

Features of Exemption from Liability for the Violation of the Right to Information

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ABSTRACT

The regulation of relations that arise in the information sphere has certain shortcomings, which consist in the fact that an unreasonably small number of numbers are devoted to certain types of information. The mechanism of protection of violated rights to information, bringing violators to civil liability is not clearly established and in general, the peculiarities of exemption from liability for the violation of the right to information are ignored. The article is devoted to the analysis of doctrinal approaches to determining the features of exemption from liability for the violation of the right to information, as well as the need to distinguish between the categories of "exemption from liability" and "grounds that exclude liability". Exemption from liability is possible only when there were grounds for prosecution. Otherwise, it can only be a matter of grounds that exclude liability.

Keywords: Information; right to information; civil liability; exemption from liability; grounds that exclude liability.

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INTRODUCTION

The current process of state-building in Ukraine is preconditioned by the awareness of a wide range of processes taking place in society, including those directly related to the implementation of constitutional provisions that concern the observance and proper implementation of human and civil rights and freedoms. One of the basic rights of citizens is their right to information. Information is a link between the state and civil society, one of the effective means of establishing a relationship between an individual and the state. Social utility, economic value, and potential danger of information require detailed legal regulation of the informational sphere, the development of mechanisms to ensure the information security of the individual, society, and the state. The circulation of information in society gives grounds for the conclusion about the emergence of a new type of social relations - information, which is the object of legal regulation. In the conditions of the general scientific novelty of information as a subject of research, in the absence of a large volume of legislative and judicial practice, the legal science objectively cannot have deep knowledge in the field in question. Although special legislation provides for the protection of subjective rights, there are still many difficulties in their application arising in practice. Many problems remain poorly understood or unexplored at all, so one of the tasks of the modern science of private law is a comprehensive study of the features of exemption from liability for violation of the right to information.

MAIN TEXT

Civil law provides for the conditions under which a person is exempted from liability - it is a case and force

majeure. O.S. Joffe understood such an external or internal attitude to an event, which is characterized by harmful actions and is extraordinary by its nature, which cannot be prevented by economically acceptable means for a person, as force majeure. He combined "case" and "force majeure" on that basis of the absence of guilt of the offender [1].

The position of O.V. Dmitrieva, according to which the main sign of liability without guilt is a sign of impossibility to prevent the commission of any violation, is successful. At the same time, the "case" has a subjective character, and the "force majeure" has an objective one [2]. In our opinion, in the informational sphere, such circumstances include the spread of a computer virus capable of destroying information in full or on a global scale, through which no relevant computer antivirus has been detected; the failure of computer systems or media transmission environments (including the global computer network); cases of local information conflicts or informational wars, which lead to devastating consequences.

The violator of rights is a special participant in tortious relations and is not subject to the provisions of the construction of a general tort, but to the special rules, including the exemption from liability. At the same time, at the general theoretical level, there was a misunderstanding of the exemption from civil liability for damage caused by the lack of corpus delicti. Thus, O.V. Tserkovna believes that "...the grounds that exclude liability and the grounds for exclusion of liability in civil law can be limited only in contractual obligations. Yet in torts, due to the fact that they perform an important protective function, due to the requirements of compliance with the law and ensure the reliability of civil

relations, reimbursement and liability are almost the same, and the very fact of causing damage is already an offense. Therefore, the categories of "exemption from liability" and "exclusion of liability" are in fact identical [3].

Such a statement cannot be accepted because the performance of tortious obligations and civil liability should not be equated at least because their protective and compensatory functions coincide. Formal logic assures that when there are no grounds for prosecution, there can be no grounds for their exemption. If the damage is reimbursed voluntarily, then there is no need for a court decision on its force recovery and prosecution. This, obviously, is understood by O.V. Tserkovna herself, who points out that the grounds for exempting a police officer from liability are general grounds, as well as for all delinquents, and, besides, also additional, caused by the specificity of activity of police officers [4].

A distinction should be made between non-prosecution to liability and exclusion of liability. There is a fundamental difference between them, which is that the non-prosecution to liability depends on the victim. At the same time, it is presumed that this is the right of the victim. When appealing to the court, the state only assesses the grounds for prosecution for violating information rights and provides an official assessment. Here we proceed from the fact that the law does not allow arbitrary interference in the personal sphere, as well as provides for the grounds and procedure for interference in it. Therefore, with strict observance of information rights, there are no grounds for bringing a person to any responsibility [5].

In the grounds for exemption from civil liability, for the most part, there is no such element of the composition of a civil offense as the illegality of actions, which excludes prosecution to civil liability, and not, as erroneously indicated in the literature, for exemption from civil liability. The exemption from liability in itself indicates:

- 1) If there are no grounds for prosecution.
- 2) The simultaneous existence of circumstances that are recognized by law as sufficient to the exemption from civil liability. Therefore, it is a question of exemption from liability in the case when there were grounds for bringing it to justice. In the opposite case, it is only a matter of grounds that exclude prosecution.

The subjects of informational relations are exempted from liability for disclosure of information with limited access if the court finds that this information is socially necessary, i.e. is a matter of public interest, and the public's right to know this information outweighs the potential harm of its dissemination [9]. The subject of public interest is the information that indicates a threat to state sovereignty, territorial integrity of Ukraine; ensures the implementation of constitutional rights, freedoms, and responsibilities; indicates the possibility of human rights violations, misleading the public, harmful environmental, and other negative consequences of activities (inaction) of individuals or legal entities, etc. (Article 29, Part 3 of Article 30 of the Law "On Information"). In addition, a person cannot be held liable for making evaluative judgments. Such 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 (use hyperbole, allegory, satire). Evaluative judgments are not subject to

refutation and proof of their veracity (Article 30 of the Law).

According to the Law "On Printed Mass-Media (Press) in Ukraine" [10], the journalist is not responsible for publishing information that is untrue, degrades the honor and dignity of citizens and organizations, violates the rights and legitimate interests of citizens or is an abuse of the freedom of the print media and the rights of the journalist if: this information is obtained from news agencies or from the founder (co-founders); it is contained in response to a request for information submitted in accordance with the Law of Ukraine "On Access to Public Information" or in response to a request; it is a literal reproduction of public speeches or messages of subjects of power, individuals, and legal entities; it is a literal reproduction of materials published by another print media with reference to it; it discloses a secret that is specifically protected by law, but this information was not obtained by the journalist illegally; the law provides for dismissal or non-prosecution for such actions [9].

The Law of Ukraine "On state support of mass media and social protection of journalists" [10] in Part 6 of Art. 17 establishes that a journalist and/or a mass-medium shall be exempted from liability for disseminating untrue information if the court finds that the journalist acted in good faith and verified it.

In addition, for civil liability the following is not excluded:

- 1) The impossibility of prosecution due to the fact that the delinquent has no property to recover it in favor of the victim.
- 2) The victim refused to accept reimbursement or even entered into an agreement with the delinquent to refuse reimbursement.

We believe that in the first and second cases it is not a question of exemption from liability because the liability comes from the state and only the state body can exempt someone from it.

We draw your attention to the incorrectness of the current legislation on damages, in particular Art. 1166 of the Civil Code - reimbursement for damage using mechanisms that are inherent in legal liability: comes from the state and can be enforced by it. Therefore, if the delinquent reimburses the damage and/or damage caused by them without waiting for a court decision, it is a voluntary fulfillment of the obligation. Therefore, we consider it necessary to reconsider the ideology of Chapter 82 of the Civil Code of Ukraine and focus it on reimbursement for damages, rather than the liability.

Exemption from civil liability is a last resort and should be applied only when there is a need to protect values higher in priority than the damage done. At least this weakens the compensatory (restorative) function of civil liability, violates the general principles of equality of parties and justice. At the same time, all grounds for exemption from civil liability can be divided into several groups: general, special and institutional (separate). The first are established in the general provisions on obligations, the special are contained in separate institutes of civil law, the separate - in its norms.

Thus, the owner of a source of increased danger is exempted from liability if the source of increased danger has fallen out of their possession due to illegal actions of third parties. At the same time, positive law does not exclude the intersection of general, special and individual grounds for exemption from civil liability, which complicates their systematics and interdependence.

Art. 617 of the Civil Code of Ukraine defines the general grounds for exemption from liability for the violation of

obligation: force majeure, fault of the creditor, case (incident), other circumstances that cause the impossibility of performance of the obligation if they arose not because of the debtor's fault. Therefore, a person is exempted from liability for the violation of obligation if they prove that the violation occurred as a result of accident or force majeure. In other words, the violator of the obligation is obliged to prove the occurrence of circumstances as grounds for exemption from liability. This necessitates the consideration of cases of exemption from civil liability.

Since the days of Roman private law, a person has been exempted from liability in case of force majeure. Its influence on the non-prosecution of a person or their exemption from liability for violation of informational rights deserves a separate definition. Force majeure and its harmful effects are associated with accidental or even "blind" natural phenomena. It so happened that force majeure is understood as extraordinary and inevitable circumstances under the prevailing conditions. They are divided into two groups:

A) natural disasters (earthquakes, floods, fires, typhoons, sharp temperature fluctuations that cause crop failure or late bread ripening, etc.) They are characterized by being extraordinary - beyond ordinary natural phenomena and being inevitable - cannot be prevented as a result of preventive measures and overcome in the current state of science and technology and capabilities of the Ministry of Emergencies of Ukraine.

B) some circumstances of public life (military actions, mass diseases (epidemics), for example, the COVID-19 pandemic, national and sectoral strikes). This should also include prohibitive acts of state bodies [11].

G.K. Matveev believed that the following features are inherent in force majeure: 1) it is manifested mostly in various natural events as destructive phenomena of nature, but is not limited to them and can be manifested both in certain social phenomena and in the actions of individuals; 2) it is a relative concept, where the range of objectively accidental facts cannot be determined in advance, once and for all; 3) is characterized by suddenness (emergency), and therefore inevitability for the responsible person [12].

V.A. Eugenzicht pointed out such features of force majeure as 1) objectivity; 2) complexity; 3) the presence of an objectively random relationship between the actions of the subject and the result; 4) the presence of an objectively necessary causal link in the event of a threat and an objectively accidental connection as soon as it arises; 5) the insurmountability of this manifestation even when eliminating the factor of unexpectedness and the manifestation of the threat or from this moment in its manifestation in this particular situation by available physical, economic and technical means [13].

According to Art. 616 of the Civil Code of Ukraine, if the violation occurred due to the creditor's fault, the court shall accordingly reduce the number of damages and penalties levied on the debtor. The court also has the right to reduce the number of damages and penalties levied on the debtor, if the creditor intentionally or negligently contributed to the increase in damages caused by the violation of an obligation, or did not take measures to reduce them. Here it may happen that the victim misjudged the information received and caused damage by their own actions. In particular, if information about the crisis in the financial market or securities market was disseminated, the decision made by the owner on the unprofitable financial transaction is a

consequence not of such information, but of low qualification of the owner.

The case as a ground for exemption from liability is considered as a circumstance that can and should have been foreseen and prevented but it has not been done. It is sometimes associated with the mental state of the person who committed the offense but did not realize or could not realize its illegality and anticipate the negative consequences. A case (incident) occurs when the mental state of the offender is characterized by the absence of their guilt, for example, if during a quarrel a person disclosed information, in particular about the adoption, which caused damage.

In accordance with Paragraph 1 of Part 2 of Art. 614 of the Civil Code of Ukraine, a person shall not be found guilty if they prove that they have taken all necessary measures to properly fulfill the obligation. Thus, in accordance with Part 1 of Art. 1186 of the Civil Code of Ukraine, the damage caused by an individual who at the time of its task was not aware of the significance of their actions and (or) could not control them, shall not be reimbursed. The case should be distinguished from guilt in the form of negligence at the time of prediction. If the guilt is associated with a predictable negative consequence, then in the event there is not even a possibility to predict the occurrence of negative consequences. Neither the actions themselves nor their consequences are covered by the consciousness of the offender.

Other cases of exemption from liability may be provided directly by law or contract. Thus, in accordance with Part 3 of Art. 1187 of the Civil Code of Ukraine, a person who illegally took possession of a vehicle, mechanism, another object, caused damage to the activities of its use, storage, or maintenance, shall be obliged to reimburse it on general grounds. At the same time, this means that the owner of the source of increased danger is exempted from liability.

We are interested in the issue of exemption from liability for the dissemination of information. Here, the interests of its owners collide to ensure the inviolability of such information, in particular with limited access, and the need to provide it in cases provided by law, such as credit histories, statistical information, etc. Given the above, it is quite relevant that the exemption from damages is called "entitlement to harm", which means the circumstances usually associated with the deliberate (intentional) infliction of harm on the basis of direct or indirect permission (order), law, or the victim [14]. These are open informational banks, or the possibility of penetrating closed informational banks. Unlawful intrusion into and receipt of such data is due to the fault of the person storing such information and non-compliance with the regime and the fault of those who unlawfully obtained and used this information to the detriment of its owner.

The conducted analysis provides grounds to assert that the exemption from liability for violations serves not only to establish justice but also is a guarantee of legality in the activities of law enforcement officers.

CONCLUSION

To sum it up, we can state that it is necessary to distinguish between the violation of civil law in general and the violation of the obligation under a contract or other grounds. These are different categories that are fundamentally different from each other and at the same time have similar features. Accordingly, in the field of

information, there should also be a violation of the rules that protect the exclusive right to information, and a violation of obligations.

For civil liability, it is of no particular importance who allowed the information to leak illegally: its owner or one of their staff, or an interested person who specifically took action to obtain it.

The basis for civil liability is a violation of:

1) Prescriptions of acts of the current legislation, which regulates relations in the informational sphere.

2) Terms of the information obligations, including non-performance or improper performance (Art. 610 of the Civil Code of Ukraine). This provides liability for the violation of information law and for violation of obligations.

When establishing a violation of the right to information, it is a question of determining the signs and composition of the committed offense. Such include the refusal to provide information, the provision of distorted or writhed information, the illegal dissemination of information with limited access without the permission of its owner.

Among the most typical violations of the right to information are the following: poor preparation of information carriers, as a result of which it loses its credibility, violation of the condition of storage, and non-disclosure of information. One way or another, this is inaccurate information as a general category.

Disclosure or illegal use of information that is a trade secret, or its illegal receipt, is primarily a matter of reimbursement. In order to reimburse for the losses incurred as a result of disclosure (receipt by illegal method, illegal use) of information that is a trade secret, its owner in accordance with procedural law must justify their existence and the actual amount.

The categories of "exemption from liability" and "grounds that exclude liability" have been distinguished. Exemption from liability is possible only when there were grounds for bringing it to justice. In the opposite case, it is only a matter of grounds that exclude prosecution.

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