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ЗАВЕДОМОСТЬ КАК КРИТЕРИЙ УГОЛОВНО-ПРАВОВОЙ ОЦЕНКИ КЛЕВЕТЫ

Акимжанов Талгат Курманович, д.ю.н., директор НИИ права при университете «Туран», научный сотрудник НИЦ Алматинской Академии МВД РК имени М. Есбулатова, профессор, заслуженный работник МВД РК, Университет Туран, Алматы, Казахстан, talgatak.kz@mail.ru

Аннотация

В статье рассматривается заведомость в качестве критерия, на основе которого даётся уголовно-правовая оценка клеветы, предусмотренной ст. 128.1 УК РФ. Несмотря на отсутствие в уголовном законодательстве разъяснений по поводу содержания заведомости, представления о ней сформировались достаточно чёткие как в уголовно-правовой доктрине, так и в судебной практике, по крайней мере в практике Верховного Суда РФ. Без сомнения, заведомость отражает субъективную сторону преступления, а именно вину в форме прямого умысла. При этом возможности использования заведомости как самостоятельного признака в литературе оспариваются, что закономерно. Для раскрытия сущности этого понятия рассматриваются материалы судебной практики, в том числе Верховного Суда РФ, а также судов нижестоящих инстанций. На основе этого выделяются некоторые компоненты, которые заведомость характеризуют. Среди них, в частности, наличие достоверного знания о ложности распространяемой информации. Одна из проблем, связанных с учётом признака заведомости и выделяемых в статье, - игнорирование судами необходимости в деталях описывать и аргументировать мотивы, по которым данный признак установлен. С учётом изученных проблем в статье предлагается уточнить в нормах УК РФ содержание данного понятия.

Ключевые слова: добросовестное заблуждение, заведомо ложные сведения, заведомость, клевета, оценочные понятия, прямой умысел, субъективные признаки клеветы

Original article

KNOWLEDGE AS A CRITERION FOR THE CRIMINAL ASSESSMENT OF LIBEL

Talgat Akimzhanov, Doctor of Law, Director of the Research Institute of Law at Turan University, Research Fellow of the Research Center of the Almaty Academy of the Ministry of Internal Affairs of the Republic of Kazakhstan named after M. Esbulatov, Professor, Honored Worker of the Ministry of Internal Affairs of the Republic of Kazakhstan, Turan University, Almaty, Kazakhstan

Abstract

The article considers knowledge as a criterion on the basis of which a criminal assessment of libel is given, provided for in art. 128.1 of the Criminal Code of the Russian Federation. Despite the lack of explanations in criminal legislation regarding the content of knowledge, ideas about it have formed quite clearly both in criminal law doctrine and in judicial practice, at least in the practice of the Supreme Court of the Russian Federation. Without a doubt, knowledge reflects the subjective side of the crime, namely guilt in the form of direct intent. At the same time, the possibility of using knowledge as an independent feature in the literature is disputed, which is natural. To reveal the essence of this concept, materials of judicial practice are considered, including the Supreme Court of the Russian Federation, as well as courts of lower instances. Based on this, some components are identified that knowingly characterize. Among them, in particular, the presence of reliable knowledge about the falsity of the disseminated information. One of the problems associated with taking into account the sign of knowingness and highlighted in the article is that the courts ignore the need to describe and argue in detail the motives for which this sign is

established. Taking into account the problems studied, the article proposes to clarify the content of this concept in the norms of the Criminal Code of the Russian Federation.

Keywords: conscientious error, knowingly false information, knowingly, slander, evaluative concepts, direct intent, subjective signs of slander

Introduction

Know-how as a mandatory criterion (sign, condition) of criminal-legal assessment of libel, causes a lot of controversy, for which there are objective reasons. Within the framework of Russian criminal legislation, the concept of knowingly or knowingly false is not specified, and explanations given by the Supreme Court of the Russian Federation (hereinafter referred to as the Supreme Court of the Russian Federation) or the Constitutional Court of the Russian Federation (hereinafter referred to as the Constitutional Court of the Russian Federation) often turn out to be extremely vague and generalized. All this does not contribute not only to uniform judicial practice, but also to the full realization by citizens of their constitutional rights in both criminal and civil legal relations.

In these circumstances, there is an urgent need for a thorough study of the phenomenon of knowingness in relation to criminal libel, especially given the lack of scientific development of the problem and the inconsistency of judicial practice.

The main part

Article 128.1 of the Criminal Code of the Russian Federation [1] treats libel as "spreading deliberately false information that discredits the honor and dignity of another person or undermines his reputation".

Here, the main emphasis should be placed precisely on the sign of knowingness, which in general is a component of the characteristic of the subjective side of the criminal act in question. Moreover, knowingness is also mentioned in the framework of regulating many other criminal acts, but the essence of this concept is not disclosed. This is what creates difficulties in understanding the relevant aspect not only in scientific and theoretical terms, but also in practical and law enforcement terms.

The sign of knowingness as mandatory is also present in the framework of other elements of the crime under consideration, provided for in parts 2, 3, 4, 5 of Article 128.1 of the Criminal Code of the Russian Federation. For example, Part 4 of Article 128.1 of the Criminal Code of the Russian Federation provides for liability for defamation that a person suffers from a disease that is dangerous to others. In this case *caseзаведомость*, knowledge means that the person knows that the victim does not have a corresponding disease that poses a danger to others, but, nevertheless, distributes information to the contrary.

It is noteworthy that the legislator decided to supplement the Criminal Code of the Russian Federation with Article 298.1, which provides for liability for libel against a judge, juror, prosecutor, investigator, person conducting an inquiry, employee of enforcement agencies.

It is difficult to say how reasonable such a decision was, because both *de jure* and *de facto* the composition provided for in Article 128.1 of the Criminal Code of the Russian Federation could also be applied to cases of defamation against any persons, including those currently mentioned in Article 298.1 of the Criminal Code of the Russian Federation. It seems that the legislator wished to additionally highlight measures of legal protection for persons engaged in law enforcement and ensuring justice. But regardless of this, the essence of the last mentioned crime as a whole also implies the presence of a sign of knowingness.

You should pay attention to Article 5.61.1 of the Administrative Code of the Russian Federation introduced in 2020 [2], which provides for the administratively punishable composition of libel provided for. It also has the attribute for *vedomosti*. That is, within the framework of whatever industry libel is considered, it is always based on knowledge.

Some explanations regarding the crime in question as a whole, including its subjective side, were given. By the Supreme Court of the Russian Federation. In one of the Definitions. The court explained that the content of the subjective side of the crime under Part 1 of Article 128.1 of the Criminal Code of the Russian Federation is

characterized by direct intent, that is, the person's awareness of the fact of spreading deliberately false information that discredits the honor and dignity of another person or undermines his reputation, and the desire to commit these actions. At the same time, in the framework of the case under consideration, specific circumstances and evidence indicating the presence of these signs in the actions of the accused are not given in the verdict. Moreover, the court session did not present sufficient evidence of the deliberate falsity of the information disseminated by the accused, as well as evidence confirming that this information in any way discredited the honor and dignity of the private prosecutor and undermined his reputation [3].

In the framework of the case described above, the Supreme Court of the Russian Federation reflected in general the essence of the sign of knowingness. And here it should be noted that *заведомость*knowingness somehow reflects the presence of direct intent, and there is no doubt about it. Moreover, the intent is connected precisely with the desire or goal to discredit the honor, dignity or reputation of another subject.

It is important to note that in each case, the court must establish specific circumstances that confirmknowledge. That is, a simple indication that the act was committed deliberately is not enough. And this, in turn, means that *заведомость*knowledge can never be fully identified with guilt (guilt is a broader concept, *заведомость*knowledge is only an aspect of it) and can be established on formal grounds. The courts of lower instances did not comply with such requirements.

This case is very revealing, as it reflects the courts' disregard of the need to detail the content of knowingness in the act of a particular accused, to argue for its existence in the event of a guilty verdict, when considering criminal cases of libel. We believe that this practice is widespread, and, of course, it is necessary to counteract it by all means.

The origins of this problem are seen in the very imperfection of the norms of the Criminal Code of the Russian Federation, which does not specify the essence of knowingness, which means that the subjects of law enforcement activities do not quite understand what exactly to focus on when establishing the sign of knowingness.

In the legal community, the issue of proof *заведомости* of knowingness is often discussed, and in this regard, in particular, it is noted that if a citizen is sure that the information he distributes contains truthful data, although in fact they are false, he cannot be held criminally liable under the "libel" clause. By themselves, certain false information cannot serve as a basis for bringing a person to criminal responsibility, unless it is proved that the appeal had no grounds, but was deliberately dictated by the intention to slander and cause harm to another person [6].

It is noteworthy that not all authors pay attention to the sign of knowingness, even in detail analyzing the composition of the crime in question [8]. This indicates its underestimation. And it seems that the same problem occurs in law enforcement practice, when the courts do not properly argue the motives on the basis of which they see the accused in the act. For the statement.

Meanwhile, the literature also emphasizes that it is impossible to bring a person to justice under Part 2 of Article 128.1 of the Criminal Code of the Russian Federation without establishing the sign of "knowingness", which assumes that, when committing an act, the subject is aware of the public danger of his actions, understands the falsity (exactly knows about the falsity of the information he reports) of the disseminated information, that this information discredits the honor and dignity of another person, undermines his reputation. If a criminal is sure that he is spreading truthful information, although in fact it is false, i.e. he is conscientiously mistaken about whether it corresponds to reality, then he cannot be held liable for libel. That is, law enforcement agencies should accurately and correctly establish the characteristics of the subject of the crime and the victim, the specifics of the act, as well as the presence of a subjective component of the deed every time they qualify defamation, including those committed publicly using information and telecommunications networks, including the Internet [9, p.107].

Thus, *заведомость* knowledge cannot take place in the case when there is a conscientious misconception about the compliance of the disseminated information with reality. This is also evidenced by some examples of judicial practice, not only

criminal or administrative, but also related to the consideration of civil claims in connection with the recovery of compensation for libel [5].

It should be noted that often in judicial practice there are situations when the victims themselves see in someone's actions the composition of criminal libel, even if there is no knowledge of the relevant actions. Thus, in one of the cases of the Fourth Cassation Court of General Jurisdiction, justifying its conclusion, it indicated that no evidence and circumstances indicating the spread of Z. had been presented or established. information about F., discrediting his honor, dignity, and undermining his reputation, since the statements of the justified Z. They were of a personal, subjective nature, she expressed her own opinion and expressed a critical assessment of F.'s actions, while the acquitted woman had no intention of spreading information discrediting the honor and dignity of a private prosecutor, and the events themselves described in F.'s statement were not established. during the interrogation of witnesses and examination of evidence, both the prosecution and the defense. In this connection, the court recognized Z. not guilty of libel, having acquitted her for not establishing the actual event of the crime [4].

We should partly agree with Professor N. I. Pikurov that the word "know-how" is absent from dictionaries of the Russian language, although it is quite often found in the legal literature. Due to the fact that the semantics of the words "knowingly", "knowingly", "knowingly" primarily concerns awareness of any circumstance or property of the object, tools, means of committing a crime, in the legal literature the term "knowingly" is usually considered in the context of the subjective side of the crime composition. Despite the fact that the term under consideration is related to its subjective side, it, in the opinion of the specified author, cannot be considered as its independent feature. The use of the construction of knowingness in legislative technique заведомости is caused by the need to differentiate the intellectual, and in some cases, the volitional component of a person's mental attitude to the act being committed [7, p. 67].

Conclusion

Заведомость Knowledge is now an integral part of criminal libel and reflects in general the aim of the subject of a crime to discredit the honor, dignity, and business reputation of a person by spreading such information that does not correspond to reality, despite the fact that the subject of the crime himself knows about this discrepancy.

Often, it is the lack of proof of knowledge that becomes a key obstacle that does not allow an individual to be held accountable. And the argument that indicates the absence of knowledge is a conscientious error. For this reason, it is important to preserve the sign of knowingness within the framework of the analyzed corpus delicti. At the same time, there is a need to clarify the meaning of this concept in the norms of the Criminal Code of the Russian Federation. We believe that for this purpose, knowledge should be defined as a characteristic of guilt, reflecting the individual's reliable knowledge of the falsity of the information being disseminated and the desire to disseminate it precisely for the purpose of causing harm to interests protected by criminal law.

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