

Responsibility for Dissemination of Inaccurate Information on the Internet

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Summary

The article is devoted to the study of the issue of liability for the dissemination of inaccurate information on the Internet. The article emphasizes that now the public opinion of socially active segments of the population is mainly formed on the basis of not critical but subjective (“consumer”) analysis of the received information. The modern realities show that the main source of its origin is the Internet: electronic media and, above all, the relevant social networks. The problem of dissemination by the mass media of inaccurate information obtained via the Internet is solved; it is seen in bringing the laws of Ukraine, which regulate public relations regarding the dissemination of information, into compliance with the Civil Code of Ukraine. The issues of development and implementation of new legislative acts aimed at regulating the status of subjects of informational relations on the Internet and establishing the grounds for their liability are also investigated.

Key words:

information, inaccurate information, right to information, legal liability, Internet

1. Introduction

The rapid development of technology provides each individual with ample opportunities to express their thoughts, views, and beliefs. Internet is one of such tools. However, the new opportunities create the preconditions for the violation of the personal non-property rights of other persons.

The Constitution of Ukraine stipulates that all people are free and equal in their dignity and rights. Everyone has the right to respect for their dignity. Human life and health, one’s honor and dignity, inviolability, and security are recognized as the highest social value.

The Convention for the Protection of Human Rights and Fundamental Freedoms and the Basic Law of the state guarantee everyone the right to protection of honor, dignity, business reputation, and refutation of inaccurate information by the person who disseminated such information.

The most common and at the same time the most effective way to protect honor, dignity, and business reputation is judicial. There are more and more cases of spreading inaccurate information on the Internet, which is due to the desire of journalists to spread the found “sensation” without checking the accuracy of the information itself.

Due to the gradual complication of social relations, the emergence of new ways of communication between subjects that require further legal regulation, some aspects of the development of the informational sphere have become the subject of scientific work of a number of home scientists, including M. Grebenyuk, O. Dovgan, O. Kurban, A. Marashchuk, K. Mudretskaya, V. Tsybalyuk, and others.

However, in our opinion, given the multifaceted nature of the outlined issues, a significant part of these issues needs further legal regulation. In particular, this applies to the possibility of bringing the perpetrators to legal liability for the dissemination of fake information.

So, we will consider further what we need to know about the protection of honor, dignity, business reputation, and refutation, and the prohibition of the dissemination of inaccurate information on the Internet.

2. Theoretical Consideration

The right to freedom of thought and free expression of one’s views is one of the fundamental non-property rights of any person. The development of information technology has greatly simplified the possibility of exercising this right, as it allows in a few minutes to disseminate any information to an indefinite number of people. But there are often situations when the information disseminated on

the Internet about a certain person is not only inaccurate but also such that violates their right to respect for honor and dignity. Sometimes it is possible to restore the violated rights in a pre-trial procedure, but in most cases, the only way to restore such rights is to seek protection in court.

The right to free expression is guaranteed by Article 34 of the Constitution of Ukraine, which stipulates that everyone has the right to freely collect, store, use, and disseminate information orally, in writing, or otherwise – at their discretion. Such information must be disseminated in compliance with legal norms on its authenticity and not violate the rights of other persons.

According to Art. 68 of the Constitution of Ukraine, everyone is obliged to strictly abide by the Constitution and laws of Ukraine, not to encroach on the rights and freedoms, honor, and dignity of other persons. The right to freedom of thought and speech, to the free expression of one's views and beliefs, corresponds to the obligation not to disseminate inaccurate information about a person and that degrades their dignity, honor, or business reputation [1].

In accordance with Art. 1 of the Law of Ukraine "On Information", information is any information and/or data that can be stored on physical media or displayed in electronic form [2].

According to Art. 5 of the Law of Ukraine "On Information", everyone has the right to information that provides for the possibility of free receipt, usage, dissemination, storage, and protection of information necessary for the exercise of their rights, freedoms, and legitimate interests. The exercise of the right to information must not violate public, political, economic, social, spiritual, environmental, and other rights, freedoms, and legitimate interests of other citizens, the rights and interests of legal entities.

According to the Law of Ukraine "On Personal Data Protection", personal data is information or a set of information about an individual who is identified or can be specifically identified [3].

The Plenum of the Supreme Court of Ukraine in the decision dated February 27, 2009, №1 "On judicial practice in cases of protection of dignity and honor of the individual, as well as the business reputation of individuals and legal entities" (hereinafter – the Resolution), stated that the right to freedom of thought and speech, to the free expression of one's views and beliefs, corresponds to the obligation not to disseminate inaccurate information about a person and such as to disgrace their dignity, honor, or business reputation.

N.D. Kohut notes that the most necessary in the field of legal regulation of information security and rules of dissemination of information are, among other things, the establishment of subjects of liability and sanctions for specific offenses in this area; establishment of clear criteria for information products, which contradicts the norms of

public morality and liability for violations in this area. In addition, the scientist believes that it is necessary to establish certain criteria for the quality of information that can be disseminated via the Internet and television, as these are public (popular) information networks, which imposes on them an increased level of responsibility for shaping public morals and societies [4]. Specific proposals to establish criminal liability for the dissemination by media representatives of knowingly false information with the receipt of illegal benefits for it were previously made [5].

Information that does not correspond to reality and is laid out untruthfully, i.e. contains information about events and phenomena that did not exist at all or that existed, but information about them does not correspond to reality (incomplete or distorted), is considered inaccurate.

Ways to protect personal non-property rights, including the right to respect for dignity and honor, the right to inviolability of business reputation, include, for example, refutation of inaccurate information and/or the right of reply, prohibition of dissemination of information violating personal non-property rights, etc.

The difference between the right to refute inaccurate information and the right of reply is that in exercising the right of reply a person has the right to disclose their point of view on disseminated information and the circumstances of violation of personal non-property right without declaring it inaccurate, and that inaccurate information is refuted by the person who disseminated it, and the answer is given by the person about whom the information was disseminated.

In some cases, an individual has the right to protection of personal non-property rights caused by the dissemination of inaccurate information when it is disseminated to other persons.

This primarily applies to family members of an individual, such as the spouse, parents, children, grandparents, great-grandparents, great-grandchildren, grandchildren, and so on. However, such dissemination of false information about the family members of an individual should violate the personal non-property rights of that individual.

Thus, for example, when false information is spread that an individual is the wife of a "traitor", she has the right to demand the refutation of this information not because it violates the right to respect for the honor and dignity of her husband, but because it is indirectly the right of this individual to dignity and honor that is violated. And it is her husband who has the right to demand refutation of such information because this information violates his right to respect for honor and dignity.

Refutation of inaccurate information is carried out by the person who disseminated such information, regardless of their fault and in the same way in which it was disseminated.

If the person who disseminated inaccurate information is unknown, the natural person whose right has been violated

may apply to the court to establish the fact of the inaccuracy of this information and refute it (paragraph three of the fourth part of Article 277 of the Civil Code of Ukraine) [6]. In case of discovery in print and other mass media, including on the Internet, of information violating the honor, dignity, and business reputation, the person whose rights are allegedly violated has the right to respond or directly address the person who committed the violation with a request to refute such information, as well as to the court with a corresponding claim.

According to paragraph 12 of the Resolution, the appropriate defendant in case of dissemination of the disputed information on the Internet is the author of the relevant information material and the owner of the website, whose identity must be identified and indicated in the statement of claim by the plaintiff.

If the author of the disseminated information is unknown or their identity and/or place of residence (location) cannot be established, as well as when the information is anonymous and access to the site is free, the owner of the website on which the information material is posted is responsible, because it was he who created the technological opportunity and conditions for the dissemination of inaccurate information.

Data on the owner of the website may be requested in accordance with the provisions of the Civil Procedural Code of Ukraine from the administrator of the system of registration and accounting of domain names and the address of the Ukrainian segment of the Internet.

At the same time, in accordance with the provisions of the Civil Procedural Code of Ukraine, the plaintiff in this category of cases must duly prove that the false information disseminated about them is a factual statement, not an evaluative judgment.

According to Article 30 of the Law of Ukraine "On Information", no one can be held liable for making evaluative judgments. Evaluative judgments, with the exception of defamation, are statements that do not contain factual data, criticism, evaluation of actions, as well as statements that cannot be interpreted as containing factual data, in particular given the nature of the use of linguistic and stylistic means (usage of hyperbole, allegory, satire). Evaluative judgments are not subject to refutation and proving their truthfulness.

If a person considers that evaluative judgments or opinions degrade their dignity, honor, or business reputation, as well as other personal non-property rights, they have the right to exercise the right granted by law to respond, as well as to their own interpretation of the case in the same media to justify the groundlessness of common judgments, giving them a different assessment [7-8]. If a subjective opinion is expressed in a brutal, degrading, or obscene manner that degrades dignity, honor, or business reputation, the person who expressed the opinion or

assessment in this way and in this way may be obliged to compensate for the moral damage caused.

A person may be held civilly liable for disseminating inaccurate information, and damage caused by such dissemination may be inflicted on both an individual and a legal entity [9].

If the person who disseminated inaccurate information refuses to refute it, as well as to compensate for material and (or) moral damage, the person in respect of whom such information is disseminated has the right to protect their rights and interests by going to court.

The legal composition of the offense, the presence of which may be grounds for the satisfaction of the claim, is a set of the following circumstances:

- a) dissemination of information, i.e. bringing it to the notice of at least one person in any way;
- b) the information disseminated relates to a specific natural or legal person, i.e. the plaintiff;
- c) dissemination of inaccurate information, i.e. such that does not correspond to reality;
- d) dissemination of information that violates personal non-property rights, i.e. either harms the relevant personal non-property goods or prevents a person from fully and timely exercising their personal non-property rights.

Dissemination of information should be understood as its publication in the press, broadcast on radio, television or using other mass-media; distribution on the Internet or using other means of telecommunications; presentation in characteristics, statements, letters addressed to other persons; messages in public speeches, in electronic networks, as well as in another form to at least one person.

Information that does not correspond to reality and is laid out untruthfully, i.e. contains information about events and phenomena that did not exist at all or that existed, but information about them does not correspond to reality (incomplete or distorted), is considered inaccurate.

According to the provisions of Art. 277 of the Civil Code of Ukraine and Art. 10 of the Civil Procedural Code of Ukraine, the obligation to prove that information disseminated is accurate is put on the defendant, but the plaintiff has the right to submit evidence of the inaccuracy of the information disseminated. The plaintiff must prove the fact of dissemination of information by the defendant, as well as the fact that as a result their personal non-property rights were violated.

Claims for the refutation of inaccurate information published in the media are subject to a statute of limitations of one year, calculated from the date of publication of this information in the media or from the day when the person learned or could have learned about this information (paragraph 2 of part two of Article 258 of the Civil Code of Ukraine).

In some cases, the perpetrator may be held administratively liable for spreading false rumors that may cause panic among the population or disturb public order,

which entails imposition of a fine from ten (170 hryvnias) to fifteen (255 hryvnias) non-taxable minimum incomes of citizens or correctional work for a period of up to one month with deduction of twenty percent of earnings (Article 1731 of the Code of Ukraine on Administrative Offenses).

Conclusions

Summing up, it can be noted that the development of information technology, in addition to positive changes, will certainly contribute to the potential abuse by certain individuals of their right to disseminate information on the Internet. It may also be concluded that, under certain conditions, certain rights may be temporarily restricted in order to preserve national sovereignty (for example, anti-terrorist operation, the introduction of the legal regime of "martial law", etc.). In particular, this also applies to the right to freedom of speech.

At the same time, given the international experience and significant public resonance due to the possibility of influencing the aforementioned constitutional law, the primary direction of the state should be to enshrine in law clear responsibilities for the subjects who own the "platforms" for spreading fakes. In such circumstances, cases of protection of honor, dignity, and business reputation on the Internet will become increasingly important, as anyone in our time can become the victim of the spread of inaccurate information about themselves. That is why knowledge of the basic algorithm of actions in the case of dissemination of such information will help to more effectively protect their rights and restore their reputation.

References

- [1] Constitution of Ukraine of June 28, 1996 № 254k / 96-VR // Bulletin of the Verkhovna Rada Of Ukraine. 1996. № 30. Art. 141.
- [2] About information: Law of Ukraine of October 2, 1992 №2657-XII [Text] // Voice of Ukraine. - 1992.
- [3] On personal data protection: Law of Ukraine of 01.06.2010 №2297-VI [Text] // Voice of Ukraine. - 2010. - №172.
- [4] Kohut N.D. Dissemination of information in modern society // Information and Law. - 2014. - № 3 (12). - St. 56-60
- [5] Busol O.Yu. Counteraction to corruption crime in Ukraine in the context of modern anti-corruption strategy: author's ref. dis. for the degree of Dr. Jurid. Science: special. 12.00.08. "Criminal law and criminology; criminal-executive law" / Olena Yuriivna Busol; NAS of Ukraine, Institute of State and Law. VM Koretsky. - K., 2015. - 36 p. - P. 25.
- [6] Civil Code of Ukraine [Text]: as of January 10. 2017: corresponds to the official. text. - Kharkiv: Pravo, 2017. - 439p.
- [7] Iasechko, M., Iasechko, S., Smyrnova, I. Aspectos pedagógicos do autodesenvolvimento de alunos de educação a distância na Ucrânia. *Laplage Em Revista*, 7 (Extra-B), 2021, p.316-323.
- [8] Iasechko, S., Ivanovska, A., Gudz T., Marchuk M., Venglinskyi O. and Tokar A. Information as An Object of Legal Regulation in Ukraine. *International Journal Of Computer Science And Network Security*. Vol. 21 No. 5, 2021 pp. 237-242
<https://doi.org/10.22937/IJCSNS.2021.21.5.33>
- [9] Kuryliuk Y., Khalymon S. (2020). Criminal profile of migrants' smuggler across the State Border of Ukraine. *Amazonia Investiga*. Vol. 9 No. 27, pp. 195–208