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APPOINTMENT OF EXPERTISE IN THE PROTECTION OF THE CHARITY AND DOMESTIC PRACTICE OF AN INDIVIDUAL

Key words: *linguistic expertise, inaccurate information, negative information, appraisal judgment.*

The existence of communicative human needs remains an undeniable fact. The state of the development of information technology indicates the improvement of means of interaction of individuals, including through the exchange of information. The advent of the Internet, various Internet platforms, mobile applications has simplified and improved the processes of searching, exchanging and disseminating information and creating it. Earlier, existing information sources such as print media, leaving their original form also transformed into electronic, in the form of Internet publications. However, the quality state of modern information has deteriorated

significantly, which is confirmed by a significant number of existing «fake» news, unverified translations and other types of defects in information. Unfortunately, the aforementioned disadvantages can be used to violate the right to respect for the honor and dignity of individuals, since the evolution of communication opportunities, expressing opinions, beliefs and views, together with it, contributed to the abuse of such rights and resulted in violations of the rights of others through the expression, dissemination of inaccurate information about a physical or legal person.

The right to respect for the dignity and honor of an individual, among others, in Article 270 of the Civil Code of Ukraine, applies to personal non-property rights. The lack of definition of the notions of «honor», «dignity» and «respect for honor and dignity» in the Civil Code of Ukraine is understandable, since these categories are primarily moral and ethical rather than legal, but at the same time, violations of such moral and ethical norms are legal consequences. However, these concepts, as well as the concept of «inaccurate information», «negative information», are embodied in The right to respect for the dignity and honor of an individual, among others, in Article 270 of the Civil Code of Ukraine, applies to personal non-property rights. The lack of definition of the notions of «honor», «dignity» and «respect for honor and dignity» in the Civil Code of Ukraine is understandable, since these categories are primarily moral and ethical rather than legal, but at the same time, violations of such moral and ethical norms are legal consequences. However, these concepts, as well as the concept of «inaccurate information», «negative information», have been embodied in the current Resolution of the Plenum of the Supreme Court of Ukraine dated February 27, 2009 «On judicial practice in cases concerning the protection of the dignity and honor of an individual, as well as the business reputation of a physical and legal person».

In the Resolution of the Plenum of the Supreme Court of Ukraine, the legal structure of the offense states that inaccurate information is such that it is not true or falsified (contains information about events or phenomena which did not exist or existed, but the details of which are incomplete or distorted) [1]. Article 277 (3) of the Civil Code of Ukraine provides for the presumption of unreliability of negative information, that is, negative information is considered to be inaccurate until the person who spread it does not prove the opposite[2]. However, by definition of «negative information» it is worth referring to the aforementioned Resolution of the Supreme Court of Ukraine of 27.02.2009. No. 1, according to which negative information is considered to be such as if it alleges violation of a person, in particular, the norms of the current legislation, the commission of any other actions (violation of the principles of morality, generally accepted rules of cohabitation, unethical behavior in personal, public or political life, etc.) and which, according to the plaintiff, violates his right to respect for dignity, honor, or business reputation.

When analyzing the decisions of the courts of first instance, it is worth noting that solving the issue related to the complexity of establishing the content of the concepts of «negative information» and «estimates judgments»,

possibly through linguistic expertise. In accordance with the provisions of the Instruction «On the appointment and conduct of forensic examinations and expert studies» approved by the Order of the Ministry of Justice of Ukraine No. 53/5 dated 08/10/1998. With the help of semantic and textual examination, the following questions are solved: the meaning of words, phrases, phrases; their objective content; as to whether the information in the text is positive or negative in relation to a particular natural or legal person; Is there a negative statement about a particular person, whether the statement is an actual statement or an appraisal judgment [3].

However, an expert-linguist or judge must determine the form in which the information is expressed (actual statement or estimation), some scholars have doubts that they are substantiated by the fact that at the legislative level the notion «evaluative judgments» is defined in Article 30 of the Law of Ukraine «On information according to which estimates of judgments, with the exception of defamation, contain statements that do not contain factual data, criticism, evaluation of actions, and statements that can't be construed as containing actual data, in particular in view of the nature of the use last one linguistic and stylistic means (use of hyperbole, allegory, satire). Estimated judgments are not subject to refutation and proof of their truth» [4]. That is, for such signs it is a matter of law, which the court determines independently.

At the same time, according to O. Rublya, the question of the proper subject of the definition of information as an appraisal or actual statement is controversial, in spite of the legislative definition of evaluative judgments, it is necessary to take into account also the use of language-stylistic means (the use of hyperbole, allegory, satire), but for such signs, this question is not only legal, therefore it requires separate knowledge [5].

An analysis of the jurisprudence suggests that the courts apply the practice of the European Court of Human Rights, since courts refer, for example, to the decision in *Lingens v. Austria*, in which the court distinguished between facts and appraisal judgments, and noted that the existence facts can be proved, and the truth of a critical statement can't be proved. The requirement to prove the truth of a critical statement is impossible to execute and violates freedom on its own point of view, which is a fundamental part of the right protected by art. 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms [6]. The courts also refer to the decision of the European Court of Human Rights in case *Feldek v. Slovakia*, dated July 12, 2001, where a similar position was held regarding the delimitation of judgmental judgments from factual evidence.

That is, in order to adequately protect their violated right to respect for honor, dignity, and business reputation, it is necessary to distinguish the distribution of inaccurate information from valuation judgments and to take into account the excessive language, since the same sentence can be interpreted by different people to be absolutely ambivalent. Of course, the plaintiff can, in advance of the filing of the claim, determine in what form information has been disseminated about him, and then apply to the court.

The issue of proper protection of the violated non-property rights of an individual is particularly important as they are in the sphere of ensuring the

functioning of not only legal norms, but also moral ones. Despite the legislative settlement of the issue of protecting the right to respect for the honor and dignity of an individual from his violation by disseminating inaccurate information, in judicial practice, the results of linguistic examination are of great significance, taking into account the peculiarities of modern methods of creating information and the complexity of determining its forms.

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INAPPROPRIATE USE OF THE EUROPEAN COURT OF HUMAN RIGHTS' CASE LAW IN UKRAINE'S LITIGATION

Key words: *European Court of Human Rights, litigation, human rights, inappropriate use.*

Ukrainian human rights activists, like Ukraine as a whole, are very proud of the ratified Convention for the Protection of Human Rights and Fundamental Freedoms [1], and the blessed opportunity to use the practice of the ECHR in order to strengthen the legal argument in litigation.