Law. Human. Environment

Journal homepage:
Law. Human. Environment, 13(2), 55-63

UDC 343.3/.7:[343.45+ 343.534] (477)(043.3)
DOI: 10.31548/law2022.02.007

"Disclosure" of Restricted Information and Related Terms of Criminal Law: Interrelation of Concepts

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Article's History:

Received: 12.01.2022
Revised: 27.03.2022
Accepted: 24.04.2022

Abstract

The relevance of the publication is explained by the fact that one of the main factors of the inefficiency of existing criminal law means of protection of information with limited access is an imperfection of the text of the current Criminal Code of Ukraine, as evidenced by the lack of a systematic approach of the legislator to the legal structure of "disclosure of information". The purpose of the research is to conduct a comparative legal analysis of the normative regulation of disclosure of information with limited access and tangential terms in criminal law for technical and legal improvement of the Criminal Code of Ukraine. To achieve it, the methods of system-structural analysis, semantic, dogmatic, Aristotelian and classification methods were used. The research considers the correlation of the content of all criminal law terms relating to the concept of disclosure, which are roughly divided into several groups: alternative acts (collection, receipt, modification, destruction, etc.), collected acts (violation of secrecy/prohibition, use), synonymous acts (distribution, disclosure, provision of access, transmission). The alternative acts of "collection" and "possession" have been identified as preparatory to "disclosure" if there is a corresponding purpose for the disclosure of the collected information, and, thus, they cannot be included in the criminal law content of the act of "disclosure" itself. It has been established that the existence of two mutually exclusive (related) legal elements of criminal offences – wrongful acquisition of information (a "truncated element" which does not give legal significance to further actions of storage, dissemination or other use of information) and disclosure (by a person who has lawfully acquired the information) – may be promising by addressing the relevant technical and legal deficiencies. The "disclosure" of relevant information has been demonstrated to constitute a "violation of secrecy" and a "violation of the prohibition on using information", but such definitions should not be used in the text of the criminal law due to their lack of specificity. Established that the content of the concepts of "disclosure", "spreading", and "dissemination" of information is identical. The study is recommended for use in improving Ukraine's criminal law and for law enforcement officials in qualifying

Keywords: classified information, dissemination of information, collection of information, modification of information, spreading of information, transfer of information, provision of access to information

Suggested Citation:

Prokopchuk, T.Y. (2022). "Disclosure" of restricted information and related terms of criminal law: Interrelation of concepts. *Law. Human. Environment*, 13(2), 55-63.

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Introduction

The level of functioning of the legal system in any state depends on both the improvement of the mechanism of legal regulation and the mechanism of law enforcement. Accurate translation of normative provisions into specific subjective rights and legal obligations, determining the grounds for criminal prosecution of a person is one of the guarantees of the rule of law. The central place among the means that will contribute to this is the legal technique. In particular, many dispositions of articles of the Special Part of the Criminal Code of Ukraine (hereinafter – the CCU) [1] refer to various infringements of information: "unlawful .... distribution of confidential information about a person" in part 1 of Article 182 of the CCU; "illegal disclosure, transfer or provision of access to insider information" in part 1 of Article 232-1 of the CCU; "illegal destruction", "illegal alteration" (Article 182 of the CCU), "unauthorised blocking, interception or copying of information" (Article 362 of the CCU), "illegal denial of access to information" (Article 171 of the CCU) etc. The legislator does not propose definitions of these definitions at the level of the criminal law, which establishes difficulties in law enforcement – the interpretation of these terms may lead to misclassification of a person's actions due to the wrong definition and resolution of competition, conflict or other relations of criminal law provisions. These are the problems that the study is designed to solve.

Aspects of compliance with legislative technique in terms of the normative establishment of criminal offences of disclosure of information with limited access have been considered in the works of many Ukrainian scholars. Thus, O.H. Semeniuk, in his monograph "Problems of Protection of State Secrets: Criminal Law and Criminological Aspects" (2017), analysed the correlation between the definitions "disclosure" and "transfer" of state secrets [2]. In addition, O.V. Sosnina in her PhD thesis "Criminal Liability for Violation of Privacy" (2017) explored terminological flaws in the dispositions of Article 182 of the CCU [3], and I.V. Yedynak in the PhD thesis "Comparative Characteristics of Criminal Liability for Breach of Secrecy of Correspondence, Telephone Conversations, Telegraph or other Correspondence Transmitted by Means of Communication or Computer, under the Laws of Ukraine and the Republic of Poland" (2021) – similar problems under Article 163 of the CCU [4]. Analysis of individual concepts used in Article 232-1 of the CCU is contained in the collaborative publication of A.A. Dudorov, D.V. Kamensky "Insider Information and Criminal Law: From American Realities to European Perspectives" (2019) [5]. However, these studies concerned the provisions of criminal legislation on specific types of restricted information. A definite level of generalisation of technical and legal shortcomings of the description of the act can be identified in the study by T.Yu. Vyslotska, "Criminal Law Protection of Secrets in Ukraine" (2018) [6], but it lacks detail and specificity.

However, to ensure the consistency of criminal law, a comprehensive study of the relationship between all the terms used in criminal law regarding the "disclosure" of information with limited accessibility is necessary, which the author has conducted for the first time and the results of which are highlighted below.

The purpose of the study is to perform a comparative legal analysis of the normative regulation in the criminal law of the manifestations of disclosure of restricted information and related terms for the technical and legal improvement of the CCU. To achieve the purpose of the study the following objectives were accomplished: the system-structural analysis of tangential transversal and local definitions of the current criminal law and their division into groups was performed, the lexical meaning of the analysed Ukrainian words was determined, the content of correlative terms in the scientific literature was studied, the specific features of liability for disclosure of information with limited access were identified.

The scientific originality of the results is that the research is the first attempt to comprehensively, using modern methods of cognition, considering the latest advances in criminal science to develop conceptual ways of further development of the text of the criminal law of Ukraine in terms of using the term "disclosure" and related concepts.

Results and Discussion

The problem of defining the concept of disclosure [*T.P.* – as a method of committing a crime] is complicated by the inconsistency of terminology, as different definitions are used in scientific sources, such as "spreading", "distribution", "disclosure", "announcement", "communication", "acquaintance", "transfer", "provision" and "leakage" of information, which requires etymological interpretation of the said terminology [7, p. 106]. Thus, scientists appropriately note that such terms as "sale", "transfer", "distribution", and "spread" of specific items or information should be unified [8, p. 150]. Such a problem at the scientific level is caused by technical and legal shortcomings of the criminal law, although the terminology of the Special Part of the CCU should be distinctive, precise, readable, and comprehensive, which is achieved primarily by the correct use of words, according to their specific meaning [9, p. 48].

Instead, in none of the 11 cases (Articles 132, 145, 159, 168, part 2 of Article 209-1, Article 231, Article 232, part 1 of Article 422, Article 328, Article 381, Article 387 of the CCU [1]) the use of the term "disclosure" as a description of an act in the text of the criminal law does not provide its definition and does not provide a list of acts that should be considered disclosure. In addition, this definition is used along with similar terms (distribution, spreading, transferring, providing access, etc.). Consider the correlation of the content of all related terms with "disclosure".

1. ***Alternative actions: collection, acquisition, alteration, destruction***

The legislator, along with the term "disclosure", uses other terms to denote related (sometimes alternative) acts that denote unlawful behaviour in handling restricted information: collection, acquisition, alteration, destruction, etc. In particular, part 1 of Article 132 of the CCU states: "Disclosure ... by an auxiliary employee who has independently *obtained* information ... of information about the medical examination ..." [1]. At the level of this legal composition of the criminal offence, the legislator clearly distinguishes between such acts as **disclosure** and **obtaining** information, and the latter in time precedes the disclosure. According to Article 231 of the CCU, a person who has committed intentional *actions designed to obtain* information constituting a commercial or banking secret, with the purpose of disclosure or other use of this information, although the title of the research indicates "collection", shall be criminally liable. Thus, the legislator uses several different terms to denote the same concept – *an act that may precede disclosure* – collection (an imperfect form of the verb); obtaining (a perfect form of the verb); actions designed to obtain (emphasising the incompleteness of the process designed to achieve a result).

An intermediate conclusion should be drawn that, at present, such actions are inherently preparatory to the "disclosure of information" if there is an appropriate purpose to publish the collected information. Thus, they cannot be included in the criminal law content of the act of "disclosure" but should be assessed as preparation for disclosure of information, and, accordingly, qualified concerning part 1 of Article 14 of the CCU. An exception is the existence of a distinct legal structure of the criminal offence of "collection" (for example, under Article 231 of the CCU), which may be established, in particular, by providing an appropriate alternative act in the relevant provision (the current CCU does not provide such an example). A similar conclusion can be reached regarding the illegal storage of restricted information (Article 182 of the CCU). However, as noted above, it would have been far better to have two mutually exclusive (related) legal elements of criminal offences – misappropriation of information (a "truncated element" which does not provide legal significance to further acts of storing, disseminating, otherwise using information) and disclosure (by the person who lawfully obtained the information).

Other types of unlawful handling of restricted access information include "unlawful destruction", "unlawful alteration" (Article 182 of the CCU), "unauthorised blocking, interception or copying of information" (Article 362 of the CCU), "unlawful denial of access to information" (Article 171 of the CCU), "non-provision of information" (Article 232-2 of the CCU), "provision of deliberately false information" (Articles 222, 351 and 351-1 of the CCU), "deliberate submission of false information or untimely submission of information" (Article 376-1 of the CCU) and others. These actions are not included in the criminal-law content of the concept of "disclosure" either, as they are essentially designed to accomplish quite different unlawful purposes, not related to the violation of the restricted access to information regime.

1. ***Collective acts of "violation of secrecy/prohibition", "usage"***

In addition, at the level of criminal law, there are "generalised" terms that may cover criminal offences of disclosure of information ("violation of secrecy", "unlawful use", "violation of the prohibition of use"). Thus, the disposition of part 1 of article 159 of the CCU states: "Deliberate violation of the secrecy of the vote during an election or referendum, which resulted in the disclosure of the content of the will of a citizen who voted in an election or referendum". Considering the contents of the disposition, one can argue that disclosure is a manifestation (type) of violation of secrets (in the case of Article 159 of the CCU only, but this cannot be extended to all cases of "violation of secrets" under the CCU (Articles 163, 397 of the CCU).

These definitions, due to their lack of specificity, not only give rise to problems in their application in practice but cause lively discussions about their content in the scientific literature. For example, D.Yu Kondratov notes that the act under Article 163 of the CCU consists only of illegal acquaintance with the content of the relevant information. Further actions regarding the storage, disclosure, publication, and use of information obtained as a result of illegal acquaintance are more socially dangerous and therefore go beyond the objective side of Article 163 of the CCU of 2001 [10, p. 125], and the fact of correspondence [10, p.131]. Instead, according to S.Ya. Lykhova, the provision contained in Article 163 of the CCU should be considered special to the provision contained in Article 182 of the CCU [11, p. 34]. A similar opinion is expressed by Yu.I. Demyanenko [12, p. 18], T.Yu. Vyslotska [6, p. 81], and O.P. Horpyniuk [13, p. 127]. In this context, I.V. Yedynak notes humorously that the validity of this decision [*T.P.* – the use of the term "violation"] is questionable, although the decision itself is logical as if the criteria and boundaries of the protected secrets are not clearly outlined in Article 163 of the CCU, it is difficult to expect certainty in socially dangerous actions [14, p. 151].

In the author's opinion, the position of scientists, who believe that according to Article 163 of the CCU of 2001, one of the types of acts (ways of secrecy violation) is the transfer of information, cannot be unequivocally rejected, as in this case the secrecy regime is violated. However, to this extent, Kondratov's opinion is valid, as the author associates the criminal prohibition with the relevant provisions of civil law and therefore concludes that the "violation of secrecy" occurs as soon as the subject of the criminal offence becomes aware of the content of the secret information.

However, the author of the research has a slightly different position. Thus, "violation of secrecy" means that an external party becomes acquainted with its content, i.e. the secret nature of the information is negated. However, this person may be not only the subject of the criminal offence but the recipient (the person to whom the subject of the criminal offence discloses this information), and, therefore, it may consist not only of acquaintance (possession) of this information but its disclosure.

A similar conclusion can be made considering the content of "violation of secrecy" under Article 397 of the CCU. This provision is designed to guarantee the right to secrecy in the provision of legal assistance. The parties to the relevant legal relations are the client and the advocate, and the subject of secrecy may be both information about the client and the content of the advocate's advice, consultations, explanations, documents compiled by the lawyer, etc. The relevant information may become legally known (without violating the regime of attorney-client privilege) to unauthorised persons (for example, employees of the central executive body implementing the state policy in the field of prevention and counteraction to legalisation (laundering) of proceeds of crime, terrorist financing and financing weapons of mass destruction proliferation in case of notification of an attorney about the financial transaction by part 7 Article 22 of the Law of Ukraine "On Advocacy and Lawyering Activity") [15]. However, if the relevant subjects of the criminal offence disclose the information entrusted to them to persons outside the regime of protection of the attorney-client privilege or not for the purposes defined by law, it will be a violation of the attorney-client privilege in the form of disclosure.

Schematically depict the logical scope of "violation of secrecy" and "disclosure" (Fig. 1).

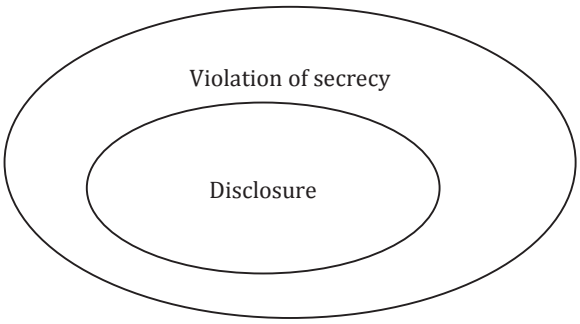

Figure 1. Correlation of the terms "violation of secrecy" and "disclosure" in the criminal law of Ukraine

An additional argument for this position could be the fact that, according to the disposition of part 1 of Article 159 of the CCU, disclosure is the only (criminally punishable) way of violating the secrecy of the vote. Thus, K.P. Zadoya notes that on the objective side of the criminal offence under part 1 of Article 159 of the CCU, is committed by violating the secrecy of the vote during elections, committed in the only *way* defined by law – by disclosing the content of the will of the citizen, which should be understood as bringing the guilty party to the attention of at least one other personal information about the content of the will of the victim, committed against the will of the latter. Not qualified under part 1 of Article 159 of the CCU case when a person against the will of a citizen who took part in the elections, learned about the content of their will but subsequently did not disseminate this information [16, p. 92]. In addition, notably, technically, this behaviour indicates a violation of the secrecy of the vote due to the legislative will it is not criminalised (unlike similar behaviour under Article 163 of CCU).

In general, the construction of the act as a "violation of secrecy" is unsuccessful, as it is not clear which type of encroachment the legislator is referring to – whether it is referring to acquaintance information or its disclosure to third parties etc. In the author's opinion, such wording should be excluded from the titles and dispositions of the relevant articles (Articles 159, 163, 397 of the CCU) as legally unspecific, replacing them with one or more specific types of encroachment on information: collection/acquaintance/possession or disclosure, etc. Therewith, such wording should be excluded from the titles of research if there is only one type of encroachment. However, if there are several of them (for example, collection and disclosure), it is permissible to use such a phrase at the level of the title of the article to save the language in criminal law.

The above conclusion coincides with the position embodied in Section 7.5 "Crimes and misdemeanours against the promotion of justice and law enforcement agencies" of the Draft CCU [17], as the current wording of Article 397 of the CCU in terms of violation of secrecy was replaced by "disclosure of lawyer secrecy": "A party who, being obliged to the secrecy of attorney, exposed it – has committed a misdemeanour." But the current wording of part 1 of Article 159 of the CCU, unfortunately, has not yet undergone similar changes to the draft of the CCU: "A person who violated the secrecy of voting during an election or referendum, which was expressed in the disclosure of the contents of the will of another voter or referendum participant – has committed a misdemeanour" (Article 4.11.14 of the draft CCU), as in Article 163 of the CCU.

Regarding the definition of "violation of the prohibition to use" (part 1 Article 232-1 of the CCU), it is the author's opinion that it includes disclosure of insider information, since the corresponding provision in Article 146 of the Law of Ukraine "On Capital Markets and Organized Commodity Markets" [18] explicitly states the prohibition to transfer insider information or provide access to it to other persons, except for the disclosure of information in the performance of professional, employment or official duties and other cases provided for by law. In addition, it concerns the execution of transactions and providing recommendations on financial instruments in respect of which the person has insider information until the disclosure of such information.

The last two manifestations are not a disclosure of information in the literal sense, furthermore, the first type of behaviour is criminalised under part 2 of Article 232-1 of the CCU). But, again, the construction of "violation of the prohibition on use" is vague, it would be much better to specify two alternative acts "disclosure of insider information" and "providing advice on financial instruments for which it holds insider information".

Thus, in the author's opinion, disclosure of the relevant information is a manifestation of a "violation of secrecy" (Article 159 of the CCU) and a "violation of the prohibition of the use of information" (Article 232-1 of the CCU) but it is not desirable to use such terminology in the text of the criminal law.

From the analysis of the description in the criminal law of the legal composition of the criminal offence under Article 231 of the CCU, it is evident that the legislator defines disclosure as a type of information use. In addition, this approach is supported in the scientific literature. Thus, O.E. Radutny observes no distinctions between using in the form of disclosure (Article 321 of the CCU) and disclosure (Article 232 of the CCU) at the level of objective signs of a crime [19, p. 133], their distinction is made considering the legality of the grounds for the subject's awareness of secret information under Article 232 of the CCU [20, p. 10]. The opinion on recognition of disclosure as a type of use is supported by S.O. Kharlamova in her dissertation research [21, p. 12].

Instead, at the level of Article 182 of the CCU, the legislator has already used two alternative concepts of "usage" and "spreading", which results in the opposite conclusion of the relevant scholars – the dissemination of information is not a manifestation of its use but refers to its distribution. Thus, O.V. Sosnina argues that in the disposition of Article 182 of the CCU all alternative ways of committing actions that constitute the objective side are indicated exhaustively, and the lexical interpretation of the term "dissemination" coincides with the interpretation of the term dissemination and disclosure [3, p. 104].

This distinction in the researchers' conclusions is again due to deficiencies in the legislative technique of the criminal law, in which various terms are used to describe acts, the content of which is not specified and harmonised, and which in various situations are used with different meanings (have different contents at the level of different legal elements of criminal offences).

Interestingly, regardless of the context (disposition of part 1 of Article 182 of the CCU), O.V. Sosnina states a different opinion – using is not possible without disclosure. As an example, the researcher cites the situation when the content of information is brought to its legal holder. She considers these actions illegal and obviously pursue an illegal purpose (for example, blackmail) [3, p. 104-105].

Particularly interesting in this context are the constructions of "transactions involving the use of information" (part 2 of Article 232-3 of the CCU) and "provision of recommendations based on information" (part 1 of Article 232-2 of the CCU).

While supporting the opinion that disclosure is a type of use, and, thus, rejecting the assertion that any use is inherent in the disclosure of information (along with the latter, it could be the provision of advice in secrecy, without disclosure of the content, the performance of transactions with acquired knowledge, which does not involve the disclosure of information to outsiders), the author still considers "usage" a rather vague terminology for criminal law use.

3. *Synonymous acts of "disclosure", "distribution", "spreading", "providing access", "transfer"*

O.M. Musychenko emphasises the prohibition in criminal law to use synonyms to denote a similar concept, phenomena that have various shades of meaning (so-called ideographic synonyms). Among them, in her opinion, should be chosen the one that has the most common meaning in the language and conveys the most precise meaning [22, p. 137].

Thus, at the level of criminal law, there is no clear distinction between the definitions of "disclosure" and "transfer" (Article 114, part 1, and Article 330 of the CCU), "distribution" (Article 114-2, part 1, Article 182 of the CCU), "spreading" and "providing access" (Article 232-3 of the CCU), "provision" (Article 256, part 1, of the CCU) and "dissemination" (Article 361-2 of the CCU). However, the issue must be answered as to whether this distinction is reasonable and required for criminal law since, in essence, all these acts involve the transfer (or potential transfer) of information from the subject of the criminal offence to an unauthorised person.

Consider the lexical meaning of the relevant words, the specifics of using the relevant terminology in the regulatory legislation, and their criminal law content about the relevant legal offences. According to the Great Dictionary of the Modern Ukrainian Language "to provide" – to allow using something [23, p.709], "to announce" – to expose, to make known, to disclose something [23, p. 826], "to transfer" – to give, to hand something, to inform, to inform [23, p. 906], "*to distribute*" – to distribute to many, *to spread* [23, p. 1098], "disclose" – to make public, to make known [23, p. 1238], "disclose" – to make available, to make known [23, p. 1247], "distribute" – to spread, *to transfer* [23, p. 1257-1258]. Thus, the authors of the dictionary use the verbs disclose and disclose as synonyms, and spread, distribute and transfer. In addition, note that the verb to disclose is explained through the noun "access". According to the Practical Dictionary of Synonyms of the Ukrainian Language, synonyms are to disclose and disseminate, publish, distribute, transfer [24, p. 388, 394].

Therewith, it is impossible not to notice the specific feature of the verb "to disclose" – it is used exclusively for particular data (information). Instead, the words "transfer", "provide", "disclose", and "disseminate" can refer to actions about objects or intangible objects (e.g., to disclose cards, pass a baton, give significance, spread a smell, etc.) If the last words are used

in the information context, then all these concepts will mean the transfer of particular information to another person(s).

Earlier, the author of this research performed a terminology analysis of the provisions of regulatory law in the field of information protection, and here are its results. There is no absolute uniformity of terminology – a total of seven distinct words and phrases are used in the regulatory legislation to denote relevant unlawful behaviour in the relevant field (disclosure, transmission, violation of secrecy, distribution, communication, unauthorised acts), of which the terminology of disclosure is used most frequently (66.67%). As for the designation of legitimate cases of disclosure of information with restricted access, nine different words are used (violation of secrecy, publication, edition, provision, transfer, distribution, disclosure, dissemination, promulgation), of which the most common are provision and edition (23.81% in total) [25, p. 170]. The term "disclosure" is used to refer to lawful conduct in only three cases. Therewith, in appropriate cases, this term is used to identify unlawful conduct (secret of pre-trial investigation, commercial secret, secret of private life) [25, p. 170]. It indicates the absence of terminological distinction between lawful and unlawful behaviour, as it is implemented for other types of information with restricted access – in 75% of cases [25, p. 170].

As for the criminal law content of the relevant terms, in general, all these terms denote the transfer of information with limited access from the subject of the crime to the addressee (specific or unspecified). A single law enforcement benchmark is provided in the Resolution of the Supreme Court in the panel of judges of the Second Trial Chamber of the Cassation Criminal Court of 17 July 2019 in Case No. 725/4771/17 (proceedings No. 51-9459km18) [26] regarding the distinction between "sale" and "disclosure" as forms of the act under Article 361-2 of the CCU. The Supreme Court notes that the unauthorised **sale** of restricted information should be understood as a paid or *free* transfer to at least one person who does not have access to this information, and distribution - as placement in an AS or computer network with *free access* to it or other actions that establish free access to it to an indefinite number of persons. Such conclusions are at least inconsistent with the content of parts 5 and 6 of Article 212-6 of the Code of Administrative Offenses [27], where the adjective free of charge is used for distribution and not for sale (it is precisely about the distinguishing feature, as all other signs of administrative offences under part 5 of Article 212-6 and part 6 of Article 212-6 of the Code of Administrative Offenses are identical).

A slightly different distinction is made by D.S. Azarov: "Dissemination covers paid and gratuitous transmission of this information, while sale covers only paid transmission; dissemination consists of the transmission of information to an indefinite, unlimited number of persons, while sale covers both one person and a significant number of them" [8, p. 149].

Both definitions are not flawless, as sale, as a general rule, does not mean gratuitous behaviour in criminal law, nor can it refer to an indefinite circle of persons, as it is a criminal transaction in which the parties are more or less identified with each other. Thus, even if a person has posted the obtained information on a specific Internet platform, which provides paid access to it for third parties, such users can be identified at least based on their authorisation on the platform, or even in case of non-cash transfer of funds (if the payment comes to the subject of the criminal offence personally from them, and not from the platform itself). Theoretically, there may be a case when authorisation is not required, and payment is not made explicitly – in this case, the identification of the addressee is difficult, but at least the subject of the crime is aware of their number, given the correlation between the price for information and the amount of money received. The crucial thing that both definitions agree on, however, is that dissemination is only possible to an indefinite, unlimited number of people. In the author's opinion, such meaning is given to the concept of "distribution" considering the necessity to distinguish these actions from "sale". If the legislator had used only one term, it would have referred to both a specific addressee and an indefinite circle, that is, the definition would be identical to disclosure.

The same conclusion applies to the correlation of "disclosure" with "dissemination". O.P. Horpyniuk's statement that disclosure is a narrower concept is incorrect, as it implies that the receiver is aware of the content of the information that is disclosed to them ("dissemination" is an action as a result of which information becomes known to an *indefinite* number of persons). As noted above, the definition of "dissemination" stated in paragraph 15 of the Resolution of the Plenum of the Supreme Court of Ukraine of 02/27/2009 No. 1 "On Judicial Practice in Cases of Protection of Dignity and Honour of an Individual, and Business Reputation of an Individual and Legal Entity" [28] is based on the coincidence of its content with disclosure (both to a specific addressee and an indefinite circle).

Thus, the real correlation of the identity of the content of the definitions "disclosure", "dissemination", and "distribution" can be depicted graphically as follows (Fig. 2). Once again, emphasise the artificial nature of the distinction between "distribution" and "sale" under Article 361-2 of the CCU, which is not solved by giving synonymous definitions various meanings. In addition, in the author's opinion, the term "sale" should not be used at the level of dispositions of the criminal law provisions of the Special Part of the CCU, which denote the disclosure of restricted information, since it is impossible to offer an alternative to it, which would denote a free transfer (except for such literal wording). Better to use a mercenary motive as a qualifying

feature. In such conditions, proving the criminal offence would be simplified – the court would not additionally have to establish the transfer of funds but would only have to prove a self-serving motive.

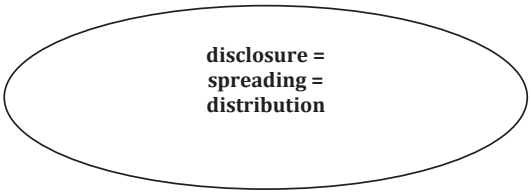

Figure 2. Correlation of the definitions "disclosure", "spreading" and "distribution" in the criminal law of Ukraine

When analysing the terms "disclosure" and "transfer" O.H. Semeniuk notes that if the term "transfer" can be attributed to the communication of any information [*T.P.* – and not only information], then "disclosure" is more suitable for the announcement of classified information. That is, the definition of "transfer" is broader in its content and includes actions to "disclose" information [2, p. 161]. Thus, in the text of the CCU "disclosure" is used only concerning information, while "transfer" refers to encroachment on human freedom (for example, Article 149 of the CCU), property (for example, Article 189 of the CCU), items withdrawn from civil circulation (for example, Article 263 of the CCU), etc. and "provision" (Article 159 of the CCU – election ballot; Article 210 of the CCU – budget loans; Article 256 of the CCU – premises, storage facilities, vehicles, etc.) This feature again should be relevant when deciding on one of these terms.

However, comparing these terms in the context of the dispositions of Articles 111, 114, 328 of the CCU, O.H. Semeniuk notes that this discrepancy in the content of these concepts does not matter, since in the commission of all these acts is performed "notification", "disclosure" of information of the same category – constituting a state secret [2, p. 161]. In addition, the author believes that the concept of "disclosure" more accurately reflects the nature of the event, which is associated with the leakage of information, and therefore proposes to abandon the simultaneous use of the two terms, leaving only disclosure [2, p. 162].

In the author's opinion, in the context of the dispositions of Articles 111, 114, and 328 of the CCU, the transfer of information necessarily involves a specific addressee identified by the subject of the criminal offence (for example, a foreign state), disclosure, therefore, may be targeted at an indefinite number of persons (the public, humanity, etc.), but it may involve a specific third party, as mentioned above. Considering the above, the real correlation of "transfer" and "disclosure" can be graphically depicted as follows (Fig. 3):

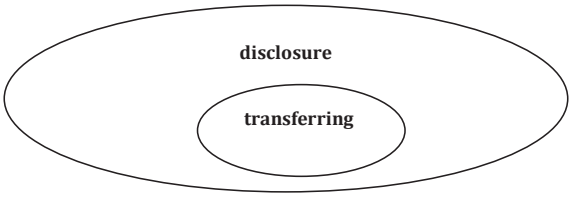

Figure 3. Correlation of the terms "disclosure" and "transfer" in the criminal law of Ukraine

However, the considerations of O.H. Semeniuk are consistent with each other, as the author, along with replacing the term "transfer" with "disclosure", proposes to abandon the criminality of acts under Articles 111 and 114 of the CCU related to the acquisition and transmission of classified information only to a special addressee – a foreign state, foreign organisation or their representatives, and to protect information from any outside influence, regardless of who is the customer of such information or its final addressee [2, p. 155]. The researcher explains this by the fact that even at the current initial stages of the development of information society, when the emergence of the Internet and the development of modern technologies do not exclude the possibility of obtaining state secrets remotely, and information technology allows going beyond conventional structures and forms of communication within one state, it becomes obvious that conventional standpoint on the necessity of protecting classified information only from foreign states, organisations and their representatives is outdated. Under the conditions of an information society, state secrets outside the state-controlled sphere of classified activities provide an opportunity for an unlimited number of users of information and communication technologies, regardless of their nationality and state of residence, to get acquainted with its contents [2, p. 153-154]. As an example, the author provides situations of countering international terrorism, drug trafficking, cross-border and other organised crime, which require states to expand information exchange, including information constituting a state secret [2, p. 154]. According to O.H. Semeniuk, in the period from 2005 to 2016, the Security Service of Ukraine issued 225 permits for the transfer of information constituting a state secret to foreign countries and their authorised representatives. In particular, in 2014, 27 such permits were issued, in 2015 – 3, in 2016 – 9 permits [2, p. 155]. The author of the research can neither support nor refute the above considerations of O.H. Semeniuk, as they go beyond the purposes of the study – to determine the general features of all criminal offences – disclosure of restricted information. However, they outline an interesting area for further promising scientific developments.

Conclusions

Notably, the willingness of the subject of a criminal offence to convey specific information only to individuals

or to the entire humanity cannot in itself indicate a different degree of public danger of the relevant act. That is why all the above actions should be referred to by the single term "disclosure". Such terminology (technical and legal) improvement of the texts of the CCU, and regulatory legislation, in particular the Criminal Procedure Code of Ukraine, the Civil Code of Ukraine and the Commercial Code of Ukraine, will contribute to the implementation of legal clarity as a component of the rule of law.

The practical significance of the research results is that they contain clear recommendations for the legislator to improve the text of the criminal law. In addition, the conclusions stated in the research on the correlation of the terms "disclosure" of restricted information with tangential ones may be useful in criminal legal qualification. At the same time, a promising area for further research is the study of subjective features of the legal elements of the criminal offence of disclosure of information with limited access, which will contribute to the development of a comprehensive vision of the problem under study – the typical legal elements of this criminal offence.

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"Розголошення" інформації з обмеженим доступом та дотичні терміни кримінального закону: взаємозв'язок понять

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Анотація

Актуальність публікації зумовлено тим, що одним з основних чинників неефективності наявних кримінально-правових засобів охорони інформації з обмеженим доступом є недосконаліть тексту чинного Кримінального кодексу України, про що свідчить відсутність системного підходу законодавця до використання юридичної конструкції "розголошення інформації". Мета дослідження – здійснити порівняльно-правовий аналіз нормативної регламентації в кримінальному законі проявів розголошення інформації з обмеженим доступом та дотичних термінів задля техніко-юридичного вдосконалення Кримінального кодексу України. Задля її досягнення використано методи системно-структурного аналізу, семантичний, догматичний, формально-логічний, а також метод класифікації. У статті розглянуто співвідношення змісту всіх термінів кримінального закону, дотичних до поняття "розголошення", які умовно поділено на кілька груп: альтернативні діяння (збирання, здобування, зміна, знищення та ін.), збірні діяння (порушення таємниці/заборони, використання), синонімічні діяння (поширення, розповсюдження, розкриття, надання доступу, передача). Визначено, що альтернативні діяння "збирання", "зберігання" є підготовчими для "розголошення інформації" в разі наявності відповідної мети оприлюднити зібрані відомості, а отже, вони не можуть включатися в кримінально-правовий зміст самого діяння "розголошення". Обґрунтовано, що існування двох взаємовиключних (суміжних) юридичних складів кримінальних правопорушень: протиправного заволодіння інформацією ("усічений склад", який не надає юридичного значення подальшим діям щодо зберігання, поширення, іншого використання інформації) та розголошення (особою, яка правомірно заволоділа інформацією) – може бути перспективним шляхом усунення відповідних техніко-юридичних недоліків. Доведено, що "розголошення" відповідної інформації є проявом "порушення таємниці", а також "порушення заборони використання інформації", однак такі терміни використовувати в тексті кримінального закону не варто з огляду на їхню неконкретність. Установлено, що зміст понять "розголошення", "поширення" та "розповсюдження" інформації – тотожний. Дослідження рекомендовано до використання під час вдосконалення кримінального закону України, а також для правозастосувачів під час кваліфікації

Ключові слова: таємна інформація, розповсюдження інформації, збирання інформації, зміна інформації, поширення інформації, передача інформації, надання доступу до інформації