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**TRANSFORMATION OF GENERAL-THEORETICAL CATEGORY
"OFFENCE" IN THE INTERNET ERA**

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Abstract

Steadily growing Internet trade and calculations in electronic money on the Internet create new difficulties of protection of the rights within national legal systems. Despite the legislation is becoming stricter in terms of the procedure of electronic payments and the appropriate license is needed, some payment service providers work illegally. The owners of the exclusive rights to goods delivery and trademarks bear losses due to Internet trade, that allows purchasing goods remotely, that means out of the jurisdiction of the national right of the exclusive distributor. More and more daily functions are shifted from the human who is competent and delictual to robots and "artificial intelligence", which don't have any rights and duties in legal understanding. It has significant effect on the content and element of offense. The issue goes to the subject of offense as it is not always possible to establish if it is an undelictual human owing to various factors. More and more offenses have cross-border nature. Working within the national legal system of one state, the companies in parallel violate the rights and the interests of competitors protected by the legislation of another state. There is a necessity to develop international legal system that enables to protect effectively all the participants of the world market. International cooperation within cybercrime is not sufficient as it covers only the most serious crimes in virtual networks, disregarding more serious offenses.

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Keywords: Digital economy, offense, Internet, Internet Commerce, the subject of the offense, composition of the wrongful act.



1. Introduction

The number of numerous factors, including climatic, physiological and social ones influence the legal systems (Ponomarenkov, Paulov, Sidorova, Saifulova, & Ovod, 2017; Curran, Fenton, & Freedman, 2012). Undoubtedly, digitalization, in particular the Internet has a significant effect.

In the world community cybercrime problems attract a lot of attention. In the Russian legal literature the reference is made to that interaction of the states in the sphere of fighting against cybercrimes requires the synthesis of legal regulations of various states in the course of using appropriate means in fighting against cybercrimes and also it demands the creation of specialized bodies (Yakimova & Narutto, 2016).

Crimes are only one of the types of offenses the refore the perspective is much more wide. The lack of precisely and clearly formulated definition of "offense" and also the availability of the formulations which are outdate and obsolete can result in their wrong interpretation, incorrect understanding of the phenomena essence as well as in the transformation of sense of justice, mistakes in legislative and law-enforcement activity. By the research of Sidorova (2018) it was established that the modern legal science offers a huge number of concepts of offense, however all of them are rather similar and represent the instruction on the main signs of the offense: illegality, danger or harm, guilt, punishability and existence of legal responsibility.

2. Problem Statement

The category "offence" is, as a rule, studied within national legal systems owing to the allocation of its various elements and structure. During the digitalization era and the mixture of market of goods and services on the Internet, it is necessary to study "offense" taking into account digital factors and the international nature of legal relations of the Internet trade participants.

The standard approach in legal science to the structure of offense and its signs has to be reconsidered in the next years. It follows from the necessity for international cooperation and development of the international legal system for a cyberspace to protect the rights and the interests of the subject of law. Researching the problems of payment systems with electronic money and Internet trade, the author comes to the conclusion that it is quite complicated to define the subject of offense and such signs of offense as illegality and legal responsibility.

3. Research Questions

3.1. Problems of definition of the subject of offense

By the general rule the subjects of offenses are natural persons and legal bodies. But in the Internet space it is often impossible to define these persons. There are some examples.

Today in the Russian Federation in the sphere of electronic money there are services such as Yandex.Money, WebMoney, Visa QIWI Wallete. Unlike Yandex.Money and Visa QIWI Wallete which services are represented by credit institutions with the appropriate bank license the WebMoney service is carried out on behalf of the Owner and Administrator of the System - the WM Transfer Ltd company which interests are represented by the administration company – the International lawyer company UAB "DEED BALTIC" with the registration address in Lithuania. As Guarantors of system activity there are

some more legal bodies registered in different countries which, according to the message on the website, store values of various legal nature. The developer of the WebMoney system is JSC “Vychislitelnye sily”. The guarantor of the calculations in the title signs WMR which are conditionally a ruble equivalent has changed in recent years.

It was LLC VMR in 2017, then in September 2018 it is SANTIKA BUSINESS GROUP INC with the address in the Seychelles. On the website of the WebMoney service it is directly specified that "the WebMoney Transfer system is not responsible for violation of the financial, material and any other liabilities existing between its participants. Being the hardware-software tool, the system doesn't control the procedure of observing any interest when transactions are carried out and cannot interfere with the operations irrespective of their purpose" (<https://www.web.money/rus/legal/warning.shtml>). By means of such notice the owners, the administrator and the guarantors of the system discharge themselves from any legal responsibility, transferring it entirely to the users of the system.

Nevertheless, according to us, situations when offenses and harm are caused not by users of the system, but other persons are possible, to establish precisely which is problematic. In particular, in case of program and system mistakes, errors of identification by the Guarantor, etc. There is a question - who will be the subject of offense, owing to the fact that the legal nature of the WebMoney system remains beyond the scope of any national legal system.

It is worth noting that in a card file of arbitration cases of the Electronic Justice system there is no information on any claims to the developer of JSC “Vychislitelnye sily”, Guarantors of WMR and the Administrator of the system. But it doesn't mean the lack of offenses when using the system, it means difficulties with law enforcement.

The second problem of electronic payment service providers is anonymous e-wallets according to Elchaninova (2015).

The personified means of payment is such means on which the operator identified the client (Art. 10 of the Federal Law "On the National Payment System". Depending on the procedure of client identification which means finding out certain information about the person (physical or legal) there are several options of e-wallets in electronic payment service providers:

- anonymous,
- anonymous nominal,
- personified,

In the Russian Federation the requirements to the procedure of identification are established by the Federal law "On Counteraction of Legalization (Washing) of Income Gained in the Criminal Way and to Terrorism Financing" and other normative legal acts of the Central Bank of Russian Federation and Rosfinmonitoring.

The WebMoney service uses the certification of users, it means the digital identity certificate approved by the analog of the autographic signature of the participant of the WebMoney system. There are 3 types of the certificates, two of which belong to anonymous or conditionally personified and only one – to personal. At the same time the identification of the system user is carried out by its own rules by natural persons – personalizers and registrars (by the same users of the system who have certain rights

and duties). So, it is impossible to mean the existence of the personified electronic payment tools in the system.

It is impossible to determine the subject of offense by this reason if he is a user of an anonymous wallet – the payment service provider can have no personal data of the owner, and data can be fictional. Use of anonymous wallets undermines financial and economic activity of the Russian Federation by taking away money in "shadow". For example, now by means of e-wallets freelancers' services are paid, therefore the employer and the freelancer do not charge and does not pay any taxes and fees from the sums of money transferred to the freelancer as payment. In practice, accepting money onto anonymous wallets is carried out also by legal bodies without its transferring to the status of corporate money. It is widespread when paying in online stores therefore the legal body has revenues which are not reported in accounting and taxing. In the context of regionalization of the world economy connected with the growth of number of international economic relations we see the increase of the role of creating associations of regional integration for successful representation and protection of interests of their countries in the world.

Undoubtedly, our point of view on the difficulties in the definition of the subject of offense will face criticism which focuses that behind each offense on the Internet anyway there is a natural or legal body. But it is not so. With the development of technologies many functions are performed by "artificial intelligence" - robots. In the Russian Federation the system of legal regulation of robotics is starting to develop. Now normative legal acts that define the concept of legal responsibility of robots haven't been adopted yet. In spite of the fact that doing some actions the robot can directly do harm, there is the tendency that natural and legal bodies are considered to be responsible for it: creators, owners and other persons who operate the robot. So, the robot itself is delictual and cannot bear responsibility for the harm it does. Meanwhile, in modern domestic literature often "delictuality" is allocated as sign of offense. All persons who reached the certain age and who don't have certain mental disturbances are considered to be delictual (Valiaeva, 2016).

On the example of the robot that has the artificial intelligence and that is able to make decisions independently and to do harm, it is visible that neither the age, nor sanity and delictuality in general can be the sign of offense made by the robot. It implies that and the structure of offense, namely the concept of its subject, in the next years will qualitatively change.

3.2. Signs of illegality and legal responsibility in the offenses committed on the Internet

In domestic legal science there are several approaches to "illegality". Y. E. Pudovochkin considers necessary to consider illegality from two aspects – objective and subjective. From the objective point of view, the illegality is a violation of certain legal benefits, forbidden by this or that branch of law. The subjective point of view of illegality is characterized by the action or inaction of the subject (Pudovochkin, 2018).

We pay attention to the point of view, that is widespread in legal science, according to which the illegality means both the violation of the normative legal act, and non-performing the duty assigned to the subject both by the normative legal act, and the contract. So, the illegal behavior in the form of action is expressed in performing active actions forbidden by the law or the contract; the illegal behavior in the

form of inaction is expressed in passive evasion to perform the duty which performance is assigned to the person by the law or the contract (Senglyaeva, 2018).

In our opinion, the illegality is an obligatory element of offense that should be read in the sense of violation of normative legal acts and agreements of subjects of law by which their rights, duties and measures of legal responsibility are defined as such agreements have to be based on the provisions of normative legal acts and shouldn't contradict them.

Allocation of punishability or legal responsibility as an obligatory sign of offense is typical for all western countries today. F. Babich considers punishability to be an obligatory component of illegality, that is expressed in certain threat to apply measures of public enforcement (Babich, 1995). E.A. Belikh emphasizes the element of punishability for one and all offenses in spite of the fact that directly specifies measures of public enforcement only for criminal actions (Belikh, 2016). Considering such element of offense as punishability, V.V. Butnev, first of all, pays attention that in criminal law the term "punishability" is often substituted for "punishment". He thinks that "punishable is subjected to punishment and it is punished" (Butnev, 2008, p.47). However, the scientist thinks that the punishability is an element of criminal offense but does not make conclusion about its connection to other types, considering the concept of "legal responsibility", but not punishability.

T.A. Mychak emphasizes "normativity" as when the deed is recognized as offense, this always has the regulatory form; out of the legislation there cannot be offenses (Mychak, 2015). A.M. Smirnov 's point of view seems to be interesting that the crime dialectically does not assume punishment but only forms the basis of a criminal responsibility (Smirnov, 2018).

The sign of punishability is characteristic of crimes, administrative and disciplinable offenses. Legal responsibility for other branches of the law is provided in sanctions, but not punishments. Punishment is one of the types of legal responsibility and for this reason the category "legal responsibility" as a sign of offenses is justified to be used.

However, the development of trade on the Internet challenges our conclusions.

For example, the Russian company makes the exclusive distributor contract with the Korean producer to deliver cosmetic production to the Russian Federation. Within the distributor agreement of the Russian company also the exclusive rights are transferred to the trademark of the Korean producer. Together with it the Korean company carries out activity in Korea reselling the above-stated cosmetic production in online store. Any person, regardless of nationality and the residence can buy cosmetics. The Korean company within the signed contract of retail purchase and sale carries out sending production to any point of the world, including the Russian Federation. As a result, the rights of the Russian company for exclusive distribution of goods are violated.

Proceeding from the definition given by us, there is no illegality if we consider the situation from the point of view of the Korean company– the bargain of retail purchase and sale is concluded in a place of company registration (that is in Korea), the requirements of Korea legislation are observed. The Korean company did not conclude any agreements limiting goods distribution therefore there is no illegality in its actions. The Russian company has different point of view as within the Russian legislation both the exclusive rights to the trademark (introduction to civil circulation of goods with the trademark on them), and the rights for exclusive distribution are broken.

In modern legal literature there is an issue where transaction on Internet purchase is made and therefore which law is applied. E.A. Makhinya notes that "the main category here is the place of living or the place of performance of the party which performs the activity that is crucial from the point of view of content of the contract. On the Internet the definition of these concepts in that form in which they are attached in international agreements and conventions, internal laws of various states, is quite problematic" (Makhinya, 2013). The author suggests proceeding from defining the place of transaction from the address of the website and its placement on the server in this or that country. According to Y.M. Baturin's opinion, distribution of national jurisdiction in the Internet is necessary, namely sovereignty over its national segment is necessary (that is the domain) (Baturin, 2000). In that case, domain "ru" will get under the legal system of the Russian Federation, but the issue regarding international domains, such as "edu", "int" is still open, etc. (Haliullin, 2012).

According to our opinion, it is necessary to start from the place of goods and services payment. If the goods go cash on delivery, then the place of transaction is the location of the buyer where he received and paid goods. In case of payment of goods and services "online" the place of transaction is the location of the seller.

From there also the sign of punishability or legal responsibility in the concept "offence" challenges a question as the activity of the Korean company within its national legal system is legal, the place of "online" transaction is Korea.

Except the problems with illegality and legal responsibility for offenses at Internet trade, there are difficulties with the subject of offense. First, in most cases it is rather difficult to define them. Information on the administrator of a domain name is often hidden, or there is no any information about the seller of goods and services on the website of online store or it can be fictional. At the same time, it is impossible to define if the subject who operates the transaction has the right to do it, it means to confirm bargaining power. K.I. Kravchenko notes that the citizens who are recognized by the court as incapacitated can make bargains on the Internet, in reality they are limited capable in the rights to make similar bargains, however it is impossible to trace it at Internet trade (Kravchenko, 2015).

Results of the real research can be used in practical work of legislative authorities of the Russian Federation and the international organizations. Theoretical conclusions of the research can be used in research institutions, in higher educational institutions when teaching certain sections of the subjects: "Theory of state and law", "Constitutional law", "Administrative law", "Financial law", "Tax law", "Criminal law", "Civil law".

4. Purpose of the Study

The studying of the influence of the Internet space on general-theoretical category "offence" aims at drawing attention of scientists-theorists and expert lawyers to the problem. The author sets the following tasks for himself: to investigate the influence of Internet trade development and electronic money on general-theoretical category "offence", to analyse the features of the subject of the offense committed on the Internet, to carry out the analysis of validity of allocation of some signs of such offense, to define the position regarding debatable issues which arise when carrying out the research.

5. Research Methods

The base of the research is the system approach. To solve the tasks methods and tools of formal, logical, process, functional research strategic, statistical and comparative analysis; expert assessment, forecasting and standard planning were applied.

6. Findings

The Internet makes changes in all spheres of human life. Emergence of new types of legal relations, namely Internet trade and electronic money calculations involves the transformation of category of offense as the structures and elements of offense which are classically allocated in legal science aren't found here. There are difficulties in definition of the subject of offense, his guilt and existence of measures of legal responsibility for offense. Within national legal systems there is impossible to protect legitimate rights and the interests of subjects of law, therefore, it is necessary to undertake measures for creation of interstate legal systems for a cyberspace.

7. Conclusion

Having analysed the problems arising in connection with the implementation of transactions and payments through the Internet, we will make a conclusion that within national legal system it is impossible to protect the rights of the subject effectively which was injured from offense. In the next years the world community has to begin with joint efforts development of rules of transactions and payments on the Internet, that is to create the whole legal system including defining applicable law and measures of responsibility for offenses.

References

- Babich, F. (1995). *Criminal law: general part*. Zagreb: Legal informant
- Baturin, Y.M. (2000). *Telecommunications and law: issues of strategy*. Moscow: Law and media center]
- Belikh, E.A. (2016). Main approaches to the concept of offense. *Current problems of law, economy and management*, 12, 85-87.
- Butnev, V.V. (2008). Concept of offense: general-theoretical and branch problems. In V.N. Kartashov, L.L. Kruglikov & M.V. Lushnikova (Eds.), *Legal notes of the Yaroslavl State University of P.G. Demidov. Issue 12. Offenses* (pp. 40-53). Yaroslavl: YarGU.
- Curran, J., Fenton, N., & Freedman, D. (2012). *Misunderstanding the Internet (Communication and Society)*. New York, NY: Routledge]
- Elchaninova, N.B. (2015). Legal problems of the address of collecting on electronic money of the debtor. *Almanac of modern science and education*, 12 (102), 75-77.
- Haliullin, A.I. (2012). The place of crime execution as a sign of an actus reus in the sphere of computer information. *Current problems of economy and the right*, 1, 291- 294.
- Kravchenko, K. I. (2015). Legal risks of the civil bargains concluded with the use of the Internet. In G. D. Akhmetov, G.A. Kainova & E. I. Osyanina (Eds.), *Jurisprudence: problems and prospects: Materials III International scientific conference 2015* (pp.95-98). Kazan: Beech.
- Makhinya, E.A. (2013). Current problems of the conclusion of civil transactions on the Internet. *Bulletin of the Omsk legal academy*, 2 (21), 69-71.
- Mychak, T. V. (2015). To the issue of concept, signs and essence of offense in Russian law. *Legality and law and order in modern society*, 26, 127-132.
- Ponomarenkov, V.A., Paulov, P.A., Sidorova, A.V., Sayfulova, L.G., & Ovod, I.V. (2017). Regional & Climatic and Genetic & Physiological Determinants of Lawmaking Activities. In E. Popkova

- (Eds.), *Russia and the European Union* (pp.31-37). Cham, Switzerland: Springer International Publishing AG.
- Pudovochkin, Y.V. (2018). Illegality as an essential element of offense: experience of the analysis, problem, prospect. *All-Russian criminological magazine*, 12 (1), 70-81.
- Senglyayeva, V.V. (2018). Concept "illegality" of civil law. In S. T. Gavrilova, A. M. Sadovnikova & Y. P. Kagirinai (Eds.), *Criminal law: current state and prospects of development: Materials II of the International scientific and practical conference dated for the day of adoption of the Criminal Code Russian Federation 2018* (pp.478-481). Voronezh: LLC Amista publishing house.
- Sidorova, A.V. (2018). General-theoretical definition of a concept "offense". *Yurist*, 7, 71-76.
- Smirnov, A.M. (2018). On the definition of the concept of crime in the criminal code of the Russian Federation. *Russian Journal of Criminology*, 12 (3), 417-423. [https://dx.doi.org/10.17150/2500-4255.2018.12\(3\).417-423](https://dx.doi.org/10.17150/2500-4255.2018.12(3).417-423)
- Valiaeva, Yu.A. (2016). Elements of offenses in the theory of law. In N.G.Uskova (Eds.), *Current problems of management and law in the 21st century: theory and practice: Collection of materials of the international scientific and practical 2016 Conference* (pp.56-58). Ryazan: Kontseption publishing house.
- Yakimova, E.M., & Narutto, S.V. (2016). International cooperation in cybercrime counteraction. *Criminology Journal of Baikal National University of Economics and Law*, 10 (2), 369-378. <https://dx.doi.org/10.17150/1996-7756.2016>.