

УДК 347.121.2

DOI: 10.37635/jnalsu.27(4).2020.145-160

Олена Велеонінівна Кохановська

Кафедра цивільного права
Київський національний університет імені Тараса Шевченка
Київ, Україна

ОСОБЛИВОСТІ ОНОВЛЕННЯ ЦИВІЛЬНОГО ЗАКОНОДАВСТВА УКРАЇНИ У СФЕРІ ПРАВА НА ІНФОРМАЦІЮ В УМОВАХ РОЗВИТКУ ГЛОБАЛЬНОГО ВІРТУАЛЬНОГО СЕРЕДОВИЩА

Анотація. *Право на інформацію вирізняється сьогодні особливостями реалізації і захисту порівняно із первісними підходами, закладеними у Цивільному кодексі України і пов'язаними із звичними для врегулювання правом відносинами у матеріальному «фізичному» світі. Стаття присвячена особливостям оновлення цивільного законодавства України у сфері права на інформацію в умовах розвитку глобального віртуального середовища, а також аналізу поняття «віртуальності» для виявлення специфіки врегулювання інформаційних відносин. Зроблено висновок, що правове регулювання у сфері інформаційних відносин загалом і права на інформацію, зокрема, повинно ґрунтуватися передусім на традиційних правових конструкціях і з використанням притаманного цивільному праву категоріального апарату, а для створення адекватного викликам інформаційного суспільства законодавства необхідно чітко узгодити позиції науковців і законотворця щодо поняття, змісту, ознак інформації, специфіки інформаційних процесів і систем, про яку йдеться також у роботах представників інших галузей науки – філософії, фізики, кібернетики та ряду інших. Звертається увага на те, що інформація в цивільному праві розглядається як окремий нематеріальний об'єкт (ст.200 Цивільного кодексу України), а в Книзі другій Цивільного кодексу України цей об'єкт набуває ознак особистого немайнового блага з усіма його ознаками і особливостями. Автор приходить до висновку, що розуміння процесів, які відбуваються у розвиненому віртуальному середовищі, потребує на сьогодні узгодження позицій щодо забезпечення і реалізації, охорони і захисту цього права із Європейськими і світовими тенденціями. Такі чинники зумовили, окрім іншого, необхідність оновлення (рекодифікації) Цивільного кодексу України. Автором встановлено, що починаючи з першої, практично кожна стаття Цивільного кодексу України містить елементи інформаційного змісту, інформаційно наповнена, або пов'язана з інформацією чи інформаційними відносинами, інформаційними правами учасників цивільних відносин, що потребує, у свою чергу, уточнення, легального закріплення і доповнення у нормах оновленого кодексу. Пропозиції, які висловлюються у цій статті, спрямовані на подальші дослідження права на інформацію і допомагають знайти відповідь на основне питання – яким має бути оновлене законодавство у сфері регулювання відносин, пов'язаних із правом на інформацію в умовах розвитку віртуальних систем і мереж, і з урахуванням сучасних Європейських і світових тенденцій у правовому забезпеченні процесів, що відбуваються у глобальному віртуальному середовищі.*

Ключові слова: немайнове право, міжнародні акти, віртуальність, інформаційні відносини, рекодифікація.

Olena V. Kokhanovska

*Department of Civil Law
Taras Shevchenko National University of Kyiv
Kyiv, Ukraine*

FEATURES OF UPDATING THE CIVIL LEGISLATION OF UKRAINE IN THE FIELD OF THE RIGHT TO INFORMATION IN THE CONDITIONS OF DEVELOPMENT OF THE GLOBAL VIRTUAL ENVIRONMENT

Abstract. *Nowadays, the right to information stands out with its specific features of implementation and protection compared to the original approaches laid down in the Civil Code of Ukraine and related to the usual legal relations in the material, "physical" world. The study investigates the features of updating the civil legislation of Ukraine in the field of the right to information in the development of the global virtual environment, as well as the analysis of the concept of "virtuality" to identify the specifics of information relations. It is concluded that legal regulation in the field of information relations in general and the right to information, in particular, should be based primarily on traditional legal constructions and using the terminology inherent in civil law, and to establish adequate legislation for the challenges of the information society, it is necessary to clearly agree on the positions of scientists and legislators on the concept, content, features of information, specifics of information processes and systems, which is also discussed in the studies of other fields of science, i.e., philosophy, physics, cybernetics, etc. Attention is drawn to the fact that information in civil law is considered as a separate intangible object (Article 200 of the Civil Code of Ukraine), and in the Book Two of the Civil Code of Ukraine this object acquires the characteristics of personal intangible property with all its features. The author concludes that the understanding of the processes taking place in a developed virtual environment requires the coordination of positions on the provision and implementation, protection and defence of this right with European and global trends. Such factors led, among other things, to the need to update (recodify) the Civil Code of Ukraine. The author found that starting with the first one, almost every article of the Civil Code of Ukraine contains elements of information content, is information-filled, or related to information or information relations, information rights of participants in civil relations, which requires, in turn, clarification, legal consolidation and additions to the provisions of the updated code. The proposals expressed in this study are aimed at further research on the right to information and help to find an answer to the main question – what should be the updated legislation in the field of regulation of relations related to the right to information in the context of the development of virtual systems and networks, and taking into account modern European and world trends in the legal support of the processes that occur in the global virtual environment.*

Keywords: non-property law, international acts, virtuality, information relations, recodification.

INTRODUCTION

At present, to lead a discussion that touches on the problems of updating the Civil Code of Ukraine¹ (hereinafter referred to as "the CC of Ukraine"), given the role of information as a phenomenon and as an object of civil rights in this process, information relations, virtuality, robotics, artificial intelligence, and even more so, a set of information rights

¹ Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15>

led by the personal intangible right of the individual to information in the development of modern theories of virtuality and posthumanism, it is necessary to return to the origins of society and science of these concepts, as well as a number of others that accompany and supplement them, as well as to the studies of the head of the working group of developers of the current CC of Ukraine A.S. Dovhert, where the need and main directions of updating the civil legislation in Ukraine are substantiated [1; 2]. Explanation of the phenomenon of virtuality is also important from the standpoint of further search for the correct legal approaches to solving the issues of guilt and legal responsibility, protection of rights when it comes to causing harm by a person – a living being, and a machine, robot, or artificial intelligence generated by a person. The competition of ideas about the essence of "human" on the one hand and "cybernetic", "informational", "virtual", on the other hand, is currently at the forefront of science as never before, since it is in this century that many previously fantastic ideas associated with the above concepts find their implementation. In addition, legal science and practice cannot stay away from these truly global and comprehensive processes, as principles, tools, history and philosophy of law, centuries-old practice of exercise and protection of human rights, including the right to information, can and should serve as the basis for humane resolution of many controversial issues in the modern rapidly changing information world.

As for information, as an object of civil law regulation, mention of it can be found in various institutions and provisions of civil law, but one should not forget that information is primarily an independent object of civil rights, and those rules that govern information relations are still in the stage of development, the right to information is stipulated only in a few articles of the CC of Ukraine and its structural parts (Articles 200, 277-278; 302 of the CC of Ukraine)¹, but even under these conditions an independent institution of civil rights has developed in Ukrainian legislation – the right to information, which has prospects for further development. The above approaches were substantiated in a monograph on the regulation of information relations in 2006 [3].

Nowadays, information is also considered a component of a substantial number of personal intangible assets, which are protected by Book Two of the CC of Ukraine². Thus, within the system of personal intangible goods that ensure the natural existence of an individual and his or her social existence, protected are the goods that have an information component, and the rights to them can be described as defensive. This group of rights includes: the right to information about one's health and the right to secrecy about one's health (Articles 285, 286 of the CC of Ukraine); the right to reliable information about the state of the environment, the quality of food and household items, as well as the right to collect and disseminate it (Part 1 of Article 293 of the CC of Ukraine); the right to a name and to change and use it (Articles 294-296 of the CC of Ukraine); the right to honour, dignity and business reputation (Articles 297, 298 of the CC of Ukraine); the right to express one's individuality (Article 300 of the CC of Ukraine); the right to privacy (Article 301 of the CC of Ukraine); the right to personal papers and the right to secrecy of correspondence (Articles 303-306 of the CC of Ukraine); the right of a person to conduct photo, film, television, and video shootings (Articles 307-308 of the Civil Code); the right to freedom of literary, artistic, scientific

¹ Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15>

² *Ibidem*, 2003.

and technical creativity (Article 309 of the CC of Ukraine), etc., which are not currently enshrined, but may actually have individuals and legal entities. This refers to the turnover of rights, the probability of their economic, monetary valuation and contractual regulation, and personal intangible assets (name, honour, dignity, business reputation, health information) under no circumstances can have economic meaning and be freely transferrable.

After the adoption of the current CC of Ukraine¹ in 2003, research and development of the mechanism of legal regulation and protection of personal non-property rights, including the right to information, became especially important for the entire spectrum of civil relations. Among the main achievements of the first private law codification of independent Ukraine is the settlement of relations in the field of personal non-property right to information of an individual within the Book Two of the CC of Ukraine, which positively influenced the introduction of liberal ideas of all human rights, implementation of adequate legal mechanisms and protection of personal non-property relations. The developers of the draft of the current CC of Ukraine, and later the entire civil society, made a positive regulation of personal non-property relations, including information, which was either not carried out or took place outside the civil legislation, although its content should be consolidated precisely in civil legislation. Currently, the situation has radically changed, as after the adoption of the current CC of Ukraine, dozens of theses on personal non-property rights and various aspects of the right to information and information rights were defended, including several doctorate theses [4-8]. The desire to establish a true democratic society with comprehensive provision of fundamental, including informational human rights and freedoms, found expression in 1990, in the Declaration of State Sovereignty of Ukraine², and the Book Two of the CC of Ukraine³ in general became the embodiment of morality, justice, self-worth of each particular individual, each of its articles took into account the progressive provisions of international human rights instruments: the Universal Declaration of Human Rights of 1948⁴, the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950⁵ and others, civil codes of numerous highly developed countries. codifications of civil law, which significantly strengthened and updated the wording in which its rules are built. The provisions of the Constitution of Ukraine have led to changes in the understanding of human information rights from those received by the state to the concept of human rights, which are related to the very fact of its existence, i.e., relate to its fundamental properties, which fully complies with private law theory of natural law. In the years since the adoption of the CC of Ukraine, the idea that civil law both regulates information relations and protects the right to information and the information itself as an intangible asset has found unconditional support in the national doctrine; therefore, the provisions of the CC of Ukraine can and should not only protect personal non-property rights to information, but also engage in their further positive regulation.

¹ Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15>

² Declaration of State Sovereignty of Ukraine No 55-XII. (1990, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/55-12#Text>

³ Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15>

⁴ Universal Declaration of Human Rights. (1948, December). Retrieved from https://zakon.rada.gov.ua/laws/card/995_015

⁵ Convention for the Protection of Human Rights and Fundamental Freedoms. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/card/995_004

Meanwhile, although the CC of Ukraine¹ currently contains a considerable set of provisions governing personal non-property relations in the field of the right to information and other information rights, it does not provide for a systematic presentation of legal material on personal non-property rights to information and other information rights; therefore, there is little to say about the consistent provision of positive regulation of the content of personal non-property information rights. Moreover, in the new century, during the current CC of Ukraine, it did not have rules that would fully regulate information relations, taking into account the features of the virtual environment, new technologies, the needs of the global information society, the place of personal non-property rights to information in these circumstances, proposals for the implementation and protection of personal non-property rights to information of individuals and legal entities. The search for answers to these problematic questions constitutes the essence of this study, and proposals for their solution can be used as a basis for further research and be used to update civil legislation.

1. MATERIALS AND METHODS

To develop an idea of the phenomena stated in the title and briefly outlined in the introduction to this study, an idea of the theoretical trends related to the problems of virtuality, information, the right to information, information rights in an era increasingly called posthumanism, it is necessary to analyse not only the articles of modern legal scholars and their legislative initiatives, but also works on philosophy, psychology, sociology, biology, cybernetics, physics, journalism, literature and other sources, including books and movies in the genre of science fiction. These are the works of prominent scientists Peter Anokhin, Viktor Glushkov, Vladimir Vernadsky, Norbert Wiener, Claude Shannon and many others, as well as works by classics of the 20th century, including the "golden age of science fiction" – Isaac Azimov, Alfred van Vogt, Clifford Simak, John W. Campbell, Hugo Gernsbeck, Paul Anderson, Alfred Bester, James Blish, Frederick Brown, Ray Bradbury, Arthur Clark, Arkady and Boris Strugatsky, films by directors such as James Cameron, Lana and Lilly Wachowski, Robert Zemeckis, Christopher Nolan, Steven Spielberg, Ridley Scott, Andrew Tarkovsky, George Lucas, Vladimir Bortko, John Carpenter, Ron Howard, Luke Besson and many others, the work of modern science fiction writers of the 21st century: Peter Watts, Ken McLeod, Chey Meville, Peter Hamilton, Karl Schroeder, Charles Stross, John Scalzi, Alastair Reynolds, Stephen Baxter, Adam Roberts, Anne Lecky, Lauren Buckets and others. [9-11]. Moreover, many words that we use nowadays to speak the modern language of yet another technological revolution and some of which are introduced into special legislation, were invented by science fiction: android, blaster, cyberspace, clone, spaceship, cryonics, multiverse, science fiction, posthuman, force field, superhero, telepathy, teleportation, etc. [12].

The methodological framework for studying the problems of the right to information in a virtual environment is the doctrine of civil law on these issues, international acts on information, objects of information rights, information relations, rights to information, provisions of the Constitution of Ukraine, provisions of Ukrainian

¹ Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15>

and foreign civil legislation. Special attention is paid to the practice of the ECtHR, namely disputes over the right to information: the freedom to receive and impart information, for example, *Ahmet Yildirim v. Turkey*, 18.12.2012; on freedom of the media (for example, *Lingens v. Austria*, 08.07.1986; *Times Newspapers Limited v. the United Kingdom*, 10.03.2009); on freedom of scientific activity and access to the Internet (*Sorguc v. Turkey*, 23.06.2009; *Ahmet Yildirim v. Turkey*, 18.12.2012); access to public information (*Leander v. Sweden*, 26.03.1987; *Gaskin v. The United Kingdom*, 07.07.1989) and many others.

2. RESULTS AND DISCUSSION

2.1 Features of the term of "virtual"

An insight into the meaning of the term "virtual" suggests that it has many meanings. Virtual is both "conditional" and "possible", "imaginary", "potential", "real". The word itself appeared in the early Byzantine philosophy of the 2nd century, has Latin roots and means an object or state that does not really exist, but may arise under certain circumstances (which emerge due to software), in philosophy the term "virtuality" is known since the 13th century and is attributed to Thomas Aquinas, who argued that a person is a combination of body and soul; in the information society, the term "virtuality" acquired a new meaning, which is associated with the so-called virtual reality and is understood in philosophy, psychology, aesthetics and culture in general as a certain state in which the subject loses the difference between real and constructed (virtual) world, which is a feature of consciousness and perception of the subject [13].

This concept is mentioned when terms such as "post-humanism", "post-humanity" are brought up. Therefore, it is important to take this into account in legal science which, in a broad sense, should be based on morality, ethics, human psychology in society. The world generated by the human imagination can be described as conditional or possible, which creates a certain image, which can be implemented in a particular form under certain conditions. Since it is necessary to convey this image to society, its individual representatives, it is embodied in human society in signs that carry the meanings conditioned in it and are broadcast in this form. Linguists and philosophers believe that it is important not only to understand the meaning of signs, but also their relationship for learning in human society to become the property of the culture of each individual. Thus, the images seen in films are perceived as real and sometimes it takes some effort to understand that they are virtual. The image is in fact a form of reflection of the surrounding reality, which is generated by human mental activity.

It is extremely important to remember that the very phenomenon of virtuality did not emerge with the advent of certain technical devices or with the invention of computers, but, most likely, with the advent of the sign system of humankind. Today, scientists around the world are asking questions regarding the virtualisation of the material world or the materialisation of the virtual one. Related to this are some additional questions – what in general is virtuality, which is called a phenomenon of modernity; is virtuality related to human nature, in particular, to its mental component; what the nature of virtuality is, etc. Virtuality as a subject of study is so interesting that it causes, among other things, a considerable emotional response in people's minds,

becomes the basis of literary works, films, inspires artists and is reflected in philosophy, sociology, cybernetics, psychology, etc. Cybernetics, mathematics, physics, and philosophers made a special contribution to the study of the phenomenon of virtuality in the 20th and 21st centuries. Thus, with the advent of the new century, one central problem has emerged that requires a modern explanation – what is virtuality and what are the features of the virtual world, if there is so much controversy about it.

Experts, among other things, also pay attention to the historical conditionality and gradual change (improvement) of the human psyche as the main cause of virtuality, while technical devices, including computers, only contributed to the process of human understanding of nature, essence, which became especially noticeable in the era of the information society. One can agree that "...the fear it causes is each time more related to the nature of human themselves, the peculiarities of their psyche, which works to fulfil themselves as a person...", and that "...virtuality is a fundamental attribute of mental consciousness (a specific form of reflection of the surrounding reality)" [14]. At the same time, when it comes to scientific progress, not only enthusiastic voices of approval are always heard, but also the stern warnings of sceptics who point out the possible negative consequences of the use of the said progress. Discussions, for example, revolve around everything that is described by such a part of speech as "post". Thus, articles and television programmes, books and films are now filled more ever with the concepts of "post-industrial society", "post-modernism", "post-apocalypse", and even "post-science". Meanwhile, at the heart of all these concepts – new, previously unknown opportunities that can carry both positive and negative aspects.

It is believed that the word "post-human" first appeared in the story of the classic of horror literature, "Beyond Time" by Howard Phillips Lovecraft, which was published back in 1936, and Lovecraft interprets this concept somewhat differently than it is perceived today: the author uses it not to describe the transformation of humans, but to describe the beings who will come after us. Around the same time, the word "posthumanism" appeared – a trend in philosophy which states that the evolution of human has not yet ended and after human should appear a superhuman [15]. This worldview recognises the inalienable human rights to improve human capabilities (physiological, intellectual, etc.) and achieve physical immortality [16].

Thus, as a principle, this could be formulated in law as follows: "Everyone has the right to improve their human capabilities, physiological, mental and intellectual, in order to achieve physical immortality", if it did not sound too fantastic to a modern person. As for immortality in networks, it is an even more controversial subject today, related to the problems of neurolink and "electronic immortality". The difference between transhumanism and posthumanism remains debatable to this day.

2.2 Analysis of the right to information

The right to information has become one of the greatest achievements in the process of human development and today belongs to the personal intangible rights of an individual, to which the Book Two of the CC of Ukraine "Personal Non-Property Rights of an Individual"¹ is dedicated. Since Book Two comprises three chapters ("General Provisions on Personal Non-Property Rights of an Individual", "Personal Non-Property Rights

¹ Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15>

Ensuring the Natural Existence of an Individual", "Personal Non-Property Rights Ensuring the Social Existence of an Individual"), it is important to define the place of the right to information in the structure of this Book. Therewith, a significant array of rules governing the personal non-property right to information is contained not only in other parts of the CC of Ukraine, but also in other acts of civil legislation¹.

The advantages of the current CC of Ukraine in terms of regulation of relations in the field of information rights are as follows: the information is mentioned in general provisions on personal non-property rights of an individual, which means that the concept is consolidated, as well as its types, content, guarantees and ways to protect personal non-property rights to information; composition of articles on the right to information on the same principles according to a holistic approach to understanding the subject and method of regulating public relations; consolidation of provisions on this right in the appropriate order, etc. Thus, the Book Two contains provisions that regulate personal non-property relations regarding the right to information based on such principles as dispositivity, legal equality, inadmissibility of interference in the private life of an individual; judicial protection of any violated civil right; as well as justice, good faith, reasonableness, etc. These principles equally apply to all other personal non-property rights.

With the rapid development of the information society in the 21st century, the time has finally come for Book Two to become a system-forming factor for all other pieces of legislation governing information relations, and especially for those relating to the personal inalienable right to information, whether they have a complex or private nature. In the Book Two, the personal non-property rights of an individual are divided into those that ensure natural existence (Chapter 21 of the CC of Ukraine)² and those that ensure its social existence (Chapter 22 of the CC of Ukraine). Meanwhile the right to information can be attributed both to Chapter 21 – "Personal Non-Property Rights that Ensure the Natural Existence of an Individual" and to Chapter 22 – "Personal Non-Property Rights that Ensure the Social Existence of an Individual", because a person has the right to information from birth, and in the process of social existence expands its capabilities. In addition, this right may belong to legal entities, which also needs to be standardised in the process of updating the CC of Ukraine in terms of changing the title of Book Two to "Non-property rights" or "Personal non-property rights".

As for personal non-property relations that develop regarding the information, in the process of applying the relevant provisions of the CC of Ukraine, certain changes have occurred³. Thus, the presumption of "integrity" was excluded from the current CC

¹ Law of Ukraine No 48 "On Information". (1992, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/2657-12#Text>; Law of Ukraine No 34 "On Personal Data Protection". (2020, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/2297-17#Text>; Law of Ukraine No 32 "On Access to Public Information". (2020, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/2939-17#Text>

² Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15>

³ Law of Ukraine No 47 "On Amendments to Certain Legislative Acts of Ukraine in Connection with the Adoption of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning Simplification of Pre-trial Investigation of Certain Categories of Criminal Offences". (2020, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/720-20#Text>; Law of Ukraine No 48 "On Information". (1992, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/2657-12#Text>; Law of Ukraine No 15 "On Amendments to the Civil Code of Ukraine on the Right to Information". (2005,

of Ukraine, according to which negative information disseminated about a person was considered unreliable until proven otherwise (while the judicial practice on the protection of honour, dignity, and business reputation was based on the fact that the obligation to prove that the disseminated information is reliable rests with the defendant¹, and the Law of Ukraine “On Amendments to the Law of Ukraine “On Prevention of Corruption” regarding Corruption Detectors”² adopted in 2019 is still under discussion; the regulation of relations for the dissemination of information obtained from official sources was clarified; dissemination of information obtained from official sources; the list of personal non-property rights in the field of medical care³ has undergone certain changes that now require clarification in the context of the right to information, namely in matters of sterilisation of a minor individual, reproductive rights, and several other issues.

Information related to intellectual activity can have various forms of its external reflection, suitable for perception directly by a person or with the help of various technical devices in a virtual environment. As a result of intellectual activity of the person the information can be personified both in an independent object, and in the form of results of intellectual creative activity, to be protected by system of the intellectual property right. Today there is some uncertainty between the system of intellectual property rights and the information capabilities of the individual regarding the free collection, storage, dissemination and use of information, while the monopoly right of the subject of intellectual property must undergo numerous restrictions (in time, space, etc.).

In general, a gradual weakening of the regulatory system of intellectual property protection should become the trend of development of legal regulation of intellectual activity in the information society, in order to ensure a balanced combination of interests of creators and their successors. This is important primarily in matters of remuneration by the creator and the interests of members of society in exercising their right to access, receive, disseminate, and use information. Here are some examples. Thus, essential information is embedded in the commercial (brand) name. All requirements for this object of intellectual property rights are "informational" in nature. It should give an objective, reliable, complete, up-to-date idea of what is additional to the information, which is the name of the person – the designation of the person, which may be part of the name of the person or be a fictitious name or abbreviation. This explains foreign approaches, for example, in the United Kingdom, when it comes to the mandatory

December). Retrieved from <https://zakon.rada.gov.ua/laws/show/3261-15#Text>; Law of Ukraine No 32 "On Access to Public Information". (2020, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/2939-17#Text>

¹ Resolution of the Supreme Court in the Composition of the Panel of Judges of the First Judicial Chamber of the Civil Court of Cassation in Case No 522/14156/14-ts. (2018, February). Retrieved from <http://reyestr.court.gov.ua/Review/72269115>

² Law of Ukraine No 140-IX "On Amendments to Certain Legislative Acts of Ukraine to Ensure the Effectiveness of the Institutional Mechanism for Preventing Corruption". (2020, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/140-20#Text>

³ Law of Ukraine No 47 "On Amendments to Article 281 of the Civil Code of Ukraine". (2004, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/140-20#Text>; Law of Ukraine No 47 "On Amendments to Article 290 of the Civil Code of Ukraine". (2011, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/140-20#Text>; Law of Ukraine No 47 "On Amendments to the Family and Civil Codes of Ukraine". (2020, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/140-20#Text>

disclosure of information about a person by indicating the person's name and address. This refers to the responsibility of each person who uses such a name to indicate, taking into account the legal status, the name of the corporation, or the name of each partner or the name (individual) of the person and other information.

The essence of such results of intellectual activity as know-how, business information, and commercial secrets refers to information per se. On 8 July 2016, Directive (EU) 2016/943 of the European Parliament and of the Council¹ concerning the protection of undisclosed know-how and business information (trade secrets) against their unauthorised acquisition, use and disclosure was adopted. The adaptation of Ukrainian legislation is currently aimed at revising it to launch new approaches to the protection of trade secrets and know-how. A trade secret can actually comprise two types of information – non-creative information (this is the so-called business information about the number of employees, customers, etc.) and creative information. Since Directive 2016/943 contains a definition of a trade secret, which corresponds to its definition in the TRIPS Agreement², it can be considered and consolidated in Chapter 15 of the CC of Ukraine³, which deals with intangible assets by a separate rule, or supplement Article 200 of the CC of Ukraine, define this object in Article 505 of the Civil Code, as proposed by the authors, and to supplement its content with the provision that a trade secret includes information in the form of know-how and business (commercial) information. It is also logical to make provision for changes in the title and content of Chapter 46 of the CC of Ukraine, which would be called "Intellectual property rights to know-how", thereby supporting the proposals of intellectual property experts who believe that such changes will add business information to the objects of intellectual property rights and contribute to the harmonisation of approaches to the protection of know-how in Ukraine. The right to information can also be the subject of various types of agreements, which has been repeatedly emphasised in the literature [17]. Since information has an intangible nature and is embodied in various forms of its external expression, it should be noted that within the framework of civil turnover, there can be a turnover of rights to information as such, and not just turnover of the information itself, for example, the provision of information by the acquirer to the copyright holder. In addition, such rights can be obtained by the acquirer for a certain period – then it would refer more to the provision of information rights, indefinitely or on terms specified in the contract.

An important contribution is made to the understanding of law in the field of personal non-property information relations in the process of making decisions by the Constitutional Court of Ukraine and other judicial bodies. This primarily refers to the protection of the right to information and other personal non-property information rights, in particular, to the constitutional interpretation of the concept of "information about a

¹ Directive of the European Parliament and of the Council of the European Union 2016/943 on the Protection of Confidential Know-How and Business Information (Trade Secrets) from Illegal Acquisition, Use and Disclosure. (2016, June). Retrieved from <http://base.garant.ru/71615160/#ixzz6Y1vvv6EQ>

² World Trade Organization (WTO) Agreement No 981_018 "On Trade-Related Aspects of Intellectual Property Rights". (1994, April). Retrieved from https://zakon.rada.gov.ua/laws/show/981_018#Text

³ Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15>

person's private and family life"¹; to the decision of the Constitutional Court of Ukraine on the recognition of certain provisions of Sub-paragraph 1 of Paragraph 40 of Section VI "Final and Transitional Provisions" of the Budget Code of Ukraine on the right of the Ministry of Finance of Ukraine to receive information containing personal data²; to the protection of honour, dignity, and business reputation³.

A number of aspects of personal non-property information rights are covered by the content of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, respectively the case law of the ECHR applies in particular to: protection of personal data (Rotaru v. Romania, 04.05.2000); access to personal information (Odievre v. France, 13.02.2003); secrecy of health information (Z v. Finland, 25.02.1997); the right to information on environmental risks or accidents (Tătar v. Roumanie, 27.01.2009); freedom to receive and impart information (Ahmet Yildirim v. Turkey, 18.12.2012); freedom of the media (Lingens v. Austria, 08.07.1986; Times Newspapers Limited v. the United Kingdom, 10.03.2009); access to public information (Leander v. Sweden, March 26, 1987; Gaskin v. The United Kingdom, July 7, 1989); electronic messages (emails) (Bărbulescu v. Romania, 05.09.2017); use of the Internet (Copland v. The United Kingdom, 03.04.2007), and many others. Among the acts of the *acquis communautaire* concerning the right to information, mention should be made of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC⁴.

In the process of updating the CC of Ukraine⁵ it is necessary to pay attention to some general provisions that have an impact on the development of personal information non-property rights. This primarily concerns the principles of their regulation, the features of their implementation and guarantees; places in the system of all personal non-property rights; clarification and addition of the list of special ways to protect these rights; mechanism for ensuring the proportionality of their application, especially if the application of mechanisms for ensuring and protecting other personal non-property rights may lead, for example, to a restriction of the right to freedom of speech, the right to information, etc. The harmonious process of updating the CC of Ukraine cannot take place without the simultaneous introduction of changes and additions to other codified acts that govern personal information intangible relations, for example, the Family Code, the Code of Ukraine on Electronic Communications, etc. An adequate response to

¹ Decision of the Constitutional Court of Ukraine in the Case on the Constitutional Petition of Zhashkiv District Council of Cherkasy Region Regarding the Official Interpretation of the Provisions of Parts One, Two of Article 32, parts Two and Three of Article 34 of the Constitution of Ukraine No 2-rp/2012. (2012, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/v002p710-1>.

² Decision of the Constitutional Court of Ukraine in the Case on the Constitutional Petition of the Commissioner for Human Rights of the Verkhovna Rada of Ukraine on the Constitutionality of Certain Provisions of the First Paragraph of Paragraph 40 of Section VI "Final and Transitional Provisions" of the Budget Code of Ukraine No 7-r/2018. (2018, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/v007p710-18#Text>.

³ Resolution of the Plenum of the Supreme Court of Ukraine No 1 "On Judicial Practice in Cases of Protection of the Dignity and Honor of Individuals, as well as the Business Reputation of Individuals and Legal Entities." (2009, February). Retrieved from https://zakon.rada.gov.ua/laws/show/v_001700-09#Text

⁴ Directive 2003/4/EC of the European Parliament and of the Council. (2003, January). Retrieved from <https://eur-lex.europa.eu/eli/dir/2003/4/oj>

⁵ Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15>

challenges of the modern information society should be to ensure the statutory regulation of contractual relations arising from personal information non-property objects, which, upon receiving an objective form, acquire signs of turnover. This refers to the solution of issues of ensuring the rights of the physical person to use such objects for the commercial purpose. Signs that personalise an individual, and the possibility of their commercial use is covered by the content of consolidated personal non-property information rights – powers of positive and negative direction and protection. Therefore, this does not refer to the use of the good itself, which is the information, but rather its projection on a material medium. Information itself as a personal non-property right remains a non-property good and it does not change in the process of commercial use.

Virtuality as a phenomenon and environment, where the right to information and other information rights are currently actualised and developed, is impossible to cognise without immersion in philosophical, historical, and artistic sources. The modern virtual world, among other things, includes information systems and networks. Hans Moravets also called the very human personality an information system or structure, believing that this definition becomes a reality if human consciousness is embedded in a computer and a certain scenario is simulated to prove that it is possible in principle. He argued that machines could become the receptacle of human consciousness and that machines could become human beings for any practical need, that is, a human could in fact be identified with a cyborg, and vice versa. [15] Meanwhile, humans described mechanical creatures long before the words "android" and "cyborg" appeared. History mentions, for example, the Catholic priest Albert the Great, who in the 13th century created a mechanical head that could answer questions, and Ephraim Chambers, a famous encyclopedist, in 1728 combined the Greek prefix "*andr-*" – "a human" with the suffix "*-oid*" – "to have a form, to be similar" to describe Albert's machine [18].

Finding the difference between the processes of "thinking like a human" and "thinking like a machine" was one of the tasks of Hans Moravets, who was mentioned above. Notably, at the same time with this research there was a development of the basic principles of an information society in combination with distribution of liberal perception of the world. Nowadays, it is a sacred human right to cultivate the right to life in a civil democratic society. The revision of the boundaries between a machine and a human has, as expected, led to the replacement of the question "who can think" with the question "what can think"; to take a decisive step towards determining the difference between a physical, real human body on one side of a computer screen and a body that is "represented" in an electronic environment on the other side. These discussions should take place in the legal environment in order to more fully consolidate all possible information rights for the real subject of civil rights.

The state of affairs described in this study, according to researchers, necessarily "makes the subject a cyborg, because both of the described entities merge due to the technologies that unite them", which means that those who believe that in the moment a person first began to look at the monitor screen, he or she actually became a post-human – a hypothetical prototype of the future human, who abandoned the usual human posture as a result of the implementation of advanced technologies, computer science, biotechnology, medicine, etc. [15]. At the global level, this problem has been studied by scientists such as A. Peng-JuSu [19], M. Barker et al. [20], B. Custers et al. [21], S.D. Cardoso et al. [22]. Notably, the author of this study has performed a long-term research

on the analysis of all these sources, which were interpreted and, as a result, allowed to look at the problem of virtuality from the standpoint of a civilist, whose goal is to update civil legislation in the context of fast development of a new society of information, networks, and systems. The purpose of the law in the development of general provisions on personal non-property rights in Chapter 20 of the CC of Ukraine¹, among which the right to information plays one of the key roles, should from the outset be understood as the need to establish general rules applicable to all personal non-property information rights, as well as a new stage in ensuring the comprehensive development of the individual, protection of his or her life, freedom, honour, dignity, and personal inviolability in the context of increasing coverage of all spheres of life by a new specially created virtuality. Meanwhile, discussions are still underway regarding the content of certain rules that are already stipulated and that can be included in Chapter 20 of the CC of Ukraine in the process of updating, in particular regarding the principles of personal non-property rights. Admittedly, some of these principles should remain in place, but they must be supplemented by those that describe the existing and subsequent stages of development of the information society, take into account the creation and use of robots and elements of artificial intelligence, new species, experiments with living organisms in everyday life, including humans from the moment of conception, the specific features of electronic money circulation and e-commerce, copyright protection in networks, the issue of settlement of relations on such a complex object of information and intellectual creative activity as digital content. These discussions are becoming increasingly thorough in the process of updating the CC of Ukraine, and in the conclusions to this study the author once again suggests ways to resolve the outlined issues.

Thus, this study differs from previous publications on the right to information as a personal non-property right of an individual, by the breadth of coverage of the problem, primarily due to the clarification of what is virtuality, a virtual world to which the processes, which previously could occur only in real life and be embodied in real relations, including those governed by law, are partially (and sometimes completely) transferred. The author analysed the problematic issues of the concept, types, specifics of the right to information as a personal intangible right, its implementation and protection in a context that covers all spheres of life, the global information virtual world. This approach allows for an almost interactive continuation of information rights research in the future.

The updating of civil legislation in the current period is described and conditioned, among other things, by the rapid development of a global virtual environment where the right to information should occupy one of the leading places, and the solution of all personal non-property information rights should be the priority task for civilistics. The very title of the Book Two of the CC of Ukraine² should cover the entire sphere of non-property relations and be called "Non-property rights", as it should govern the provisions on all non-property relations of both individuals and legal entities, as well as provisions relating to virtual the environment where these relations currently arise. The content of the articles of Chapter 20 of the CC of Ukraine should be clarified and supplemented by provisions that take into account the achievements of the information society,

¹ Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15>

² *Ibidem*, 2003.

information technologies, the emergence of new personal non-property assets to which non-property rights can be extended; the subjective composition of these relations, the specific features of the exercise, implementation, and protection of rights in their existence, including in a virtual environment, and Chapter 20 of the CC of Ukraine should be entitled "General Provisions on Non-Property Rights".

It is necessary to significantly supplement the list of intangible assets and rights to them, to determine their place in Chapters 21 and 22 of the CC of Ukraine, and the rule on the right to information (and all related non-proprietary information rights) should be transferred to Chapter 21 of the CC of Ukraine¹ (provided that the current classification of personal non-property rights is retained). It is also possible to provide for the amendment of the Book Two of the CC of Ukraine with additional chapters, which would cover non-property rights that cannot be attributed to the current classification. These are non-property rights of legal entities; non-property rights related to the development of information relations, etc. It is proposed to discuss the possibility of supplementing the said Book Two with a rule on the turnover of rights to the objects of non-property rights, in particular on the turnover of certain information rights, while the list of obligations in Book Three should be supplemented with obligations with non-property content subject to the development of the corresponding provisions.

The provisions of the CC of Ukraine on objects of civil rights should also be expanded with regard to the emergence of objects unknown at the time of adoption of the current CC of Ukraine. These are different types of information, information products, resources, systems, etc. and objects of rights created and located in the Internet, cryptocurrency, personal data (personal information), autonomous works, artificial intelligence, content (digital content), etc. These objects should be clearly listed among the intangible assets of Chapter 15 of the Book One of the CC of Ukraine, clarified in Articles 199-201 of the CC of Ukraine and additional articles to avoid errors in their misinterpretation, errors in determining their legal nature and regulatory mechanisms, methods of protection. It is necessary to expand Chapter 15 of the CC of Ukraine with additional articles that would amend the general provisions on such objects and emphasise the general significance for all other books of the Code. First of all, this applies to information as an intangible asset – an object of civil rights, which would allow to introduce important and timely additions to many articles of all the books of the CC of Ukraine.

The provisions of the updated CC of Ukraine on transactions should ensure the full functioning of relations in the field of e-commerce, smart contracts, web banking, and other attributes of the digital economy in a virtual environment, which will not only preserve all assets and achievements of the current CC of Ukraine of Ukraine but will also allow to adapt it to modern realities.

CONCLUSIONS

Summing up, it should also be noted that the right to information and other intangible information rights of individuals are not only developing at a significant pace, but in the last few years are very closely confronted with the problems posed by information technology, robots, and artificial intelligence. Virtuality has never been so similar to

¹ Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15>.

reality, and post-humanity has never seemed so close. These processes must be taken into account in the current development of civil legislation at the level of principles and individual articles, but it is necessary to "make haste slowly", bearing in mind that the legal consolidation of processes occurring in society in the development of information society should be based on well-being of people as the highest virtue", which Aristotle advocated for, and the "morality in law", on the need to comply with which insisted I.O. Pokrovsky. This study is of interest to scholars, in particular, representatives of the civilistic school of law, teachers and students of higher educational institutions of law, lawmakers, representatives of the working group on recoding (updating) civil legislation and all those interested in civil law, information relations, personal non-property rights of individuals in general and in a virtual environment in particular.

REFERENCES

- [1] Dohvert, A.S. (2019). Recodification of the Civil Code of Ukraine: main factors and prerequisites for the start. *Law of Ukraine*, 1, 27-41.
- [2] Yaroslav Mudryi National Law University. (2019). Is it time to recode the Civil Code of Ukraine? In *Current Issues of Private Law: Materials of the XVII Scientific-Practical Conference Dedicated to the 97th Anniversary of the Birth of Professor V.P. Maslov* (pp. 28-32). Kharkiv: Pravo. Retrieved from https://www.google.com/search?rlz=1C1SQJL_ruUA790UA790&sxsrf=ALeKk018SR11Dy-wyEnv5DhoXNfmdjJ_2g%3A1609758703800&ei=7
- [3] Kokhanovska, O.V. (2006). *Theoretical problems of information relations in civil law*. Kyiv: Kyiv University Publishing and Printing Centre.
- [4] Kokhanovska, O.V. (2006). *Civil law problems of information relations in Ukraine* (Doctoral thesis, Taras Shevchenko Kyiv National University, Kyiv, Ukraine).
- [5] Stefanchuk, R.O. (2007). *Personal intangible rights of individuals in civil law* (Doctoral thesis, National Academy of Sciences of Ukraine, Institute of State and Law named after V.M. Koretsky, Kyiv, Ukraine).
- [6] Slipchenko, S.O. (2013). *The mechanism of legal regulation of personal non-property relations with negotiable objects*. (Doctoral thesis, Kharkiv National University of Internal Affairs, Kharkiv, Ukraine).
- [7] Fedyuk, L.V. (2015). *Personal intangible rights of legal entities*. (Doctoral thesis, Taras Shevchenko Kyiv National University, Kyiv, Ukraine).
- [8] Kulinich, O.O. (2017). *Theoretical problems of realization and protection of the right of the physical person to own image*. (Doctoral thesis, National University "Odessa Law Academy", Odessa, Ukraine).
- [9] Katkova, T.G., Stiebieliev, A.M., Chmykhun, S.E., & Mkrtschan, M.Z. (2020). Provision of cybersecurity in Ukraine: Issues of legal responsibility. *Advances in Intelligent Systems and Computing*, 113, 243-254.
- [10] Reshota, V., Dzhok, R., Reshota, O., & Kryvenchu, Y. (2020). Problems of legal regulation of support in the implementation of control operations in Ukraine and information technology to solve this problem. *CEUR Workshop Proceedings*, 2654, 492-503.
- [11] Hovorushchenko T., Herts A., & Pavlova O. (2020). Method of forming a logical conclusion about legal responsibility in the cybersecurity domain. *CEUR Workshop Proceedings*, 2732, 128-135.

- [12] Prorokov, G., & Smirnov, A. *14 words that produced science fiction*. Retrieved from <http://www.lookatme.ru/mag/live/things/213903-sci-fi-words>
- [13] Gritsanov, A.A., Galkin, D.V., & Karpenko, I.D. (2003). Virtual reality. In *The latest philosophical dictionary* (pp. 171-173). Minsk: Book House.
- [14] Hales, K. (2013). How we became posthuman. In *Virtual bodies in cybernetics, literature, and computer science. Second edition, corrected* (pp. 9-19). Kyiv: Nika-Tsentr.
- [15] Sterling, B. (2007). *Schismatrix*. Moscow: Eksmo.
- [16] Posthumanism. Retrieved from <http://www.posthumanism.com>
- [17] Kodynets, A.O. (2016). *Civil law regulation of obligatory information relations*. Kyiv: Alert.
- [18] Albert the Great: A Holy Alchemist from Cologne. Retrieved from <https://nasledie.pravda.ru/1134065-albert>
- [19] Peng-JuSu, A. (2017). Information revelation in the Property Right Theory of the firms. *International Journal of Industrial Organization*, 52, 133-164. <https://doi.org/10.1016/j.ijindorg.2017.02.004>
- [20] Barker, M., Olabariaga, S.D., Wilkins-Diehr, N., Gesing, S., Katz, S.D., Shahand, Sh., Henwood, S., Glatard, T., Jeffery, K., Corrie, B., Treloar, A., Glaves, H., Wyborn, L., Chue Hong, N.P., & Costa, A. (2019). The global impact of science gateways, virtual research environments and virtual laboratories. *Future Generation Computer Systems*, 95, 240-248. <https://doi.org/10.1016/j.future.2018.12.026>
- [21] Custers, B., Dechesne, F., Sears, A.M., Tani, T., & van der Hof, S. (2018). A comparison of data protection legislation and policies across the EU. *Computer Law & Security Review*, 34(2), 234-24. <https://doi.org/10.1016/j.clsr.2017.09.001>
- [22] Cardoso, S.D., Faraco, C.B., de Sousa, L., & Da Graça Pereira, G. (2017). History and evolution of the European legislation on welfare and protection of companion animals. *Journal of Veterinary Behaviour*, 19, 64-68. <https://doi.org/10.1016/j.jveb.2017.01.006>

Olena V. Kokhanovska

Doctor of Law, Professor

Academician of the National Academy of Legal Sciences of Ukraine

Honoured Worker of Science and Technology of Ukraine

Professor of the Department of Civil Law

Taras Shevchenko National University of Kyiv

01033, 60 Volodymyrska Str., Kyiv, Ukraine

Suggested Citation: Kokhanovska, O.V. (2020). Features of updating the civil legislation of Ukraine in the field of the right to information in the conditions of development of the global virtual environment. *Journal of the National Academy of Legal Sciences of Ukraine*, 27(4), 145-160.

Submitted: 11/06/2020

Revised: 20/10/2020

Accepted: 27/11/2020