

## УГОЛОВНОЕ ПРАВО, УГОЛОВНО-ИСПОЛНИТЕЛЬНОЕ ПРАВО

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### CRIMINAL LAW POLICY INFIGHT AGAINST ILLEGAL HANDLING OF SPECIAL TECHNICAL MEANS OF SURREPTITIOUS OBTAINING OF INFORMATION: IMPORTANT EMPHASES

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at Institute of Law of Vasyl Stefanyk Precarpathian National University**SUMMARY**

The article is devoted to definition of main problems of criminal law policy in fight against illicit trafficking of special technical equipment for surreptitious obtaining of information, in particular on improving criminal law regarding aggravating features of crime and adequacy of existing criminal liability for violation of fundamental personal rights and freedoms in result of illicit manufacture, import, storage and sale of special technical equipment for surreptitious obtaining of information for its illegal obtaining and distribution; determination of direction of strategy and principles of implementation of criminal law to improve effectiveness of information security, information, and legal regime of protection of fundamental individual rights and freedoms.

**Key words:** Criminal Law Policy, Policy in Fight against Crime, Directions of Criminal Law Policy, special means of surreptitious obtaining of information.

**АННОТАЦИЯ**

Статья посвящена определению основных проблем уголовно-правовой политики в сфере борьбы с незаконным обращением специальных технических средств негласного получения информации, в частности, по совершенствованию положений уголовного законодательства в части отягчающих признаков совершения преступления и адекватности существующей уголовной ответственности за нарушение основных личных прав и свобод человека в результате незаконного изготовления, ввоза, хранения и реализации специальных технических средств негласного получения информации, для незаконного ее получения и распространения; определения направления стратегии и принципов реализации уголовно-правовых норм для повышения эффективности обеспечения безопасности информационных ресурсов, информации и правового режима защиты основных личных прав и свобод человека.

**Ключевые слова:** уголовно-правовая политика, политика в сфере борьбы с преступностью, направления уголовно-правовой политики, специальные средства негласного получения информации.

**Introduction.** Today there is a variety of opinions concerning future development of criminal legal legislation in suppression of illegal circulation of special technical means of surreptitious obtaining of information (hereinafter referred to as STMSOI) in Ukraine. The Legal doctrine analysis reflected in expert conclusions, draft laws, acts of judicial interpretation, enables to define direction and modality of changing appropriate criminal law standards. In addition, in recent times there have been attempts to change criminal law policy strategy in regard to transformation of criminal responsibility for use of STMSOI by decriminalization of making and obtaining such means.

At same time, policy in fight against crime, as Fris P.L. notes, should be based on general principles like whole legal policy of Ukraine, as follows: democracy, respect of human rights and freedoms, supremacy of law; equality of citizens, retroactivity through time, excluding dual responsibility, legality and fault-based responsibility, humanism [1]. However, today's fundamentals of Criminal Law Policy in suppression of illegal information collection and circulation of STMSOI are not kept, directions of policy remain unclear, and principles of policy implementation are not clearly determined, and cannot be traced directly at stage of acceptance and implementation.

**The Analysis of investigation that contains solution for problem and underlining unresolved issues.** The works of many domestic and foreign scientists are dedicated to

investigation of issue of Criminal Law Policy, who are as follows: Y.V. Baulin, V.I. Borysov, V.K. Hryshchuk, O.M. Kostenko, V.O. Merkulova, A.A. Mytrofanova, A.A. Muzyka, V.O. Navrotskyi, M.I. Panov, N.A. Savinova, V.V. Stashis, P.L. Fris, V.Ya. Tatsii, V.O. Tuliakov and etc. The doctoral dissertation of N.A. Savinova emphasizes issues, in particular, of criminal law policy in provision of security of information and information resources, and does not draw attention to issues directly concerning policy in suppression of STMSOI. Therefore, issues of criminal law policy in this field remains not completely investigated and more abstract. Thus, direct analysis of nature and especially important issues of criminal law policy in suppression of illegal use of STMSOI, which is based on empirical data of opinion poll, is relevant and necessary.

**The object** of article is a determination of major issues that arise during implementation and realisation of criminal law policy in fight against illegal handling of STMSOI in Ukraine.

The majority of scientists (among whom are V.M. Burlakov, O.M. Dzhuzha, V.P. Salnikov, V.H. Lykholob, O.I. Kovalenko, Ya.Yu. Kondratiev, O.H. Kulik, O. Ye. Mykhailov, P.P. Mykhailenko, V.P. Filonov etc.) and peculiarly subjects of preventive activity interpret terms of crime prevention and crime precaution as similar or identical [2, p. 42]. For example, A.F. Tokarev thinks that prevention means an action that is intended to stop any events from happening, and precaution means an action that is intended to prevent any

negative changes from happening in events [3, p. 13]. We also adhere to appropriate conception.

The recent adoption of a number of legislative acts concerning information protection [4; 5; 6], suppression of illegal use and circulation of STMSOI, ratification of new version of Articles 201, 359 of Criminal Code Of Ukraine, Articles 15, 195-5, 259, 262 of Code of Administrative Offences of Ukraine, and Article 112 of Criminal Procedure Code of Ukraine, on June 15th 2010, have an impact on criminal and legal doctrine and corresponding law policy in field.

The Thus, Article 6 of Edict of President of Ukraine of November 7th 2005 № 1556/2005 «On respect for human rights during operational and technical measures» assigns Security Service of Ukraine and Ministry of Internal Affairs of Ukraine to improve level of work on «finding, preventing and stopping facts of acquisition or use of special technical devices for interception and or means of surreptitious obtaining of information by subjects, who shall have no right to provide operational investigative activity» [7]. In same time, such assignment is not associated with trying to implement additional types of criminal and administrative responsibilities in circulation of STMSOI, as evidenced by absence of draft laws that are developed and submitted to Verkhovna Rada of Ukraine.

The highest bodies of authority have more than once addressed to issue of circulation and use of STMSOI. In particular, Article 1 in decision of National Security and Defense Council of Ukraine dated March 21st 2008 «On emergency measures related to provision of security of information of Ukraine» within three months Cabinet of Ministers of Ukraine with involvement of Security Service of Ukraine shall develop and present draft laws concerning regulation of circulation of STMSOI, in particularly, control of carrying m across state border, and also determination of criminal responsibility for illicit manufacturing, traffic, possession, and implementation of STMSOI; and concerning penalty enhancement for illegal collection, possession, use or distribution of personal data of a person without his/her consent [8] for consideration by Verkhovna Rada of Ukraine.

The monitoring of compliance with this decision was imposed on Secretary of National Security and Defense Council of Ukraine [9], and appropriate draft law «On amendments to Criminal Code of Ukraine (concerning responsibility for illegal handling of STMSOI)» was developed by Security Service of Ukraine within Plan for management of preparations of acts that are required for implementation of Edict of President of Ukraine dated April 23rd 2008. The approved by Vice-Prime Minister, I.V. Vasiunyk, on May 16th 2008 under № 377 Government transmitted draft law to Parliament (registration number 3358 dated November 12th 2008) [10]. In that context it may be reasonable to bring an opinion of professor P.L. Fris related to fact that program level of criminal law policy provides precise strategic and tactical (short-term) plans in legislative activity and regulation of law-enforcement activity in criminal law policy [8, p. 447].

As specified by an explanatory note to project, it was developed «upon experience of activity in information security of state». In addition, drafters saw reason to develop draft law, because of unsatisfactory condition, to ir opinion, of protection of human privacy rights, in particular, secrecy of correspondence, telephone conversations, telegraph correspondence etc. One of causes of such condition y defined imperfection of criminal law provisions related to inadequacy of current criminal responsibility for violation of said rights, as a level of social danger that y can contribute to. The authors of this draft law refer also to special attention of international law to providing each person with respect for ir rights and basic freedoms, and first and foremost for ir privacy rights [11].

As defined by parliament experts, draft law № 3358 was developed for purpose of making legislation of Ukraine consistent with provisions of Constitution of Ukraine by means of improving legal regime for protection of basic personal rights and freedoms. For solution of this problem draft law offered to amend current rules of Criminal Code of Ukraine in order to establish criminal responsibility for illicit carrying STMSOI across customs border, which shall be considered as target of crime as provided by part 1 of Article 201 of Criminal Code of Ukraine («Contraband»). In addition, project proposed to significantly amend Article 359 of Criminal Code of Ukraine by adding such facts of criminal activity as illicit manufacturing, obtaining, selling or storing for use of STMSOI.

In this respect authors of draft law № 3358 provided keeping current forms of said crime, but with cancelling such qualifying element of p. 2 of Article 359 of Criminal Code of Ukraine, as significant violation of rights, freedoms or interests of individuals, interests of state or public, or interests of separate legal entities. It was proposed to increase financial responsibility for commission of crime, specified by p. 1 of Article 359 of Criminal Code of Ukraine (instead of penalty charge in amount of from one hundred to two hundred personal exemptions of citizens, its size was specified within from two hundred to one thousand such exemptions) with saving or forms of responsibility for crimes provided by both parts of this Article of Criminal Code of Ukraine [12].

The conceptual idea of draft law consisted of establishing said criminal responsibility «for violation of principle personal rights and freedoms of a person as result for illicit manufacturing, traffic, possession, and implementation of STMSOI for illegal obtaining and distribution of information, secrecy of which is guaranteed by Constitution of Ukraine. In addition, to opinions of authors of project, its aimed to «impact on consciousness of potential law breaker by means of making severity of sanctions determined by state for a socially dangerous action available to public». As determined by expert of Security Service of Ukraine, implementation of this project of law of Ukraine «will allow improving condition of protection of human rights of privacy, in particular, secrecy of correspondence, telephone conversations, telegraph correspondence etc., will create additional conditions for increasing effective fight against such dangerous event as illegal distribution and selling of STMSOI that will have a positive influence on general social and political situation in state and will provide improvement of international image of Ukraine» [11].

During speech at parliamentary committee in framework of discussion of said project head deputy of Security Service of Ukraine A. Pavlenko stated that necessity of adoption of this law was explained by «unsatisfactory condition in Ukraine of protection of human privacy rights, in particular, secrecy of correspondence, telephone conversations, telegraph correspondence etc» One of causes of such condition representative of Security Service of Ukraine defined «imperfection of criminal law provisions related to inadequacy of current criminal responsibility for violation of said rights, as a level of social danger that y can contribute to». The members of Committee on Legislative Provision of Law Enforcement Activities promoted draft law, adoption of which, to ir opinion, could improve condition of respecting human rights of privacy, create additional conditions for increasing effective fight against such dangerous event as illegal distribution and selling of STMSOI»; this Committee recommended for Verkhovna Rada of Ukraine to take said draft law as a basis [13].

The However, it should be added that experts of Chief Scientific Expert Department of Verkhovna Rada of Ukraine gave a negative assessment of proposals to amend Art. 359 of Criminal Code of Ukraine, and after considering results of project review thought it expedient to bring it back to subject

of legislative initiative for fine tuning. The According to m, illicit manufacturing, obtaining, selling or storing for use of STMSOI is an economic activity that «can only be done with an appropriate license, and its implementation without such license at present contains elements of crime under Article 202 of Criminal Code of Ukraine». The experts also believe that lack of project is absence of differentiation of se actions as an economic activity and or forms of implementation (for example, handicraft production, one time sale), regardless of number and cost of objects manufactured, obtained or sold [10, p. 1].

In addition, conclusion of Chief Scientific Expert Department stated that «manufacturing, obtaining and selling» STMSOI for purpose of use m at present, also shall be punished. To opinion of parliament experts, «depending on circumstances se actions shall be qualified as preparation for committing a crime specified by Article 359 of Criminal Code, or as complicity (aiding and abetting) in commission of this crime». To ir opinion, same should be qualification actions of a person in case of storage of STMSOI for purpose of use, «because for «storage» of appropriate subjects, a person firstly shall manufacture or obtain m», and authors of project did not explain «why such qualification of actions shall be considered as insufficient [10, p. 2].

The experts of Office of Verkhovna Rada of Ukraine explain ir own position also in that current qualification «is in compliance with general concepts of criminal law in a greater degree», this is because one of crime objects, specified by current Article 359 of Criminal Code of Ukraine, are human rights, ownership, economic interests of subjects of economic entity that can be violated in consequence of use of elements of this crime». In addition, cases when guilty person did not do damage to, and only was going to do damage to this object (to opinions of se specialists such is indeed an actual side of case in manufacturing, obtaining, selling or storing STMSOI), «shall be logically qualified as preparations for committing a crime but not a completed crime [10, p. 2].

We do not agree with proposed complicated circumstances (signs of crime, specified by p. 2 of Article 359 of Criminal Code of Ukraine). Please be reminded: majority of crime components provided by Criminal Code of Ukraine in connection with limitation of human rights, despite field of implementation of se rights and specific object of crime, aggravating circumstances include in particular those which substantially impair condition of victim (ensuing of various drastic consequences and threats), contribute to dimension of crime by increasing possibility of its subject ( commission of an organized group or an official) or cause particularly vulnerable status of victim (crimes against minors, subordinate employees, patients, and ors.) or social importance ( voter, officer, statesman). So really aggravating feature of commission of such crime that could include illegal use of STMSOI by officials, and that was not included to project.

At same time, argument of experts of Chief Scientific Expert Department of Verkhovna Rada of Ukraine also is not perfect. The actions related to handling of STMSOI can be qualified depending on circumstances within both article 202, and article 203 («Engagement in prohibited economic activities) of Criminal Code of Ukraine. In general, responsibility for circulation of different things withdrawn from circulation or with limited circulation, specified in Criminal Code of Ukraine, though in most of cases during establishment of responsibility for manufacturing, selling, transferring concrete things law-maker does not criminalise ir storage even for purpose of selling. The re is no responsibility for storage of things, circulation of which shall be a crime: counterfeit postage stamps and tickets (Art. 215 of Criminal Code); illegally manufactured, obtained or counterfeit excise

stamps or control stamps (Art. 216 of Criminal Code); state hallmark (Art. 217 of Criminal Code); fake corporate securities (Art. 224 of Criminal Code); privatization papers (Art. 234); items of a pornographic nature (Art. 301 of Criminal Code); forged or illegally obtained documents giving right to obtain narcotic drugs or psychotropic substances or precursors (art. 318 of Criminal Code); harmful software or hardware designed to interfere with operation of computers, automated systems, computer networks or telecommunications networks (art. 361-1 of Criminal Code) [14].

At same time, Criminal Law of Ukraine provides responsibility for storage of forged money, state securities, or tickets of state lottery (Art. 199); discs for laser reading systems, matrices, equipment and raw materials for ir production (art. 203-1); alcoholic beverages and tobacco products or or excise goods (Art. 204); radioactive materials (Art. 204) and so on. Thus, establishment of responsibility for illegal storage of STMSOI does not contradict criminal law policy of Ukraine. The consequence of such criminalizations is quite different As known, during establishment of responsibility for illegal storage of distributed things with limited circulation – firearms (except for smooth-bore hunting), ammunition, explosives and explosive devices (art. 263 of Criminal Code); narcotic drugs, psychotropic substances or ir analogues (art. 307 and 309 of Criminal Code); precursors (art. 310 of Criminal Code); toxic or potent substances that are non-narcotic and psychotropic or ir analogues, or toxic or potent drugs (Art. 312 of Criminal Code), criminal legislation of Ukraine in said articles of Criminal Code provides for a special form of exemption from responsibility provided that voluntary surrender of government of subjects [15]. Perhaps we should consider this possibility and under criminalization of circulation of STMSOI.

The problems of establishment of criminal responsibility for contraband of STMSOI. The shall be considered. The authors of project № 3358 justified with presence, to ir opinion, increased danger for society, which is associated with unlimited import of STMSOI. At same time, representatives of Security Service of Ukraine show mainly that cost of such means does not exceed a thousand personal exemptions of citizens, and subject of ir movement across state border of Ukraine cannot be held to criminal responsibility. The refore, project was provided for correcting subject of crime Art. 201 of Criminal Code of Ukraine («Contraband»)[15]. 201 of Criminal Code of Ukraine («Contraband»)[15].

The se projects have become ground for adoption of draft laws, which specified content of Art. 359 of Criminal Code of Ukraine, namely – law of Ukraine dated July 15th 2010, № 2338-VI «On Amendments to Criminal Code of Ukraine concerning responsibility for illegal handling of STMSOI [17] and Law of Ukraine on June 15th, 2010», № 2339-VI «On Amendments to some legislative acts of Ukraine concerning improvement of responsibility for illegal handling of STMSOI» [17]. The legal doctrine of Ukraine, unfortunately, has no a conscious response to changes in Criminal Code of Ukraine concerning strengning of penalties for crimes, criminalization of purchase and sale of STMSOI that took place.

The combination of issues concerning usage, obtaining and sale of STMSOI in Article 359 that led to two subjects of this crime, has evoked some response of orists of criminal law. M.V. Karchevsky proposes amendments to Criminal Code in area of criminal-law protection of information; in particular on establishment of responsibility for illegal access to information (proposed Art. 363-3 of Criminal Code), with using «technical or software means for unauthorized access to information» [12, p. 519], without specifying how Art. 359 of Criminal Code of Ukraine should be modified.

In addition, among 208 respondents, employees of Security Service of Ukraine, only 57 persons (27,4%) considered

special criminalisation of circulation of STMSOI expedient, and 16 respondents (7,69%) thought that it could be possible only for manufacture and contraband of STMSOI. At same time, to opinion of 68 respondents (32,69%), proper socially dangerous actions are covered by or articles of Criminal Code and that is sufficient, or 67 (32,21%) thought that administrative responsibility should to be imposed for appropriate socially dangerous actions. The refore, 110 respondents (58,88%) noted that implementation of severe sanctions for illegal handling of STMSOI that was established on June 2010 was an excessive strengning of criminal repression, but 86 respondents (43,35%) agreed with such strengning, and or 12 employees of Security Service of Ukraine (5,77%) marked that dimension of responsibility, which was established in Article 359 of Criminal Code has been insufficient at present. So, the legal consciousness of practitioners reflects different tendencies of hazard assessment of circulation of STMSOI and forms of suppression of se procedures.

It should be noted that for execution of assignments of Ministry of Internal Affairs of Ukraine within 2008 Kyiv National University of Internal Affairs took an active part in development of draft law of Ukraine «On amendment to Criminal Code of Ukraine concerning responsibility for illegal handling of special technical means of surreptitious obtaining of information» № 46/55Bp of December 5th 2008).

The Let's look upon practice in application of Article 359 of Criminal Code of Ukraine by law enforcement bodies. The 2006–2007 in local government bodies, political party's chapters, offices of enterprises and commercial structures, units of Secure Service of Ukraine identified and seized approximately 60 STMSOI (radio radiation inserting devices, systems of surreptitious audio&video information retrieval, including 4 complexes of monitoring of cellular networks). The refore, Courts held approximately 40 persons administratively liable according to Articles 164 and 195-5 of Code of Administrative Offences of Ukraine, and investigative units of Security Service of Ukraine opened more than 10 investigations for use of specialized equipment under Articles 359, 333 of Criminal Code of Ukraine. In 2006–2008 Security Service of Ukraine seized 3 complexes of cellular networks monitoring and initiated respective criminal proceedings [6].

It should be emphasized that in 2011 among 208 respondents of law enforcement officers of Security Service of Ukraine during carrying out of ir official duties 70 persons (33.6%) dealt with illegal handling of STMSOI, 19 from m pointed out criminal proceedings initiated according to Article 359 of Criminal Code of Ukraine, 41 persons – about or criminal cases, 2 persons – about cases of administrative proceedings, 8 persons mentioned events within cases relating to operational investigations.

The According to data of Security Service of Ukraine, this Service ceased illegal activities of commercial firm, which was engaged in illegal audio interception of citizens and individual officials of Ukraine. The y seized special equipment for spying, audio interception and recording of conversations by means of signal interception in cellar network GSM from employees of firm. According to conclusions of experts, this equipment is most difficult among similar ones, its market price constitutes up to USD 420,000.00 depending on its configuration. The According to data of Security Service of Ukraine, this equipment was carried to Ukraine illegally, it was first case of large-scale documentation of illegal use of STMSOI in Ukraine. The During search, complex of monitoring of cellular networks, computers with special software and or STMSOI, which can be used only by operational subdivisions of law enforcement bodies with court's permission. The open resources do not contain data on furr criminal law qualification of said facts of Security Service of Ukraine. Investigative Departments of Security Service of

Ukraine (as of January 2010) have continued to investigate this criminal case [5].

An additional point is that crime was solved according to results of providing by Security Service of Ukraine an operational investigative activity concerning criminal proceeding initiated in 2007 in Chernihiv Region, and related to illegal audio interception of mobile telephone conversations, negotiations. legal proceeding was issued against two persons – employees of commercial firm in city of Chernihiv, who were apprehended during commission of wrongful acts in connection with information interception in interests of own business. For a long period of time by means of special equipment (complex of monitoring of cellular networks) se persons illegally monitored mobile telephone negotiations of people's deputies of Ukraine, mayors of city, police officers, entrepreneurs, city dwellers. More than 60 facts of interception of telephone conversations were established [11].

On September 01st 2008 district court of Chernihiv Region concluded a trial of this criminal case, two persons were issued an indictments under Part 2 of Article 359 of Criminal Code of Ukraine for illegal use of STMSOI, repeatedly, upon previous agreement of group of persons that caused a significant damage to rights protected by law, freedoms depending on interests of individual citizens, state and society. The said persons were held responsibility for breach of confidentiality of telephone conversations, correspondence that were transmitted by communications tools and related to public and state officials by means of use of special equipment designed for surreptitious obtaining of information (p. 2 of Article 163 of Criminal Code of Ukraine), and for illegal collection, storing of confidential information about a person without he/his consent (Article 182 of Criminal Code of Ukraine).

The state accusers on case proposed to give a 4 years and 6 months sentence to head of crime, and a 3 years and 6 months sentence to performer of crime. Under sentence head of crime received a 4 years and 8 months sentence with probation period of 2 years, performer of crime – a 4 years sentence with probation period of 2 years. The Taking into account severity of crimes committed, duration of crime actions and personality of convicted persons, who were former law enforcement officials, Procuracy of Chernikhiv Region made a decision of appeal of this sentence. The pretrial investigation on criminal case of illegal carrying complex of monitoring of cellular networks to Ukraine has been continued. This complex belongs to dual-use products and its international transferring is subject to obligatory state control.

On January 2008, Department of Security Service of Ukraine in Dnipropetrovsk Region special technical means for surreptitious audio information retrieval, which was installed in ordinary power strip for purpose of interception of conversations of employees, were identified and seized from Chief Accountant of local commercial enterprise. According to criminal case files on March 2008 Babushkinskiy District Court convicted accountant of committing a crime under Part. 1 of Article 359 of Criminal Code of Ukraine, and gave a two years sentence with a probation period.

On December 2008 – January 2009 Security Service of Ukraine provided a number of operations. The 4 complexes of monitoring of cellular networks with total value more than 15 million hryvnias were seized according to results. On January 16th 2009 Security Service of Ukraine with assistance of special «Alfa» division apprehended a citizen of Ukraine, from whom two complexes used for illegal interception of mobile phones of individuals were seized. ir hard discs contained audio files with records of telephone conversations of law enforcement officials, judges, representatives of local authorities, deputies, businessmen and ors. One of se complexes allows listening both at once 8 mobile phone numbers and can save thousands

of conversations, capacity of its hard disk is 160 gigabytes. The During illegal interception of information a complex is situated in distance of 300 m from object of interception at a distance up to 300 meters and can be hidden to intercept telephone conversations.

In city of Chernikhiv in 2007 illegal activities of a group of people, who with help of special equipment for secret collection of information from communication channels, listened to telephone conversations and intercepted phone messages of state and public figures and private citizens, were stopped. As a deputy of Chernihiv Municipal Council was involved in criminal activity, investigation was carried out in cooperation with prosecutors. On December 2008, court verdict in criminal case was as follows: two people were sentenced to 4 years of imprisonment under Art. 359 of Criminal Code of Ukraine. On 07 th 2009, complex was seized from an officer of Black Sea Fleet of Russian Federation stationed in city of Sevastopol during carrying across customs border, which officer tried to illegally bring to Russia. According to experts' conclusions, seized complex for illegal interception of information was actively used in city of Sevastopol according to recent data of Security Service of Ukraine. The investigation unit of Department of Security Service of Ukraine in Lviv Region pre-trial of which includes prejudicial investigation on criminal cases specified by Art. 359 of Criminal Code of Ukraine, on October 21st 2006 criminal case was closed on grounds of p. 2 p. 1 Article 6 of Criminal Procedure Code of Ukraine according to experts' conclusion, in relation to which devices were seized, are not STMSOI, and belongs to radio microphones for receiving and transmitting acoustic information which were manufactured by obsolete technique. On September 1, 2005 Department of fight against corruption and organized crime of Office of Security Service of Ukraine in Odessa region initiated a criminal proceedings under number 346 P. 1 of Article 359 of Criminal Code of Ukraine on grounds of statement of director TV and Radio Company «ART» that in his office devices for audio interception of information had been illegally installed, but it was not brought to trial. In addition, experts of Security Service of Ukraine state that a long period of investigation of case under Art. 359 of Criminal Code of Ukraine is explained by long-term expertises.

The After adoption of a new Criminal Code of Ukraine in 2001 Criminal Procedure Code of Ukraine an investigative jurisdiction on cases under Art. 359 of Criminal Code of Ukraine was established for procuracy authorities. After that Law of Ukraine of May 11th 2004 № 1703-IV of investigative jurisdiction on cases according to Art. 359 of Criminal Code of Ukraine was transferred to investigative divisions of Security Service of Ukraine In addition, according to Law of Ukraine of June 15 th 2010 № 2339-VI in cases concerning crimes provided by. 202 of Criminal Code of Ukraine (in particular, in relation to contraband of STMSOI) pre-trial investigation shall be carried out by authority, which initiated criminal proceedings earlier under p. 2 of Article 202 pre-trial investigation was carried out by investigation units of internal affairs bodies.

The Interestingly, among respondents employees of Security Service of Ukraine, only 126 respondents (60.58% of total number) indicated that competence of investigation of cases of illegal handling of STMSOI should belong exclusively to Security Service of Ukraine; a significant part of respondents (74 persons or 35.58%) remark a need for joint jurisdiction in se cases, 6 respondents (2.88%) would like to give appropriate jurisdiction to Procuracy, and 2 person (0.96%) – to police.

The or characteristic of legal reality in illegal usage of STMSOI is attempts of law enforcement officers to extend subject-matter of article 359 of Criminal Code of Ukraine by referring self-made devices of obtaining data, etc. to it. The Taking into account limited criminal law practice, we can take

an administrative sanction case of an individual for illegal circulation of STMSOI as an example. On February 7th, 2005 during investigation of financial and operating activities of entrepreneur L., three mini cameras, CCTV monitoring set, video receiver and video transmitter were found. The se technical devices had a number of STMSOI characteristics whereby y were confiscated. For determination of belonging of confiscated goods to STMSOI, 6 confiscated electronic devices were sent to Scientific and Technical Department of Security Service of Ukraine for investigation, by results of which 4 were referred to STMSOI and rest, even despite a big number of analogical characteristics (voltage supply, current consumption, carrier frequency), did not belong to STMSOI. The According to conclusions № 78 of an expert of Security Service of Ukraine dated February 25th 2005, mini video cameras belong to STMSOI, and are subjects of commercial production. On this basis court reached conclusion of elements of law violation in actions of L., envisaged by article 195-5 of Code of Administrative Offences of Ukraine (earlier revision), because se mini cameras were illegally purchased and stored. By decision of Central District Court of city of Mykolaiv dated April 4th, 2005, L. was found guilty of committing administrative offense according to article 195-5 of Code of Administrative Offences of Ukraine, and was charged a penalty of 850 UAH, and punished by confiscation of three mini cameras.

In addition among 19 identified officials of Security Services of Ukraine that investigated cases connected with illegal handling of STMSOI, 3 people (15,8%) admitted that no specific problem occurred during proceedings on case, but rest noted ir presence. Thus, 2 (10,5%) respondents pointed out problems connected with incompleteness of Criminal Legislation in this field, 4 (21,05%) persons mentioned incompleteness investigative jurisdiction in this field, but majority saw problem exactly in STMSOI expertise (10 interviewed or 52,6% of this group of respondents).

Can we talk about necessity of criminal responsibility for only illegal usage of STMSOI under such conditions? As a matter of fact, question of efficiency of imposition of criminal responsibility cannot increase efficiency of criminal security and crime prevention. The y do not equally change practical complexity of classification of above mentioned actions.

Conclusion. On assumption of above mentioned we can fully state that at present directions of criminal law policy in fight against illegal handling of STMSOI requires proper and logic modernisation of both political consequent approaches and approaches to issues of criminalisation. Today determination of activities concerning illegal handling of STMSOI in Criminal Code is not completed and requires focusing firstly on improving definitions and proper interpretation for content of relevant regulations, and excluding decriminalisation of alternative actions, which are not much less socially dangerous than illegal use of se means.

In addition, transfer of jurisdiction provided by Art. 359 of Criminal Code of Ukraine to investigative competence of Security Service of Ukraine has both positive and negative features. The Security Service of Ukraine is main authority that performs state control and administrative practice in circulation of STMSOI, bodies of Security Service of Ukraine perform expertise of technical means concerning fact that y belongs to STMSOI and so on, and licence respective economic activities in manufacture and implementation of STMSOI. It simplifiers task for investigators of Security Service of Ukraine at same time it should be noted that jurisdiction of procuracy authorities may provide for holding not only general subject of crime but also law enforcement officer that exceed ir authority in use of STMSOI to responsibility for under Art. 359 of Criminal Code of Ukraine. As we see analysis of practice give us opportunity to

state that today under Art. 359 of Criminal Code of Ukraine no law enforcement officer, who is engaged in appropriate forms of operational and investigation activities that has become an element of domestic criminal policy in this field, has been held to responsibility.

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