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INFORMATION AS AN OBJECT OF CIVIL LAW: PROBLEMS OF UNDERSTANDING

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The purpose *of this article is to consider problematic issues regarding the concept of information as an object of civil law, to determine the basic premises of the approach to understanding the term «information» in civil law and the legal regime of information. The term «information» is atypical for the science of law in general and civil law, in particular, because it has specific characteristics-characteristics that are not inherent in other objects of civil law. Perhaps due to this, the information still remains insufficiently researched by scholars in the field of civil law. The doctrine of civil law also lacks a generally accepted understanding of information and its legal regime.* ***The methodological basis*** *of the research is general scientific and special methods of scientific knowledge. The use of these methods made it possible to analyze the concept of information as an object of civil law, to consider the problems of understanding the term "information" and the legal regime of information.* ***Results:*** *practically all specialists in civil law in Ukraine, engaged in one way or another in the study of information as an object of law and the legislator of Ukraine, misunderstand the essence of the term "information", defining it exclusively as "information ...", at the same time as it is nothing more than a "message" (1) containing "information" (2).* ***Discussion:*** *the article outlines the current trends in the position and development of information law in the legislation of Ukraine, theoretical literature, different points of view of scientists regarding the concept of information, its content, trends of the problem of the legal regime of information in civil law.*

Key words: *information; notification; legal status of information; publicly known information; confidential information.*

Problem statement and its relevance. The science of civil law has not fully explored information as an object of law, the concept of the term «information» and the legal regime of information. Therefore, it is necessary to determine what information is, what is its content, and what is the legal status of information. At the same time, it should be taken into account that open (generally known) information does not have a clearly defined legal regime.

Analysis of recent research and publications. A number of scientists paid attention to the issue of the theoretical level of development of the «information» category in the science of civil law. In particular, the study of the term «information», certain aspects of the legal regime of information, confi-

dential information are covered in scientific works: I.L. Bachilo, A.B. Vengerova, A.G. Diduk, V.A. Dozortseva, O.A. Yefremova, Yuzvishina I.I. and others.

Questions regarding the concept of information and its legal regime are currently very relevant. In the doctrine of civil law, there are different positions of scholars regarding this. Therefore, the purpose of this article is to determine the basic premise of the approach to understanding the term «information» in civil law.

To achieve the goal, the following tasks are solved: to investigate the theoretical level of the development of the «information» category in the science of civil law and exact sciences; determine what is included in the content of the information and investigate the legal regime of the information.

Presentation of basic material of the research. To date, the science of civil law, not only domestic, but also foreign, has not yet fully explored information as an object of law. The term «information» is atypical for the science of civil law, so it still remains understudied. There is also no generally accepted concept of information in civil law.

The very term «information» is no less difficult to understand for other sciences, including exact ones. Philosophers and scientists have been interested in the origin of life on earth since ancient times. Having defined the object of interest of scientific knowledge, they did not even notice that their interests, primarily information about space, time, energy, movement, mass, are located in the five-unit information space. It was very difficult to give an exact definition of information, as noted by I.I. Yuzvyshyn: that it was not given importance as an object of science not only a few decades ago, but even nowadays [1, p. 22].

As for legal science, it proceeds from the fact that information is an object of civil law (legal relationship).

It should be noted that the Civil Code of the Ukrainian Soviet Socialist Republic (1963) did not consider information as an object of civil law at all. In the current Civil Code of Ukraine, the term «information» is found in many articles (201, 202, 278, 279, 286, 303, 304, 507, 508, 509, 510 and others) [2].

Thus, it can be stated that for the first time in domestic legislative practice, among the objects of civil law, «information as such» is called «information as such», as an independent object, separate from the results of intellectual, creative activity (Article 178 of the Civil Code of Ukraine) [2].

The very term «information» (from the Latin «information» - clarification, representation, exposition, concept of something) means some information, a collection of any data, knowledge [3]. It can usually be interpreted as a variety of information about events, facts, processes that are transmitted by some people to other people, verbally, in writing, or in any other way (for example, with the help of conventional signals - signal flags and flags of sailors), as well as the process itself transmission or receipt of this information [4]. However, this concept is increasingly used as the third component of existence - together with matter and energy. Emphasizing this, T. Stoneyer writes that tools and machines, being defined labor, are at the same time defined information. This idea is true in relation to capital, land or any other factor of the economy in which labor is embodied. There is no method of production application of labor, which at the same time would not be an application of information [5, p. 393].

It is clear that such a definition is not very suitable for legal science. At the same time, as it is rightly noted in the literature, that the subject of information receives more and more attention from the legislator. And this happens, undoubtedly, under the influence of the demands of life itself. Information is the most important resource for management and all forms of life support for society [6, p. 75].

In addition, a number of laws have been adopted and are in effect in Ukraine that directly regulate social relations in the field of information: the Law of Ukraine «On Information» (1992), the Law of Ukraine «On Scientific and Technical Information" (1993), the Law of Ukraine «On the protection of information in information and communication systems» (1994).

Thus, the Law of Ukraine «On Information» dated October 2, 1992 [7] defines information as any information and/or data that can be stored on physical media or displayed electronically (Article 1). The identical definition of information is fixed in Article 200 of the Civil Code of Ukraine [2].

We cannot agree with this definition of information, as it does not fully reveal the essence of the information itself. In addition, the legislator did not take into account the fact that information has many inherent natural qualities, but two of them are of particular importance for determining the legal regime of information. On the one hand, information is «information» (which has content), and on the other hand, information is «information» (which has no content). Further research will prove the thesis that «information» is always just a «message» that conveys «information». For this, it is necessary to consider the concept of «information as such» and to separate «information as such» from other objects of law that are constantly accompanying and inseparably connected with it.

Other legal objects that constantly accompany «information as such», as V.I. Zhukov rightly points out, mean:

1) its «material medium» is an object of ownership, for example, a disc;

2) the «content» of information, - an idea formulated in a certain way, - it can be, for example, a technical solution - an object of the institute of industrial property; the mathematical formula is set out in the article - the object of copyright.

To carry out the analysis, let's conventionally call it: «material carrier» of information - object of law «A»; «content» of information is the object of «B» law. As a «pure» object of law – «information as such», we will point to its «form» - object «C». In turn, the "form" of information can be divided into «that which is read by a machine» (the conventional designation is the object of the right «C-1») and «which is read by a person» (the conventional designation is the object of the right «C-2»).

Then, as far as computer programs are concerned, the object of the «C-1» law is programs and databases in the form of object codes that can only be read by a computer (machine). The object of the «C-2» law is those programs and databases that a person reads. Both objects are objects of copyright [8, p. 148].

The question arises as to how these objects are consistent with the object provided for by the Law of Ukraine «On Information», where «objects of information relations» are documented or publicly announced information about events and phenomena in the field of politics, economy, culture , as well as in social, environmental, international and other spheres» [7]. In Article 1 of the Law of Ukraine «On Information», information is considered as any information and/or data that can be stored on physical media or displayed in electronic form. As can be seen from the conducted analysis, this provision is erroneous. Next, we will prove the thesis that information is always just a message, and its content is information. So information is a message containing information about anything.

For a better understanding of the meaning of the terms «information» and «message», it is necessary to refer to the judgments of specialists in this field of knowledge. Thus, specialist in the field of information V.Z. Kogan believes that clarification of the concept of «information» is possible only in the system of information flow and interaction, in the process of which certain information is transmitted. For this, it is necessary to separate the concepts: «knowledge» and «properties». In his opinion, «knowledge» is often understood as information about certain properties of the organic and inorganic world. In fact, they acquire the characteristics of information only after an individual or a group of people is informed about them.

And until then, we are dealing rather with «properties», which can only conditionally be considered as «information in a hidden form». Without taking into account the consumer, as noted by V.Z. Kogan, it is impossible to talk about information, even fictional, potential. For this, it is necessary to establish the difference between the concepts: «properties», «knowledge», «information» [9, p. 12]. Information about events that took place in society, even if they are documented, are in the state of the legal regime of «properties» and only conditionally, as already noted above, can be considered as «information in a hidden form». Specialists in the field of cybernetics insist on a fundamental difference between the concepts of «properties», «knowledge», «information». As for the specified recommendations, you should listen to them and separate these concepts.

Another specialist in the field of information, V.M. Trostnikov, claims that, only by connecting with the consumer, the message «releases» information, and in itself it does not contain any infor-

mational substance [10, p. 15-16]. In addition, the same «message» can give a lot of information to one consumer, but not enough to another. As V.M. Trostnikov rightly points out, it makes sense to talk about the amount of information in the case when the «properties» and «messages» of the person who receives them are known [10, p. 16-17].

So, the scheme of the information process that leads from the «source to the final» (which we just talked about) can look like this: Object - Properties of the object - Information about the properties of the object - A message containing information about the properties object = Amount of information received from the message, or = Information.

Accordingly, the informational (legal) relationship regarding information about this or that event in society (object) can have five legal regimes: «about the object» - «about the properties of the object» - «about information regarding the properties of the object» - «a message that contains information about the properties of the object» and, finally, - «the amount of information received from the message».

Accordingly, the Law of Ukraine «On Information» inadequately reflected the object of information. The legislator did not take into account all inherent natural properties of information, especially two of them, which are important for determining its legal status. On the one hand, information is «information» (which has meaning), and the Law of Ukraine «On Information» is based on this concept, and on the other hand, information is «message» (which has no meaning). The last object is «information as such».

The unit of measurement of the amount of perceived information can be, for example, «one bit» (as used in computer science). It is important to emphasize that without taking into account the amount of characteristics of the information received from the message, it is only possible to talk about «information as such» conditionally. It makes no legal sense to point to «information as such» as the direct object of the right, because then the same information can serve as the «object» of different rights and the most diverse rights will result in the same object .

Based on this, the following conclusion can be drawn: «Information as such» is the «object» of not one separate relationship regulated by legal law, but many relationships capable of intersecting in «information as such». This happens because the law does not deal with «things» or «information as such», but with such properties of them, from which, according to the law, certain obligatory actions of people should proceed.

Accordingly, the question arises: what are these or other similar properties inherent in «information as such»? Properties (legal facts) with which the law can connect certain mandatory actions of people. Taking into account the specifics of this object of law, we are talking about such properties of «information» that are unknown to civil law.

When considering information as a subject of legal relations in the legal system, a subject of relations between the state, legal entities and individuals, for example, the explanatory dictionary gives the following definition of information - as messages and information that inform about the state of affairs about the state of anything [11]. This is true, because during the movement of information in the process of its creation, distribution, processing and consumption, the vast majority of social relations arise precisely about information as a message about information. Important importance in the processes of legal regulation of information, says O.B. Vengerov, is the usual understanding of information as a message, that is, as a set of information (data) about the state of any object. At the same time, it is meant that not the information itself, but the relations regarding the information that arise in the field of management, become the subject of legal regulation [12, p. 78]. Unfortunately, many specialists, including lawyers, considering and studying information in this aspect, do not have a unified approach to defining the concept and content of information, which leads to disputes and contradictions to this day.

Studying information as a subject of legal relations [13, p. 97], it is impossible to talk about it not specifically at all. The subject of consideration should be, first of all, information that is in civil, administrative or other public circulation and about which, or in connection with which, because of this,

social relations arise that are subject to regulation by law [14, p. 89].

The most important direction of improving the effectiveness of law is currently improving the legal information system, improving legal information services, which is due to the huge role of legal information in law-making and law enforcement activities, in legal education.

This, in turn, determines the deep interest of scientists in the study of a wide range of problems of legal information, in particular, its collection, processing, transmission, movement and use in the mechanism of regulation of social relations. Of course, during the period of economic changes in our society, the role of information in general and confidential information in particular is objectively growing. Therefore, it is necessary to consider general theoretical and legal concepts, without which it is impossible to determine the essence, structure and purpose of information provision in society, to find the place and role of legal information in it. I think that for a deeper disclosure and definition of this problem, it is necessary to investigate its epistemological roots, following the entire process of knowledge of these phenomena and the genesis of the main definitions of information in general.

Conclusions. Thus, on the basis of the conducted analysis, it can be concluded that the legislator of Ukraine misunderstands the essence of the term «information», defining it exclusively as «information ...», at the same time as it is nothing more than «message» (1) containing «information» (2) about anything. Of course, it (information) has objectively inherent properties, just like other objects – physical, social and any other. Therefore, it would be advisable to hold a scientific discussion with the participation of specialists in the field of cybernetics, computer science, mathematics and civil lawyers to more accurately define the properties objectively inherent in such a complex phenomenon as «information as such», so that lawyers can associate certain legal consequences with them (properties) and reflect this in their sources of law.

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ІНФОРМАЦІЯ ЯК ОБ'ЄКТ ЦИВІЛЬНОГО ПРАВА: ПРОБЛЕМИ РОЗУМІННЯ

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Метою *даної статті є розгляд проблемних питань щодо поняття інформації як об'єкта цивільного права, розуміння терміну «інформація» та «правовий режим інформації». Термін «інформація» є нетиповим для науки права загалом і цивільного права, зокрема, оскільки має специфічні ознаки-властивості, які не притаманні іншим об'єктам цивільного права. Можливо завдяки цьому інформація досі залишається недостатньо дослідженою науковцями у сфері цивільного права. У доктрині цивільного права відсутнє також загальноприйняте розуміння інформації та її правового режиму.* ***Методологічною основою*** *дослідження є загальнонаукові та спеціальні методи наукового пізнання. Використання цих методів дало можливість проаналізувати поняття інформації як об'єкта цивільного права, розглянути проблеми розуміння терміну «інформація» та правового режиму інформації.* ***Результати:*** *практично всі в Україні фахівці цивільного права, що займаються так чи інакше дослідженням інформації як об'єкта права та законодавець України, хибно розуміють суть терміну «інформація» визначаючи її виключно як «відомості ...», в той же час, як вона є не що інше як «повідомленням» (1), що містить «відомості» (2).* ***Обговорення:*** *у статті викладено сучасні тенденції положення та розвитку інформаційного права в законодавстві України, теоретичній літературі, різні точки зору вчених щодо поняття інформації, її змісту, тенденції проблеми правового режиму інформації в цивільному праві.*

Ключові слова: *інформація; відомості; повідомлення; правовий режим інформації; загальновідома інформація; конфіденційна інформація.*

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