

The principles of criminal law in the aspect of protection of constitutional rights of citizens

Принципи кримінального права в аспекті захисту конституційних прав громадян

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Abstract

Description. The purpose of the article is to identify the subject of crimes related to the violation of confidentiality of telephone conversations transmitted by means of communication or through a computer, to qualify the criminal activity properly and to distinguish them from other crimes and misdemeanors. The purpose of the article also covers the issues of the principles of criminal law, which can solve the problems of formulating certain rules of the law on criminal liability, designed to protect the constitutional rights and freedoms of an individual. Methodology. In the course of the study general and special methods of the legal science were used: comparative and legal method; formal and dogmatic method; dialectical method; statistical method. The results of the study made it possible to identify the areas for improving the principles of criminal law for breach of confidentiality of correspondence, telephone, telegraph or other kinds of correspondence transmitted by means of communication or through the computer, and the

Анотація

Опис. Мета статті – розкрити предмет злочинів, пов'язаних із порушенням конфіденційності телефонних розмов, переданих засобами зв'язку або через комп'ютер, належним чином кваліфікувати злочинну діяльність та відмежувати її від інших злочинів та проступків. Мета статті також охоплює питання принципів кримінального права, за допомогою яких можна вирішити проблеми формулювання певних норм закону про кримінальну відповідальність, покликаних захистити конституційні права та свободи індивіда. Методика. У процесі дослідження були використані загальні та спеціальні методи юридичної науки: порівняльно-правовий метод; формальний та догматичний метод; діалектичний метод; статистичний метод. Результати дослідження дали змогу визначити сфери вдосконалення принципів кримінального законодавства за порушення конфіденційності кореспонденції, телефону, телеграфу чи інших видів кореспонденції, що передаються засобами зв'язку або через

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areas of international cooperation in this area. Practical implications. According to the results of the research, some proposals were made for a more precise formulation of the characteristics of the object as well as the elements of the objective element of the crime under consideration. Value / originality. Based on the authors' approach to identifying the subject matter of a crime, which involves liability for violation of confidentiality of correspondence, telephone conversations, telegraph or other correspondence transmitted by means of communication or through a computer, it was determined what features of the subject matter of the crime in question should be recorded in laws and what principles of criminal law can solve the task set by the study.

Key words: criminal law protection of confidentiality of correspondence, communications, computer, confidential information of personal nature, IMEI, MAC address, IP address.

Introduction

The right to confidentiality of correspondence has been accepted in international law since 1948. The Universal Declaration of Human Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms directly indicate the confidentiality of personal correspondence. Thus, Article 12 of the Universal Declaration states that "no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks".

Thus, Article 8 of the European Convention makes it clear that "everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".

комп'ютер, та сфери міжнародного співробітництва в цій області. Практичні наслідки. За результатами дослідження були розроблені деякі пропозиції для більш точного формулювання характеристик об'єкта, а також елементів об'єктивного сторони злочину, що розглядається. Співвідношення / оригінальність. На основі запропонованого авторського підходу до визначення ознак предмету злочину, що передбачає відповідальність за порушення таємниці листування, телефонних розмов, телеграфної чи іншої кореспонденції, що передаються засобами зв'язку або через комп'ютер, визначено які саме ознаки предмета розглядуваного злочину повинні бути зафіксовані в законі та які принципи кримінального права спроможні вирішити поставлені дослідженням завдання.

Ключові слова: кримінально-правова охорона таємниці кореспонденції, засоби зв'язку, комп'ютер, конфіденційна інформація особистого характеру, IMEI, MAC-адрес, IP-адрес.

However, these documents do not regard this right as absolute. Article 12 of the Universal Declaration protects against what is called the incomprehensible term "unjustified interference", which is apparently contrasted with "intervention" in accordance with the law with the clearly stated goal. European Convention defines the limits of this right more clearly; according to it, all individuals have the right to confidential correspondence, but this right can be restricted "in accordance with the law".

Consequently, the issues related to criminal protection of correspondence, including the qualification of breach of telephone conversations, telegraph or other correspondence transmitted by means of communication or through a computer, are the subject of study of many Ukrainian and foreign scientists.

At the same time, the practice of applying Article 163 of the Criminal Code of Ukraine by law enforcement agencies is different, and many issues, including those concerning the subject matter of the crime, have largely been neglected. Therefore, the purpose of the article is to identify the main features of the subject matter of the crime under examination, which should be

reflected in law and practice. It also seeks to clarify the nature of the principles of criminal law that directly affect the solution of the problems that have been raised.

Materials and Methods

The studied materials are international treaties, legislation of certain States (Ukraine, Great Britain, Italy, Germany, Finland, etc.), the work of scientists, the register of court decisions and the results of the work of the bodies of pre-trial investigation of Ukraine and the materials of criminal proceedings.

The study used general scientific and special methods, which are the means of scientific research. In particular, special legal methods are: comparative and legal method, which was used in the analysis of the rules of substantive and procedural law of international and national legislation of Ukraine and other States, scientific categories, definitions and approaches; formal and dogmatic (legal) method helped to disclose the content of the legislative provisions of the current Criminal Code of Ukraine on the responsibility for breach of confidentiality of telephone conversations transmitted by the means of communication or through a computer and to develop proposals for the improvement of Art. 163 of the Criminal Code of Ukraine; dialectical method was applied to understand the nature of such a socially dangerous phenomenon as the violation of confidentiality of telephone conversations transmitted by the means of communication or through a computer, to establish the legal nature of the subject matter of the offence under examination; statistical method was used when summarizing the results of the study of empirical sources.

Results and Discussion

One of the subject matters of the crime under Art. 163 of the Criminal Code, is confidentiality of telephone conversations.

The information on communication, subscriber, provision of telecommunication services, including receipt of services, their duration, content (outgoing and incoming connections, SMS, MMS, etc.), transmission routes, identification features of end-use telecommunication terminal equipment (SIM subscriber number), IMEI, MAC address, IP address, etc.) that was within the range of certain base stations at a particular time (traffic) including the location of the subscriber, without disclosing the content of conversations and

messages, does not meet the specific requirements to telephone calls and criminal protection of information and therefore the provisions of Art. 163 of the Criminal Code are not applied.

The unlawful receipt, use and dissemination of traffic information in violation of the established order are not identical (equivalent) to one that is provided in Art. 163 of the Criminal Code of Ukraine “violation of confidentiality of telephone conversations”, and therefore cannot form the evidence of this crime.

The disclosure of the fact of correspondence, telephone conversation, telegraph or other correspondence transmitted by means of communication or through a computer in the absence of the fact of receipt, use and dissemination of information about the contents of such correspondence, conversations does not form the crime under Art. 163 of the Criminal Code of Ukraine.

Unlawful receipt of information on communication, subscriber, provision of telecommunication services, including receipt of services, their duration, content (outgoing and incoming connections, SMS, MMS, etc.), transmission routes, identification features of end-use telecommunication terminal equipment (SIM subscriber number), IMEI, MAC address, IP address, etc.) that was within the range of certain base stations at a certain time (traffic), including information on the subscriber’s location, without disclosing the content of conversations, messages can be qualified under Art. 182, 366-1, 366-2, 364 of the Criminal Code of Ukraine subject to availability of other required elements of the offence.

Thus, in formulating the rules aimed at protecting the constitutional rights of an individual, the legislator must clearly state the duties and rights of both those who enjoy such rights and those who directly intervene in the private sphere of life. In this case, the principle of legality and the principle of legal certainty which make demands on the quality of the law should play a central role, since the criminal law is the most severe, and therefore the issue of its definiteness, legibility and clarity is the most acute.

Let’s consider some individual issues, aspects relating to the criminal protection of private life of an individual and the implementation of certain principles of criminal law in formulation, enforcement and application of the mentioned norms in more detail.

Thus, D. Yu. Kondratov (2015), examining the legal content of confidentiality correspondence and determining its main characteristics, has come to the conclusion that confidential information should be considered as confidential personal information, is already being transmitted or is transmitted by the means of communication or through a computer, the illegal familiarization with which may harm the interests of its owner, resulting in restricted access to it in accordance with the provisions of the legislation of Ukraine, and for the unauthorized violation of which criminal liability is established.

This definition, although it contains the basic legal features of the concept of “confidentiality”, but does not provide a clear answer to whether the information on communication, subscriber, provision of telecommunication services, including receipt of services, their duration, content (outgoing and incoming connections, SMS, MMS, etc.), transmission routes, identification features of end-use telecommunication terminal equipment (SIM subscriber number), IMEI, MAC address, IP address, etc.) that was within the range of certain base stations at a certain time (traffic), including information about the subscriber’s location, without disclosing the content of conversations, messages is the information that meets the criteria of secrecy of correspondence and telephone conversations.

It is quite acceptable that the information about the fact of telephone conversation and the actual location of the subscriber (s) under certain conditions can be recognized as such that can harm the interests of its owner (owners) in case of illegal familiarization with it and is subject to protection as a component of privacy.

Besides, D.Yu. Kondratov (2012) makes a proper remark in one of his articles on the need to distinguish the violation of confidentiality of personal correspondence from the offences under Articles 168, 182, 359 of the Criminal Code of Ukraine, and states in particular that the collection of confidential information about a person without his (her) consent is one of the forms of the objective element of violation of confidentiality, the responsibility for which is provided for in Art. 182 of the Criminal Code of Ukraine.

Based on this view, it is possible to conclude that unlawful receipt of information about telephone connections of the subscriber, including the indication of his whereabouts, without qualifying

the contents of telephone conversations can be qualified as a crime under Art. 182 of the Criminal Code of Ukraine. Part 2, Art. 359 of the Criminal Code of Ukraine is also applied in case of the use of special equipment for this purpose. There is another view expressed by a number of scientists, according to which the subject matter of the crime, provided by Art. 163 of the Criminal Code of Ukraine, along with information, which is already being transmitted or is transmitted by citizens through correspondence or telephone conversations and messages of citizens transmitted by telegraph or by other means of communication, as well as through a computer and constituting a secret of the citizen (citizens) should also include information about the fact of correspondence or conversation of one person with another, information about the addressee to whom the letter (telegram) was addressed or with whom there was the conversation (his address, surname, name, patronymic, etc.), information about the date and time of the letters or conversations. At the same time, the authors define two main criteria for the characteristics of the specified information, which may be the subject matter of the crime under examination: 1) its nature – it must be a secret of a citizen, and 2) the way of its transmission – it is being transmitted or is transmitted by the means of communication or through a computer.

Interesting idea was expressed by I. Yednak (2017) in the course of examining the provisions of Art. 163 of the Criminal Code of Ukraine. He draws attention to the “constructive feature” of Art. 163 of the Criminal Code of Ukraine – the use of the term “transmitted” by the legislator in the provision of the article. The use of this term and the grammatical interpretation of the analyzed article make it possible to state, first of all, that the process of transmitting correspondence must continue, that is, it has already begun and has not finished yet. The author concluded that the information, which has already been transmitted could not be recognized as the subject matter of this offence, since there was no the interference in this process.

The authors of the Scientific and Practical Commentary to the Criminal Code of Ukraine (Dzhuzha, Savchenko & Cherniei, 2016) were of the opinion that the crime under Art. 163 of the Criminal Code of Ukraine is considered terminated from the very moment the third person is actually acquainted with the content of private correspondence, telephone conversations, telegraphs and other communications of citizens transmitted by means

of communication or through a computer. Such a view gives grounds to conclude that the subject matter of the said crime may be only the content of private correspondence, telephone conversations, telegraph and other communications of citizens, and not the mere fact of such correspondence, conversations, and communications.

Given the importance of ECHR practices for understanding and applying criminal and criminal procedural legislation in the context of implementation and protection of the guarantees and rights of an individual and a citizen, it should be noted that the protection of personal data by the ECHR is essential for the realization of the right to privacy and family life by an individual (see *S. and Marper v. the United Kingdom*). The ECHR has repeatedly expressed the view that confidentiality involves the secrecy of information transmission, covering the security and secrecy of postal, telephone, electronic and other forms of information transmission; and information secrecy, which may include the secrecy of Internet access.

The concept of confidentiality also includes the elements relating to the right of the individual to his or her image (*Sciacca v. Italy*). In other words, photos or video clips containing images of a person should fall within the scope of Article 8 of the European Convention of Human Rights. This is important when posting photos on public or social sites on the Internet. Recording a person's voice for the further analysis is interference in his or her right to privacy (See *PG and JH v. The United Kingdom*).

Publication of material obtained in public places by the way or by the means, which go beyond those that could be envisaged, may also fall within the scope of Article 8 § 1 in terms of relevant recorded information or material (see *Peck v. the United Kingdom*).

In the case of *Uzun v. Germany* the ECHR found that monitoring of the applicant by means of the global positioning and processing system and the use of the information thus obtained was an interference in the exercise of his right to privacy protected by Article 8 § 1 of the Convention.

While the primary purpose of Article 8 to protect a person against arbitrary or unlawful interference by public authorities, positive obligations may be an integral part of effective mechanism of protection of the right to privacy and family life (see *Airey v Ireland*). These obligations may include the adoption of the

measures designed by the State to protect privacy, even in the area of relations between individuals, such as the Internet user and those who provide access to a particular site on the Internet. In other words, the State has a positive obligation to impose an effective deterrent against serious interference in the personal data of a person, sometimes through the application of effective criminal law provisions (see *X and Y v. the Netherlands*, *August v. The United Kingdom*, *M. C. v. Bulgaria*, *K.U. v. Finland*).

The collection, storage and disclosure of personal information by the State, for example regarding to a police register, is an interference with the exercise of a person's right to privacy, guaranteed by Article 8 § 1 of the Convention (*Leander v. Sweden*). The continued use of stored information is irrelevant to this conclusion (*Amann v. Switzerland*). Such an interference violates Article 8 if it is not "statutory" and does not set one or more of the legitimate goals, enshrined in paragraph 2 and, in addition, is not "necessary in a democratic society" to achieve those goals. Considering the case of *P.G. and J.H. v. The United Kingdom* the ECHR concluded that monitoring the applicant with the help of Global Positioning System, which had been ordered by the Federal Attorney General to investigate several crime scenes of attempted murder, undertaken by terrorist organization, and to prevent further attacks using explosive devices served the interests of national security and public order, the prevention of crime and the protection of the rights of victims. Finally, the interference was in proportion to the legitimate aims pursued and necessary in a democratic society within the meaning of Article 8 § 2.

Thus, the ECHR stated the need to protect any important private information from unlawful interference; it was also suggested that there should be boundaries and proportionality of State interference in the private life of citizens.

The rules concerning the protection of private information in national legislation are contained in the Criminal Code of Ukraine, the Criminal Procedural Code of Ukraine, as well as in the Code of Administrative Offenses, the Civil Code of Ukraine and others.

Therefore, it is important to differentiate private information according to the degree of protection, to distinguish criminal offences from administrative misconduct, disciplinary violations, which in our opinion is important to clearly define the object of the crime under Art. 163 of the Criminal Code of Ukraine.

Considering the subject matter of a correspondence secrecy, including violation of confidentiality of telephone conversations, telegraph or other correspondence transmitted by means of communication or through a computer, one should proceed from the fact that confidential information is diverse by its nature. The secrecy of correspondence, telephone conversations, telegraph and other correspondence guaranteed by Article 31 of the Constitution of Ukraine can only be restricted by court in cases provided by the law, in order to prevent a crime or to find out the truth during a criminal investigation, if it is not possible to obtain information by other means.

The exercise of the right of law enforcement agencies to interfere in private communication by lifting of the information from transport telecommunication networks and electronic information systems is in accordance with the requirements of the Criminal Procedural Code of Ukraine, Instruction “On organizing unspoken investigative (search) actions and using their results in criminal proceedings”, departmental orders and instructions governing the conduct of operational and technical measures and unspoken investigative actions.

According to the Instruction “On organizing unspoken investigative (search) actions and using their results in criminal proceedings” (Clause 1.11.5.) lifting of the information from transport telecommunication networks lies in conduct of undercover investigations with the use of appropriate technical means of observation, selection and fixation of information transmitted by a person, as well as receiving, converting and recording various types of signals transmitted by communication channels (signs, signals, written text, images, sounds, messages of any kind).

Along with this sufficiently detailed definition, the question remains whether the information on communication, subscriber, provision of telecommunication services, including receipt of services, their duration, content (outgoing and incoming connections, SMS, MMS, etc.), transmission routes, identification features of end-use telecommunication terminal equipment (SIM subscriber number), IMEI, MAC address, IP address, etc.) that was within the range of certain base stations at a particular time (traffic) can be considered telephone conversation, its component, and in so whether it can be regarded as the subject matter of the crime under Art. 163 of the Criminal Code of Ukraine.

The distinction between “telephone conversation” and “information about telephone connections” is enshrined in Art. 1 of the Law of Ukraine “On Telecommunications”, which defines the terms “telecommunications” and “traffic”:

“telecommunications” is the transmission, and / or receipt of signs, signals, written text, images and sounds or messages of any kind by radio, wire, optical or other electromagnetic systems; “traffic” is a set of information signals transmitted with the help of technical means of operators, telecommunication providers over a certain period of time, including consumer information and / or official information;

Thus, a telephone conversation (conversation between persons through any telephone communication using wired or electromagnetic systems) and traffic (transmission of audio signals, written text, images with the information about the consumer, duration of communication, etc.) are not defined by the abovementioned Law. Different order of access and degree of protection of the rights of citizens to information on the content of telephone conversations and traffic are also defined in the Criminal Procedural Code of Ukraine.

According to Art. 258 of the Criminal Procedural Code of Ukraine, which defines the types of interference in private communication, the type of interference in private communication is the lifting of the information from transport telecommunications networks and in accordance with Art. Art. 247, 258, 263 of the Criminal Procedural Code of Ukraine such interference is carried out by the decision of the investigating judge of the Court of Appeal.

At the same time, the receipt of information about telephone connections (traffic) contained in the electronic information systems of providers is carried out in accordance with the procedure established by Art. 159 of the Criminal Procedural Code of Ukraine on the basis of the decision of the investigating judge of the district court.

Besides, the Order of the Security Service of Ukraine dated of April 26, 2016 no. 026 provides for the possibility of requesting information on the facts of the subscriber connection, which are not based on the decision of the investigating judge but on written requests signed by the heads of operational units. A similar procedure was established in the order approved by the Order of

the Ministry of Internal Affairs of Ukraine of February 12, 2008 no. 64 “The procedure for obtaining information on mobile (mobile) subscribers, its processing, accounting and use”. Different degree of protection of information on the secrecy of correspondence and telephone conversations and connection information (traffic) raises doubts about the legitimacy of identification of information about the fact of telephone conversations, correspondence in the absence of information about its content with violation of confidentiality of correspondence, telephone conversation.

However, the study of the practice of criminal proceedings on the facts of violation of telephone conversations, including the facts of illegal receipt and dissemination of information about telephone connections, shows that there are different approaches to determining the subject matter of the crime under Art. 163 of the Criminal Code of Ukraine.

There are no decisions of appellate and cassation courts of Ukraine investigating the legal nature of the subject matter of confidentiality of telephone conversations and correspondence, so investigations have been made based on first-instance sentences, most of which were made on agreements on the admission of guilt.

The courts handed down sentences on the facts of unlawful receipt, use, transfer of information on telephone connections of citizens and on traffic, as under the Art. 163 and other articles of the Criminal Code of Ukraine.

Thus, according to the judgment of the Prydniprovskiy district court of Cherkasy of March 23, 2017 in case no. 711/10887/16-k illegal obtaining of information on communication, subscriber, provision of telecommunication services, including receipt of services, their duration, content (outgoing and incoming connections, SMS, MMS, etc.), transmission routes, identification features of end-use telecommunication terminal equipment (SIM subscriber number), IMEI, MAC address, IP address, etc.) that was within the range of certain base stations at a particular time (traffic) is qualified under Art. 163 of the Criminal Code. The same position was expressed by Prydniprovskiy District Court of Cherkasy in the judgment of April 25, 2016, Case no. 711/1912/13-k; by Irpin City Court of Kyiv Region in Case no. 367/1464/18. However, a number of courts have expressed different legal position on the classification of such actions.

In our opinion, one should proceed from the very concept (conceptual appeal) “secret ... telephone conversations ... transmitted by means of communication or through a computer”, which is enshrined in Part 1, Art. 163 of the Criminal Code for the proper definition and distinction between the crimes, enshrined in Articles 163, 182, 361-2 of the Criminal Code of Ukraine.

The meaning of this term includes the following components: a) “telephone conversations”; b) their “secrecy”; c) the ability of such conversations to be transmitted “by means of communication or through a computer”.

Regarding the concept of “telephone conversations”.

There is no definition of the meaning of the concept of “telephone conversations” at the legislative level. However, some legal acts specify the concepts that are directly related to clarifying the content of the concept of “telephone conversations”.

Firstly, some legal acts use the concepts that refer to telephone conversations as a certain ongoing activity of a person. Thus, Part 3, Art. 27 of the Criminal Procedural Code uses the wording “the content of personal telephone conversations... and other communications”. That is, the legislator uses in this case not only the concepts of “content of personal telephone conversations” and “content ... of other messages”, but also explicitly indicates that personal telephone conversations must have some content. The other provisions of the Criminal Procedural Code also indicate that telephone conversations may take such “ongoing forms” as a “call” (Article 135 § 1 of the Criminal Procedural Code refers to “making a telephone call”) and “negotiations” (see paragraph 4, clause 6, Article 194 of the CPC, which refers to “telephone negotiations with a person ...”).

Secondly, telephone conversations as time-consuming activities can be computed, which is also indicated by the relevant provisions of the Criminal Procedural Code. In particular, Part 4, Art. 73 of the Penal Code enshrines the opportunity for the convicts to “make telephone calls without limiting their number”; Art. 107 of the Penal Code provides for the concept of “telephone conversations, including mobile conversations”.

Thirdly, if we analyze the provisions of the Law “On Telecommunications”, we can conclude that the presence of telephone calls implies the

exchange of certain information that is carried out through the use of telecommunications networks. That is, telephone conversations can be understood as ongoing activities related to the exchange of information through telecommunications networks. In this case, Art. 1 of the Law “On Telecommunications” uses and clarifies the concept of “voice telephony”, from which the above adjective “telephone”, using in the phrase “telephone conversations” derives. In other words telephone conversations are not performed without the use of telecommunication networks and the exchange of certain information.

Fourthly, telephone conversations are included in the content of personal non-property rights (Part 1 of Article 270 of the Civil Code of Ukraine). In this case, special attention should be paid to the relation between the concepts of “conversations” (conversations made by telephone) and “objects”, for which telecommunications and telecommunication networks are used. When interpreting the meaning of the concept of “conversation” it turns out that it covers “verbal exchange of thoughts, information”. Instead, the “objects”, for which telecommunications and telecommunication networks are used, are not just some statements. Thus, the concept of telecommunication, enshrined in Art. 1 of the Law on Telecommunications, covers the “transmission, emission and / or reception of signs, signals, written text, images and sounds or messages of any kind by radio, wired, optical or other electromagnetic systems”, and telecommunications networks – “a set of technical telecommunication equipment and facilities designed for routing, switching, transmitting and / or receiving signs, signals, written text, images and sounds or messages of any kind by radio, wire, optical or other electromagnets systems between the end-user equipment”. The “objects”, mentioned in these legislative definitions, mean:

- a) for telecommunications – “signs, signals, written text, images and sounds or messages of any kind” (telecommunication carry out transmission, radiation and / or reception with these objects);
- b) for telecommunications networks – “signs, signals, written text, images and sounds or messages of any kind” (telecommunications networks carry out routing, switching, transmission and / or reception with these objects).

Consequently, conversations (such as signs, signals, sounds and messages) can be transmitted and received through telecommunications and telecommunication networks. However, networks can receive and transmit other signals, sounds, messages that are not recognized as conversations in addition to conversations, telecommunications and telecommunications networks. On this basis, signals, sounds and messages transmitted by telecommunications and telecommunication networks, but which are not the means of sharing of certain information (messages) between people, cannot be recognized as conversation. Under certain conditions, they can be considered signals, sounds and messages transmitted and / or received by telecommunication networks. Here are some examples to illustrate this. Thus, the provisions some legislative acts provided for the so-called “incoming telephone signals for all types of telephone communication”. In this case, the legislator directly referred to such “telephone signals” as constituents of the telephone communication, but did not consider them to be messages transmitted by the telephone, in connection with which these signals could not be recognized as direct (verbal) telephone conversations. In another case, unilateral passing of a message (for example, without the recipient’s consent) cannot be considered as conversation. In any case, in order for the conversation to take place, the recipient of the SMS must enter into the exchange of information (by replying to the received SMS or by calling the person, who sent such SMS, etc.).

Thus, legal and factual features can be distinguished in telephone conversations. Legal signs are associated with the fact that personal non-property rights are applied to such conversations and consequently they are subject to confidentiality.

The actual features of telephone conversations are related to the fact that such conversations are the activities of at least two persons involved in the conversation regarding the exchange of information with each other, having a specifically expressed form with a certain meaning, carried out by appropriate means of communication. In such circumstances, telephone conversations must meet the following mandatory requirements in order to indicate the content of the subject matter of the crime under Art. 163 of the Criminal Code:

- 1) to reproduce certain activity of a person that lasts for a certain period of time and is exchanged by several persons who

- participate in such a conversation (exchange of information);
- 2) to have a clearly expressed objective form (verbal, form of sounds, signals, messages, so-called “tacit consent”, etc.);
 - 3) to have a certain sense (i.e., regardless of the form chosen, the conversation should contain specific information exchanged by the persons participating in it, who perceive (understand) the meaning of such information);
 - 4) to be transmitted by certain means of communication (i.e. by telecommunications, telecommunication networks).

If the conversation does not meet at least one of these requirements, the telephone conversation is the subject matter of the offence under Art. 163 of the Criminal Code, considered to be absent.

Regarding the concept of “confidentiality of telephone conversation”.

The right to confidentiality of telephone conversations, guaranteed under Art. 31 of the Constitution, is not clarified in the Law “On Telecommunications”. Part 1 of Art. 9 of this Law only reproduces the general provisions regarding the protection of such secrecy and its guarantee by the norms of the Constitution. In any case, understanding of the concept of confidentiality, enshrined in Art. 163 of the Criminal Code, does not go beyond the generally accepted content and involves the presence of information exchanged by the participants of a telephone conversation, the disclosure of which to other persons, who are not participants of the conversation, preserves its secrecy in some form, part (in whole or in part) (see also Art. 306 of the Criminal Code of Ukraine).

Thus, in this case, the concept of confidentiality of telephone conversation is related to the legal features of the conversations discussed above, and may be recognized as subject matter to other offenses. Thus, violation of the provisions of Art. 306 of the Civil Code of Ukraine may form the composition of a civil offense and the failure to comply (violate) the procedure of protection of personal data established by the law, which has led to illegal access to these data or violation of the rights of the subject of personal data, may form the composition of the administrative offense, enshrined in Part 4, Art. 188³⁹ of the Code of Administrative Offences. Besides, violation of the order of accounting, storage and use of documents and other material media

containing official information that led to the disclosure of such information may contain the features of administrative offense, enshrined in Art. 212⁵ of the Code of Administrative Offenses, and the exercise of unlawful access to information stored, processed or transmitted in information (automated) systems is the composition of the administrative offense, enshrined in Article 212⁶ of the Code of Administrative Offenses.

The information about the connections of the subscribers of the mobile operators, indicating the date, time, base stations and IMEI of the mobile terminals (hereinafter referred to as “connection information”) does not contain any indication of those properties of telephone calls, which must comply with the above requirements, in particular:

- a) such “connection information” does not reproduce the specific activities of several parties to the conversation shared between them (that is, does not constitute, does not involve the exchange of information);
- b) the participants to the conversations do not exchange “connection information”, although it has some form of sounds, signals, information, messages about something (in particular, subscriber connections, dates, times, base stations and IMEs, etc.); in this case, it can only be stated that “connection information” is information about the fact (s) of conversation (exchange of information) that took place in reality between several persons, but such acts by do not relate to the content of the conversation between the persons (see below);
- c) “connection information” has the content, which is related to the occurrence, existence, disappearance, termination, etc. of certain facts (i.e. regardless of form), but this content does not reproduce the specific information exchanged by the participants to the conversation;
- d) “connection information” is transmitted by certain means of communication (i.e., by telecommunication, telecommunication networks) not as the content of a conversation that has taken place between persons, but as information relating to the operation of such means of communications, telecommunications.

Therefore, on the basis of the above, it is not possible to identify the concept of “telephone conversations” and “connection information”, since the latter concept is primarily an element of communication (telecommunications, telecommunication networks), not the semantic (mental) content of a conversation of several people. This “connection information” refers under certain conditions to contact information about the fact of the conversation and its participants, as well as about the operation of communications (telecommunications, telecommunication networks). And the concept of “contact information” is used at the legislative level and does not relate to the content of telephone conversations. Therefore, under other necessary conditions, “connection information” can be considered as “contact information” (certifying the fact of contact of persons who participated in the conversation) about the work of the means communication (telecommunications, telecommunication networks), not the content of the individuals’ thoughts.

In some circumstances, “connection information” and violation of the procedure for dealing with such information may be considered as features of composition of administrative offenses under Part 4, Art. 188³⁹, Art. 212⁵, 212⁶ of the Code of Administrative Offences (see above), or the signs of the respective disciplinary offenses. In particular, such “connection information” may be recognized as a variety of personal data, on which certain rights exist and which are provided for in Part 4, Art. 188³⁹ of the Code of Administrative Offences, as well as contain information stored on tangible medium (article 212⁵ of the Code of Administrative Offences) and in information (automated) systems (article 212⁶212⁵ of the Code of Administrative Offences). However, with the ratio of Art. 163 of the Criminal Code to Part 4, Art. 188³⁹, Art. 212⁵, 212⁶ of the Code of Administrative Offences one should take into account the different nature and the degree of harmfulness of their actions. Moreover, when committing the act provided for in Art. 163 of the Criminal Code, such harmfulness reaches the level of material damage, which is enshrined in Part 2, Art. 11 of the Criminal Code, as opposed to committing the acts specified in Part 4, Art. 188³⁹, Art. 212⁵, 212⁶ of the Code of Administrative Offences. With this in mind, one should pay attention to the following.

The public danger of the offence under Art. 163 of the Criminal Code of Ukraine lies in the fact that such object of criminal and legal protection,

as the personal right to confidentiality of telephone conversations, which is in some way connected with the principles of realization of non-property rights by a person, suffers considerable damage. However, there is no direct indication in the text of Art. 163 of the Criminal Code of such socially dangerous consequences of the act committed. However, this does not mean that the person’s right to confidentiality of telephone conversations does not suffer certain harm as a result of the act committed.

The peculiarity of such an understanding of the public safety of the crime under Art. 163 of the Criminal Code is that “substantial damage” is a normative guideline, which is enshrined in Part 2, Art. 11 of the Criminal Code and is used to indicate the lowest limit of public danger of any crime, to distinguish it from minor actions (including those stipulated in the Code of Administrative Offences). Therefore, any actions provided for in Art. 163 of the Criminal Code, as a general rule, can cause significant damage, which is manifested in violation of the specified right of the person, harming actual possibilities of its implementation, but is not considered in the content of socially dangerous consequences as a mandatory element of the crime, but in specifying the degree and the nature of the damage of the object of the crime, provided for in Art. 163 of the Criminal Code. That is, when qualifying this crime, it is necessary to find out the presence of a certain violation of confidentiality of telephone conversations, despite the fact that the extent of the damage is not provided for in Art. 163 of the Criminal Code of Ukraine. Therefore, the qualifications, enshrined in Art. 163 of the Criminal Code of Ukraine must take into account the violation of prospects of realizing the personal right to confidentiality of telephone conversations.

One of the referent points of the social danger of an act envisaged by the Criminal Code as a crime of a certain kind is the material harm caused by it (see Part 2 of Article 11 of the Criminal Code). Otherwise, if one does not set such a referent point of public danger as violation of the ability to exercise the right to confidentiality of telephone conversations in the qualification of this offence, then it would be impossible to distinguish similar offences, which cause non-pecuniary damage. That is, in determining social danger of a qualifying act, one cannot just establish non-pecuniary damage as a sign of the crime set out in Art. 163 of the Criminal Code. It is also necessary to find out the content of other referent points of social danger (consequences of actions, methods and means of committing them,

mental attitude, etc.). Thus, the concept of “substantial damage”, enshrined in Part 2, Art. 11 of the Criminal Code, allows to distinguish socially dangerous activity from the so-called “insignificant”.

Considering the mechanism of formation of the said infringement, it requires the establishment of the following mandatory conditions:

- 1) the act must take the form provided for in Part 1, Art. 163 of the Criminal Code as a violation of confidentiality of telephone conversation;
- 2) this act entails harming the prospects of realizing the right to confidentiality of such conversations, which are included in the content of the “injured” object of the crime, but in Art. 163 of the Criminal Code are not defined textually;
- 3) such an act results in substantial damage inherent in any socially dangerous act provided for by the Criminal Code of Ukraine, regardless of the extent of damage caused by the crime.

Thus, harming the prospects actually involves two types of socially dangerous consequences, which differ in content and amount from the harmful consequences of the above-mentioned administrative offenses – the violation of the ability to exercise the right to confidentiality of telephone conversations.

However, the information about telephone connections (traffic, fact of a telephone conversation) does not show the features of the violated possibilities to realize the direct right to the confidentiality of telephone conversations, because:

- a) the content of telephone conversations, for which the right of confidentiality exists, must be specifically defined (it does not appear from the facts that the person was aware of such specific content);
- b) uncertainty of the individual characteristics of exchange of information between several persons in the said conversation;
- c) realization of the intention to be aware of the content of particular information, which is in the telephone conversation, should be evidenced by concrete factual circumstances.

Therefore, the mere transmission of information, data carriers containing “connection

information” cannot violate the aforementioned prospects of realizing the right to confidential telephone conversations. In other words, in order for an act to actually violate (be capable to violate) such a right (or to create obstacles in the exercise of the said prospects), the person should realize his / her intention to become aware of such telephone conversations, the content of the telephone conversations, exchanged between the participants of the conversation.

Thus, the harm of the offence, provided for in Art. 163 of the Criminal Code, lies in the mechanism of encroachment, which consists of several elements, namely:

- a) the victim (the person, who is deprived of the right to confidentiality of the specific telephone conversation or, in other words, to specific information in the content of a telephone conversation);
- b) committing violation of the said right implies that the person has real possibilities to realize (keep) the confidentiality of telephone conversations which he (she) actually loses or whose implementation is significantly complicated due to the obstacle created; such loss would, in principle, result in substantial injury;
- c) awareness of the subject of the crime of the legal content of the above conditions of encroachment: a) the legal status of confidentiality of telephone conversations, the person’s right to confidentiality when conducting a telephone conversation; b) the duty to refrain from any interfering in the implementation of the aforementioned possibilities by a person, which is related to their actual violation and awareness in the information exchanged during the telephone conversation.

All the above elements of the mechanism of encroachment are included into the content of the object of the crime under Art. 163 of the Criminal Code of Ukraine. Therefore, in the absence of any of these elements one cannot speak of the damage to such an object. If necessary, the individual elements that are damaged may be taken into account in the content of the object of the specified administrative offenses.

In view of the above analysis of the concepts of confidentiality of telephone conversations, as well as information relating to dialed telephone numbers, time and duration of telephone

conversations, let us consider the definition of “traffic” as a constituent “component” of telephone conversations.

The provisions of Art. 8 of the Convention on the non-interference in person’s privacy and family life, which may in particular be related to confidentiality of telephone conversations, should be considered as normative reference for the answer to this question.

Some decisions of ECHR, which explain the specifics of applying Art. 8 of the Convention, are considered as enforcement reference:

- 1) an expanded interpretation of the concept of “interference”, which includes dialed phone numbers, their time, duration and other connection information”. In particular, paragraph 89 of the judgment in the case of *Malone v. The United Kingdom* referred to a violation of Art. 8 of the Convention, concerning not only the interception of the information transmitted in the process of telephone conversations, but also the transmitted records of metering of such conversations.

In this case, the ECHR has adopted a clear position on the need to differentiate between unreasonably receiving information about the content of telephone conversations by metering the information transmitted by the telephone and also by recording telephone conversations (paragraph 84 of the abovementioned Decision). In this case, the ECHR has explicitly stated that the use of data obtained during such “accounting”, regardless of the circumstances and purposes, violates Art. 8 of the Convention. According to the ECHR, the records of contain information, including the numbers dialed. Such telephone numbers are considered by the ECHR as an integral element of telephone communication.

This conclusion is contained in paragraph 84 of the ECHR decision and is indicated in the English version of the decision by the following wording: “*integral element in the communications made by telephone*”. In this formulation, the English term “communications” is used in the plural and is translated as “means of communication”, “transfer of communication”, “communication lines”, “communication channels”, etc. In the event that there has been an improper receipt and use of such “records” of “communications”, then these

acts, under circumstances referred to in Part 2 of Art. 8 of the Convention, constitute a violation of the provisions of Art. 8 of the Convention (paragraph 84 of the Decision). Thus, it can be concluded that the receipt and use of information in the form of “records” about the “means of communication” used in the process of transmitting a telephone conversation should be distinguished from the content of the telephone conversation itself, which is transmitted by such “means of communication”. However, in both these cases, the misuse of such “records” and the information on the telephone conversation itself may constitute a violation of Art. 8 of the Convention. Thus, such “records” although protected by the provisions of Art. 8 of the Convention as an element of confidentiality, but are not included in the broadest meaning of the concept “telephone conversations”;

- 2) the need for a broad understanding of the concept of confidentiality, the content of which also covers telephone conversations (their secrecy) (see the case of *Nimitz v. Germany*, related to the fact that information about the contact of one persons with another person as well as the content of this contact may relate to the privacy of the person);

Thus, violations of the “connection information” can, under some circumstances, constitute a breach of confidentiality (or, in other words, invasion of privacy). However, such invasion of privacy is largely beyond the scope of crime, the content of which is related to the violation of the right to confidentiality of telephone conversations.

That is to say, the use of “connection information” may be recognized as invasion of privacy under the abovementioned ECHR decisions, but will not be considered as the violation of confidentiality of telephone conversations under Art. 163 of the Criminal Code of Ukraine. Under certain circumstances, such invasion of privacy may be associated with the commission of administrative offenses under Part 4, Art. 188³⁹, Art. 212⁵ or Art. 212⁶ of the Code of Administrative Offenses of Ukraine or under Articles 182, 361-1, 361-2 of the Criminal Code of Ukraine.

Thus, in our opinion, such principles of criminal law as the principle of legality, the rule of law and the principle of legal (legal) certainty, as an integral part of the latter, should be placed on top to deal with this issue.

The principle of legality means that all the provisions underlying the criminal prosecution for violation of confidentiality of telephone conversations transmitted by means of communication or through a computer, as well as the problem of punishment, exemption of punishment or the occurrence of other legal effects should be formulated solely in law, as in a supreme act of State power. Besides, the criminality and punishability of the act in question should be determined only by the Criminal Code of Ukraine. The legislation of Ukraine recognizes just a specific socially dangerous act or omission as a crime and does not permit prosecutions for beliefs, views, way of thinking, etc.

Due to the fact that the considered rule of law is contained in the section of the Criminal Code, which protects the constitutional rights and freedoms of an individual, then the principle of the rule of law, which is designed to ensure the priority of human rights, takes priority in this aspect. Therefore, in order to ensure adequate protection of the right of any person to privacy, it is necessary not only to fix such a norm in the Criminal Code, but also the recognition and unconditional perception of the highest value of the individual, his (her) inalienable rights and freedoms should be felt between the lines of this provision. Only in this case the rule of criminal law for the breach of confidentiality of telephone conversations transmitted by means of communication or through a computer will comply with this principle of criminal law.

With regard to the principle of legal certainty, the Rule of Law Index Report (Agrast, Botero & Ponce, 2011) adopted by the European Commission for Democracy through Law (Venice Commission) at its 86th plenary session, held on 25 – 26 March 2011, stated that legal certainty is one of the essential elements of the rule of law (para. 41); legal certainty requires that legal rules are clear and precise, and aim at ensuring situations and legal relationships remain foreseeable (paragraph 46). Therefore, it is especially important that all terms used for fixing and embodiment of this legal rule into the Criminal Code is clearly defined and does not permit ambiguous meanings.

The compliance with the requirement of clarity and ambiguity of the rules establishing criminal liability is especially important in view of the specificity of the criminal law and the consequences of criminal prosecution, since this type of legal liability is associated with possible significant restrictions on human rights and

freedoms. Therefore, it is especially important to clearly define all the elements of the composition of the offence in the criminal law.

Conclusions

The current state of criminal protection private life of the individual, as well as the case law on the application of this article is diverse and not completely regulated, which indicates the need for more effective legislative fixing of the elements of both the object of the crime (the subject matter of the crime) and the objective aspect of this crime in the law on criminal liability. In this perspective, it should be noted that the law that determines the objective and subjective features of any crime is the supreme, universal, integrative, state-protected regulator, which expresses political and social justice in the system of principles and precisely defines the range of subjects of law and legal relations, their legal rights, duties and guarantees in order to ensure social progress. It should not be forgotten that today the most characteristic feature of this law (its principles) is its active development. After all, the highest judicial bodies today make decisions that directly affect the system of domestic law and, accordingly, the system of its principles, and hence the significant impact on the rights and freedoms of citizens.

Today, an important task is to improve the legal technique to accurately reflect all the elements of a crime in law. That is why such a principle of criminal law as the principle of legality, the rule of law and the principle of legal certainty are taking the lead. The first one requires that acts constituting crimes are defined at the legislative level; the next one recognizes the person the highest social value; the last one puts demand on the law to be clear, understandable and qualitative. Not least for solving this issue are a close international cooperation of law enforcement agencies in a given direction and the ambiguity of the case law.

References

- Agrast, M., Botero, J. & Ponce, A. (2011). WJP Rule of Law Index 2011. Washington, D.C.: The World Justice Project.
- Case of Airey v Ireland (Application no. 6289/73) of 09 October 1979. Available from [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-57420%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57420%22]}) (accessed: 24.02.2020).
- Case of Amann v. Switzerland (Application no. 27798/95) of 16 February

2000. Available from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-58497%22%5D%7D> (accessed: 24.02.2020).
- Case of K.U. v. Finland (Application no. 2872/02) of 02 March 2009. Available from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-89964%22%5D%7D> (accessed: 24.02.2020).
- Case of Leander v. Sweden (Application no. 9248/81) of 26 March 1987. Available from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-57519%22%5D%7D> (accessed: 24.02.2020).
- Case of M. C. v. Bulgaria (Application no. 39272/98) of 04 December 2003. Available from https://www.coe.int/t/dg2/equality/domesticviolencecampaign/resources/M.C.v.BULGARIA_en.asp (accessed: 24.02.2020).
- Case of Nimitz v. Germany (Application no. 13710/88) of 16 December 1992. Available from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-57887%22%5D%7D> (accessed: 24.02.2020).
- Case of Peck v. The United Kingdom (Application no. 44647/98) of 28 April 2003. Available from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-60898%22%5D%7D> (accessed: 24.02.2020).
- Case of PJ and JH v. The United Kingdom (Application no. 44787/98) of 25 September 2001. Available from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-59665%22%5D%7D> (accessed: 24.02.2020).
- Case of S. And Marper v. The United Kingdom (Applications nos. 30562/04 and 30566/04) of 4 December 2008. Available from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-90051%22%5D%7D> (accessed: 24.02.2020).
- Case of Sciacca v. Italy (Application no. 50774/99) of 11 January 2005. Available from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-67930%22%5D%7D> (accessed: 24.02.2020).
- Case of Uzun v. Germany (Application no. 35623/05) of 2 September 2010 Available from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-100293%22%5D%7D> (accessed: 24.02.2020).
- Case of X and Y v. The Netherlands (Application no. 8978/80) of 26 March 1985. Available from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-57420%22%5D%7D> (accessed: 24.02.2020).
- Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols Nos. 11 and 14 supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16. Available from https://www.echr.coe.int/Documents/Convention_ENG.pdf (accessed: 24.02.2020).
- Dzhuzha, O. M., Savchenko, A. V., Cherniei, V. V., eds. (2016). Scientific and Practical Commentary to the Criminal Code of Ukraine. Kyiv: Yurinkom Inter.
- Fourth Section Decision as to Admissibility of Application no. 36505/02 by Carl Wade August against the United Kingdom. Available from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-23012%22%5D%7D> (accessed: 24.02.2020).
- Instruction “On organizing unspoken investigative (search) actions and using their results in criminal proceedings” of November 16, 2012 no. 114/1042/516/1199/936/1687/5. Available from <https://zakon.rada.gov.ua/laws/show/v0114900-12> (accessed: 24.02.2020).
- Judgment of Irpin City Court of Kyiv Region, case no. 367/1464/18. Available from <https://ip.ko.court.gov.ua/sud1013/> (accessed: 24.02.2020).
- Judgment of Prydniprovskiy District Court of Cherkasy of April 25, 2016, case no. 711/1912/13-k. Available from <https://youcontrol.com.ua/ru/catalog/court-document/57378042/> (accessed: 24.02.2020).
- Judgment of Prydniprovskiy District Court of Cherkasy of March 23, 2017, case no. 711/10887/16-k. Available from <https://youcontrol.com.ua/catalog/court-document/65598556/> (accessed: 24.02.2020).
- Kondratov, D.Yu. (2012). The questions of qualifications of violation of privacy of correspondence, public-call talks, telegraph or other correspondence, that passed communication means or through a computer. Public Law, 3 (7), 144 – 150.
- Kondratov, D.Yu. (2015). Correspondence Secrecy as the Crime Object Under the Art. 163 of the Criminal Code of Ukraine. Bulletin of the Criminological Association of Ukraine, 1 (9), 94-107.
- Law of Ukraine (1997). On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the First Protocol and Protocols Nos. 2, 4, 7 and 11 to the Convention” of July 11, 1997 no. 475/97-VR. Available from <https://zakon.rada.gov.ua/laws/show/475/97-%D0%B2%D1%80> (accessed: 24.02.2020).
- Law of Ukraine (2003). On Telecommunications of November 18, 2003 no. 1280-IV. Available

from <https://zakon.rada.gov.ua/laws/show/1280-15> (accessed: 11.03.2020).

Law of Ukraine (2006). On the Enforcement of Judgments and the Practice of the European Court of Human Rights of February 23, 2006 no. 3477-IV. Available from <https://zakon.rada.gov.ua/laws/show/3477-15> (accessed: 24.02.2020).

Law of Ukraine. (1984). The Code of Ukraine on Administrative Offenses of December 07, 1984 no. 80731-X. Available from <https://zakon.rada.gov.ua/laws/show/80731-10> (accessed: 11.03.2020).

Law of Ukraine. (1996). The Constitution of Ukraine of June 28, 1996 no. 254k/96-VR. Available from http://search.ligazakon.ua/l_doc2.nsf/link1/Z960254K.html (accessed: 11.03.2020).

Law of Ukraine. (2001). Criminal Code of Ukraine of April 05, 2001 no. 2341-III. Available from <https://zakon.rada.gov.ua/laws/show/2341-14> (accessed: 11.03.2020).

Law of Ukraine. (2003). The Civil Code of Ukraine of January 16, 2003 no. 435-IV. Available from <https://zakon.rada.gov.ua/laws/show/435-15> (accessed: 11.03.2020).

Law of Ukraine. (2003). The Penal Code of Ukraine as of July 11, 2003 no. 1129-IV. Available from <https://zakon.rada.gov.ua/laws/show/1129-15> (accessed: 11.03.2020).

Law of Ukraine. (2012). Criminal Procedural Code of Ukraine of April 13, 2012 no. 4651-VI. Available from

<https://zakon.rada.gov.ua/laws/show/4651-17> (accessed: 11.03.2020).

Malone v. The United Kingdom (Application no. 8691/79) of 02 August 1984. Available from [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-57533%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57533%22]}) (accessed: 24.02.2020).

Order of the Ministry of Internal Affairs of Ukraine (2008). Order to receive information on the subscribers of mobile communication operators, its processing, accounting and use, of February 12, 2008 no. 64. Available from <https://zakon.rada.gov.ua/laws/show/z1117-13> (accessed: 24.02.2020).

Order of the Security Service of Ukraine (2016). Regulation on the automated information and reference system of the Department of Operational and Technical Measures of the Security Service of Ukraine of April 26, 2016 no. 026. Available from <https://zakon.rada.gov.ua/laws/show/z0910-19> (accessed: 24.02.2020).

United Nations General Assembly (1948). Universal Declaration of Human Rights of December 10, 1948. Available from <https://www.un.org/en/universal-declaration-human-rights/> (accessed: 24.02.2020).

United Nations (2007). United Nations Convention on the Use of Electronic Communications in International Contracts. New-York: United Nations Publication.

Yednak, I. (2017). Structural peculiarities of the art. 163 of the Criminal Code of Ukraine «The confidentiality violation of mailing, phone calls, telegraphic or other kinds of correspondence that are sent via mass media or computer. Actual Problems of Law Issue 3 (11), 148 – 154.