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INDEPENDENT USE OF INSIDER INFORMATION: CRIMINAL AND LEGAL PHYSICAL ANALYSIS

Most of the developed stock markets in the world have laws that prohibit the sale of insider information by «insiders», which are usually attributed to a relatively broad range of individuals who have access to such information.

On May 20, 2011, the President of Ukraine signed a law prohibiting the use of insider information on the stock market and envisages the introduction into the Code of Administrative Offenses of Ukraine, the Criminal Code of Ukraine, the Laws of Ukraine «On State Regulation of the Securities Market in Ukraine» and «On Securities and Stock market «of the relevant changes aimed at preventing the use of insider information on the stock market [1, c. 56-58].

The main direct object of the crime is the social relations in the field of the functioning of the stock market. An additional direct object is the right to property and the principles of fair competition. The public danger of a crime lies in the fact that the illegal use of insider information can negatively affect the stability of the stock market and lead to a deterioration in the attractiveness of issuers.

The constitutive feature of this crime is that parts 1 and 2 of this article provide for independent offenses of the same structures.

The subject of the crime is insider information. - any unpublished information on the issuer, its securities or transactions with them, the disclosure of which may significantly affect the value of securities (Article 44 of the Law of Ukraine of February 23, 2006, No. 3480-IV «On Securities and the Stock Market»).

On the objective side, the crime is characterized by actions (according to Part 1 and Part 2 of Article 2321 of the Criminal Code), socially dangerous consequences and a causal connection between actions and consequences. The actions provided for in part 1 are intentional unlawful disclosure of insider information; its transmission or access to it; providing with the use of such information recommendations on the acquisition or alienation of securities or derivatives (derivatives); Part 2 - in the commission, using insider information for own benefit or in favor of others, transactions aimed at the acquisition or alienation of securities or derivatives (derivatives) to which insider information relates;

The consequences of both Part 1 and Part 2 of the commented article are described in the same way: the receipt by a person who committed the specified actions or third parties of unreasonable profits to a significant extent; avoidance of significant losses by a member of the stock market or third parties; causing significant damage to the rights protected by law, the freedoms and interests of individual citizens, or public or public interests, or the interests of legal persons (a comprehensive interpretation of the last two types of damage is given in paragraph 1 of the note to Article 2321 of the Criminal Code).

This crime is considered to be terminated from the moment of at least one of the consequences indicated in the disposition (material composition). Illegal disclosure of insider information should be

considered its disclosure or communication in any way to at least one person who has no legitimate reason to be aware of such information.

Illegal transmission of insider information is its transmission in any way, including by facsimile means, on any kind of media, as well as in any generally accepted form, understandable for the perception of another person who has no legitimate reason to be acquainted with such information.

Providing with the use of insider information recommendations on the acquisition or alienation of securities or derivatives may involve the decision to acquire or dispose of them, as well as other actions for the commission of transactions by another person. The main feature of the commission, using insider information, of transactions aimed at the acquisition or alienation of securities or derivatives (derivatives) to which insider information refers, is that the subject of the offense commits transactions for their own benefit or in favor of others.

Under the persons (the subject of a crime), who committed the actions provided for in this Article, shall mean: officials of the issuer, including those who were officials of the issuer at the moment of inspecting insider information; persons who have access to insider information in connection with the performance of their labor (official) duties or contractual obligations, regardless of relations with the issuer, including employees of professional stock market participants; civil servants who know the insider information as a result of their official (official) duties; persons who have been acquainted with insider information in an illegal manner; auditors, notaries, experts, appraisers, arbitration managers, or other persons who fulfill publicly granted statutory powers. The subjective aspect of the crime is characterized by intentional form of guilty, the attitude to the consequences may be both intentional and careless.

In the case of disclosure of insider information by an employee by negligence, which led to causing significant harm or grave consequences, the fine should be qualified as a professional negligence under art. 367 of the Criminal Code [2, c. 458-459].

Given the foregoing, one can conclude that the subject of a crime under Art. 232-1 of the Criminal Code of Ukraine is currently insider information, that is: any unpublished information about the

issuer, its securities or transactions with them, the disclosure of which may significantly affect the value of securities.

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**ARTICLE 4 OF EUROPEAN CONVENTION ON THE PROTECTION
OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS AND
NORMS OF CRIMINAL LEGISLATION IN UKRAINE:
COMPARATIVE ASPECTS**

In Ukraine, as in some other European countries, there has been an increase in the number of trafficked persons both within their own national borders and abroad. Thus, in recent years 332 cases of sale of people into slavery have been registered and about 100 thousand Ukrainians have been victims of trade [1].

The current state of employment of the Ukrainian population greatly contributes to the employment of Ukrainian citizens, and especially women, abroad. At the same time, they are used not only as cheap labor, but also as sex - slaves. Therefore, recently, certain actuality in Ukraine is committed by sexual slavery. The mass media often reports about Ukrainian sex slaves abroad.

Recognizing the importance of combating slavery, the international community, systematically, through the adoption of international legal acts, is combating this evil, which fully applies to the European Convention. Yes, Art. 4 (Prohibition of slavery and forced labor) of the European Convention, states that:

1. No one shall be held in bondage or servitude.
2. No one shall be subjected to forced or compulsory labor.