and the order of their investigation (Shepitko, 2018). Although there are modern authors' scientific reflections on these components, namely Basysta *et al.* (2022), but still, they are not enough to form a complete picture with different visions of scientists. V.A. Zhuravel and A.V. Kovalenko (2022) reasonably assert that investigating evidence is one of the operations with it. Firstly, the subject examining the evidence must be familiar with the source of evidentiary information, and they must also obtain and establish the content of the factual data contained in such a source. In the future, such a subject would have to evaluate it, as well as the evidence in their totality. Part 3 of Article 404 of the CPC of Ukraine (2012) prescribes two situations regarding the examination of evidence by an appellate court, namely: 1) re-examination of circumstances that have already been "established during criminal proceedings" and investigated by the court of first instance (here the legisla-

tor speaks of the obligation court and establishes a mandatory condition for the specified re-examination, specifically "provided that they were investigated by the court of first instance incompletely or with violations"), as well as 2) "examination of evidence that was not examined by the court of first instance". Part 3 of Article 404 of the CPC of Ukraine stipulates the existence of a request by the participants of the court proceedings for this as a common condition for both situations regarding such an examination of the evidence by the appellate court. It follows from part 3 of Article 404 of the CPC of Ukraine that there is also a requirement for the time frame for filing the specified appeal, specifically, for the first situation, it is an appeal of the participants in the court proceedings, and for the second, the appeal should be filed "during the hearing in the court of first instance". Therewith, an exception to the latter quoted wording is established, namely: "…if they became known after the adoption of the contested court decision" (CPC of Ukraine, 2012) (apparently, judging from the above legislative wording, only in such a state of affairs, it is possible to discuss the possibility of examining the evidence by the appellate court without the appropriate request of the party to the proceedings. In addition, judging from Letter of the High Specialized Court of Ukraine for Consideration of Civil and Criminal Cases No. 10-1717/0/4-12 (2012), it should be borne in mind that "such evidence can be submitted by the participants in the court proceedings or demanded by the court in the presence of a corresponding request of the participant in the criminal proceedings in preparation for the appeal proceedings"). Moreover, part 4 of the analysed article of the Criminal Code of Ukraine (2012) establishes a prohibition for the appellate court, specifically, it "is not entitled to consider charges that were not brought in the court of first instance".

Furthermore, Article 396 of the CCP of Ukraine (2012) contains requirements for an appeal. Its second part has six points, among which, in terms of the declared issues, we will focus on the following two: "…4) requirements of the person who files an appeal and their substantiation, indicating what constitutes the illegality or unreasonableness of the court decision; 5) request of the person who files an appeal to examine the evidence".

That is, a systematic analysis of the provisions of the second part of Article 396 of the CPC of Ukraine, parts 1 and 3 of Article 404 of the CPC of Ukraine and considering the provisions of Article 26 of the CPC of Ukraine, suggests that the examination of evidence by the appellate court (except for the situation "…when they became known after the adoption of the contested court decision", which has already been analysed above) along with compliance with the requirements of part 3 of Article 404 of the CPC of Ukraine, must be in a causal relationship with the petition of the person who files an appeal for the examination of evidence, which, judging by from Item 5 of Part 2 of Article 396 of the CPC of Ukraine, should be determined by a separate position in the appeal.

Conclusions

Therefore, based on the correlation of form and content, the principles of criminal proceedings with the provision of the probability of their procedural violations, due to the selection of five basic components that belong both to the current criminal procedural legislation and to constitutional and conventional requirements and tracking their correlation In connection with the problem mentioned in the title of the article, the authors of this study managed to get an answer to the question of the validity and limits of the appellate court's own initiative in the examination of evidence.

Therefore, in the end, the conviction is formulated that the initiative of the court of appeal to examine the evidence and its further investigation by this court is permissible in a situation where the court of first instance did not examine this evidence, because it did not have information about it at the time of making its own decision. This approach can ensure the balance of the parties (they should be provided with the same favourable conditions) to the criminal proceedings, including judicial proceedings on appeal. In addition, with this approach, it will be possible to discuss the existence of criminal procedural rules and their compliance. Otherwise, there is nothing to say about the fairness of the trial.

It is proved that there are two options for the court to obtain such evidence, the first of which is to directly request it by the court in preparation for the appeal hearing. Another option is to provide them to one of the participants in the court proceedings. For the first situation, it should be typical to have a corresponding request from one of the participants for a request.

It has been established that under other initial conditions and situations, specifically when there is an appeal, which refers to the worsening of the situation of the accused, it is necessary to have a petition from one of the parties to avoid a violation by the court of the principles of criminal proceedings prescribed in Article 22 of the CPC of Ukraine when showing initiative regarding the examination of evidence.

Considering those issues that require further scientific attention in the area under study, they remain and primarily relate to the development of proposals and further normalization of the exclusive procedure of initiation and receipt by the appellate court of those evidence that can be examined by it without the parties' requests.

Acknowledgements

None.

Conflict of interest

None.

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Дослідження доказів за власною ініціативою суду апеляційної інстанції в кримінальному провадженні

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Анотація. Сьогодні об'єднана палата Касаційного кримінального суду в складі Верховного Суду робить спробу вирішити проблему власної ініціативи апеляційного суду в дослідженні доказів, оскільки підходи окремих судових палат, зокрема Першої та Третьої, – різняться. Дослідження має на меті з'ясувати ті випадки, за існування яких апеляційна інстанція має право ініціативно дослідити докази, не зазіхнувши на складники тієї засади, що передбачена статтею 22 Кримінального процесуального кодексу України. Застосованим формально-логічним методом удалося узагальнити, що зміст та форма такого перегляду повинні відповідати засадам кримінального провадження, серед яких рівність перед законом та судом, а також змагальність сторін (доведено, що їх відсутність може свідчити про порушення як конституційних, так і конвенційних прав), свобода в поданні суду своїх доказів і в доведенні перед судом їхньої переконливості. Результати дедуктивного методу дали змогу сформулювати такі тези про: законодавець, розуміючи рівність процесуальних прав не як їхню однаковість, унормовує її у Кримінальному процесуальному кодексі як рівність щодо можливостей реалізації наданих прав; також законодавець узалежнює таку рівність прав від тих функцій, якими наділений певний учасник кримінального провадження. Поєднання обвинувачення, захисту та правосуддя в одній іпостасі протирічить змагальності. У статті розкрито, що пасивність сторін змушує суд обирати власну активну діяльність у межах визначеної для нього функції правосуддя, а його ініціативність направлена на перевірку доказів для ухвалення законного, обґрунтованого і справедливого рішення. Обґрунтовано, що ці риси судового провадження апріорі притаманні й апеляційному перегляду, поряд із властивими йому особливостями, серед яких визначення обсягу доказів, які підлягають дослідженню, а також дотримання тих меж судового перегляду, котрі унормовано статтею 404 Кримінального процесуального кодексу України. Виявлено, що ініціатива суду апеляційної інстанції щодо дослідження доказів та їх подальше дослідження в цьому суді допустимі за ситуації, коли такі докази стали відомі після ухвалення судового рішення, що оскаржується. Дотримання цього правила убезпечить суд від імовірних порушень вимог статті 22 Кримінального процесуального кодексу України, а наукові напрацювання в цій царині покликані, серед іншого, проторувати шлях для єдності судової практики завдяки доктринальним рекомендаціям

Ключові слова: активність суду; ініціативність суду; угляд судді; межі перегляду судом апеляційної інстанції; погіршення становища обвинуваченого

UDC 343.13
DOI: 10.32518/sals1.2023.33

Соціально-правові студії. 2023. Т. 6, № 1
Social & Legal Studios. 2023. Vol. 6, No. 1

Criminal liability for illegal possession of cryptocurrency in Ukraine

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Abstract. This study investigated the criminal liability for illegal acquisition of cryptocurrency in Ukraine, which is relevant in connection with the considerable spread of cryptocurrencies and cases of their illegal acquisition, as a result of which significant material damage is caused to the victims. Specifically, this is explained by the collapse of cryptocurrency exchanges and hacker attacks on cryptocurrency wallets. The purpose of this study was to investigate what criminal liability is prescribed for illegal possession of cryptocurrency in Ukraine. The study employed a dialectical approach and methods of system and technical and legal analysis, as well as a formal and logical method. Approaches to understanding the term "cryptocurrency" were defined, and its types were specified. The features of the functioning of blockchain technology were covered. This paper analysed the legal regulation of virtual assets in Ukraine, their relationship with cryptocurrency. It is noted that at its core, cryptocurrency is not a virtual asset and that it is advisable to consider it an electronic asset based on the blockchain – a decentralized public register of all cryptocurrency transactions conducted on the network. Shortcomings in the legal regulation of cryptocurrencies in Ukraine were highlighted, specifically, it was noted that the signs of virtual assets do not fully coincide with the signs of cryptocurrencies. The most common ways of illegal possession of cryptocurrency were specified, and problematic issues of bringing individuals who have come into illegal possession of cryptocurrency to criminal responsibility were outlined. This paper substantiated the impossibility of bringing individuals who have come into illegal possession of cryptocurrency to criminal responsibility in Ukraine, considering the principle of legal certainty and avoiding analogy in criminal law. The necessity of criminalizing illegal possession of cryptocurrency was proved. Practical recommendations on making appropriate amendments to the Criminal Code of Ukraine were formulated. The theoretical value of this study lies in the formation of an approach to the need to criminalize the illegal possession of cryptocurrencies, and its results can be used in law-making activities

Keywords: virtual assets; blockchain; cryptocurrency crimes; theft; criminalization

Introduction

Recently, cryptocurrency has become an integral part of people's lives both in Ukraine and in many countries around the world. It is traded on centralized and decentralized exchanges, where savings are kept, goods and services are paid for, donated, lent, and inherited, i.e., generally owned and disposed of at the discretion of the people possessing these cryptocurrencies. In 2022, Ukraine ranked third among the world leaders in mass implementation of cryptocurrencies (Chainalysis, 2022).

However, given its popularity, in Ukraine and the world there are increasingly more people who want to illegally take possession of it in one way or another. In terms of the functioning and circulation of cryptocurrencies, it can be argued that public relations have developed rapidly and considerably outstripped legal regulation in many countries of the world, specifically in the field of criminal proceedings. Ukraine is no exception.

The purpose of this study was to investigate the criminal liability for illegal possession of cryptocurrency in Ukraine and find ways to solve existing problems. Cases of illegal possession of cryptocurrency have ceased to surprise law enforcement officers and ordinary citizens. News about the next collapse of the cryptocurrency exchange, hacker attacks on exchanges and cryptocurrency wallets, hacking of smart contracts, cross chain bridges and various kinds of fraud, the consequence of which is the illegal possession of cryptocurrency, appear daily. For instance, in early November 2022, cryptocurrency owners were stirred up by the news about the collapse of the FTX ("Futures Exchange") cryptocurrency exchange. According to the rating of the 30 countries most affected by its collapse, published by the CoinGecko resource, Ukraine was in 22nd place because well over 72 thousand users from Ukraine used the services of this exchange (Ng, 2022).

It is quite difficult to imagine what property damage was caused by the latter, since there are currently no mechanisms for its establishment, let alone compensation. And there are many such examples. However, currently, Ukraine has not

Suggested Citation **Article's History**: Received: 25.12.2022 Revised: 13.02.2023 Accepted: 29.03.2023

Kozii, V. (2023). Criminal liability for illegal possession of cryptocurrency in Ukraine. *Social & Legal Studios*, 6(1), 33-40. doi: 10.32518/sals1.2023.33.

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yet directly criminalized the illegal possession of cryptocurrency. At the same time, the monitoring of the Unified State Register of Court Decisions as of February 2023 confirms fairly common cases of conviction of individuals for infecting computers with malicious software for hidden mining (Verdict of Rivne City Court…, 2019; Verdict of the Dzerzhinsky District Court…, 2018); sale of narcotics for cryptocurrency (Verdict of the Starokostyantiniv District Court…, 2020); illegal sale of information with limited access for cryptocurrency (Verdict of the Kherson City Court…, 2018); cryptocurrency financing of terrorism (Verdict of the Krasnogvardiiskyi District Court…, 2021); legalization of criminally obtained funds using cryptocurrency (Verdict of the Pechersk District Court…, 2019), etc. But in Ukraine, there are no court decisions on finding individuals guilty of illegal possession of cryptocurrency itself, and not, for instance, money that was transferred to fraudsters in some kind of cryptocurrency project because in such a case there is a possession of money, and the actions of individuals are subject to qualification as fraud under the corresponding part of Article 190 of the Criminal Code of Ukraine (2001) (the CCU).

Presently, the investigation of crimes related to the illegal possession of cryptocurrencies is a new area in the work of law enforcement officers. In addition, in Ukraine, there are no scientific studies that relate to the investigation of illegal possession of cryptocurrencies. Scientists pay attention only to certain issues related to this topic.

Thus, in 2021, a team of scientists from the Kharkiv National University of Internal Affairs investigated the algorithm of actions of employees of pre-trial investigation bodies regarding the seizure of electronic assets, including virtual ones obtained by criminal means (Tsutskiridze *et al.*, 2021). S. Hrytsai (2022), investigating the legal regime of virtual assets in Ukraine, concluded that Ukraine has established a presumption of legality of ownership of a virtual asset. V. Cherniei *et al.* (2021), investigating criminal liability for cryptocurrency transactions, concluded that for the correct qualification of criminal offences related to the turnover of cryptocurrencies, it is advisable to recognize cryptocurrency as a type of property or money. Based on the results of the analysis, they concluded that relations regarding cryptocurrencies in most countries of the world are insufficiently regulated and are still outside the legal framework. This complicates the establishment of criminal liability for operations involving the turnover of cryptocurrencies. O. Karapetian and V. Bilynskyi (2018) investigated cryptocurrency as an object of illicit enrichment. S. Chaplian (2018), investigating the legal nature of cryptocurrencies, addressed the relationship between the concepts "cryptocurrencies" and "money". V. Nosov and I. Manzhai (2021), investigating certain aspects of the investigation of cryptocurrency transactions in the prevention and investigation of crimes, formulated several main tasks for law enforcement agencies at the current stage of cryptocurrency development. This is primarily the identification of individuals involved in certain operations with cryptocurrencies. To better understand the processes in the blockchain system, tools for appropriate analysis should include appropriate visualization tools and as complete up-to-date data banks as possible to properly build associative relationships with particular individuals and legal entities. The study of criminal offences in the field of cryptocurrencies allowed D. Kaznacheyeva and A. Dorosh (2021) to conclude that the physical sign of cryptocurrency as a subject of criminal offences lies in its specific form – a digital code.

As for foreign research, prominent are the works of such scientists as I.G.A. Pernice and V. Scott (2021), who, exploring the concept of cryptocurrency, concluded that cryptocurrency systems are unified because they are designed to host a medium of exchange for general or limited purposes, using an infrastructure that, to varying degrees, replaces trust in institutions with cryptography. J. Marinotti (2022), exploring digital asset ownership, refutes the idea that ownership requires physical control, separating ownership from another fundamental concept of things. It emphasizes the unique purpose of ownership in the ownership process: the transfer of the status of real claims. M. Guri (2018), investigating ways to steal private keys from cryptocurrencies, points out the vulnerability of even cold wallets, i.e., those that are not connected to the Internet.

C.N. Braaten and M.S. Vaughn, (2019), E. Reddy (2020), F.M.J. Teichmann and M.-C. Falker (2021), S. Kethineni (2020) refer to the use of cryptocurrencies in criminal finance, specifically as payment for narcotics. The study of C. Albrecht *et al.* (2019) refers to the tendency to increase the use of cryptocurrencies specifically for laundering funds obtained through criminal means. T. Thomas *et al.* (2022) introduced BlockQuery, a bitcoin network query system capable of detecting transactions generated by hierarchical deterministic (HD) wallets that many publicly available tools cannot find due to errors in address retrieval methods. V. Dyntu and O. Dykyj (2021), considering cryptocurrency as a tool for financing terrorism, note that for the fight against crime, the main issue is the deanonymization of the owner/user of Bitcoin, which allows identifying the criminal.

However, scientists have not conducted comprehensive studies of this topic. Agreeing in general with the need to determine the legal nature of cryptocurrency, it should be noted that cryptocurrency as a whole is characterized only by certain features of property or money.

To solve the questions: what cryptocurrency is, what are its types and specific features of functioning and circulation, what is the state of its legal regulation, and what are the methods of its criminalization, a dialectical approach, methods of systemic and technical-legal analysis, as well as formal logical method were applied.

Specifically, the provisions of the current Ukrainian legislation were interpreted in the appropriate manner: Law of Ukraine "On Virtual Assets" (2022), Civil Code of Ukraine (2003), Criminal Code of Ukraine (2001), Tax Code of Ukraine (2010), Laws of Ukraine "On Payment Services" (2021), "On Electronic Commerce" (2015), "On Capital Markets and Organized Commodity Markets". Draft Law of Ukraine No.7183 "On Circulation of Cryptocurrency in Ukraine" (2017) was also examined.

Legal nature of cryptocurrency

First of all, the term "cryptocurrency" is commonly used, and in fact is an abbreviation for "cryptographic currency", which means cryptographic money. In turn, in simple words, cryptography is the science of encryption.

The Encyclopedia of Modern Ukraine provides the following definition of cryptography: "Cryptography" – (from crypto… and …graphy) – the art, science, and technology of ensuring the secrecy of information. It studies ways and methods of protecting information from changes and

unauthorized interference in transmission, processing, and storage (Homonai, 2014).

In 2008, an unknown person or group of people under the pseudonym Satoshi Nakamoto created the world's first cryptocurrency – bitcoin (BTC). All other cryptocurrencies that appeared after Bitcoin are called altcoins. From a technical standpoint, bitcoin is a digital electronic asset that rotates in a decentralized payment system based on the blockchain ("blockchain" stands for "chain of blocks").

However, Bitcoin is not the only cryptocurrency, e.g., the Coinmarketcap resource as of 01.02.2023 tracked 22,405 cryptocurrencies (Today's Cryptocurrency Prices…, n.d.).

Any cryptocurrency conventionally consists of a set of characters – letters and numbers, and these same characters make up the address of the wallet, the so-called public key, which is generated by the system and which one needs to know who is going to transfer a certain amount of a particular cryptocurrency to it. However, there is also a private key that allows the blockchain to dispose of the corresponding amount of cryptocurrency located on the specified wallet, i.e., at the specified address, and there is also a hash of the transaction.

As stated on the EXBASE.IO project website (About EXBASE.IO Platform, n.d.), hash is a cryptographic term used to denote data obtained as a result of passing original information through a hash function. Furthermore, this result can also be called a hash value, hash code, or digest. Hash functions themselves are certain mathematical algorithms that convert any information to a hash of a fixed size (length). Most often, combinations of sixteen characters are used, which use numbers from 0 to 9 and letters from A to F. The alphabet used is exclusively Latin. As a simple example, it is worth considering the hash function SHA-256, which is used in Bitcoin – the most widely used cryptocurrency in the world. If we pass through it the sentence: "learning to understand cryptocurrency", then we will get the following result: de469d52c87d4366b74c435044253a36b6397c8600772d55828dad63dcbfa25d.

What is important is that it doesn't matter how many times you repeat this phrase, or on which machine to do it. The same source information always gives the same hash. However, if you change at least one letter, e.g., start the sentence with a capital letter or replace one Cyrillic letter "a" with the corresponding Latin letter, then there will be entirely different results: 9bc4aa82a9057cfc9922641632bbf7d73cbf57addf8c303126f509af26baf31d and 59c7a3d152a739abe8adcb2925e9ff03237b7875cf210ab055770e5463b31cbf, respectively.

It can be argued that knowing the hash is extremely useful for verifying the accuracy of information, without disclosing its content. That is why these algorithms are used to search closed databases, analyse large files, and provide additional information protection. Furthermore, it is the hash function that underlies the operation of most blockchain networks (About EXBASE.IO Platform, n.d.). Therefore, every hash and every transaction is unique and unrepeatable.

Only a person who has a private key to a transaction for a certain amount of cryptocurrency can own a cryptocurrency. In this case, the private key decrypts the public key and hash of the transaction, but this does not work in the opposite direction. If the cryptocurrency is on the exchange, then the exchange also has private keys, and if the exchange is hacked or the cryptocurrency is stolen from it, respectively, the owner also loses it. In fact, the rule "not your keys – not your cryptocurrency" applies here, but many cryptocurrency owners still keep it on exchanges for operational trading and making a profit from such activities. The rate of decentralized cryptocurrencies is constantly changing, sometimes very quickly and significantly, because neither the state nor its regulatory authorities have a direct influence on the rate of a particular cryptocurrency, since it is decentralized. There are also stablecoins – these are altcoins whose exchange rate is secured by assets, such as fiat currencies or commodity values, and the stablecoin exchange rate corresponds to the value of the asset that provides it, such as 1 US dollar, 1 euro, or 1 gram or ounce of gold.

The key features of most cryptocurrencies are decentralization, since in this case, there is no issuing centre, which is usually used by central banks and governments of countries around the world when issuing money, and that any cryptocurrency transaction, with some exceptions, cannot be cancelled. In general, cryptocurrencies are electronic assets that contain a set of characters whose existence is based on cryptographic rules. Summarizing all the above, from a technical standpoint, cryptocurrency is a code encrypted by a special program, i.e., a sequence of letters and numbers that are recorded electronically and accepted by users as a means of payment and exchange.

According to the findings of the International Group on combating dirty money laundering – Financial Action Task Force, FATF (2014), cryptocurrency is only one of the types of virtual currencies, namely a decentralized virtual currency.

As noted by O. Kreminskyi (2022), in general, all existing approaches to virtual currencies can be reduced to the following, where virtual currency is recognized as follows: 1) cash; 2) a monetary surrogate; 3) a commodity (property, asset); 4) a property right; 5) a form of payment service. In Kreminskyi's opinion, virtual currency, like electronic money, is a type of digital currency with one substantial difference: it is not related to fiat currencies.

However, the classification of cryptocurrencies as cash is questionable, since it does not correspond to their characteristics, the same applies to monetary surrogates, because by its essence and legal nature, cryptocurrency is not a virtual asset or virtual currency, and it is more correct to consider it an electronic asset based on blockchain. No blockchain – no cryptocurrency. It is the blockchain that is the difference and characteristic feature that allows distinguishing cryptocurrency from electronic money.

The Law of Ukraine "On Virtual Assets" (2022) introduces legal regulation of virtual assets. Analysis of its provisions irпnyiei that a virtual asset is a special form of existence of an intangible good in electronic form, which has a value and certifies property rights. The Great Explanatory Dictionary of the Modern Ukrainian Language defines the word "virtual" (from the Latin virtualis – imaginary, possible) as an imaginary, non-existent object (Virtualis, n.d.).

However, cryptocurrency cannot be considered a fictional and imaginary category that is not present in the real world, since it objectively exists in our reality. It just exists in electronic form.

There are also reasonable doubts regarding the legislators' attribution of a virtual asset to intangible benefits. The concept and list of intangible assets are contained in Chapter 15 of the Civil Code of Ukraine (2003), according to Article 199 of which, the results of intellectual, creative activity, and other objects of intellectual property rights create civil

rights and obligations pursuant to the Book IV of Civil Code of Ukraine and other laws. According to Article 200 of the Civil Code of Ukraine, information is any information and/or data that can be stored on material media or displayed in electronic form. Apart from those mentioned above, the legislator includes personal non-property goods protected by civil law and which, according to Art. 201 of the Civil Code of Ukraine, are as follows: health, life; honour, dignity, and business reputation; name (designation); authorship; freedom of literary, artistic, scientific and technical creativity, as well as other benefits protected by civil legislation.

That is, the legislator understands intangible benefits as the results of intellectual and creative activities, information, as well as personal non-property benefits. However, only two of these signs are directly related to the cryptocurrency and, accordingly, are its signs. This is information, because cryptocurrency is a set of symbols – numbers and letters, and it is also the result of intellectual activity, because any cryptocurrency is based on program code. However, given the signs of cryptocurrency and the specific features of its functioning, the legislators' attribution of cryptocurrency to an intangible good is questionable. Especially given that almost any cryptocurrency on the stock exchange or online exchange has its own buying and selling rates, and the owner can instantly exchange it for cash, which can be immediately withdrawn from the stock exchange to a bank card.

Analysis of the Law of Ukraine "On Virtual Assets" (2022) indicates that the legislator in Ukraine actually meant cryptocurrency by virtual assets, but there is no mention of this in the Law, and this can only be guessed through analysis and interpretation of the norms of the Law. Thus, the signs of a cryptocurrency correspond to such signs of a virtual asset as the fact that it is recognized as an object of civil rights, has a value expressed by a set of data in electronic form, as well as the fact that its existence and turnover is ensured by the system of circulation of virtual assets and, furthermore, it can testify property rights, specifically the rights of claims to other objects of civil rights. But at the same time, it is doubtful whether cryptocurrencies are classified as intangible goods.

In addition, the question of on what basis the actions of individuals who came into illegal possession of cryptocurrency should be qualified according to the norms of the Criminal Code of Ukraine (2001) is still unresolved. Based on what legislation? What exactly did individuals get if there is no legal definition of cryptocurrency? What equivalent of cryptocurrency, in terms of monetary funds, should be determined for criminal liability, or is it possible that the mere fact of possession of cryptocurrency, regardless of its size, is sufficient? How to determine the value of the stolen cryptocurrency in terms of the national currency of Ukraine – the hryvnia – at the time of the commission of the criminal offence, if there is no corresponding methodology? The National Bank of Ukraine does not determine the exchange rates of cryptocurrencies, and at the same time, on different online exchanges and online exchange resources, the rates of the same cryptocurrencies can differ substantially and, moreover, constantly fluctuate. Does the jurisdiction of the state of Ukraine extend to the specified social relations, if, for instance, a citizen of Ukraine moved to an online cryptocurrency exchange, relatively speaking, 10 bitcoins, the value of which fluctuated within 15-16 thousand US dollars during November 2022, and the exchange went bankrupt due to improper management of the entrusted cryptocurrency or as a result of a hacker attack, bitcoins were stolen, and the place of registration of this exchange was Virgin Islands, South Korea, Japan, Canada, or Liechtenstein, or Argentina. And finally, the main question is: what is the difference between taking possession of a cryptocurrency, in the above case, 10 bitcoins, and taking possession, relatively speaking, of an asteroid from a distant constellation or, in the end, a shell from a beach or a stone from a cobblestone near the closest house? And what fate awaits the criminal proceedings on illegal possession of cryptocurrency, which are being investigated and will undoubtedly be investigated by the pre-trial investigation bodies in Ukraine. Evidently, without criminalization of illegal possession of cryptocurrency, the solution to this problem is impossible.

State of legal regulation of illegal possession of cryptocurrencies

In Ukraine, the turnover of cryptocurrencies has been unresolved for many years. Only on February 17, 2022, the Law of Ukraine "On Virtual Assets" (2022) was adopted. The adoption of this law is perceived by society as a significant event that launched the legalization of cryptocurrencies in Ukraine. However, there is not a single mention of cryptocurrency in it, and this raises the question of what exactly then belongs to the subject of its legal regulation and what the legislator understands by virtual assets. To answer this question, it is necessary to analyse the main provisions of this Law. Thus, according to Item 1 of Article 1 of the latter, a virtual asset is an intangible benefit that is an object of civil rights, has a value and is expressed by a set of data in electronic form. At the same time, within the meaning of Part 3 of Article 2 of the Law of Ukraine "On Virtual Assets", it does not apply to legal relations related to the regulation of electronic money, securities, and derivative contracts. Furthermore, according to Item 1 of Section VI "Final and Transitional Provisions", this Law shall enter into force on the date of entry into force of the Law of Ukraine on Amendments to the Tax Code of Ukraine (2010) regarding the specific features of taxation of transactions with virtual assets, but not earlier than publication of this Law.

As of the beginning of February 2023, the relevant amendments to the Tax Code of Ukraine have not been made and, accordingly, the Law has not entered into force. Therefore, the legal status of virtual assets in Ukraine has not yet been determined de jure. The legislators also pointed out that the law does not apply to legal relations concerning the turnover of electronic money, securities, and derivative contracts. The definition of the concept of electronic money is contained in Item 14 of Article 1 of the Law of Ukraine "On Payment Services" (2021), according to the content of which they are units of value stored in electronic form, issued by the issuer of electronic money for payment transactions that are accepted as a means of payment by individuals other than their issuer, and is a monetary liability of such electronic money issuer.

Pursuant to Part 1 of Article 13 of the Law of Ukraine "On Electronic Commerce" (2015), settlements in the field of electronic commerce can be carried out using payment instruments, electronic money, by transferring funds or paying in cash in compliance with the requirements of the law on the execution of cash and non-cash settlements, as well as in another method prescribed by the legislation of Ukraine, which regulates the provision of payment services.

As for securities and derivative contracts, the definition of these concepts is contained in Articles 8 and 31 of the Law of Ukraine "On Capital Markets and Organized Commodity Markets" (2006), and accordingly, a security is a document of the prescribed form with the corresponding details, which certifies a monetary or other property right, determines the relationship of the issuer of the security (a person who issued a security) and a person who has rights to a security, and stipulates the performance of obligations under such a security, as well as the possibility of transferring rights to a security and rights to a security to other persons. Securities exist in electronic (electronic securities) and paper (paper securities) forms. In turn, a derivative contract is a contract whose terms stipulate the obligation of one or each of the parties to such a contract in relation to the underlying asset and/or the terms of which are set depending on the value of the underlying indicator, and may also stipulate the obligation to conduct monetary settlements.

The legislators have also normalized the issue of criminal liability in this area of public relations. Thus, Article 199 of the Criminal Code of Ukraine (2012) prescribes criminal liability for the sale of counterfeit money. In addition, Article 200 of the Criminal Code of Ukraine prescribes criminal liability for illegal actions with electronic money.

But the same cannot be said about cryptocurrency since the law does not provide a direct answer as to what cryptocurrency is and how it relates to virtual assets.

Ways and methods of criminalizing illegal possession of cryptocurrency

According to the requirements of Part 2 of Article 4 of the Criminal Code of Ukraine (2001), criminal illegality and punishability, as well as other criminal-legal consequences of an act, are determined by the law on criminal liability, which was in force at the time of the commission of this act.

The criminalization of acts means the implementation of constant monitoring of public relations that need to be protected by criminal law means. Criminalization is determined by the objective needs of society, because if there are gaps, public relations are harmed.

Reasons for criminalization are as follows: 1) the need to perform obligations under international treaties ratified by the Verkhovna Rada of Ukraine; 2) the need to create legal mechanisms for affirming and ensuring human rights and freedoms as the main duty of the state; 3) the need to ensure the implementation of certain provisions of the Constitution and other laws of Ukraine; 4) the results of criminological research on the dynamics and prevalence of a certain act, which substantiate the need for its criminal law prohibition; 5) public opinion (Melnyk & Klymenko, 2004).

In the case of illegal possession of cryptocurrency, it is evident that the development of public relations took place dynamically, while the legislation stayed static and the basis for criminalizing illegal possession of cryptocurrency is the prevalence of cases of illegal possession of cryptocurrency and causing material damage to its owners, which confirms the need for its criminal prohibition.

The authors of the Draft Law of Ukraine No. 7183 "On Circulation of Cryptocurrency in Ukraine" (2017) were the closest to the introduction of the term "cryptocurrency" and the regulation of cryptocurrencies in Ukraine, who proposed to define cryptocurrency as a program code (a set of symbols, numbers, and letters), which is an object of ownership, can act as a means of exchange and information about which is entered and stored in the blockchain system as accounting units of the current blockchain system in the form of data (program code). Article 6 of the Draft Law made provision for the right of a subject of cryptocurrency operations to freely dispose of a cryptocurrency, specifically, to carry out operations on the exchange (exchange) of cryptocurrencies of any kind for another cryptocurrency, to exchange it for electronic money, currency valuables, securities, services, goods, etc. It was also assumed that the general rules that apply to cryptocurrencies apply to the right of private property.

This indicates both the urgent need to amend the already adopted Law of Ukraine "On Virtual Assets", and the need to define in it, specifically, the concept of cryptocurrency, its types and features of its legal regulation. It is also urgent to supplement the Criminal Code of Ukraine with a corresponding article, which will make provision for criminal liability for illegal possession of cryptocurrency.

Therewith, the principle of legal certainty must be observed, as well as the inadmissibility of analogy in the criminal law.

In turn, this means that the legislative level should establish a criminal ban on illegal possession of cryptocurrencies, and not undefined virtual assets, which are referred to in the Law of Ukraine "On Virtual Assets" (2022). Given that cryptocurrency has exchange rates on exchanges and can be converted into cash, it is evident that due to illegal possession of it, the victim suffers material damage, and accordingly its size should be established, from which criminal liability begins. The optimal amount can be determined, e.g., 3 or 5 minimum wages at the time of committing a criminal offence, so that the resources of pre-trial investigation bodies are not spent on small amounts of damage.

The study of scientific literature and Ukrainian and world practices allowed N. Khak Siddiki and R. Movchan (2018) to conditionally highlight the main areas of use of cryptocurrencies for criminal purposes and to consider cryptocurrency as an object of criminal encroachment (theft of cryptocurrency from accounts, Internet fraud, extortion redemption in cryptocurrency, etc.).

Agreeing with the above, it is worth noting that the ways of using cryptocurrencies for criminal purposes are constantly being modified and supplemented with new ones.

An analysis of the methods of illegal possession of cryptocurrency suggests that they can be:

1) theft, i.e., the secret theft of cryptocurrency, which occurs in cases where, due to the hacking of the exchange by hackers or gaining access to the victim's electronic wallet in another way, the cryptocurrency is sent from the victim's wallet by criminals to their own cryptocurrency wallets or to exchanges or mixers to make it impossible to track the further movement of cryptocurrency and identification of criminals;

2) misappropriation or embezzlement of cryptocurrency, which occurs when the cryptocurrency is entrusted to it by the owner of the exchange or other online resources, such as exchangers or cryptocurrency companies, but employees or officials, as a result of dishonest management of the entrusted cryptocurrency, dispose of it at their discretion, e.g., pawn or exchange it to other assets or transferred to other electronic wallets, which leads to its loss to the victim;

3) fraud, which occurs when any individuals, by deception or abuse of trust, e.g., under the promise of large profits, receive cryptocurrency from the victim in any way, intending to illegally take possession of it.

The qualifying features should be its repeated or earlier conspiracy by a group of individuals or a criminal organization, as well as illegal possession that caused considerable damage to the victim or was committed on a large and especially large scale. Therewith, it is possible and appropriate to consider the approach of the legislator to determining the amount of damage in property crimes, as indicated in the note to Article 185 of the Criminal Code of Ukraine (2012).

Furthermore, the question of how to determine the amount of material damage caused due to the illegal acquisition of cryptocurrency also needs an urgent solution. Such damage must be expressed according to the exchange rate of the National Bank of Ukraine at the time of the completion of the crime in the national currency of Ukraine, the hryvnia. At the same time, on different online resources, the exchange rate may differ and fluctuate substantially over a short period of time (even a few seconds). A solution to this problem may be to determine the value of assets at the rates of the world's largest cryptocurrency exchange. Presently, this is Binance. However, among over 20,000 cryptocurrencies that exist in the world today, only more than 600 are listed on Binance. This means that this size can also be determined by the rates of the largest 10 or 20 or more exchanges, e.g., according to their rating by trading volume.

Conclusions

Therefore, the Law of Ukraine "On Virtual Assets" introduces the legal regulation of virtual assets, and despite the absence of any mention of cryptocurrency, the analysis of its provisions allows asserting that, specifically, it includes cryptocurrency as a virtual asset. At the same time, the correctness of the legal definition of virtual assets is questionable, since virtuality means something imaginary, i.e., something that does not exist in real life. However, cryptocurrency objectively exists in our reality and is not something imaginary, it just exists in electronic form. The legislator unreasonably refers virtual assets to intangible goods because, foremost, intangible goods are intellectual property rights and personal non-property goods.

The conducted study proves that cryptocurrencies are electronic assets. From a technical perspective, cryptocurrency is a code encrypted by a special program, i.e., a sequence of letters and numbers that are recorded electronically and accepted by users as a means of payment and exchange. Therefore, by its very nature, cryptocurrency is not a virtual asset because it is an electronic asset based on the blockchain – a decentralized public register of all conducted cryptocurrency transactions on the network, which acts as an inherent feature that allows distinguishing cryptocurrency from electronic money.

The study of the issue of criminal liability for the illegal acquisition of cryptocurrency allows coming to well-founded conclusions that the urgent task of the legislators in Ukraine is to amend the Law of Ukraine "On Virtual Assets" and define the concept of cryptocurrency, its types and features of legal regulation, as well as establish a criminal responsibility for the illegal acquisition of cryptocurrency and the addition of the corresponding article to the Criminal Code of Ukraine. Presently, the Criminal Code of Ukraine does not prescribe any criminal liability for illegal possession of cryptocurrency. Therefore, the amendment of the Criminal Code of Ukraine with an article that establishes such liability for various forms of illegal possession of cryptocurrency (theft, misappropriation or embezzlement, fraud) will make it possible to bring the perpetrators to criminal responsibility and will contribute to ensuring respect for the rights of victims, especially in the context of the return of the stolen cryptocurrency from them.

Meanwhile, it can be stated that the owners of cryptocurrencies in Ukraine are not protected by the current legislation from their loss as a result of illegal possession by other individuals, since the legislators, in compliance with the principle of legal certainty, do not recognize the corresponding actions as criminal and despite the dynamic development of public relations in this area, the legislation was and still is static.

This study can serve as a solid basis for further scientific research on issues related to criminal liability for illegal possession of cryptocurrency. Equally important are further areas of research, which concern the specific features of proof in criminal proceedings regarding the illegal acquisition of cryptocurrency, the methods and tactics of their investigation, and the imposition of punishment for the commission of such crimes.

Acknowledgements

The author conducted the study independently, respectively, there is no acknowledgement to individuals or organizations for any technical support, ideas, financial (material) aid, etc., thanks to which the study became possible.

Conflict of interest

Since the author's study was conducted independently, there is no conflict of interest.

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Кримінальна відповідальність за незаконне заволодіння криптовалютою в Україні

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Анотація. Статтю присвячено дослідженню кримінальної відповідальності за незаконне заволодіння криптовалютою в Україні, що є актуальним у зв'язку зі значним поширенням криптовалют і випадків незаконного заволодіння ними, унаслідок чого потерпілим спричиняється значна матеріальна шкода. Зокрема, це відбувається внаслідок краху криптовалютних бірж та здійснення хакерських атак на криптовалютні гаманці. Мета статті – дослідити те, яку кримінальну відповідальність передбачено за незаконне заволодіння криптовалютою в Україні. У процесі дослідження застосовано діалектичний підхід і методи системного та техніко-юридичного аналізу, а також формально-логічний метод. Визначено підходи до розуміння поняття «криптовалюта», указано її види. Розкрито особливості функціонування технології блокчейн. Проаналізовано правове регулювання віртуальних активів в Україні, їх співвідношення з криптовалютою. Відзначено, що за своєю сутністю криптовалюта – це не віртуальний актив і що її доцільно вважати електронним активом на основі блокчейну – децентралізованого публічного реєстру всіх проведених криптовалютних транзакцій мережі. Висвітлено недоліки в правовому регулюванні криптовалюти в Україні, зокрема відзначено, що ознаки віртуальних активів не повною мірою збігаються з ознаками криптовалют. Наведено найпоширеніші способи незаконного заволодіння криптовалютою та окреслено проблемні питання притягнення до кримінальної відповідальності осіб, які вчинили незаконне заволодіння криптовалютою. Обґрунтовано неможливість притягнення до кримінальної відповідальності в Україні осіб, які вчинили незаконне заволодіння криптовалютою, з урахуванням принципу правової визначеності та недопущення аналогії в кримінальному праві. Доведено необхідність криміналізації незаконного заволодіння криптовалютою. Сформульовано практичні рекомендації щодо внесення відповідних змін до Кримінального кодексу України. Теоретична цінність дослідження полягає у формуванні підходу щодо необхідності криміналізації незаконного заволодіння криптовалютою, а його результати можуть бути використані в правотворчій діяльності

Ключові слова: віртуальні активи; блокчейн; злочини у сфері криптовалют; викрадення; криміналізація

UDC 343.95
DOI: 10.32518/sals1.2023.41

Соціально-правові студії. 2023. Т. 6, № 1
Social & Legal Studios. 2023. Vol. 6, No. 1

Psychological profile and prerequisites for the formation of the killer's personality

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Abstract. The relevance of the study is conditioned upon the elevated level of crime and scientific interest in determining the prerequisites for murders that are individual in nature, develop into a series of hidden intentions and have complex consequences for the life of society. Clarifying the psychological causes of serious crimes is important for preventive work in the defined area. The purpose of this study was to determine the personality traits of murderers, to identify the prerequisites for the formation of criminal behaviour, to investigate the classification and rating of serial crimes by cruelty and methods, to analyse statistical data on the commission of murders. In the study of the nature of serial murders, the following methods were used: the method of analysis and synthesis, the biographical method, the statistical method, and the generalization method. Using theoretical analysis, the psychological root causes of homicide drives, their main features and methods of implementation, and gender characteristics regarding the strength of committing a crime were identified; the data obtained were confirmed by real statistical indicators. The study highlighted the problem of increasing criminal cases caused by the mental state of the individual. The features of the psychology of the killer were covered, and the influence of childhood and life circumstances on the formation of the internal urge to commit murder was substantiated. The factors that encourage violence were identified. The types of serial killers were identified, and the "handwriting" of crime execution was analysed. The essence of impulsive and serial murder was delineated, and the concept of moral statistics as a provocative factor in committing a crime was covered. A psychological portrait of a serial killer was formed. Features of early research at the level of physiology and genetics were established. The presented theoretical material not only serves as an informational resource but can also be used in carrying out preventive measures related to early education, the methods of which have a preventive and correctional impact

Keywords: crime; serial killer; mask of normality; McDonald's triad; Herostratus syndrome

Introduction

Serial murders are crimes that are difficult to explain from the standpoint of science and investigative authorities, since their nature and motive are not always fully revealed and have a complex and hidden nature. The causes and propensity for murder are investigated on an ongoing basis, but wellestablished empirical studies do not provide a particular answer as to the motives and factors that provoke violence. Destructive behaviour is the shadow side of the realization of desires, which have complex consequences for the objects of interaction. Genetic inheritance, difficult living conditions at an early age, affecting emotionality and changes in the activity of the psyche, create internal drives for "pathological pleasures", fulfilled through particular methods of violence.

The relevance of this study lies in the need to investigate the specific features of the nature of serial killers, to identify the prerequisites for the formation of cruelty in behaviour and the factors that determine its manifestations, to study the early history of individuals who have committed serious crimes to form modern key approaches to the investigation of a serial killer's personality, which will additionally be guided by specialists in criminal, legal psychology, forensic medicine, law enforcement agencies when solving complex cases.

Psychiatrist and psychoanalyst S. Subbota (2021) claimed that almost every day, 8% of people meet a serial killer on the streets, but not everyone can become the object of bullying. Usually, the victims of killers are individuals who evoke memories and are similar to the object that, in the early stages of life, "spawned" the current actions. Many individuals' crime patterns are similar to each other, especially regarding sexual crimes.

Early studies by FBI agents R.K. Ressler *et al.* (1988) were aimed at thirtysix sexually oriented murderers incarcerated in the United States who committed single or serial murders. As a result, a model of the motivational model of sexual murderers was created, as well as a typology and distinction of committed murders according to the level of

Suggested Citation **Article's History**: Received: 07.12.2022 Revised: 18.02.2023 Accepted: 29.03.2023

Spytska, L. (2023). Psychological profile and prerequisites for the formation of the killer's personality. *Social & Legal Studios*, 6(1), 41-48. doi: 10.32518/sals1.2023.41.

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behavioural complexity. M. Gullotta *et al.* (2021), investigating groups of male sex offenders, based on the results of psychodiagnostics of Australian prisoners, distinguished two types of murder: the opportunistic-impulsive, or spontaneous type of criminal's behaviour, which acts with a low level of reflection, and the sadistic type, which prematurely plans actions with a manifestation of sadism.

The founder of the WAAF World Anti-Criminal and Anti-Terrorist Forum O. Chystiakov (2010) comprehensively investigated and analysed criminogenic factors in Ukraine based on serial murders in 1960-2010 and concluded that mass murders according to the classic scheme are committed by mentally unbalanced individuals against the background of personal issues, as a result of which hostility and blame are transferred to certain groups of people. This type of crime, unlike a chain or serial crime, does not have emotional cooling and is impulsive, sometimes unplanned.

A supporter of the psychoanalytic trend, T.L. Barber (2016), focused her research on the search for the fundamentals of innate abilities and actions from childhood, which served as the reason for the development of a psychopathic personality. The scientist compared murderers with neurotics, who were driven by fear, despair, anxiety, and a sense of loneliness. According to the researcher, the shortest path to the research of the unconscious should be the interpretation and examination of dreams based on the theories of S. Freud, the identification of the specific features of their presence or, on the contrary, the use of associations during interrogation regarding the details of the crime.

V. Zepinic (2018), investigating the psychology of psychopathic personalities, discovered the special significance of the phenomenon of the "mask of normality", the essence of which is the ability of a person to hide their true "self", appearing to be an absolutely adequate and mentally healthy individual. There is an artificial behaviour that can adapt to social norms and moral canons, and conscientious volitional control occurs.

An interdisciplinary approach to the investigation of serial crimes was applied by the authors of the Ukrainian monograph (2019), who considered the problem in three aspects: criminal law, forensic, and psychological. The goal that guided the work of this team of scientists was to create the basis for legislative consolidation of the term "serial murder", since it remains uncertain in the Ukrainian legal field. Criminologist L.V. Husar (2020) was engaged in the study of the specific features of the formation of a search portrait of a serial criminal. H.M. Getman (2018), investigating the modelling method during adversarial criminological investigation, noted that it is necessary to involve psychologists and psychiatrists, and sometimes specialists from other branches of scientific knowledge. H.V. Katolyk & A.O. Shatalova (2022) investigated how the image of a serial killer is perceived not by specialists, but by ordinary citizens, which is also critical for a comprehensive investigation of the portrait of a serial killer.

The purpose of this study was to highlight the prerequisites for the formation of the killer's personality, namely: the state of mental health, conditions of early childhood, features of interaction with social institutions, the presence and manifestations of parental care, experienced psychoemotional injuries, the level of development of feelings and their suppression. The scientific originality of this study lies in the search and coverage of modern approaches to investigate the causes of complex factors of mental activity deviations and improve the basics of forming a psychological portrait, which will further allow for a broader search for criminals through scientific approaches.

Materials and methods

The methodological framework of this study included the following methods: the method of analysis and synthesis, which helped analyse early scientific approaches to the investigation of the psychology of murderers, to form a general vision of the problem based on the accumulated facts. The method of analysis revealed information on the basics of the formation of manic tendencies, determined the criteria of the motivational component, the root causes of deviations. The comparative analysis helped establish the gender features of committing a crime against the life of society, to find such stimuli that cause a pathological violation. Using synthesis, the author of the study combined the study results into a single structure for a scientific explanation of the phenomenon of the emergence of murderers.

Based on the analysis of early scientific approaches, the author formed a general psychological portrait of murderers, which is based on "classical" concepts and provides a general idea of the hidden possibilities of an antisocial personality. This portrait is not universal and cannot create an idea of each serial killer individually, but it serves as a reference point, which, based on general concepts, creates an abstract understanding of the probable person, from which law enforcement agencies will be able to start to find the killer's trail. A particular situational psychological portrait is formed individually for each criminal, depending on the degree of difficulty of solving the case and inflicted bodily injuries, the tools used for murder, the consequences that form the "handwriting". Portrait data can be based on psychoanalytic, cognitive-behavioural approaches, reveal its meaning from the basics of deep psychology, forensic medicine, profiling, medical history, be based on the results of the Achtnich photo test, the Sondi test, psychiatric mechanisms according to A. Wundt, which can reveal approximate physiological and psychological data (age, height, weight, external features, assumptions about mental state).

Portrait formula: age, probable height, physical features, gender definition; archetype (object, figure, reason for attack); mental reaction (determination of features depending on the degree of severity of the murders); probable type of serial killer; leading factor (motor – physical effort); dominant factor (sadism, depressive syndrome, false morality); search for psychiatric abnormalities, their presence; identification of key tools of crime, characteristics of "handwriting" (Maltsev *et al.*, 2019).

The biographical method helped study in detail the history of serial killers, using the individual life path at various stages of their lives for analysis. This method helped identify possible early factors (endogenous, psychogenic, sociogenic), that could provoke adverse changes in the psyche and behaviour of the killer's personality. The biographical method served as "the history of an individual case", with life components that do not have a place in an adequate society and leave a complex imprint on the future of murderers and their victims have been researched and analysed.

The statistical method helped quantify and qualitatively assess the problem under study, confirming the level of its importance with the result of numerical totals. Statistical

indicators allowed to generally reveal the level of social life of murderers and their interaction with victims, to estimate the scale of the problem of crimes against life, periods of their activity and "calm". Based on the reporting of the Ukrainian analytical portal, the data of the General Prosecutor's Office of Ukraine and the UN Office of World Statistics, the results regarding the spread of crime against life in Ukraine and murders at the international level were compared, and practical confirmation of the consequences was obtained.

The generalization method helped evaluate the behaviour of serial killers, influence the process of forming a psychological portrait, combining psychological data on early life stages, possible critical situations, social interaction of murderers, and methods of murder. This method established a general relationship between the practical results obtained and the results of past studies.

Results

Investigating the psychological characteristics of murderers, the author focused on statistical indicators that periodically reveal the number of crimes against life and are recorded on a legislative basis. The crime rate is growing, murder is becoming an easier way to implement revenge or get pleasure, but each complex process hides the reaction that has arisen to a certain stimulus.

According to the data of the Ukrainian analytical portal, which tracked the dynamics of crimes from 1992 to 2020 in Ukraine, the growth and highest indicator was observed in 1993-2003. The first high-profile murders began to occur in 1992, when about 3,600 murders and attempts were recorded in the country, and a few years later the figure increased by 4.5 thousand a year. The period of calm occurred in 2007-2012, when the number of murders and attempts did not exceed 2.9 thousand per year (Baganets, 2021).

As of 2013, the situation in Ukraine has worsened, over seven thousand recorded murders occurred as a result of serious bodily injuries, beyond twelve thousand cases were recorded in 2014. As for sexual crimes, the peak of growth occurred in 1992–1993, then the situation declined. 2018 showed the lowest number of rapes – 203 victims (Baganets, 2021).

According to the data of departmental statistical reporting, pursuant to the Law of Ukraine "On Access to Public Information" (Law of Ukraine "On Access…", 2011), in 2020, 1,375 minors were declared missing by the state, and in 2021, within nine months, 1,319 children disappeared, the rest of the data are being processed (Response of the Department of Information…, 2021).

The statistics of the General Prosecutor's Office of Ukraine report that as of the beginning of 2019, no murders were recorded, but in the middle of the year, the rate gradually began to increase, and already at the end of the year, in December, 1,360 people were recorded who were suspected under Article 115 "Intentional murder" (Prosecutor General's Office of Ukraine, 2019).

According to the statistics of the United Nations Office on Crime and Drugs, it was established that as of 2012, the highest level of murders was recorded in the USA – the rating of which was (16.3) out of 20 possible, the situation in Ukraine according to analytical indicators received a rating (3.0) (UNODC, 2014). Such contrasting numerical indicators aroused the scientific interest of comparing the data of homicide statistics in Ukraine with the number of American crimes for the analysis of changes in the present period. As of 2020, the number of homicides in the United States increased by 30%. According to the Federal Bureau of Investigation, in 2020, 21,570 people were killed, which is 29.5% more than in 2019, but in most cases the murder weapon was a firearm. The number of sexual crimes increased by 5.6% in 2020 (Gramlich, 2021).

The statistical study allowed assessing the overall picture of the problem of crimes against the life of society, the numerical values of which do not have a positive decline, which is explained by the characteristics of grave crimes over the years. The analysis of the data clearly emphasizes the importance of researching the phenomenon of serial killers to understand their essence, effective dialogue in case of arrest, creation of psychological countermeasures, early assumption and calculation of future steps, which will ensure a positive result in the search for criminals during the activities of law enforcement agencies.

Biographical study of serial killers

The analysis of biographical data of serial killers revealed life situations and complex stages of existence that have similarities with each other, creating a probable system of reasons for the formation of a future killer. Studies of the childhood period of murderers revealed the problem of growing up in singleparent families, participation in acts of physical struggle and domestic violence (witnesses of the father's aggression towards the mother), education in orphanages, officer service and military training, victims of paedophilia, abuse from the hands of their mother or bullying, undergone surgical interventions.

Analysing the life path of the famous American serialist Ted Bundy, the author noted that this person probably became a "victim of the past" because according to the biographical description, the boy suffered in childhood due to the incorrect construction of family values and did not grow up in a complete family, and later learned that his mother – a sister who concealed her motherhood, giving her son to be raised by her parents. The unpleasant truth made Bundy feel guilty and ashamed, disgusted and useless. Ted Bundy has repeatedly witnessed domestic violence and attempts to establish an emotional connection with his foster father have failed. The killer showed cruelty and sadism to animals as a child, which probably signalled a behavioural deviation according to the Macdonald triad. Bundy committed his brutal atrocities against women who resembled his mother. Despite showing coldblooded instincts, Bundy received a large group of fans and followers in society who were on his side and provided support. In interviews with psychiatrists, the killer revealed his inner grievances against women from his family, because of which he felt negligent and worthless, demonstrated awareness of his actions (Sullivan, 2019).

The Lipstick Killer William Heirens lived a similar childhood, he witnessed frequent arguments and scandals between his parents, which destabilized his emotional state, and for his own peace, the boy began to steal to change the focus of attention, it grew into a habit, poverty as an additional factor affected the desire to become a criminal and a murderer, notably, based on biographical analysis, this murderer was formed through destructive changes of a psychogenic and sociogenic nature (Rosewood & Walker, 2016).

Hydrocephalus, diagnosed in Andrii Chikatylo, a Ukrainian serial killer, could be a probable cause of inhumane acts. An added traumatic factor for the criminal was the loss of

his brother and the lack of necessary parental care, during which the person lived through the stress of loneliness and loss, lack of support. Andrey Chikatylo, nicknamed the Red Ripper, committed murders for sexual reasons, the number of his victims is up to 65 people. Among them were male and female children aged 7 to 17 years, women and adolescent girls. In this case, aggressive actions could be caused by changes in the structure of the brain that affected mental activity, the fact that endogenous and psychogenic factors intervened, which were caused by early hydrocephalus and its treatment by surgery and medication (Pizzichi, 2022).

The study of the psychological characteristics of social psychopaths indicates that murder has no gender, which is why it can be committed by both men and women, the difference is only in the motive and method of committing the crime. The proportion of women responsible for murder does not exceed the proportion of murders committed by men, the number of their victims accounts for about a third of cases. Usually, the motive lies in a deep resentment towards the male sex, conflict of relations with the environment, competition, financial enrichment, rarely in the pathology that accompanies the scenario of serial murders. The most common weapons that women can use to kill are heart medications, toxic substances, sharp objects, and firearms (Benkart, 2019).

Researchers in the United States claim that men can kill any stranger, women are capable of planned murder of people they know without resorting to persecution, this mode of action is determined evolutionarily, i.e., such behaviours were laid down by our ancestors. It is about the ability to hunt, which belongs to men, and gather, which was the responsibility of women in the past (Wattis, 2016).

One of the most famous female killers was Bella Sorenson Guinness, nicknamed "Black Widow", who killed fortytwo people. Her first victims were her two daughters, whom she poisoned to pay for insurance. The examination showed symptoms of colitis in children, but later found that it was premeditated murder. By a strange coincidence, the killer's husband, who was undergoing medical treatment for the heart and for whose death Bella received insurance compensation, also died. In total, the woman buried 40 men and was able to save more than a quarter of a million dollars (Amesson, 2021).

Another example for the gender analysis of killers was Jane Toppan, nicknamed "Jolly Jane". Working as a nurse, she injected her victims with morphine, which caused cardiac arrest and sudden death, the torment of patients brought pleasure to the killer. Biographical analysis indicated that the girl at the age of 17 began to experience hostility in the family and suffered the death of her mother hard, being in a state of frustration for a long time. After 7 years, she began to commit deliberate, wellplanned crimes for her pleasure and entertainment, experimenting with doses of morphine administration. Psychiatrists of that time formed an expert opinion that the killer's actions were caused by a genetic nature. The biological father and sister were mentally ill and were in a hospital for treatment. The killer was not convicted, but was sent to a psychiatric hospital for treatment, and later her condition worsened, and delusional ideas arose based on her own early actions (Schechter, 2003).

Psychological profile of a serial killer (general meanings)

During the study on the specific features of serial killers, a set of characteristics that form the psychological profile of the killer, an overall assessment and a criminological property were determined. The main feature of the psychological portrait is the compilation of a profile assessment based on the materials of operational and criminal cases (García-Baamonde *et al.*, 2022). Based on the biographical method and a theoretical study of the nature of antisocial individuals, the author formed a psychological portrait of a "classic" serial killer, the description of which is general in its meaning.

A serial killer is a person of any race, over the age of thirty, of medium build and height, has a wellformed physiological structure, is distinguished by charismatic manifestations, and sometimes attractiveness. With a prominent level of intelligence, emotionally restrained, but sometimes harsh in arguments, proof of views, clearly focused on the purpose, capable of analysing the course of events, taking risks into account.

They always act unassisted, maintain social connections, but avoid large audiences, and try not to make unnecessary acquaintances. Socially adapted, single or divorced, may eventually find a partner and marry to create the role of a good family person, thereby ensuring an alibi. They focus on a single victim model or their social role, which triggers an exciting effect and enhances memories of trauma experienced.

As a child, they underwent difficult periods or were "born in blood", i.e., they witnessed the brutal murder and violence of a loved one or a stranger. They can wait out and maintain selfcontrol, are capable of emotional recovery, but a new craving for the victim is a new life taken away, murder becomes not just a "brutal act", but a counter-transfer, a struggle with the past. Periodically, there is a partial manifestation of delusions or hallucinations, there is a dialogue with the "dark companion", i.e., a reflection of one's own "self", they probably could have been treated in psychiatric departments. The killer is unable to sympathize, but they can express false emotions, especially important people can cause real experiences. Feelings of guilt and conscience are absent, there is complete confidence in the correctness of the act, they try to control impulsive actions to maintain their safety. They use separate locations for murder, but the "handwriting" of the execution is its essence (depending on the strength and severity of the injuries caused, a specialist in forensic medicine and expertise can establish assumptions about the height, weight, and age of the criminal). In case of detention and charges brought, they will not pretend to be a victim with mental disorders, will deliberately reveal all the crime scenes, describe the stages of committing the murder, and clarify the reason for the crime. However, having received a life sentence, they can calmly accept the sentence, or they will not give up attempts to escape or suicide.

Discussion

Murder is a crime that does not have a reverse process and includes in its nature a thirst that encourages action to satisfy internal "dark" desires. Having analysed the statistics of murders in Ukraine and abroad (Baganets, 2021), the peak activity of murderers has its own period, since behind any difficult act is emotional exhaustion that needs recovery. According to recent years, sexual homicides have become the most popular. In Ukraine, the fight against crime is actively conducted because the problem concerns the life of an innocent society, but at the legislative level there are weak rules of punishment, which in no way affect the desire to commit a deadly act again.

The term "serial murder" originates from past historical times. This type of crime is localized in time, space, and the

actions of one person who has four or more victims on their account. Most serial killers use a similar pattern of crime, but there are individual cases that emphasize seriality with a special "handwriting" (Egger, 1984).

In serial murders, there is a break, the socalled period of emotional cooling, which can last a week, a month, or years. During this period, ordinary social life continues, which does not cause much suspicion. When studying the specific features of crimes against life, it is worth distinguishing the terms "serial" and "impulsive" murder because the activity of serial killers is defined by a break of one week with a minimum number of victims, it is planned and has a clear purpose; impulsive murder occurs in a state of affect and the influence of a sudden stimulus, which the psyche of the killer took for a hostile gesture, then there is confusion in the investigation because the tools with which the blows were inflicted may differ (Daniszewska, 2017).

Characterization of the features of a serial killer showed that the direction of damage caused has the same features, but the behaviour of the individual and its psychopathology have individual manifestations and methods of bloodshed. The mental component of serial killers has distinctive features compared to mentally balanced people, there are the most common features that distinguish killers from ordinary society: lack of empathy, emotional empathy; lack of remorse; impulsiveness, sudden rush, lack of volitional control; inherent ambition, often attractiveness, manipulativeness; there is a thirst to control events, to gain power, etc. (Zuniga, 2021).

Usually, the killer does not stop at one episode of death, they seek repetition, thus declaring themselves to society, as a result of which pleasure arises not only from physical harm, but also from the power of fear over the masses. The degree of brutality of serial murders is considerably higher than that of ordinary spontaneous ones. The serial murder is planned to the smallest detail and has no potential witnesses.

There is a classic typology of serial killers, which was formed based on early research and operational investigations: *visionaries* – individuals suffering from psychosis, characterized by delusions of grandeur and hallucinations, "orders" to kill "received from above" (e.g., Herbert Mullin, who claimed that the murders were aimed at stopping an earthquake, about which the killer allegedly received a warning from heavenly forces); goaloriented *missionaries*, a great "mission" that should be carried out for the good of humanity, e.g., to protect against certain social groups of the population (Jack the Ripper, whose "mission" was to cleanse society of prostitutes; "Tarot Card Killer"); *hedonists*, whose actions are aimed at their satisfaction, namely: rape, maiming, torture for money (Andrii Chikatilo is a vivid representative of this type); *controllers* – the type of killers who have fantasies about power and dominance and who take pleasure in knowing that the victim's life is in their hands (David Berkowitz, known as the "44 calibre killer"); *cannibals* who commit murder for the victim's flesh (a wellknown representative is Nikolai Dzhumagaliev, who killed and consumed no less than ten women) (Sharma, 2018).

In the study of the psychology of a serial killer, it is worth noting that not all murders were committed by people with low intelligence or an average level of education. Forensic practice indicates that most serial killers have a prominent level of intelligence, which allows them to more successfully implement their planned atrocities. Thanks to their high intelligence, murderers manipulate professionally, find an approach to victims, control scenarios, and show false empathy because in fact it is absent. Expression of narcissism and a sense of grandiosity are the main catalysts for killers (Sharma, 2018).

The prerequisites for the formation of the killer's personality may contain many factors and criteria of influence, but the causal relationship lies in the period of childhood, the pathological program of interaction with parents and social institutions. To clarify the fundamentals of early destructive manifestations, psychiatrist J. -MacDonald in his scientific work "The Threat of Murder" published the triad of the murderous sociopath, namely a set of three elements that describe the general behaviour of a person: zoosadism, pyromania, and enuresis; these three main components characterized the possibility of the future killer occurring. However, later this theory stayed a concept that is not considered by current psychiatrists and criminologists because further studies have shown that abuse of animals, frequent attacks are demonstrative behaviours that arise as a result of parental mistreatment and neglect (Parfitt & Alleyne, 2020).

Changes and pathologies in the structure of the brain are an added stage in the development of an antisocial vision of the world. Comparing the encephalogram images of the killer's brain and the brain of an ordinary, peaceful person, one can notice differences in the structure and size of the hemispheres. It is these changes that affect the central nervous system, its functioning, and behavioural disorders. American researcher Kent Kiel from the University of Madison conducted a CT scan of people who were accused of murder. Surveys of about 800 prisoners indicated that the brain structure of the perpetrators differs from that of those who did not commit such a crime. Areas of the orbitofrontal cortex and anterior frontal lobes had individual shapes and showed a low amount of grey brain matter. This study did not provide irrefutable evidence that exactly the identified feature of the areas serves as a marker of killers, however, it definitely confirms the non-standard level of aggression (Sajous-Turner *et al.*, 2020).

The scientific journal "Molecular Psychiatry" (Tiihonen *et al.*, 2014) published an experiment investigating the blood structure of serial killers. The respondents were more than 1,000 prisoners, as a result of which two genes were identified that were highly likely to be involved in the manifestation of excessive aggression. All the samples contained two genes: CDH13, known in scientific circles as the "warrior gene", and MAOA, which is passed down from the mother and is responsible for the level of serotonin in the body, which affects social behaviour. About 20% of the world's population are carriers of one of the genes, which is quite normal, but the presence of a double combination causes complex disorders and fatal cases. According to researchers, the "warrior gene" is successfully combined with drugs and alcohol that cause hormonal instability. However, forensic psychiatry refutes the studied elements and notes that only the existing mental abilities and psychological phenotype of the individual determine its relation to the urge to kill, and the created experiment has no legal force and does not affect the court decision (Subramanian, 2020).

The urge to kill and the desire to show off one's "soul-killing talents" can cause the "Herostratus syndrome", in which the individual develops a desire to become historically famous, thereby generating fans who will euphorically imitate the sociopath. Lust for fame and informational power lay the foundation of the driving force behind crime (Leyton, 2017).

In the study of the distribution of murders, the researcher M. Rapley relied on the concept of "moral statistics", which is an essential element of empirical demography. According to the scientist, society has all the prerequisites for crimes that can be carried out because there are conditions that contribute to them, create the basis for the crime, and the killer is a tool. Social inequality, a low financial level, poverty, a sense of superiority from the outside – cause a desire for violence in mentally unstable individuals (Rapley *et al.*, 2003).

Killers can adapt to society, keep pace, build their families, attend sports classes, follow certain preferences, acquire professional titles because it is precisely these qualities that provide the needs that are accepted in the state and society. Serial murders are not work and occupation, they serve as a way to satisfy a sudden need, to stop a pathological situational drive. Many of the killers worked regular jobs that not only provided financial security, but also provided alibis.

Ukrainian researchers have developed a unique scientific monograph "Psychological portrait of a serial killer" (Maltsev *et al.*, 2019), work on which lasted for decades. The researchers considered the phenomenon of serial killers based on an international sample of cases from countries of the Romano-German legal Family (Great Britain, USA, Spain, Germany, and others). 30 murderers were described in detail, a significant part of them were of Ukrainian origin. The main tool used by scientists to diagnose individuals who may be prone to murder is M. Achtnich's photo test. The monograph mentions three types of serial killers: a person who kills only men; a person who kills only women; mixed type – murders of men and women. Researchers note that most often a serial killer is a man aged 23-28 years or 35-45 years old, women are incapable of becoming serial maniacs, but there are certain exceptions regarding individuals who acquire a masculine nature and are reinforced by psychiatric disorders (excessive aggression, deviation in sexual preferences) (Maltsev *et al.*, 2019).

A comparison of the psychological portrait generated by the author of this article with the research results of the authors of the monograph revealed common features regarding the definition of possible age, gender, physique, the ability to stay invisible, put on a "mask of normality", having mental abilities and sometimes creative imagination. However, the psychological portrait proposed by the author of the study has received general values that serve as a classic model of potential murderers, the exact use of which will depend on the degree of severity of the murder and the situation under investigation. The approach of the authors of the monograph has a clear structure and sections, which are divided into many added criteria that can diagnose the propensity to kill and determine with 100% accuracy the killer present among the suspects.

Antisocial behaviour is the result of the influence of a destructive factor, the phenomenon of which has no single meaning. Any adverse changes in the social environment (and even in the environment of the mother's womb) can contribute to the future formation of serial killers: childhood, relationships with parents, inferiority of family ties, being under the pressure of constant abuse and bullying, etc. A vital role is played by the genetic characteristics and structure of the brain hemispheres, blood composition, physique, and shape of the cranial areas. The involvement of the DNA structure in aggressive outbreaks requires more research, since it is too early to say one hundred percent that genetics is responsible for the tendency to kill.

Analysis of statistical data on the course of serial murders showed that the peak of activity of serial killers falls on a certain period: they are more "productive" in the spring and autumn. A decline in crime can occur when the killer's identity needs emotional recovery and tries to avoid suspicion or confuse the investigation. The intensity of aggressive outbreaks can be different and individually formed.

It is important to note that one scientific approach is not enough to investigate the composition of the killer's psyche in detail. Only a comprehensive approach to the problem can provide a general picture, assess the real result, but the study of individual areas leaves the results of the study only at the stage of theory, which forensic experts will later deny. The main problem of modern criminogenic approaches is to delve into a onesided process, but the search for reasons lies in the deep psychology of investigating children's injuries, genetic features, pathological functionality of the cerebral cortex, and social variability.

H. Katolyk (2022) conducted research among students, lawyers, and psychologists to find out how young people imagine a portrait of a serial killer. Using an associative test and a questionnaire, the scientist found that representatives of different professions perceive the image of the killer differently: if future lawyers operate with particular realities (the means and consequences of murder, details that will help find and punish the criminal), then psychologists focus on the causes of the crime and the character traits of the serial killer. Thus, proceeding from the empirical research of H. Katolyk and, in general, on the results obtained by the author of this study, we can discuss the relevance of interdisciplinary approaches to the formation of a portrait of a serial killer because only in this way, by combining the visions of various sciences, can we get a complete and detailed picture.

Conclusions

The present study led to the following conclusions. Serial killers are individuals whose formation and existence have no single explanation because mental pathologies can develop under several factors. The conducted biographical method showed that received emotional injuries, physical abuse of parents, unhealthy relationships in the family probably created the initial foundation for the emergence of pathological traits. An analysis of the biographies of individual serial killers showed that, in general, they experienced similar early issues: a difficult childhood, personal grudges, physical trauma, being abandoned by one of their parents, and their motive was often sexual gratification. It was also revealed that there are types of individuals who commit crimes against life for financial enrichment, using the conditions of professional activity to achieve the purpose, which emphasizes the presence of awareness, clear planning, logic.

Analysis of medical studies has shown that antisocial behaviour occurs and worsens due to hormonal changes, low grey matter content, Individual differences in brain structure, and the presence of a "killer gene" in the blood. During the study, the author formed a psychological portrait based on "classical values" and served as a reference point for understanding the nature of potential killers, their characteristics, and level of development. However, for the development of a particular individual portrait, the author recommends that specialists engaged in its development and implementation, thoroughly investigate crime scenes, murder instruments, signs of physical injuries, find a logical

connection between the victims, which may indicate mental trauma, etc. Such actions can help in creating a portrait of a particular individual, get an idea of their physical characteristics, possible mental illnesses, and motive, which will speed up and simplify the work of investigative bodies.

Through the conducted research, the author managed to achieve the set scientific purpose and reveal the importance of studying the phenomenon of the existence of potentially dangerous individuals, but the nature of killers does not have a final explanation because for a comprehensive approach and study of the psychological features of serial killers, it is necessary to involve social, psychological, and medical resources more deeply, pay attention to neurophysiology, sexology, clinical psychopathology, and the investigation of the internal structural elements of the central nervous system, its modifications, the reasons causing its changes.

Acknowledgements

None.

Conflict of interest

None.

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Психологічний портрет та передумови формування особистості вбивці

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Анотація. Актуальність дослідження зумовлена високим рівнем злочинності та науковим інтересом до визначення передумов вбивств, що мають індивідуальний характер, переростають в серії прихованих намірів та несуть складні наслідки для життя суспільства. З'ясування психологічних причин тяжких злочинів має важливе значення для проведення превентивної роботи в окресленій сфері. Мета наукового дослідження – визначити особливості характеру вбивць, виявити передумови формування злочинної поведінки, дослідити класифікації та рейтинг серійних злочинів за жорстокістю та методами, проаналізувати статистичні дані щодо скоєння вбивств. У дослідженні природи серійних вбивств використано такі методи: метод аналізу та синтезу, біографічний метод, статистичний метод, метод узагальнення. За допомогою теоретичного аналізу виявлено психологічні першопричини потягів до вбивств, їхні головні особливості та методи реалізації, порівняно гендерні особливості щодо сили вчинення злочину; отримані дані підтверджено реальними статистичними показниками. У статті висвітлено проблему збільшення кримінальних випадків, спричинених психічним станом особистості. Розкрито особливості психології вбивці та обґрунтовано вплив періоду дитинства та життєвих обставин на формування внутрішнього потягу до вбивств. Окреслено фактори, що підштовхують до насильства. Визначено типи серійних вбивць та проаналізовано «почерк» виконання злочинів. Розмежовано сутність імпульсивного та серійного вбивства, розкрито поняття «моральної статистики» як провокативного фактору скоєння злочину. Сформовано психологічний портрет серійного вбивці. Виявлено особливості ранніх досліджень на рівні фізіології та генетики. Представлений теоретичний матеріал не лише слугує інформаційно-ознайомчим ресурсом, але й може бути використаним у проведенні запобіжних заходів, що стосуються раннього виховання, методи якого мають профілактичний та корекційний вплив

Ключові слова: кримінал; серійний вбивця; маска нормальності; тріада Макдональда; синдром Герострата

UDC 35.078.3:342
DOI: 10.32518/sals1.2023.49

Соціально-правові студії. 2023. Т. 6, № 1
Social & Legal Studios. 2023. Vol. 6, No. 1

Methodological foundations of information security research

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Abstract. The lack of an established approach to methodological research in information security determines the further development of scientific knowledge and changes in paradigms and becomes especially relevant considering the aggression of the Russian Federation and the need to strengthen the information security of Ukraine. The purpose of this study was to identify the principles of information security research methodology. To fulfil this purpose, general philosophical methods of investigating legal phenomena were applied, namely the analysis of corresponding legislation and theoretical solutions. This paper, considering the latest theory of state and law and information law of Ukraine, considering the current legislation and regulatory requirements of the European Union, outlined abstract and logical aspects of the methodological foundations of information security research in the context of digital transformation and Russian information expansion. It was noted that addressing the topic of interdisciplinary research is closely related to a fundamentally new historical situation, which reveals the construction of information relations of a new type between social groups, covering philosophy, political science, sociology, economics, and law. This study considered the activity-based, system-structural, system-functional, informational, integration, predictive, methodological, and paradigmatic scientific approaches to the study of legal phenomena. It was indicated that information security is of particular importance for the design of innovative social systems in the context of digital transformation, which requires further scientific research on the methodology of scientific intelligence in information security. The study was aimed at improving the research methods of information security and protection of individuals, society, and the state from destructive informational influence covered by the object of information security

Keywords: information protection; information destructive influence; interdisciplinary research; principles; digital transformation

Introduction

A natural consequence of the movement of humanity towards a democratic, legal state based on the recognition of the security of the individual, society, and the state as the highest value was the consolidation of the idea of human rights in the public consciousness. It is natural that information security stands out in the complex of tasks of state and legal construction facing society. The development of the information society in Ukraine has led to positive opportunities and adverse consequences manifested in various areas of community functioning, including in the information space. An essential component that ensures the effective genesis of the information community is information security, it belongs to the sphere of influence of national security as one of the main elements. All types of security that form the national security system (economic, military, state, transport, etc.) have an information component, and therefore improving information security is an important area of state activity.

The term "information security" is multifaceted and is considered by modern researchers from the perspective of various approaches. The subject under study is multifaceted. Information security through the lens of philosophy was considered by K.V. Zakharenko (2021), historical events – by

Suggested Citation **Article's History**: Received: 4.01.2023 Revised: 28.02.2023 Accepted: 29.03.2023

Yesimov, S., & Borovikova, V. (2023). Methodological foundations of information security research. *Social & Legal Studios*, 6(1), 49-55. doi: 10.32518/sals1.2023.49.

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V. Smolianiuk (2021), political realities – by V.O. Babina and I.V. Kudlai (2022), K.V. Zakharenko (2021), jurisprudential areas – by M.V. Baran (2021), O.M. Boiko (2021), international relations – by V.P. Kononenko *et al.* (2021), O.V. Pyrozhyk (2021) and others. Ideologically, all approaches are based on the information security strategy of Ukraine (Decree of the President of Ukraine No. 685/2021…, 2021).

The concept of information security is formed by the set of proportionally balanced rights of society, the state and the individual, the state of protection of the informational interests of the state. The information sphere combines the community of information, subjects, and information infrastructure, which ensure the production, collection, distribution, generation, and application of information as a mechanism of influence on emerging social relations.

The state of economic, political, military, and other components of a country's security also directly depends on the situation in the information industry. During the improvement and transformation of the legal and political system, the modernization of all spheres of life to enter the European legal space, security issues become particularly important. To find an answer to the difficult tasks facing Ukraine, we need the latest paradigm of the content and degree of information security, especially during martial law, which was introduced after the armed aggression of the Russian Federation against Ukraine. In the science of information law, a certain algorithm for analysing the problems of legal support of information security has developed. It makes provision for the definition of the conceptual framework in the analysed sphere, the place and role of information security in the national security system (Doronin, 2020), the establishment of national interests in this area, coverage of the content of the principles, tasks, and functions of information security, characteristics of the system of legal regulation of public relations in the sphere under study.

In multidimensional research, there is a need not only for a standard scientific abstraction from partial to essential characteristics of legal phenomena, but also for a special combination of their diverse aspects within the framework of a practical task or theoretical construction. To develop methodological tools for analysing information security, it is necessary to factor in the disciplinary research approaches that have developed in this subject area. The purpose of this study was a comprehensive theoretical substantiation of the methodological framework for the information security research in information law, which is necessary to improve the norms of information law in the specified area. Fulfilling this purpose depends on the implementation of tasks that lie in the investigation of the main methodological approaches to information security research in the context of digital transformation. To achieve the purpose of this study, the methods of investigating the objective reality and cognition were used comprehensively and systematically: general scientific and private scientific one, aimed at substantiating the prerequisites and principles of research and determining the hierarchy of priorities and values in information security research.

The methodology of scientific research on information security is the subject of scientific research of the following scientists. A. Althonavan and A. Andronache (2018) reviewed general aspects of the information security research methodology. L.V. Lytvynova (2021), T.P. Afonchenko *et al.* (2020) revealed the essence of interdisciplinary research in law. T.S. Perun (2017), S.H. Onopriienko (2021), T.V. Mikhailina and Yu.V. Gotsulyak (2021) considered the methodology of information security in the context of philosophical approaches. Ye.V. Bilozorov (2021; 2022) studied the methodological and activity approach as a tool for cognition of law. The studies by M.N. Kurko and S.V. Didenko (2021), O.M. Balynska and V.A. Yashchenko (2018), O.H. Danilian and O.P. Dzoban (2019) covered the methodology of modern law. H.M. Hulak (2020), M.V. Kovaliv *et al.* (2022) revealed certain aspects of the study of information protection and protection of individuals, society, and the state from destructive informational influence. M.Yu. Osadchuk (2017), V.B. Hdychynskyi (2019) investigated certain approaches of methodology in law. S. Wendzel *et al.* (2022) revealed certain aspects of the information security research methodology in the context of the modern development of information and communication technologies.

General methodological approaches to ensuring information security

The information security methodology should be considered as the basis of theoretical knowledge methods that form the structure and orientation of research. In this case, the methodological function of science is its role for private or interdisciplinary sciences. The theory of state and law exists as a fundamental science in relation to special sciences, for which knowledge of objectively natural and essential things in the state and law serves as a theoretical basis for developing their own means of cognition. The methodology of legal science for information security research contains certain sections that are closely interrelated. The basis of these sections is the philosophical method, to which the methodological principles of jurisprudence, the main provisions and categories of legal science, which represent the formulation of categories of legal reality, relative to information security in the information space of Ukraine, their value is contained in the dialectical-materialistic method, but is expressed indirectly through generally accepted foundations of jurisprudence.

The philosophical method helped obtain the principles of cognition of legal phenomena, general categories of methodological significance for the information security research. This method is based on materialistic dialectics, the application of its laws and categories to the cognition of state-legal phenomena forms the essence of methodology in jurisprudence, specifically in information law. The essence and content of information security cannot be fully covered as a result of analysis alone, separated from other social and legal events and facts. Information protection and protection against destructive informational influence are objects of information security, interconnected and mutually determined by social relations on which the law acts, through the will of the majority of political forces, the tasks facing the law, the historical prerequisites for the operation of the law, between the public and private interests, which are shared very conditionally. All specified methods were used comprehensively. The study of information security in dynamics, progressive movement helps to objectively establish a true picture of the functional state of the legal security system, to see the transformations generated by the changes that occur in public relations regulated by law.

When investigating an object, especially one as complex as the socio-legal phenomenon of information security, the methods of scientific cognition become crucial. Their significance is enhanced by the discovery of new types of scientific

rationality. Until recently, the underestimation and even indifference to theoretical and methodological issues inherent in a fairly significant part of the scientific community turns into the category of anachronisms that hinder the growth of scientific knowledge.

Therefore, at present, the imperative requirement of a scientist's self-reflection on the basics of search and research activities, including ideological and axiological aspects, is becoming normative for scientific research. Furthermore, methodology, along with any other category of scientific cognition, is a dynamic cognitive education and cannot be transformed into any system of knowledge about the principles and methods of scientific search. Otherwise, it will turn into a conservative system of complete knowledge and will be unable to perform the functions assigned to it.

From the standpoint of classical scientific rationality in science, including law, the choice of the method of cognition is determined by the specifics of the object of research that is highlighted and investigated, and the focus on solving a certain research problem. The study of an object is optimally effective only if it is carried out according to the requirements of a methodology that factors in the specifics of the object, and therefore, ways, methods, and means of its cognition. Information security research is a new area of theoretical research carried out in the context of various humanitarian, social, socio-political, and technical disciplines, i.e., it is an interdisciplinary study, which requires its own methodological interpretation. The difficulties of methodological analysis are conditioned upon the fact that it is necessary to factor in the changing formats of information technology development, the development of the post-industrial and information society.

Research approaches used within interdisciplinary areas, such as the information environment approach, the systemic approach (presentation of the systematicity of a new type of information society), the integrative approach (the synthesis of various ideas about information interaction and the integration of this concept into the theory of information security), ideas about the level scientific knowledge, which involves the identification of the substantive level (procedural and material in the legal aspect of the presentation of the object of research), the conceptual level (generalization of the object of research in the subject of research), technical and technological levels – do not give rise to a single scientific plane of research. The richness of terminology in information technology, information security, or cyber threats is an advantage. However, when the theoretical legacy varies between different definitions and meanings of the same term, it creates confusion and value is lost (Althonavan & Andronache, 2018).

The essence of the interdisciplinary approach is that this approach does not express a synthesis of various disciplinary principles, methods, and concepts. The interdisciplinary approach as a research methodology includes general principles, general scientific and private scientific methods and concepts that cross the boundaries of particular scientific disciplines and transcend these particular disciplines in terms of their marginal generality. Accordingly, such a research methodology is called an interdisciplinary methodology precisely because it is built on top of particular methodologies. This is what sets the integral system unity, epistemological certainty, methodological integrity, and completeness of the study.

The multidimensional nature of the object of information security research in the context of information security and protection of the individual, society, and the state from destructive informational influence implies study in the cross-section of different fields of knowledge: philosophical (Kononenko *et al.*, 2021), historical (Smolianiuk, 2021), political (Babina & Kudlai, 2022; Zakharenko, 2021), legal (Baran, 2021; Boiko, 2021), international (Kononenko *et al.*, 2021; Pyrozhyk, 2021), and other sciences. Each of the branches of knowledge can contribute to the knowledge of information security as an object of research in its own way.

Social engineering approach to strengthening information security

According to L. Lytvynova (2021), to analyse information security as a dynamic semantic mechanism of influences, scientific intelligence should represent a multi-level open model, consider the dynamic difficulties of genesis and, as a rule, should be investigated through the lens of social development. Information security is a multidisciplinary concept that is part of sociology, communication theory, philosophy, public administration (Panchenko, 2020), information theory, political science, social and general psychology, etc. Consideration of the concept of information security in the context of the protection of information and individuals, society, and the state from destructive informational influence in the scientific research of scientists suggests the dominant trend of modern science, which lies in the scientific analysis of information security within the framework of separate areas of science (Lytvynova, 2021).

Isolated consideration of the same issues within individual disciplines does not give the effect that can be achieved with the interaction of special knowledge. Interdisciplinary synthesis of knowledge is aimed at combining efforts to jointly solve scientific and applied problems for the effective implementation of information security.

Although the term "interdisciplinary approach" in modern scientific discourse does not have clear conceptual boundaries, the phenomenon itself involves the joint study of interdependent aspects of a widespread problem when researchers attempt to build a common perspective (Afonchenko *et al.*, 2020). According to T.S. Perun (2017), to analyse the level of "information security, it is possible to take such categories of dialectics as possibility and reality, form and content, essence and phenomenon, space and time, whole and part, etc. It is also possible to use the laws of dialectics: on the unity and struggle of contradictions; on the transition of quantitative changes to qualitative ones; on negation, etc."

S.H. Onopriienko (2021) notes that the methodological foundations of information security research are based on the multidisciplinary nature of this category. The application of private law and public law procedures to the study of information security allows developing the system and complexity of innovative academic knowledge.

In the context of an interdisciplinary approach, information security research singles out general scientific elements of the method of cognition: deduction and induction, synthesis and analysis, classification and abstraction, modelling and analogy, including such methods as synergistic, instrumental, systemic, etc.; methods (approaches) of learning law characteristic of jurisprudence: normative-analytical, dogmatic, comparative legal.

The use of a systemic and instrumental view of the object of scientific cognition of information security, consideration of its construction from the inside as a monolithic system is

caused by the desire to highlight systemic matter and the nature of the object under study – information, the definition of which is given in the Law of Ukraine "On Information" (1992).

As noted by T.V. Mikhailina and Yu.V. Gotsulyak (2021), the instrumental alliance of methodological knowledge, as opposed to the theoretical worldview, differs in architecture and is formed through the interaction of more accurate, "neutral" in terms of its meaning, methods that perform the functions of "technical" cognitive techniques and tools during research. The functional-instrumental approach to the scientifically argued methodology of conducting cognitive practice requires a combination of inherently diverse knowledge about the legal purpose of information security, legal norms that provide legal opportunities to ensure protection, the originality of the activity of legal entities to generate and use legal methods.

According to Ye.V. Bilozorov (2022), an important method of ensuring the effectiveness of law, overcoming the ossified legal reality, is an effective legal theory. It can be a method of interpreting the phenomena of law due to their dynamism, which should correspond to the relations governed by legal norms.

An idea about the methodology in the field of information protection, as a complex mechanism of interaction of various categories within the practical and theoretical level of law enforcement and law-making activity, was formed from a review using system-structural, activity, system-functional, etc. approaches.

From the standpoint of the study by M. Kurko and S. Didenko (2021), systematic approach occupies a prominent place in the methodology of information security research. A positive point of the system approach in the study of information security is the prospect of considering the dynamics of systems, which provides favourable conditions for comparing heterogeneous items in a single object.

The functional approach allows considering the direction of pressure at the time of implementation of the national policy in the field of security. In this case, as noted by O.M. Balynska and V.A. Yashko (2018), the structural and functional approach allows outlining the internal model (structure) of a person's implementation of any behavioural act at the total level.

From the general system of methodological provisions of jurisprudence regarding research in the information sphere, it is advisable to apply approaches to the study of information security in the context of information security and protection of individuals and society from destructive informational influence: situational, informational, integration, prognostic, methodical, paradigmatic.

Research of situations that arise in legal practice includes the need to use them in processes related to strengthening information security. A detailed review of various opinions on this topic and the formation of a general understanding of situations related to the strengthening of information security is contained in the literature sources (Hulak, 2020; Kovaliv *et al.*, 2022).

The information approach to research in the field of information security is present as a necessary epistemological category. The implementation of the information approach in information security contributes to the development of techniques and methods for analysing objects that provide an opportunity to demonstrate the informative value of features in quantitative terms.

In the context of the study by M.Yu. Osadchuk (2017), integration approach provides an opportunity to analyse the mechanism of the process of strengthening information security as a system that determines the establishment of information security and protection from destructive informational influence at two levels: private and general. The private level, which determines the procedure for establishing individual facts, is a priority for ensuring information security and affects the development and use of administrative legal techniques in relation to them.

Natural law paradigm of information security

The methodological approach as an element of the natural law paradigm determines the probable structure and procedure of actions to obtain the desired result, is observed within the framework of the legal ordering of information rights.

The methodological method, approach is an independent element of the epistemological toolkit of modern legal science; although it requires complex use simultaneously with other methodological elements, it is advisable to use it to investigate strengthening information security in the context of a paradigmatic approach (Bilozorov, 2021).

During information security research, it is advisable to use an evolutionary approach, which is possible through the formulation of theses that should underlie the evolutionary approach to the study of law:

- any phenomenon of objective reality arises as necessary, considering the already existing phenomena that change (evolve) over time, do not exist by itself, but are connected with others, forming objective patterns (mechanisms), as well as interrelated and subject to evolutionary change;
- categories (in this case, "information security"), being a reflection of the phenomena of objective reality in the human mind, can evolve independently within the limits set by objective reality;
- categories (components of the information security object) can give rise to new categories, which, in case of certain favourable circumstances, can become phenomena of objective reality;
- conscious and unconscious higher nervous activity as a phenomenon of objective reality is included in objective laws, as well as human-created phenomena of objective reality, specifically, such as information security;
- the objective regularities are the most "rational" (elementary) and represent the simplest algorithms, in this connection, the evolutionary process is carried out in the simplest and easiest way, as can be seen in the transformation of information security to protection against information that creates a destructive informational influence on a person, society, and the state;
- the basis of evolution is adaptability, so evolutionary change can represent, from the standpoint of a person, not only progress, but also regression (in this case, this refers to the fact that information security measures restrict human rights in the information space);
- given that social norms are a phenomenon of objective reality in this regard, they are subject to evolutionary changes, are included in objective laws (mechanisms). It is impractical to evaluate evolutionary processes from the perspective of compliance with social norms;
- it is necessary to assess the consequences of evolutionary processes occurring in society from the standpoint of

compliance with social norms, since they are one of the tools for influencing these processes, allowing them to be adjusted in the direction desired by society.

According to V.B. Hdychynskyi (2019), the system of concepts and ideas about law reflects the true reality, determined by the choice of the object of scientific research by members of the scientific legal community and is based on legal values, stereotypes, norms of legal ethics, principles, guidelines, a set of views, etc.

The analysis of the doctrine and industry legislation within the framework of the paradigm approach from the perspective of information security helps to consider industry regulation from a different perspective and outline both the way to implement and specify security measures and identify factors that justify the choice of certain legal protection tools.

The principal functions of legal science are generally recognized as practically applied, predictive, educational, theoretical, and cognitive (Danilian & Dzoban, 2019). The paradigm implements general ideas about the future. The paradigmatic approach to research in the field of information security is directed towards the study of legal reality in dynamics and can be applied to characterize various, including equivalent, variants of the genesis of the practice and legislation of the application of law (Wendzel *et al.*, 2022). The predictive and methodological functions of law are interdependent. The use of a paradigmatic approach within the framework of theoretical legal research on information security should be selective in nature and factor in the priority institutions of law for socio-economic development, in this case Ukraine.

The methodological matrix of information security research includes:

- principles: the principle of consistency, according to which the formulation of the basic concept (information security of a person in the information age) is based on identifying a variety of system connections of all structural and functional components of individual-personal, socio-psychological, socio-group, social, and civil existence of a person in the information age;
- the principle of evolution, according to which information security, having a systemic quality, has the ability to self-develop, including vectors of social dynamics;
- the system principle of integrity, according to which information security in the context of digital transformation constitutes an integral system of interrelated properties of its constituent elements;
- the principle of multifactoriality and multifacetedness, according to which information security in the conditions of digital transformation is expressed in the aggregate unity of individual-personal, social-psychological, professional-activity, spiritual-creative, moral, aesthetic, social-group qualities of a person.

When investigating information security objects in the context of digital transformation and countering Russian information expansion, the legislator should foremost factor in the social conditionality of legal regulation, the value of certain public relations, their role, and significance for the entire system of public relations in the information space. Improving the level of information security will be effective if it is socially determined. Therefore, the study of social conditionality of information security should be considered the primary factor, the basis for effectiveness. Even though the norms of information law, which determine the areas of strengthening information security, as the norms of all other branches of law, are consolidated in the legislation as a result of conscious human activity, their origins should be sought in the laws of social development. This guides the researcher.

The direct basis of the methodology of information security research is the social need to protect a certain group of public relations. The study of Information Security is reduced to objective laws in social development, when there is a need to protect public relations that have become particularly significant and valuable to society at the appropriate time stage.

The concept of social Predestination is overly broad and comprises many objective factors, which together are indicators of the need to investigate information security in the context of digital transformation and the influence of factors of information confrontation with aggressors.

Conclusions

Information security, as a component of national security, requires further comprehensive theoretical justification of the methodological basis to improve the norms of information law, which relate to increasing the degree of protection of information security, considering the specific features of the present. The considered methodological approaches to the study of information security in the conditions of armed aggression of the Russian Federation and the process of forcing digital transformation lead to new approaches to the research methods of information protection, protection of the individual, the state, and society from informational harmful effects outlined by the object of information security.

Methodology, by its very nature, is not just a sustainable system of scientific cognition, since this would mean termination of its development. The dynamism of this cognitive formation is beyond doubt, it is determined by the specificity of the object and is considered by factoring in the social development. A multidisciplinary and multifaceted approach to the scientific analysis of information security allows forming a complex, systemic mechanism of influence on the sphere of information protection from destructive influence.

The proposed model of an effective system theory of protection of information security objects contributes to the improvement of measures to ensure this group of public relations and can be used in the field of theoretical and practical law-making and law enforcement processes.

At the same time, the variety of objective factors of the concept of social conditioning and terminology in the field of information technology, information security (cyber threats) is both an advantage and an obstacle for the further genesis of the proposed methodological foundations of information security research and may become the subject of further scientific research.

Acknowledgements

None.

Conflict of interest

None.

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Методологічні основи дослідження інформаційної безпеки

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Анотація. Відсутність усталеного підходу до методологічних досліджень у галузі інформаційної безпеки зумовлює подальший розвиток наукового знання та зміни парадигм і набуває особливої актуальності з огляду на агресію рф та необхідність посилення інформаційної безпеки України. Мета статті – визначити основи методології дослідження інформаційної безпеки. Для реалізації мети застосовано загальнофілософські методи дослідження правових явищ, зокрема аналіз відповідного законодавства та теоретичних розідок. У статті з врахуванням новітньої теорії держави і права та інформаційного права України, зважаючи на чинне законодавство та нормативні вимоги Європейського союзу, окреслено абстрактно-логічні аспекти методологічних основ дослідження інформаційної безпеки в умовах цифрової трансформації та російської інформаційної експансії. Зазначено, що звернення до теми міждисциплінарних досліджень тісно пов'язане з принципово новою історичною ситуацією, яка виявляє побудову інформаційних відносин нового типу між соціальними групами, охоплюючи філософію, політологію, соціологію, економіку та право. Розглянуто діяльнісний, системно-структурний, системно-функціональний, інформаційний, інтеграційний, прогностичний, методичний, парадигмальний наукові підходи щодо дослідження правових явищ. Указано, що інформаційна безпека має особливе значення для проєктування інноваційних соціальних систем в умовах цифрової трансформації, що вимагає подальших наукових досліджень методології наукових розвідок у сфері інформаційної безпеки. Дослідження спрямоване на вдосконалення методів дослідження захисту інформації та захисту особи, суспільства та держави від інформаційного деструктивного впливу, що охоплюється об'єктом інформаційної безпеки

Ключові слова: захист інформації; інформаційний деструктивний вплив; міждисциплінарні дослідження; принципи; цифрова трансформація

UDC 342.727
DOI: 10.32518/sals1.2023.56

Соціально-правові студії. 2023. Т. 6, № 1
Social & Legal Studios. 2023. Vol. 6, No. 1

Restriction of the right to information in the interests of national security: The problem of justification

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Abstract. The relevance of this study is conditioned upon the lack of a single theoretical justification for limiting the right to information, even though Ukrainian legislation allows such limitations in the Constitution. The purpose of this study was to analyse certain cases of restrictions on the right to information in the interests of national security and determine ways to justify such restrictions. The methodological framework of this study included the analysis of law enforcement practices concerning the restriction of the right to information. The study established that, despite a considerable theoretical basis in protection of human and civil rights and freedoms, the modern practice of administrative courts is based only on providing a legal assessment of the actions of the Security Service of Ukraine regarding the recognition of information and other activities of the subject of information relations as illegal in the light of the powers and advantages granted to the Service pursuant to Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The absence of a single mechanism for restricting the right to information in the interests of national security was proved. The paper substantiated that the courts and state bodies of Ukraine, which are responsible for regulating information activities, have not yet developed their own ways and mechanisms for restricting the right to information, which would factor in their practice of providing a legal assessment of each of these cases. It was noted that the basic means of justifying the restriction of the right to information in the interests of national security, as well as any restriction of the right to information, is the use of a "three-part test". The outlined grounds for localizing the right to information will be useful for scientists, law enforcement officers, and information security specialists for their legitimate application

Keywords: rights and freedoms of a person and a citizen; lawful restriction of the rights and freedoms of a person and a citizen; security; information security; information rights of a person; three-part test

Introduction

Even though Ukrainian legislation allows for certain restrictions on the right to information to ensure public order, territorial integrity, or national security in general; prevent crimes or riots; provide a system of measures aimed at preserving and developing physiological and psychological functions of optimal working capacity and social activity of a person with the maximum biologically possible individual life expectancy; protect the rights and freedoms of other people or their reputation; prevent disclosure of information obtained confidentially, or to observe the impartiality of justice and maintain its authority – the doctrinal provisions of legal science do not contain justifications for the implementation of such restrictions.

The practice of administrative courts since 2019 covers the consideration of cases concerning the national defence and security of Ukraine, public security and order, namely: suppression and prevention of illegal activities of organizations, societies, and other institutions that encroach on the freedoms and rights of citizens and/or the constitutional system; refugees. A separate area of development of justifications for restricting the right to information is cases concerning appeals against inaction or actions, acts of the President of Ukraine, the Verkhovna Rada of Ukraine, the High Council of Justice, the High Qualification Commission of Judges of Ukraine and bodies that evaluate, dismiss, elect (appoint) members of the High Council of Justice.

With the adoption and entry into force of the Law of Ukraine "On Sanctions" (2014), as well as some decisions regarding the use of special economic and other localization measures (sanctions) to subjects of information activity and other citizens who are guaranteed the right to information, namely with reference of such subjects to the category of persons controlled by non-resident foreign physical or legal entities, stateless persons, foreigners, as well as persons who commit terrorist crimes, as well as to the application itself, the question of their validity arose. Since the right to information of some subjects determines the emergence of legal obligations for officials of subjects of power (Dovzhuk, 2020).

Suggested Citation **Article's History**: Received: 20.12.2022 Revised: 19.02.2023 Accepted: 29.03.2023

Shynkar, T. (2023). Restriction of the right to information in the interests of national security: The problem of justification. *Social & Legal Studios*, 6(1), 56-62. doi: 10.32518/sals1.2023.56.

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Scientific literature of a methodological and theoretical nature devoted to the protection of human freedoms and rights contains some well-founded theses and ideas related to the issues under study. The theoretical aspects of the essence of restrictions on human and civil rights are covered by the studies of legal scholars O. Andriievska (2018) on the constitutional and legal mechanism for restricting human and civil rights and freedoms in Ukraine, I. Dakhova (2018) on constitutional regulation and practice of the European Court of Human Rights, O. Osynska (2010) on theoretical and applied aspects of restricting human rights and freedoms, Yu. Razmietaieva (2018) on the doctrine and practice of human rights protection, M. Savchyn (2018) on constitutional criteria for restricting human rights and fundamental freedoms, V. Sorokun (2010) on the international legal protection of the right to freedom of conscience and religion, T. Slinko (2018) on the legal grounds for restricting the exercise of human and civil rights and freedoms, S. Shevchuk (2007) on the practice of the European Court of Human Rights in the context of Western legal tradition, etc.

The opinions of representatives of Ukrainian science agree that the restriction of fundamental human rights (incl. the right to information) is directly related to the difference between absolute and relative rights (Koruts *et al.*, 2021; Politanskyi, 2016), is a necessary component of the legal system, introduced with a particular purpose (one of which is the protection of national security), specified in the law, form an exhaustive list (Bilousov, 2015) and should not distort the essence of rights and freedoms (Plakhotniuk *et al.*, 2021). If the target can be protected in another way, avoiding restricting the right to information, preference should be given to the latter. A balance must be maintained between the information rights of a person, which cannot be unlimited, and the introduction of real responsibility of officials of subjects of power for numerous non-committal replies, as managers of public information (Guyvan, 2019). A practical position is to consolidate the possibility of restricting the rights and freedoms of a person in the text of the Constitution by state authorities under conditions of martial law in the interests of national security (Bukhanevych *et al.*, 2021), such as, for instance, the Asian model of ensuring information security (Shemchiuk, 2020). This proposal requires a separate theoretical legal investigation.

Notably, despite the exceptional importance and relevance of the issue of certain restrictions on the right to information in the interests of national security, foreign and Ukrainian science did not pay the necessary attention to the development of the rationale, which indicates the existing and potential significant gaps in the legislation, while the judicial practice during 2019-2022 indicates efforts to develop such solutions.

The absence of a single theoretical justification of individual localization measures regarding the right to information, considering the interests of national security, was noted. Despite a significant theoretical basis in the field of protection of human rights and freedoms, the modern practice of administrative courts is based on providing a legal assessment of the actions of the Security Service of Ukraine to recognize information and other activities of the subject of information relations as illegal in the light of the powers granted to it and the principles prescribed in Article 10 of the European Convention on Human Rights (1950).

Separately, the problem of substantiating the limitation of the right to information, considering the interests of national security, concerns the absence of requirements in the Convention that prevent states from requiring licensing (revocation of the licence) of the activities of cinematographic, radio broadcasting, or television enterprises, which necessitates the continuation of scientific research.

Considering the significance and relevance of the highlighted problem, the purpose of this study was to analyse the law enforcement practice regarding certain limits of the right to information, factoring in the interests of national security and the genesis of definitions regarding the ways to justify the corresponding restriction as one of the areas of further academic and applied research.

To fulfil the specified purpose, the relevant legislative framework was analysed, namely: provisions of the Constitution of Ukraine (1996), Laws of Ukraine “On Access to Public Information” (2011), “On Amendments to the Law of Ukraine “On Information” (2011), “On Sanctions” (2014), “On the Condemnation of the Communist and National Socialist (Nazi)” totalitarian regimes in Ukraine and the Prohibition of Propaganda of Their Symbols” (2015). Certain decisions of local courts, the Supreme Court of Ukraine, and the European Court of Human Rights were also considered.

Law enforcement practice on localization of the right to information

Let us consider some of the most revealing cases concerning the restriction of the right to information.

Thus, in case No. 9901/22/21, the plaintiff substantiates his claims by the fact that the controversial Decree of the President of Ukraine No. 43/2021 of 02.02.2021, which caused the suspension of broadcasting of such television channels as “112”, “NewsOne” and “Zik”, violates his rights as a buyer of audio-visual information, and also indicates that by its consequences in the form of the termination of broadcasting of the specified three television channels, the disputed Decree mediates interference with his rights, specifically constitutional ones (Decision of the Supreme Court…, 2021). In addition, the plaintiff, referring to Article 7 of the Law of Ukraine “On Information” (Law of Ukraine No. 2938-VI…, 2011) and Article 10 of the European Convention on Human Rights (1950), insists that receiving audio-visual information through a public telecommunications network constitutes the content of his right to receive information, and this right guarantees him the freedom to choose the forms and sources of receiving information. The defendant (representative of the President of Ukraine), in his response to the statement of claim, insists that “the current legislation clearly establishes that state authorities, only if there are sufficient grounds, submit proposals for the application of sanctions to the NSDC for consideration” (Decision of the Supreme Court…, 2021), which indicates the application of the “presumption of legality” in relation to corresponding actions or decisions. In the appellate instance, the Grand Chamber of the Supreme Court determined that “the disputed decree is an act of individual action and its issuance does not affect the particular rights of the plaintiff” and “restricting the viewer’s access to certain TV channels or TV programs does not mean a violation of the right to information” (Resolution of the Supreme Court…, 2021).

In case No. 520/118/20 (Decision of the Kharkiv District Administrative Court…, 2020), the Kharkiv District

Administrative Court considered the position of the Main Territorial Department of Justice in the Kharkiv Region regarding the fact that with the entry into force of the Law of Ukraine "On the Condemnation of the Communist and National Socialist (Nazi) Totalitarian Regimes in Ukraine and the Prohibition of Propaganda of Their Symbols" (2015) the founders of print media that used any well-known or historically recognized symbols of known totalitarian regimes of the 20th century (communist, national-socialist, Nazi), as well as posted appeals or elements of propaganda of these regimes, were obliged to re-register the print media. At the same time, the Court refused the plaintiff to satisfy the claim, and in the appellate (Decision of the Second Appeal Administrative Court…, 2020) and cassation (Resolution of the Supreme Court in a panel…, 2021) instances, it left this decision unchanged, referring to the procedure established by the current rules and procedures for determining non-compliance (Procedure) of any economic or other activity of any legal entity (both resident and non-resident), political party, non-state, public movement, as well as other association of citizens (their structural formation of oblast, regional, city, village, settlement level, territorial community level), their names or symbols, as well as the statutory purposes of the requirements of the above-mentioned law (Law of Ukraine No. 317-VIII…, 2015). According to the plaintiff, the limitation of his right to information was not justified and was directly manifested in the failure of the Ministry of Justice to comply with the procedure defined by law for establishing the non-compliance of print media activities with the requirements of the law. In addition, the plaintiff drew the court's attention to the application of an appeal to the court with a lawsuit to stop the activity of the specified object without applying the preliminary establishment of non-compliance of its activity by the method of conducting a legal examination (Decision of the Kharkiv District Administrative Court…, 2020).

The court of first instance issued a ruling considering the current legislation, which stipulates a procedure that should precede the appeal of the Ministry of Justice to the court with a claim for termination of the activity of a particular object. Separately, at the beginning of the procedure, the Ministry of Justice must take several measures: firstly, to ensure the conduct of a legal examination, as well as the commission assessment of the relevant content with the drafting of the corresponding decision by the Commission. It should also be borne in mind that at this stage the deadlines for filing a lawsuit in court regarding the termination of the object's activity are determined, which amount to ten days and the countdown begins from the time the Commission drafts a decision on non-compliance with the requirements of the Law. Therefore, the court of first instance noted that the program goals of Slovo Pravdy newspaper, regarding which this decision was made, do not contain manifestations of propaganda of well-known totalitarian regimes of the 20th century (communist, national socialist, Nazi). The court also stated that the specified name does not contain any symbolism of the known totalitarian regimes of the 20th century (communist, national socialist, Nazi). Furthermore, the plaintiff did not submit any evidence to the case materials confirming the factual use of the symbols of the well-known totalitarian regimes of the 20th century (communist, national socialist, Nazi) by the newspaper in its title, its implementation of any manifestations of promotion of the well-known totalitarian regimes of the 20th century (communist, national socialist, Nazi).

In Part 2 of Article 6 of the Law of Ukraine "On Access to Public Information" (2011), the possibility of applying such mechanisms in the general practice of localization of the right to information to ensure national security, namely special economic and other localization measures regarding subjects of information activity, requires a profound analysis and the formation of a justified position both in the field of law enforcement by courts, and the study of these mechanisms by scientific and educational circles, etc.

Social engineering approach to strengthening information security

Thus, the Law of Ukraine "On Access to Public Information" (2011) acts as a guarantor of ensuring the access of Ukrainian citizens to public information. Therefore, the primary basis for the protection of state sovereignty in the information sphere is the observance of information freedom, as the fundamental principle of protection of information sovereignty (Solodka, 2020). Therewith, the criterion of mandatory provision of appropriate access is the public interest in such information.

In its decision dated 06.05.2020 in the case regarding the confirmation of the illegality of inaction, the requirement to perform actions (case No. 380/2525/20) referring to the military unit 3002 of the National Guard of Ukraine, the Lviv District Administrative Court outlines the circle of individuals affected by the "public interest" and states that an exhaustive list of subjects in the field of access to public information has been determined pursuant to Article 12 of the Law of Ukraine No. 29-39-VI (Decision of the Lviv District Administrative Court…, 2020).

As noted by the Human Rights Commissioner of the Verkhovna Rada of Ukraine, during the ten months of 2020, she personally received over 3,200 complaints regarding non-compliance with the right to access to socially important and public information. This represents more than 11% of the total number of complaints received by the Commissioner's Secretariat (Oleksiiuk *et al.*, 2020). Therewith, the authors of the Recommendations of the Commissioner of the Verkhovna Rada of Ukraine regarding the guarantee of the constitutional rights of a person and a citizen on the possibility of obtaining the necessary information, prepared as a result of the consideration of these complaints, emphasize that the substantial interest of society in certain information, a general public dispute regarding the object of information is an important reason to incline the manager of information before its provision (Oleksiiuk *et al.*, 2020).

Information that proves a threat to the territorial integrity of Ukraine, state sovereignty is recognized as a subject of public interest in the specified relations; supports the implementation of constitutional freedoms, duties, and rights; attests to the possibility of non-compliance with human rights, intentional false information, threatening economic and some other negative results of activity and/or inaction of legal entities (Oleksiiuk *et al.*, 2020).

At the same time, to reduce the risk of abuse regarding the localization of the right to information by the state, a narrow interpretation of this norm should be used, and the application of national security interests should be avoided as a prerequisite for limiting the right to information (Tsviki, 2017).

Procedural issues of applying restrictions on the right to information

In the specified Decision of the Lviv District Administrative Court in the case No. 380/2525/20 (2020), it is recorded that the existence of reasons for restricting access, which comprise the content of the "three-part test" is mandatory for the manager of information.

According to the position of the Court, reasoned refusal of access to public information must contain the following justifications: 1) to which type of interests from those listed in Item 1, Part 2, Article 6 of the Law of Ukraine "On Access to Public Information" (2011) the localization belongs and why access restriction concerns particular information; 2) what real damage is caused to the legitimate interest(s); what is the correlation between the possible occurrence of damage and the provision of access; why the occurrence of this harm is important; any possibility of harm as a result of obtaining access to information must be considered; 3) why the public interest may be exceeded by the damage resulting from obtaining information (Law of Ukraine No. 2939-VI…, 2011).

Lack of information in the judge's conclusion regarding at least one of the above-mentioned reasons of the so-called the three-part test is a signal that restricting access to information is illegal and a negative decision on its provision is groundless (Decision of the Lviv District Administrative Court…, 2020).

During consideration of court case No. 9901/22/21, the Supreme Court of Ukraine, formed by the panel of judges of the Cassation Administrative Court, analysed whether the blocking of an information resource has a negative effect on the corresponding user, i.e., whether he can receive similar information from other sources; whether the information to which access is restricted has a special nature for the user; whether the blocking of the resource led to the deprivation of the user of the main source of communication or the distribution of his information (Decision of the Supreme Court in a panel…, 2021).

When determining whether there is a public interest in receiving information, by Resolution of the Plenum of the Supreme Administrative Court of Ukraine (2016), managers are suggested to consider certain factors: firstly, the category of the person requesting information, indicating the possibility of making the request independently; secondly, the circle of persons (individuals or legal entities) for whom information is requested; thirdly, the presence of public interest (discussions, public discussion, petitions, etc.) in such information, which is discussed, e.g., in the media, the Verkhovna Rada, or a local representative body at the time of forming (receiving information by the manager) a request; fourthly, the length of time from creating a document (documenting information) to submitting a request; fifthly, assessment of the probability of causing harm as a result of non-disclosure of information; sixthly, additional arguments in favour of disclosure of information, such as the connection of the request with a public person or a candidate for this public position; seventhly, assessment of the arguments for the possibility of harming the rights to protect personal data, refusal to interfere with personal life, especially when it comes to ideological, religious, political beliefs, ethnic or racial origin, membership in political parties or unions, having a criminal record, as well as other personal information covering genetic, biometric, health status, sexual life, etc. in comparison with the usefulness of the public interest in disclosure of information.

Conceptual significance of the "three-part test" for justifying the restriction of the right to information

Both the judicial practice and the doctrinal provisions of the information law consider both the restriction of access to public information and the ban on its distribution permissible, but on the condition that the judicial authorities (law enforcement authorities) use the means of the "three-part test", while avoiding the application of "three-part test" regarding the localization of access to information, according to the position of both national and European courts – entails the illegality of such a restriction (Decision of the Lviv District Administrative Court…, 2020).

Thus, on the one hand, the position of the court, and, on the other hand, the absence of any other justification for restricting the right to information outside the relationship of access to public information, allows considering the use of the "three-part test" as the main concept of justification. It is also necessary to consider the position of the European Court of Human Rights, according to which rights should be considered in a broad sense, and limitations or exceptions should be as specific as possible (Decision of the European Court of Human Rights…, 2009), adapt to the solution of urgent public problems and be symmetrical to the legitimate ultimate goal (Bohdan, 2019).

According to the procedure recommended by the resolution of the Plenum of the Supreme Administrative Court of Ukraine (2016), first of all, it is advisable to discuss the "legality of interests", for the protection of which the corresponding right to information is applied. Thus, according to Clause 6.3 of the Procedure, "interests" are specified in Item 1, Part 2, Article 6 of the Law of Ukraine No. 2939-VI "On Access to Public Information" (2011) and correspond to Article 34 of the Constitution of Ukraine (1996).

The procedure also orients the law enforcement officer to ensure that his or her actions correspond to a single purpose – to protect the relevant interest. In turn, the courts are advised to pay attention to proportionality (non-proportionality) in relation to the legitimate interest that is protected, establishing a balance between the interest that is protected and which may be harmed by information activities (the exercise of the right to information), and the right of society to know the requested information. When justifying the legitimacy of restrictions due to the legitimacy of interests, the courts must consider the presence of public interest in certain information (information activity), which cannot be considered "lost", and the corresponding list of types of information activity – exhaustive. Consequently, the application of the criteria defined by the procedure for the existence of public interest in particular information can also be carried out in relation to the right to information, specifically in the following aspects:

- dissemination in society or a certain part of it of discussion on topical issues, explanation of this important information to update the public discussion;
- clarification and interpretation of the content of prerequisites for making certain decisions by authorities, officials of local self-government bodies or state bodies;
- strengthening the accountability and control of the authorities to society, ensuring the openness of making relevant decisions and the process of preparing them;
- efficiency of audit of receipt and provision of public funds, management of municipal and state property, variance of municipal benefits;

◂ research of threats to public order and security, health of citizens, preventive measures for the occurrence and counteraction to serious consequences;

◂ identifying facts of misleading the public;

◂ other cases prescribed by law.

In addition, such justifications should be attributed to restrictions on the right to information by assigning the content of such information to the category "restricted access information". Thus, pursuant to the recommendations of the procedure for applying the "three-part test" in any case, localization of the right to information is mandatory.

The fact that the information has previously been lawfully classified as "information with restricted access" or the time for checking whether there are grounds for restriction has already expired cannot be considered an obstacle to non-application of the restriction. Other examples of the conceptuality of the application of the "three-part test" are quite frequent cases when the harm to the legitimate interest exceeds the public interest, respectively, of a separate piece of information or document, and therefore, the restriction is imposed only on that part of the information that passed the "three-part test". It is necessary to factor in the fact that such a complex legal institution as the right to information is heterogeneous in terms of the legal force of freedom and rights, which differ in possibilities and extremities of their limitation (Lukianova & Slyvka, 2021).

As indicated in the above-mentioned Court decision in case No. 380/2525/20, the list should be the cornerstone of the information to which access can be localized. This rule is applied in case there are grounds for restriction in each particular case, identified using the "three-part test" and should be applied by requesters and managers of such information (Decision of the Lviv District Administrative Court..., 2020). Thus, to evaluate the same list, which is nothing more than an abstract category of information, there is no need to use a "three-part test". At the same time, for any information that is marked "for official use", the use of the "three-part test" is mandatory.

Conclusions

As a result of the analysis of the law enforcement practices, it was established that both Ukrainian judicial practice and the judicial practice of the European Court of Human Rights are united in the legal position that no official is empowered to take actions aimed at sanctioning the right to socially useful information, without giving reasons for such a restriction according to the construction: "the restriction will not cause more harm than good".

The analysis of law enforcement practice in general proved the presence of several issues: firstly, the absence of a single mechanism for applying restrictions; secondly, the efforts of the courts of Ukraine and state bodies, whose competence includes the regulation of information activities, to develop their own paths and mechanisms of applying restrictions on the right to information, considering their practice of providing a legal assessment to each of these cases.

One of the ways to solve the specified issues in the practical plane is the application of the "three-part test" as a tool for justifying the implementation of any restriction of the right to information.

Further research into the issue of the justification of certain localization of the right to information in the interests of ensuring national security should be directed towards evaluation of the means of the "three-part test", specifically in the aspect of choosing a means that will ensure minimal restriction of the right to information. Another area of research should be consideration of the justification for the cancellation (liquidation) of the right to information as an extreme form of localization of the right to information in the interests of national security, using the "three-part test".

Acknowledgements

None.

Conflict of interest

None.

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Обмеження права на інформацію в інтересах національної безпеки: проблема обґрунтування

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Анотація. Актуальність статті зумовлено відсутністю єдиного теоретичного обґрунтування обмеження права на інформацію, незважаючи на те що українське законодавство такі обмеження допускає у Конституції. Мета роботи – проаналізувати певні випадки обмеження права на інформацію в інтересах національної безпеки й визначити способи обґрунтування таких обмежень. Методологічна основа дослідження – аналіз правозастосовної практики щодо обмеження права на інформацію. У статті встановлено, що, незважаючи на значну теоретичну базу у сфері захисту прав і свобод людини та громадянина, сучасна практика адміністративних судів ґрунтується лише на наданні правової оцінки діям Служби безпеки України щодо визнання інформаційної та іншої діяльності суб'єкта інформаційних відносин протиправною у світлі наданих Службі повноважень та переваг відповідно до ст. 10 Конвенції про захист прав людини і основоположних свобод. Доведено відсутність єдиного механізму обмеження права на інформацію в інтересах національної безпеки. Обґрунтовано, що суди та державні органи України, до компетенції яких віднесено регулювання інформаційної діяльності, досі не напрацювали власних шляхів і механізмів обмеження права на інформацію, які б враховували їхню власну практику надання правової оцінки кожному з таких випадків. Наголошено, що базовим засобом обґрунтування обмеження права на інформацію в інтересах національної безпеки, як і будь-якого обмеження права на інформацію, є застосування «трискладового тесту». Окреслені підстави локалізації права на інформацію стануть в пригоді науковцям, правоохоронцям, фахівцям з інформаційної безпеки для правомірного їх застосування

Ключові слова: права і свободи людини та громадянина; правомірне обмеження прав і свобод людини та громадянина; захищеність; інформаційна безпека; інформаційні права людини; трискладовий тест

Науково-аналітичний журнал
«СОЦІАЛЬНО-ПРАВОВІ СТУДІЇ»

Том 6, № 1
2023

(Англійською мовою)

Відповідальний редактор:
М. Ковінько

Редагування бібліографічних списків:
М. Ковінько

Комп'ютерна верстка:
О. Глінченко

Підписано до друку з оригінал-макета 29.03.2023
Ум. друк. арк. 7,5
Наклад 100 примірників

Видавництво: Львівський державний університет внутрішніх справ 79007, вул. Городоцька, 26, м. Львів, Україна
тел.: +380 (32) 233-20-80
E-mail: info@sls-journal.com.ua
www: https://sls-journal.com.ua/uk

The scientific and analytical journal
"SOCIAL AND LEGAL STUDIOS"

Volume 6, No. 1
2023

Managing Editor:
M. Kovinko

Editing Bibliographic Lists:
M. Kovinko

Desktop Publishing:
O. Glinchenko

Signed to the print with the original layout 29.03.2023.
Conventional Printed Sheet 7.5
Circulation 100 copies

Publisher: Lviv State University of Internal Affairs
79007, 26 Horodotska Str., Lviv, Ukraine
tel.: +380 (32) 233-20-80
E-mail: info@sls-journal.com.ua
www: https://sls-journal.com.ua/en