

UDC 343.9

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Hrebenkova, Marharyta (2021). Types and specificities of electronic documents and electronic presentations as sources of evidence. *Entrepreneurship, Economy and Law*, 10, 103–110, doi <https://doi.org/10.32849/2663-5313/2021.10.16>

## TYPES AND SPECIFITIES OF ELECTRONIC DOCUMENTS AND ELECTRONIC PRESENTATIONS AS SOURCES OF EVIDENCE

**Abstract. Purpose.** The aim of the article is to cover the legal nature of the sources of evidentiary information, i.e., electronic evidence, and their place in the system of evidence.

**Research methods.** Research methods are chosen on the basis of the specific objectives, tasks, object and subject matter of the study. These include a dialectic method for elucidating some aspects of electronic documents and presentations as sources of evidentiary information in criminal proceedings; the technical legal method is used to study the law provisions and specificities of legal technology; hermeneutic one makes it possible to reveal the legal content of provisions of the CPC and legislative proposals and to identify flaws in the regulatory mechanism.

**Results.** The current legislation, legislative proposals aimed at expanding sources of evidentiary information are analysed. The need for electronic documents and presentations as the sources of evidentiary information is emphasised. Understandably, tangible medium can be referred to “tangible objects,” that is, related to physical evidence, since the latter may indeed contain information relevant to criminal proceedings. For example, appropriate skills, techniques and other cognitive tools, enabling to properly fix and interpret the crime pattern, are required to perceive any traces. In practice, “electronic media” can be examined both as parts of the physical world and as means of reading, recording and reproduction of computer hardware. In such case, it can be stated that “electronic documents” are really a criminal procedural category indeed closely connected with electronic information media.

**Conclusions.** The article analyses the concepts of “electronic evidence,” “electronic documents” and “electronic presentations”; determines their legal nature and further ways of developing the concept of “electronic evidence” in criminal procedure. It is proposed to increase the list of procedural sources of evidence by supplementing “electronic presentations.”

**Key words:** sources of evidence, electronic evidence, electronic documents, electronic information medium, electronic presentations, pretrial investigation.

### 1. Introduction

The creation and use of the Internet, new technologies and new ways of communication have caused the changes in law. New ways of committing crimes emerged, crime became more experienced and inventive. The national legislator has faced with the need both to introduce legal provisions for regulating relations that arise and to adapt existing legislative provisions to new realities. The aim of the article is to elucidate the legal nature of the sources of evidentiary information, namely electronic evidence, and their place in the system of evidence.

Rapid development of science and technology provides new opportunities for the progress of mankind. Evidence in electronic form, seen

as admissible in courts before, is already an element of the evidence base. In practice, there are many questions about the possibility of using information from the Internet as evidence or stored in electronic media. Due to the increasing relevancy of the issue, both legislative proposals and some scientific perspectives on the issue occur.

### 2. Review of regulations on electronic documents and electronic presentations

One of the first legal regulations, which provided for the use of electronic means of information fixation was the Law of Ukraine on Information as of 02 October 1992, in which part 1 of article 1 has defined the term “information” as “*any intelligence and/or data that may be stored in tangible media or presented electronically*”

(Law of Ukraine On Information, 1992). The lawmaker immediately separated information in tangible media from electronically stored information. In turn, the lawmaker gave a separate definition of the term "document": "*tangible medium, which stores information, main functions thereof are its storage and transmission in time and space*" (Law of Ukraine On Information, 1992). Therefore, it can be argued that the term "information" which is intelligence or data is important in proving only when it is in the medium. That is, with regard to the material world it is intangible. Therefore, specificities enable to understand that "electronic form (mode)" is an intangible form of fixation for intangible by its essence information. This is the way to interpret the "electronic form" of fixation in accordance with the provisions of the law being investigated. Consequently, it is not clear that it is an "electronic mode," because the phenomenon is only a form of information presentation and has an indirect relation to the document, since the document, according to the law, is a material medium.

Provisions of the Law of Ukraine on electronic documents and electronic document flow of confuses even more defining the term "electronic document" as "*a document that fixes information in the form of electronic data, including mandatory particulars of the document*" (Art. 5 of the Law) (Law of Ukraine On Electronic Documents and Electronic Document Flow, 2003). In this case, obviously the legislator interprets a tangible medium (the object of the material world), as information (non-material category) fixed in electronic data, including the mandatory particulars of the document. According to part 1 of article 8 of this Law, electronic documents have the legal status, according to which "*the legal force and admissibility of the electronic document cannot be denied solely because it has an electronic form*" (Shepitko, 2010). Therefore, "electronic documents" for the first time came in legal force equal to physical ones. According to the above theoretical provisions on the web portal of the State Archival Service of Ukraine, the content of the "electronic document" can be considered as "*text and graphic parts that make up the document. The context of the electronic document is information about the relationship of documented information with natural or legal persons and other documents*" (Website of the State Archival Service of Ukraine, n.d.). Thus, it is possible to agree that the components of the "electronic document" can be grouped into structural elements such as content and context. However, in turn, the "electronic document," according to the above theoretical provisions, is divided into the internal "*this is the structure of the content part of the document;*" (Website

of the State Archival Service of Ukraine, n.d) and the external "*this is the structure of the environment in which an electronic document exists (information medium, file format, etc.)*" (Website of the State Archival Service of Ukraine, n.d.). Such interpretation of "electronic documents" by their structure has been since the entry into force of the Law of Ukraine on electronic documents and electronic document flow".

However, it should be noted that finally the lawmaker has not revealed the meaning of "electronic data," which is in an intangible form of fixation and fixes intangible, abstract intelligence in the tangible medium. The document of a tangible nature is now both tangible and intangible. Intelligence in the form of electronic data cannot be read (perceived) without tangible media. A.S. Bilousov, argued that this is the obvious dichotomy. The latter for the first time introduced the term "computer objects," stressing the mutual dependence of "electronic information" on its medium (Bilousov, 2008) and referring them to the category of physical evidence.

### 3. Scientific perspectives on using electronic evidence

V.Yu. Shepitko in his study on the role of electronic information means has defined potential advantages of information technologies. He argues that they can be used during criminal proceedings and forensic examinations "*information technologies enables to gather, compare and analyse information from different sources (messages, search operation results, interrogations, address database, etc.), to establish a chronological sequence of events over time and correspondence of individual facts, to make plans and patterns of the scene, model of the crime event using computer equipment, etc.*" (Shepitko, 2010, pp. 196-197). In other words, the role of electronic information technologies has been clearly and theoretically reasoned not only as a subject matter of proof but also as a means of perception through which the work of law enforcement bodies can be technically improved.

A.V. Kovalenko in his work has come even closer to understanding the legislative regulation of the problem of "electronic evidence". Thus, he analyses: current provisions of the Civil Procedure Code of Ukraine, the Economic Procedure Code of Ukraine, the Code of Administrative Justice of Ukraine, the concept of electronic evidence, different scientific concepts concerning the definition of the investigated problem and finally determines the urgent need to formulate the doctrinal and legal definitions of the concept of "electronic evidence" in the criminal procedure and in the scientific development of the basic

approaches to gathering, examining and using electronic evidence with further consolidation of such approaches in the CPC of Ukraine (Kovalenko, 2018, pp. 237-233).

Therefore, over recent, the importance of "electronic evidence" and/or "electronic documents" has been increasing years in the science of law, for example, in their study, O. Kravchenko and K. Makarchuk underlined the adoption of Draft Law No. 6232 as of June 20, 2017, providing for amendments to the following procedure codes: the EPC (the Economic Procedure Code of Ukraine), the Civil PC (the Civil Procedure Code of Ukraine), the CAJ (the Code of Administrative Justice of Ukraine). In this regard, the corresponding Law of Ukraine 2147-VIII was adopted later and introduced a new term "electronic proof". Furthermore, in the course of this study, scientists state the problems of determining electronic evidence and their sources in the CPC of Ukraine, such as *"the criteria for establishing one or another electronic proof either as an original or as a copy"* (Kravchenko, & Makarchuk, 2019).

For example according to amendments to Art. 94 of the EPC of Ukraine, Art. 100 of the Civil PC of Ukraine, Art. 99 of the CAJ of Ukraine, "electronic evidence" is: *"... information in electronic (digital) form that contains data on circumstances relevant to the case, in particular, electronic documents (including text documents, graphic images, plans, photos, video and audio recordings, etc.), web sites (pages), text, multimedia and voice messages, metadata, databases and other data in electronic form. Such data can be stored in portable devices (memory cards, mobile phones, etc.), servers, backup systems, other electronic storage locations (including the Internet)"* (Law of Ukraine On Amendments to the Commercial Procedural Code of Ukraine, the Civil Procedure Code of Ukraine, the Code of Administrative Procedure of Ukraine and Other Legislative Acts, 2017). According to the provisions of the above definition, "electronic evidence" is recognized as *"information in electronic (digital) form, which contains data on circumstances which are relevant for the case"* and these data should be stored in the appropriate media.

A.V. Stolitnii and I.V. Kalancha argue that: *"Sources of evidence available in the criminal procedure of Ukraine ... do not allow to declare separate electronic evidence as an individual source, however, their electronic fixation is stated. Thus, ... the term "electronic evidence" should have only theoretical recognition, while the artificial concept of "electronic evidence" should not replace the electronic form of their fixation. Of course, ...there is the prospect of such format of electronic information... that will require*

*the expansion of sources of evidence by electronic ones. In this case, the criminal procedure law will require amendments in terms of how it is received, fixed, stored and used. Therefore, first of all, it is necessary to clearly delimit the electronic source of evidence and to fix the evidence in electronic format, ..."* (Stolitnii, & Kalancha, 2019, pp. 188). Therefore, the latter review of "electronic evidence" in the context of Bilousov and Shepitko's ideas has been continued. Consequently, the ideas of double criminalistic perception of "electronic sources" have been further studied and placed among other scientific and theoretical ideas of the mentioned topic. However, the main difference stated by researchers is that electronic information/intelligence in the tangible media in this case is considered separately as an "electronic source" and as a separate form of protocol fixation. In this case, scientists unintentionally delimitate "electronic sources of evidence" from "electronic documents," which directly contradicts the CPC provisions of Ukraine.

The provisions of the CPC of Ukraine, which require all participants to comply with the principles of publicity, "electronic evidence" is considered in the context of documents (as a type of physical evidence). According to para. 1 of part 2 of Art. 99 CPC of Ukraine *"documents, provided the availability of information in them, ... may include: footage, sound recording, video recording and other media (including electronic)"* (Criminal Procedure Code of Ukraine, 2012). In this case, the legal concept of physical evidence as "material objects" (Art. 98 CPC of Ukraine) is the same as the notion of "electronic documents/evidence". According to a teaching manual by M.V. Hutsaliuk, O.V. Korneiko and V.H. Khakhanovskiy, the list provided by para. 1 of part 2 of article 99 of the CPC of Ukraine should be expanded by *"... Information media that fix the procedural actions by the technical means. In some cases, namely, when the document is unchanged, it can have both signs of the document and a physical evidence"* (Hutsaliuk, Korneiko, & Khakhanovskiy, 2019, p. 5). Accordingly, the authors of the textbook once again argue that the "electronic evidence" is the same as a physical evidence, assuming the permanence of the medium of the latter. In our opinion, the permanence can be applied both to the tangible media and to the intelligence in it in electronic form. Nevertheless, as is known, according to part 1 of the Article 94 of the CPC of Ukraine, during the evaluation of evidence (electronic documents, electronic presentations) must comply with the following requirements: appropriateness, admissibility, sufficiency and reliability (Bandurka, 2013, p. 281).

According to M.A. Pohoretskyi and M.Ye. Shumylo, investigative (search) actions and covert investigative (search) actions are the most important for proving among methods of collecting evidence (Bandurka, 2013, p. 277). For example, nowadays procedurally, according to articles 93, Section 20 of the CPC, "electronic presentations" can be detected by officers of law enforcement bodies during searches (Art. 234), examination (Art. 237), as well as during temporary access to things and documents as an action of criminal proceedings (Art. 159) (Criminal Procedure Code of Ukraine, 2012). In addition, "electronic presentations" can be obtained during the conduct of covert investigative (search) actions, provided for by Articles 260, 263, 269, 269, 270 and Art. 271 of the CPC of Ukraine. In this case, they are drawn up as an appendix to the protocol of the relevant investigative (search) action (Criminal Procedure Code of Ukraine, 2012).

Understandably, regardless of the branch of law where the concept of "electronic evidence" is applied, the "electronic evidence/document" is inseparable from its information medium.

According to the content of the website of the Ukrainian Library Encyclopaedia, "electronic medium is a tangible medium, which is used for recording, storing and reproduction of information processed by means of computer techniques. Electronic media include hard drives, flash memory, CD, DVD, Blue-ray, discs, diskettes, tapes, etc." (Barkova, Zemtseva, & Sanchenko, 2014). Understandably, tangible medium can be referred to "tangible objects," that is, related to physical evidence (according to provisions of the CPC of Ukraine), since the latter may indeed contain information relevant to criminal proceedings. For example, appropriate skills, techniques and other cognitive tools, enabling to properly fix and interpret the crime pattern, are required to perceive any traces. In practice, "electronic media" can be examined both as parts of the physical world and as means of reading, recording and reproduction of computer hardware. In such case, it can be stated that "electronic documents" are really a criminal procedural category indeed closely connected with electronic information media.

S. S. Chernyavskyi and Yu.Yu. Orlov advocate the relationship between "electronic evidence/document" and the information medium in their research, substituting the term of "electronic documents" with the term "electronic images," as a separate independent type of evidence: "Electronic documents" as a source of evidence in criminal proceedings, in our opinion, are not traditional documents. Because of this, and in order to avoid terminological confusion,

the author proposes to mark them with a special term "electronic presentation" and to consider it as an independent source of evidence in criminal proceedings and a separate type of evidence" (Orlov, & Cherniavskyi, 2017, p. 116-117).

It should be noted that among other researchers of the legal nature of "electronic evidence" M.I. Demura, D.I. Klepka and I.O. Krytska should be noted because in their studies they reveal different scientific approaches to the modern attitude to the concept of "electronic evidence". For example, the following scientific perspectives on the nature of "electronic evidence" can be underlined: "1) the possibility of referring this category of objects to documents (denying the need to allocate them as an independent procedural source, emphasizing the priority of information fixed in the medium for proving); 2) the possibility of referring this category of objects to physical evidence (computer objects are one of the varieties of a separate group of physical evidence, in connection with a special field of use); the possibility of referring this category of objects to both documents and to physical evidence (digital evidence can be recognized both as physical evidence and documents); 4) the need to separate digital sources of evidentiary information as an independent procedural source (digital information is determined by unique characteristics different from other procedural sources of evidence)" (Demura, Klepka, & Krytska, 2020, p. 40).

#### 4. Promising vectors for the development of legislation on the use of electronic evidence

Therefore, in our opinion, it would be appropriate to consider in the context of understanding the nature of "electronic evidence" the provisions of the Draft Law of Ukraine On Amendments to the Criminal Procedure Code of Ukraine to Increase the Effectiveness of the Fight against Cybercrime and the Use of Electronic Evidence, according to the proposals of which, it is necessary to complete Chapter 4 "Evidence and Proving" of Section 4 "General Provisions" with paragraph 4-1 "Electronic evidence," according to which: "1. Electronic evidence is information in electronic (digital) form with intelligence that may be used as evidence of fact or circumstances established during criminal proceedings." From now on, any information in electronic (digital) form constitutes evidence. "2. Electronic evidence may include: 1) electronic documents (including text documents, graphic images, plans, photos, video and sound recordings, etc.); virtual assets; 3) web sites, web pages; text, multimedia and voice messages; metadata; databases; 7) other information in electronic (digital) form" (Draft Law of Ukraine On Amendments to the Criminal Procedure Code of Ukraine to Increase the Effectiveness of the Fight

against Cybercrime and the Use of Electronic Evidence, 2020). Thus, the "electronic document," according to the Law of Ukraine "On electronic documents and electronic document flow", is an intangible presentation, which has legal force, and now it is proposed to include "electronic documents" in the list of evidence, though we know, the provisions of the current CPC of Ukraine, provide for only "electronic documents". Such change of legislative priorities (from intelligence/information stored in a tangible medium to information exclusively in an electronic form) is a reflection of trends of social relations development, including scientific and technological progress. However, the lawmaker does not answer the question what exactly is the "electronic form of presentation/fixation". All that we know today is that the information is stored electronically in tangible media. How does it occur, what types of traces can be identified and what types of means of fixing the mentioned traces should be used in the course of the pre-trial investigation – the response we are not given.

The next part of the article empowers the bodies of pre-trial investigation, the prosecutor's office to use information as evidence in criminal proceedings: "*Copies of information contained in information (automated) systems, telecommunication systems, information and telecommunication systems, their integral parts, made by the investigator, the prosecutor with the involvement of a specialist, are found by the court an electronic evidence*"; and other participants of the criminal procedure: "*3. The parties to the criminal proceedings, the victim, the representative of the legal entity, in respect of which the proceedings are conducted, are obliged to provide the court with an electronic proof in the original or in electronic copy without any infringement of its integrity and authenticity*"; *6. The copy of electronic evidence, made by the investigator, prosecutor with the involvement of a specialist, and is found by the court the original of electronic evidence*" (Draft Law of Ukraine On Amendments to the Criminal Procedure Code of Ukraine to Increase the Effectiveness of the Fight against Cybercrime and the Use of Electronic Evidence, 2020). Moreover, the focus should be on the innovation such as "original of electronic evidence": "*4. The original electronic evidence is its presentation, which is as substantial as the procedural source of evidence*". It is quite difficult to state the urgent need to introduce the term "original electronic evidence" because, in our opinion, this definition, which gives priority to one or another information in a particular criminal proceeding, can only confuse its participants, because, according to a technical logic method, when it comes to the original, there is a ques-

tion of whether a copy is available and whether the copy of "electronic evidence" constitutes evidence equal to the original. In this case, the term "unique electronic evidence" would be more appropriate in our opinion. In turn, the term "copy of electronic evidence," used in the Draft Law, should be mentioned "*7. A party to a criminal proceeding that submits a copy of electronic evidence must indicate that he or she has the original of electronic evidence. If a copy of electronic evidence is submitted, the court may, upon request of the party to the criminal proceedings or on its own initiative, request the original of electronic evidence to be submitted to the person concerned*" (Draft Law of Ukraine On Amendments to the Criminal Procedure Code of Ukraine to Increase the Effectiveness of the Fight against Cybercrime and the Use of Electronic Evidence, 2020). Obviously, quite different attitudes concerning definition of terms "original of electronic evidence" and "copy of electronic evidence" are provided for by law. As the original, according to the proposals in para. 4 of article automatically gives the "original of electronic evidence" the status of the source of evidence, the "copy of electronic evidence" is only a subjective attitude of the party to criminal proceedings directly to "electronic evidence" provided in the course of criminal proceedings. The actual difference between the original and the copy can only be established during the course of expert examinations. This is not mentioned in the Draft Law. Thus, information relating to the commission of an offense in electronic form, which is stored in the tangible medium again turns into intangible information, dependent on the judicial body's decision exclusively whether it constitutes evidence or not, moreover the court will have the right to appoint expert examinations concerning the reasonable confirmation of the originality of one or another "electronic evidence". This, in our opinion, can serve as a lever for manipulation during the establishment of objective truth in the case.

Furthermore, in accordance with the provisions of the paragraph, we see a well-established idea about the relationship of "electronic evidence" with the medium: "*5. The parties to criminal proceedings submit electronic evidence in the tangible medium*" (Draft Law of Ukraine On Amendments to the Criminal Procedure Code of Ukraine to Increase the Effectiveness of the Fight against Cybercrime and the Use of Electronic Evidence, 2020). Therefore, the Draft Law being studied enables to conclude that its authors advocate the approach that "electronic evidence" is a separate type of sources of evidence.

At the present stage, "electronic presentations" are differentiated by specialists in

the field of library science and information and communication technologies as separate types of electronic resources or electronic documents (Karpiuk, 2014).

Evidence in electronic form, such as images and videos, is fast becoming a recognized group of forensic artifacts and is most commonly found on social networking sites and platforms. Large amounts of images, audio and video are created, transmitted, stored and forged on a daily basis, and they are posted on public internet platforms, which are again potential sources of evidence in criminal proceedings. However, with the proliferation of digital images and public tools enabling to edit digital photos, the accuracy and authenticity of the photo, for example, may become questionable. Therefore, it is important to authenticate photographs and other images properly before presenting them as potential evidence (Kravchenko, & Makarchuk, 2019, p. 364). Therefore, it would be more appropriate to use the term "electronic presentations," because this definition of the phenomenon being studied fully reflects the truth of its use in practice. Because with regard to electronic evidence, or electronic documents, it is primarily a presentation of the objects of the material world, i.e. electronic technology.

### 5. Conclusions

Therefore, not only a lack of unanimous interpretation and understanding of the term "electronic evidence," but also differences in the rep-

resentation of scientists and legislators on their legal nature and affiliation should be noted. In most cases, both scholars and law-makers agree on the intrinsic relationship of electronic information/intelligence with the medium (media) and therefore the unique source of evidence under investigation is accepted. Nevertheless, it can be argued that electronic images should be an independent source of evidence in criminal proceedings.

The term "electronic document," enshrined in the provisions of the CPC of Ukraine derives from the provisions of the adopted Law of Ukraine "On electronic documents and electronic document flow," which in turn is related to the term "information," introduced by the Law of Ukraine on Information, which has caused a number of conflicts and contradictions, due to a lack of full knowledge of "electronic form of presentation" and "electronic document." These issues should be further regulated.

Unfortunately, the term "electronic presentation" has not been legally established yet, but scientists have already identified electronic reflection as a source of evidence in electronic form. In Part 3 of Art. 99 of the CPC of Ukraine the legislator applies the term "electronic document," obviously referring to it. However, it should be admitted that there is no full procedure for the recognition, storage of "electronic presentation," its admission as evidence in criminal proceedings and the understanding of the procedural admissibility of copies of electronic images and original electronic images.

### References:

- Bandurka, O.M.** (2013). *Kryminalnyi protsesualnyi kodeks Ukrainy: naukovo-praktychnyi komentar [Criminal Procedure Code of Ukraine: Scientific and practical commentary]*. Kharkiv: Pravo (in Ukrainian).
- Barkova V., Zemtseva, R., & Sanchenko, B.** (2014). *Informatsiia ta dokumentatsiia. Bibliotечно-informatsiina diialnist. Terminy ta vyznachennia poniat [Information and documentation. Library and information activities. Terms and definitions]*. Kyiv: Minekonomrozvytku Ukrainy (in Ukrainian).
- Bilousov, A.S.** (2008). Kryminalistychni analiz ob'ektiv kompiuternykh zlochyniv [Forensic analysis of objects of computer crimes]. *Extended abstract of candidate's thesis*. Kyiv (in Ukrainian).
- Demura, M.I., Klepka, D.I., & Krytska, I.O.** (2020). Shchodo obmezhenia prav pid chas vyluchennia tsyfrovnykh dzherel dokazovoi informatsii u kryminalnomu provadzhenni [Regarding the restriction of rights during the seizure of digital sources of evidence in criminal proceedings]. *Forum Prava – Forum Rights*, 60(1), 37-46 (in Ukrainian).
- Hutsaliuk, M.V., Korneiko, O.V., & Khakhanovskiy, V.H.** (2019). *Naukovo-praktychnyi komentar Zakonu Ukrainy «Pro osnovni zasady zabezpechennia kiberbezpeky Ukrainy» [Scientific and practical commentary on the Law of Ukraine "On Basic Principles of Cyber Security of Ukraine"]*. Kyiv: Natsionalna akademiia prokuratury Ukrainy (in Ukrainian).
- Karpiuk, D.V.** (2014). Vydy merezhnykh dokumentiv [Types of network documents]. *Naukovi pratsi Natsionalnoi biblioteky Ukrainy im. V.I. Vernadskoho – Scientific works of the National Library of Ukraine named after V.I. Vernadsky*, 40, 171-181 (in Ukrainian).
- Kovalenko, A.V.** (2018). Elektronni dokazy u kryminalnomu provadzhenni: suchasnyi stan ta perspektyvy vykorystannia [Electronic evidence in criminal proceedings: current status and prospects for use]. *Visnyk Luhanskoho derzhavnogo universytetu vnutrishnikh sprav im. E.O. Didorenka – Bulletin of Luhansk State University of Internal Affairs. E.O. Didorenko*, 4(84), 237-245 (in Ukrainian).

**Kravchenko, O., & Makarchuk, K.** (2019). Problemni pytannia zastosuvannya tekhnichnykh zasobiv fiksuvannya ta yikh rezultativ u dokazuvanni u kryminalnomu provadzhenni v aspekti reformuvannya kryminalnoi yustyttsii v Ukraini. *Visnyk prokuratury [Problematic issues of application of technical means of fixation and their results in proving in criminal proceedings in the aspect of reforming criminal justice in Ukraine]*. *Visnyk prokuratury – Bulletin of the prosecutor's office*, 6, 67-76 (in Ukrainian).

**Kryminalnyi protsesualnyi kodeks Ukrainy**: pryiniaty 13 kvit. 2012 roku № 4651-VI [Criminal Procedure Code of Ukraine from April 13 2012 № 4651-VI]. (2012). *zakon.rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17> (in Ukrainian).

**Orlov, Yu.Iu., & Cherniavskiy, S.S.** (2017). Elektronne vidobrazhennia yak dzherelo dokaziv v kryminalnomu provadzhenni [Electronic reflection as a source of evidence in criminal proceedings]. *Yurydychnyi chasopys Natsionalnoi akademii vnutrishnikh sprav – Legal Journal of the National Academy of Internal Affairs*, 1, 12-24 (in Ukrainian).

**Proekt Zakonu Ukrainy** Pro vnesennia zmin do Kryminalnoho protsesualnoho kodeksu Ukrainy shchodo pidvyshchennia efektyvnosti borotby z kiberzlochynnistiu ta vykorystannia elektronnykh dokaziv : zareiestrovanyi 1 veres. 2020 № 4004 [Draft Law of Ukraine On Amendments to the Criminal Procedure Code of Ukraine to Increase the Effectiveness of the Fight against Cybercrime and the Use of Electronic Evidence from September 1 2020 № 4004]. (2020). *zakon.rada.gov.ua*. Retrieved from [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=69771](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69771) (in Ukrainian).

**Sait Derzhavnoi arkhivnoi sluzhby Ukrainy** [Website of the State Archival Service of Ukraine]. (n.d.). *old.archives.gov.ua*. Retrieved from [https://old.archives.gov.ua/Electronic/E\\_D.php](https://old.archives.gov.ua/Electronic/E_D.php)

**Shepitko, V.Iu.** (2010). Informatsiini tekhnologii v kryminalistytsi ta slidchii diialnosti [Information technologies in criminology and investigative activities]. *Pytannia borotby zi zlochynnistiu – The fight against crime*, 19, 194-203 (in Ukrainian).

**Stolitnii, A.V., & Kalancha, I.H.** (2019). Formuvannia instytutu elektronnykh dokaziv [Formation of the institute of electronic evidence]. *Problemy zakonnosti – Problems of legality*, 146, 179-191 (in Ukrainian).

**Zakon Ukrainy Pro elektronni dokumenty ta elektronnyi dokumentoobih** : pryiniaty 22 trav. 2003 roku № 851-IV [Law of Ukraine On Electronic Documents and Electronic Document Flow from May 22 2003 № 851-IV]. (2003). *zakon.rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/laws/show/851-15> (in Ukrainian).

**Zakon Ukrainy Pro informatsiiu** : pryiniaty 2 zhovt. 1992 roku № 2657-XII [Law of Ukraine On Information from October 2 1992 № 2657-XII]. (1992). *zakon.rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/laws/show/2657-12#Text> (in Ukrainian).

**Zakon Ukrainy Pro vnesennia zmin do Hospodarskoho protsesualnoho kodeksu Ukrainy**, Tsyvilnoho protsesualnoho kodeksu Ukrainy, Kodeksu administratyvnoho sudochynstva Ukrainy ta inshykh zakonodavchykh aktiv : pryiniatyv 3 zhovt. 2017 roku № 2147-VIII [Law of Ukraine On Amendments to the Commercial Procedural Code of Ukraine, the Civil Procedure Code of Ukraine, the Code of Administrative Procedure of Ukraine and Other Legislative Acts from October 3 2017 № 2147-VIII]. (2017). *zakon.rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/laws/show/2147-19#Text> (in Ukrainian).

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## ВИДИ Й ОСОБЛИВОСТІ ЕЛЕКТРОННИХ ДОКУМЕНТІВ ТА ЕЛЕКТРОННИХ ВІДОБРАЖЕНЬ ЯК ДЖЕРЕЛ ДОКАЗІВ

**Анотація.** *Метою статті* є розкриття правової природи джерел доказової інформації, а саме електронних доказів, та їх місця в системі доказів.

**Методи дослідження** обрані з урахуванням специфіки цілей, завдань, об'єкта та предмета дослідження. Серед них – діалектичний метод, який дав змогу розкрити окремі аспекти електронних документів і відображень як джерел доказової інформації у кримінальному провадженні; формально-юридичний (юридіко-технічний) метод, що був використаний для вивчення норм права, дослідження особливостей юридичної техніки; герменевтичний метод, за допомогою якого з'ясовано правовий зміст норм Кримінального процесуального кодексу України та законодавчих пропозицій, виявлені дефекти нормативного регулювання.

**Результати.** Проведено аналіз чинного законодавства та законодавчих пропозицій, спрямованих на розширення джерел доказової інформації. Підкреслено необхідність використання електронних документів і відображень як джерел доказової інформації. Встановлено, що матеріальний носій можна віднести до «матеріальних об'єктів», тобто таких, що належать до речових доказів, оскільки на останніх можуть міститися відомості, які мають значення для кримінального провадження. Так, для сприйняття будь-яких слідів необхідне застосування відповідних умінь, навичок, техніки та інших інструментів пізнання і сприйняття, що дають змогу здійснювати належним чином фіксацію та інтерпретацію слідової картини злочину. У практичній діяльності електронні носії можна досліджувати і як частини матеріального світу, і як засоби зчитування, запису й відтворення комп'ютерної техніки. У такому разі можна визнати, що електронні документи як кримінальна процесуальна категорія справді тісно пов'язані з електронними носіями інформації.

**Висновки.** У статті проаналізовано поняття «електронні докази», «електронні документи» та «електронні відображення», встановлено їхню правову природу та подальші шляхи розвитку інституту електронних доказів у кримінальному процесі. Запропоновано збільшити перелік процесуальних джерел доказів шляхом доповнення їх електронними відображеннями.

**Ключові слова:** джерела доказів, електронні докази, електронні документи, електронний носій інформації, електронні відображення, досудове розслідування.

*The article was submitted 15.10.2021*

*The article was revised 05.11.2021*

*The article was accepted 26.11.2021*