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## LIABILITY OF AN ATTORNEY FOR DISSEMINATION OF FALSE INFORMATION

**Abstract. Purpose.** The purpose of the article is to establish the specific features of an attorney's liability for dissemination of false information. **Results.** The article focuses on the specific features of application of liability to an attorney-at-law for dissemination of false information. It is determined that if an attorney-at-law disseminates false information in the course of his/her practice of law, even on behalf of the client, he/she shall be liable under civil law in accordance with the applicable provisions of law. A lawsuit may be filed against him/her to refute such information. It is proved that the essence of the practice of law is to provide professional legal services to clients with a view to achieving justice exclusively on the basis of legal and morally justified means. It is determined that the practice of law in accordance with the requirements of the law contributes to: increasing the level of trust in the practice of law; a positive impact on the level of legal awareness; and promotes the achievement of justice exclusively through legal and morally justified methods. It is emphasised that Article 19 of the Rules of Professional Conduct for Attorneys expressly provides that an attorney shall not accept the instructions, if the result desired by a client, or the methods for achieving it, on which the client insists, are unlawful, or if the client's instruction goes beyond the scope of the attorney's professional rights and duties. In cases, if the said circumstances are not obvious, the attorney shall give appropriate clarifications to the client. If under such circumstances it is still impossible to agree with the client the modifications in the contents of the instruction, the attorney shall decline the conclusion of the agreement with the client. The advocate shall not, in the course of his or her practice, resort to means and methods contrary to the applicable law or these Rules. **Conclusions.** It is concluded that the essence of the practice of law is to provide professional legal services to clients with a view to achieving justice exclusively on the basis of legal and morally justified means. The practice of law in accordance with the requirements of the law contributes to: increasing the level of trust in the practice of law; a positive impact on the level of legal awareness; and promotes the achievement of justice exclusively through legal and morally justified methods. If an attorney-at-law disseminates false information in the course of his/her practice of law, even on behalf of the client, he/she shall be liable under civil law in accordance with the applicable provisions of law. A lawsuit may be filed against him/her to refute such information.

**Key words:** practice of law, attorney-at-law, rule of law, liability, agreement, client, rights, obligations.

### 1. Introduction

The full existence and functioning of any society is impossible without the legal order. The legal order is a legitimate regulatory chain, which is achieved by issuing laws and other regulations, improving legislation, and taking measures to strengthen the legality. According to Article 4 of the Law of Ukraine On the Bar and Practice of Law (Law of Ukraine On The Bar and Practice of Law, 2012), the main principles of the practice of law are compliance with the rule of law, legality, independence, confidentiality and avoidance of conflicts of interest. Legal responsibility is central to ensuring and maintaining orderly social relations. It is the institution of legal liability as one of the optional elements of the operation of law

that to a certain extent implements the requirements of legal provisions. One of the most pressing issues of legal liability remains liability for violations in the information field, in particular, the liability of an attorney-at-law for dissemination of false information. Therefore, the question of the attorney's liability in case of dissemination of false information in the course of performing his or her duties arises.

The purpose of the article is to establish the specific features of an attorney's liability for dissemination of false information.

### 2. Control over the practice of law

The provision of qualified practice of law is impossible without ensuring appropriate control over such activities. Such control is primarily ensured by the rules of the institu-

tion of legal liability of the attorney-at-law. The activities of the attorney-at-law cannot be based solely on the desire to provide qualified legal services, they must also be ensured by legal liability for the non-performance or improper performance of the duties assigned to him or her. The main task of such liability is to ensure that the attorney performs his or her duties in providing legal services properly. This increases the level of trust in the legal profession and has a positive impact on the level of legal awareness of citizens. The rights and obligations are emphasised by scholars who consider responsibility as a specific institution of social control that defines the rights and obligations of a subject in connection with the task entrusted to him/her and the legal or moral - positive or negative - consequences in case of fulfilment or, respectively, non-fulfilment of these rights and obligations (Oliinyk, 2016). This definition of liability, in our opinion, should be supported, especially when it comes to the liability of attorneys. It includes not only retrospective but also prospective aspects of responsibility, since it contains an indication of behaviour aimed primarily at the proper performance of the duties assigned. Therefore, legal liability of the attorney may be characterised as a special legal status of the participant in legal relations, which implies the rights and obligations enshrined in the regulations and contracts, understanding of the need to comply with the relevant provisions, as well as the possibility of adverse consequences in case of violation of these provisions on the basis and in accordance with the procedure specified in the law or contract.

The regulatory system of relations in the information field is aimed at ensuring the effectiveness of relations and strengthening guarantees of observance of the rights of the participants in legal relations (Lohinova, Drobozhur, 2015). The Constitution of Ukraine (1996) guarantees everyone the right to freedom of thought, speech, and free expression of their views and beliefs (Article 34). Everyone has the right to freely collect, store, use and disseminate information orally, in writing or in any other way of their choice. However, the main condition for this is that the information must be disseminated in compliance with the legislation on its reliability and not tarnish the honour, dignity and business reputation of other persons. Article 32 of the Constitution of Ukraine provides for a number of guarantees in the field of personal data protection: no one shall be subjected to interference in his private life and family matters; the collection, storage, use, and dissemination of confidential information about a person without his consent shall not be permitted, except for the cases determined

by law and only in the interests of national security, economic welfare, and human rights; every citizen shall have the right to have access to the information about himself/herself possessed by public authorities and bodies of local self-government, institutions, and organisations unless such information is considered a state or other secret protected by law; everyone shall be guaranteed judicial protection of the right to rectify unauthentic information about himself/herself and members of his family, the right to demand the expungement of any type of information, as well as the right to compensation for material and moral damages caused by the collection, storage, use, and dissemination of such unauthentic information. According to court practice, the right to freedom of thought and speech, to the free expression of one's views and beliefs is supported by the obligation not to disseminate false information about a person or information that discredits his or her dignity, honour or business reputation (Resolution of the Plenum of the Supreme Court of Ukraine On refutation of false information and recovery of moral damages, 2019).

According to the provisions of Article 29 of the Law of Ukraine On Information (1992), society has the right to receive socially necessary information and information of public interest is considered to be information that indicates a threat to state sovereignty, territorial integrity of Ukraine; ensures the exercise of constitutional rights, freedoms and obligations; indicates the possibility of human rights violations, misleading the public, harmful environmental and other negative consequences of activities (inactivity) of individuals or legal entities, etc. Moreover, the society has the right to receive information that corresponds to reality and enables the society to independently assess it on the basis of all the facts and diversity of opinions on the assessment of such information and its importance for the society, so it is important that the information disseminated by anyone, especially by the media or opinion leaders, officials, civil servants, on the one hand, consistent with reality, and on the other hand, socially significant and satisfying the public demand for control over the activities of state bodies and their officials. Thus, no matter how socially necessary the information is, it must always be reliable if it is presented in the form of factual statements (Resolution of the Plenum of the Supreme Court of Ukraine On protection of business reputation and the obligation to refute false information, 2021).

The party to relations in the information sphere may demand elimination of violations of its right and compensation for property and moral damage caused by such offences

(part 2 of Article 200 of the Civil Code of Ukraine (hereinafter - the "Civil Code")) (Civil Code of Ukraine: dated January, 2003). According to Article 275 of the Civil Code the protection of a personal non-property right is carried out in the manner prescribed by Chapter 3 of this Code, as well as in other ways in accordance with the content of this right, the manner of its dissemination and the consequences caused by this violation. Dissemination of information should be understood as: publication in the press, broadcasting on radio, television or other mass media; dissemination on the Internet or using other means of telecommunication; presentation in statements, letters addressed to other persons; messages in electronic networks, as well as in other forms to at least one person (Resolution of the Plenum of the Supreme Court of Ukraine On judicial practice in cases of protection of the dignity and honor of an individual, as well as the business reputation of an individual and a legal entity, 2009). In addition, information that is untrue or falsely stated, i.e. contains information about events and phenomena that did not exist at all or that existed, but the information about them is not true (incomplete or distorted), is considered unreliable. Information that is disseminated in violation of this requirement shall be deemed unreliable (Resolution of the Plenum of the Supreme Court of Ukraine On judicial practice in cases of protection of the dignity and honor of an individual, as well as the business reputation of an individual and a legal entity, 2009). The concept of "reliability" is a highly evaluative concept, as what is right for one person may be wrong for another. In addition, the current legislation of Ukraine does not define the concept of "reliability". However, scholars interpret and understand this concept in different ways. For example, some scientists define "reliability" as a property of information that determines the degree of objective, accurate reflection of events and facts that have taken place; the absence of errors and biased judgements (Mykytenko, 2016); correspondence to reality; correspondence, adequacy and identity of the data obtained to the actual conditions or the property of information that determines the degree of objective, accurate reflection of events and facts that have taken place (Politanskyi, 2013). Therefore, reliability can be understood as a truthful reflection of reality both on material carriers and in the oral transmission of information. Reliability should be an objective category and not depend on the person's perception of the information, as well as on the way it is transmitted. Analysing the Supreme Court's ruling, it can be concluded that information that is untrue or falsely

presented, that is, contains information about events and phenomena that did not exist at all or that existed but the information about them is not true (incomplete or distorted), is considered unreliable (Resolution of the Plenum of the Supreme Court of Ukraine On judicial practice in cases of protection of the dignity and honor of an individual, as well as the business reputation of an individual and a legal entity, 2009).

### **3. Regulatory framework for the protection of disputed, unrecognised or violated rights**

The Civil Code provides a list of ways to protect a disputed, unrecognised or violated right, this list is not exhaustive, and the court may apply other remedies. With regard to protection against false information that has been communicated to other people in one way or another, Article 277 of the Civil Code should be noted. An individual whose personal non-property rights have been violated as a result of the dissemination of false information about him or her and/or his or her family members has the right to respond and to refute such information. The defendants in a case for the protection of dignity, honour or business reputation are the individual or legal entity that disseminated the false information, as well as the author of the information. Refutation of false information means that the person who disseminated such information at the request of the person about whom such information was disseminated must recognise such information as false in a form identical to the form or adequate to the form of dissemination of false information (Resolution of the Plenum of the Supreme Court of Ukraine On judicial practice in cases of protection of the dignity and honor of an individual, as well as the business reputation of an individual and a legal entity, 2009).

Another special remedy is the right to reply to the person who disseminated false information. Nowadays, the Civil Code does not regulate the issue of the right to reply to a person, since more attention is paid to the right to refute. According to R. Stefanchuk, the right to reply should be understood as the right to present one's own point of view regarding the disseminated information and the circumstances of the violated personal non-property right (Stefanchuk, 2008). The main difference between the right to refute false information and the right to reply is that when exercising the right to reply, a person has the right to present his or her own point of view on the disseminated information and the circumstances of the violation of a personal non-property right without recognising it as false, and that false information is refuted by the person who dis-

seminated it, and the reply is given by the person in respect of whom the information was disseminated.

The analysis of the current legislation, in particular Articles 4, 20 of the Law of Ukraine "On the Bar and Practice of Law", Article 13 of the Civil Code gives grounds to assert that an attorney shall not commit acts prohibited by law, the rules of conduct, the legal services agreement, or violate the rights of other persons. The attorney may use only those means and methods of work that are not prohibited by law. Therefore, if the attorney, while representing the client, commits a criminal, administrative or civil offence, the status of an attorney does not exempt him or her from liability for such violation. If an attorney-at-law disseminates false information in the course of his/her practice of law, even on behalf of the client, he/she shall be liable under civil law in accordance with the applicable provisions of law. A lawsuit may be filed against him/her to refute such information (Resolution of the Plenum of the Supreme Court of Ukraine On judicial practice in cases of protection of the dignity and honor of an individual, as well as the business reputation of an individual and a legal entity, 2009). According to Article 20 of the Law "On the Bar and Practice of Law", during the practice of law, a lawyer has the right to perform any actions not prohibited by law, the Rules of Professional Conduct (2019) and the legal aid agreement necessary for the proper performance of the legal services agreement. According to para. 15 of Part 1 of Article 23 of the Law "On the Bar and Practice of Law", the attorney's statements in the case, including those reflecting the client's position, statements in the media, cannot be the basis for the attorney's liability, if they do not violate the professional duties of the attorney. In addition, Article 13 of the Civil Code of Ukraine, Articles 4 and 20 of the Law "On the Bar and Practice of Law", and Article 7 of the Rules of Professional Conduct stipulate that, in the course of representation, an attorney shall not commit acts prohibited by law, the rules of professional conduct, or a legal services agreement, nor violate the rights of other persons. Article 19 of the Rules of Professional Conduct for Attorneys expressly provides that an attorney shall not accept the instructions, if the result desired by a client, or the methods for achieving it, on which the client insists, are unlawful, or if the client's instruction goes beyond the scope of the attorney's professional rights and duties. In cases, if the said circumstances are not obvious, the attorney shall give appropriate clarifications to the client. If under such circumstances it is still impossible to agree with the client the modifications in the contents

of the instruction, the attorney shall decline the conclusion of the agreement with the client. The advocate shall not, in the course of his or her practice, resort to means and methods contrary to the applicable law or these Rules.

According to Article 25 of the Rules of Professional Conduct, in the performance of a client's instruction an attorney is categorically prohibited to use unlawful and unethical means, in particular, to encourage witnesses to give false testimony, to resort to unlawful methods of pressure on the opposing party or witnesses (threats, blackmailing, etc.), to use his or her personal connections (or, in some cases, special status) in order to influence directly or indirectly the court or another body before which he or she represents or defends the clients' interests, to use information which was obtained from a former client and the confidentiality of which is protected by law, and to use other means contrary to the applicable laws or these Rules. This suggests that an advocate may use only those means and methods of work that are not prohibited by law.

#### 4. Conclusions

Therefore, the essence of the practice of law is to provide professional legal services to clients with a view to achieving justice exclusively on the basis of legal and morally justified means. The practice of law in accordance with the requirements of the law contributes to: increasing the level of trust in the practice of law; a positive impact on the level of legal awareness; and promotes the achievement of justice exclusively through legal and morally justified methods. If an attorney-at-law disseminates false information in the course of his/her practice of law, even on behalf of the client, he/she shall be liable under civil law in accordance with the applicable provisions of law. A lawsuit may be filed against him/her to refute such information.

#### References:

- Konstytutsiia Ukrainy : vid 28 chervnia 1996 r. № 254k/96-VR [Constitution of Ukraine: dated June 28, 1996 No. 254k/96-BP]. (1996). *rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80> (in Ukrainian).
- Lohinova, N.I., Drobozhur, R.R. (2015). *Pravovyi zakhyst informatsii* [Legal protection of information]. Odesa : Feniks (in Ukrainian).
- Mykytenko, L.A. (2016). *Paradyhma zabezpechennia prava spozhyvacha na informatsiiu* [The paradigm of ensuring the consumer's right to information]. *Zovnishnia torhivlia: ekonomika, finansy, pravo*, no. 1, pp. 47–55 (in Ukrainian).
- Oliinyk, O.O. (2016). *Sotsialna vidpovidalnist* [Social responsibility]. Rivne : NUVHP (in Ukrainian).

Politanskyi, V.S. (2013). Pryntsypy informatsiino-pravovyykh vidnosyn [Principles of informational and legal relations]. Chasopys Kyivskoho universytetu prava. no. 1, pp. 55–60. (in Ukrainian).

Postanova Plenumu Verkhovnoho Sudu Ukrainy Pro sprostuvannya nedostovirnoi informatsii ta stihnennia moralnoi shkody : vid 12 lystopada 2019 roku № 904/4494/18 [Resolution of the Plenum of the Supreme Court of Ukraine On refutation of false information and recovery of moral damages: dated November 12, 2019 No. 904/4494/18]. (2019). *rada.gov.ua*. Retrieved from <https://zakononline.com.ua/court-decisions/show/8603519> (in Ukrainian).

Postanova Plenumu Verkhovnoho Sudu Ukrainy Pro sudovu praktyku u spravakh pro zakhyst hidnosti ta chesti fizychnoi osoby, a takozh dilovoi reputatsii fizychnoi ta yurydychnoi osoby : vid 27 liutoho 2009 roku № 1. [Resolution of the Plenum of the Supreme Court of Ukraine On judicial practice in cases of protection of the dignity and honor of an individual, as well as the business reputation of an individual and a legal entity: dated February 27, 2009 No. 1]. (2009). *rada.gov.ua*. Retrieved from [https://zakon.rada.gov.ua/laws/show/v\\_001700-09#Text](https://zakon.rada.gov.ua/laws/show/v_001700-09#Text) (in Ukrainian).

Postanova Plenumu Verkhovnoho Sudu Ukrainy Pro zakhyst dilovoi reputatsii ta zobov'iazannia sprostuvaty nedostovirnu informatsiiu : vid 13 zhovtnia 2021 roku [Resolution of the Plenum of the Supreme Court of Ukraine On protection of business reputation and the obligation to refute false informa-

tion: dated October 13, 2021]. (2021). *ligazakon.net*. Retrieved from <https://ips.ligazakon.net/document/C020503> (in Ukrainian).

Pravyla advokatskoi etyky vid 15 liutoho 2019 roku № 0001891-17 [Rules of Professional Conduct dated February 15, 2019 No. 0001891-17]. (2019). *rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/rada/show/n0001891-17#Text> (in Ukrainian).

Stefanchuk, R.O. (2008). Osobysti nemainovi prava fizychnykh osib (poniattia, zmist, systema, osoblyvosti zdiisnennia ta zakhystu) [Personal non-property rights of natural persons (concept, content, system, features of implementation and protection)]. Kyiv : KNT (in Ukrainian).

Tsyvilnyi kodeks Ukrainy : vid 16 sichnia 2003 r. № 435-IV [Civil Code of Ukraine: dated January 16, 2003 No. 435-IV]. (2003). *rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15#Text> (in Ukrainian).

Zakon Ukrainy Pro advokaturu ta advokatsku diialnist : vid 05 lypnia 2012 roku № 5076-VI [Law of Ukraine On The Bar and Practice of Law: dated July 5, 2012 No. 5076-VI]. (2012). *rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/laws/show/5076-17#Text> (in Ukrainian).

Zakon Ukrainy Pro informatsiiu : vid 2 zhovtnia 1992 r. № 2657-XII [Law of Ukraine On Information: dated October 2, 1992 No. 2657-XII]. (1992). *rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/laws/show/2657-12#Text> (in Ukrainian).

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## **ВІДПОВІДАЛЬНІСТЬ АДВОКАТА ЗА ПОШИРЕННЯ НЕПРАВДИВОЇ ІНФОРМАЦІЇ**

**Анотація. Мета.** Метою статті є визначення особливості відповідальності адвоката за поширення неправдивої інформації. **Результати.** У статті розглянуто особливості застосування відповідальності до адвоката за поширення неправдивої інформації. Визначено, що якщо адвокат при здійсненні адвокатської діяльності навіть за дорученням довірителя поширив недостовірну інформацію, то він має нести цивільно-правову відповідальність відповідно до норм чинного законодавства. До нього може бути пред'явлений позов про спростування такої інформації. Обґрунтовано, що суть адвокатської діяльності полягає у наданні професійної правової допомоги клієнтам із метою досягнення справедливості виключно на основі законних та морально виправданих засобів. Визначено, що здійснення професійної адвокатської діяльності відповідно до вимог закону сприяє підвищенню рівня довіри до адвокатської діяльності; позитивному впливу на рівень правосвідомості; сприяє досягненню справедливості виключно на основі законних та морально виправданих методів. Наголошено, що в ст. 19 Правил адвокатської етики прямо передбачено, що адвокату забороняється приймати доручення, якщо результат, якого бажає клієнт, або засоби його досягнення, на яких клієнт наполягає, є протиправними, або якщо доручення клієнта виходить за межі професійних прав і обов'язків адвоката. У випадках, якщо зазначені обставини не є очевидними, адвокат має надати відповідні роз'яснення клієнту. Якщо з таких обставин не вдається узгодити з клієнтом зміну змісту доручення, адвокат зобов'язаний відмовитись від укладення договору з клієнтом. Адвокат не має права в своїй професійній діяльності вдаватися до засобів та методів, які суперечать чинному законодавству або вказаним Правилам. **Висновки.** Зроблено висновок, що адвокатська діяльність

полягає у наданні професійної правової допомоги клієнтам із метою досягнення справедливості виключно на основі законних та морально виправданих засобів. Здійснення професійної адвокатської діяльності відповідно до вимог закону має підвищувати рівень довіри до адвокатської діяльності, сприяти позитивному впливу на рівень правосвідомості, досягненню справедливості виключно на основі законних та морально виправданих методів. Якщо адвокат при здійсненні адвокатської діяльності, навіть за дорученням довірителя, здійснив поширення недостовірної інформації, то він має нести цивільно-правову відповідальність відповідно до норм чинного законодавства. До нього може бути пред'явлений позов про спростування такої інформації.

**Ключові слова:** адвокатська діяльність, адвокат, верховенство права, відповідальність, договір, клієнт, права, обов'язки.