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Criminal protection of state secrets in Ukraine and EU countries

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Abstract

The aim of the study was to outline the differences between certain aspects of the system of state secrets protection in Ukraine and some countries of the European Union EU, which provides the basis for determining the directions of improvement of the national system of state secrets protection. The following general scientific methods were used in the article: analysis and synthesis, deduction and induction, analogy. As a result of the research, the following aspects of criminal protection of state secret in Ukraine and the EU countries identified for comparison were considered: definition of state secret, types of information classified as state secret, levels of secrecy, terms of classification, liability for disclosure of state secret. The methodological contribution of the study are the recommendations for the improvement of certain aspects of the system of state secrets protection in Ukraine. It is concluded that, the direction of future research should also be the disclosure of features and measures to optimize the procedure of security checks of persons having access to classified information.

Keywords: protection of state secrets; national security; criminal liability; secrecy levels; disclosure of classified information.

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Protección penal de los secretos de Estado en Ucrania y en los países de la Unión Europea

Resumen

El objetivo del estudio fue esbozar las diferencias entre ciertos aspectos del sistema de protección de secretos de Estado en Ucrania y algunos países de la Unión Europea UE, lo que proporciona las bases para determinar las direcciones de mejora del sistema nacional de protección de secretos de Estado. En el artículo se utilizaron los siguientes métodos científicos generales: análisis y síntesis, deducción e inducción, analogía. Como resultado de la investigación, se consideraron los siguientes aspectos de la protección penal del secreto de Estado en Ucrania y los países de la UE identificados para la comparación: definición de secreto de Estado, tipos de información clasificada como secreto de Estado, niveles de secreto, términos de clasificación, responsabilidad por la divulgación del secreto de Estado. La contribución metodológica del estudio son las recomendaciones para la mejora de ciertos aspectos del sistema de protección de secretos de Estado en Ucrania. Se concluye que, la dirección de futuras investigaciones debe ser también la divulgación de características y medidas para optimizar el procedimiento de controles de seguridad de las personas que tienen acceso a información clasificada.

Palabras clave: protección de secretos de Estado; seguridad nacional; responsabilidad penal; niveles de secreto; divulgación de información clasificada.

Introduction

State secrets protection is one of the primary tasks for every state, because the disclosure of information that constitutes a state secret can seriously harm national security (Denyshchuk, 2019; Tyshchuk and Syvovol, 2021). However, this problem is particularly acute in the context of a military conflict, as evidenced by the experience of Ukraine after the full-scale invasion of the Russian Federation into its sovereign territory.

In such conditions, the disclosure of state secrets endangers the lives of civilians and the military of Ukraine, and may also negatively affect the further course of the conflict for the country as a whole. It follows that the effective reformation of the state secret protection system of comes to the fore among the strategic development goals.

Ukraine has launched the reform of the state secret protection system began before the beginning of the full-scale invasion, as evidenced by the mention of this direction of state policy in the National Security Strategy of

Ukraine (On the National Security Strategy of Ukraine, 2020). Ukraine's course towards integration into the world community, in particular the European Union (EU) and the North Atlantic Treaty Organization (NATO), determines the need to take into account the experience and practice of member countries of these associations in the course of reform (Zub, 2019; Ponomarenko, 2021; Halushka and Tikhonova, 2021).

Boldyr (2018) examines the reformation of the state secrets protection system in Ukraine from the perspective of identifying discrepancies between national traditions and practices of EU and NATO countries, as well as outlining measures to bring Ukrainian legislation into compliance with the norms of these associations. The researcher defines the main problematic issues that must be agreed related to the following aspects:

- granting and refusing permission to carry out activities related to state secrets for public authorities, local self-government bodies, enterprises, institutions, organizations;
- the procedure for granting and reissuing a Special Permit to public authorities, enterprises, institutions, and organizations headed by a foreign citizen;
- protection of information during execution of contracts or works related to classified information by non-governmental enterprises;
- approaches to ensuring the functioning of the admission system in the field of state secrets;
- the appropriateness of the procedure for approving the "list of positions that require admission and access to state secrets" at each enterprise or institution;
- the appropriateness of monetary compensation to persons for work under classified restrictions.

Vdovenko and Danyk (2019) also find significant discrepancies between the national system of state secret protection and the system of the EU and NATO countries. Researchers provide a list of specific documents and individual articles that should be revised. They identify the physical and moral obsolescence of the state secret protection system as one of the main threats to Ukraine's national security.

Serhiychuk (2019) deals with a comparison of the national state secret protection system and the systems of some other countries, in particular France, Estonia, and Uzbekistan. The researcher notes the main positive approaches in the French and Estonian experience, which can be useful for reforming the Ukrainian state secret protection system. Based on these approaches, he proposes to implement some changes in the Law of Ukraine "On State Secrets" and the Criminal Code of Ukraine.

A number of studies also deal with the problems of the Ukrainian state secret protection system. Kharchenko (2021) outlines aspects of the work of public authorities, local self-government bodies, enterprises, institutions and organizations that are engaged in activities related to state secrets, as well as aspects of organizational control and state policy in this area, etc. Denyshchuk (2021) identifies the current problems of legal protection of state secrets urged by a number of factors, in particular, the armed aggression of the Russian Federation (RF) (at the time of writing the author's article, a large-scale military invasion had not taken place).

Nehoda (2021) describes measures to prevent crimes in the field of state secret protection depending on the levels of crime prevention given by the researcher. Oliinyk (2020) focuses on a separate direction of implementation of those measures, in particular, general social measures.

Foreign researchers usually considered the state secret protection system in the context of the protection of classified information. For example, Topolewski (2020) studies the historical aspects of the protection of classified information in Poland, and provides prerequisites for building an effective protection system. Wądołowski (2022) describes the system of protection of classified information in Bosnia and Herzegovina, comparing certain aspects with the Polish system. Topolewski (2020) examines the protection of classified information in Hungary, mostly focusing on the growing threats to the security of such information in the context of the development of the information society.

So, the aim of this study is to identify the differences between certain aspects of the state secret protection system in Ukraine and some EU countries, which will give the grounds for determining the directions for improving the national state secret protection system. The aim involved the fulfilment of the following research objectives:

- study the definition of state secrets in the legislation of Ukraine and EU countries;
- identify the specifics of the definition of types of information classified as state secrets in the legislation of Ukraine and EU countries;
- describe the degrees of secrecy and terms of classification established by the legislation of Ukraine and EU countries;
- compare the responsibility for the disclosure of state secrets established in the legislation of Ukraine and EU countries.

1. Methodology

1.1. Research procedure

The research covers the study of a number of legislative documents of the EU countries (Estonia, Latvia, Lithuania, the Czech Republic, Bulgaria and Poland) and Ukraine, related to the protection of state secrets, as well as their Criminal Codes. This research direction necessitates consideration of a large amount of information that cannot be described in detail in one article. Therefore, the study focused on certain aspects of the specified legislative documents, in particular: definition of state secret, types of information classified as state secret, secrecy levels, terms of classification, responsibility for disclosure of state secret.

The foregoing determines the division of the research into three stages. The first stage involved the study of the definition of state secret, the secrecy level and the terms of classification of information constituting a state secret provided by the legislative acts of the studied countries. The main differences between the studied aspects in the EU countries and Ukraine are determined at this stage using methods of analysis and synthesis.

The second stage provided for the identification of types of information classified as state secret. The main criteria that must be met by the classification of information classified as state secret were determined by using the methods of deduction and induction, and the compliance of Ukrainian legislation with these criteria was established through the use of analysis and synthesis.

The third stage describes the responsibility for the disclosure of state secrets defined in the Criminal Codes of the studied countries. The method of analogy was used to determine the aspects that should be reviewed and improved in Ukrainian legislation, taking into account the European experience, in particular, in the context of a large-scale invasion.

1.2. Sampling

The research sample consists of EU countries in view of the need to harmonize Ukrainian legislation with international norms in the context of Ukraine's integration into the world community, in particular the EU and NATO. The following countries were selected for comparison: Estonia, Latvia, Lithuania, the Czech Republic, Bulgaria and Poland. This choice is primarily determined by the common past of Ukraine and the some studied countries as part of the Soviet Union – Estonia, Latvia, and Lithuania.

Therefore, it is appropriate to consider the ways in which the legislation of these countries and Ukraine developed after they gained independence. Second, the sample also includes Ukraine's neighbours – the Czech

Republic, Bulgaria and Poland, the choice of which is determined by the relatively close location of the countries, which causes their mutual influence and relationship from the perspective of politics, economy, and culture.

1.3. Information background

Scientific periodicals of Ukraine and other countries, as well as legislative acts of Ukraine and the studied countries were used as the information background of the research, in particular:

- Law of the Republic of Latvia On State Secrets;
- Law of the Republic of Lithuania No. VIII-1443 On State and Official Secrets of 25 November 1999;
- Law of Ukraine No. 3855-XII “On State Secrets”;
- Decision of the National Security and Defence Council of Ukraine On the National Security Strategy of Ukraine;
- Act of the Czech Republic No. 412 On Protection of Classified Information of 21 September 2005;
- Classified Information Protection Act (Bulgaria);
- State Secrets And Classified Information Of Foreign States Act, Estonia (2011);
- The Act on the Protection of Classified Information of 5 August 2010, Poland;
- as well as the Criminal Codes of all the studied countries.

2. Results

The reliability of the state secret protection system primarily depends on the effective criminal law system legislatively enshrined by the state. Outdated practices of state secret protection can lead to increased threats, in particular from cybercriminals, in the context of the development of a digital society, as well as in view of the lack of mechanisms to counter new ways and means of committing crimes in the field of state secret protection. At the same time, the use of the latest tools and experience of developed countries can contribute to increasing the reliability of state secret protection.

This research focuses on the following aspects of the criminal law protection of state secrets in Ukraine and the EU countries selected for comparison:

- definition of a state secret;
- types of information classified as state secrets;
- secrecy levels;
- terms of classification;
- responsibility for disclosure of state secrets.

2.1. The definition of state secret, the secrecy levels and the terms of the classification of information constituting a state secret presented in the legislative acts of the studied countries

Six EU countries are selected in this article in order to conduct a comparative analysis with Ukrainian practice: Estonia, Latvia, Lithuania, the Czech Republic, Bulgaria and Poland. The information background of the research includes an analysis of the laws of these countries regarding state secrets protection and their criminal codes. In particular, Table 1 provides a comparison of the definitions of state secrets given in the laws of the selected countries regarding the state secrets protection with the source indicated.

Table 1. Definition of state secret presented in the legislative acts of the selected countries

Country	Source	Definition of state secret
Estonia	State Secrets and Classified Information of Foreign States Act (Estonia)	“State secret ² means information provided exclusively by this Act or legislation adopted pursuant to it, which requires protection from disclosure in the interests of national security or foreign relations of the Republic of Estonia, with the exception of secret information of foreign countries
Latvia	Law of the Republic of Latvia on State Secrets	State secret means such information of a military, political, economic, scientific, technical or other nature, which is included in the list approved by the Cabinet of Ministers, and the loss or illegal disclosure of which may cause damage
Lithuania	Law of the Republic of Lithuania No. VIII-1443 On State and Official Secrets	State secret is a political, military, intelligence, law enforcement, scientific, technical and other information classified in accordance with the procedure established by this Law, the loss or illegal disclosure of which could endanger the sovereignty, territorial integrity, defence capability of the Republic of Lithuania, cause damage to states, endanger human life
Czech Republic	Act No. 412 On the Protection of Classified Information of 21 September 2005	Classified information is information in any form recorded on any medium designated as such in accordance with this Law, the unauthorized disclosure or misuse of which may harm the interests of the Czech Republic or may be detrimental to those interests, and which is listed as “classified information”

Bulgaria	Classified Information Protection Act (Bulgaria)	For the purposes of this Law, classified information is any information constituting a state or official secret, any foreign secret information. A state secret is the information specified in Annex 1, the unauthorized access of which could threaten the interests of the Republic of Bulgaria or harm such interests related to national security, defence, foreign policy or the protection of the constitutional system
Poland	The Act of 5 August 2010 on the Protection of Classified Information (Poland)	The Act establishes rules for the protection of information, the unauthorized disclosure of which would cause or could cause damage to the Republic of Poland or would be disadvantageous from the perspective of its interests, also in the process of their development and regardless of the form and method of their expression, which is hereinafter referred to as “classified information”
Ukraine	Law of Ukraine “On State Secrets”, 2022	State secret (hereinafter also referred to as classified information) is a type of secret information that includes information in the field of defence, economy, science and technology, foreign relations, state security and law enforcement, the disclosure of which may harm the national security of Ukraine and which are recognized as state secrets and are subject to state protection pursuant to this Law

Source: prepared by the authors.

The analysis of the definitions given in Table 1 gives grounds to note that only in Ukrainian legislation national security only is the object that can be harmed by the disclosure of a state secret. Of course, national security has the highest priority, but the legislation of other EU countries under research expands the list of the objects that can be harmed by the disclosure of state secrets, thereby further strengthening the protection of the interests of countries.

So, in Estonia it is national security and foreign relations, in Latvia – state security and economic or political interests, in Lithuania – sovereignty, territorial integrity, defence capability of the Republic of Lithuania, other states and human life, in the Czech Republic and Poland – the interests of the state as a whole, in Bulgaria – interests related to national security, defence, foreign policy or protection of the constitutional system. Therefore, in the author’s opinion, the definition given in the Ukrainian legislation needs some clarification.

Table 2 presents the secrecy levels and terms of classification of information constituting a state secret in the legislative acts of the selected countries.

Table 2. Secrecy levels and terms of classification of information constituting a state secret in the legislative acts of the selected countries.

Country	Secrecy levels	Terms of classification
Estonia	1) "restricted" level; 2) "confidential" level; 3) "secret" level; 4) "top secret" level	From 10 to 75 years depending on information type
Latvia	Information constituting a state secret, depending on its significance, is divided into three categories: "especially important", "top secret" and "secret".	Information constituting a state secret classified as "secret" – for 5 years, as "top secret" – for 10 years, as "especially important" – for 20 years. Data on persons engaged in operational investigative activities and persons involved in special procedural protection are classified for a period of 75 years.
Lithuania	The classifications from the highest secrecy level to the lowest are as follows: 1) "top secret"; 2) "secret"; 3) "confidential"; 4) "restricted access"	Information is classified for the following terms: 1) information classified as "top secret" – for 30 years; 2) information classified as "secret" – for 15 years; 3) information classified as "confidential" – for 10 years; 4) information classified as "restricted access" – for 5 years. Classified information, the disclosure of which could create prerequisites for a threat to human life or health, is classified for 75 years
Bulgaria	Information that is a state secret must be classified with the following security level: "top secret"; "secret"; "confidential"	Periods of protection of classified information, starting from the date of creation: 1) information classified as "top secret" – 30 years; 2) information classified as "secret" – 15 years; 3) information classified as "confidential" – five years; 4) information constituting an official secret – 6 months.
Czech Republic	Secret information is classified as: a) "top secret"; b) "secret"; c) "confidential"; d) "restricted access"	10 years from the date of application for the "confidential" secrecy level, 15 years for the "secret" secrecy level, and 20 years for the "top secret" secrecy level
Poland	The classifications "top secret", "secret" and "confidential"	A confidentiality clause is provided by a person authorized to sign a document or mark [...]. That person can specify a date or event after which the confidentiality clause will be lifted or amended.
Ukraine	The security label is as follows: "special importance", "top secret" or "secret".	Information classified as "special importance" – 30 years, "top secret" – 10 years, "secret" – 5 years.

Source: prepared by the authors.

Table 2 gives grounds to conclude that the selected countries distinguish three or four secrecy levels. The terms of classification of the most important information, which constitutes a state secret, reach a maximum of 20-30 years. Information about persons engaged in investigative activities may be classified for 75 years (in Poland, such information must remain protected regardless of the time that has passed).

2.2. Types of information classified as state secrets

The legislation of the countries selected for the study also differs regarding the definition of the types of information that constitute a state secret. For example, in Estonia, such information in a generalized form includes data related to foreign relations, national defence, law enforcement, security agencies, infrastructure and information protection (State Secrets and Classified Information of Foreign States Act, 2011).

In Latvia, special attention is paid to the protection of information related to national defence, in particular, data on:

the military potential of the state, its defence strategy and tactics, defence and mobilization plans;

systems and material and technical means of armament, communication and information, their acquisition by state security and defence bodies;

location of facilities, buildings and other objects important for state security and defence, plans for their protection and evacuation;

types and quantities of products produced for the needs of state security and defence, as well as mobilization capacities of industry, etc.

Besides, information regarding state material reserves, scientific research, discoveries, use of inventions, if such activities are carried out with the support of the state, certain areas of state foreign policy, and a number of other types of information, including information about means and methods of protecting state secrets (Rada, 2004).

In Lithuania, the list of information that may constitute a state secret is quite detailed and contains 28 items. Traditionally, information about the defence of the state is in the first place: information about the state defence reserve and summarized detailed information about the mobilization reserve of material resources, plans for the activities of public authorities and self-government bodies in cases of a state of emergency and martial law, as well as mobilization plans. Besides, important information constituting a state secret in the country includes information on:

- protection of securities, documents, banknotes and other documents from forgery;

- individual information regarding criminal intelligence;
- information about negotiations with foreign countries;
- cooperation with special services of other states;
- protection of nuclear facilities;
- keeping secret information;
- preservation of information about secret participants of criminal intelligence and their activities;
- plans to combat terrorism and sabotage;
- new technologies, scientific research, tests and their results, which are of special importance for the interests of the state, etc. (Law of the Republic of Lithuania, 1999).

In Bulgaria, the list of information that can constitute a state secret covers even more of its types than in Lithuania, and is set out in the annexes to the relevant legislative act. The list is divided into categories:

- information related to the country's defence (24 items);
- information related to the country's foreign policy and internal security (34 items);
- information related to the country's economic security (7 points) (Classified Information Protection Act, 2018).
- In the Czech Republic, it is prohibited to disclose classified information to an unauthorized person, which may cause:
 - threats to sovereignty, territorial integrity or democratic principles of the state;
 - significant damage to the Czech Republic in the financial, monetary or economic spheres;
 - death of people or threat to life and health of citizens;
 - violation of internal order and security in the country;
 - a serious threat to the combat capability of the Armed Forces of the Czech Republic, the North Atlantic Treaty Organization or its member state or the armed forces of a EU member state;
 - a serious threat to important security operations or activities of intelligence services;
 - a serious threat to the activities of the North Atlantic Treaty Organization, the European Union or a member state;

- a serious violation of the diplomatic relations of the Czech Republic with the North Atlantic Treaty Organization, the European Union, member states or another state or a serious aggravation of the situation causing international tension (On the Protection of Classified Information of 21 September, 2005).

In Poland, types of secret information are distinguished according to the classifications of secrecy defined in the legislation. Classified information is considered “top secret” if its unauthorized disclosure would cause extremely serious damage to the Republic of Poland through:

- a threat to the independence, sovereignty or territorial integrity of the Republic of Poland;
- a threat to internal security or the constitutional system of the Republic of Poland;
- a threat to allies or the international position of the Republic of Poland;
- weakening of the defence capability of the Republic of Poland, etc.
- Classified information is subject to the “secret” caveat if its unauthorized disclosure would cause serious harm to the Republic of Poland through:
- hindering the performance of tasks related to the protection of the sovereignty or constitutional system of the Republic of Poland;
- deterioration of the relations of the Republic of Poland with other states or international organizations;
- violation of the defence preparation of the state or the functioning of the Armed Forces of the Republic of Poland, etc.

The classified information is marked “confidential” if its unauthorized disclosure would harm the Republic of Poland through:

- complication of the current foreign policy of the Republic of Poland;
- hindering the implementation of defensive measures or having a negative impact on the combat capability of the Armed Forces of the Republic of Poland;
- violation of public order or threat to the safety of citizens, etc. (Global-Regulation, 2010).

The legislation of Ukraine provides a wide list of information that can be defined as a state secret. It is proposed to divide such information into categories: information in the field of defence, information in the field of economics, science and technology, information in the field of foreign

relations, information in the field of state security and law enforcement (The Law of Ukraine on State Secrets, 2022).

The types of information which can constitute a state secret enshrined in the legislation of the countries depend, first of all, on the priorities, strategic goals, peculiarities of internal and foreign policy in each individual state. However, it is common that such types of information, in general, should be: first, consistent with international norms, second, be sufficiently detailed to avoid misunderstandings, and, third, contain types of information related to such areas as defence, economy and finance, science and technology, foreign policy activities, intelligence or counterintelligence activities, internal security in the country, in particular, the security of citizens. Based on the conducted comparative analysis, Ukrainian legislation in this area meets the specified criteria in general.

2.3. Responsibility for the disclosure of state secrets established in the Criminal Codes of the selected countries

One of the most important and effective ways to ensure the protection of state secrets is to establish responsibility for its disclosure. Table 3 provides data on the responsibility for the disclosure of state secrets established in the Criminal Codes of the selected countries, indicating the relevant articles.

Table 3. Responsibility for disclosure of state secrets defined in the Criminal Codes of the selected countries

Country	Responsibility for disclosure of state secrets
Estonia	§ 241. Disclosure of state secrets and secret information of foreign countries (1) Disclosure or illegal notification or provision of illegal access to a state secret or secret information of a foreign state by a person who is obliged to maintain the confidentiality of a state secret or secret information of a foreign state [...] is punishable by a fine or imprisonment for a term of up to five years. (2) The same act committed by a legal entity is punishable by a fine (Penal Code, 2017).
Latvia	Article 94. Intentional disclosure of state secrets Intentional disclosure of a state secret, if it is committed by a person who has been warned not to disclose a state secret, and there are no signs of espionage in this crime, is punishable by imprisonment for a term of up to five years or temporary imprisonment, or probation supervision, or community service, or by a fine, with deprivation of the right to engage in certain activities or the right to hold certain positions for up to five years (Criminal Law/Krimināllikums, 2022).
Lithuania	Article 125. Disclosure of state secrets 1. A person who discloses information constituting a state secret of the Republic of Lithuania, if this information was entrusted to him/her or he/she gained access to it through his/her service, work or during the performance of public functions, but in the absence of signs of espionage, shall be punished by deprivation of the right to hold certain positions or engage in certain activities or deprivation of liberty for a term of up to three years (Law on the Approval and Entry into Force of the Criminal Code, 2010).

Czech Republic	<p>Article 317. Threats to classified information</p> <p>(1) Whoever collects information classified in accordance with another legal provision with the purpose of disclosing it to an unauthorized person, who collects data containing secret information for such a purpose, or who intentionally discloses such secret information to an unauthorized person, shall be punished by imprisonment for a term of up to three years or a ban on engaging in relevant activities.</p> <p>(2) The offender shall be punished by imprisonment for a term of two to eight years, a) if he/she intentionally discloses information that is classified as “top secret” or “secret” in another legal act to an unauthorized person, b) if he/she has committed the act referred to in clause 1, although the protection of secret information was specifically entrusted to him/her, or c) if by such action he/she will obtain a significant benefit for himself/herself or another person or cause significant harm to another person, especially with serious consequences.</p> <p>(3) The offender shall be punished by deprivation of liberty for a term of five to twelve years, a) if the action referred to in paragraph 1 concerns secret information from the field of defence of the Czech Republic, which has the Top-Secret status in accordance with other legal norms or b) if he/she commits such an act that poses a threat to the state or in a state of war (Penal Code/Trestní zákoník, 2023).</p>
Bulgaria	<p>Article 357.</p> <p>(1) Anyone who discloses information constituting a state secret that has been entrusted to him/her or has become known through his/her service or work, as well as anyone who discloses such information being aware that it may harm the interests of the Republic of Bulgaria, unless is subject to a more severe punishment, shall be punished by imprisonment from two to eight years.</p> <p>(2) If the act has or may have particularly serious consequences for the security of the state, it shall be punishable by imprisonment for a term of five to fifteen years.</p> <p>(3) A person who disseminates foreign secret information received in accordance with an international treaty to which the Republic of Bulgaria is a party shall also be punished by a fine under Clauses 1 and 2. (Criminal Code Bulgaria, 2017)</p>
Poland	<p>Article 265.</p> <p>§ 1. Anyone who discloses or, contrary to the provisions of the Law, uses information classified as “secret” or “top secret” shall be punished by imprisonment for a term of 3 months to 5 years.</p> <p>§ 2. If the information referred to in § 1 was disclosed to a person acting on behalf of a foreign organization, the party at fault shall be punished by imprisonment for a term of 6 months to 8 years [...].</p> <p>Article 266.</p> <p>§ 1. Anyone who, contrary to the provisions of the Law or the obligation assumed, discloses or uses information that he/she has known in connection with his/her function, work, public, social, economic or scientific activity, shall be punishable by a fine, restraint of liberty or imprisonment for up to 2 years.</p> <p>§ 2. A civil servant who discloses secret information classified as “secret” or “confidential” to an unauthorized person, or information that he/she received in connection with the performance of official duties and the disclosure of which may harm interests protected by law, shall be punished by imprisonment for up to 2 years (Penal Code/Kodeks karny, 2023).</p>

Ukraine	Article 328. Disclosure of state secrets 1. Disclosure of information constituting a state secret by a person to whom this information was entrusted or became known in connection with the performance of official duties, in the absence of signs of treason or espionage, shall be punishable by imprisonment for a term of two to five years with deprivation of the right to hold certain positions or engage in certain activities for a period of up to three years or without such. 2. The same act, if it caused serious consequences, shall be punishable by imprisonment for a term of five to eight years (Criminal Code of Ukraine, 2022).
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Source: prepared by the authors.

Analysing Table 3, it can be noted that the legislation of the Czech Republic and Bulgaria provide the most severe punishment for the disclosure of state secrets. In the Czech Republic, in cases where disclosed state secrets were related to information in the field of defence with the Top-Secret status, in case of threat to the state or in a state of war, the offender shall be punished by imprisonment for a term of five to twelve years.

In Bulgaria, if the disclosure of a state secret has or may have particularly serious consequences for the security of the state, the punishment ranges from five to fifteen years of imprisonment. In Estonia and Latvia, the maximum term of punishment is five years, in Lithuania — three years, in Poland and Ukraine — eight years.

In the author's opinion, it is advisable for Ukraine to revise the terms of punishment for the disclosure of state secrets following the example of Bulgaria and the Czech Republic. If the disclosure of a state secret led to particularly serious consequences for the security of the state or occurred in case of threat to the state or in a state of war regarding particularly important information related to the defence of the country, it is advisable to increase the terms of the maximum punishment. Besides, the Estonia's experience of the introduction of responsibility in the form of a monetary penalty for the disclosure of state secrets to a legal entity can be effective.

3. Discussion

The article provides a comparison of the definitions of state secrets, types of information classified as state secrets, secrecy levels, terms of classification and responsibility for disclosure of state secrets in the countries selected for the study. The following conclusions can be drawn from the analysis in the context of recommendations for Ukraine:

The definition of state secrets should be clarified in Ukrainian legislation, in particular regarding the expansion of objects that may suffer damage as

a result of the disclosure of secret information. It is appropriate to increase the responsibility for the disclosure of state secrets, especially in the field of information that is particularly important for ensuring national security, is related to defence, and was also disclosed in a state of threat to the country or war.

Ukrainian and foreign researchers also give a number of recommendations in their studies on the reform of the state secret protection system and bringing the national system in compliance with international standards. Boldyr (2018) focuses on the aspects of checking persons who have access to classified information.

The researcher provides the following recommendations for optimizing such a check: replace the term “providing access to state secrets” with the concept of “security check certificate”; introduce a differentiated number of security checks depending on the secrecy level; revise the terms of the security check; consider the possibility of applying a security check to citizens before their appointment to responsible positions, etc. Aspects of security check were not covered in the author’s research, because this topic went beyond the areas outlined in the article, and therefore this problem can become an area of further research.

Analysing the experience of other countries as an example for Ukraine, Serhiychuk (2019) makes the following recommendation regarding amendments to the Law “On State Secrets”: to include the terms of storage and the secrecy level of classified information. This practice, as defined in this article, is carried out in Poland. However, in the author’s opinion, there is no need for such a division in Ukrainian legislation, because it already has a division by spheres of information (defence, economy, science and technology, foreign relations, state security and law enforcement).

Inclusion of features by terms of classification periods and secrecy levels can make it confusing and less transparent. Following the example of Estonia, Serhiychuk (2019) also proposes to define (according to the Estonia’s experience) a legal entity as the subject of crimes in the field of state secret protection. Such a suggestion can be effective in view of strengthening the protection of state secrets due to increasing the responsible attitude of legal entities keeping them.

As a result of the analysis of the experience of other countries, it is appropriate to cite the opinion of Kharchenko (2021): blind copying of foreign experience can lead to undesirable results, and therefore the use of such experience should be coordinated and adapted to national traditions and peculiarities.

A number of researchers emphasize that improving the system of information and communication technologies (ICT) and strengthening cyber security is necessary to increase the effectiveness of the state secret

protection system. Thus, Vdovenko and Danyk (2019) point out that, among other things, changes in the state secret protection system consist in determining the directions of scientific research in the field of information protection, the development of cryptographic and technical information protection systems, determining the sources of funding for such scientific research, etc.

Studying the protection of classified information in Hungary, Topolewski (2020) emphasizes the growth of threats to the security of such information in the context of the development of the information society. Topolewski (2020) also emphasizes the need for the development and use of ICT security measures, noting that the improvement of the state secret protection system should first of all be based on the rules and regulations established by law, as well as appropriate sanctions. The researcher's findings are reflected in the results of the author's research, in which the improvement of legislative norms and the establishment of appropriate responsibility are priority directions for increasing the effectiveness of the state secret protection system.

Denyshchuk (2021) writes on the areas of improvement that have been carried out by Ukrainian government officials recently and relate, in particular, to providing access to state secrets, classification procedures, requirements for persons related to the protection of state secrets, control and supervision, etc. The researcher notes that the introduced changes require further consideration and improvement, which, based on the results of the research conducted in this article, should be agreed with.

As mentioned above, it is advisable to pay special attention to the review of responsibility for the disclosure of state secrets, because in wartime this aspect can directly affect the course of the conflict. This opinion is confirmed in the studies of foreign researchers. In particular, Wądołowski (2022) in his research focuses on the organization of the system of protection of state secrets in the context of consideration and interpretation of criminal laws on crimes against the protection of classified information based on the analysis of the experience of the Republic of Croatia and Bosnia and Herzegovina.

Aspects of combating crimes in the field of state secrets protection are separately considered in the works of Ukrainian researchers. Nehoda (2021) studies the levels of combating such crimes. The researcher singles out three levels: general social counteraction (consists in the implementation of preventive influence on the crime rate in general); special criminological countermeasures (provides for the prevention of certain types of crimes in the relevant spheres of their commission); individual countermeasures (prevention of crimes by individual persons).

Oliinyk (2020) examines in detail a separate direction – subjective prevention of crimes, which is most closely related to the “individual countermeasures” mentioned above. The countermeasures include the improvement of professional qualities, resource and other provision of relevant state bodies, associations and individual citizens, improvement of information and analytical work, careful selection of personnel, etc.

Conclusions

Ensuring the protection of state secrets is always one of the most important tasks of the state in the context of preserving its national security, but the fact that Ukraine is at war with the Russian Federation makes this problem particularly acute. The issue under research is also relevant in view of Ukraine’s integration into the world community.

This article analysed the following aspects of the criminal law protection of state secrets in Ukraine and EU countries selected for comparison: definition of state secrets, types of information classified as state secrets, secrecy levels, terms of classification, responsibility for disclosure of state secrets. The results of the analysis gave grounds to establish that the improvement of the state security protection system of Ukraine should consist, among other things, in the following:

clarification of the definition of a state secret, in particular regarding the expansion of the list of objects that may suffer damage as a result of the disclosure of secret information;

increased responsibility for the disclosure of state secrets, especially in the field of information that is particularly important for ensuring national security, refers to defence, and was also disclosed in times of threat to the country or war.

The obtained results can be useful for government officials in view of their focus on the identified problematic aspects. The direction of further research should be to identify specifics and determine measures to optimize the procedure of security checks of persons who have access to classified information.

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