



Criminal Prohibitions when Using Mobile Applications

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Abstract: The article summarizes interim results of a research performed under the project of the Russian Science Foundation focusing on criminal law risks of using mobile applications. These risks can be of two types: the risk of being held criminally liable and the risk of being victimized by the criminal activities of others. The second type of risk is better defined because it is addressed in the context of preventing crimes committed using information and telecommunications networks or in the field of computer information in general. The first one implies not only situations when a user intentionally causes harm through a mobile application, but also cases where people do things, the public danger and wrongfulness of which is not obvious to them. Such persons usually have no desire to violate criminal law but do so failing to understand the unlawfulness of their actions due to the specific environment and technological features. Therefore, the ultimate goal of this project (at the next step) is to ensure safety of mobile application users, including inadmissibility of their unjustified criminal liability, through the development of recommendations on the rules of behavior when using relevant technologies. The purpose of the work within the framework of the presented scientific article is to determine the state of use of mobile applications (characteristics of mobile Internet culture) and those criminal law regulations that may be consciously or unconsciously violated by users of mobile applications. To achieve this goal two sociological surveys were conducted among users of mobile applications to determine how they use their mobile devices. The provisions of the criminal law and the materials of criminal cases were analyzed in order to understand what crimes can be committed by users of mobile

applications who actually did not want and did not understand that they were violating the criminal law.

Keywords: messengers; social networks; dating apps; Mamba; wrongfulness; criminal law; crime

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I. Introduction

Individuals aged twenty-five to thirty years old and older may look back at their daily routine fifteen years ago. They would wake up, prepare breakfast using the food stored in the fridge, perhaps they would turn on a personal computer, access a browser and check e-mail, then, remembering by heart their bus time table, they would get ready and leave for the office or college. During the day, they would have some small talks with colleagues or classmates, read a newspaper or, pretending to be immersed in work, read news via the office computer. Later they would go for lunch at a cafeteria or some other fast food casual, and in the afternoon they would call friends on the cell phone or through an office landline and arrange a long-awaited meeting to kick around the latest happenings in each other's lives. They would try to call the clinic to reschedule tomorrow's appointment, as you would be "in poor shape," get through; write the new date in the diary. On the way home they would find the nearest ATM to withdraw some cash

remembering you had to replenish your bus pass or buy a new one. They would meet with friends in a cafe where they had already been before and enjoyed their nice food. They would learn that their friend had been on a fascinating trip viewing intriguing photo in the album he had specially brought. Then they might have been caught by surprise to hear that his ex-girlfriend met a new guy and even moved in with him a few weeks ago, but couldn't break the news to you because their new apartment block doesn't have landline service and hadn't yet been connected to the internet. After realizing that they need a romantic relationship, they would decide to head to a club or bar recommended by some friends to have the opportunity to meet someone on the dance floor or in the chillout. Having no time to go shopping for something posh, they would come home to put on some old but still trendy shirt. After finally reaching the place and having a drink, they suddenly feel tired as the day was long and full of fuss and order a cab home by dialing the number of the taxi company they found in the advertising leaflets near the checkroom. When finally at home, they would set the bedside alarm clock so that they could drop by the office in the morning, despite the day off, just to print out some important documents received by the corporate e-mail, which can only be accessed from the office computer, and to pick up the day planner you forgot on the desk.

For many, this routine has not changed much, but for many others it looks very different these days. People of all ages and in all regions often order home delivery of food and groceries, clothes and other goods, work remotely, receiving and responding to work-related emails, including while traveling, find best traveling routes in automatic mode, receive services through virtual personal accounts, communicate with colleagues, classmates, friends, parents, spouses and children through instant messengers, audio, video or conference calls from anywhere. They are up to date of all events in the life of their loved ones and not only them through social networks. They keep track of social and political news and commentaries reading posts in various online communities, do most publicly available financial transactions in one click, and find best free time options, including dating, without distracting from other activities, and using geolocation for convenience. More and more people choose to organize their lives in this way, especially since all of the

above can be easily accomplished with the help of just one device that is nowadays, without exaggeration, a companion of almost every person — a mobile phone (smartphone).

According to one of the most authoritative data and statistics portals in Russia (Statista), the number of smartphone users in 2022 amounted to 120.14 million people, which is more than 82 % of the country's total population. The number of smartphone users in Russia is forecast to increase steadily between 2023 and 2028, adding 5.6 million new users (+4.57 %). According to this forecast, smartphone user base will hit 128.29 million people by 2028 (Degenhard, 2023). And this is a global trend. Back in 2016, the number of smartphone users worldwide was 3.67 billion or 45 % of the Earth's population (Turner, 2023) at that time, and according to some reports, it reached 86 % in 2022.

It has to be noted that mobile technology penetration figures need some adjustment to make allowance for smartphone sharing and Internet restrictions in effect in some regions of the world (e.g., Iran, DPRK), but as far as Russia is concerned, a definite year-on-year growth is obvious. According to a research performed in the U.S on mobile device usage trends, Russia, along with India, Indonesia, and Turkey, are absolute leaders in terms of growth of smartphone (Flynn, 2023) use time per capita. DataReportal analysts estimated smartphone use time of an average Russian at 3 hours and 39 minutes a day¹ in 2022. Along with that, the time spent daily in front of a desktop PC or laptop tends to decrease.² According to the Global Media Intelligence Report, prepared together with Publicis Media-Starcom and GWI,³ the

¹ Digital 2022: Global overview report. Available at: https://datareportal.com/reports/digital-2022-global-overview-report?utm_source=Global_Digital_Reports&utm_medium=Article&utm_campaign=Digital_2022 [Accessed 11.06.2023].

² Statista. Percentage of mobile device website traffic worldwide from 1st quarter 2015 to 4th quarter 2022. Available at: <https://www.statista.com/statistics/277125/share-of-website-traffic-coming-from-mobile-devices/#:~:text=Mobile%20accounts%20for%20approximately%20half,consistently%20surpassing%20it%20in%202020> [Accessed 11.06.2023].

³ The Global Media Intelligence Report 2022. Available at: <https://www.insiderintelligence.com/content/global-media-intelligence-report-2022> [Accessed 11.06.2023].

time spent by people using non-mobile internet-connected devices had reduced by 10 % during the period from 2019 to 2022.

This is confirmed by the International Telecommunication Union data indicating that the growth of stationary and mobile network traffic equaled 23.2 % and 163.6 %, respectively, in Russia over the recent few years. Faster than in Russia growth of mobile traffic is reported only in the United Arab Emirates, Montenegro and Thailand.⁴

The foregoing indicates that the number of mobile phone (smartphone) users in Russia will only be increasing. Users tend to spend more time using apps rather than browsers on their mobile devices. This is just because mobile apps are conveniently focused on personal needs and the use of personal data, thus allowing faster access to desired content. It has to be noted that distinction between browsers and apps on mobile devices has been blurring for years. Most of browser usage time is spent in web windows of relevant mobile applications, driven by marketing, organizational, and other interests of software and app developers and mobile device manufacturers.

Thanks to their variety and functionality, the use of mobile apps is beneficial in many ways, both the above mentioned and others. However, their regular use may also have negative consequences. Most researchers of mobile internet culture point out to such cons of mobile apps as workplace distraction, reduction of personal contacts and psychological addiction (Parasuraman et al., 2017). Signs of smartphone addiction include, for example, constantly checking your phone for no reason, feeling anxious or worried without your phone, waking up in the middle of the night to check for updates and new information, and reduced professional efficiency due to prolonged and sometimes unnecessary use of your phone and the apps on it (Chen, 2015).

Negative consequences also include legal risks, of which criminal risks are most dangerous for users. Criminal law risks can be of two types: the risk of being held criminally liable and the risk of being victimized by the criminal activities of others. The second type of risk is better defined because it is addressed in the context of preventing

⁴ International Telecommunication Union: Database of world telecommunication indicators. Available at: <https://ourworldindata.org/internet> [Accessed 11.06.2023].

crimes committed using information and telecommunications networks or in the field of computer information in general. The first one implies not only situations when a user intentionally causes harm through a mobile application, but also cases where people do things, the public danger and wrongfulness of which is not obvious to them.

Such persons usually have no intent to violate criminal law but do so failing to understand the unlawfulness of their actions due to the specific environment and technological features that provoke a subconscious feeling of permissibility and blunt the perception of the limits of allowable behavior, rights and other legally protected interests of citizens, organizations, society, and state. Users of mobile applications may be prosecuted for lewd acts (Art. 135 of the Russian Federation Criminal Code) or even violent acts of a sexual nature (Art. 132 of the Russian Federation Criminal Code) when posting their own or other people's explicit photos, artistic or historical materials with similar images in online communities accessible to minors; for violation of privacy (Art. 137 of the Russian Federation Criminal Code) when sending to third parties their correspondence with a person who disclosed non-public information about their personal life; for illegal circulation of special technical means (Art. 138 of the Russian Federation Criminal Code) when purchasing spy equipment available on a marketplace as a gift for someone; for illegal use of means of individualization of goods (Art. 180 of the Russian Federation Criminal Code) when composing and filling out the page of one's online store in social network; for cashless counterfeiting (Art. 187 of the Russian Federation Criminal Code) when creating incorrect payment orders in a mobile business bank; for circulating unregistered medical products (Art. 238 of the Russian Federation Criminal Code) when ordering expensive foreign drugs; for the dissemination of pornography (Art. 242 of the Russian Federation Criminal Code) when sending intimate photos or links to relevant videos in personal correspondence, even with one's regular sexual partner, etc. At the same time, these people would probably never show explicit images to minors in real life or counterfeit cash currency, because in real life they realize the public danger of such acts. Therefore, the ultimate goal of the Russian Science Foundation (RSF) project, under which the development of this topic began, is to ensure

safety of mobile application users, including the inadmissibility of their unjustified prosecution, by informing them about the rules of behavior when using relevant technologies.

To achieve this goal, it is necessary to identify situation that has formed about the use of mobile applications (characteristics of mobile internet culture and behavior models of mobile application users) and those criminal law regulations that may be consciously or unconsciously violated by mobile application users. The foregoing is the purpose of this study.

II. Methods

In today's environment, a new world emerges almost every day, and even more frequently in the digital realm. The transformations that began during the Covid-19 pandemic, as well as current world events, are increasingly orienting mobile app developers toward a new paradigm. While previously the acronym VUCA (Volatility — Uncertainty — Complexity — Ambiguity) (Handy, 1995; Johansen, 2007, 2012) was used to describe an unpredictable, rapidly changing environment, now the term BANI has come up to describe the new reality. New times dictate the need to adapt working tools and behavior models to a Brittle, Anxious, Nonlinear and Incomprehensible world. The author of this term, futurist Jamais Cascio, suggests that when analyzing current situation the likely forecast for the near or even distant future (Cascio, 2020) should be taken into account, among other things.

So, it follows that it is impossible to determine the state of mobile apps use without forecasting the prospects of such usage in the foreseeable future. Therefore, this study was carried out without reference to any specific mobile applications but taking into account the demand for their functionality today and in the near future.

The study of publications on mobile Internet culture and materials of judicial and investigative practice allowed us to determine an approximate scope of social relations protected by criminal law, which are subject to the risk of being affected by the use of mobile applications. The most frequent targets of this impact are property rights as well as social relations supporting public health and morality and the procedure of handling legally protected information, including personal data.

To determine behavioral patterns of people when using mobile apps, it was decided to conduct a large-scale poll (survey) among mobile application users.

Survey parameters and procedures were designed based on current analytics in the field of mobile application development as well as specialized literature (in law, sociology, computer and information sciences): from journalism (Chereshnev, 2022) to seminal works (Dremlyuga, 2022). As it follows, most active users of mobile applications are students who, due to their age, involvement in modern, including technological, processes, and their social status, use mobile applications more and longer than other categories of the population and to the fullest extent of their functionality (Jeong and Lee, 2015; Roberts et al., 2014). Therefore, students were identified as the primary group of respondents. Taking into account existing professional affiliations, other groups of respondents were identified as research and teaching staff, criminal law practitioners and any acquaintances of them who, at the request of the former, would agree to participate in the poll and answering specially designed questions.

In order to establish constants and variables in the models of human behavior when using mobile apps, questions were formulated so that to allow, first, establishing socio-demographic characteristics of respondents (age, gender and education level); second, the type (in terms of functionality) of apps they use, frequency and reasons for using; third, the character of use and the experience of causing or suffering harm from using mobile apps; fourth, the level of perception of possible risk associated with the use of mobile apps; fifth, the level of perception that certain activities may constitute a crime; sixth, recent changes in mobile app usage behavior; and seventh, the reasons influencing the transformation of mobile app usage behavior. That was how a questionnaire⁵ for the poll was compiled.

⁵ For the purpose of greater coverage, in order to achieve a wider geography in Russia and in some foreign countries, and taking into account the topics of the poll, the questionnaire was converted into electronic form with the help of the Google Forms software. Available at: https://docs.google.com/forms/d/e/1FAIpQLSfY3X4sLbKogpmHUQkPxofOQs_goK9-J43cV-asNv7ymK7m2g/viewform [Accessed 11.06.2023].

This questionnaire was sent to students of 31 educational institutions in Russia, Kazakhstan, Belarus, and Kyrgyzstan, teachers from criminal and medical law departments of these universities, as well as to lawyers who regularly show up at the events held by the Scientific and Educational Center for Criminal Law Application at the Kutafin Moscow State Law University (MSAL) requesting them to voluntarily and anonymously take part in the poll.

Understanding that the poll mostly involved law professionals and students, who are likely to be much more aware of possible criminal law risks of using mobile applications than people who do not have such knowledge or such education, it was decided that it was necessary to conduct a poll using the same questionnaire among persons without legal education.

This survey was conducted by Analytical Sociology LLC under a relevant contract. According to the report presented by that organization, the poll involved 250 residents from Moscow and St. Petersburg over 23 years old, 50 % men and 50 % women.

As already indicated, some of the questions in the questionnaire concerned the directions of development and transformation of human behavior when using mobile applications, as well as reasons for the changing such behavior. In order to verify and analyze the obtained results, another poll was organized among experts (law and political scientists, sociologists, psychologists, economists, and practitioners in relevant fields with significant experience in assessing social and legal phenomena). They were asked questions about their field of work and work experience, changes in their mobile app usage behavior, their assessment of causes of such changes, and directions in which apps and their usage behaviors will in their opinion⁶ be changing.

In addition, focus group discussions were regularly organized with Kutafin Moscow State Law University (MSAL) students to analyze potential criminal law risks of using mobile applications. Each participant kept a mobile app usage diary for four months (from December 2022 to March 2023), indicating which mobile apps he or she needed to use,

⁶ Available at: <https://docs.google.com/forms/d/e/1FAIpQLSepRsEGvVQgAlh vAL8PUO91yczx-bV1WpfBhXE8S-teZRchvw/viewform> [Accessed 11.06.2023].

as well as any risks that may have occurred as a result of such activity. After identifying potential risks, study participants discussed prospects of materialization and management of such risks with their colleagues or classmates.

The results obtained in these studies were compared with each other and analyzed from the viewpoint of applicable criminal law as well as judicial and investigative practices.

III. Results and Discussion

Primary results of the study are data on human behavior patterns when using mobile applications (mobile internet culture) and the factors forming them in relation to criminal responsibility.

More than 1,100 people were polled (including 250 by Analytical Sociology LLC) using basic questionnaire and more than 50 people — using the questionnaire prepared for experts.

It was established that absolute majority of people use the same (in their basic functionality) mobile apps: messengers, social networks, mobile banking, apps to order goods or services and apps to create or watch video content. A third of respondents said that they use photo or video editing apps at least once a week and slightly more use health or fitness apps. In doing so, users are essentially performing the same actions available in their respective apps. For example, messengers and social networks are used for keeping in touch with friends, giving “likes,” writing comments or reposting materials posted by friends or other people, posting other materials (texts, photos, videos, etc.) about their lives, communicating on educational, organizational or work-related matters, including offering goods or services. A fifth of respondents said they use mobile applications to find new people with common interests, for friendship or romantic relations, and about 12 % of respondents said they post materials on socially significant events, events related to various agencies or organizations, as well as the life of people they are not acquainted with personally. Half of respondents said they use popular messengers, as most universal and easy-to-use applications (Alonzo and Oo, 2023), to search for information and store data in addition to their main functionality.

The risks, mobile app users are exposed to, are often of similar nature. Thus, absolute majority of users in all age groups admit sending personal documents (passport photos, medical checkup results, etc.) through messengers or social networks. A significant percentage of users lost personal data because of hacked social networks accounts, as well as fell victim to extortionists or scammers.

A quarter of those polled admitted having access to content blocked in Russia through regular use of cryptography (encryption) in the form of special programs, such as VPN services. The majority of users believe that the use of these programs does not entail the risk of prosecution, much less criminal liability, and this belief is based on the rampant use of such services, admissions of their use by public persons and some publications (Vagantov, 2022) on the subject. Given the current state of digital communication, the types and means that enable it, the lineup of users and socioeconomic merits of the blocked IT products, we can only hope that the latter concept will not be unequivocally rejected. However, there are legal grounds for doing so, which can be seen in a number of recent court decisions. For example, Oktyabrsky District Court of Tomsk found Mr. B. guilty of committing a crime under Art. 273, Part 1 of the Russian Federation Criminal Code for using a malicious program. It was established that B., being aware of that the use of the Vipole program would neutralize computer information protection means, regularly launched this malicious computer program, thereby using it. As a result of the B.'s use of the Vipole malicious computer program, information protection means were neutralized so that B. and his activity on the Internet⁷ could not be unambiguously identified. We did not find any subsequent cases of this sort but given the wording of the law and the applicable clarifications⁸ made by the Russian Federation Supreme Court Plenum it cannot be ruled out that people using applications that affect information security by distorting their network activity may be held liable in the future.

⁷ Court ruling of Oktyabrsky District Court of the city of Tomsk dated 21 October 2022. Case No. 1-981/2022.

⁸ Russian Federation Supreme Court Plenum Resolution No. 37 dated 15 December 2022 "On Some Issues of Judicial Practice in Criminal Cases Related to Computer Information, as Well as Other Crimes Committed Through the Use of Electronic or Information and Telecommunication Networks, Including the Internet."

It is significant to note that the survey revealed serious distinctions in the attitudes of respondents belonging to different age and professional groups toward certain mobile app use behaviors, including those associated with the risk of criminal prosecution.

The survey we conducted on our own, was initially focused on students, so 88 % of respondents were 18 to 26 years old, university graduates or receiving higher education, usually in law (Group 1). In the survey performed by the contracted specialist organization, 72.4 % of respondents were people aged 27 to 65 years old, the absolute majority of whom had higher or unfinished higher education in disciplines other than law (Group 2). It seems that it was the difference in sociodemographic characteristics of these groups that influenced the choice of their answers. Thus, more than 16 % from Group 2 admitted placing materials (posts, photos, videos, etc.) in social networks and messengers related to socially significant events, activities of agencies or organizations, and other people who are not their family members, while only about 8 % of Group 1 respondents admitted doing that. Much older respondents (compared to students) admitted regular use of paid games and apps to create or watch video content.

33.1 % of Group 2 respondents admitted using dating apps on daily basis, while the figure was only 3.7 % among students. These values correlate with answers to the question “Have you ever sent out any materials (photos, videos) with naked intimate parts of your body on dating apps, dating chat rooms, groups or social networks to find a partner?” Among the older age group, 67.2 % responded negatively, while among students, 85.7 % indicated that they had never sent anything like this. These data show that a significant percentage of people allow themselves to send intimate photos and videos to other persons, believing, as it seems, that criminal liability in this case is excluded due to the private nature of sharing and non-relevance of these materials to pornography. Given marital, partnership, and other interpersonal near-sexual relationships, these arguments are well-reasoned from the social viewpoint. Moreover, subject-matter experts maintain that the exchange of erotic photos between sexual partners via cell phone has no criminal component (Soloviev, 2017). However, law enforcement practice, partly based on some ambiguity in the

law, confirms the opposite. For example, Marksovsky District Court of Saratov Region found Mr. L. guilty of committing a crime under Art. 242, Part 3, Para. “b” of the Russian Federation Criminal Code. It was established in the case that L., on the night of DD.MM.YYYY, being in <address>, using his Redmi cell phone, subscriber number N, the Internet, and WhatsApp messenger, sent a photo of male genital organ, which is a pornographic material, to the cellular communication device, being in use of the victim, who received the above mentioned pornographic material.⁹

It has to be noted that there is still no legal definition of pornography in the national law to date. The attributability of such products to pornography is determined by various non-profit organizations invited by court or investigative authorities. The approach of such organizations is often simple: they cite the same authors, many of whom once cited each other, and then conclude that such and such materials are attributable to pornography due to lack of historical, artistic or scientific value, as this indicative feature of pornography is perhaps the only one that is not questionable (Zazirnaya, 2014). Given that, it is easy to find oneself under pornography dissemination charges if you sent intimate images of yourself in a private message to another user, even if you are in a romantic relationship with him or her.

Under the Russian Federation criminal law, dissemination, public display or advertisement of pornographic materials or objects is a punishable crime, and a reserved warning of that could be formulated as a recommendation based on the results of the RSF project. App users should be aware that Art. 242 of the Russian Federation Criminal Code stipulates criminal liability for disseminating pornographic materials (even if sent to just one person), as well as for their public display. At the same time, demonstration of such materials in private does not entail liability. Therefore, it would be reasonable to use specialized dating applications that provide moderation of images posted by users in their accounts and do not allow users to send their photos during correspondence or allow their hidden placement on one’s own personal

⁹ Court ruling No. 1-18/2023 of Marksovsky District Court of Saratov Region dated 10 February 2023.

account (in the latter case, if another user is given access to such hidden images, that will be a private demonstration, not dissemination) or allow sending photos in the “self-destruct” mode, i.e., precluding their further use, which cannot be qualified as dissemination.¹⁰

It appears that these “digital law” nuances should be taken into account by developers of relevant domestic IT products, which are growing in number as popular foreign dating apps are limiting their functionality in Russia or withdraw completely. User guides for relevant applications, as well as software alerts, should warn users of the consequences of not only sending photos and videos, but also of disclosing their personal data and other information that can be used by criminals for committing mercenary and even violent crimes.¹¹

Only 10 % of respondents in our poll expressed concern about their safety and the security of their personal data when using dating apps. 4.8 % of respondents from Group 2 and 2.6 % from Group 1 said that they were aware that some of their actions in such applications may constitute an offense.

Survey participants consider social networks and messengers to be the most risky applications. Half of respondents fear being harmed by third parties, and a quarter do not rule out the possibility of being held liable for their own actions when using these apps. For example, more than half of respondents in Group 2 mistakenly believe that they may be held criminally liable for clicking on a “like” under someone else’s post in a social network with information about the belonging of certain territories of the Russian Federation to other states (70.2 %), or for indicating HIV-negative status in their profile when they are HIV-positive (50 %), or for ordering from abroad a drug containing potent substances for personal consumption (58.1 %), or for virtual (via video link) actions of a sexual nature for a fee (58.5 %), while the absolute

¹⁰ Russian Federation Supreme Court Plenum Resolution No. 37 dated 15 December 2022 “On Some Issues of Judicial Practice in Criminal Cases Related to Computer Information, as Well as Other Crimes Committed Through the Use of Electronic or Information and Telecommunication Networks, Including the Internet.”

¹¹ Court ruling of Solntsevsky District Court of Moscow dated 13 February 2023, Case No. 1-105/2023.

majority of respondents from Group 1 (mostly law students) know that these actions do not constitute criminal offence.

Representatives of the older age group are more aware than students that showing parts of one's naked body live (via video link) to another person in a private conversation is not a crime (Sharapov, 2021) (86.7 % vs. 77.7 %).

A higher percentage of Group 2 respondents (compared to those from Group 1) correctly indicated that criminal liability is possible for reading private messages addressed to another person¹² (37.1 % vs. 27.3 %), for running a video blog and receiving income from advertisers without proper registration and taxation (53.2 % vs. 40.7 %), and for administering a social network group whose members share information with each other on how to commit suicide (84.7 % vs. 56.9 %). If the first of the above situations is not very common and the second one depends on the amount of income received, the low awareness of the latter among students is a cause for concern.

The topic of responsibility for participation in so-called death groups has been widely discussed among broad public for several years now with lots of information and methodological materials for schoolchildren and their parents (Maslova, 2020) and scientific papers (Ustinova, 2020) published and numerous educational events and programs held in online communities and youth-oriented media. Despite the fact that provisions of Art. 110–110.2 of the Russian Federation Criminal Code, especially in respect of those who organize suicide promotion activities, do not clearly indicate prohibited actions in particular, the meaning of these norms is clear and should be communicated to broad public. Given the paramount importance of human life, any direct or indirect complicity (Bimbinov, 2023) in the suicide of another person, especially a minor, is absolutely unacceptable, without regard to motives. In its recent decision, the Russian Federation Constitutional Court pointed out that “taking into account the restrictions established for dissemination of certain types of information, Art. 110.2 of the Russian Federation Criminal Code does not imply prohibition of lawful behavior, but is

¹² Court ruling of Engelsky District Court of Saratov Region dated 5 May 2021, Case No. 1-1-392/2021.

aimed at protecting an indefinite circle of persons (which may include minors, who, due to the incomplete formation of their personality, are characterized by immaturity and suggestibility) from harmful (negative) influence on their psyche, which may, under unfavorable circumstances, provoke them into committing suicide or assist them in that act.” Therefore, this provision is indirectly aimed at protecting human life as a supreme good and a special constitutional value, which corresponds to the constitutional duties of the state to ensure the rights and freedoms of citizens and to take adequate measures to protect them.¹³

As already indicated, the most popular software products include applications for ordering goods or services, including government services, as well as mobile banking. Only a small number of respondents (about 3 %) are concerned that any actions using these applications may constitute an offense or crime. This is probably due to the fact that the vast majority of users of such applications perform the same non-intrusive actions, such as calling a cab, ordering the delivery of goods, transferring money, and so on. However, some functions of these IT products and the operations performed using them are not without risk. For example, financial transactions should not be made if their characteristics, such as the payment addressee or its purpose, are unknown.

Sending money to an unknown recipient can lead to a variety of criminal cases, from drug trafficking to treason. Inadmissibility of falsifying the purpose of payment should be clear to all persons involved in economic activity, including self-employed and small businesses. Insufficiently responsible attitude to non-cash money circulation, the importance and legal protection of which is not inferior to cash, unfortunately leads to criminal prosecution. Thus, Arzamas City Court of Nizhny Novgorod Region found Ms. R. guilty of committing eighteen crimes under Art. 187, Part 1 of the Russian Federation Criminal Code. The investigation determined that the defendant, acting willfully and using the functionality of Sberbank Business Online, composed

¹³ Decision No. 1104-O of the Russian Federation Constitutional Court dated 30 May 2023 “On refusal to accept for consideration the complaint of Polina Dmitrievna Yesipova about violation of her constitutional rights by the provisions of Art. 110.2 of the Russian Federation Criminal Code.”

counterfeit payment orders relating to electronic means of payment, namely: payment order No. for RUB 20,000, payment order No. for RUB 5,000, payment order No. for RUB 4,000, and payment order No. for RUB 1,500, by entering false (made up by her) information about the purpose of payment, i.e., she generated counterfeit payment orders relating to electronic means of money transfer.¹⁴

The abovementioned situations and criminal cases initiated in connection with them clearly demonstrate that human behavior patterns when using mobile applications are subject not only to the risk of being harmed, but also to the risk of criminal liability, including in cases where unlawfulness of such actions is not obvious. Improving this state of affairs should be the task of the state, professional legal community and applied science.

IV. Conclusions

The results of this study indicate that people most readily use messengers, social networks, applications for ordering goods or commercial services, mobile banking and dating applications, the criminal law risks of using which have their specifics primarily due to their functionality. As the survey results indicate, this situation can change if relevant security measures are implemented, including the possibility of criminal prosecution; if people come to want to ensure their privacy; or if some apps we are used to cease to exist (be blocked or slowed down).

As things stand today, there are no prospects that the functionality of the most popular apps will cease to be in demand. User and expert polls and analytical data on current IT developments indicate that new applications (with full voice support; cloud-based (not tied to operating system or device model); specialized (allowing to receive professional consulting assistance); with the function of virtual and augmented reality; self-learning; ecosystem applications) will reproduce the functions of all currently popular applications. Criminal law risks will soon become common for all mobile apps, and, therefore, safe

¹⁴ Court ruling of Arzamas City Court of Nizhny Novgorod Region dated 26 November 2021, Case No. 1-414/2021.

use guidelines should be universal. Such approach can, among other things, create prerequisites for the formation of new interdisciplinary research areas at the intersection of law and other sciences. Further clarification of the state of mobile culture and the scope of criminal law risks will allow balancing and improving the approach to ensuring legal protection of social relations by preventing criminal and near-criminal behavior. The poll results indicate that, unlike Group 2 respondents, young people would prefer the option of being warned about criminal responsibility with justification of its reasons. For example, a warning of criminal liability for drug purchase should be accompanied not only by the indication of possible prison terms or other punishment, but also by pointing to the public danger of such activity and other reasons for its criminalization.

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