

## ***Enforcement of the constitutional right of the individual to information in social networks: issue of criminal legal qualification under the law of Ukraine***

***Здійснення конституційного права людини на інформацію в соціальних мережах: питання кримінального правового обмеження за законом України***

*Dmytro Bielov*

### Key words:

*human rights, criminal responsibility, public appeals, social networking.*

### Ключові слова:

*права людини, кримінальна відповідальність, публічні заклики, взаємодія через соціальні мережі.*

At the beginning of the XXI century social networks became very popular. People use them in order to keep in touch with their families and friends. These are such global social networks as MySpace, FriendWise, FriendFinder, Yahoo! 360, Facebook, Orkut, Classmates and many others. Each country has its own social network. In the USA, for example, users use LinkedIn in order to have various business contacts and monitor opportunities for career development<sup>1</sup>.

Information disseminate via social networks much faster than via the network of real life. Information can be revealed for the group of people unexpectedly because digital information is easy to be copied, can be kept for a long time at no allowance and is available for search. Especially harmful for users are those occurrences where information "travels" through different spheres and gets through people it is not intended for<sup>2</sup>.

According to the Art. 34 of the Constitution of Ukraine: 1) everyone is guaranteed the right to freedom of thought and speech, and to the free expression of his or her views and beliefs (§ 1); 2) everyone has the right to freely collect, store, use and disseminate information by oral, written or other means of his or her choice (§ 2); 3) the exercise of these rights may be restricted by law in the interests of national security, territorial indivisibility (§ 3)<sup>3</sup>. For the enforcement of this constitutional provision in the Art. 28 of the Law of Ukraine "On Information" on 2 October 1992 is established the injunction on the use of information, in particular, for calls for infringement of territorial integrity of Ukraine<sup>4</sup>. In this very relation there is established in the Art. 109 of the Criminal Code of Ukraine on prohibition to commit public appeals and distributing materials with appeals to commit actions aimed at the forceful change or overthrow of the constitutional order or take-over of government and Art. 110 of the Criminal Code of Ukraine on prohibition to commit public appeals and distributing materials with appeals to commit actions aimed at changing the territorial boundaries or national borders of Ukraine in violation of the order provided for in the Constitution of Ukraine. Both prohibitions are aimed at security of territorial integrity of Ukraine<sup>5</sup>.

<sup>1</sup> Зернецька О.В. Глобальні соціальні мережі та кібербезпека особистості / О.В. Зернецька // Віче. – 2016. – № 1. – С. 22–26.

<sup>2</sup> Серьогін В.О. Соціальні мережі як загроза прайвесі / В.О. Серьогін // Форум права. – 2011. – № 2. – С. 822–827. – [Electronic resource]. – Access mode : <http://www.nbuv.gov.ua/e-journals/FP/2011-2/11cvojzp.pdf>.

<sup>3</sup> Конституція України : Закон України від 28 червня 1996 р. № 254к/96-ВР [Electronic resource]. – Access mode : <http://zakon2.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>.

<sup>4</sup> Про інформацію : Закон України від 2 жовтня 1992 р. № 2657-XI [Electronic resource]. – Access mode : <http://zakon3.rada.gov.ua/laws/show/2657-12>.

<sup>5</sup> Кримінальний кодекс України : Закон України від 5 квітня 2001 р. № 2341-III [Electronic resource]. – Access mode : <http://zakon2.rada.gov.ua/laws/show/2341-14>.

In accordance with notes to the Criminal Code of Ukraine<sup>6</sup>, public appeals envisage at least one public appeal to indefinite but significant range of persons, which includes ideas, views or enforcement demands intended to spread them through the population or its separate categories (public authorities, military etc.) in order to persuade a number of people to certain actions. Therewith, publicity is an evaluative dimension and the question about its occurrence should be decided separately for each accident taking into account time, place, circumstances of committing appeals and so on.

For the purpose of revealing an objective aspect of this crime, it is important to define notions, which characterize it, namely: "public appeals", "change", "forceful". Thus, Great Explanatory Dictionary of Modern Ukrainian Language does not have the term "public appeals", but includes a term "public", which it interprets in the following manner: "Public 1) which is taking place at the presence of public, common, nationwide, publicly-disclosed, open; 2) intended for wide use"<sup>7</sup>. Herewith, most of scientists assert that publicity means that appeals are of open, *easily understandable character* (underlined by myself) and refer to general public<sup>8</sup>.

Taking into consideration that the term "public appeals" used by the Criminal Code of Ukraine consists of two words: "public" and "appeals" (where in the context of disposition of the Article 109 of the Criminal Code of Ukraine they cannot be disconnected), thus it is also important to reveal the essence of the term "appeals". The explanatory dictionary defines the category "appeals" as: 1) request, invitation to come, to arrive, to go somewhere (sound, exclamation, which calls, urges); 2) apply to a certain group of people, which briefly express a keynote of the time, policy input, task, proclamation, slogan (demand for developing any activity, to behave in a certain manner)<sup>9</sup>.

However, it is not enough; there is also a necessity to apply to the doctrine of criminal law, where are the following views: 1) appeal, which is mentioned in § 2 Art. 109 of the CC of Ukraine – is *an active impact* (underlined by myself) on indefinite number of people (listeners, readers, viewers), or on members of a certain party, organization, or other group, aimed at inducing of forceful change of the constitutional order<sup>10</sup>; 2) appeals – are such a form of influence on consciousness, will and behaviour of people, when by means of direct address to them there is formulated an inducement to a certain type of activity (in this case appeals are intended specifically to unite people and direct their behaviour to forceful change of the constitutional order<sup>11</sup>.

The interpretation of mentioned above terms gives grounds to assert that the term "change", which is used in a disposition of the § 2 Art. 109 of the CC of Ukraine should be used here in the following meanings: as an action; to force to fall down; to overturn by force; to kill; to destroy, to liquidate something (for example, political regime).

A subject of criminal legal protection provided by the Article 110 of the Criminal Code is the territorial integrity of Ukraine. Herewith, concerning the public appeals to commit actions aimed at changing the territorial boundaries or national borders of Ukraine in violation of the order provided for in the Constitution of Ukraine, public relations, upon which these actions impinge, have in our view some features. As expected, they lie in the fact that these relations occupy a relatively independent place in the system of national relations because there is also another subject of relation – it is information of that meaning, which perception by people can arouse a desire (intention) to commit actions aimed at changing the territorial boundaries or national borders of Ukraine in violation of the order provided for in the Constitution of Ukraine.

The presence of direct meaningful relation of analysed forms of encroachment with provisions of the Art. 34 of the Constitution of Ukraine requires a special consideration of the issue about guaranteeing of stated

<sup>6</sup> Кримінальний кодекс України: науково-практичний коментар / [Ю.В. Баулін, В.І. Борисов, С.Б. Гавриш та ін.] ; за заг. ред. В.В. Сташиса, В.Я. Тація. – К. : ВД «Ін Юре», 2003. – 1196 с.

Баулін Ю.В. Кримінальний кодекс України: науково-практичний коментар. Особлива частина / Ю.В. Баулін, В.І. Борисов, В.І. Тютюгін та ін. – 5-те вид., доп. – Х. : Право, 2013. – 1040 с.

<sup>7</sup> Великий тлумачний словник сучасної української мови / уклад. і гол. ред. В.Т. Бусел. – К. ; Ірпінь : ВТФ «Перун», 2003. – С. 74.

<sup>8</sup> Чуваков О.А. Преступления против основ национальной безопасности Украины / О.А. Чуваков // Уголовный кодекс Украины: комментарий. Общая и Особенная части : [учебник] / под ред. Е.Л. Стрельцова. – Х. : ООО «Одиссей», 2002. – С. 263.

<sup>9</sup> Великий тлумачний словник сучасної української мови / уклад. і гол. ред. В.Т. Бусел. – К. ; Ірпінь : ВТФ «Перун», 2003. – С. 395.

<sup>10</sup> Хавронюк М.І. Злочини проти основ національної безпеки України / М.І. Хавронюк // Кримінальне право України. Особлива частина : [підручник] / [Ю.В. Александров, О.О. Дудоров, В.А. Клименко та ін.] ; за ред. М.І. Мельника, В.А. Клименка. – К. : Юридична думка, 2004. – С. 26.

<sup>11</sup> Хавронюк М.І. Злочини проти основ національної безпеки / М.І. Хавронюк // Науково-практичний коментар Кримінального кодексу України від 8 квітня 2001 р. / за ред. М.І. Мельника, М.І. Хавронюка. – К. : Канон, 2001. – С. 263.

constitutional rights in solving questions about criminal responsibility according to the Art. 110 of the Criminal Code. These questions can be solved, in particular, with the help of defining a distinction of public appeals from related notions, which are concerned with enforcement of rights envisaged by the Art. 34 of the Constitution. Among these notions we consider: "public utterances", "rationale for committing actions", "justification of need for actions" agitation, "propaganda". Thus, criminal legal prohibition is based on the notion that unambiguously expresses an individual's abuse of constitutional right, in particular, right to information dissemination. This abuse must be reflected in the essence of disseminating information. It is the very essence of the notion of public appeals in the Articles 109 and 110 of the Criminal Code of Ukraine, which is characterized by direction of informational influence for arousing a desire (intention) of other persons to commit actions aimed at forceful change or overthrow of the constitutional order or take-over of government, change of the territorial boundaries or national borders of Ukraine in violation of the order provided for in the Constitution of Ukraine.

### Summary

The article is devoted to coverage features the use of public information in social networks. The author draws attention to the occurrence of criminal responsibility for public expression in social networks.

### Анотація

Статтю присвячено огляду особливостей використання публічної інформації в соціальних мережах. Автор приділяє увагу випадкам кримінальної відповідальності за публічні висловлювання в соціальних мережах.

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**Prof. JUDr. Dmytro Bielov, DrSc,**  
Department of Constitutional Law and Comparative Law  
Law Faculty  
Uzhhorod National University