ISSN 1392-3110
Socialiniai tyrimai / Social Research. 2010. Nr. 2 (19), 27–36

Financial Hearsay: Content, Features, Legal Regulation

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Abstract

This article focuses on the analysis of the concept of financial hearsay and the information forming the content of financial hearsay. Financial hearsay is analysed as the object of legal regulation.

The essence of the concept of financial hearsay is revealed through the thorough analysis of its features. It can be concluded that financial hearsay contains information: 1) not confirmed by official sources, 2) having potential to be both true and false, 3) having a characteristic spread, 4) notifying about significant events to state and society.

After research, it can be noticed that the concept of financial hearsay does not exist in Lithuanian legal acts, nor they regulate information corresponding to the content of financial hearsay. At the constitutional level, there is legal basis for the restriction of the dissemination of information that could affect state's financial stability; however, they are not implemented in adopted legal acts. In absence of legally solidified concept comprising all possible forms of financial hearsay, misleading assumption of the violation of the principle of inevitability of responsibility emerges. Moreover, it gives a possibility for legal nihilism to appear.

Comparative analysis from the civil law point of view shows that in Lithuania financial hearsay is considered value judgements, therefore it is not estimated on equity criterion and is not compared with reality. Misleading information has no indication of status of facts, therefore although mislead persons experience financial loss, civil law does not offer legal remedies for the protection against the dissemination of such information.

Criminal law regulates only the spread of information that is knowingly false. Legal sanctions for the persons who spread financial hearsay are limited to warnings.

The spreading of financial hearsay is seen as equal to manipulation of financial instruments market, qualifying financial hearsay as the spread of incomplete information about issuer or its securities. In the absence of gross property damage, administrative sanctions for the violators are applied.

Keywords: financial hearsay, hearsay content and features, financial stability, legal regulation of financial hearsay.

Introduction

The spreading of financial hearsay – inaccurate, incomplete information, unconfirmed by official sources though presented as facts – has a significant impact on state's, society's and personal interests. When making the real estate purchase/sale contracts, taking out loans and performing other business operations persons observe situation in the market and make decisions based on the presented information and the way they interpret it. Publicly released financial hearsay about a bank's insolvency arouses panic among people and impels them to withdraw deposits kept in the bank. Information related to the banking sector is estimated by the society with great concern. This can be illustrated by concrete examples: financial hearsay spread about collapse of Vilniaus bankas in 2003, financial presence of Parex bank in bankruptcy in Latvia in November of 2008, financial hearsay about the critical financial conditions of Lithuanian banks in 2008. It is therefore important to promote confidence in the financial sector, to develop a stable economy and avoid the negative consequences of financial hearsay.

The presented topic is relevant. The nature of financial hearsay as a public phenomenon, its multiplicity, the patterns of its emergence and spread have been examined in solitary scientific works on philosophy, psychology, sociology, management, economy and law. A lack of research across branches of social science is noticeable.

The subject of the research: financial hearsay.

The aim of the research: to disclose the content, features, problematic aspects of legal regulation and practical application of the financial hearsay as a social phenomenon.

Research methods: linguistic, analytical, systematic, comparative and logical.

The concept of financial hearsay

In the Dictionary of Lithuanian Terms two meanings of hearsay are given: 1) knowledge or sounds 2) noise (Lietuviu kalbos terminu zodynas, 2006). Linguistically as synonymous to the term hearsay the term rumours can be used (Lyberis, 2002). Modern Lithuanian Dictionary accentuates that hearsay must be regarded as knowledge that has no certainty (Keinys, Klimavicius, Paulauskas, Pikcilingis, Sliziene, Ulvydas, Vitkauskas, 2000). Thus, it leaves the possibility to trust the disseminated information.

Definitions of hearsay are expressed similarly in other languages. In the Dictionary of the English language of the United States (Houghton Mifflin Company, 2000) the concept of hearsay is given as unconfirmed information of unknown origin generally transmitted orally. United States law dictionary (Bouvier, 1856) describes hearsay as general public statement about certain things without knowing whether it is true. It is noted that although hearsay itself is not considered evidence, facts about their existence without ascertaining truth or falsity of the hearsay can be proven. The Great French Dictionary of Terminology (Le Grand Dictionnaire Terminologique, 1999) describes hearsay as knowledge that is transmitted publicly. The Dictionary of Swedish language (Svenska Akademiens Ordbok, 1997) presents the definition of hearsay as knowledge that is passed to each other without checking its veracity.

Hearsay is being analysed by more than one branch of science.

Sociology examines how the spread of hearsay as a phenomenon occurs in social groups, which of them are more sensitive and more exposed to the effects, how it influences the stratification of the society. For example, which information is more likely to affect pensioners, students, farmers, businessmen, etc.

Psychology analyses characteristic mental and behavioural changes of human beings resulting from the disseminated information.

By questioning the basis of social being, human relationship with the world and himself, in the emergence and existence of hearsay as a phenomenon, philosophy contemplates Kant's questions that are believed to be cornerstones: what can I expect, what do I know, what must I do (Nekrasas, 2004). Hearsay is the context for the answers to these questions.

For economy it is important what influence the disseminated hearsay will have on to be taken decisions, how it will affect the selection of one or another variant at micro or macro economic level.

Law as the regulator of social relations gives the importance to ensuring the protection of rights and freedoms. Thus, it is important to regulate social relations so that the spread of hearsay would not violate the rights and freedoms that belong to persons and ascertain that the ones already violated would have legal remedies.

Considering the definitions mentioned earlier, it can be concluded that the definitions of hearsay in Lithuanian and other languages are similar. Generally, it is perceived that hearsay is certain information that gives persons knowledge about a particular event.

The features and characteristics of financial hearsay

General features attribute certain information to hearsay and the specificity of information (disseminated information about state's economic sector or entity) describes the latter classified as financial hearsay.

Informative nature of hearsay can be regarded as its general feature. New, previously unknown information is being presented. Another general feature is that hearsay has a strong evaluative criterion – such information is unclear, therefore various interpretations are possible. One more important feature is that such information is not confirmed by an official source, so it can be both true and false. And finally, the information being spread by hearsay is distinguishable by its significant importance, since it includes relevant issues to the state, society and individual.

Feature that defines qualification of hearsay as the financial hearsay is its object – it reveals what information is being disseminated about what. Hearsay can comprise information about various phenomena and events. For hearsay to be attributed to financial hearsay it must contain information that is relevant to the state's economic interests, finances. In other words, the object of financial hearsay is considered to be information important to the economic (financial) stability.

In accordance with the previously mentioned features, it follows that financial hearsay is based on the information: 1) unconfirmed by official sources, 2) having potential to be both true and false, 3) having tendency to spread, 4) revealing events significant to state and society.

In Lithuanian legal sources the concept of financial hearsay is not established.

Financial hearsay – a threat to financial stability as a constitutional value

Freedom of information is enshrined in Lithuanian law. Article 25 of the Constitution of the Republic of Lithuania (hereinafter – the Constitution) establishes the right of every human being to have convictions and express them freely (Zin., 1992, Nr.

33-1014). It is specified that a person cannot be hindered from seeking, receiving and imparting information and ideas. The provisions of this Article define the constitutional basis for freedom of information. As it was stated by the Constitutional Court of the Republic of Lithuania (hereinafter – the Constitutional Court) this freedom is one of the grounds for the open, just, harmonious civil society and democratic state, important assumption for the implementation of various constitutionally established individual rights and freedoms, because the person can fully implement many of his/her constitutional rights and freedoms only when having the freedom to freely seek, receive and impart information (Zin., 2002, Nr. 104-4675; Zin., 2004, Nr. 14-465; Zin., 2005, Nr. 87-3274; Zin., 2005, Nr. 113-4131). In other words, the Constitution guarantees and protects the public interest to be informed.

Freedom of information as the natural freedom of a human being is not absolute. The limits of this constitutional value are determined by its relation to other constitutional values expressing the rights and freedoms of others and necessary needs of the society.

According to the Paragraph 3 of the Article 25 of the Constitution, freedom of information may only be limited by law and if it is necessary to protect the health, honour, dignity, private life and morals of the human being or in order to defend the constitutional order. Paragraph 4 of the same Article states that freedom to express convictions and to impart information cannot be compatible with criminal actions such as incitements of national, racial, religious or social hatred, violence and discrimination, slander or disinformation. The prohibition of dissemination of such information is absolute.

The corresponding restrictions on freedom of information are also established in international and European Union law. Paragraph 2 of Article 10 of the European Convention on Human Rights and Fundamental Freedoms (hereinafter – the Convention) (Zin., 1995, Nr. 40-987) provides a possibility of restricting freedom of information when necessary conditions are met: it is necessary in a democratic society, it is established in national laws and it has an objective to protect such values as national security, territorial integrity, public policy interests, it expresses a will to prevent wrongs or crimes, protecting human health, morals, dignity or other rights, preventing the disclosure of confidential information or guaranteeing the judicial authority and impartiality. Article 52 of the European Union Charter of Fundamental Rights (hereinafter – the Charter) reveals that any restriction of the implementation of the rights and freedoms of the Charter (including freedom of expression and freedom of information) must be established by law and must not change the essence of these rights and freedoms (OL, 2007, C 303/01). Restrictions must also be based on the principle of adequacy and imposed only when necessary and genuinely meet common interests recognised by the European Union or there is a need to protect rights and freedoms of others. While the meaning and scope of the rights included in the Charter corresponding to the rights guaranteed by the Convention are such as they are defined in the Convention, this does not hinder the European Union law from providing more protection.

Paragraph 3 of Article 25 of the Constitution explicitly declares constitutional values in the protection of which the restrictions of information or freedom would be possible. The Constitution names such legal values as health, honour, dignity, privacy, morals and constitutional order. In the ruling of the 19th of September of 2005 the Constitutional Court has noted that the list of constitutional values established in Paragraph 3 of Article 25 of the Constitution cannot be seen as exhaustive (Zin., 2005, Nr. 113-4131). In other words, it implies the possibility of restricting the freedom to receive and impart information when there is a need of the protection of other constitutional values, explicitly undefined in this paragraph.

The Constitution entrusts the limits of implementation of freedom of information to be established by laws adopted by the Seimas (the Parliament). The latter is obliged to regulate the conditions of restricting dissemination of information: the content of information that is prohibited or restricted to disseminate, ways in which certain information cannot be spread. According to the Constitution there arise obligations for the legislator to establish responsibility for persons who behave in disregard of restrictions or prohibitions of freedom of information or spread the prohibited information. Likewise there must be appointed entities that have authority to supervise compliance with restrictions or prohibitions and those that have competence to impose established legal responsibility for the breach of law.

The Constitutional Court has stated that the provision of Paragraph 4 of Article 25 of the Constitution declaring incompatibility of freedom of information with criminal actions means that the legislator must establish such legal regulation that incitement of ethnic, racial or social hatred, violence, discrimination, defamation and disinformation, which encroach on the values protected by the Constitution, would be prosecuted as criminal actions (Zin., 2005, Nr. 113-4131). It was also pointed out that the formulation “criminal actions” cannot be interpreted merely linguistically, i.e. establishing by law only criminal responsibility, but also must be understood as behaviour that is incompatible with any actions interfering with law, therefore legal not only criminal responsibility should be applied.

Financial hearsay in the context of opinion and fact

Looking into financial hearsay from the civil law perspective, there is not established a clause that would protect financial stability. The only legal provisions that would allow to recover damages made to the financial sector is the ones of the Civil Code of the Republic of Lithuania (hereinafter the Civil Code). Article 2.24 of the Civil Code provides the remedy for the wrongs against honour and dignity (Zin., 2000, Nr. 74-2262). The essence of the concepts of honour and dignity were revealed by the Supreme Court of the Republic of Lithuania (hereinafter – the Supreme Court) (Lietuvos Respublikos Auksciausiasis teismas, 2001a, 2001b). Personal honour is understood as the respect of the merits recognised by the society and good personal name. Personal dignity is considered a subjective self-evaluation, sense of value of self. To the legal person this means its business reputation, in other words, a good title, a positive evaluation of its performance and results, positive attitude in the society and business environment. A business reputation of a legal person may only be damaged when the disseminated information is not veridical, i.e. is false, fictional knowledge declaring facts and circumstances which never existed or had been different.

In the case of A. K. v. UAB "Joneda" on the 16th of March, 2007 the Supreme Court declared that every time when the court is analysing the case of infringement of honour or dignity it has to determine whether there was disseminated information that derogates one's honour or dignity and is veridical or the information that is only considered value judgement or, in other words, opinions. If the disseminated information is data it must be based on facts. Addressing the issue of opinion and data in the Supreme Court case law the main criteria in defining the nature of the disseminated information is its adequacy to the reality based on the application of truth and falsehood criteria (Lietuvos Respublikos Auksciausiasis teismas, 2001a, 2001b).

Financial hearsay as inaccurate, incomplete, unclear and misleading information is not considered a fact, because it does not correspond to accuracy criteria which facts are characterised by. Facts are not valued to be positive or negative, they simply state certain circumstances. A fact is a certain, not fictitious event, where data is information that reveals the content of the fact. Because facts reflect actual phenomenon or events of the reality, the information that is found from data based on facts is deemed to be corresponding to reality. Data might be true or invented, therefore it is verified by criterion of truth and the existence of fact is being checked (Lietuvos Respublikos Auksciausiasis teismas, 2009). Their existence is determined in accordance with Article 177 of the Civil Procedure Code of the Republic of Lithuania: using the explanations of the parties and third parties (either direct or through the representatives), statements of the representatives, documentary evidence, protocols of the inspections and conclusions of experts. Pictures, video and sound recordings not violating the law may also be regarded as the remedies of averments. The Civil Code establishes the presumption that the disseminated information is untrue as long as the other party proves otherwise.

However, the information disseminated through financial hearsay may be verified from the viewpoint of validity of the presented information by official sources, so it cannot be attributed to the subjective opinion. An opinion expresses the perceptions, wits, insights, thoughts or comments on general ideas, facts and figures, events or phenomenon, assessments, conclusions or observations on knowledge related to certain events, declared publicly in the media. It may rely on facts-based arguments. It is subjective, therefore truth and accuracy criteria are not applicable, but the opinion must be expressed honestly and ethically, without an intention to distort or conceal real data. Since the opinion is expressed about actually existing facts and data, it presupposes that firstly facts have to be declared, and then opinion as subjective interpretation of such information. Such provisions are established in the case law.

Honour, dignity and business reputation are protected after evaluating integrity of such facts as data dissemination (the importance is given to clarify what has been spread – data or opinion and if it was data whether it was really disseminated), the fact that these data were about another person, the fact that by spreading such data person's honour or dignity is being humiliated and the fact that such data is false information. What kind of knowledge is considered to be humiliating personal honour or dignity or business reputation the Supreme Court has interpreted in one of its rulings. Humiliating information is such information that is untrue and violates personal honour and dignity or good name in a society by not complying with law, morality and customary rules, that is a false information, information discrediting a person, in which there are the breach of law, violation of customary or moral rules, ignominy or misbehave at home, in a family or in public life, or unfair social, industrial, economic activity, etc (Lietuvos Respublikos Auksciausiasis teismas, 1998).

When publicising information through the media the priority is given to public interest. When classifying disseminated affirmations under one or another category (opinions as value judgements or knowledge of data as fact statements) the context should be

deliberated giving attention to the formulation of statements, circumstances of the report, assessment of the real behaviour, the expression of the opinion without an actual legal basis, etc. A separate statement, sentence or any part of it may give the impression that it was data presented, though the thorough assessment of what was said in a whole context may show that it was only a subjective opinion or vice versa. In determining whether the disseminated information is data or opinion, the court judges its content, purpose, forms of artistic expression. When analysing the context the court questions whether the statements are categorical, are they raised with purpose to draw attention to the present problem, does it reveal the concern of the author, etc. It is very important to examine the formulation of a sentence – whether it implies assertions, doubts, suggestions, questions or any other forms. If the information is expressed with doubts, making references that all what is said is an assumption or an opinion, it can be concluded that such information is only a subjective approach of a person to the facts, but not data itself.

Since the biggest threat to the state's and also society's financial stability arises through the financial disequilibrium of the financial institutions, the relevant question is what legal remedies financial institutions have in order to defend themselves from the information spread by financial hearsay. In the absence of the clear legal and economic definition of financial hearsay, it is seen a tendency to increase the safeguards for the credit institutions for the protection against operational risks. In other words, the negative effects of the financial hearsay are left to be incorporated into the potential risks of the credit institutions as well as to foresee and provide measures that allow dealing with them. On the other hand, rudiments for the legal regulation of the information that can pose a threat to the financial stability are disclosed.

The Civil Code provides the remedy to defend the rights by demanding to rebut the disseminated information that does not agree with reality. The implementation of such a requirement is reasonable after the actual person who spread such information has been identified. The person, whom the disseminated false information was about, has a right to write a denial and request the media to let publish it publicly for free or announce it in other way. The initiative to defend oneself from financial hearsay by denying them is left for each entity individually. There is no legal obligation to deny disseminated misleading financial hearsay.

In order to ensure the legality of provision of financial services, the State regulates the work of financial institutions: sets out the requirements for the founders, managers and shareholders of the entities providing financial service, establishes their rights, obligations and operational conditions, approves the order of establishment and closure of the financial institutions, and carries out the regular monitoring of such entities. Supervisory authority for the credit institutions – the Bank of Lithuania – publicly presents information that is considered to be of preventative value for the spread of financial hearsay. Due to the turmoil in financial markets the main focus is on questions such as the liquidity of the banks and funding risk management. This authority is considered the official source of information and should be used for verifying the information spread by financial hearsay. For example, the Financial Stability Review of 2009 shows that even though the turmoil in global financial markets aroused an increase in liquidity risk, the Lithuanian banking system was able to respond adequately and as a result the position of Lithuanian banks liquidity has improved (Lietuvos bankas, 2009).

Legal regulation of the financial hearsay

The established restrictions on the freedom of information by the provisions of the Constitution are the main criterion indicating how the legislator needs to legally regulate information comprising state's secrets, classification, use, declassification and protection of such information, the choice of the appropriate legal instruments that would not unduly restrict personal right to information.

The main legal foundations and order on coordination and control of the classification, storage, use, declassification and protection of the state's and service's secrets, minimum requirements for the protection areas for the classified information (personnel security, administration of the classified information, physical security, security of classified transactions, systems and network security of the automated data processing) are provided by the Republic of Lithuania and Official Secrets Act. Confidential information includes information about documents, products, works and other objects, their presence, substance and content as well as the documents, products, works. The loss or the unauthorised disclosure of confidential political, military, economic, judicial, educational, scientific and technical information may cause harm to the state or its institutions, interests, or lead to the unauthorised public disclosure of secret information that might endanger human health, therefore such information is considered an official secret (Zin., 1999, Nr. 105-319).

Article 7 of the mentioned Act provides a list of categories of classified information. Information important to the economic sector and classified as official secret is the inspection and verification data of the banks and other credit institutions, insurance companies, insurance agents, enterprises organising lotte-

ry and gambling, also the information about the projects on establishment of national and base currency as well as data about repo transactions and term deposits of the Bank of Lithuania, the list of the participants and their bids in the auctions of the securities of the Government of Lithuania and the Bank of Lithuania, and their liquidity loans, information provided by the financial institutions in their suggestions for the state borrowing in foreign and domestic capital markets and application of derivative financial instruments. State and official secrets entities (institutions established by the President of the Republic of Lithuania, the Seimas and the Government of the Republic of Lithuania, state or municipal institutions and entities established by them whose activities are related to the classification and declassification of information, the use or security of classified information) are responsible for making the detailed lists of the mentioned classified information.

Classified information is differentiated by providing it with a relevant tag – "Top Secret", "Secret", "Confidential" or "Restricted Use" – determining the period of classification (30, 15, 10, 5 years with possibility to extend it) and providing the necessary protection. Information is classified and declassified in accordance with the rule of law, principles of adequacy and timeliness. It is also very important that the tag of information and the level of protection would be adequate to the importance of the information and the extent of the damage, which could result in a situation of unauthorised disclosure or loss of such information. This is the most important information, highly protected by state, therefore a certain licence or appropriate security permission is obligatory to the persons who work or become acquainted with the foreign classified information. As provided in the Paragraph 2 of the Article 15 of the States and Official Secrets Act the President of the Republic of Lithuania, the Speaker of the Seimas and the Prime Minister have the access to such information and availability to use it ex-officio. All the persons in charge are obliged not to disclose, lose or impart entrusted or discovered information to unauthorised persons. The law provides strict protection and control of such information.

When disclosed or lost, classified information might affect state's economic sector, therefore it is provided with the highest level of protection, i.e. prohibition of dissemination of such information is absolute. The safekeeping of secret information is justified in the public interest. For the legal responsibility to appear the mere fact of disclosure of such information without explaining the manner of violation of law or how such information became known to society is sufficient.

The Criminal Code of the Republic of Lithuania (hereinafter – the Criminal Code) includes criminal sanctions for the criminal offences such as a disclosure of state's secret (Article 125 of the Criminal Code) and a disclosure of officials' secret (Article 297 of the Criminal Code) (Zin., 2000, Nr. 89-274). The disclosure of state's secret is a crime that infringes national independence, territorial integrity and constitutional order of the Republic of Lithuania. Everyone who does not obey is punishable by imposing a fine, restriction to involve in a certain activity or get a certain job, restriction of freedom or imprisonment for up to three years. Certain information about state's financial system, as already mentioned, may be classified as officials' secrets. The criminal sanctions for disclosure of officials' secrets are more lenient in comparison to the disclosure of the state's secrets. In Article 297 of the Criminal Code criminal offence of the disclosure of the officials' secrets is established as misdemeanour. This criminal offence (analysing its form of fault) could be done both intentionally and negligently. The person may have been aware of that the information because of his/her actions might become known to unauthorised persons and so deliberately seek that, or the person may have been unaware of that but has been able to and could foresee the effects. Criminal responsibility is established for those who revealed the information. In the Criminal Code the completeness of the criminal offence is linked to the disclosure, consolidating the material elements of the criminal offence. Such criminal offence may be committed both through activity (for example, publication of the information through the media) and inactivity (for example, failing to comply with record keeping procedures). It is illogical to think that a public speaking of the person, who has access to secrets, giving inaccurate information, will not have influence on society. It is impossible to involve such a person into criminal investigation procedure in the absence of the fact of disclosure of a secret. To involve, there must be precise information revealed.

Article 285 of the Criminal Code establishes criminal offence of the false report of a disaster or imminent danger to the society (Zin., 2000, Nr. 89-274). These are the material elements of such criminal offence, where the occurrence of consequences is considered an obligatory element of the crime, therefore one of two consequences is required: turmoil of people or major property damage. For the qualification of a conduct of a person and application of criminal responsibility there are alternative actions established: false report of a disaster or imminent danger to the society, or the dissemination of information about the

disaster or imminent danger to the society. A person can only falsely report when he is clearly aware of such information to be untrue, in other words, is behaving with intent. If we identified the information spread by financial hearsay that endangers financial stability of the financial system, with the imminent danger to the society, the criminal sanctions (a fine, an arrest or imprisonment up to two years if the behaviour caused turmoil of people or severe property damage) established by this article could be applicable. This Article is enshrined in the Chapter XL of the Criminal Code and therefore protects the public policy as the legal value.

The imminent danger to the society and the threat to the financial stability are linked. When causing a threat to the financial stability, the imminent danger to the society indirectly emerges, because the collapse of the financial system will impel the rise of unemployment, the increase of state's debt, a fall of living standards, etc.

Disseminated financial hearsay poses a threat to national security, the concept of which includes political, social, economic and other factors. The Lithuanian State Security Department (hereinafter – VSD) that ensures the national security is accountable to the Seimas and the President of Lithuania. VSD officials are entitled to issue a warning as an individual precautionary measure for the illegal inadmissible actions. This measure is applied when a person is performing or preparing to perform actions that fall into the competence of VSD, but do not qualify for the criminal or administrative responsibility. The person is being warned that his/her actions are harmful and can affect the state's and society's security interests. Exactly this measure is applied to the persons who spread financial hearsay, as the dissemination of financial hearsay is not criminalised in Lithuanian national law.

VSD informs about its activities by announcing that in public statements. In 2003 when investigating the validity of the spread of the financial hearsay about the complicated financial situation of the Bank "Vilniaus bankas" VSD found out that the hearsay did not correspond to the reality and moreover was associated with the competitive fight. It was suggested to the society to ignore the financial hearsay that was lacking factual background; VSD continued its investigation into the disseminated financial hearsay (Valstybes Saugumo Departamentas, 2009). In the absence of the legally established responsibility for the dissemination of financial hearsay the only sanctions applied to disturbers were warnings. A similar analysis was carried out in 2008, when VSD was investigating the panic caused by the person who sent out mobile phone text messages urging to withdraw deposits from banks alleging their critical condition. The process of investigation required effort, considering the possibility that process of sending the mobile text messages forward does not reveal the forwarders, but is crucial to reveal the very first person, who sent out such a message, considering him/her a source of the disseminated financial hearsay. Unfortunately, even though the source of hearsay was identified, in accordance with the current legal regulation the only possible legal sanction would be warning.

Companies listed on stock exchange are very sensitive to financial hearsay. Article 218 of the Criminal Code establishes the criminal offence of manipulation of the price of securities. For the dissemination of inaccurate or incomplete information about issuer or its securities, criminal sanctions such as restriction of liberty, fine or imprisonment for up to three years are applicable. The necessary elements for the criminal responsibility to appear are a major property damage as a consequence and the motive of the violator – ambition to artificially raise or lower the price in stock market. Major property damage is the evaluative criterion. By applying the analogy of law, in accordance with the explanation of the concept in Chapter XXXI of the Criminal Code, the substantial material damage could be considered a damage exceeding the sum of 150 MLS (Minimum Level of Subsistence).

Law on Markets in Financial Instruments of the Republic of Lithuania provides that as inside information is regarded precise information about already happened or planned to happen events that is directly or indirectly related to one or more issuers, as well as other information that could have a significant impact on the price of the financial instruments or linked derivatives, if such information is not publicly disclosed. Issuers are obliged to disclose the information about fundamental events following the order established in the Resolution No. Q1-17 adopted by the Securities Commission of the Republic of Lithuania (hereinafter – the Securities Commission) on 17th of July in 2008 pursuant to Article 62 of the Law on Markets in Financial Instruments of Republic of Lithuania and Article 18 of the Lithuanian Securities Law. Inside information is considered confidential and issuers and persons operating on behalf of them are obliged to make lists of persons entitled to have access to such inside information. At the same time European Union directives in this area are implemented (Zin., 2009, Nr. 143-6335).

Part V on the confidentiality and rules of disclosure of the inside information regulates the dissemination of the hearsay. Hearsay is listed as unapproved information that may affect the price of the financial instruments of the issuer. When hearsay is spread, is-

suers are encouraged to confirm or deny the information. The Securities Commission is also granted the right to give a requirement to issuers to confirm or deny disseminated hearsay.

For the manipulation of information – disseminating the inaccurate and misleading information about the reasons for the termination of subscription agreements on purpose to acquire Agrowill Group shares – the Securities Commission imposed on ZIA Holding a fine of LTL 28 thousand on 28th of March in 2009. However, problems arouse when practically applying the provisions of the Criminal Code, because in most cases, there is an objective for obtaining a certain profit rather than making damage.

In order to guarantee the efficient functioning of markets of financial instruments and to avoid the misuse of them, to ensure the inevitability of criminal responsibility, to strengthen the legal responsibility for legally established criminal offences, Ministry of Justice of the Republic of Lithuania and Securities Commission prepared a draft law on amending the Articles 217, 218, 270, 271, 310 of the Criminal Code and amending and supplementing its Annex, also adding the new Article 224 to it. This would allow the implementation of the European Parliament and Council Directive 2003/6/EC on trading in securities based on insider dealing and manipulating of market. When legally regulating, it is suggested to use a concept of financial instruments instead of securities, to change manipulation of price of securities into manipulation of markets of financial instruments and to word the criminal offence as follows: "a person, which had a transaction or gave an order to buy or sell financial instruments in order to artificially increase or decrease the market price of financial instruments, or make a misleading impression about the supply or demand of financial instruments, or maintain unusual or artificial market price of financial instruments, or made a transaction or gave an order to buy or sell financial instruments with the help of fictitious instruments or otherwise as prohibited by law, or spread untrue, misleading or incomplete information about the issuer or its financial instruments, if the person himself or on behalf of others avoided significant material damage or received significant material benefits or made a significant financial loss to the issuer or to another market participant, or there was caused serious damage to the market of financial instruments or financial system, therefore is punishable with a fine or imprisonment for up to four years" (Lietuvos Respublikos Baudziamojo…, 2009).

Such a formulation of the elements of the crime would somewhat involve the content of financial hearsay as incomplete of misleading information about the issuer and its financial instruments.

Conclusions

The essence of the concept of financial hearsay is revealed through the analysis of features: information is new and important, but not confirmed by an official source, therefore vague, misleading. These features as a whole define financial hearsay as the disseminated vague and misleading information about the economic situation and financial system.

In Lithuanian legislation exists neither the concept of financial hearsay, nor information corresponding to the content of financial hearsay. At constitutional level fundamentals for limiting the spread of information which would harm state's financial stability are established, however, adopted laws do not provide for such restrictions.

In terms of civil law financial hearsay is considered disseminated opinion; therefore, it is not evaluated by justice criterion and is not treated as compliant with reality. Misleading information has no indication of facts, so even though misled people suffer financial loss, civil law does not provide for legal redress for dissemination of such information.

Criminal law regulates only information that is known to be false. Such information is accurate, but does not agree with reality. Legal sanctions for persons spreading financial hearsay are limited to warnings.

Qualifying financial hearsay as disseminated incomplete information about the issuer or its securities, the spreading of financial hearsay is equal to the manipulation of financial instruments market. In the absence of significant property damage, administrative responsibility for the committed breach of law occurs.

The draft law of the Criminal Code prepared and presented to the Seimas extends the concept of information disseminated by financial hearsay, formulating it as incomplete or misleading information about the issues or financial instruments.

Without legally established concept encompassing all forms of financial hearsay the presuppositions for violation of the principle of inevitability of responsibility are created, possibility of emergence of legal nihilism remains.

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Finansiniai gandai: turinys, ypatumai, teisinis reglamentavimas

Santrauka

Finansinių gandų – netikslios ir nepatvirtintos oficialiais šaltiniais informacijos, pateikiamos kaip faktai – paskleidimas turi didelę įtaką asmens ir šalies interesams.

Sudarydami nekilnojamojo turto pirkimo-pardavimo sandorius, imdami paskolas ir atlikdami kitas ūkines operacijas asmenys stebi padėtį rinkoje ir veikia darydami išvadas pagal tai, kokią informaciją sužino ir kaip ją interpretuoja. Viešai paskleidus finansinį gandą apie tam tikro banko nemokumą, gyventojai supanikuoja ir pradeda atsiimti indėlius, laikytus tame banke. Informaciją, susijusią su bankų sektoriumi, visuomenė vertina itin atidžiai. Todėl svarbu skatinti pasitikėjimą finansų sektoriuje, vystyti stabilią ekonomiką, vengti finansinių gandų neigiamų padarinių.

Nagrinėjama tema yra aktuali. Gandų kaip visuomeninio reiškinio prigimtis, daugialypiškumas, susiformavimo ir pasklidimo dėsningumai nagrinėti pavieniuose filosofijos, psichologijos, sociologijos, vadybos, ekonomikos, teisės mokslo darbuose. Pasigendama tyrimų socialinių mokslų šakų sandūroje ir atitinkamų sąsajų.

Straipsnio tikslas – atskleisti finansinių gandų kaip socialinio reiškinio turinį, ypatumus, teisinio reglamentavimo ir praktinio taikymo probleminius aspektus.

Finansinių gandų sąvokos esmė yra atskleidžiama per šio reiškinio požymių analizę. Informacija yra nauja, svarbi, bet nepatvirtinta oficialaus šaltinio, todėl neaiški, klaidinanti. Tokių požymių visuma leidžia finansinius gandus apibrėžti kaip neaiškios, klaidinančios informacijos apie valstybės ekonominę padėtį, finansų sistemą skleidimą.

Tyrimu nustatyta, kad nei finansinių gandų sąvokos, nei informacijos, atitinkančios finansinių gandų turi-

nį, Lietuvos teisės aktuose nėra. Konstituciniu lygiu yra pagrindai riboti sklaidą informacijos, kurią paskleidus būtų pažeidžiamas valstybės finansinis stabilumas, tačiau žemesnės galios teisės aktai nenumato tokios informacijos ribojimų.

Civilinės teisės požiūriu finansiniai gandai laikomi paskleista nuomone, todėl nevertinami teisingumo kriterijumi, netikrinama jų atitiktis tikrovei. Klaidinanti informacija neturi duomenų statuso, todėl nors ir suklaidinti asmenys patiria turtinės žalos, civilinė teisė teisinių gynybos būdų nuo tokios informacijos skleidimo nenumato.

Trumpalaike apsisaugojimo priemone galima laikyti finansinių gandų paneigimą. Civilinė teisė įtvirtina teisinį imperatyvą paneigti tik tikrovės neatitinkančius duomenis ar faktus, todėl finansinių gandų paneigimas paliekamas kiekvieno teisės subjekto nuožiūrai.

Baudžiamosios teisės srityje reglamentuojama tik tokia informacija, kuri yra žinomai melaginga. Apsiribojama galimybe duoti įspėjimus asmenims, skleidžiantiems finansinius gandus.

Traktuojant finansinius gandus kaip paskleistą neišsamią informaciją apie emitentą ar jo vertybinius popierius, finansinių gandų skleidimas prilyginamas manipuliavimui finansinių priemonių rinka. Nesant didelės turtinės žalos, už tokią nusikalstamą veiką iškyla administracinė atsakomybė.

Apibendrinant galima teigti, kad, nesant teisiškai įtvirtintos visas finansinių gandų formas apimančios sąvokos, sudaromos prielaidos pažeisti atsakomybės neišvengiamumo principą, taip pat lieka galimybė atsirasti teisiniam nihilizmui.

Pagrindiniai žodžiai: finansiniai gandai, gandų turinys ir ypatumai, finansinis stabilumas, finansinių gandų teisinis reglamentavimas.

The article has been reviewed.
Received in May, 2010; accepted in August, 2010.