

## СТАТТЯ НОМЕРА

ЮРИДИЧНІ НАУКИ

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### **CRIMES AGAINST THE ELECTORAL RIGHTS OF CITIZENS IN UKRAINE: THE PECULIARITIES OF THEIR COMMITTING AND INVESTIGATION**

This article is concerning on researching the crimes against the elective franchise as the crimes within the transnational nature, which are committed by the usage of information technologies. Different approaches to determine crimes against electoral rights of citizens have been described. Significant differences in number of offenses recorded by the Department of Information Support and Coordination of Police, crimes detected by the National police of Ukraine, as well as in the number of initiated criminal proceedings and number of criminal proceedings referred to the court have been highlighted. The types of unauthorized interference into the database of the State Register of Voters have been pointed. The impact of new voting technologies in increasing number of crimes against the elective franchise has been stressed. The external and internal subjects of crimes against the elective rights of citizens committed by usage of information technologies have been specified. Certain difficulties and problems, an overcoming of which requires a comprehensive approach, have been disclosed. In particular, blanket nature of statutory regulations, lack of well-established investigative and judicial practice, the needs in cooperation among different law enforcement agencies, including international engagement, involvements non-governmental organizations, etc.

**Key words:** *electoral rights of citizens, crimes, election crimes, information technologies, mechanism of committing, investigation.*

*Original article*

#### **Introduction**

Cross-border crimes infringe upon a host of human rights. For example, the right to life, to labour, to freedom, to study, to safety, etc. But what about the crimes against the right to exercise the elective franchise? Aren't these crimes a part of organized cross-border crimes as well?

Google, Facebook, and Twitter have disclosed that their servers have been used for distributing disinformation during the 2016 US presidential election campaign, which appear to have had a significant impact on election results [1]. Similarly, bots and fake news have allegedly had an impact on the federal election in Germany, as evidenced by a study of Oxford University [2]. Crimes against the elective franchise are also related to the usage of information technologies and unlawful interference in elections from abroad. And in this paper I posit that these cases are a part of organized crime.

Illegal influence on the election process and election results causes huge harm to fundamentals of state formation, undermines the authority of national regulatory and administrative authorities, promotes the expansion of negativism, and prevents the development of order and peace in the state. In Ukraine namely illegal offences of elections administration or (and) falsification of their results became a decisive boost to key changes, associated for example with mass disorders, change of leadership of the country, its political policy, etc. Timeless of this topic is particularly serious prior to the elections of the President of Ukraine or Verkhovna Rada of Ukraine of 2019.

Department of Information Support and Police Coordination had registered 8.220 incidents during the 2015 local election campaign as evidenced by a study of Civil Network OPORA. At the same time, during the regular local elections 2015 the National Police of Ukraine (hereinafter

referred to as NP of Ukraine) initiated 478 pre-trial investigations by the results of review and verification of these notifications. Only 68 criminal proceedings were taken to court with criminal indictment, a significant part of the rest had been closed without going to court [3]. Thus, one should note the existence of various types of record databases on the violations of the electoral law that significantly complicates analysis of statistics.

According to the results of the Analytical Report on the sociological survey results, the most relevant sources of information for the population aged 18-35 are news sites on the Internet and social networks. People aged 35-44 mostly focus on television news, but also use information from news sites on the Internet and social networks. Television news is the main source of information about social and political events in Ukraine. This channel of information is a key for the overwhelming majority of people aged 45 and over [4].

The usage of Internet resources to manipulate the consciousness of voters who prefer this particular source of information is possible.

Researching the electoral crimes as the crimes against the electoral rights of citizens, which have the transnational nature, it is what I'm trying to achieve in this discussion of the situation in Ukraine. Commission of electoral crimes is a new aspect in understanding the essence of transnational crimes. Accordingly, I believe that the results of the discussion will both essentially supplement the notion of transnational organized crime and will be represented in the elaboration of the strategy, tactics and methodology on combating the crimes against the electoral rights of citizens in Ukraine.

### **Methodology**

The findings in the present chapter are based on triangulation of methods including desk review of secondary data (both academic and grey literature) as well as primary research carried out in Ukraine. Furthermore, an analysis of media reports regarding key cases and judgments of conviction, delivered by the courts of Ukraine, statistical data from official websites of law enforcement agencies of Ukraine as well as statistical data from the public organizations, and also results of statistical researches of international and social organizations to uncover any possible additional information on how the mechanism of committing crimes against the elective franchise is used in practice. Several illustrative cases are presented in more details.

Last but not least, a review of court cases on the crimes against the elective franchise for the

period 2014-2018 was carried out in order to identify any references to information technologies within the mechanism of committing crimes against the elective franchise. Furthermore, the review also has the aim of tracing the verdicts usually given in these cases. The review focused on cases from three regions of Ukraine (Lugansk region, Donetsk region and Kyiv).

### **The main points of this paper:**

- there are different approaches to determine crimes against electoral rights of citizens. Some scholars call them "electoral" and refer to their scope all other types of crimes prepared and committed with the purpose to elect (not to elect) a particular candidate during the election process. In our opinion crimes against electoral rights of citizens should be considered as a separate group of crimes defined by the Criminal Code of Ukraine (hereinafter referred to as CC of Ukraine), and at the same time should be studied other types of crimes and offenses within the mechanism of their commission, which were committed with the purpose of preparation, commission or (and) concealing crimes against electoral rights of citizens. Since the example of using the election process as a mechanism of encroachment on territorial integrity of Ukraine does not make the latter as an electoral crime. At the same time, investigators of law enforcement agencies conducting pre-trial investigations within this mechanism of committing a crime against the foundations of the national security in Ukraine, must know, take into account and use the electoral law while establishing and proving all the circumstances of the crime;

- the crimes against the electoral rights of citizens are committed systematically in Ukraine; their number significantly increases during the election period.

*Thus since the start of the 2019 election campaign in Ukraine, there have been registered 357 cases related to the election. Law enforcers are currently investigating eight criminal proceedings: four in the case of hooliganism, one in violation of the order of financing of the election campaign, one in obstruction of the professionalism of journalists and one in excess of authority or official authority [5];*

- some crimes against the electoral rights of citizens in Ukraine have transnational nature, since their commission involves non-citizens of Ukraine who live or stay in another state or country during the preparation, commission or (and) concealing a crime;

- transnational crimes against the electoral rights of citizens are committed by organized criminal groups;

- the most advanced computer and telecommunication technologies are actively used in the commission of such crimes;

- other crimes (for example, hooliganism, causing bodily harm, appropriation of property, etc.), the criminal liability of which is provided for in other sections of the CC of Ukraine, are reflected in the mechanism of committing certain types of crimes against the electoral rights of citizens, the liability of which is provided for in Section V of the CC of Ukraine;

- some types of criminal interference into the election process in Ukraine are qualified as crimes against the foundations of the national security of Ukraine (for instance, the actions aimed at violent change or overthrow of the constitutional system or at the seizure of state power – the Art. 109, encroachment on the territorial integrity of Ukraine – the Art. 110, etc.);

- while investigating crimes against the electoral rights of citizens, having transnational nature, committed by organized criminal groups or (and) related to the usage of new computer and telecommunication technologies, there are difficulties and problems, an overcoming of which requires a comprehensive approach;

- state of combating crimes against the electoral rights of citizens and other types of interference into the election process in Ukraine attracts attention both at the international and national levels;

- there are needs to active implementation of training courses for the law enforcement officers on the peculiarities of investigating the mentioned crimes;

- the procedure of international cooperation between law enforcement agencies should be simplified in order to effective and expeditious investigation of elective crimes committed by usage of information technologies.;

- it's important to continue scientific researches in this field to unify the concepts of the crimes against the electoral rights of citizens, to develop an efficient methodological recommendation of their detection, investigation and prevention.

### **Legal framework**

It is well known that inescapable duty of the democratic state is to enable its citizens to exercise a right to take part in the administration of state affairs in All-Ukrainian and local referenda, freely elect and be elected in central and local public authorities. The imprescriptible right of every citizen of the democratic state is freely elect the authority; and this right is contained in Article 38 of the Constitution of Ukraine. The specified right is system-

atically violated during the election period, in particular; during the UA presidential election campaign, people's deputies, deputies in local councils, settlement, and village councils, municipal mayors etc.

The electoral legislation in Ukraine consists of several laws, namely: on the Elections of the president, MPs, on Local Elections, on the Central Electoral Commission, on Political Parties in Ukraine, on the State Register of Voters, etc.

According to the CC of Ukraine the criminal liability for commission of crimes against the elective franchise is recognized in seven articles. These Articles provide criminal liability for such crimes as:

- 1) hindering to exercise the elective franchise or the right to take part in the referendum, obstruction to work of the Election Committee or Commission for the Referendum or activity of the official observer (Art. 157);

- 2) false representation to the Agency of maintenance of the State Voter Register or falsification of elective documents, referendum documents or information from the State Voter Register (Art. 158);

- 3) illegal use of ballot card, referendum ballot, voting by the elector and referendum participant more than once (Art. 158-1);

- 4) illegal abolishment of electoral records or referendum documents (Art. 158-2);

- 5) breaching of the secrecy of elections (Art. 159);

- 6) violation of the mode of financing of the political party, election campaign, campaign in All-Ukrainian or local referendum (Art. 159-1);

- 7) bribery of voters, referendum participants (Art. 160).

According to the Unified Report on Criminal Violations for the year of 2018 no criminal offences under Article 158-1, 158-2, 159 of the CC of Ukraine were registered. Only one case was reported in accordance with the Art. 159-1 of the CC of Ukraine, 3 cases were reported in accordance with the Art. 158, only 4 cases were reported in accordance with the Art. 160, 6 cases were reported in accordance with the Art. 157. Only 2 criminal proceedings of the total number of them were referred to the court with the criminal complaint (in accordance with the Art. 160 of the CC of Ukraine) [6]. For reference, 44 criminal offences were registered for the year 2017 in accordance with Art. 157-160 of the CC of Ukraine, only 5 of which were referred to the court with the indictment [7].

Thus, it should be stated that despite of several Articles in the CC of Ukraine which provide criminal liability for committing abovementioned

crimes, there is no well-established investigative and judicial practice.

The Code of Ukraine on Administrative Offenses (hereinafter referred as CUAO) also contains the Chapter 15-A of the Art. 212-7 - 212-20 that provides administrative liability for encroachment to exercise the will of the people and established procedure for its guaranteeing.

Only from the beginning of 2019 (i.e. during the period of three weeks of January) the National Police of Ukraine recorded 47 notifications on possible violations of the electoral law, the liability for which is provided by the CUAO. Most of them are related to the lack of information on propaganda products provided by the Law [8].

As we previously stated, the Department of Information Support and Police Coordination had registered 8 220 incidents during the 2015 local election campaign. And at the same time, the National Police of Ukraine initiated 478 pre-trial investigations according to Articles 157-160 of the CC of Ukraine. Only 68 criminal proceedings with criminal indictment were taken to court, a significant part of the rest had been closed without going to court [1]. In total between 2014 and 2017 the investigators of the National Police of Ukraine opened more than 1 thousand criminal proceedings regarding violations of electoral legislation in elections for various posts, among them only 95 criminal proceedings were referred to the court [8].

Crimes against electoral rights of citizens can be considered latent. It is, first of all, indicated by significant differences in the number of offenses recorded by the Department of Information Support and Coordination of Police, as well as by the number of crimes detected by the National Police of Ukraine, and the number of initiated criminal proceedings. Secondly, one should emphasize that a great number of criminal violations of the electoral law was qualified as crimes against the fundamentals of the national security of Ukraine, for example, intervention with territorial integrity of Ukraine.

*Thus, according to the guilty verdict No. 233/3621/18, citizens of Ukraine actively participated in organization and implementation of an illegal referendum on establishment so-called independent, sovereign state – “Donetsk People’s Republic” within the territory of Donetsk Region on May 11, 2014. In addition to the above the Person\_1, being in the capacity of the Head of the local electoral commission in violation of Art. 1, 2, 5, 8, p. 2 of Art. 19, Art. 73, par. 3 p. 1 Art. 85, subpar. 13, 18, 20 p. 1 Art. 92, Art. 132, 133 of the Constitution of Ukraine and the Law of Ukraine*

*“On All-Ukrainian Referendum”<sup>1</sup>, received a list of electors and voting bulletins from representatives of so-called Territorial Electoral Commission. After that, the Person\_1 with the participation of Person\_3, Person\_4, Person\_5, Person\_6, and other unidentified persons, engaged in the capacity of “members of local electoral commission”, organized placement of desks, ballot boxes and equipment for voting booths, provided briefing of the said persons concerning the procedure for the conduct of illegal referendum. After the close of voting in a so-called referendum, the Person\_1 organized the further making and signing of protocols on election results and their delivery together with ballot boxes and voting bulletins to members of so-called Territorial Electoral Commission [10].*

The abovementioned criminal acts were concerned with the solution of the question “Do you support the Act of State independence of Donetsk People’s Republic?”, in other words the question on changes of the boundaries or national border of Ukraine by removal of administrative and territorial entities of Donetsk Region from the jurisdiction of Ukraine.

The similar judgment of convictions was delivered also in other courts of Lugansk and Donetsk Regions, Kyiv City and other settlements according to the results of events that took place in May 2014 within the territory of the temporarily occupied territory of Lugansk and Donetsk Regions<sup>2</sup> as well as on the “elections” which was

<sup>1</sup> It should be noted that the said Law is not valid, since the Constitutional Court of Ukraine on April 26, 2018 has adopted the Resolution on recognizing the Law unconstitutional both because of the violation of the procedure of its review and adoption and in regard to its content.

<sup>2</sup> Popasna District Court Case No. 423/1711/18, available at <http://reyestr.court.gov.ua/Review/74591116>; Krasnyi Lyman Municipal Court of Donetsk Region Case No. 236/2127/17 (<http://reyestr.court.gov.ua/Review/68004459>); Sloviansk Municipal and District Court of Donetsk Region Case No. 243/5823/17 (<http://reyestr.court.gov.ua/Review/68055916>); Kramatorsk Municipal Court of Donetsk Region Case No. 234/439/18 (<http://reyestr.court.gov.ua/Review/71991858>); Artemivsk Municipal and District Court of Donetsk Region Case No. 219/10310/17 (<http://reyestr.court.gov.ua/Review/70406068>); Novoaidar District Court of Luhansk Region Case No. 419/3157/16-к (<http://reyestr.court.gov.ua/Review/73143577>); Sviatoshynskiy District Court of Kyiv City Case No. 668/14221/15-к (<http://reyestr.court.gov.ua/Review/56291512>); Volnovakha District Court of Donetsk Region Case No. 221/5613/17 (<http://reyestr.court.gov.ua/Review/70467550>); Zhovtnevyi District Court of Mariupol City Case No. 263/12605/14-к (<http://reyestr.court.gov.ua/Review/70406960>);

provided in the so-called “Lugansk People’s Republic” and “Donetsk People’s Republic” for 11 November 2018 [11]. These criminal proceedings were opened due to the fact of organization and implementation of so-called repeated “elections” in the temporary occupied territories of Lugansk and Donetsk Regions according to p. 1 Art. 109 (actions, performed with the purpose of forcible change or overthrow the constitutional order or assumption of power), p. 2 of the Art. 110 (violation of the territorial integrity and inviolability of Ukraine), p. 1 of the Art. 258-3 (creation of the terrorist group or terrorist organization, leadership of such group or organization or participation in it) of the CC of Ukraine on November 12, 2018 [12]. In other words, the facts of organization, financing and holding of illegal elections, as well as participation in them in the capacity of candidates are classified as crimes against the foundation of national security of Ukraine.

The latency of crimes against electoral rights of citizens is also explained by the fact that some voters are not aware about electoral procedures and their rights. In particular, it is indicated by the results stated in the Analytical Report about Voters’ Awareness of Their Electoral Rights and Electoral Procedures [4].

Also, elections’ transnational character promotes latency of electoral offences. As we mentioned above, the Google, Facebook and Twitter disclosed that their servers have been used for distributing disinformation during the 2016 US presidential election campaign, which appear to have had a significant impact on election results. According to media reports, hearings regarding unlawful interference in elections were scheduled in US Congress on the November last year; therefore, representatives of the abovementioned campaigns were called to give evidence [13; 14]. And at the beginning of December 2018, it became known that the former FBI director James Comey decided to testify about the FBI’s investigations into Russia interference in the 2016 U.S. election [15].

The usage of information technologies in the mechanism of commission the crimes against the elective franchise also occurs in Ukraine. For example, press centre of the Security Service of Ukraine reported on identification and termination of the considerable quantity of hackers attacks on the official website of CEC and system “Elections” in April 2014 [16].

*According to this report, the overwhelming number of attacks was generated from the territory of the Russian Federation using botnets. The organized hacker group who carried out preparation to inactivation of information resources of CEC and planned to bring into challenge results of the voting was arrested within the framework of opened criminal proceedings in Kiev. Moreover, the work of two servers, affected by viruses, rented by Russian citizens, was detected and blocked in Vinnytsia. Lawbreakers generated a powerful DDOS-attack on information resources of CEC (with the capacity of more than 200 000 packets per second) received unauthorized access to servers of website hosting providers “Besthosting” through hacking. The criminal proceeding was also registered due to this fact.*

*Also, the implementation of the intention to overload communication links by means of continuous auto redial to land-line phones of election districts of Ternopil, Zhytomyr, Poltava and Volyn Regions was prevented. Moreover, during preparation to presidential elections and directly on election day on 25 May 2018 the Security Service of Ukraine implemented “very sophisticated comprehensive measures” to ensure reliable functioning of telecommunication system and official website of CEC and also avoided an unauthorized interference to the results of voting, displayed by information systems of CEC [16].*

*At the same time a malicious software (virus tab), entered into the electronic data-processing system, was identified and preliminary destroyed. Consequently, a special information campaign for election results discretization, coordinated by the Russian party, was disrupted (the candidate Yarosh was intended to be announced as a leader of voting with a rating of 37 %). Without awareness of deactivation of virus tab by Ukrainian intelligence service the Russian television channel ORT revealed the provocation and commented in their plot very the same result that must have been generated by a virus on CEC website [17].*

As can be seen from the above, the criminality, associated with the realization of the right to vote by citizens has been reaching alarming proportions in Ukraine over the last years. Certain scientific researches attest to the consistency of criminal violations of electoral legislation [18, c. 3]. The abovementioned fact becomes not only the obstacle for recognition of election results objective but also it constitutes grounds for repeat elections, it gives occasion to destabilization of the situation in a particular region or in the whole country.

The specified situation attracts considerable attention of the international community, wherefore the condition of electoral legislation and process in Ukraine are investigated by them be-

fore, during and after elections [19; 20]. Also, international organizations conduct various training and roundtables, focused on prevention of election process criminal violations in Ukraine. Thus, “the International Foundation for Electoral Systems (IFES) organized a series of events in Ukraine from June 4-8, 2018, as part of its Cybersecurity Assessment Week initiative. The initiative aimed to assess the cybersecurity of Ukraine’s election process and infrastructure. With Ukraine’s 2019 presidential and parliamentary elections approaching, the prospect of cyber-attacks that could potentially undermine critical systems is a real threat and could have severe ramifications in Ukraine and beyond” [21]. On 28 November 2018 Ukraine’s CEC installed equipment and software provided by the OSCE Project Co-ordinator in Ukraine for ensuring comprehensive technical protection of the State Voter Register, as part of efforts aimed at enhancing security of election administration systems from digital threats. This is an important step in the implementation of the CEC’s plans to enhance the cybersecurity of election administration during the 2019 votes. As of 10 October 2018, the State Voter Register contained personal data of more than 35.6 million Ukrainians eligible to participate in the presidential and parliamentary elections envisaged to take place next year. Also, the roundtable discussion was organized by the OSCE Project Co-ordinator in Ukraine together with the CEC. “During the event the OSCE Project Co-ordinator presented the results of a sociological survey on voters’ awareness about their electoral rights and procedures. This event is part of the project “Enhancing cybersecurity and transparency of election processes in Ukraine” implemented by the Project Co-ordinator in Ukraine under the financial assistance of the Mission of the United States to the OSCE and the Government of Norway” [22].

Pre-election delegation of the European Parliament and American National Democratic Institute, which was in Ukraine in November 2018 for assessment and development of recommendations with the purpose of holding of fair presidential and congressional elections in the year of 2019, expressed concern regarding strengthening of misinformation war and appealed Ukrainians for combating with misinformation of the Russian Federation in elections 2019. The key recommendations were the adoption of new electoral legislation and ensuring the inclusiveness of elections, etc. [23].

Understanding a danger of electoral rights violation and with the law-enforcement purpose during election process, the Minister of the Interior of Ukraine Arsen Avakov and the Head of Central

Election Committee of Ukraine Tetiana Slipachuk concluded Memorandum of cooperation between Ukrainian agencies on December 5, 2018. It was done for the first time in the history of activity CEC and Ministry of Internal Affairs of Ukraine. Within the framework of signed Memorandum, the Parties agreed upon the presentation of information on consistent offences of electoral legislation, on adjustment of information interchange concerning criminal violations against elective franchise, maintenance of their electronic map with a breakdown by types and regions during the elections of the President of Ukraine, people’s deputies of Ukraine and local elections. Also, the Ministry of Internal Affairs and CEC agreed upon joint uncovering, prevention, and suppression of offences, associated with interference in the work of computer networks and state research and information and information and telecommunication systems [24]. Also, the CEC is planning to create a separate unit for providing cybersecurity during elections [25].

The main impact of these actions can be estimated in the spring of 2019 – during the elections of the President of Ukraine and Verkhovna Rada of Ukraine.

#### **Problem of definitions of crimes against the elective franchise**

It worth noting that the problem of conceptual framework definition and classification of certain kinds of criminal activities are typical for criminological, criminal legal science and forensic science in Ukraine. With relation to electoral crimes, the emphasis in this regard should be placed in the particular on the fact that in accordance with the Criminal Code of Ukraine the criminal liability for commission of crimes against the elective franchise is recognized just in seven articles (namely: 157, 158, 158-1, 158-2, 159, 159-1, 160). But certain criminal actions, related to encroachment on the electoral rights of citizens, in practice, qualify under the other articles of the CC of Ukraine because of their insufficient certainty or uncertainty in current legislation. It not only makes a proper record and crime analysis against elective franchise impossible, but also leads to avoidance of criminal liability by guilty persons. Also, this results in difficulties in the investigation of the specified types of crimes, because namely the current legislation and judicial and investigation practices are the ground for the development of methodological recommendations for investigation.

Criminologists identify criminality in the area of the election process as the mass, historically changeable, socially negative phenomenon of

criminal and legal nature, that consist of the aggregate of crimes against the elective franchise that are committed both during the election process and after it [26; 18, c. 12].

Few works of domestic and foreign scientists in criminalistics literature were dedicated to the investigation of crimes against the elective franchise. Among the scientists are the following: O.Yu. Antonov [27], O.V. Kubarieva [28], V.P. Korzh [29] and others.

Russian scientist attempted to give criminological comprehension of “electoral criminal activity” within the framework of thesis work for the degree of the Doctor of Juridical Science. According to the scientist the electoral criminal activity is the integrated aggregate of crimes and offences, associated with preparation and conduct of elections, united by a general purpose – election (defeat) of the candidate [27]. The author included five types of crimes and offences to this combination, according to his opinion the main of them are the following: falsification of voters’ signatures, antimarketing as a means of affecting electors, rival candidates (including slander, abuse, bribery of voters and so on), professional misconduct (usage of administrative resources), violation of the mode of electoral campaign financing and voter fraud. The term “electoral” especially requires attention when analysing the given concept. According to the Free explanatory dictionary the term “electoral” is a political one, it derives from the Latin word “elector” – voter, the one who chooses [30]. In this context, the electoral criminality has to comprise crimes, committed by voters, instead, those, who are elected or those, who are interested in the election of the particular candidate, are involved in the organization, preparation, commitment and non-disclosure of the extraordinary majority of crimes. Confirmation of this point of view can be found in works of political scientists, who identify in particular three elements, forming the following system: voters’ system (segregated or combined in definite structures), system of politicians (so-called independent ones or also those who are united into blocks and unions) and system of different mechanisms, providing collaboration of voters and politicians [31].

O.V. Kubarieva also studied the concept of “crimes, related to the realization of the electoral rights” taking into account criminal-law and criminalistics features. In particular, she identified them as a system of criminal offences, comprising of three levels:

1) “substantive” crimes, determining the technology of criminal activities and directionally focused on elective franchise violation (for exam-

ple, obstructing to elective franchise implementation or the right to take part in a referendum, work of electoral commission, referendum commission or official observer activity (Art. 157 of the CC of Ukraine); falsification of electoral documents and referendum documents, or falsification of the results of voting, false representation to the agencies of the State Voter Register or falsification of information from the State Voter Register (Art. 158); voting at a polling station more than once (Art. 158-1); illegal destruction of election-related documents or referendum documents (Art. 158-2); violation of the secrecy of election (Art. 159); violation of the mode of financing of candidate’s election campaign, political party (block) (Art. 159-1);

2) other crimes, going along with violation of elective franchise (are the components of their methods of preparation, commitment and non-disclosure). In particular, separate crimes against life and health, public order and morality, in the sphere of computer machines (computers) application, systems and computer networks and telecommunication networks were referred to them by the scientist;

3) related crimes, associated with illegal (corrupt) practices of public officials [28, c. 13].

Analysing this definition, the absence of appropriate ground of specified “levels” allocation should be noted. Thus, reasons of delimitation of “other” crimes from “related” crimes are not clear. Because the corruptive activity of public officials can be the element of preparation, commitment or (and) concealment of crimes, related to elective franchise implementation.

Based on the research of electoral crimes in the context of their affiliation with corruptive technologies, they should be considered as ways of organization and realization of the elective process by certain politicians, public officials or governmental agencies through the use of wrongful techniques, methods, actions, mass or individual bribery of the electorate, unlawful interference in electoral consciousness and electoral behaviour and commitment of other corrupt practices in favor of separate parties, candidates for an elective office [29].

Results of the mentioned work can be taken into account, but they need to be modernized in view of changes made to the Criminal Code of Ukraine, the Criminal Procedure Code of Ukraine, other normative acts, identifying the separate stages of the election process. Also, both the newest information and communication systems and their resources, applied while committing of crimes against elective franchise, and

transnational character of investigated types of crimes should be considered.

In this article “new voting technologies” (hereinafter referred to as NVT) are defined as the usage of information and communications technologies (hereinafter referred to as ICT) applied to the casting and counting of votes.

It should be noted that the usage of ICT in elections has increased considerably in recent years. Today, almost all electoral processes make some use of new technologies (from voter registration to tabulation of results). New technologies have also been utilized in the voting and counting of votes in some countries, which has raised certain questions about the extent to which such applications are in line with Organization for Security and Co-operation in Europe (hereinafter referred to as OSCE) commitments and other international good practices for democratic elections. Several OSCE participating States have implemented or tested NVT during their elections. This has involved the use of electronic voting machines, ballot scanners, and Internet voting or other electronic means. Some of these states continue to use NVT, while others have stopped using them and have returned to paper-based electoral methods. Given the considerable amount of discussion currently underway regarding potential advantages, as well as challenges, related to the use of NVT in elections, the OSCE Office for Democratic Institutions and Human Rights (hereinafter referred to as ODIHR) has given increased attention to this issue in the context of its election observation mandate [32].

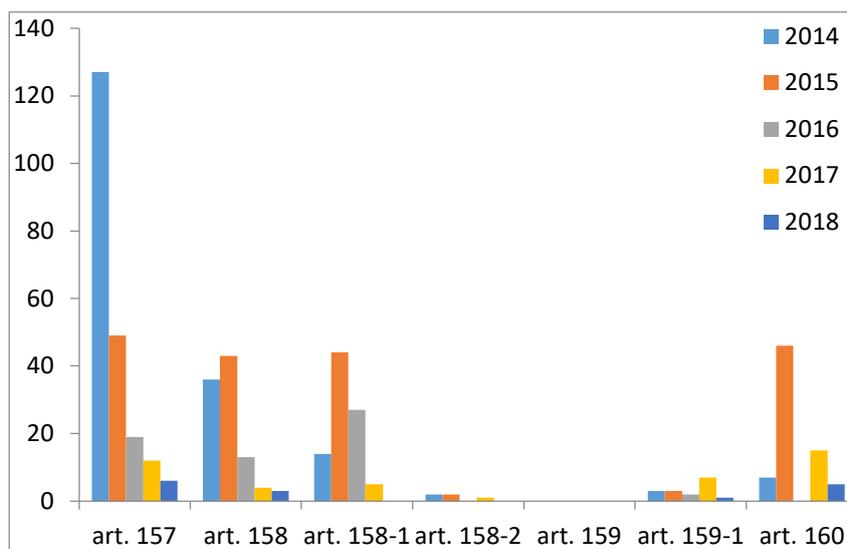
At the same time, the use of NVT poses certain challenges to the election process. NVT are

often implemented in a manner that makes direct physical observation of some important procedures as difficult as fixation and exclusion of evidence having illegal influence on status and results of elections, committed by applying information technologies. An additional complication is that NVT may not be widely understood by the typical policemen. Nevertheless, NVT issues are also closely tied to the different aspects of the investigation of these crimes according to Criminal Procedure Code of Ukraine.

Thus, the goal of this work is conduction of forensic analysis of crimes against the elective franchise, committed with the appliance of information technologies and practice of combating them with the purpose of providing investigative agencies with modern means and methods of detection, investigation, and prevention of the specified crimes.

#### **Crimes against the elective franchise: some problems of investigation**

According to Diagram#1, exactly based on the data of statistical reports from the official website of the General Prosecutor’s Office of Ukraine 495 criminal proceedings were opened under Articles 157-160 of the CC of Ukraine in the period 2014-2018. While the Deputy Head of the Main Investigation’s Department of the NP of Ukraine indicated the number of more than 1 thousand of criminal proceedings which were opened by the results of special elections of the President of Ukraine and people’s deputies in the year of 2014, local elections in the year 2015, by-elections to Verkhovna Rada in the year of 2017 and elections to the joint communities [7].



*Diagram # 1 – Total quantity of crimes against the elective franchise registered during 2014-2018*

So there is a significant difference between the number of crimes against the elective franchise recorded in the statistical reports placed on the official website of the General Prosecutor's Office of Ukraine and the number of these crimes according to the data of the NP of Ukraine.

In our opinion, this points to the existence of several problems in fighting crimes against the elective franchise. First of all, the considerable part of statutory regulations is blanket that requires deep knowledge in other branches of legislation. And due to the lack of this problematic among course topics when studying relevant academic disciplines on the bachelor's and master's levels in educational institutions with specific conditions of study, the overwhelming majority of investigators and officials of the operative units face with characteristics of the mechanism of commission of the electoral crimes and particularities of their investigation immediately during the work having insufficient level of relevant knowledge [33].

Secondly, particularities of the mechanism of specified crimes commitment are defined by usage of information and communication systems and their resources, transnational character of these crimes. Furthermore, the mechanism of the crimes against the elective franchise also related to implication in the crimes persons who are having high social, political status and job title or who are the citizens of other countries. As a result, investigators frequently deal with strong opposition to the investigation from the part of entities, involved into the commission of specified crimes.

The specified shows a clear need for international cooperation in the investigation of such types of crimes and contribute to the emergence of difficulties, associated with the establishment of facts, that are subjected to clarification, the commitment of separate investigative (search) activities, the specifics of usage of special knowledge, etc.

Outlined issues and level of legal, criminalistic, organizational and administrative ensure of detection, investigation and prevention of crimes against the elective franchise lay the groundwork for deep and comprehensive study of conceptual and other issues of the given problem. Consequently, it is important to develop a theoretical complex of scientifically grounded strategy and tactics of prevention of the defined crimes.

The NP of Ukraine during the period of regular local elections in 2015 has initiated 478 pre-trial investigations under the Articles 157-160 of the CC of Ukraine, which establish liability for crimes against the elective franchise. Almost 16 % of these pre-trial investigations (78 criminal

proceedings) were related to the submission of false information to the agency of the State Register of Voters or falsification of election documents, referendum documents, voting results or information of the State Register of Voters (the Art. 158 of the CC of Ukraine) [3].

The mentioned crimes were committed by the following methods, which were defined in the Art. 158 of the CC of Ukraine: 1) intended submission of false information about the voters to the agency of the State Register of Voters; 2) intended entering of false information into the database of the State Register of Voters; 3) unauthorized actions with information contained in the database of the State Register of Voters; 4) other unauthorized interference into the database of the State Register of Voters. The last three methods are related to the usage of information technologies.

According to the materials of the investigative and judicial practice and the results of interviewing IT-specialists, unauthorized interference into the database of the State Register of Voters is carried out, for example, due to DDOS-attack to the website of the CEC. Such an influence is carried out aiming at:

1) interfering the usual operation of the website due to its overload to block the access of users to the website and the data on it (DDOS-attack as the ultimate goal to cause panic, distrust of the population to the results of the elections in general or at certain polling stations);

2) detecting vulnerabilities of information security and downloading malicious software, the use of which will make it possible attackers to enter further false information, to violate the established routing of information, to commit other unauthorized actions (DDOS-attack as a cover for further criminal activities against elective franchise);

3) getting access to associated servers, which carry out a certain type of operations, the results of which are displayed on the official website of the CEC. Illegal access allows offenders to send false information directly to the State Register of Voters, to forge information about the course and results of expression of will at polling stations and to distort the processing of information, and finally to falsify the results of voting (DDOS-attack as a mean to obtain unauthorized access and falsify the results of voting) [34, c. 164].

The commission of this and other crimes against elective franchise may also be related to the use of such information technologies as: a) creating spam-mailings with threats to specific individuals; b) making cashless funds transfer; c) placing special political advertisements, propaganda texts and political news in favor of a particular

candidate, or/and false messages aimed at discrediting certain candidates on the websites of well-known providers, public organizations, political parties or mass media, in particular through the network of created or purchased accounts, botnets, Internet-trolling tools, links to the secondary resources, etc.

The specified technologies are usually implemented by so-called “external” subjects, i.e. by persons, who are not bound by employment relations with companies, establishments and organizations, for resources of which the illegal influence with the use of informative technologies including active usage of bot-nets is executed. At the same time unauthorized interference in work of database of State Voter Register, site of Central Electoral Campaign and related servers can be carried out by so-called “internal” subject:

1) employee of CEC or its structural units –

a) Department of administration and information security, information support, analytical processing of information or/and software maintenance of the Department of Informational Support of CEC Secretariat;

b) Department of maintenance of the State Voter Register, entitled to implement actions in the maintenance of the Voter Register, use funds of the software support of automated informative and telecommunication system “State Voter Register”;

2) employee of the enterprise, agency, organization, who performs systemic software for performance of automated informative and telecommunication system “State Voter Register” [34, c. 164-165; 35].

### **Cybercrimes and new direction in committing crimes against the elective franchise**

Usage of information and telecommunication technologies by the specified subjects, aiming the falsification of voting results or information of State Voter Register, consist in downloading of variety of hostile or intrusive software’s forms. It can appear in the form of executable code, scripts, active content, and other malware by means of attachment of external storage medium, sending messages opening or following by a link to a site with malware, etc. The abovementioned actions could be implemented in advance and malware would be activated in the certain time to provide illegal interference by the perpetrators. Thus, they try to overcome the security system without being noticed as well as to interfere into the normal work process of electronic computing machines (computers), automation systems, computer networks or telecommunication system without authorization. In additional, the attackers

try to breach established order of information routing in purpose of falsification the process and results of willing expression of the citizens during the elections.

Usage of information and telecommunication systems and their resources can take place while a commitment of other crimes against the elective rights of citizens as well. Compulsion interference with citizens’ right to elect or the right to take part in the referendum, the work of Election Committee, the Committee for referendum, or official observers’ activity, relates within the usage of information technologies in form of spamming with threats against particular persons. The usage of information technologies relates with a cash-free payment when bribing a voter or a referendum participant as well as when the breach of the order of financing of the political party, pre-election campaign, campaign in All-Ukrainian or local referendum. Hiding its traces the attackers try to publish special political advertisements, propaganda texts and political news in favor of the particular candidate or (and) false information messages, designed to discredit the particular candidate on the websites of diverse famous providers, non-governmental organizations, political parties, mass media, by using network of specially created or gained profiles, extensive usage of botnets, tools of internet trolling, references to exterior resources, etc.

According to the statistical information that displayed on the official web-site of the General Prosecutor’s Office of Ukraine<sup>1</sup>, 99 criminal proceedings were opened under Art. 158 of the CC of Ukraine during 2014-2018. But, as we noted above, some of the cases involving the usage of information technology in committing crimes against the elective franchise are qualified under the other articles of the CC of Ukraine.

*Thus, in August 2018 members of the Security Service of Ukraine reported on criminal proceeding commencement upon a committing of crimes against fundamentals of national security. In particular, the activity of Internet-propagandists, who had planned to interfere in the coming elections of the President of Ukraine on 31 March 2019, was detected and blocked. Operational staff of the Security Service of Ukraine established that the Russian intelligence services engaged Ukrainian citizens in criminal activities in Dnipro, Kryvyi Rih and Nikolopol through social networking websites for monetary reward. The task of these persons was in the manipulation of public opinion, preparation of the “base” for influence on the future elections. Among*

<sup>1</sup> [https://www.gp.gov.ua/ua/stst2011.html?dir\\_id=104402](https://www.gp.gov.ua/ua/stst2011.html?dir_id=104402).

tasks that were set by the representatives of the aggressor-country were the following: 1) search of bloggers and active authors of social groups, who have to publish political news, sent from Russia for monetary reward; 2) involvement of «straw» persons for Internet sites registration in Ukrainian segment of domain names; 3) search and order of services for the promotion of Internet resource and content in IT-companies, located in the south-eastern regions of Ukraine. The specified actions were meant to conceal the involvement of the Russian Federation to “fake” news expansion and popularization of pro-Russian election process participants. Also, Russian supervisors planned to escalate separatist sentiment the day before and during the elections of the President of Ukraine. With this purpose, members had to publish news, discrediting government authorities and create groups of so-called patriotic direction. By applying these resources, it was planned to publish destructive materials, which include appeals to violent change of the constitutional order of Ukraine and violation of its territorial integrity [36; 37].

Political scientists don't exclude the use of Internet resources, social media and hacker attacks with the purpose of interference into the election process. That's why they draw attention to the cases of blocking pages of public-spirited social leaders and politicians in social media even prior to the elections [38].

E-democracy conception was approved in Ukraine; one of its measures is the development of regulatory legal acts with a view to ensuring electronic voting<sup>1</sup>. Because of high risks of hackers' attacks on official websites of regulatory and administrative authorities of Ukraine, preservation of paper voting system is considered to be one of the key measures to ensure the security from external interference in elections. The introduction of electronic innovations is considered to be premature meanwhile citizens don't have credibility to election process as it was stated with reference to international recommendations concerning elections [39]. In regards to this, it should be noted a results of the public opinion

<sup>1</sup> План заходів щодо реалізації Концепції розвитку електронної демократії в Україні та плану заходів щодо її реалізації : затв. розпорядженням Кабінету Міністрів України від 08.11.2017 № 797-р // База даних «Законодавство України» / Верховна Рада України. URL: <http://zakon.rada.gov.ua/laws/show/797-2017-%D1%80#n154> (accessed 19.02.2019). – On Approval of the Conception of E-democracy Development in Ukraine and Plan of Measures for Its Implementation: Ordinance of the Cabinet of Ministers of Ukraine No. 797-p dated from 8 Nov 2017.

poll, conducted by GfK Ukraine for the Council of Europe within the framework of the project “Reform of electoral practice in Ukraine”. The specified data attest to the very low level of voter confidence to courts (2.83 points from 10 potential) and law-enforcement authorities (4.3 points – to the National Police, 3.11 – to the prosecution agencies) [40].

### Discussions and conclusions

Crimes against the elective franchise are related to the usage of information technologies in Ukraine similar to the situation in other countries. It is very probable that high-tech cyber technologies are having an impact on the organization of crime in Europe. Despite diversity of election legislation, different legal grounds of criminal prosecution and multiple formats of criminal procedure for investigating crimes, there are certain similarities of the mechanisms for illegal interference into election process in all countries. And the usage of computer and telecommunication technologies is one of them.

According to the Clingendael Expert Survey, the proliferation of high-tech cyber technologies is one of three shocks that may not be very probable but would have an impact on the threat of transnational organized crime. The Survey also notices that the proliferation of high-tech cyber technologies does not only play a role in traditional criminal activities but opens up a huge new criminal field. In our opinion this statement refers to the electoral crimes.

In support of this assumption, should be used data from a record “Worldwide Threat Assessment”. According to it Russia is taking steps to influence Ukraine's presidential election in March 2019 and legislative elections in the field, applying a range of tools to exert influence and exploit Kyiv's fragile economy, widespread corruption, cyber vulnerabilities, and public discontent in hopes of ousting Poroshenko and bringing to power a less anti-Russia parliament. Russia will continue its military, political, and economic destabilization campaign against Ukraine to try to stymie Kyiv's efforts to integrate with the EU and strengthen ties to NATO [41, p. 38].

Although nowadays the crimes against the electoral rights of citizens aren't a part of organized cross-border crime in a traditional, generally accepted concept of it (as the drugs, human trafficking, money laundering, illegal weapons, etc.), we believe it should be considered as an integral part of current transnational organized crime.

Aforementioned is a reason for emphasizing that there are several problems in Ukraine which

related to the crimes against the elective franchise.

First of all, there are several sources of information about the registered number of crimes against the elective franchise currently in Ukraine. It requires an improvement of approaches to the statistical accounting of the crimes against the elective franchise.

Also the studied types of crimes are characterized by a high level of latency. So it makes difficulties to analyse them. But because of this circumstance the analysis included key cases and judgments of conviction, delivered by the courts of Ukraine as well as the statistical data from public organizations.

An overcoming of difficulties in investigation the crimes against the electoral rights of citizens which have transnational nature, committed by organized criminal groups or (and) related to the usage of new computer and telecommunication technologies, requires a comprehensive approach.

Such an approach should include, first of all, amendment of the relevant articles of the CC of Ukraine, which provide the criminal liability for crimes against the electoral rights of citizens.

Secondly, the Criminal Procedural Code of Ukraine requires appropriate amendments in regard to special procedures of investigating and conducting some investigative (search) actions in case of necessity the interaction with law enforcement agencies of other countries. We consider it expedient to introduce a special order of criminal proceedings on the specified types of crimes, taking into account the active usage of the newest information technologies within the mechanism of their commission, the cross border and organized characteristic of the crimes, the need of international cooperation during their investigations, and the special order of certain investigative (search) actions, including secret, which ensure the detection and collection of proper evidence.

Thirdly, the expediency of improving the approaches to the statistical recording of crimes against the electoral rights of citizens and related crimes or other offenses is extremely relevant.

We are convicted that, as a result, because of it the level of people trust in the election process and election results will increase.

Fourth, it is necessary to improve the existing and elaborate the new methods for investigating crimes against the electoral rights of citizens, especially those having transnational nature, committed by organized criminal groups or (and) related to the usage of new computer and telecommunication technologies.

Fifthly, it is urgent to develop and implement special advanced training courses on the methodology for investigating crimes against the electoral rights of citizens and other crimes related to them aimed at investigators, operative officers of the NP of Ukraine, the Security Service of Ukraine, the State Bureau of Investigations and other law enforcement agencies of Ukraine.

Eventually, it's important to continue scientific researches in this field to unify the concepts of the crimes against the electoral rights of citizens, to develop an efficient methodological recommendation of their detection, investigation and prevention.

The specified situation attracts considerable attention of the international community, wherefore the condition of electoral legislation and election process in Ukraine are investigated by them before, during and after elections [19; 20].

In regards of the worlds' countries recently face the problems of interference in election processes from abroad; there also is an extremely relevant task to establish the international teams for a comprehensive research of crimes against the electoral rights of citizens which are committed by the usage of information and telecommunication technologies, and developing a strategy to combat them.

The members of these research teams will be able to exchange information, experience and collaborate to develop more effective methods for detecting, investigating and preventing these crimes.

It is also advisable to hold scientific conferences, seminars, round tables for experts on the fighting against these crimes.

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## **МАТЮШКОВА Т. П. ПРЕСТУПЛЕНИЯ ПРОТИВ ИЗБИРАТЕЛЬНЫХ ПРАВ ГРАЖДАН В УКРАИНЕ: ОСОБЕННОСТИ ИХ СОВЕРШЕНИЯ И РАССЛЕДОВАНИЯ**

Исследованы преступления против избирательных прав граждан как имеющие транснациональный характер и совершаемые с использованием информационных технологий. Описаны разные подходы к определению преступлений против избирательных прав граждан. Отмечены существенные различия в количестве преступлений, зафиксированных Департаментом информационного обеспечения и координации полиции, количестве преступлений, выявленных Национальной полицией Украины, а также в количестве уголовных производств, в которых начато досудебное следствие и направленных в суд. Определены виды несанкционированного вмешательства в базу данных Государственного реестра избирателей. Выделены внешние и внутренние субъекты совершения преступлений против избирательных прав граждан, совершаемых с использованием информационных технологий. Указаны некоторые проблемы, преодоление которых требует комплексного подхода. Например, бланкетный характер норм Уголовного кодекса Украины, недостаточный объём следственной и судебной практики, потребности в сотрудничестве различных правоохранительных органов, включая международное взаимодействие, привлечение неправительственных организаций и др.

**Ключевые слова:** избирательные права граждан, преступление, электоральные преступления, информационные технологии, механизм совершения, расследование.

## **МАТЮШКОВА Т. П. ЗЛОЧИНИ ПРОТИ ВИБОРЧИХ ПРАВ ГРОМАДЯН В УКРАЇНІ: ОСОБЛИВОСТІ ЇХ ВЧИНЕННЯ ТА РОЗСЛІДУВАННЯ**

Досліджено злочини проти виборчих прав громадян як такі, що мають транснаціональний характер і вчиняються з використанням інформаційних технологій. Описано різні підходи до визначення злочинів проти виборчих прав громадян. Указано на суттєві відмінності у кількості злочинів, зафіксованих Департаментом інформаційного забезпечення та координації діяльності поліції, кількості злочинів, виявлених Національною поліцією України, а також у кількості відкритих кримінальних проваджень та кількості кримінальних проваджень, переданих до суду.

Визначено види несанкціонованого втручання у базу даних Державного реєстру виборців. Виокремлено зовнішніх та внутрішніх суб'єктів учинення злочинів проти виборчих прав громадян, що вчинюються з використанням інформаційних технологій. Показано вплив нових виборчих технологій на кількість злочинів проти виборчих прав громадян. Указано на такі способи використання інформаційних технологій, як: створення спам-розсилок із погрозами на адресу конкретних осіб; здійснення безготівкових розрахунків; розміщення на сайтах відомих провайдерів, громадських організацій, політичних партій, засобів масової інформації спеціальних політичних рекламних оголошень, пропагандистських текстів і політичних новин на користь конкретного кандидата, чи/і неправдивих інформаційних повідомлень, спрямованих на дискредитацію окремих кандидатів, у тому числі через мережу спеціально створених чи придбаних облікових записів, шляхом активного використання бот-мереж, інструментів інтернет-тролінгу, посилення на сторонні ресурси тощо.

Розкрито певні проблеми у розслідуванні досліджуваних злочинів, для подолання яких, на думку автора, необхідний комплексний підхід. Зокрема, такими проблемними питаннями є: бланкетний характер норм, якими передбачено відповідальність за вчинення електоральних злочинів; відсутність відповідних навчальних курсів у структурі підготовки правоохоронців; недосконалість кримінального процесуального законодавства для ефективного й оперативного розслідування досліджуваних злочинів, що вчинюються з використанням інформаційних технологій; складність процедур міжнародної правової взаємодії; необхідність співпраці різних правоохоронних органів та громадських організацій під час їх розслідування.

**Ключові слова:** виборчі права громадян, злочин, електоральні злочини, інформаційні технології, механізм учинення, розслідування.