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On the Impact of Digital Technologies on Modern Society

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ABSTRACT: The article analyzes the changes that have occurred in public life and legal relations during the period of rapid development and implementation of information and communication technologies. Based on the presented facts and observations, the necessity of normative regulation of various processes and persons in the digital space is substantiated. Government agencies must seriously adapt to modern challenges.

Keywords: information; information security; rights and freedoms; information technology; state; prosecutor's office; development; society; law; digitalization; state apparatus; social networks; legal regulation; violation of rights; society change; information society.

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О влиянии цифровых технологий на современное общество

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Аннотация. В статье анализируются изменения, произошедшие в общественной жизни и правоотношениях за период бурного развития и внедрения информационно-коммуникационных технологий. На основе представленных фактов и наблюдений обосновывается необходимость нормативной регламентации различных процессов и действий в цифровом пространстве. Кроме того, делается вывод о том, что государственные органы должны серьезным образом измениться и адаптироваться под современные вызовы времени.

Ключевые слова: информация; информационная безопасность; права и свободы; информационные технологии; государство; прокуратура; развитие; общество; право; цифровизация; государственный аппарат; социальные сети; правовое регулирование; нарушение прав; изменение общества; информационное общество.

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In one of our previous articles, we considered the problem of the integral importance of information in modern society. The results of that discussion were that information has an essential value, the revelation of which should be regulated by law, since it can affect basic human rights and freedoms. In turn, the protection and supervision of compliance with these norms by state bodies can be achieved only by a comprehensive impact at the financial, regulatory, and organizational levels on the field of information technologies [1, 2].

The importance and value of information was precisely described by the Prime Minister of the Russian Federation, M.V. Mishustin, in March of last year, who emphasized that the data of today is the "new oil, gold, and platinum of the 21st century"[1].

The concept of information as a value does not require additional justification. At the same time, if we analyze the current situation in the field of information technologies, the statement will require significant clarification.

According to the Federal Law "On Information, Information Technologies, and Information Protection", information consists of messages and data regardless of their presentation form. These regulations find their wide practical implementation not only in the activities of social network users and information operators, but even in the conservative law enforcement sphere. Thus, in applied research, the need to use the entire range of information — operational, statistical, and reference — from various sources, including the Internet, has been noted for quite a long time [3].

Thus, it should be assumed that only information in the form of messages is the key value when information is an object of commodity-market relations.

We must disagree with this statement for the following reasons:

As mentioned above, the development and spread of digital communication technologies currently require the regulation of relations between people arising in cyberspace [3]. In developing this thesis, it should be stated that these factors have generated a number of phenomena that were previously quite difficult to imagine.

The most striking example, in our opinion, is the following: Digital communication technologies are not only messengers, electronic mailboxes, and various social networks. They also comprise a significant number of online entertainment programs, which, first of all, should include online network games. Many people involved in the game process (sometimes the number of users reaches dozens of millions[2]), form communities that exist according to certain established rules. The enthusiasm of individuals and the prevalence of such hobbies are confirmed by the following facts:

"The virtual universe is firmly penetrating into real life. That is why many unique items in online games cost a lot of money... people are ready to give not virtual currency, but real money... the main goal in the Entropia Universe is the purchase of an entire planet (Calypso) for a fabulous 6 million US dollars. The main difference with this planet is that a developed and self-sufficient economic system was created there"[3].

Yet, in addition to the possibility of buying and selling virtual things, there is a practice of stealing them[4].

How should the cost of a particular cyber product be estimated in this case?

There are already Internet websites that are essentially online markets for such goods[5]. Thus, we can state that a certain segment of commodity–market relations has developed and exists which is not regulated by normative law in any way and actually falls out of view from the state. At the same time, the lack of legal regulation or judicial precedent is typical for other countries as well[6].

Returning to the example of the purchase of "Planet Calypso" for six million US dollars, it should be assumed that this purchase was made by some wealthy person not in the interests of his child, the fan of computer games. Most likely, such a transaction was a purposeful investment, since there was a developed economic system on this planet. Thus, having spent a large amount of real currency on the purchase of a cyber-mite, a person has actually invested in a virtual business, which, despite the fact that it exists only as a game, can bring real money as income.

And again, it should be emphasized that this income method is not regulated by law, which is an undoubted gap.

In some cases, the subject of commercial turnover is not the very information, but rather the information space that is filled with certain content. As an example, we can cite the video hosting site YouTube, where the placement of information can bring a tangible profit[7].

Actually, the main mechanism for generating income on YouTube looks very simple: if a user places content on the site that becomes popular, then gradually its reproduction will be preceded by some kind of commercial that cannot be completely missed. Advertising is paid for by the interested person, the advertiser, and part of the fee is transferred by

[1] https://yandex.ru/turbo?text=https%3A%2F%2Ftass.ru%2Fpolitika%2F7959893&utm_source=yxnews&utm_medium= mobile&utm_referrer=https%3A%2F%2Fyandex.ru%2Fnews.03brand.2020) (accessed on: 10.05.2021).

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the video hosting owners to the person who places the most popular videos.

What is the determining factor that affects the profitability or unprofitability of a particular video? The key factor of success is its distribution among users, i.e., the more information field a certain content occupies, the higher its price.

"The growth of digital information seems really unstoppable. According to big data research sources, 90% of the data that exists in the world today was created in the last 10 years. Today, 1021 bits of information are created in the world per year, and the speed of their production is constantly growing. Every year, the number of created bits increases by 20%. If such rates continue in the coming centuries, then in 300 years the power required to generate these bits will exceed all the current energy consumption of mankind…However, with an increase of 20% per year, by the year 2370, the amount of bits produced will exceed the number of atoms on Earth"[8].

Thus, it is easy to guess that in the near future a constraint may arise whereby only valuable information will be subject to storage. With a shortage of capacity for other content, the user, trying to save his or her information, will pay for its storage. In turn, this will mean that it will be more profitable to store only those data that directly benefit the user, in comparison to constant payment for storage.

If you look at the list of current leaders of earnings in YouTube, the "information-saturated" future does not seem too happy.

Thus, the information space at the present time (and the storage of information in the future) should be recognized as a very popular subject in civil circulation.

In addition, I would like to emphasize that, in such a situation, the safety of educational information content causes reasonable concern: will the works of the most famous poets and writers, such as A. Pushkin, L. Tolstoy, F. Dostoevsky, be stored in a paid information field or will their place be taken by fashionable persons of a certain period of time? The Russian President V.V. Putin rightly noted during a meeting with participants of the All-Russia mutual assistance action, "We are together": "The Internet is capable of destroying society from within, if it is not subject to moral laws. By and large, it must obey not only the laws, the legal rules, but also the moral laws of our society. Otherwise, this society will be destroyed from with in"[9].

Based on this, it can be concluded that the layer of public relations described in this article should not be ignored by the state and its legislators. Their regulations should be based on the latest trends in computer technology development and the basic legal values of our society and the state, as recognized by the Russian Constitution.

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Economic Losses of the Russian Budgetary System

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***ABSTRACT*:** The article analyzes a new legal trend, the essence of which is to consider property relations as a single complex, whereby the boundaries of certain segments of property and legal regulation complement and replace each other. The analysis of jurisprudence and, above all, case law and justice gives examples of such phenomena.

The article analyzes the rulings of the Constitutional Court of the Russian Federation, which show a connection between tax and civil law. First of all, this resolution of the Russian Constitutional Court of December 08, 2017 No. 39-П, which was to some extent a turning point, because it introduced the possibility of the subsidy of state coercion and confirmed the new content of delita liability, provided for by Article 1064 of the Russian Civil Code. Delicate liability began to transform and became not only a means of reparations to the holder of absolute right, but also an expanded reimbursement of "purely economic losses." The latter are defined as "physical damage not resulting from physical injury to a person or property." From these positions, the article analyzes the Rulings of the Russian Constitutional Court of 05.03.2019 No. 14-П and from 02.07 2020 No. 32-П.

The two above-mentioned rulings are united by the fact that the possibility of recovering purely economic losses under Article 1064 of the Russian Civil Code in these decisions is assumed, i.e., it indirectly stems from the content of the decision. In the article the author concludes that the widespread use of tort liability situations involving public relations shows that, thanks to the expansion of its content, it tends to go beyond civil law and the article by the institution of inter-industry.

Keywords: tort liability; purely economic losses; state legal personality; subsidiarity; arrears; tax and civil law.

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«Чисто экономические убытки» бюджетной системы РФ

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Аннотация. В статье анализируется новая правовая тенденция, суть которой заключается в том, чтобы рассматривать имущественные отношения как единый комплекс, где границы отдельных сегментов имущественно-правового регулирования дополняют и замещают друг друга.

Анализ судебной практики и, в первую очередь, прецедентно-правовых судебных решений дает примеры такого явления.

В статье рассматриваются Постановления Конституционного Суда РФ, демонстрирующие связь налогового и гражданского права. Прежде всего, это Постановление КС РФ от 08.12.2017 № 39-П, которое явилось в определенной мере переломным, так как ввело возможность субсидиарности государственного принуждения и подтвердило уже начавшее к тому времени складываться в цивилистике новое содержание деликтной ответственности, предусмотренное ст. 1064 ГК РФ. Деликтная ответственность начала трансформироваться и стала не только средством возмещения вреда обладателю абсолютного права, но и расширилась до возмещения «чисто экономических убытков». Последние определяются как «физический ущерб, не являющийся следствием физического увечья (повреждения) лица или его имущества». С этих позиций в статье анализируются Постановления КС РФ от 05.03.2019 № 14-П и от 02.07.2020 № 32-П.

Два вышеназванных постановления объединяет то, что вопрос о возможности взыскания чисто экономических убытков по ст. 1064 ГК РФ в этих решениях предполагается, т.е. косвенно вытекает из содержания решения.

В статье автор делает вывод: те случаи, когда деликтную ответственность пытаются применить к ситуациям, вытекающим из публичных отношений, свидетельствуют о том, что благодаря расширению своего содержания она имеет тенденцию выйти за рамки гражданско-правового института и стать институтом межотраслевым.

Ключевые слова: деликтная ответственность; чисто экономические убытки; правосубъектность государства; субсидиарность; недоимка; налоговое и гражданское право.

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Today, there is an intricate connection between tax regulations and civil law. Examples are evident in judicial practice, which result from the interpretation of tax regulations. In judicial practice, there has been a tendency to consider property relations as a single complex, where the boundaries of individual property segments and legal regulation merge, complement, and replace each other. The state has focused on individual property segments and legal regulation at the expense of other segments, an example is the strengthening of tax enforcement by civil law.

The source of this trend lies in the understanding of arrears as damage caused to the budget system. For the first time, the definition of such damage appeared in the Ruling of the IC in Civil Cases of the Russian Federation Supreme Court No. 81-KG1419 of January 27, 2015. It was noted that "failure to fulfill the person's obligation to pay legally established taxes and fees entails damage to the Russian Federation in the form of funds not received by the budget system." In 2020, the Constitutional Court of the Russian Federation reiterated this point. The Court stressed that "arrears…cause such harm to the budget system, which consists directly in violating the rules of its functioning and should be compensated by the payment of penalties along with the payment and compulsory collection of the actual arrears (the amount of unpaid tax)." However, on July 2, 2020, the Constitutional Court of the Russian Federation emphasized, in its Resolution No. 32-П that "the loss of the opportunity to forcibly collect arrears…may also indicate that an independent harm has been caused to a public legal entity, which consists in the tax obligation termination due to the loss of the right to collect the tax amount…" Thus, it appears that the arrears of both the unpaid amount of tax and the loss of the state's ability to forcibly collect it are harmful, and any harm must be compensated.

The legal regime for arrears as a public legal category is defined by the Tax Code of the Russian Federation. Accordingly, the compulsory procedure for the recovery of arrears and resulting compensation for damage caused to the budget system is also defined by the Tax Code of the Russian Federation in articles 46 to 48. However, in recent years, the loss by the state of the right to collect arrears in some cases has been considered as a basis for civil liability under Article 1064 of the Civil Code of the Russian Federation. This has resulted in situations where the tax and legal regulations began to develop and become strengthened by the civil-legal "resource."

For the first time, the decision to recover arrears as civil damage at the level of precedent-based legal regulation was adopted by the Constitutional Court of the Russian Federation in Resolution No. 39-П of August, 12 2017. This Resolution was, to a certain extent, a turning point, since; first of all, it introduced the possibility of subsidiarity, i.e., a certain reserve, auxiliary state coercion. More precisely, civil liability under Article 1064 of the Civil Code of the Russian Federation began to be considered as a reserve in case it is impossible to apply measures of tax and legal coercion in connection with late payment of tax and the arrears' formation. In addition, this Resolution by the Constitutional Court of the Russian Federation confirmed the new content of tort liability provided for in Article 1064 of the Civil Code of the Russian Federation, which had already begun to take shape in civil law. More precisely, an expansive approach to the content of tort liability provided for in Article 1064 of the Civil Code of the Russian Federation has gradually begun to manifest itself in civil law. In the Soviet times, the content of civil tort liability included the concept of damage caused exclusively to property or a person, and the property that was harmed should have been within the victim's possession before the damage was caused [1]. In other words, only the absolute rights of a person were protected by tort liability. Today, the number of civil law disputes is gradually increasing, and the courts are focused on satisfying the victims' claims for compensation for damages that have a so-called economic nature and are not related to physical damage to their property. At the same time, third parties have begun to participate in such cases. In civil law, tort liability is going through a transformation process and has become not only a means of providing compensation for harm to the absolute right owner, but also a means to provide compensation for "purely economic losses," i.e., financial damage that is not the result of physical injury (damage) of a person or his property [2].

Based on the foregoing, the above mentioned Resolution by the Constitutional Court of the Russian Federation at the level of case-law regulation confirmed a new approach to tort liability provided for in Article 1064 of the Civil Code of the Russian Federation, ensuring the expansion of its content. After all, it is obvious that the arrears formed in connection with causing harm to the state due to non-payment of tax does not damage the original property status of the state, i.e., it does not affect its absolute rights. Accordingly, in this Resolution by the Constitutional Court of the Russian Federation, the civil damage caused to the budget system of the Russian Federation is expressed in purely economic losses.

The mentioned Resolution by the Constitutional Court of the Russian Federation contains a number of restrictions on the application of tort liability under Article 1064 of the Civil Code of the Russian Federation. Firstly, with regard to situations arising from tax legal relations, it establishes that such application is possible only in two cases: a) after the termination of the taxpayer organization, which should be recorded in the Unified State Register of Legal Entities, and b) after the court finds that the organization is actually not operating, and it is impossible to recover arrears and penalties from it. Secondly, and this is very important, although it has remained unnoticed in science until now: in the Resolution, the possibility of subsidiary application of civil liability measures' to situations arising from public legal relations is available to a different category of persons than

tax enforcement measures. The possibility of applying to the state, in certain cases, is lost. More precisely, if tax and legal enforcement measures in certain cases cannot compensate for the damage caused by the organization to the budget system due to non-payment of taxes, then such damage in certain cases is compensated by an individual (the head of the organization) by way of tort liability provided for in Article 1064 of the Civil Code of the Russian Federation.

The said Resolution by the Constitutional Court of the Russian Federation, despite the restrictions specified in it on the use of tort liability (Article 1064 of the Civil Code of the Russian Federation), gave the practice a "template" to satisfy claims for compensation of damage caused to the budget system by non-payment of taxes. This is evidenced by the endless lawsuits sent to the courts on this issue through the office of the prosecutor and the tax authorities.

Thus, in 2016, the Federal Tax Service of the Mordovia Republic appealed to the court to recover the losses incurred by the Federal Tax Service from V.A. Nuzhin, the head of the LLC. The Federal Tax Service represented the costs of the bankruptcy case and remuneration to the arbitration manager. The tax authority decided to recover its losses from V.A. Nuzhin due to the fact that the Federal Tax Service had to cover these losses in accordance with the law due to the fact that it initiated the bankruptcy case due to the insufficient bankruptcy estate of the debtor enterprise headed by V.A. Nuzhin. In other words, considering the enterprise's inability to cover its tax arrears and the expenses of the arbitration manager, the Federal Tax Service decided to recover them in a civil procedure from the head of the enterprise, V.A. Nuzhin, in accordance with Article 1064 of the Civil Code of the Russian Federation.

The case was considered by the Constitutional Court of the Russian Federation. Without satisfying the complaint of the tax authority, the Constitutional Court formulated a legal position in the Resolution No. 14-П of March 5, 2019, the court stated that "it is impossible to unequivocally establish that the occurrence of losses at the authorized body is connected exclusively with the illegal behavior of the debtor's head, which was expressed in the failure to file an application for declaring the debtor bankrupt." In fact, the Constitutional Court of the Russian Federation found that the absence of a causal relationship between the actions of the authorized body and the debtor's head, required by the composition of tort liability, suggests the inapplicability of Article 1064 of the Civil Code of the Russian Federation to the situation, i.e., to discuss the compensation for damage caused to the state by the debtor's head.

The court agreed to consider the Tax authority's complaint, but refused to satisfy it. Its justification for the refusal based on the absence of a causal relationship between the debtor's head and the expenses of the tax authority, leads to the logical conclusion that if the causal relationship between these entities had been proved, the court would have satisfied the tax authority's complaint. Meanwhile, it is important to emphasize here that in this case, what is not considered as harm from the point of view of the regulatory content at the civil law institution of tort liability is considered as harm (loss) caused to the state. After all, it is known that according to Article 15 of the Civil Code of the Russian Federation, losses are understood as "expenses that a person whose right has been violated has made or will have to make to restore the violated right". In this case, the absolute right of the state is not violated. The decision to make or not to make expenses in connection with the bankruptcy procedure are the risks that the tax authority initiating the bankruptcy procedure face, because according to paragraph three of Article 59 of the Federal Law On Insolvency (Bankruptcy), it is responsible for paying off unpaid debts from the debtor's property. In this regard, the tax authority, when filing a complaint with the court, did not try to resolve the issue of compensation for damage, because there was no damage, but there was a risk of damage, i.e., its right to either take the risk or to shift it to another entity- the debtor's representative.

Since the Constitutional Court of the Russian Federation did not discuss the issue of the quality of the harm and its compliance with the regulatory content of the tort liability regulation, it is legitimate to assume that the court, following the trend emerging in practice, considered the tax authority's losses not as losses arising from modern civil legislation, but as purely economic losses that can generally be satisfied.

This situation is to a certain extent similar to the situation that was considered in the Constitutional Court of the Russian Federation on December 8, 2017 No. 39-П. It is similar because it demonstrates a tendency to move away from the established civil tort liability concept and to maintain the concept of collecting "purely economic losses" within the framework of this liability. The tax authority, having suffered losses due to the inability to satisfy the public interest at the expense of the debtor organization in public law, decided to satisfy it at the expense of the debtor organization head in civil law according to Article 1064 of the Civil Code of the Russian Federation.

To some extent, the same logic of reflection gives rise to the Resolution by the Constitutional Court of the Russian Federation No. 32-П of February, 07, 2020. In practice, the situation became widespread when the prosecutor's office began suing individual taxpayers for the recovery of arrears recognized as hopeless. In other words, the formation of arrears, which was recognized as hopeless in public law, according to the prosecutor's office, could be considered as harm caused to the budget system, and in some cases be compensated in civil law.

In the Constitutional Court of the Russian Federation case No. 32-П, the individual entrepreneur I.S. Mashukov unreasonably declared tax deductions for VAT. The tax authority added VAT, penalties, and a fine to him. I.S. Mashukov appealed the tax authority's decision to the court and filed a petition for interim measures. The court

granted his claim, but the higher court refused to recognize the tax authority decision as illegal. Finally, after a long litigation, the tax authority appealed to the court to recover mandatory payments and sanctions from I.S. Mashukov, but the appeal was dismissed due to the expiration of the six-month period for applying to the court on this basis. Thus, the tax authority decided to declare the debt of I.S. Mashukov for taxes, penalties, and fines unrecoverable and wrote them off. In addition, a criminal case was initiated against I.S. Mashukov under Article 198 of the Criminal Code of the Russian Federation, which was subsequently terminated. However, the prosecutor's office appealed to the court with a claim to recover material damage caused to the budget system from the entrepreneur. The court upheld the prosecutor's claims and the claims were satisfied in the amount of VAT arrears.

The Constitutional Court of the Russian Federation concluded that the recovery of the arrears was hopeless due to the inaction of the tax authority, and this was the objective reason for the damage to the budget of a public legal entity. Thus, the complaint of I.S. Mashukov to the Constitutional Court of the Russian Federation was satisfied. However, another important point in the Resolution by the Constitutional Court of the Russian Federation is that the court actually allowed the possibility of collecting debts (arrears) recognized as hopeless from the taxpayer in civil law, if the causal link between the tax payer's actions and the harm caused to the budget was proved. At least, the court did not expressly state that it was impossible to claim material damage in this case. Thus, the court did not actually deny the possibility of collecting damage from the taxpayer that was formed not as a result of damage to the property originally owned by the state, but as a result of public-legal relations due to non-receipt of the expected revenues by the budget system. It follows from the above that this Resolution by the Constitutional Court of the Russian Federation builds on the position developed in the Resolution by the Constitutional Court of the Russian Federation on December 8, 2017, and thus expands the content of tort liability under Article 1064 of the Civil Code of the Russian Federation to include purely economic losses.

From the above, it follows that in modern conditions, tax and legal situations serve as an important factor in the development of the tort liability content provided for in Article 1064 of the Civil Code of the Russian Federation. The widespread occurrence of situations where tort liability is being applied to situations arising from public relations indicates that tort liability, due to the expansion of its content, tends to go beyond the civil law institution, like the institute of unjustified enrichment[1], to become an inter-sector institute. However, the question of applying tort liability to relations arising from public relations generally is not simple.

The above discussion may elicit reflections the ongoing processes in law, about the blurring of the boundaries between public law and civil law sanctions and about the practical possibility of applying tort liability to situations arising from public relations. The complexity of this issue is connected, surprisingly, with such a fundamental category as legal personality.

The application of civil law enforcement measures by the state to relations arising from public legal relations is quite obviously, the realization of its civil legal personality. However, it should be considered that the state is a special entity that has civil legal personality along with public legal personality, and the latter is common, because due to public legal personality, the state can only, first of all, ensure its public interest. The implementation of public legal personality by the state is a direct way for it to exercise public power. The civil legal personality of the state, on the other hand, is considered a target for it as it applies to special cases that cannot be covered by the state's implementation of the public legal personality[2]. For example, it was noted in science that the state uses its civil legal personality when it is impossible to replenish budget revenues other than at the expense of civil legal payments, rent for leasing state property, sale of state property, etc. [3; 4]. In connection with the above, it should be understood that the state, having a dualistic legal personality, in order to realize its public interests, can realize both its public and private legal personality, but in relation to different cases, situations, and subjects.

The application of civil law enforcement measures by the state (Article 1064 of the Civil Code of the Russian Federation) to relations arising from public relations in connection with the taxpayer's failure to pay taxes and the inability to collect them forcibly is the state's implementation of its civil legal personality. However, a pertinent question at this juncture is whether the civil legal personality of the state can be implemented vicariously when the realization of its public legal personality, and accordingly, the provision of its public interest cannot be made at the expense of this? In other words, in relation to our situation, the question sounds like this: can the state, unable to satisfy its public interest via the public legal personality implementation (collect tax in accordance with the legislation on taxes and fees), realize its civil legal personality to ensure its public interest vicariously, in a civil procedure?

It seems that this is impossible and should not be so, because in this case, the state turns into a monster with two heads, and it is placed in a special legal position in comparison to any other law subject, because unlike any other law subject, it can ensure its interest in any case, by

[1] See: Resolution by the Constitutional Court of the Russian Federation No. 9-П from March 24, 2017.

[2] In the Ruling by the Constitutional Court of the Russian Federation No. 139-O of December 4, 1997, the court emphasized that "the Russian Federation, subjects of the Russian Federation and municipalities participate in civil legal relations as subjects with special legal capacity, which, due to their public legal nature, does not coincide with the legal capacity of other civil law subjects, citizens and legal entities pursuing their private interests".

any method. In other words, the state is in a position where it is "always right." Moreover, the subsidiary implementation of the state civil legal personality actually exposes the weakness of its public legal personality and its lack of self-sufficiency and the need to strengthen it.

It should be noted that civil liability measures in the above mentioned situations, i.e., in situations arising from public legal relations, can be applied only when the subject of this responsibility differs from the one where public legal coercive measures were originally supposed to be applied, but were not applied due to the impossibility of ensuring public interest. In this case, the civil liability of the state is not applied vicariously with respect to public law enforcement measures, thus, one type of legal personality of the state is not strengthened at the expense of another one. An example is the Resolution by the Constitutional Court of the Russian Federation of August, 1, 2017, which is plausible because the arrears and penalties not paid to the budget system by an organization in accordance with the procedure established by the Tax Code of the Russian Federation are considered as civil damages only if it is compensated by an individual, i.e., a different subject, but only in specific cases. This is very important, because it is then impossible to discuss the subsidiary use of the state's civil legal personality. Otherwise, if civil liability measures are applied to the same subject, then the state's subsidiary legal personality will take place.

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Problems in Legal Regulation of Liability for Crimes that Infringe Digital Finance[1]

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ABSTRACT: The digitalization of the financial sector in developed legal systems, the use of block chain technology, the introduction of digital forms of participation in civil turnover, and the introduction of the possibility of settlements in digital currencies, are designed to increase the efficiency of the economy and, ultimately, improve the quality of life of citizens. However, technological progress and positive expectations from the introduction of digital technologies in the sphere of public relations cannot guarantee protection of the values enshrined in the Basic Laws of certain states. While acknowledging the fact that the level of crime in the sphere of economic activity is one of the indicators of national economic security, special attention should be paid to the evolution and forecasting of the means of criminal legal protection of the monetary system, which is currently undergoing a process of digital transformation. This is due to the fact that digital financial technologies carry certain risks for the monetary system, due to objective factors.

Firstly, many things depend on the functioning of the monetary circulation and the effectiveness of currency restrictions, for example, the macroeconomic indicators of the stability of the economic system, the exchange rate of the national currency, the achievement of the balance of payments necessary for stable development, and the country's position in the international arena.

Secondly, in the context of increasing structural imbalances in the world economy and the global financial systems, the growth of private and sovereign debt, the widening gap between the valuation of real assets and derivative securities, it is the sphere of currency regulation and currency control that becomes one of the stabilizing tools in the system of state measures to support the economy. Add to those the sharp decline in the role of traditional factors of economic growth associated with scientific and technological changes.

Transactions by dint of new technologies are recognized as high-risk around the world due to the instability of their existence. Taking into account the data, as well as other risks of the introduction of digital technologies, therefore, requires an analysis of the problems of legislative regulation of criminal liability for crimes in the field of digital finance.

Keywords: monetary crimes; digitalization; cryptocurrencies; digital finance; criminal liability.

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Проблемы законодательной регламентации уголовной ответственности за преступления в сфере цифровых финансов[2]

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Аннотация. Цифровизация сферы финансов в развитых правопорядках, использование технологии блокчейна, внедрение цифровых форм участия в гражданском обороте и введение возможности расчета в цифровых валютах призваны способствовать повышению эффективности экономики и, в конечном итоге, улучшению качества жизни граждан. Однако технологическая прогрессивность и позитивные ожидания от внедрения цифровых технологий в сферу общественных отношений не могут служить гарантией защиты ценностей, закрепленных в Основных законах тех или иных государств. С учетом того, что уровень преступности в сфере экономической деятельности является одним из показателей состояния экономической безопасности, особое внимание необходимо уделить анализу эволюции и прогнозированию развития средств уголовно-правовой охраны валютно-денежной системы, претерпевающей в настоящее время процесс цифровой трансформации. Это связано с тем, что цифровые финансовые технологии несут в себе, помимо прочего, определенные риски для валютно-денежной системы, обусловленные объективными факторами.

Во-первых, от качества функционирования сферы валютно-денежного обращения и эффективности валютных ограничений зависит многое, например макроэкономические показатели стабильности экономической системы, курс национальной валюты, достижение необходимого для стабильного развития уровня сальдо платежного баланса, положение страны на международной арене и проч.

Во-вторых, в условиях усиления структурных дисбалансов в мировой экономике и мировой финансовой системе, роста частной и суверенной задолженности, увеличения разрыва между стоимостной оценкой реальных активов и производных ценных бумаг, резкого снижения роли традиционных факторов обеспечения экономического роста, связанного с научно-технологическими изменениями, именно сфера валютного регулирования и валютного контроля становится одним из стабилизирующих инструментов в системе государственных мер поддержки экономики.

Операции, опосредуемые новыми технологиями, признаны высокорисковыми по всему миру в связи с нестабильностью своего существования. Учет данных, а равно иных рисков внедрения цифровых технологий поэтому требует анализа проблем законодательной регламентации уголовной ответственности за преступления в сфере цифровых финансов.

Ключевые слова: валютные преступления; цифровизация; криптовалюты; цифровые финансы; уголовная ответственность.

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The digitalization of the financial sphere, the spread and popularization of cryptocurrencies, the introduction of artificial intelligence technologies and distributed ledger (*blockchain*) into public relations today form a completely new financial and digital ecosystem of public relations which can seriously change the balance of power of financial market participants around the world [1, p. 148]. Nevertheless, despite all the positive aspects of the modern financial technologies [2; 3, p. 47; 4; 5], it is necessary to state the insufficient degree of data predictability in order to ensure the effectiveness of the national monetary system protection and the realization of the citizens' rights and freedoms, including by means of criminal laws.

The use of such technologies, by virtue of their very structure and legislation that is not adapted to it, today allows the bypass of the borders and barriers that are laid down in the legislation to counter economic crimes [6]. In this regard, it is important to point out the problems that arise today in legislative regulation of criminal liability for crimes in the field of digital finance. However, before proceeding to their direct analysis, it is necessary to briefly consider the issue of identifying digital financial instruments as objects of rights and forms of behavior of participants in economic activity.

1. Digital financial instruments and their identification

"Digital financial instruments" is a collective term, which, for the purposes of this article, encompasses all possible and existing digital forms of expression of certain economic benefits (values). These include digital currencies of central banks, cryptocurrencies, virtual currencies, tokens, digital financial assets. Their common features, the differences between them, and a comparison with traditional monetary instruments, are presented schematically by the experts [7] (Fig. 1).

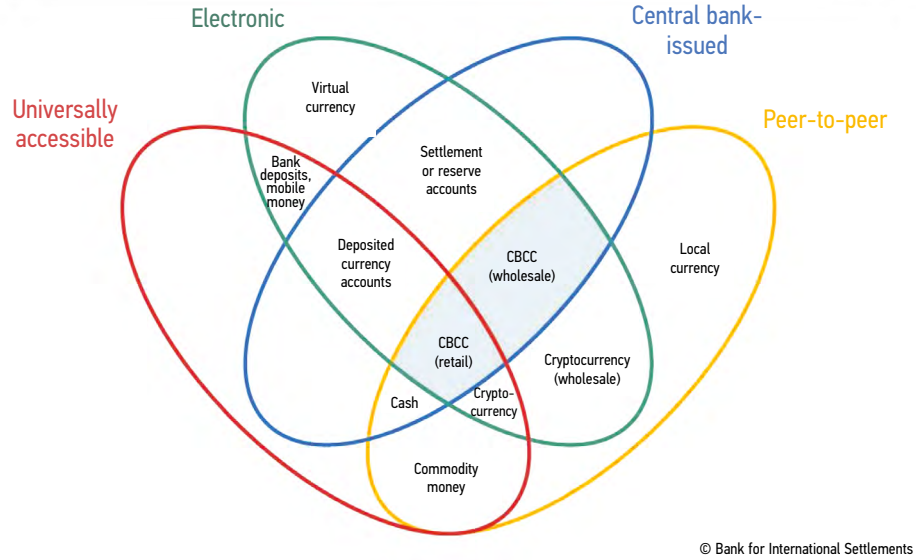
Despite the variety of digital financial instruments available, in the analysis of regulating a new sphere of public relations, we may generally identify a particular digital financial instrument as property, goods (work and service), or currency value identified in digital form.

1.1. Digital financial instruments are a special kind of property that does not relate to individually defined things. Despite the fact that the social and economic aspects of such property reflect its formal, but not material boundaries, which are essentially absent [8], nevertheless, property rights guarantees can and should be applied to it. In this regard, a digital financial instrument, in fact, formally falls under the category of assets, i.e. things, rights, or actual states, specific opportunities, or advantages for the subject, the receipt of which, on the basis of law, may have value, considering a special calculation.

1.2. From the point of view of civil turnover, digital financial goods (works and services) are economic goods (works and services) intended for sale, exchange, or other introduction into circulation, which have full or significant interchangeability [9] and, as a rule, rely on a *blockchain* or a decentralized cryptographic register to cause their functioning. For example, *mining* equipment or *crypto custody services* belong to this category.

1.3. Currency values are valuable and generally highly liquid funds that do not have a purely utilitarian purpose, characterized by convertibility and extraterritoriality, while maintaining their own nominal value [10, p. 143-145] as a kind of universal economic good. It is obvious that digital financial instruments have such features. We recall also that due to their monetary nature and possibility of extraterritorial use, foreign currencies, external securities, as well as international monetary or settlement units are identified as currency values. The differences between them are not limited to their form but have a more meaningful

The money flower: a taxonomy of money Graph 3



Pic. 1. A taxonomy of money. Accessibly on: https://www.bis.org/publ/qtrpdf/r_qt1709f.htm

basis that allows identifying digital financial instruments as a special object (value).

1.4. At the same time, digital financial instruments are not objectified in the space. Their exclusive material expression, as in the case of currency values in non-cash form, is a record (information) made at a specific time in the system. However, if in the case of "traditional" currency values, such a record is electronically reflected on the credit institution account, then digital financial instruments as a record are verified through special technologies or solutions (for example, in the block of the transaction chain it is the *blockchain*).

The digitalization of the financial sphere in developed legal systems, the use of *blockchain* technology, the introduction of digital forms of participation in civil turnover, and the introduction of settlement in digital currencies are designed to increase the efficiency of the economy through the emergence of new opportunities for doing business. However, technological progressiveness and positive expectations from the introduction of digital technologies in the sphere of public relations cannot serve as a guaranteed protection of the values enshrined in the basic law.

Considering the fact that the crime level in the economic activity sphere is an important indicator of the economic security condition, special attention should be paid to the analysis of the evolution and forecasting in the development of criminal legal protection of the monetary system, which is currently undergoing digital transformation. The noted features of the identification of digital financial instruments allow us to present the elements of this possible evolution and development of new means of criminal legal protection under the conditions of the digitalization of economic relations.

2. Diversification of criminal legal remedies in the context of digitalization of economic relations

2.1. A common type of illegal behavior in the field of digital finance is the theft of digital financial instruments. However, as we have established above, these instruments, while formally recognized as property, are considered a special kind of property. This circumstance requires a revision of the traditional understanding of the subject matter of theft, which is the basis of criminal legislation and judicial practice.

Up to the present time, its materiality (physical embodiment) is traditionally recognized as one of the requirements of the subject matter of theft. The encroachment as a whole should be committed precisely in relation to the thing in the ordinary sense of the word, and not property rights and other categories that are not objectified in the space [11]. This approach is also followed by relevant explanations on the issues of judicial practice in cases of fraud and embezzlement. Even though the scope of the subject of the fraud, in the case of theft, according to these explanations includes non-cash and electronic money that does not have a material expression, due to the principle of legality, such a position is not subject to an extended interpretation [11].

Moreover, digital financial instruments differ from electronic and non-cash funds at an essential level. Cryptocurrencies are not directly affected by the same requirements for the subject matter of theft due to the peculiarities of accounting for actions with digital records, which as a rule reflect only the fact of using a private key at a certain point in time. For example, the transfer of 1 BTC consists in using a private key confirming this transaction, while the corresponding entry in the blockchain verifies the operation. However, this 1 BTC is de facto not influenced by the subject matter remaining "in the same place". The understanding that a digital financial instrument is an economic good for its owner and also essentially differs from any previous forms of expression of economic benefits (primarily money), inevitably leads to the need to revise the traditional approach to determining the subject matter of theft and change the concept of legal regulation and legal understanding of theft as it is now.

2.2. The sector of digital financial goods (works and services) is a rapidly developing area of economic activity. It should include, for example, activities to ensure the safety of digital financial instruments (crypto custody business) and the "extraction" of digital financial instruments using mining equipment.

Ensuring the safety of digital financial instruments is a financial (banking) service, the detailed regulation of which can be found in German legislation. According to Section 32 (1) of the German Banking Act (Kreditwesengesetz, KWG), the conduct of banking activities or the provision of financial services in Germany on a commercial basis or to the extent for which the establishment of a commercial enterprise is necessary, requires the written permission from the German Federal Financial Supervisory Authority (BaFin). Referring to the German experience of regulating the provision of digital financial services, a clarification of banking legislation and, consequently, the composition of the relevant crime, will be required.

At the same time, new so-called crypto crimes that are not considered in the national criminal legislation are becoming very common today. For example, this applies to the phenomenon of hidden mining, i.e., unauthorized secret use of the resources from the user's computer (server) in order to extract benefits in the form of a potentially possible reward for carrying out such activities. It is noteworthy that in the designated context, these actions do not in fact differ from any other actions of a person using someone else's equipment without the owner's permission (the same harm is caused). In addition, not all cryptocurrencies use the mining mechanism. However, attackers use those cryptocurrencies that are built on this mechanism in order to obtain a potential reward for hidden actions with the

user's equipment by accumulating resources according to the Internet of things concept.

The elements of crimes included in Chapter 28 of the Criminal Code of the Russian Federation (1996, amended 2012) assume that the corresponding script that uses the user's computer resource without his permission must be embedded in the affected computer system, i.e. installed in it. With hidden mining, there is no such impact on the system. Taking into account the development of various Internet services and Internet technologies, in the vast majority of cases there is no "infection" or use of computer system vulnerabilities. In other words, the malicious script functions remotely, using computer resources virtually, via Internet sites (while the user is on the page of such a site or as what happens more often, when viewing Internet content, mainly movies) [12].

2.3. Construction of the corpus delicti associated with the legalization (laundering) of money or other property is due to the significant influence of international regulation on countering this type of socially dangerous behavior. Among the many relevant international agreements, we must mention the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (it is the key one)[3], Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime[4], Convention against Transnational Organized Crime[5], UN Convention against Corruption[6], Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism[7], Directives of the European Union[8] and the Financial Action Task Force (FATF) documents.

These international agreements address the definition of what constitutes the subject of the crime, which is any economic benefit received or extracted, directly or indirectly, because of the commission of the crime. Such a broad approach to the definition of the subject of the crime allows the implementation of specific measures at the international level to counter this type of socially dangerous behavior, regardless of the form of obtaining the corresponding benefit by the attacker. This approach is effective in order to qualitatively eliminate existing risks and prevent the emergence of new risks under the conditions of the constantly changing threats, including those in connection with the development of technologies. For example, the relevant measures are consistently implemented in the European Union at the level of mandatory Directives for member States on combating Money Laundering.

In contrast to international regulation, the national approaches to countering this type of socially dangerous behavior is objectively limited by the legislation peculiarities, not only in criminal law, but also in the civil, financial, and other spheres, as well as relevant judicial applications of the law.

The subject of the crime, according to the explanation by the Plenum of the Supreme Court of the Russian Federation (Resolution No. 32, July 7, 2015), consists of money or other property deliberately acquired by persons in a criminal way, as well as received as a material reward for the crime committed or as a payment for the sale of items restricted in civil circulation. At the same time, cash means cash in the currency of the Russian Federation or in foreign currency, as well as non — cash funds, including electronic money, under other property (movable and immovable property), property rights, documentary and non-documentary securities, as well as property obtained as a result of processing property acquired by criminal means or as a result of committing a crime (for example, a real estate object built from building materials acquired by criminal means).

Such an explanation follows the civil-legal characteristics of the objects of civil rights. In accordance with Article 128 of the Civil Code of the Russian Federation: "To the objects of civil rights shall be referred the things, among them money and securities, and also the other kinds of the property, such as the rights of property; the works and services; information; the results of intellectual activities, including the exclusive right to these (the intellectual property); the non-material values".

Under this definition, property rights would include non-cash funds, non-documentary securities, and digital rights. However, it should be recognized that the objects of civil rights listed in said Article 128 of still do not give a complete idea of the analyzed subject of the crime. Due to the ambiguity of the legal regime for digital financial instruments, the open list of objects of civil rights specified in the law does not add certainty and clarity to the qualification of regulatory legal relations in circulation and protective ones when committing offenses using cryptocurrencies and other instruments [13, p. XVI, 91].

The analysis of civil legislation, legislation on digital financial assets, the national payment system, as well as on currency regulation and currency control does not allow the direct attribution of the so-called foreign tokens, cryptocurrencies, and other digital financial instruments to the considered subject of the crime.

However, in accordance with the FATF recommendations, cryptocurrencies, for example, are a kind of virtual money. Namely, they are decentralized, convertible, distributed,

[3] Signed in Vienna on December 20, 1988.

[4] Signed in Strasbourg on November 08, 1990.

[5] Adopted in New York on November 15, 2000 by Resolution 55/25 at the 62nd plenary meeting on the 55th session of the UN General Assembly.

[6] Adopted in New York on October 31, 2003 by Resolution 58/4 at the 51st plenary meeting 58/4 at the 51st plenary meeting on the 58th session of the UN General Assembly.

[7] Signed in Warsaw on May 16, 2005.

[8] For example, Directive No. 2015/849 of the European Parliament and of the Council of the European Union "On the prevention of the financial system use for money laundering or terrorist financing, on the amendment of Regulation (EU) 648/2012 of the European Parliament and of the Council and on the repeal of Directive 2005/60/EC of the European Parliament and of the Council and Directive 2006/70/EC of the European Commission" (adopted in Strasbourg on May 20, 2015), the EU Directive on combating money laundering, etc.

open-source peer-to-peer virtual currencies based on mathematical principles without a central administrator, without centralized control or supervision [14]. Therefore, today the functions of money can be performed not only by money that has the payment power [15, p. 47] (i.e. signs that are legal tender) but also by digital financial instruments, and in the future, by other monetary "surrogates" [16] (for example, quantum "money").

From an economic point of view, digital financial instruments are just an economic boon for their owner, since they can de facto be exchanged for traditional money forms, accepted as payment in certain jurisdictions, perform the storage function, etc. For this reason, it seems appropriate to assert the transformation of the "payment power" concept, which in relation to digital financial instruments today is mediated not only by legal means, but also by economic laws, as well as by the free goodwill of participants in digital transactions [17]. This confirms the legitimacy of using the term "economic benefit" at the international level to express the subject of the crime related to money laundering.

Such instruments are of value to their owner. For this reason, at the international level, they are an economic good that falls under the requirements of Anti-Money Laundering/Combating the Financing of Terrorism/ Fraud Risk Management Unit (AML/CFT/FRMU). Thus, the subject feature at the background of the analysis of the corpus delicti construction associated with the funds' legalization (laundering) is expressed today to a greater extent by economic (financial) categories (benefits), usually expressed in a legal form, which is not considered at the national level. The analysis also suggests the need to improve the design for the elements of crimes provided for in Articles 174 and 174[1] of the Criminal Code of the Russian Federation.

2.4. The crime of counterfeiting in the science of criminal law is traditionally associated with cash, which exists in the form of banknotes and coins[9], as well as securities in documentary form [18], including those related to currency values. However, with the development of technologies, the issue of counterfeiting of non-cash, electronic, and digital funds seems to deserve special attention.

Most scientists analyzing the problem of such forgery of funds agree that both the non-cash, electronic, and digital form of existence for banknotes and valuables in the form of records excludes their forgery [19; 20].

This conclusion is also confirmed by the peculiarities in the functioning of information systems that consider records of crediting or debiting funds, since technologies exclude the possibility of giving records a significant similarity to the original. The validation stage of the record allows the determination with certainty whether the record is authentic. If the system confirms the "falsified" record, it does not become fake, since the possibility of verifying this validity fact is excluded.

However, this does not exclude the possibility of putting into circulation funds that are not controlled by the state in non-cash, electronic, or digital forms, which may lead to a violation of the balance between the amount of financial resources in circulation and the total volume of expenditures in the economy [21, pp. 118–119]. The immediate object of the described crime seems to undergo negative changes, not only because of cash and currency values counterfeiting, but also during the "falsification" of non-cash, electronic, or digital funds. In this case, we are talking about the fact that the information system identified the record submitted for verification with the true state of affairs, but only in form, not in content. Probably in this context, it is necessary to conduct a scientific discussion about the need and possibility of including an independent corpus delicti in the Criminal Code of the Russian Federation.

Thus, the legal vacuum of the new sphere in public relations, its subordination to algorithms and programs on the one hand, and the "analog" nature of the analyzed criminal legislation norms on the other, form barriers to achieving the proper efficiency level of criminal legal protection in the national monetary system. The digital space has so far been left without the necessary "infrastructure" that can protect the subjects of public relations, including by criminal law means. Nevertheless, the analyzed features of the digital financial instruments identification allows the visualization of the elements of the possible evolution in existing criminal law means and the development of new ones to protect these relations in the conditions of their digitalization. The introduction of digital technologies into national financial systems should be conditioned by the improvement in the structures of crimes that encroach on the monetary system and the development of new ones, while considering the understanding of digital principles and rules for the circulation of digital financial instruments.

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Theoretical and Legal analysis of Modern Approaches to the Concept of International Crime[1]

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***ABSTRACT*:** The article attempts to study the political and legal essence (nature) of international crime as a negative impact of social reality in the analysis of various approaches. It is concluded that the concept of "international crime" in the context of modern trends in globalization and transformation of social relations is relevant by its definition. It is argued that in the theory of international criminal law, there are four approaches, different defining factors that comprise the contextual element of an international crime — violations of international peremptory norms (jus cogens); the special nature of the external expression of such acts indicating the inherent danger of the phenomenon (as, for example, the direction of intent, seriousness and scale, special attitude on the part of the international community); functional relationship with an agent acting as a criminal policy; and encroachment on international peace and human security. Modern methods of development of the international community are applied in modern literature) as are torture, encroachments on persons enjoying international immunity, international terrorism, piracy, illegal circulation of weapons of mass destruction, etc. The option of criminalizing acts that infringe on international peace and human security and are committed as international crimes is also not excluded. An international crime is a complex affair committed in the context of institutional politics, infringing on international peace and security, and challenging the concept of the international community, thus, falling under universal jurisdiction.

Keywords: international crime; crimes against the peace and security of mankind; international peace; international security; international jurisdiction; international legal order; international criminal responsibility; digital revolution; cyber security; cyber attacks; cyber threats.

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ТЕОРЕТИКО-ПРАВОВОЙ АНАЛИЗ СОВРЕМЕННЫХ ПОДХОДОВ К ОПРЕДЕЛЕНИЮ КОНЦЕПТА «МЕЖДУНАРОДНОЕ ПРЕСТУПЛЕНИЕ»[2]

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Аннотация. В статье предпринимается попытка исследования политико-правовой сущности (природы) международного преступления как негативного явления социальной действительности в фокусе анализа различных научных подходов. Делается вывод о том, что концепт «международное преступление» в условиях современных трендов глобализации и трансформации социальных отношений является релевантным в своем определении. Доказывается, что в теории международного уголовного права существует четыре подхода, по-разному определяющих факторы, составляющие контекстуальный элемент международного преступления: нарушение государствами международных императивных норм *(jus cogens)*; особый характер внешнего выражения таких деяний, свидетельствующий об имманентной опасности явления (например, направленность умысла, серьезность и масштабность, особое отношение со стороны международного сообщества); функциональная связь с государством, выступающим в качестве субъекта преступной политики; посягательство на международный мир и безопасность человечества. Учитывая современные реалии осложнения международных отношений, негативные тренды научно-технического прогресса, а также возникающие угрозы для устойчивого развития международного сообщества, в правовой литературе предлагают более широкую систему международных преступлений, относя к ним помимо основных (преступление агрессии, военные преступления, геноцид, преступления против человечности) также пытки, посягательства на лиц, пользующихся международным иммунитетом, международный терроризм, пиратство, незаконный оборот оружия массового поражения и др. Не исключается также и вариант криминализации деяний, посягающих на международный мир и безопасность человечества и совершенных в информационном пространстве, в качестве международных преступлений. Международное преступление представляет собой сложное деяние, совершаемое в контексте проведения институализированной политики, посягающее на международный мир и безопасность человечества и вызывающее озабоченность международного сообщества, и как следствие — подпадает под универсальную юрисдикцию.

Ключевые слова: международное преступление; преступления против мира и безопасности человечества; международный мир; международная безопасность; международная юрисдикция; международный правовой порядок; международная уголовная ответственность; цифровая революция; кибербезопасность; кибератаки; киберугрозы.

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In the history of human civilization, there have always been acts that encroached upon the most essential social relations promoting the interests of the entire world, thus infringing upon universal peace and security and causing concern for all of humanity. However, it was only after the Second World War that the international community took political and legal measures to counter such acts. These measures marked the birth and development of a conceptual and legal paradigm for combating international crimes.

This retrospective analysis of the development of criminal responsibility for international crimes focuses on the ambiguous process of the classification of these acts. Indeed, back in 1915, the Declaration of the Allies (the Entente countries) established "crimes against humanity" as the most serious offense under international law. The next stage in the assignment of responsibility for international crimes was associated with the post-war processes of bringing to criminal responsibility persons involved in the commission of crimes against peace, humanity, and of war crimes committed during the Second World War. These were most profoundly characterized by the Nuremberg trials in 1945-1946 and the Tokyo Trial in 1946–1948).

Afterwards, genocide was criminalized in 1948 by the Convention on the Prevention and Punishment of the Genocide Crime, followed by the recognition of apartheid as an international crime, with the adoption of the International Convention on the Suppression and Punishment of the Apartheid Crime of 1973. The group of war crimes were reflected in the Charter of the Nuremberg Tribunal and based on the provisions of customary law and provisions of The Hague Law. It has long been ethically expanded and regularly specified in four special Geneva Conventions:

- The Convention on the Amelioration of the Fate for the Wounded and Sick in Active Armies, from August 12, 1949.
- The Convention on the Amelioration of the Fate for the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea from August 12, 1949.
- The Convention on the Treatment of War Prisoners from August 12, 1949.
- The Convention on the Civilian Persons' Protection in Time of War from August 12, 1949.

Add these additional protocols:

- Additional protocol to the Geneva Conventions from August 12, 1949, concerning the protection of Victims of International Armed Conflicts, from June 8, 1977.
- Additional Protocol to the Geneva Conventions from August 12, 1949, concerning the protection International Armed Conflicts' victims, from June 8, 1977.
- Additional Protocol to the Geneva Conventions from August 12, 1949, concerning the adoption of an additional distinctive emblem, from December 8, 2005).

The illegality of crimes against peace is expressed in the criminalization of planning, preparing, unleashing, and waging an aggressive war, as well as in the criminalization of participation in a common plan or conspiracy aimed at committing those crimes. In 1974, the UN General Assembly adopted resolution 3314 (XXIX), which established the crime of aggression. In the current conditions of international criminal law development, the UN International Law Commission is also developing a draft Convention on the Prevention and Punishment of Crimes against Humanity.

Criminalization of acts of concern to the entire international community continued via the work of the International Law Commission. At different times, the Commission has presented various drafts of the Code of Crimes against the Peace and Security of Mankind (1996), reflecting ambiguous approaches to the list of such crimes. Subsequently, the crime of genocide, crimes against humanity, and war crimes have become the subject of consideration within the framework of international jurisdiction in the work of the International Tribunals for the Former Yugoslavia in 1991 and Rwanda in 1994. The culmination of the development of international criminal responsibility for acts that cause concern to the entire international community and infringe upon the universal peace and security of all mankind was the adoption of the Rome Statute for the International Criminal Court in 1998. This international document reflects past experience in the legal regulation of responsibility for international crimes.

At the same time, such acts that infringe upon universal peace and security were not always perceived (nor are they yet perceived today) by national legislatures as criminal acts that have the highest character of public danger, which creates different approaches in the political and legal responses to these acts. For example, in some common law countries (USA, Canada, and Great Britain), aggressive war is not criminalized to this day; in other countries, aggressive war is criminalized according to the Nuremberg process model (Russia, Ukraine, Belarus, and Kazakhstan), or the crime of aggression covers the definition presented in the UN General Assembly resolution of 1974 (Georgia). The lack of criminal law unification at the national level is also observed in relation to war crimes, genocide, and crimes against humanity.

The lack of a uniform criminal law policy in the field of ensuring international peace and security for mankind, considering new and emerging threats caused by modern trends of globalization and scientific and technological progress, as well as the dynamism of international relations, actualizes the question of a common understanding of the "international crime" concept. In modern legal science, international crime is often identified with such principles as "crimes against international law," "crimes under international law," "crimes against humanity," "international legal crimes," "crimes against the peace and security of mankind," and "crimes that cause serious concern to the entire international community" [1, pp. 97–100]. The spread of definitions does not allow us to determine at first glance the most acceptable designation of this act. At the same

time, in modern criminal law theory, different approaches have evolved regarding the conceptual and legal definitions of acts that fit the concept of "international crime".

Thus, some experts in international criminal law science emphasize the legal prohibition of certain acts based upon the need to fortify the principles of public international laws that are threatened as a result of their commission[3]. In this case, the criminalization of such acts is tied to the recognition of international obligations arising from norms jus cogens [2, pp. 63–66]. International crimes are defined as acts related to the violation of a state's obligations to jus cogens. According to Article 53 of the Vienna Convention on the Law of International Treaties from 1969, the peremptory norms of general international law include those that are accepted and recognized by the international community of states. Deviation from those is unacceptable and they can only be changed by a subsequent general international law norm of the same nature[4].

Such acts can be qualified as *de jure* international torts that trigger the state's international responsibility, as well as criminal acts that determine the onset of an individuals' criminal responsibility in the realm of international jurisdiction. The functional connection of an international act with the state, which acts as an instrument of criminal policy, also adjoins this approach.

The dualistic nature of international crime can be traced within this framework. On one hand, international crimes should be understood as illegal acts committed by states and expressed in non-fulfillment of their international obligations. In essence, the definition of an international crime is wrongful actions by states related to the violation of their international obligations. This approach was previously reflected in the draft articles on the Responsibilities of States for Internationally Wrongful Acts, of 2001[5].

On the other hand, prohibition of such acts is expressed in the obligation of states to investigate and prosecute the persons responsible for their commission, or to extradite such persons to another state that is ready to mete out justice (the basic principle of extradition is *aut dedere aut judicare*) [3].

Criminalization of acts in the international criminal law system demonstrates the international form of the crime, which means a political and legal prohibition of such acts and in concreto testifies to interstate cooperation in the field of ensuring international law and order.

Other authors define the concept of international crime through the special nature of their external expression. This approach is based on the Latin formula *malum in se* ("evil as it is"). Such actions are initially recognized a priori as unacceptable and illegal, regardless of their actual criminalization. The public danger of these acts is determined by the nature of their external expression, which is manifested in the intent direction (for example, an encroachment on basic human values), seriousness and scale, as well as a special attitude on the part of the international community, which consists of recognizing such acts as "shocking the conscience of humanity" [4, p. 19–20]. This approach tends to a greater extent to involve a philosophical understanding of the research subject, since it is based on the recognition of the social relations of the inhumane acts' as a category of humanistic ideas developed during the liberalization of political discourse.

Special attention should be paid to the approach according to which an international crime is an act committed with the direct or indirect participation of the state[6]. It is assumed that the probability of violating the universal peace and security of mankind increases if international criminal acts are committed with the direct or indirect participation of the government. Indeed, the historical facts of genocide, crimes against humanity, and war crimes have usually been committed with the participation of states (for example, the Turkish Armenian genocide in 1915–1923, the Holocaust during World War II, genocide and crimes against humanity in Kampuchea in 1975–1979, genocide and war crimes during the civil war in Yugoslavia in 1995, and some other aggressive wars). This thesis is only partially true. At the same time, it is impossible to exclude the potential for committing international crimes (except, perhaps, for the crime of aggression) by non-governmental actors in international relations (transnational companies, private military companies, illegal armed groups, terrorist organizations, and transnational criminal communities). For example, if we consider the civil war in modern Syria for violations of international humanitarian law, then there are clearly signs of war crimes and crimes against humanity on both sides — the government troops and the opposition terrorist organizations and other states' armed forces. For this reason, the connection of an international crime with State policy should not be considered as the criminal act's criminalizing feature.

The fourth group of scientists, on the contrary, focuses not so much on binding to the international law norms, as on the special value of those objects (international peace and human security) against which encroachments are committed. To a certain extent, this approach is based on the law-making work of the International Law Commission, while creating a unified Code of Crimes against Mankind, Peace, and Security. In the history of international criminal

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[5] The text of the Articles is attached to UN General Assembly Resolution No. 56/83 from December 12, 2001 and corrected by document A/56/49 (Volume I)/Corr4. URL: https://legal.un.org/ilc/reports/2001/russian/chp4.pdf (accessed on: 20.04.2021).

[6] Jorgensen N.H. 2000 State responsibility for the commission of crimes against international law (dissertation of Ph.D.). URL: https://search.proquest.com/docview/301570225/21DBA22D34D74612PQ/90?accountid=152445 (accessed on: 20.03.2021).

law in the second half of the 20th century, there are three known drafts of such codes (1954, 1991, and 1996), in which the criminalization of particularly dangerous acts that infringe on international peace and human security were proposed [5]. In contrast to previous approaches, this perception of the public danger of international crimes' acquires an institutional and legal expression that allows one to distinguish international crimes from other torts and unfriendly acts that lack a sufficient degree of public danger comparable to the danger of the international crimes. Considering the nature of the objects of the criminal legal protection (international peace and security of mankind), the modern complexities of international relations, negative trends of scientific and technological progress, as well as emerging threats to the sustainable development of the international community, the legal literature suggests a broader system of international crimes. In addition to the main ones—the crime of aggression, war crimes, genocide, crimes against humanity—there are torture, attacks on persons enjoying international immunity, international terrorism, piracy, illegal trafficking in mass destruction weapons, inter alia. [6, p. 294; 7, p. 144].

In the digital transformation of modern public relations, proposals are being made to recognize certain socially dangerous acts committed in cyberspace as international crimes [8, p. 151]. It is also argued that the technology and the nature of the digital era itself is determining the transformation of international crimes that have developed in modern international law (in particular, crimes of aggression and war crimes), which can be conducted via the use of information and telecommunication technologies [9, p. 390–400; 10, p. 34; 11, p. 10–11].

Despite critical objections to this approach, it should be noted that it is relevant, according to modern trends in the development of new weapons, and promising in terms of international criminal law in the field of ensuring international human peace and security. Indeed, it is hardly appropriate to blindly deny the ongoing changes in military thought and affairs. In modern conditions of complicated international relations, and scientific and technological progress, computer network attacks committed against critical infrastructure facilities of other states are becoming a reality, which are determining the transformation of national military doctrines. For example, the Russian Federation military doctrine effectively guarantees that modern military conflicts are accompanied by an increase in information warfare, which is used as a tool to achieve political goals without the direct use of military force. The doctrine also refers to the increasing role of information and control systems used in conducting combat operations, as well as interstate relations in the military-political sphere, using modern technical means and information technologies[7]. The US military doctrine also notes the growing dependence on cyberspace and the increasing risks of cyber attacks that can be used to worsen, disrupt, or destroy access to the functional and operational work of information systems. It is noted that cyberspace is becoming a new theater of military confrontation between states with conflicting national and international interests[8]. Special attention is paid to ensuring cyberspace security in the doctrine of China's National Defense in the new era[9]. The document notes that cyberspace is a key area of national security, economic growth, and social development, while cyber security remains a global problem and serious challenge for China. The Chinese Armed Forces are rapidly developing national cyberspace, cyber security tools, and increasing their cyber defense capabilities in accordance with that country's international position and status as a major cyber country. The document also reflects that the People's Republic of China strives to ensure national cyber-sovereignty, information security, and social stability.

The position of those authors who claim that the potential harm from possible cyber attacks, expressed by undermining information security, weakening the economic system, and disorganizing the military infrastructure, can be commensurate with the consequences of direct armed forces use [9, p. 390–400; 10, p. 34; 11, p. 10–11], seems convincing and justified. In addition, in the modern international security system, when the direct use of armed force by one state against the sovereignty, political independence, and territorial integrity of another state becomes an unlikely scenario for complicating international relations, cyber attacks become an instrument of illegal interference in the internal affairs of another state. If we move away from the traditional perception of armed force via conventional weapons and begin to consider cyber weapons as the weapon type that can achieve results comparable to the consequences of typical weapons, then cyber attacks can be qualified as acts of aggression, subject to the other conditions inherent in this crime. On the contrary, if a cyber attack carried out against critical infrastructure objects is not defined as a kind of state armed force, then such a situation can be regarded as interference in the internal affairs of the state and an unfriendly act. From a legal point of view, the ratio of two types of computer networks or cyber attacks are actualized here: 1) cyber attacks are characterized as a type of state armed force and, therefore, qualify as acts of aggression, according to the UN General Assembly resolution Definition of Aggression No. 3314 (XXIX) of December 14, 1974; or 2) cyber attacks are not considered types of state armed force, according to the definition of crime of aggression, therefore disallowing their qualification as international crimes.

[7] Military doctrine of the Russian Federation from December 12, 2014. SPS "ConsultantPlus" URL: http://www.consultant.ru/document/cons_doc_LAW_172989/ (accessed on: 10.05.2021).

[8] Offensive Cyber Operations in US Military Doctrine. URL: https://fas.org/blogs/secrecy/2014/10/offensive-cyber/ (accessed on: 10.05.2021).

[9] China's National Defense in the New Era. The State Council Information Office of the People's Republic of China. July 24, 2019. URL: https://www.globalsecurity.org/military/world/china/doctrine.htm (accessed on: 10.05.2021)

The analysis of various approaches to understanding the nature of this phenomenon allows us to variously conceive conceptual and legal definitions of international crimes, disclosed via the following alternative factors that make up their contextual elements:

- violation by states of international peremptory norms (*jus cogens*);
- the special nature of the external expression of such acts, indicating the inherent danger of the phenomenon (for example, the direction of intent, its seriousness and scale, and special attitude on the part of the international community);
- functional connection with the state acting as a criminal policy subject;
- an encroachment on international peace and human security.

At the same time, it should also be noted that these approaches, on the one hand, overlap with each other, and on the other hand, coincide at some moments. For example, the understanding of an international crime is as the violation of obligations arising from the operation of norms *jus cogens.* To some extent, it intersects with the definition of international crimes as encroachments against human peace and security, since the violation of such norms can threaten the international legal order. On the other hand, they are not always acts that violate the norms jus cogens, endanger international peace and human security. They might be acts of aggression that are insufficiently serious, or are sporadic and isolated war crimes. A similar situation manifests with a functional connection to the state, acting as a criminal policy subject.

Thus, in the theory of international criminal law, there are four approaches to the disclosure of the concept of "international crime": 1) acts that are expressed through the violation by the state of international obligations arising from the international norms operation *jus cogens,* which determines the onset of international legal responsibility; 2) acts that are expressed in the violation by the state of international obligations arising from the operation of international norms *jus cogens*, which entails the implementation of international criminal responsibility for the individuals responsible for their commission due to the fact of their primary (i.e., international level) criminalization; 3) acts that, due to special forms of external expression, show the highest character of public danger, which allows them to be characterized as "evil as it is" (*malum in se*); and 4) acts that infringe on certain elements of the international legal order and international human peace and security.

The conceptual and legal definitions of an international crime, according to the understanding of international human peace and security, which act as fundamental values that form the basis of the international legal order, corresponds to modern trends in world politics and the state of international criminal law development.

An international crime is a complex act committed in the context of an institutionalized policy that encroaches on international human peace and security, causing concern to the international community, and as a result falls under universal jurisdiction. The modern understanding of an international crime is of a complex act that encroaches on international human peace and security. It does not mean that the group of such crimes that has been developed in the international criminal law system (the crime of aggression, genocide, war crimes, and crimes against humanity) is sufficient and final. In fact, it is impossible to exclude the emergence of new acts that encroach upon or endanger the above-mentioned objects, since scientific and technological progress, destructive forms of globalization, and modern processes of intercultural interaction continuously demonstrate new threats to humanity (for example, international terrorism, illegal trafficking in weapons of mass destruction, ecocide, the creation of human beings, interference in the internal affairs of other states ["color revolutions"], cyber attacks, and drug trafficking). The option of criminalizing acts that infringe on international humanity, peace, and security are committed in the information space as international crimes is also not excluded.

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The Victory Day in the Great Patriotic War: What the Biography of the Philosopher I.A. Ilyin Hides

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ABSTRACT: The article contains fragments of Russian philosopher I. A. Ilyin's biography and separate articles from his other works. It shows that I. A. Ilyin collaborated with fascist Germany, worked against the USSR, and supported the regimes of Mussolini and Hitler. Nowadays, this information about Ilyin is not published in Russia for some unclear reasons.

Keywords: philosophy; philosophy of law; I.A. Ilyin; fascism; nazism.

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Ко Дню Победы в Великой Отечественной войне, или Что скрывает биография философа И.А. Ильина

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Аннотация. В статье приводятся фрагменты биографии русского философа И.А. Ильина и отдельные статьи из его творчества. Показывается, что И.А. Ильин сотрудничал с фашистской Германией, вел работу против СССР, поддерживал режимы Муссолини и Гитлера. Отмечается, что по непонятным причинам в настоящее время указанные сведения об Ильине не афишируются и не публикуются в России.

Ключевые слова: философия; философия права; И.А. Ильин; фашизм; нацизм.

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The personality of I. A. Ilyin is well known by modern scientists as a religious philosopher from the first half of the 20th century, a lawyer, and the author of books, including The general law and the state doctrine" and "On the essence of legal consciousness".

The main milestones of Ilyin's biography are also known. He was an ardent opponent of the Soviet government. In 1922, together with 160 other well-known publicists of that time, he was expelled from Russia on the so-called "Philosophical Steamer". He lived in Germany and then moved to Switzerland, where he died in 1954. Ilyin's work is now being carefully studied and positively evaluated. However, here is the problem: as so often happens in Russia, the studies are one-sided and therefore biased.

For some reason, modern experts do not write and perhaps do not know that Ilyin was a supporter of Hitler's coming to power. Ilyin's articles and letters in support of the Nazi party, the National Socialist German Workers' Party (NSDAP, for the German abbreviation), are not published. In 2020, a remark about Ilyin's initial support for fascism and approval of the attack on the Soviet Union was removed from Wikipedia. However, in 2019, this information was present on Wikipedia.

In addition, Ilyin was one of the ideologists of the Russian All-Military Union (RAMU). Employees of the RAMU conducted underground work in the USSR. The purpose of this work was to prepare an armed uprising and overthrow the Soviet government. From the point of view of Soviet legislation (and the legislation of some other countries), the RAMU was an international terrorist organization. During the war between the USSR and Finland in 1939–1940, members of the RAMU were on the side of Finland, killing Soviet soldiers. During the Great Patriotic War, members and leaders of the RAMU fought for the fascists against the USSR or at least supported fascist Germany.

To provide further confirmation, it is enough to cite historical fact: in 1945, the USSR demanded that Finland detain and transfer 22 employees of the RAMU who were allegedly guilty of committing war crimes and carrying out espionage and terrorist activities against the Soviet Union on the instructions of Germany (the so-called Leino list). Finland unconditionally fulfilled the USSR's requirements and thereby confirmed that the 22 employees carried out the criminal activities. It is well known that the military crimes on the side of the fascists were connected with the disintegration of the Soviet Union, primarily Russia.

The work against the RAMU as a terrorist organization was a priority for the Soviet state security agencies both in the pre-war period and during the Great Patriotic War. The Soviet government, its leaders, its communist approach, and all that it represents may be perceived in different ways; however, it is difficult for people to support the fascists who fought against their homeland and killed their compatriots.

Ilyin, an Orthodox religious philosopher, supported the ROVS until his death in 1954. He acted as its ideologist and published his works in the journals of this organization.

In this paper, we discuss the work of Ilyin. Specifically, we provide several detailed quotes from his article, characteristically titled "National Socialism. The New Spirit", which was published in 1933 shortly after Hitler came to power[1]. According to Ilyin,

Europe does not understand the National [S]ocialist movement. Europe is afraid of it. And because of fear the misunderstanding is growing. And the more Europe does not understand, the more it believes all the negative rumors, all the stories of "eyewitnesses," all the frightening predictors. Left-wing publicists of almost all European nations scare each other with [N]ational [S]ocialism, creating a real roll call of hatred and anger. Unfortunately, the Russian foreign press is gradually becoming involved in this roll call; European passions are beginning to be transmitted to emigration and to confuse the emigrants. It becomes morally impossible for us, who are in the very cauldron of events, seeing everything with our own eyes, subject to all new orders and laws, but maintaining spiritual sobriety, to remain silent. It is necessary to speak; and to tell the truth. But the way to this truth still needs to be cleared ... First of all, I categorically refuse to assess the events of the last three months in Germany from the point of view of German Jews who have been curtailed in their public legal capacity, who have suffered financially or even left the country in this regard. I understand their state of mind; but I cannot turn it into a criterion of good and evil, especially when evaluating and studying such phenomena of world significance as German National Socialism. And it would be strange if the German Jews expected this from us[2].

His commentary on the bloody events and riots that accompanied the fascists' coming to power is considerably interesting and indicative:

I refuse to judge the movement of German National Socialism by those excesses of struggle, individual clashes or temporary exaggerations that are put forward and emphasized by its enemies. What is happening in Germany is a huge political and social upheaval; the leaders constantly characterize it with the word "revolution." This is a movement of national passion and political tension, which has been concentrated for 12 years, and for years, yes, for years, it has been shedding the blood of its adherents in battles with the communists. This is a reaction to the years of postwar decline and despondency: a reaction of grief and anger. When and where did such a struggle go without excesses? But for us, who have seen the Russian Soviet revolution, these very excesses look just like angry gestures or individual accidental incorrectness[3].

[1] Ilyin I. A. National Socialism. The New Spirit // Electronic Library of the Odintsovo Deanery. URL: http://www.odinblago.ru/filosofiya/ilin/ilin_i_nacional_sociali/ (accessed on: 15.10.2020).

[2] Ibid.

[3] Ibid.

In other words, it is silencing the Nazis' actions and their careful support. Moreover, Ilyin writes: "What did Hitler do? He stopped the process of Bolshevization in Germany and thereby rendered the greatest service to the whole of Europe. This process in Europe is far from over; the worm will continue to gnaw Europe from the inside. But the situation won't be the same. Not only because many dens of communism in Germany have been destroyed; not only because the wave of detonation is already going through Europe; but mainly because the liberal-democratic hypnosis of non-resistance has been thrown off. While Mussolini is leading Italy, and Hitler is leading Germany, European culture is given a reprieve. Has Europe understood this? It seems to me that it has not ... Will she understand it very soon? I'm afraid it won't... Hitler took this postponement primarily for Germany. He and his friends will do everything to use it for the national, spiritual, and social renewal of the country. But by taking this reprieve, he also gave it to Europe. And the European peoples must understand that Bolshevism is a real and fierce danger; that democracy is a creative dead end; that Marxist socialism is a doomed chimera; that a new war is beyond Europe's strength, neither spiritually nor materially, and that only a national upsurge can save the cause in every country, which will take up the "social" solution of the social question dictatorially and creatively. Until now, European public opinion has only been repeating that extreme racists and anti-Semites have come to power in Germany; that they do not respect rights; that they do not recognize freedom; that they want to introduce some kind of new socialism; that all this is "dangerous" and that, as Georg Bernhard (former editor of the Fossische Zeitung) recently put it, this chapter in German history "hopefully will be short." It is unlikely that we will be able to explain to European public the opinion that all these judgments are either superficial or short-sighted and biased"[4].

Furthermore, Ilyin's arguments about fascism and racism in the context of the processes that began in Germany in 1933 are interesting.

The leading layer is being updated consistently and radically. By no means the whole thing; however, on a large scale. On the basis of a new mindset; and as a result of this, often in the direction of the personnel rejuvenation. Everything involved in Marxism, social-democracy and communism is being removed; all internationalists and Bolshevik elements are being removed; a lot of Jews are being removed, sometimes (as, for example, in the professorship) the overwhelming majority of them, but by no means all of them. Those who are clearly unacceptable to the "new spirit" are removed. This "new spirit" has both negative and positive definitions. He is irreconcilable with regard to Marxism, internationalism and defeatist dishonor, class harassment and reactionary class privilege, public venality, bribery[,] and embezzlement. There is no such irreconcilability with regard to the Jews: not only because private entrepreneurship and trade remain open to the Jews but also because persons of Jewish blood (take into account two grandfathers and two grandmothers, of whom none should be a Jew) who were lawfully in public service on August 1, 1914; or who have participated in military operations since then; who lost their father or son in battle or as a result of injury; or who are in the service of religious and church organizations are not subject to restriction in the rights of public service (decree of May 8, this year). Psychologically, it is clear that such limited restrictions are perceived by Jews very painfully: they are offended by the very introduction of a presumption not in their favor, "you are unacceptable until you have shown the opposite"; and also "it is not your faith that is important, but your blood." However, the mere existence of this presumption makes it necessary to recognize that a German Jew who has proved his loyalty and devotion to the German homeland in practice is not subject to legal restrictions (neither in education nor in the service). The "new spirit" of national Socialism has, of course, positive definitions: patriotism, faith in the German people identity and the German genius power, a sense of honor, readiness for sacrificial service (the fascist "sacrificio"), discipline, social justice[,] and extra-class, fraternal-national unity. This spirit is, as it were, the substance of the whole movement; it burns in the heart of every sincere National Socialist, strains his muscles, sounds in his words, and sparkles in his eyes. It is enough to see these believers, real believers; it is enough to see this discipline to understand the significance of what is happening and ask yourself: "Is there a people in the world who would not want to create a movement of such an uplift and such a spirit?" In other words, this spirit unites German National Socialism with Italian fascism"[5].

Providing comments on these words by Ilyin is unnecessary. Human rights, humanity, and the freedom of worldviews were apparently alien to this philosopher. To Ilyin, Bolshevism and communism, after all, just comprised a different worldview and a different ideology. However, unlike communists and Bolshevists, Ilyin sees no trouble in national fascism. On the contrary, Ilyin openly tries to whitewash fascism [1, p. 124–135].

The phrase about Italian fascism is not accidental. In 1925, Ilyin was sent to Italy by the emigrant newspaper Vozrozhdenie to collect materials about the situation in the country, about its new leader Mussolini, and about Italian fascism. Ilyin was positively received by the local fascists and allowed to visit their libraries. Upon his return, within a short time, he prepared a series of articles for the newspaper Vozrozhdenie under the general title "Letters about Fascism." The articles were devoted to discussing the essence of fascism, the internal and foreign policy of the fascist authorities, the struggle between the Italian fascists and the Freemasons, the biography of Mussolini, his personality,

[4] Ibid.

[5] Ibid.

etc. [2]. Moreover, all the publications were in support of the Italian fascists. The articles are readily available in Germany; however, these articles are not published in Russia.

Although the reason is unclear, Ilyin's biography and views on Russia have now been carefully retouched. From Wikipedia, as already noted, the phrase where he initially supported fascism and the rise to Hitler's power has been removed. The annotation to the book published at the Law Faculty of the Moscow State University states that the biographical essay about Ilyin "not only describes the amazing fate of this wonderful man but also introduces the reader to the world of his creativity, to the ideas of the great Russian thinker, the national Russian genius of the 20th century" [3, p. 4]. Alternatively, as V.V. Sorokin wrote, "I.A. Ilyin came closest to the spiritual and moral problems of jurisprudence in the 20th century in his works" [4, p. 4]. His biography was also changed; for example the well-known legal historian V.A. Tomsinov writes that Ilyin was allegedly persecuted by the Gestapo and was forced to move from Germany to Switzerland [2, pp. 626–629]. The younger generation may believe this. However, we have directly communicated with veterans of the Great Patriotic War and with people who saw the fascist regime firsthand, who would provide a different view. Moreover, it would be difficult to prove that Ilyin would have been able to work and live in Germany from 1933 to 1938 if he had not supported Hitler. One cannot honestly conclude that the Gestapo would have allowed Ilyin to leave Germany for Switzerland if he had not been profitable for them. If he had not supported Hitler, the Gestapo would have destroyed him as a speck of dust and would have tortured him in a concentration camp, without giving him the opportunity to pack up and leave. It should be recalled that Ilyin acted as an ideologist of the RAMU and fought against the Soviet Union, which was beneficial to Hitler's regime. Moreover, it should be noted that Ilyin did not fight against Hitler's regime. Historians should have recorded these facts but, for some reason, remain rather restrained.

The aforementioned V.A. Tomsinov quoted Ilyin: "For 16 years, I was a guest of Germany, and I never allowed myself to speak publicly about its internal affairs, or interfere in politics, or get involved in the struggle inside the country" [2, p.630]. In other words, he constantly wrote harshly and fought against the USSR, but he never criticized Germany, Hitler, and fascism. Moreover, he called on the RAMU to conduct subversive activities against the USSR, which was beneficial to the Gestapo and the Nazis. Therefore, he managed to survive; he was not arrested and shot. Although we respect V.A. Tomsinov and his works, it seems that Ilyin managed to outwit him on a number of positions. Let us quote V.A. Tomsinov in full:

In February 1938, Ilyin was again summoned to the Gestapo. After Ilyin again refused the Gestapo's offers of cooperation with the German authorities, he was banned from any public speeches in both Russian and German, under threat of imprisonment in a concentration camp. Reporting this to S.V. Rachmaninoff, Ilyin noticed "Unfortunately, I learned from a reliable source that all this persecution has the goal of forcing me to recognize the German 'racism' point of view, to use my name and my forces in the impending 'Ukraine conquest'. I am telling you this in strict confidence!" It is curious that the letter to Rachmaninoff, in which Ilyin wrote about the Germans' intention to conquer Ukraine, is dated August 14, 1938, that is, Germany's attack on the USSR had been discussed in Germany three years before it actually took place. In a letter to I.S. Shmelev dated October 13, 1938, Ilyin wrote that in April 1938 he was summoned to an interview with the deputy of A. Rosenberg, the Head of the NSRP external department. It follows from Ilyin's words that during this conversation they discussed the German occupation of Ukraine and the involvement of a Russian scientist in the work on the ideological justification of this action. Ilyin replied that he would never agree to the Ukraine occupation and its separation from Russia [2, p. 628].

The Barbarossa plan, which resulted in an attack on the USSR, was signed by Hitler in December 1940. The plan was strictly secret; only the leaders of the country, the leadership of the German armed forces, and the heads of the German special services were aware of it. In 1938, there were no such plans. The German leaders in this period were rather concerned about armed conflicts with Great Britain and Europe. It is all the more doubtful that details such as the use of Ilyin in Ukraine, instead of other potentially occupied territories (Belarus or the western part of Russia), were discussed. It seems that the authenticity of such letters by Ilyin is considerably doubtful. In addition, the possibility that the letters were not written by Ilyin in actuality should not be excluded; alternatively, he could have written them much later to justify his own actions.

It can, however, be assumed that the top leadership of Germany and the Gestapo could already have known about Hitler's secret plans for a potential attack on the USSR in 1938 and discussed these plans in a small group. In this case, we must admit that Ilyin was substantially close to the fascist leaders and well known to them — that is, well known from the right side and, therefore, trusted by the fascists at that time with the most secret plans of Hitler.

In 1945, Ilyin wrote differently. He wrote that if he had foreseen the world war, the attack on Russia, and Germany's defeat in the war from the very beginning of Hitlerism, he would have acted differently [5, p. 281]. However, this also appears to be doubtful. In addition, we doubt the complete truth and authenticity of the published letters by Ilyin, the absence of their editing, and the completeness of their publication. However, if Ilyin truly had this thought, why did he not warn him about the war in time? Why did he not fight against the fascist invaders? Why did he not defend his Motherland for the sake of Russia and the Russian people given that, in his own words, he loved Russian people very much?

In the same letter from 1945, there is an interesting phrase about the National Socialists. Ilyin writes the

following: "They are the enemies of Russia, who despised the Russian people with the last contempt; they used communism as their propaganda card. Communism in Russia was only a pretext for them to justify their thirst for conquest before other peoples and before history" [5, p. 317]. In other words, if the war against communism and the USSR was not a pretext for the National Socialists but precisely the goal of overthrowing the Soviet government, it might have been justified by Ilyin. From here, we can return to the arguments from the press and on the Internet that Ilyin wanted a change of power in the USSR at any cost: even at the cost of war and the seizure of Russia by Hitler.

In 1948, Ilyin wrote the article "On fascism"[6]. Because this article is rarely published, we will provide detailed quotes from it, which, again, speak for themselves.

Fascism is a complex, multifaceted phenomenon and, historically speaking, far from being obsolete. Fascism emerged as a reaction to Bolshevism, as a concentration of state-protective forces to the right. During the onset of left-wing chaos and left-wing totalitarianism, it was a healthy, necessary and inevitable phenomenon... Speaking out against left-wing totalitarianism, fascism was further right since it was looking for fair socio-political reforms. These searches could be successful and unsuccessful: it is difficult to solve such problems and the first attempts could fail. But it was necessary to meet the wave of socialist psychosis with social and, consequently, anti-socialist measures. These measures have been brewing for a long time, and we should not have waited any longer. Finally, fascism was right, because it proceeded from a healthy national-patriotic feeling, without which no nation can either assert its existence or create its own culture. However, along with this, fascism committed a number of deep and serious mistakes that defined its political and historical physiognomy and connected its name with odious associations that are constantly being emphasized by anti-fascists. Therefore, for future social and political movements of this kind, it is necessary to choose a different name. And if someone calls his movement by its former name ("fascism" or "national socialism"), it will be interpreted as an intention to revive all the gaps and fatal mistakes of the past.

These gaps and errors were as follows:

1. Irreligion. Hostile attitude to Christianity, to religion, to confessions[,] and churches in general.

2. The creation of right-wing totalitarianism as a permanent and supposedly "ideal" system.

3. The establishment of a party monopoly and the corruption and demoralization that grows out of it.

4. Going to the extremes of nationalism and militant chauvinism (national "grandiosity mania").

5. Mixing social reforms with socialism and slipping through totalitarianism into the economy nationalization.

6. Falling into idolatrous Caesarism with its demagogy, servility and despotism.

These mistakes compromised fascism, restored entire confessions, parties, peoples and states against it, led it to an unbearable war and destroyed it. Its cultural and political mission failed, and the opposition spread with even greater force..."[7]

Note that the "patriot" Ilyin, who lived in Switzerland, does not condemn fascism. There is not a single word about the more than 20 million of his compatriots who died during the war with Germany. Not a single word is included regarding the millions of people who lost their relatives, who were left without shelter and food, and who were left with various health complications. Ilyin did not write about the siege of Leningrad and the hundreds of thousands of Leningrad defenders who died, about the battles of Stalingrad and Kursk, about concentration camps, about the extermination of Russian people and people of other nationalities, about the bombing of peaceful cities, about the destruction of entire villages and towns, etc. On the contrary, he simultaneously regretted that "the opposition spread with even greater force..."

He cynically wrote that Russians should be protected from slavery and that the Russian soul must not be crippled [6, p. 6]. In another characteristic quote, Ilyin stated that the struggle for the right is an element of normal legal consciousness. The expression, "struggle for the right" does not seem appropriate [3, pp. 363–374], especially if we remember that the struggle (as with any competition) is honest and dishonest, moral and immoral, fair and unfair ... [and] the law is considerably contradictory as merely remembering our comprehensive theory of law evinces [1, 7–10].

Following his article in 1933, one might have excused his actions based on a lack of understanding of certain issues. In 1948, however, Ilyin wrote, with cynicism, about the same thing. Moreover, at the end, he added the following: "Franco and Salazar have understood this and are trying to avoid these mistakes. They do not call their regime 'fascist'. Let's hope that the Russian patriots will analyze the mistakes of fascism and National Socialism profoundly and will not repeat them".[8] This is, again, hidden support for Nazism and fascism. This is the essence of Ilyin's ideology, his true thoughts, and desires at the final stage of his life.

There are many cases in history when real Russian patriots, even while in exile, opposed Nazism, fascism, and Hitlerism, joined the Soviet army, or supported the Soviet army. Such a case does not apply to Ilyin. Unfortunately, works by Ilyin were not published in Russia during the Soviet period. The works were not published primarily because everyone understood whose side he was on and who he sympathized with. When the pain of the war was still great and affected almost every family, it was difficult to support and publish

[6] Ilyin I.A. Our tasks: About fascism // Electronic Library of the Odintsovo Deanery. URL: http://www.odinblago.ru/nashi_zadachi_1/37 (accessed on: 15.10.2020).

[7] Ibid.

[8] Ibid.

pro-fascist works or their authors. In addition, publication was difficult because all nationalities, including Hebrews (Ilyin called them Jews), existed amicably in the USSR.

May 9 is still celebrated as Victory Day to date; however we sometimes attempt to whitewash and create excuses for people who killed and maimed our compatriots as well as those who supported the fascists. Currently, for some reason, biographies are misrepresenting the facts. Individuals have the right to know that many Russian emigrants (including some philosophers, historians, and lawyers) supported Hitler and even fought against Russia. However, there is scarce information regarding the same, and the available information is being distorted and destroyed. Moreover, attempts are being made to present the frank service of Hitler's fascists not as a betrayal of Russia but as a struggle against totalitarian Bolshevism and communism. This is a lamentable trend of our time: it means that history does not teach us.

In conclusion, we once again draw attention to the fact that the work and biography of Ilyin began as one-sided and biased. Simultaneously, his life and work are considerably contradictory. He appears to be a monarchist but supported the February Revolution of 1917 and the overthrow of the monarchy. He considered himself a faithful Orthodox man; however, he approved of the brutal war against the Soviet government, which gainsays the Orthodox faith. Ilyin called himself the Russian patriot but supported fascism and was ready to exterminate Russian Communists and Bolsheviks, who comprised a significant part of the Russian population at the time. He spoke about Russia as an enslaved country and the people who were mortally tortured in Soviet times. However, serfdom (in fact, the slave-owning system) was legally abolished in Russia only in 1861 and lasted until the 20th century. The absolute majority of Soviet people were not nobles at all but serfs. Thus, contemplating the monarchy, it appears that Ilyin did not wish for freedom for most people but rather alluded to another form of slavery. He held Soviet views, yet he justified fascism, Nazism, and war. Ilyin had a right to oppose the Soviet government, but he did not have a right to support fascism and Hitler.

Surprisingly, the biography and views of Ilyin have only been retouched in Russia. In Germany and other countries, his support for the regimes of Mussolini and Hitler is evident; one can easily find his pro-fascist articles.

In our philosophical works, we have repeatedly emphasized that the roots of a person's behavior and beliefs should be sought when telling the history of their life. It might be difficult to absolutize the biographical factor, but one must agree that biography has a strong influence on a person's creativity and even more so on their philosophy. Once his biography is learned, Ilyin's philosophy can be understood more clearly. However, his biography must be conveyed honestly, objectively, and in full. Therefore, when publishing books by or about Ilyin, it is important to note his support of fascism, Hitler, and Mussolini. Special attention must be paid to these facts; only then can one proceed to appreciate the works of this philosopher, many of which are genuinely interesting and informative. Ilyin undoubtedly left a legacy in philosophy and jurisprudence. However, we must not forget his history — we must always remember the feat of our ancestors and the actions of their opponents.

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