правопорушень, за останні п'ять років, найбільшу частку жінок, порівняно з чоловіками, засуджено за вчинення злочинів проти основ національної безпеки України – 55,7 %. При чому, у жодній з інших груп кримінальних правопорушень сукупно, кількість засуджених жінок не переважає кількості чоловіків. Така перевага жінок складається в основному за рахунок вчинення ними злочину, передбаченого ст.110 КК «Посягання на територіальну цілісність і недоторканність України», оскільки серед 533 осіб, засуджених за вчинення цього злочину, за період 2016-2020 рр., було 343 жінки (64,4 %). Тенденції до вищезазначеної переваги почалися з 2018 р., коли частка жінок склала 71 %, і продовжилась у 2019 р. (72 % жінок) та 2020 р. (72 % жінок).

Ключові слова: *кримінологічна характеристика, жіноча злочинність, структура жіночої злочинності.*

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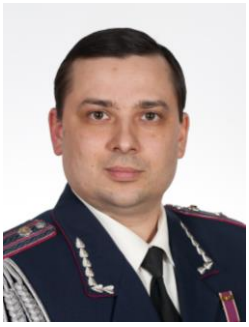

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FOREIGN EXPERIENCE OF CRIMINAL LEGAL PROTECTION OF PRIVACY

Abstract. The authors have studied international practice, as well as the experience of some foreign member states of the European Union in criminal law protection of privacy. The peculiarities of regulating the objective features of the criminal offense of "Violation of privacy" in the Criminal Code of Ukraine, as well as in the criminal law of the United States, the French Republic, Switzerland, the Kingdom of Spain, Poland, Bulgaria.

They emphasized the multifaceted nature of the right to privacy in accordance with the provisions of international human rights law, as well as the need to improve domestic legislation in this area through the introduction of unified terminology.

Keywords*: privacy, violation of privacy, violation of the inviolability of the home, criminal offenses that infringe on privacy, confidential personal information.*

Relevance of the study. The urgency of scientific and theoretical development of the selected issues is primarily due to the urgent need to ensure proper criminal and legal protection of privacy in Ukraine in accordance with generally accepted international practice, as well as taking into account foreign experience in this field. In addition, the results of the analysis of official statistical reports on the results of the investigation of criminal offenses under Article 182 of the Criminal Code of Ukraine "Violation of the right to privacy" show that only a few percent of them were sent to court with indictments. In particular, in the period from 2016 to 2020, 968 such criminal proceedings were opened in Ukraine and only 39 (4 %) of them were sent to court with an indictment, namely: in 2016 – 141 criminal proceedings were opened under Art. 182 of the Criminal Code of Ukraine, of which 4 (3 %) were sent to court with indictments; in 2017, 151 and 0 (0 %), respectively; in 2018 – 177 and 1 (0.5 %); in 2019 – 210 and 23 (11 %); in 2020 – 289 and 11 (4 %) [1]. Therefore, the problems of criminal law protection of privacy are not only scientific but also practical interest, due to the modern

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needs of domestic law enforcement practice.

Recent publications review. Scientists such as O. Horpynyuk, Yu. Demyanenko, I. Korol, Ye. Lashchuk, S.. Lykhova, I. Prysyazhnyuk, O. Sosnina and others have made a considerable contribution to the study of the issue of criminal-legal protection of privacy. At the same time, some issues of application of domestic law on criminal liability for invasion of privacy have not yet found a clear solution in the science of criminal law or law enforcement practice, which necessitates their further study.

The article objective is to substantiate proposals for improving domestic legislation on criminal liability in this area based on the results of analysis of generally accepted international practice, taking into account the achievements of the doctrine of criminal law and foreign experience in criminal law protection of privacy.

Discussion. For the first time in the world, the legal model of the right to privacy was formed in 1928 in the practice of the US Supreme Court thanks to the speech of Judge Louis Brandeis in the case of Olmsted v. USA, in which the Court held that interception of information without physical violation, with the dissenting opinion that "the right to be alone" is the most universal of the rights most valued by all civilized people [2]. It should be noted that almost forty years before that, Louis Brandeis, along with another famous American lawyer Samuel Warren, made one of the first attempts to define this right in his joint publication "Right to privacy" (1890) [3].

After the Second World War there was a legal formation of the right to privacy at the international level with the proclamation of it in Art. 12 of the Universal Declaration of Human Rights (1948): "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence; reputation. Everyone has the right to protection of the law against such interference or encroachment" [4], as well as in Art. 17 of the International Covenant on Civil and Political Rights (1966) [5]. In the European legal tradition, the current scope and content of the concept under study is reflected in the provisions of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) and the practice of its application. In particular, its main content is enshrined in Article 8 of the Convention on the Right to Respect for Private and Family Life, in particular the right of everyone to respect for their private and family life, housing and correspondence. The second part of the analyzed article prohibits interference with the exercise of this right by public authorities, while allowing the possibility of such interference in exceptional cases when it is carried out in accordance with law and is necessary in a democratic society for national and public security or economic well-being. riots or crimes, to protect health or morals or to protect the rights and freedoms of others [6]. Today, the constitutions of almost every country in the world guarantee the right to privacy at the national level. The Basic Law of Ukraine is no exception in Art. 32 enshrines the constitutional right of a person to the inviolability of his personal and family life [7].

In the context of the problem we are considering, it should be noted that scholars rightly emphasize the multifaceted nature of the right to privacy in accordance with the provisions of Art. 30–32 of the Constitution of Ukraine [8, p. 47], as well as the need to improve domestic legislation in this area through the introduction of unified terminology. In particular, the proposal of K. Rezvorovych to replace the definition of "right to privacy" in the normative legal acts of Ukraine with the definition of "the right to private and family life" in order to harmonize the relevant provisions of normative legal acts of different legal force regulating personal life relations and approximation of domestic legislation to European standards [9, p. 99]. Given the specific research purpose, we consider the most optimal research algorithm, which involves clarifying the objective features of the criminal offense under Art. 182 of the Criminal Code of Ukraine "Violation of privacy", establishing the peculiarities of criminal liability for violation of privacy in some foreign countries of the European Union and, finally, the formulation of proposals to improve criminal protection of privacy in Ukraine. According to the current Criminal Code of Ukraine (hereinafter – the Criminal Code), liability for illegal collection, storage, use, destruction, dissemination of confidential personal information or illegal alteration of such information, except as provided by other articles of this Code, Article 182 "Violation of privacy". However, this title of the article is not fully consistent with its disposition, which reflects only the informational aspect of privacy. Thus, the proposal of OP deserves support. Gorpyniuk to state the title of Article 182 of the Criminal Code of Ukraine in the following wording: "Violation of the inviolability of personal information" [10, p. 182].

The analysis of the forms of encroachments provided for in the disposition of Part 1 of Art. 182 of the Criminal Code of Ukraine, namely: collection, storage, use, destruction, dissemination, change of confidential information about the person. A reference to the reference literature, in particular, the explanatory dictionary of the Ukrainian language, made it possible to establish that the word "gathering" is identified with the action on the meaning of "collect", which is defined as putting something together in one place; to accumulate something in one place, etc. [11]. In accordance with Part 1 of Art. 12 of the Law of Ukraine "On Personal Data Protection" collection of personal data is defined as part of the process of their processing, which involves actions to select or organize information about an individual [12]. In the modern science of criminal law, this issue also remains controversial. In particular, some scholars interpret the concept of "collection" as a process of searching, obtaining confidential information in any illegal way [13, p. 46]; others – as a result of this process, i.e. the fact of obtaining (availability) of such information.

Proponents of the second approach are S. Lykhova and I. Zinchenko, who define the illegal collection of confidential information about a person as an unauthorized subject receiving information about the private life of another person, which contains his personal and family secrets without his consent (in any way) [14, p. 271; 15, p. 77], as well as many other scientists (O. Horpynyuk, M. Melnyk, etc.) [10, p. 125; 16, p. 450]. In the context of the researched problems, the proposals of scientists to recognize the observation of another person's private life are of interest [17, pp. 19-20], as an independent way of violating the right to privacy, regardless of whether this information was recorded or not [18, p. 178].

As an argument in support of these proposals, it should be noted that the Prydniprovsky District Court of Cherkassy found guilty of committing a criminal offense under Article 182 of the Criminal Code of Ukraine, a person who for several months illegally listened to (without recording) confidential information about their neighbors manufactured listening device [19].

The analysis of the existing positions in the science of criminal law on the definition of "illegal collection of confidential information about a person" gives grounds to conclude that the criminal offense is considered complete from the moment the perpetrator receives such information, and not from the beginning of the search. In connection with the above, we propose in the text of the disposition of Art. 182 of the Criminal Code of Ukraine, the word "collection" should be replaced by "receipt".

With regard to actions covered by the concept of "illegal dissemination of information", the relevant clarifications on this issue were provided by the Plenum of the Supreme Court of Ukraine (hereinafter - the Supreme Court) in Resolution № 1 of 27 February 2009 on Judicial Practice honor of an individual, as well as the business reputation of individuals and legal entities", from the content of which it can be concluded that the fact of dissemination of information can be stated if it became known to a third party [20]. This understanding of the studied category has been confirmed in the legal literature and in the works of many scholars [15, pp. 79-80; 16, p. 558]. In the context of the studied issue it should be noted that the interpretation of the concept of "dissemination of confidential information" proposed in the science of criminal law, as well as in the explanations of the Supreme Court, which is essentially reduced to its communication, at least to a third party more consistent with the meaning of "disclosure". As an argument in support of this position, we note that according to the Academic Interpretive Dictionary of the Ukrainian language, the word "distribute" means – to make known to many, to distribute or sell something to many; to distribute [11]. That is, in the sense of the word "disseminate" confidential information must be communicated to many persons, not one, third parties. There, the word "confidential" is interpreted as not subject to publicity, trusting, secret [11]. Based on the above, we believe that the legislator's use of the word "distribution" in the disposition of Art. 182 of the Criminal Code of Ukraine is incorrect, because its semantic load does not fully meet the purpose of criminal law protection of confidential information, which, in fact, should be protected from publicity. The above allows you to justify the proposal to replace the disposition of Art. 182 of the Criminal Code of Ukraine the word "distribution" to "disclosure". In turn, "disclosure of confidential information" should be understood as the actions of the perpetrator, as a result of which confidential information became known to an unauthorized person. For example, in Art. 250.12 of the Model Criminal Code of the United States "Violation of privacy" provides for liability for illegal eavesdropping or surveillance, and for violation of "privacy of messages" (illegal interception, disclosure without the consent of the sender or recipient of the existence or content of the message) [21, pp. 189-190].

Unlike US law, criminal law protection of privacy in European countries has its own specifics. For example, not one article is devoted to crimes against privacy, personal appearance and housing, but a separate chapter X in Book II of the Criminal Code of the Kingdom of Spain, consisting of Chapter I "On the disclosure and disclosure of secrets" (Articles 197-201) and Chapter II "On violation of the inviolability of housing, premises of legal entities and premises of public institutions" (Articles 202-204) [22, pp. 104-107]. It should be noted that in accordance with Art. 197 of the Criminal Code of the Kingdom of Spain, a criminal offense is the use of technical means to listen to the transmission, recording and reproduction of sound or images in order to violate the privacy of another person [23, p. 104]

Polish criminal law (Chapter XXIII "Crimes against Freedom" of the Criminal Code of the Republic of Poland) provides for liability for significant violation of the privacy of another person, committed through constant harassment of this person or his closest person (Article 190a); for receiving an image of a naked person or a person during sexual intercourse, using violence, unlawful threat or deception against him for this purpose, or disseminating such an image without the consent of the person (Article 191a); as well as for breaking into someone else's house, apartment, flat, room or fenced area, or for not leaving this place against the requirements of the authorized person (Article 193) [23, pp. 76-77]. In turn, the criminal law protection of the information aspect of privacy is devoted to Art. 267 of this Code, located in Chapter XXXIII "Crimes against the protection of information", which provides for the responsibility of a person for unauthorized access to information not intended for him, opening a closed letter by connecting to a telecommunications network or breaking or bypassing special protection of such information ; for gaining access to part or all of the information system; for embedding or using an eavesdropping, visual device or other device or programming for the purpose of obtaining such information, as well as for disclosing it to another person.

It should be noted that the criminal law protection of privacy, secrecy of correspondence, telephone conversations, postal, telegraphic or other messages, inviolability of housing is carried out by certain rules in the legislation of many other member states of the European Union. For example, in Articles 226-1, 226-2 and 226-4 of the Criminal Code of the French Republic. Section III "Criminal acts against honor and in the secret and private sphere" of the Swiss Criminal Code also contains Art. 179 "Violation of the secrecy of correspondence", Art. 179 bis "Eavesdropping and recording of other people's conversations", Art. 179 ter "Illegal recording of conversations", Art. 179 quarter "Violation of the secret and private sphere through the use of recording and recording equipment" provides for liability for surveillance with such equipment or recording facts from the private sphere of another person, which should not be available to everyone without his consent, as well as for recording or notification to a third party such facts, keeping a record or providing access to it to a third party [24, p. 201-202]. Criminal liability for illegal disclosure of someone else's secret, which can disgrace someone's good name, provided for in Article 145 of the Criminal Code of Bulgaria, for violating the inviolability of housing, premises or vehicle - in Article 170, and for violating the inviolability of correspondence – under Art. 171 of this code [25, p.113, 127-128; 26].

Conclusions. The presented analysis of the criminal legislation of some foreign member states of the European Union on the criminal law protection of privacy can be used to improve the legal structure of the criminal offense under Art. 182 of the Criminal Code of Ukraine, in particular, its wording in the new wording: "1. Illegal receipt, storage, use, destruction, disclosure of confidential information about a person or illegal alteration of such information, except as provided by other articles of this Code".

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

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ЗАРУБІЖНИЙ ДОСВІД КРИМІНАЛЬНО-ПРАВОВОЇ ОХОРОНИ НЕДОТОРКАННОСТІ ПРИВАТНОГО ЖИТТЯ

Анотація. У статті досліджено міжнародну практику, а також досвід деяких зарубіжних країн-учасниць Європейського Союзу щодо кримінально-правової охорони недоторканості приватного життя. Встановлено особливості регламентації об'єктивних ознак складу

кримінального правопорушення «Порушення недоторканості приватного життя» в Кримінальному кодексі України, а також у кримінальному законодавстві Сполучених Штатів Америки, Французької Республіки, Швейцарії, Королівства Іспанія, Республіки Польща, Республіки Болгарія. За результатами проведеного аналізу наявних наукових досліджень, довідкової літератури, відповідних положень чинного законодавства України про кримінальну відповідальність за порушення недоторканості приватного життя, а також судової практики додатково обґрунтовано потребу щодо удосконалення нормативно-правового визначення їх кримінально протиправних форм, запропоновано нову редакцію ст. 182 КК України «Порушення недоторканості приватного життя»: «1. Незаконне отримання, зберігання, використання, знищення, розголошення конфіденційної інформації про особу або незаконна зміна такої інформації, крім випадків, передбачених іншими статтями цього Кодексу».

Наголошено на багатоаспектності права на недоторканість приватного життя відповідно до положень міжнародних нормативно-правових актів у сфері прав людини, а також на потребі удосконалення вітчизняного законодавства у цій сфері шляхом впровадження уніфікованої термінології.

Ключові слова: *приватне життя, порушення недоторканності приватного життя, порушення недоторканності житла, кримінальні правопорушення, що посягають на недоторканність приватного життя, конфіденційна інформація про особу.*

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CRIMINAL OFFENCE AND PUNISHMENT IN THE FIELD OF TRANSPLANTATION: A COMPARATIVE ANALYSIS

Abstract. In modern medicine, the health or death of one person is effectively used to save the life or treatment of diseases of another, in science, cosmetology, pharmacology. This is a special method of surgical intervention, which consists in the removal of organs and (or) other anatomical material from the donor with simultaneous implantation of the recipient. Medical progress is inevitably accompanied by legal, economic, social and moral factors. Undoubtedly, from a moral and social point of view, the goal of saving the life and health of the person (recipient) is noble, but the deterioration of health or deprivation of life of the donor – legally ambiguous, even despite his wishes or consent, because undoubted damage to life and health. In addition, cases of consumer attitudes towards the human body have led to the emergence and spread of illegal transplant activities.

The article notes the causes and conditions of the emergence and spread of illegal activities in the field of transplantation, provides known forms, methods and participants. Based on a comparative analysis of legislative models of crimes and punishments in CIS countries with identical legal systems, attention is focused on the need to unify the legal definition of forms and types of criminal activity in the field of transplantation, in particular, ensuring interaction and cooperation with law enforcement agencies. Ways of counteracting crimes in the field of transplantation are considered. Ways of borrowing positive international experience.

Keywords: *illegal activity in the field of transplantation, donation, organs and other human anatomical material, crime, punishment.*

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