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SPECIFICITIES OF ECONOMIC LIABILITY FOR OFFENSES IN THE FIELD OF TELECOMMUNICATIONS

Abstract. Purpose. The purpose of the article is to clarify the specificities of economic liability for offenses in the field of telecommunications. **Results.** The category of legal liability is classified according to various criteria. In practical terms, the classification based on the nature of sanctions and the sectoral feature is considered to be most appropriate. According to the latter, it is customary to distinguish legal liability types, such as criminal, administrative, disciplinary, civil, constitutional and international. It was revealed that spam, as a phenomenon, takes place not only in electronic but also in traditional mail. The economic component of spam is entrusted to the sender, who pays for the postal service, and the postal service delivers to the addressee (to the home mailbox or P.O. box in the post office). The technology in this case allows you to remain anonymous. In fact, in most cases, postal services receive printed products in unconverted form for mass mailing to postal addresses. Such an agreement is beneficial to each of the parties. The postal department proceeds from the need to preserve the postal network in the face of falling demand for subscriptions to printed publications. The sender saves money on creating its own delivery network. The recipient, taking out a pack of advertising booklets from the mailbox, does not feel much irritation. He does not pay for their delivery services as a recipient and does not pay for it even indirectly as a taxpayer. **Conclusions.** The current legislation defines the grounds for establishing contractual liability. For example, we can cite the provisions of Article 36 of the Law “On Telecommunications”, which define the grounds for contractual liability in the relations of telecommunications between operators, providers and consumers, to consumers of these services. In particular, in accordance with the provisions of Part 2 of Article 36 of the above law, if there is a delay in payment for the services provided by the telecommunications operator and provider, consumers pay a penalty calculated by the cost of unpaid services in the amount of the discount rate of the National Bank of Ukraine, which was in effect at the time for which the penalty is charged. These provisions are detailed in the Rules for Provision and Receipt of Telecommunication Services.

Key words: telecommunications market, detection, prevention, elimination, legislation.

1. Introduction

In the form of a duty, liability is an active aspect, in which it is the person's awareness of his/her own social position, significance in the social progress, personal participation in the state affairs. Liability within the first meaning is a certain behavioural regulator of moral and political nature. The interest in the aspect of the obligatory type of liability reached its maximum level when it became possible to legally justify cruel and inhuman crimes (Shemshuchenko, 1998, p. 128).

The second aspect of liability can be understood due to the retrospective, in the form of liability for actions that were committed in the past. On the one hand, it can be defined as a person's recognition of the consequences

of his/her own unfavourable behaviour, and on the other hand, imposition of appropriate restrictions and deprivations on this person, adequate negative public reaction to his/her actions. Some scholars note that legal liability can be used only in relation to a broad understanding of the concept of “punishment”.

It should be noted that despite the existence of legal liability for the protection of the order of social and state nature, the above does not exhaust its high role and purpose. Since legal liability implies an outstanding educational impact, any punishment for legal violations is primarily stored in the personal consciousness of the offender.

The purpose of the article is to clarify the specificities of economic liability for offenses in the field of telecommunications.

2. Theoretical issues of legal liability in the field of telecommunications

Legal liability is an important regulatory element of social relations of a legal nature, the content thereof can be described as a targeted impact on individual behaviour through legal means. This complex influence enables to fully regulate relations in society, to give them the appropriate features of stability and consistency, to implement the principles of social justice and to avoid aggravation of social conflicts. The existence of law in the form of a regulator of relations of society at all times is directly conditioned by the need to maintain law and order in a heterogeneous society, filled with internal contradictions, in order to prevent any deviations and violations of the established rules of conduct.

Legal liability as an independent and necessary component of the legal regulatory system can be characterised by three specific features:

1. It is the types of state coercion.
2. The exclusive basis for the application of legal liability is a legal violation.
3. This legal category is implemented and functions by taking appropriate negative measures against persons who have committed legal violations (Hrek, 2010, p. 42).

The category of legal liability is classified according to various criteria. In practical terms, the classification based on the nature of sanctions and the sectoral feature is considered to be most appropriate. According to the latter, it is customary to distinguish legal liability types, such as criminal, administrative, disciplinary, civil, constitutional and international.

Determination of the specificity of legal liability, the use of its certain varieties, establishment of the boundaries and development of possible areas for its improvement provide for particularly acute problems in the field of telecommunications and the use of the radio frequency resource of Ukraine (Kozlovskiy, 2016, p. 203).

For example, the above is due to a large number of controlling entities and legal provisions of the legislation that regulate certain relations, their scattering in regulations of not only different legal force, but also different legislative branches.

According to the provisions of Article 75 of the Law of Ukraine "On Telecommunications", persons who violate the telecommunications legislation shall be liable for civil, administrative and criminal offences in accordance with the law (Law of Ukraine on Telecommunications, 2003).

Moreover, profits received by a telecommunications operator or provider in the course of its activities without notifying the National Com-

mission for the State Regulation of Communications and Informatization (NCCIR) and/or permits for the use of numbering resources, licenses, violations of tariffs set by the NCCIR, shall be seized by the court and transferred to the State Budget of Ukraine (Kozlovskiy, 2016, p. 203).

3. Specificities of economic activity in the telecommunications industry

Due to the peculiarities of the subject of telecommunications relations, economic activities in the telecommunications industry are a fairly new phenomenon, and there is a lack of thorough research of problems related to the analysis of the characteristics of economic liability of legal entities in the telecommunications industry.

Economic liability is understood as the endurance by the actors of economic relations of adverse consequences of economic and (or) legal nature due to the use of economic sanctions against them in the manner and on the grounds provided by laws and economic contracts. The legal means of implementation of liability within the economic sector are economic sanctions as measures of influence on the legal violator within the economic sector, the use of which have economic and (or) legal effects of adverse type (Milash, 2008, p. 377).

Chapter 24 of the Economic Code of Ukraine (EC) defines general principles of liability of participants of relations in the economic sector. According to the provisions of Article 216 of the Economic Code of Ukraine, the parties to economic relations bear economic liability for violations of provisions in the sector of economic activity by economic sanctions against the guilty persons in the manner and on the grounds provided by the Economic Code of Ukraine, other laws and agreements.

Part 2 of Article 217 of the EC of Ukraine provides for types of economic liability such as: compensation for damages; penal sanctions; operational and economic sanctions.

Moreover, according to parts 3, 4 of Article 217 of the EC of Ukraine, another type of liability is administrative and economic sanctions, the difference thereof from others can be recognised in the fact by whom they can be applied and in the grounds for using these sanctions (Economic Code of Ukraine, 2003).

Furthermore, the above types of liability differ from each other by the forms of its implementation. Like all other types of legal liability, economic liability is characterised by the following forms of implementation: voluntary and compulsory (judicial and extrajudicial procedure).

Administrative and economic sanctions, including compensation for damages and pen-

alty sanctions, can be used both voluntarily and in a judicial (compulsory) manner; sanctions of economic and operational nature, exclusively in an extrajudicial compulsory manner; administrative and economic sanctions, in a compulsory (extrajudicial) manner (Milash, 2008, p. 377).

The grounds for economic liability (use of sanctions of economic type) of a business entity may include a legal violation committed by this entity in the economic sector.

The following special legal regulations govern relations in the telecommunications industry and establish the procedure for bringing to liability persons guilty of violating certain provisions of legislation in this field:

1. Law "On Telecommunications".

2. Rules for providing and receiving telecommunication services.

3. Basic requirements to the agreement on provision of telecommunication services, etc.

Since the legal relations that arise in the telecommunications industry are of an economic nature, in addition to the above legal provisions, the parties of relations in the field of telecommunications are subject to the provisions of legislation governing economic relations.

Taking into account the general provisions of economic legislation, special provisions define the characteristic specificities of the use of administrative and economic sanctions against telecommunications operators and providers.

Bringing administrative and economic entities to liability is of great interest, because the procedure for establishing offenses (through scheduled and unscheduled inspections by an authorised entity) has its own characteristics.

The state supervision of the telecommunications market, in accordance with tasks entrusted, is carried out by the NCCIR. The main task of this supervision is to detect, prevent and eliminate violations of the legislation by the participants of the administrative and telecommunications market in the course of their activities in the telecommunications sector. The NCCIR exercises its full powers in terms of supervision by conducting scheduled and unscheduled inspections, implementing other measures in accordance with the legislation aimed at detecting, preventing and eliminating legislative violations by participants of the administrative telecommunications market.

During inspections the NCCIR:

1) monitors compliance with the requirements for the quality of services in the telecommunications sector, availability of licenses provided by law, other permits in the telecommunications sector;

2) verifies compliance with the license conditions by telecommunications operators and providers;

3) controls the compliance of administrative telecommunications market participants with laws, standards and other regulatory documents in the telecommunications sector;

4) measure the parameters of telecommunications networks in the manner prescribed by the NCCIR;

5) controls the observance of the traffic routing procedure on telecommunications networks by telecommunications operators.

Measures of influence on offenders, based on the information provided on the official website of the NCCIR (Official site of the National Commission for State Regulation of Electronic Communications, Radio Frequency Spectrum and Provision of Postal Services, 2021) are: issuing orders to eliminate violations of licensing conditions within the telecommunications sector and conditions for the use of radio frequency resources; issuing orders to eliminate legislative violations within the telecommunications sector and the use of radio frequency resources and other means of influencing offenders.

S. Seniuta underlines that the Ukrainian legislation regulating activities in the field of telecommunications provides for the use of administrative and economic sanctions, which are provided for by both the EC and other laws (Seniuta, 2014, p. 55).

The EC provides for the following type of administrative and economic liability: administrative and economic fine, which can be defined as a sum of money paid by a business entity to a certain budget in case of violation of the established rules for economic activities.

The notion of the terms "fine" and "penalty" is provided by the current Tax Code of Ukraine (TCU). According to Section 1 of the TCU, these legal relations should be guarded by this regulations, which is confirmed by the essence of Article 1 of the TCU.

According to the content of subparagraph 14.1.162 of Article 14 of the TCU, the fine is the amount of funds in the form of interest rates charged on the amounts of monetary liabilities not repaid within the time established by law.

In accordance with subparagraph 14.1.265 of Article 14 of the TCU, a penalty shall be understood as a payment of a fixed amount and/or interest charged from a taxable person in connection with their breaching requirements of the tax legislation and other laws subject to control by state tax service agencies, as well as sanctions for breaches in the field of foreign economic activity.

Regarding other types of economic sanctions in the field of telecommunications, it can

be said that violations during economic activities by business entities may arise, in addition to legal requirements, also from contracts. Moreover, it is necessary to distinguish the liability of contractual and non-contractual nature of business entities.

Liability of contractual and non-contractual type may arise both in vertical and horizontal legal relations between participants in relations in the telecommunications industry. For example, liability may arise both between the economic entities that carry out economic activities in the telecommunications industry, between economic entities and consumers, between economic entities and telecommunications regulatory authorities, etc. (Seniuta, 2014, p. 56).

4. Specificities of the legal and regulatory framework for contractual liability

The current legislation defines the grounds for establishing contractual liability. For example, we can cite the provisions of Article 36 of the Law "On Telecommunications", which define the grounds for contractual liability in the relations of telecommunications between operators, providers and consumers, to consumers of these services. In particular, in accordance with the provisions of Part 2 of Article 36 of the above law, if there is a delay in payment for the services provided by the telecommunications operator and provider, consumers pay a penalty calculated by the cost of unpaid services in the amount of the discount rate of the National Bank of Ukraine, which was in effect at the time for which the penalty is charged. These provisions are detailed in the Rules for Provision and Receipt of Telecommunication Services.

In contractual relations, the other party, the business entity to which the services are provided, is not exempt from liability.

The above examples of grounds for bringing participants of economic relations in the field of telecommunications, in accordance with the provisions of Article 217 of the EC, can be attributed to a type of penalty sanctions.

Furthermore, the legislation enshrines the grounds for applying other types of liability, that is, compensation for damage, application of operational and economic sanctions.

For example, the establishment of the obligation to compensate for damage by one of the parties to the obligation is enshrined in part 4 of Article 36 of the Law "On Telecommunications", according to which, whenever damage to the telecommunications network, due to consumer fault, is detected, all the costs of the administrative telecommunications operator to eliminate the damage, as well as reim-

bursment of other losses (including lost profits), should be borne by the consumer.

In the relations between the provider of services in the field of telecommunications and the consumer, measures of operational and economic influence may, if necessary, be applied, which enable the party to immediately respond to the violation in case of its detection.

For example, paragraph 54 of the Rules for the provision and receipt of telecommunications services (Resolution of the Cabinet of Ministers of Ukraine On approval of the Rules for the provision and receipt of telecommunications services, 2012) provides for an operational and economic measure such as the right of the administrative and telecommunications operator and provider to temporarily reduce the provision of services on their own initiative.

Analysis of the general legislative grounds for bringing to legal liability participants in telecommunication relations enables to determine which types of liability from those provided for by general regulations are embodied in the rules of special legislation. It should be noted that the provisions of special legislation provide for the possibility of applying all types of legal liability defined in the EC.

It should be noted that the participants should specify the rights of the participants of telecommunication relations in certain contracts, which will provide an opportunity to specify legal liability or establish liability and its form for those types of violations for which it is not provided by the current legislation (Seniuta, 2014, p. 58).

Next, the focus should be on the opinion of the scientist who underlines that liability in the field of telecommunications is not only within the framework of generally accepted types of liability, but also liability for spamming. For example, Yu.V. Volkov (Volkov, 2011, pp. 80-83) argues that in the modern world spam, that is, mass unwanted e-mailing has become quite a common negative phenomenon. Everyone who has an electronic mailbox has probably faced this problem. For the recipient, in the vast majority, this phenomenon is negative and requires adequate measures. Considering ways to combat spam, first of all, the nature of the phenomenon should be considered.

Spam, as a phenomenon, takes place not only in electronic but also in traditional mail. The economic component of spam is entrusted to the sender, who pays for the postal service, and the postal service delivers to the addressee (to the home mailbox or P.O. box in the post office). The technology in this case allows you to remain anonymous. In fact, in most cases, postal services receive printed products in unconverted form for mass mailing to postal

addresses. Such an agreement is beneficial to each of the parties. The postal department proceeds from the need to preserve the postal network in the face of falling demand for subscriptions to printed publications. The sender saves money on creating its own delivery network. The recipient, taking out a pack of advertising booklets from the mailbox, does not feel much irritation. He does not pay for their delivery services as a recipient and does not pay for it even indirectly as a taxpayer. This type of spam, paid for by a private advertiser, allows the budget to save on the maintenance of the state postal service.

A different nature of the phenomenon is observed in the case of sending spam through electronic communication channels. The sender, nominally pays for access to the network (in fact, can carry out the mailing for free, using their own, official or attracted resources). Delivery is made to the mail server of the addressee's telecommunications operator or to a similar server of the addressee's free postal service. Receipt by the subscriber is carried out at his own expense. This is one of the essential differences between e-mail spam and postal spam. On the other hand, the cost of sending via telecommunication channels is much less than the cost of postal mailing. The use of a mailing register (a list of addresses of a mail server or compiled

in another way) significantly reduces the time of preparation of one letter. Furthermore, significant factors are the absence of customs barriers to spamming, the possibility of anonymous mailing and others. Efficiency and low cost in the presence of high demand create a significant advantage of electronic mailing. These differences of electronic mail spam from traditional mail spam give rise to a lot of problems. Reuters agency with reference to the U.S. Department of Commerce notes that 83% of all e-mail traffic is spam ("spam" e-mail) (Resolution of the Cabinet of Ministers of Ukraine On approval of the Rules for the provision and receipt of telecommunications services, 2012), the fight against which the United States, Great Britain and Australia began jointly.

5. Conclusions

To sum up, it should be noted that the specificities of liability for violations in the field of telecommunications are characterised by the application of different types of liability. According to the provisions of Article 75 of the Law of Ukraine "On Telecommunications", persons who violate the telecommunications legislation shall be liable for civil, administrative and criminal offences in accordance with the law. Moreover, some scientists underline a fairly new type of legal liability in the field of telecommunications – economic liability

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ОСОБЛИВОСТІ ГОСПОДАРСЬКОЇ ВІДПОВІДАЛЬНОСТІ ЗА ПРАВОПОРУШЕННЯ У СФЕРІ ТЕЛЕКОМУНІКАЦІЙ

Анотація. Мета. Метою статті є з'ясування особливостей господарської відповідальності за правопорушення у сфері телекомунікацій. **Результати.** Категорію юридичної відповідальності класифікують за різноманітними ознаками. Найбільш доцільною в рамках практичного відношення вважається класифікація за ознаками характеру санкцій та за галузевою рисою. За останньою прийнято виділяти наступні види правової відповідальності, зокрема кримінальну, адміністративну, дисциплінарну, цивільно-правову, конституційну та міжнародно-правову. З'ясовано, що спам, як явище, має місце не тільки в електронній, а й в традиційній пошті. Економічна складова спаму покладена на відправника, який оплачує поштову послугу, а поштова служба здійснює доставку до адресата (в домашню поштову скриньку або абонентський ящик в поштовому відділенні). Технологія в даному випадку дозволяє залишатися анонімним. Насправді в більшості випадків поштові служби отримують друковану продукцію в неконвертованому вигляді для масової розсилки на поштові адреси. Така угода вигідна кожній зі сторін. Поштове відомство виходить з необхідності збереження поштової мережі в умовах падіння попиту на підписку друкованих видань. Відправник економить кошти на створення власної мережі доставки. Одержувач, виймаючи з поштової скриньки пачку рекламних буклетів, не відчуває особливого роздратування. Він не платить за послуги з їх доставки, як одержувач і не платить за це навіть непрямою чином як платник податків. **Висновки.** Чинне законодавство визначає підстави для встановлення договірної відповідальності. Так, як приклад, можна навести положення статті 36 закону «Про телекомунікації», якими визначено підстави використання відповідальності договірної типу у відносинах телекомунікацій між операторами, провайдерами й споживачами, до споживачів даних послуг. Зокрема, згідно зі змістом норм ч. 2 статті 36 вищевказаного закону, якщо є затримка оплати за надані послуги телекомунікаційними оператором та провайдером споживачі оплачують пеню, що обчислюється вартістю послуг, що неоплачені, у розмірі облікової ставки Національного Банку України котра діяла в момент, за котрий пеня нараховується. При цьому вказані положення деталізуються Правилами надання й отримання телекомунікаційних послуг.

Ключові слова: телекомунікаційний ринок, виявлення, запобігання, усунення, законодавство.

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