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Illegal privatisation of critical infrastructure facilities: Problematic aspects and ways to solve them

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Abstract
The relevance of the subject of study is due to the practical importance of protecting critical infrastructure facilities in the context of increasing potential threats from criminal encroachments associated with the illegal privatisation of such facilities. The purpose of the study is to analyse the current state of criminal legal protection of critical infrastructure from illegal privatisation, develop separate recommendations on the specifics of organising an investigation into the illegal privatisation of critical infrastructure objects, and provide proposals for improving the national system for protecting critical infrastructure from illegal privatisation. The methodological approach to the study was based on using a diagnostic method, by which privatisation is considered both as a social and legal phenomenon. Methods of analysis, dogmatic, formal-legal, modelling, comparative-legal are also used. The study provided for a comprehensive review and examination of the current state of regulatory regulation of the protection of critical infrastructure facilities from illegal privatisation in the criminal legal dimension. It is established that in Ukraine, it is insufficient and needs to be improved. Proposals on criteria for assigning critical infrastructure objects to privatisation processes, creating legal mechanisms for their alienation into private ownership and ensuring proper state control over their further functioning are substantiated. The study focuses on the specifics of starting a pre-trial investigation of the illegal privatisation of critical infrastructure facilities and organising a pre-trial investigation, considering the forensic classification

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of criminal offences committed during the privatisation process. It is proposed to supplement Article 233 of the Law of Ukraine on criminal liability with a separate qualification composition, which would establish criminal liability for the illegal privatisation of critical infrastructure facilities, providing for the commission of this socially dangerous act of punishment in the form of imprisonment. The results obtained are of practical importance in the development and substantiation of theoretical provisions, conclusions and recommendations for improving the national system for protecting critical infrastructure from criminal offences

Keywords:
illegal alienation; state and municipal property; vital objects; socially dangerous act; investigation of criminal offences; protection of national security

Introduction

With the transition from a command-and-plan economy to free market relations, Ukraine's law enforcement system faced a lot of socially dangerous acts related to illegal economic activities that were previously unknown to national security. This made it necessary to reform the criminal justice system and introduce a new section into the norms of criminal legislation that qualified criminal offences in the field of economic activity. As of 2023, Section VII of the Law of Ukraine on criminal liability[1] is not only one of the largest in the structure of the Special part but also one that has undergone dynamic transformations. For example, out of forty-seven amendments and additions, eighteen concerned the decriminalisation of previously existing criminal prohibitions. This circumstance led to legal discussions on the forensic classification of criminal offences, the generic object of which is economic activity, and caused certain difficulties in developing appropriate forensic recommendations for their investigation.

Illegal privatisation of critical infrastructure facilities should also be attributed to these criminal offences. In this regard, it should be noted that countries where individual initiative and less state intervention in economic processes have historically been supported at the national level do not have this problem. However, effective state control has been built there. For example, investigating the positive aspects of the privatisation of state-owned infrastructure facilities, S. Li *et al.* (2019) divide these processes into two groups, the first of which includes full privatisation when assets and services are fully transferred to the management of a private owner. The second group of scientists includes partial privatisation, when only a part of the assets is alienated to the ownership of a private company, which as a result, leads to the coexistence of the public and private sectors. According to N. Higton & S. Clark (2010), the use of the partial alienation model of state property is most effective when privatising large infrastructure projects, such as, for example, transport infrastructure. Because under these conditions, the state not only does not lose control over the functioning of critical infrastructure but also provides an opportunity for its further development by attracting public-private partnership (private investment).

However, the scientific literature also considers the negative factor of full privatisation. Thus, in particular, investigating the problematic aspects of the privatisation of objects of the penitentiary system, M. Yin (2022) draws attention to systematic human rights violations in private Australian migrant detention centres. Considering the forensic characterisation of the illegal privatisation of state and municipal property, Ye. Priakhin (2019) draws attention to the special public danger of this act since its objects are often engineering structures for civil protection of the population. T. Chumakova (2022) notes that in Ukraine, according to some expert estimates, approximately 90% of privatisation processes occur in violation of the current legislation, including historical and cultural heritage monuments, which threatens their preservation. Investigating legislative provisions and judicial practice on the issue, A. Krasnoshlyk (2020) notes inadequate control and insufficient operational support of privatisation procedures by authorised state authorities. Highlighting the problematic aspects of economic and legal support for privatisation, O. Reznik & O. Bondrenko (2021) rightly refer to the lack of proper interaction between law enforcement and regulatory structures, and the involvement of the judicial system as the last tool and lever of influence on the illegal privatisation process itself. Examining the mechanisms of illegal privatisation of state or municipal property, R. Komisarchuk (2017a) also draws attention to the misuse of funds received from privatisation. For this reason, as the researcher rightly notes, instead of investing privatisation revenues in the development of local or sectoral infrastructure that will help stimulate the economy, they are usually directed to cover the budget deficit, which violates the main goal of privatisation, which is the economic development of the country through attracting foreign and internal investment.

Thus, considering the above, the question arises regarding the development of certain provisions of forensic recommendations for detecting and stopping the illegal privatisation of critical infrastructure facilities,

[1] Criminal Code of Ukraine. (2001, May). Retrieved from https://zakon.rada.gov.ua/laws/show/2001-05#Text.

which is the purpose of this study. The following tasks were set to achieve this goal: analyse the theoretical and legal aspects of organising an investigation into the illegal privatisation of critical infrastructure facilities; highlight the procedural features of the legality and validity of the decision of an authorised official to start a pre-trial investigation; provide proposals for improving the national system for protecting critical infrastructure in the privatisation sector of the economy.

Materials and Methods

A diagnostic method was used to achieve these tasks, by which the object under study was analysed as a complex socio-legal phenomenon. Along with general scientific methods of deduction, induction, analogy of synthesis and analysis, special methods of legal analysis were used, which became the basis for studying normative legal acts, analytical materials, and scientific concepts on issues that were included in the subject under study.

Therewith, both types of research methods were used – theoretical and empirical. For example, using this theoretical method, the analysis of the assessment of legal categories, clarification of definitions in the conceptual framework, and development of proposals for improving the current legislation within the framework of the chosen research subject were conducted. Methods of comparative legal and formal legal analysis were used to analyse regulatory legal acts related to the organisation of pre-trial investigation of illegal privatisation of critical infrastructure facilities. Using the modelling method, conclusions and proposals were formulated to improve the national system for protecting critical infrastructure. This was achieved by making appropriate changes and additions to the provisions of legislative and bylaws that regulate the protection of critical infrastructure facilities, etc.

The theoretical basis of the study was scientific papers that analysed certain aspects of the illegal privatisation of state and municipal property (Humin & Pryakhin, 2020; Chumakova, 2022), and criminal law protection of critical infrastructure objects in this area of activity (Komisarchuk, 2017b; Dontsov, 2020). Scientific concepts and conclusions of the authors formed the basis of the study, and some provisions were further developed.

The empirical basis of the study consists of analytical and statistical materials of the Ministry of Internal Affairs of Ukraine concerning the identification, disclosure, and investigation of illegal privatisation of critical infrastructure facilities (The Ministry of Internal Affairs revealed..., 2014). The legal basis of the study consists of laws and bylaws, the norms and provisions of which regulate certain issues related to ensuring the national system of protection of critical infrastructure and legal, economic, and organisational bases for activities in the field of privatisation of state or municipal property. In particular, the norms and provisions of the Constitution of Ukraine[1], Criminal Code of Ukraine[2]; Code of Civil Protection of Ukraine[3]; Land Code of Ukraine[4]; Housing code of Ukraine[5]; Law of Ukraine "On National Security of Ukraine"[6]; "On Critical Infrastructure"[7]; "On Privatisation of State and Municipal Property"[8]; "On the List of Cultural Heritage Monuments that are not Subject to Privatisation"[9]; relevant decisions of the Constitutional Court of Ukraine[10], Strategies for ensuring state security of Ukraine[11], concerning the subject under study.

Results

Among the most criminogenic relations in the economic field, along with financial, banking, foreign economic activity and energy, metallurgical, oil refining, and chemical industry, Ukrainian researchers also refer to privatisation processes in the public sector of the economy. First of all, this is due to the negative consequences of the privatisation of previous years (Romanenko & Shtokin, 2017), when against the background of rising inflation and imperfect regulatory support, there was an "ordered" alienation of state and municipal property at prices below its cost. Given the fact that under martial law, privatisation processes in Ukraine continue to gain momentum, this topic has not lost its relevance today. For example, according to official government sources, the French Republic has assets in 71 companies, which are covered by

[1] Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.
[2] Criminal Code of Ukraine. (2001, May). Retrieved from https://zakon.rada.gov.ua/laws/show/2001-05#Text.
[3] Code of Civil Protection of Ukraine. (2012, October). Retrieved from https://zakon.rada.gov.ua/laws/show/5403-17#Text.
[4] Land Code of Ukraine. (2001, October). Retrieved from https://zakon.rada.gov.ua/laws/show/2768-14#Text.
[5] Housing Code of Ukraine. (1983, June). Retrieved from https://zakon.rada.gov.ua/laws/show/5464-10#Text.
[6] Law of Ukraine No. 2469-VIII "On the National Security of Ukraine". (2018, June). Retrieved from https://zakon.rada.gov.ua/laws/show/2469-19#Text.
[7] Law of Ukraine No. 1882-IX "On Critical Infrastructure". (2021, November). Retrieved from https://zakon.rada.gov.ua/laws/show/1882-20#Text.
[8] Law of Ukraine No. 2269-VIII "On the Privatisation of State and Communal Property". (2018, January). Retrieved from https://zakon.rada.gov.ua/laws/show/2269-19#Text.
[9] Law of Ukraine No. 574-VI "On the List of Monuments of Cultural Heritage that are Not Subject to Privatisation". (2008, September). Retrieved from https://zakon.rada.gov.ua/laws/show/574-17.
[10] Decree of the President of Ukraine No. 56/2022 "On the Decision of the National Security and Defence Council of Ukraine. Strategy for Ensuring State Security". (2022, February). Retrieved from https://www.president.gov.ua/documents/562022-41377.
[11] Ibidem, 2022.

four sectors of the economy (energy – 7; Industry – 19; services and finance – 15; transport – 30) (Ministry of Economy, Finance, Industry and Digital, n.d.). Poland has 11 active enterprises in public ownership (List of state-owned enterprises..., 2023). Therewith, according to the State Property Fund in Ukraine, only in 2022, more than a thousand state-owned objects were put up for sale, including one hundred and fifty state-owned enterprises, not accounting for the local privatisation procedures (State Property Fund of Ukraine, 2022). The above makes it clear why, among European countries with a continental legal system, illegal privatisation of state or municipal property, as a separate part of criminal offences, except for Ukraine (Article 233)[1], provided for only by the Criminal Legislation of Bulgaria (Article 253)[2] and Belarus (part 3 of Article 424)[3]. That is, countries where the communist system previously dominated, and a substantial share of assets was in state and/or collective ownership.

In this context, the legal and organisational basis for ensuring the security and sustainability of privatisation objects, which are critical for the functioning of the state and its population, becomes important. Analysing the international[4][5] (European Commission, 2005) and national legislation[6] from the subject under study, it is possible to distinguish five categories of the main threats to critical infrastructure, namely: natural, man-made, social, military, and combined. This classification is also followed by V. Fediuk (2022) and O. Yaremechuk & Y. Stakhnitskyi (2022). In turn, social hazards include, firstly, physical threats – potential dangers that cause crisis situations to arise at a critical infrastructure facility as a result of sabotage, terrorist acts, theft, deliberate destruction and/or damage to property necessary for their functioning, etc. (Melnyk & Leschuh, 2019; Franchuk *et al.*, 2021). Secondly, cyber threats – potential hazards that have disrupted the proper functioning of information and telecommunications systems of a critical infrastructure object, which, as a result, led to an emergency situation (Zhu *et al.*, 2021; Chowdhury, 2021). Thirdly, corruption threats –potential hazards that have disrupted the proper functioning of a critical infrastructure facility as a result of committing corruption (Fig. 1).

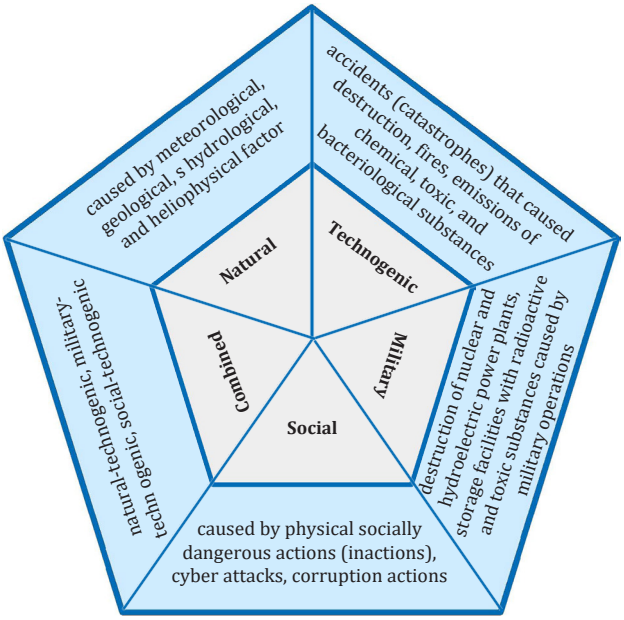

Figure 1. Classification of the main hazards that cause violations of the normal functioning of critical infrastructure facilities

Source: compiled by the author

Corruption risks in relation to critical infrastructure facilities should also include their illegal privatisation. In general terms, economic crime, along with corruption offences, remains one of the main threats to the national security of Ukraine. This is also emphasised in the national security strategy of Ukraine[7], the provisions of which state that inconsistency and incompleteness of reforms and corruption of public authorities are key factors that prevent the Ukrainian economy from being brought out of a depressive state, making it impossible for its sustainable and dynamic growth, increasing its vulnerability to external and internal threats, and creating and fueling a criminal environment in this field of activity. In turn, insufficient protection of property rights, slow development of market relations in key areas of economic activity, a substantial share and role of the public sector in the country's economy, and imperfection and fragmentation of the current legislation – restrain economic growth and repel potential or existing investors.

[1] Criminal Code of Ukraine. (2001, May). Retrieved from https://zakon.rada.gov.ua/laws/show/2001-05#Text.
[2] Criminal Code of the Republic of Bulgaria. (1968, March). Retrieved from https://parliament.bg/bills/42/402-01-8.pdf.
[3] Criminal Code of the Republic of Belarus. (1999, July). Retrieved from https://kodeksy-bel.com/ugolovnyj_kodeks_rb.htm.
[4] Presidential Policy Directive No. PPD-21 "Critical Infrastructure Security and Resilience". (2013, February). Retrieved from https://obamawhitehouse.archives.gov/the-press-office/2013/02/12/presidential-policy-directive-critical-infrastructure-security-and-resil.
[5] Directive (EU) of the European Parliament and of the Council No. 2016/1148 "On Concerning Measures for a High Common Level of Security of Network and Information Systems Across the Union". (2016, July). Retrieved from https://eur-lex.europa.eu/eli/dir/2016/1148/oj.
[6] Law of Ukraine No. 1882-IX "On Critical Infrastructure". (2021, November). Retrieved from https://zakon.rada.gov.ua/laws/show/1882-20#Text.
[7] Decree of the President of Ukraine No. 392/2020 "On the Decision of the National Security and Defence Council of Ukraine of 14 September 2020 "On the National Security Strategy of Ukraine". (2020, September). Retrieved from https://www.president.gov.ua/documents/3922020-35037.

Systematic analysis of the laws of Ukraine "On privatisation of state and municipal property"[1] and "On critical infrastructure"[2] allows concluding that their norms do not regulate aspects of the privatisation of critical infrastructure facilities and control over its implementation. Article four of the Law on privatisation only emphasises that privatisation processes do not apply to state-owned enterprises and objects necessary to ensure the state's basic functions, its defence capability, objects that are the property of the Ukrainian people, and property that forms the material basis of Ukraine's sovereignty. Evidently, this provision is destructive since it is not clear, firstly, what the legislator means by the basic and secondary functions of the state. Secondly, what list defines the objects that are the property of the Ukrainian people, and thirdly, what property forms the material basis of the state sovereignty of Ukraine.

In addition, in the theory of state and law, the functions of the state, as the main areas of its activity that practically ensure its vital activity, are usually divided into internal (aimed at solving the internal problems of the country) and external (aimed at establishing and maintaining political and economic relations with other countries) (Gusareva & Tikhomirova, 2017). Together, they are closely interrelated, and therefore, the violation of the functioning of one of them, according to the principle of the "cascade effect", leads to catastrophic consequences for the other. As an example – the financial crisis of 2008, when the reckless strategy of providing mortgage loans in the United States created a collapse in the real estate stock market, which led to the bankruptcy of one of the world's largest investment banks, Lehman Brothers, and as a result, led to a global financial crisis, the consequences of which the Ukrainian economy is still experiencing (Kachur *et al.*, 2016; Kolinets, 2018).

Instead, the national legislation on critical infrastructure referred to "vital functions and/or services" as those areas of activity that are implemented not only by state or local authorities but also by individuals or legal entities of any form of ownership. This differentiation, branching and inconsistency of the normatively defined lists of objects that are not subject to privatisation with vital functions and/or services forces to apply a structural and functional approach with which to determine the main criteria for classifying critical infrastructure objects. Thus, infrastructure can be considered both from the standpoint of its form, internal structure and content and to cover its general purpose in society (Table 1).

Table 1. Classification of critical infrastructure based on a structural and functional approach

Classification criteria	Classification
By functional purpose	Agricultural and industrial; banking; construction; investment; innovation; institutional; information or telecommunications; defence and security; security and protection; industrial and industrial; socio-cultural; insurance; trade or market; financial, transport
By territorial coverage	International; national; regional; local (object)
By form of ownership	Public; private; mixed (corporate)
By intended purpose	Military; civil (social); economic
By industry division	Intersectoral (universal); intra-sectoral (special)
By the level of profitable and investment attractiveness	Profitable (commercial); sponsored (non-profit)
By organisation form	Real; virtual
By level of regulation	Regulatory; unregulated
By time of operation and/or provision of services	One-time (short-term); permanent (regular)
By degree of maturity	Developed (formed); undeveloped (unformed)
By importance category	National; regional, local; local
By management level	National; regional(industry); local; object

Source: compiled by the author

Considering the above classification, at least two ways to commit illegal privatisation of critical infrastructure facilities can be distinguished. Firstly, by abuse of power or official position during the privatisation procedure, and secondly, by committing official forgery or providing deliberately false information about the type of privatisation property, the assessment of it and/or the subject of privatisation. They can be committed both secretly and openly but in a veiled (hidden) form. It is essential to clarify the circumstances concerning the person responsible, the factors that influenced the implementation of criminal actions (purpose and motives), the factors that determined the choice of the method of committing a criminal offence, the presence of corrupt ties in state and local authorities, the nature of their relationship, and the relation

[1] Law of Ukraine No. 2269-VIII "On the Privatisation of State and Communal Property". (2018, January). Retrieved from https://zakon.rada.gov.ua/laws/show/2269-19#Text.
[2] Law of Ukraine No. 1882-IX "On Critical Infrastructure". (2021, November). Retrieved from https://zakon.rada.gov.ua/laws/show/1882-20#Text.

of the subject of a criminal offence to the subject of criminal encroachment, which influenced the choice of the method of committing this socially dangerous act. Considering this, information and/or data are subject to mandatory identification not only regarding the privatisation property and the person – subject of privatisation, but also the procedure for its implementation and the contractual price of alienation. Under these conditions, when investigating the illegal privatisation of critical infrastructure facilities, it is of great forensic importance to identify both material and ideal traces of criminal offences. A special place in this process is given to documentary sources of information (Komisarchuk, 2017a), which, considering the subject of research, can be conditionally grouped into three main groups, presented in Table 2.

Table 2. Classification of documentary sources of information on the illegal privatisation of critical infrastructure facilities

Current regulatory legal acts regulating the privatisation procedure	Documents that reflect illegal privatisation	Documents reflecting the privatisation procedure
These documents regulate the regulatory aspects of privatisation, assessment, and protection of critical infrastructure facilities. These include legislative laws and bylaws in force at the time of privatisation.	These are documents, the content of which can directly reflect the illegal privatisation of critical infrastructure objects (certificates of ownership, inventory lists, forged acts, purchase and sale agreements, fictitious declarations of the origin of funds, lease agreements, court decisions, etc.).	These are documents that reflect the procedure for transferring critical infrastructure objects to ownership (acts on the creation and registration of a commercial structure and its financial statements, origin and movement of funds, orders, inventory lists, acts of acceptance and transfer, extracts from registers, etc.).

Source: compiled by the author

In this regard, attention is drawn to the legality and validity of the decision of an authorised official to start a pre-trial investigation. The complexity of this issue lies in the fact that from the moment of receipt of primary information about criminal offences, the investigator and prosecutor are limited not only in the time of entering such information and/or data in the relevant state register of pre-trial investigations but also in the procedural means of verifying the information received before the start of the pre-trial investigation (Article 214 of the CPC of Ukraine).[1] Therefore, it is advisable to identify documentary information about the illegal privatisation of critical infrastructure facilities immediately after its receipt, where identification is understood as a certain procedure for checking the available (factual) information, to resolve the issue of the need to enter it in the relevant register.

In the classical sense, it is possible to distinguish at least three ways of collecting primary information about criminal offences, namely: observation, experiment, and survey. Observation provides an opportunity for the investigator or prosecutor to analyse the situation at the scene of an incident directly by examining and analysing it. An experiment that provides an opportunity to establish a causal relationship. To this end, to clarify the circumstances of a criminal offence, the legislator was given the opportunity to conduct additional verification actions that are not related to the inspection of the scene of the incident. In turn, the survey allows obtaining the necessary information and/or data about a criminal offence through social interaction. Therewith, it is not necessary to collect written explanations from the interviewees. The process of communication itself consists of verbal or nonverbal exchange of information, which allows perceiving and understanding the interlocutor. Therefore, when examining and evaluating primary information about the illegal privatisation of critical infrastructure objects, a documentary or audit survey is effective and, in some cases, the only way to identify objective signs of a criminal offence. When analysing the primary information about a criminal offence by an authorised official, a number of circumstances should be clarified, namely: whether the documents sent or handed over are a reason for the start of a pre-trial investigation; whether their content contains facts indicating signs of a criminal offence; on the basis of which specific data it is possible to conclude that the facts given could actually have taken place; under what article of the Special part of the Criminal Code of Ukraine a criminal offence can be qualified, which is referred to in documentary sources; whether the information given in the documents refers to information with restricted access; whether the applicant is a person-denunciator; whether there is a need to implement additional measures to ensure the security of the applicant person in the interests of justice; whether the authorised body and a specific official conduct a pre-trial investigation into the commission of a criminal offences given in documentary sources of information or available materials are subject to transfer under territorial or subject jurisdiction.

Considering the assigned tasks, employees of control and audit services, auditors, accountants, tax specialists, surveyors, appraisers, non-committed employees

[1] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.

of the State Property Fund of Ukraine, the State Service for the protection of critical infrastructure and ensuring of the national resilience system, the National Agency for the Prevention of Corruption can be invited as consultants, etc. Otherwise, the received information is processed according to the rules of general office management[1]. However, this does not discredit the person who is the bearer of information about a criminal offence, and, accordingly, does not deprive them of his functional importance in relation to the beginning of a pre-trial investigation. Considering the public response to the illegal privatisation of critical infrastructure facilities, the process of verifying applications (reports) of a criminal offence should be continued in accordance with departmental acts regulating the activities of authorised law enforcement agencies. This approach is also of practical importance, as it provides an opportunity for society to assess the state of law enforcement activities in the fight against economic crime, where success depends not only on the specific person who informed the law enforcement agencies about the committed act but also on the professional competence of authorised participants in criminal proceedings, in the course of their direct participation in the implementation of security measures in the economic sphere. The results of this activity should be documented by a report of authorised officials with mandatory indication of data obtained during the performance of their powers, which are registered in the state information system of criminal offences.

Investigating the forensic characteristics of a person guilty in criminal proceedings on illegal privatisation of state or municipal property, it should be noted that the subject of this criminal offence can be a sane person who has reached the age of sixteen and is directly involved in the privatisation process (Article 233 of the Criminal Code of Ukraine)[2]. This provision is primarily justified by the person's civil legal capacity in relation to the right to make transactions (Frintova & Frinta, 2022). When it comes to the illegal privatisation of critical infrastructure facilities, it is likely that there is a special entity in the composition under study. They can be both foreigners and citizens of Ukraine. In particular, persons to whom privatisation property is entrusted, heads of the object of privatisation, people's deputies, officials of state (local) executive authorities, participants in privatisation legal relations, non-residents, the activities of which are coordinated by special services of foreign states, etc. (Humin & Pryakhin, 2020; Chumakova, 2022). In this context, the activities of subjects of illegal privatisation of critical infrastructure are mostly organised in nature with established corrupt ties (relations) in state or local authorities. Therefore, this illegal activity can be characterised by separate features, which are as follows. Firstly, these illegal transactions involve officials authorised to conduct privatisation processes or related procedures. Secondly, the implementation of criminal intentions requires "intellectual properties", which refers to this category of criminal offences as acts the commission of which requires a certain set of systematised special knowledge. Thirdly, the socially dangerous consequences of these criminal offences reflect significant material losses for the state and its population at the state or municipal levels. Fourthly, the commission of these criminal acts is characterised by high latency. In particular, due to the fact that the subjects of privatisation legal relations themselves are interested in implementing criminal intentions, which, as a result, masks this illegal activity under the guise of completely legal civil operations.

Privatisation of state or municipal property can be legal only if the provisions of general (civil) and special legislation in this area of activity are not violated. To the latter, except for the legislation on privatisation,[3] researchers refer, firstly, the Land Code of Ukraine[4] regarding the privatisation of land plots (Krykh, 2008; Chumakova, 2022). Secondly, the Housing Code of Ukraine[5] on the privatisation of housing stock (Potip & Negodchenko, 2019). Third, the Law of Ukraine "On the List of Cultural Heritage Monuments that are not Subject to Privatisation"[6] regarding the privatisation of cultural heritage sites listed in the Register of Immovable Monuments of Ukraine (Arkhipova & Klevchuk, 2021). Fourthly, other regulatory acts of the Cabinet of Ministers of Ukraine and the State Property Fund that define the list of objects of small or large privatisation or objects that are not subject to alienation (Zabzaliuk & Besaha, 2023).

This is one of the key principles of privatisation, which consists of the well-known postulate: "only what is provided for by law is allowed". Given this, the institution of privatisation belongs to the basic institutions of civil law, but with certain features. This is also confirmed by the decision of the Constitutional Court of Ukraine No. 9-rp of July 1, 1998[7], the operative part of which "privatisation agreements" were assigned to special types of transactions under which the purchase and

[1] Law of Ukraine No. 393/96-BP "On the Appeal of Citizens". (1996, October). Retrieved from https://zakon.rada.gov.ua/laws/show/393/96-%D0%B2%D1%80#Text.
[2] Criminal Code of Ukraine. (2001, May). Retrieved from https://zakon.rada.gov.ua/laws/show/2001-05#Text.
[3] Law of Ukraine No. 2269-VIII "On the Privatisation of State and Communal Property". (2018, January). Retrieved from https://zakon.rada.gov.ua/laws/show/2269-19#Text.
[4] Land Code of Ukraine. (2001, October). Retrieved from https://zakon.rada.gov.ua/laws/show/2768-14#Text..
[5] Housing Code of Ukraine. (1983, June). Retrieved from https://zakon.rada.gov.ua/laws/show/5464-10#Text.
[6] Law of Ukraine No. 574-VI "On the List of Monuments of Cultural Heritage that are not Subject to Privatisation". (2008, September). Retrieved from https://zakon.rada.gov.ua/laws/show/574-17.
[7] Decision Constitutional Court of Ukraine No. vn 12-rp/98 "In the Case of the Constitutional Appeal of the Kyiv City Council Trade Unions Regarding the Official Interpretation of the Part of the Third Article 21 of the Labour Code of Ukraine". (1998, July). Retrieved from https://zakon.rada.gov.ua/laws/show/v012p710-98#Text.

sale of state or municipal property to private ownership is conducted with a corresponding change in the form of this ownership right (Dontsov, 2020). In this regard, as rightly noted by O. Zadorozhnyi (2018), privatisation of state or municipal property is characterised, firstly, by a specific purpose and principles of its implementation, secondly, by a special subject and object of alienation, and thirdly, by a special procedure and content of privatisation legal relations.

This allows dividing critical infrastructure objects into two groups. The first group includes objects of critical infrastructure that are subject to privatisation but subject to compliance with the appropriate procedure for granting permission for their alienation and considering the qualification requirements (features and restrictions) for taking part in the sale of eligible buyers. In turn, the second category should include critical infrastructure objects that are of strategic importance for the state, which does not allow them to be alienated to private ownership.

Considering the banquet composition of criminal offences under Article 233 of the Criminal Code of Ukraine[1], the issue under study is complicated primarily by insufficient legal regulation of privatisation procedures regarding infrastructure facilities that are critical for the functioning of the state and its population, especially those that have a municipal form of ownership. This state of affairs, according to O. Reznik & O. Bondarenko (2021), not only creates certain difficulties in distinguishing socially dangerous acts from civil relations but also violates the constitutional rights of territorial communities to property. Since, as T. Davchenko (2020) rightly notes, enterprises that are not always important for the municipality are alienated to private ownership at the market price and transferred to an effective owner who can ensure their further proper functioning. However, privatisation enterprises are deliberately brought to bankruptcy, and their production areas are turned into shopping, entertainment, warehouse, and office premises. As an example of such a privatisation transaction, the illegal transfer of real estate by individual officials of the Kyiv city administration at a reduced price and without holding an appropriate auction can be noted, which caused damage to the municipality in the amount of more than UAH 150 million (The State Bureau of Investigation..., 2021). Another example is the alienation of the First Kyiv Machine-Building Plant to private ownership. On this occasion, according to the State Bureau of Investigation, during the assessment process, the value of privatised property was reduced by more than UAH 1 billion (The State Bureau of Investigation..., 2022).

Illegal alienation of civil protection structures to private ownership is also reviewed. Thus, according to the Ministry of Internal Affairs of Ukraine, only in 2014 in the Dnipropetrovsk region, contrary to Part 12 of Article 32 of the Civil Protection Code of Ukraine,[2] 38 facts of illegal actions to remove bomb shelters from communal ownership to private ownership were exposed. In each of the above cases of illegal privatisation, their "buyers" had certificates of ownership of the real estate, which were issued by the relevant local government regulatory authorities, confirming the legal ownership of these assets by the individuals (The Ministry of Internal Affairs revealed..., 2014).

Continuing this subject, it should be noted that along with positive factors, digitalisation processes in society have contributed to the emergence of new ways of committing criminal offences, including the illegal privatisation of infrastructure facilities. For example, in early 2023, the Security Service of Ukraine exposed a criminal scheme to legalise illegal buildings through hacking and changing the unified state electronic system in the construction sector. In this case, this refers not to the usual cybercrimes but to offences that could legalise hundreds of buildings built in violation of building codes, which as a result could lead to man-made emergencies (This year, the Security…, 2023).

Considering the importance of critical infrastructure facilities for ensuring the proper functioning of the main activities of the state during their privatisation, one of the critical places is occupied by the circle of subjects of privatisation relations and their legal status. Under the subjects of privatisation O. Dudorov & K. Dudorova (2011) refer to individuals or legal entities with legislative powers to alienate or acquire ownership of privatisation property or their ability to otherwise influence privatisation processes. Regarding this, R. Komisarchuk (2017b) proposes to regulate issues related to the non-admission to privatisation processes of persons registered in offshore zones and countries that are not participants in international legal relations in the field of countering the legalisation (laundering) of proceeds from crime. These persons should also include residents of countries that are not participants in international legal relations on preventing and countering cybercrime, including states that sponsor terrorism and violators of other international legal relations, in particular, those related to war crimes, crimes against humanity, genocide, ecocide, etc.

Therefore, during the privatisation of critical infrastructure facilities, the state should ensure effective public and parliamentary-government control. In this regard, supporting the opinion of M.M. Potip (2019) on the formation of a separate, independent, controlling institution for the privatisation of state or municipal property, attention is drawn to the activities of the National Agency for the Prevention of Corruption and the State Service for the protection of critical infrastructure and ensuring of the national resilience system of Ukraine. Service for the protection of critical infrastructure and ensuring the national resilience system

[1] Criminal Code of Ukraine. (2001, May). Retrieved from https://zakon.rada.gov.ua/laws/show/2001-05#Text.
[2] Code of Civil Protection of Ukraine. (2012, October). Retrieved from https://zakon.rada.gov.ua/laws/show/5403-17#Text.

is a newly formed central executive authority, the main task of which is to form and implement state policy in the field of critical infrastructure protection[1]. Considering the above, it is proposed to include ensuring state control over the privatisation processes of critical infrastructure facilities and determining priority areas for their interaction with authorised law enforcement agencies to prevent illegal privatisation of critical infrastructure facilities in the powers of Service for the protection of critical infrastructure and ensuring the national resilience system. In turn, this will provide additional regulatory guarantees for the protection of critical infrastructure from illegal privatisation and, as a result, strengthen the national system of sustainability of Ukraine in this area of legal relations.

Conclusions

Thus, in Ukraine, at the present stage of the development of legal science, issues related to the investigation of criminal offences related to the illegal privatisation of state or municipal property remain relevant. Critical infrastructure facilities occupy a special place among this composition of socially dangerous acts. This is primarily due to their functional importance, aimed at providing vital functions and/or services for the state and its population. In other words, it means that critical infrastructure ensures the life of the main activities of the state.

Solving these problems requires a comprehensive approach, where the state should step up not only the activities of authorised law enforcement agencies to counteract violations of national legislation in the privatisation sector of the economy but also ensure proper conditions for regulating the legal mechanism for protecting critical infrastructure objects from illegal privatisation. Despite the urgency of this issue, the level of state protection of critical infrastructure facilities is insufficient. For the most part, the reason for this situation is the lack of legally defined criteria for the privatisation of critical infrastructure and the implementation of independent control over the privatisation processes in relation to its facilities. Together with corruption in state and local government bodies, in the absence of an independent press, increasing inflation, insufficient legal framework, etc., the activities of law enforcement agencies in the fight against illegal privatisation are fruitless. This is explained by the fact that, under such conditions, it is easy to hide the traces of this criminal offence, and it is difficult to determine the motives for its commission.

The situation in the privatisation sector of the economy is also aggravated by the lack of regulatory criteria for classifying critical infrastructure objects as privatisation, the creation of legal mechanisms for their alienation into private ownership, and ensuring proper state and public control over their further safe functioning. Negative factors also include insufficient communication of relevant law enforcement agencies with authorised entities of the national critical infrastructure protection system. In this regard, it is proposed, at the regulatory level, to include the functions of forming a register of critical infrastructure objects that are subject to full or partial privatisation and monitoring the legality of their alienation into private ownership, including in terms of verifying the accuracy of information on the assessment of privatisation property and information about potential buyers in the powers of Service for the protection of critical infrastructure and ensuring the national resilience system. Therewith, the system of protection of critical infrastructure forces the legislator to supplement Article 233 of the Criminal Code of Ukraine with separate provisions that would provide for the qualification signs of illegal privatisation of critical infrastructure objects while simultaneously increasing the penalty to imprisonment. These changes will further provide additional guarantees for the protection of national security not only in the privatisation sector of the economy but also in the national system for protecting critical infrastructure.

Promising areas of further research on this subject are the security of the national system for protecting critical infrastructure from cyber attacks, including military ones. In this direction, it is proposed to analyse the principles of conducting investigations using electronic digital data provided by the Berkeley Protocols.

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Conflict of Interest

None.

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Незаконна приватизація об'єктів критичної інфраструктури: проблемні аспекти та шляхи їх вирішення

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Анотація
Актуальність предмета дослідження зумовлена практичною важливістю захисту об'єктів критичної інфраструктури за умов підвищення потенційних загроз від злочинних посягань, пов'язаних з незаконною приватизацією таких об'єктів. Мета статті полягає в аналізі сучасного стану кримінально-правової охорони критичної інфраструктури від незаконної приватизації, розробленні окремих рекомендацій щодо особливостей організації розслідування незаконної приватизації об'єктів критичної інфраструктури й наданні пропозицій з удосконалення національної системи захисту критичної інфраструктури від незаконної приватизації. Методологічний підхід до наукового дослідження ґрунтувався на використанні діагностичного методу, за допомогою якого приватизацію розглянуто і як соціальне, і як правове явище. Також використано методи аналізу, догматичний, формально-юридичний, моделювання, порівняльно-правовий. Дослідження передбачало комплексний огляд і вивчення поточного стану нормативно-правового регулювання захисту об'єктів критичної інфраструктури від незаконної приватизації в кримінально-правовому вимірі. Встановлено, що нині він є недостатнім і потребує вдосконалення. Обґрунтовано пропозиції щодо критеріїв віднесення об'єктів критичної інфраструктури до приватизаційних процесів, створення правових механізмів їх відчуження в приватну власність і забезпечення належного державного контролю щодо їх подальшого функціонування. Акцентовано на особливостях початку досудового розслідування незаконної приватизації об'єктів критичної інфраструктури й організації досудового розслідування з огляду на криміналістичну класифікацію кримінальних правопорушень, які вчиняють у процесі приватизації. Запропоновано доповнити ст. 233 закону України про кримінальну відповідальність окремим кваліфікаційним складом, який встановлював би кримінальну відповідальність за незаконну приватизацію об'єктів критичної інфраструктури, передбачивши за вчинення цього суспільно небезпечного діяння покарання у виді позбавлення волі. Отримані результати мають практичне значення в розробленні й обґрунтуванні теоретичних положень, висновків і рекомендацій з удосконалення національної системи захисту критичної інфраструктури від кримінальних правопорушень

Ключові слова:
незаконне відчуження; державне та комунальне майно; життєво важливі об'єкти; суспільно небезпечне діяння; розслідування кримінальних правопорушень; захист національної безпеки