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O.Y. Zablotska,
candidate of Law,
M.P. Kobets

CRIMINAL AND LEGAL PROTECTION OF A PERSON: PRO ET CONTRA

The comparative analysis of international and Ukrainian legislation regarding the regulation of honor and dignity of a person is carried out.

Keywords: *honor, dignity, slander, goodwill, defamation.*

In the conditions of the present the issue of the criminal-law protection of the honour and dignity of citizens is pointed out. The problematics of honor and dignity protection of a citizens keeps an urgency throughout the existence of a society. Especially acute is the issue of criminal-legal protection of honour and dignity of citizens in the context of the present time. Both Ukrainian, and foreign scientists are engaged in the research of this issue, namely O. Bandurka, V. Bortnik, M. Korzhansky, M. Koroleva, V. Osadchy, P. Mikhaylenko, P. Rabinovich, V. Stashis, V. Tatsy etc.

Purpose of writing this paper was to review the advisability of the amendments to the Criminal Code of Ukraine, namely to the art. 151-1 “Defamation and Its Normality to the International Standards, International Experience of Regulating the Protection of Honor and Dignity of the Person” [1].

Since the adoption of the Criminal Code several bills for the criminalization of defamation were repeatedly submitted for consideration to the Supreme Council in 2004, 2005, 2006, 2008 and 2010, but neither of them was supported.

In the Criminal Code of Ukraine of 1960 responsibility for defamation were specified in article 125, and for an insult – in article 126.

In the absence of qualifying signs the defamation was considered a to be crime that did not represent the considerable public danger, and affairs on their charge concern the affairs of private charge [2].

The parliamentary Assembly of the Council of Europe firstly in the Resolution № 1239, and in due course in the Recommendation №1513 since 2001 assigned to Ukraine a number of duties concerning the observance of standards of a freedom of speech.

The PACE called upon the organs of the Ukrainian authorities to improve general conditions of mass media work, in particular, regarding the adoption, without any further delay, amendments to legislation, concerning fines or damage, caused by the defamation, and the decriminalization of defamation. For the performance of the above-stated requirements the PACE in 2001 Ukraine decriminalized defamation and deleted this article from the new Criminal Code [3].

During the preparation of the Criminal Code of Ukraine, several decisions were taken not to include an article on the defamation because non-property personal rights of the individuals which are the honour, dignity and business reputation, refer to the sphere of civil law regulation.

When these are infringed, a person may appeal to the Court according to the Art. 201 of the Civil Code of Ukraine. In Art. 28 and 32 of the Constitution of Ukraine as well as in articles 297 and 299 of the Civil Code of Ukraine the right of every person to respect for his or her dignity and honour, as well as the integrity of

business reputation, is established. Thus, the person provides sufficient protection in the event of dissemination of false information about him. If there is the violation of these rights, the person may apply to the Court with the claim to protect them. Civil law also sets the compensation for moral damage, caused by false information dissemination [4, 5, 6].

As it mentioned in the conclusion of the Supreme Court to the bills about libel in 2008 the concept of defamation as honor and dignity as well as goodwill have subject individually defined character. Therefore, an assessment of harm, caused with a slander should be put into practice by a person, against whom it is directed, taking into account subjective views about these concepts and the extent of the injury. Therefore the decision to appeal to the court should be made by a person who has suffered from the negative effects, caused with the spread of false, inaccurate and negative statements or information.

The law gives no clear definition of the concept of “slander”, therefore, it would allow judges to interpret it differently.

The term “slander” is interpreted by the Plenum of the Supreme Court explaining in art. 1 p. 11 of the Ordinance No 7, September 28, 1990, as “the communication to uncertain quantity of persons or at least the one person of false information about likely conducted by the victim an illegal or immoral act or another information, dishonoring the victim. Flagrant lie is declared as an obvious for the guilty fact of the contradiction of the data to the reality”. But this interpretation was applied to the Criminal Code of 1960 that lapsed in 2001 [7].

Explanatory Dictionary of Ukrainian Language clarifies the term “slander” as an untrue accusation for the purpose to stigmatize, embarrass anybody. Thus, slander is a statement that is served as the “facts”, although they’ve never happened. This position is confirmed by the scientific journals, in which it is mentioned that “the content of the slander are explicit actual data” [8].

Scientists and lawyers repeatedly pointed out the discrepancy of the national legislation to the Convention’s items on the protection of honor, dignity and reputation from the media and judicial errors.

These controversial issues of judiciary practice have been partially resolved due to the amendments to the Law of Ukraine “About the Information”. According to them the value judgements, except of an offence or slander, are the statements, which don’t contain actual data in particular, criticism, assessment of actions as well as words that can not be interpreted as such that contain the actual data in view of the character of use of language means, in particular, the use of hyperboles, allegories, satires. Value judgements are not the subject of the disclaimer or proof of their verity [9].

Therefore, it would be reasonable to introduce into national legislation the term “defamation” for the definition of the offence, including the humiliation of honour, dignity and goodwill by spreading false information of an actual character that is an abuse of freedom of speech and thought as well as the media.

Defamation (LAT. Diffamatio – “slander” from LAT. Diffamare – “spreading gossip”) is the spread of false information that demeans person’s honour and dignity, goodwill. Defamation is synonymous with the term “humiliation of honour, dignity and business reputation”. Ukrainian legislation does not generally use the term “defamation”, but as a concise informative word of a foreign origin, it is widely used in practice and in the legislation of some other countries [10]. International experience and European democracy, in general, has a tendency to decriminalize the libel. According to the amendments, made by the Parliament of Bulgaria in 1999 to the Criminal Code, the sanction for the insult and libel is just a fine. In May 2000, the

French Parliament abolished imprisonment as a punishment for libel and insult. In 2003, the defamation had been deleted from the Criminal Code in Slovakia.

The laws of the decriminalization of defamation also were passed in Ghana (2001) in Bosnia and Herzegovina (2002) , in Sri Lanka (2002), and in Georgia (2004).

According to the OSCE, the sentences involving deprivation of liberty for offences per word are submitted in some post-Soviet countries, the countries of the Balkans and Eastern Europe. This state of affairs is continued in such countries as Poland, the Czech Republic, Croatia, Hungary. However, thus the responsibility for the libel is fixed in the criminal legislation, in practice it is rarely applied [11]. An exception is the United Kingdom. It even gave rise to a mass phenomenon: defamation-libel tourism.

As the British Law places the plaintiff in a rather convenient position, the duty of bringing truthfulness of a common information lays on the respondent. All the decisions of the European Court the criminal prosecution for defamation is recognized as excessive, i.e. such as one disproportionate to an object in view.

International bodies such as UN and OSCE long ago recognized the risk of criminality liability in libel cases. For example, Parliamentary Assembly called on the countries to abolish all the laws that criminalize defamation of public figures, government and public servants. In the special Declaration of the UN and OSCE representatives and the Organization of American States on January, 10, 2002, it was stated that the criminal responsibility for defamation should be abolished and replaced, where it necessary to the proper norms of a free legal defamation

The UN Committee on Human Rights also has repeatedly stated its concern about the use of criminal liability for the defamation and encouraged all the countries to implement the wide-ranging reforms. Despite the condemnation by the international legal institutions of the criminalization of slander. on July 13, 2012 the State Duma of the Russian Federation adopted several amendments to the Criminal Code of the Russian Federation, which restore the article “defanation”, abolished less than a year ago. Although prison terms were biased, however, significantly increased the maximum fine for the slander – 5 million rubles (\$ 1.22 million).

Other penalties have risen as well. For the dissemination of the false information that disgraced the honor and dignity of other person or dent somebody’s reputation fine will be 500 thousand rubles (122 thousand UAH). Defanation related to jobbing is flagged for 2 mln rubles (490 thousand UAH). Slander, contained in a public speech, was demonstrated in the production or the media is flagged to 1 mln rubles (245 thousand UAH).

The maximum penalty for slandering that a person has a disease that is dangerous to others, as well as for the defamation, related to the accusation of committing the crimes of a sexual nature are proposed to set in the amount of 3 million rubles (730 thousand UAH).

Slander, combined with an accusation of committing a grave or especially grave crime, is flagged by a fine to 5 mln rubles (1,22 mln UAH), tenfold the previously proposed sanctions. Moreover, the amendments introduced a new article “Defamation Concerning the Judge, the Jury, the Prosecutor, the Investigator As Well As the Person who Prosecutes the Inquiry, the Officer of Justice” while considering the materials or a court case. This action will be flagged by a fine of up to 2 million rubles (490 thousand UAH).

Slander concerning those persons in connection with the previous investigation or implementation of the verdict, the decision of a court or other judicial act shall be

flagged by a fine of up to 1 million rubles (245 thousand UAH). Those actions, combined with an accusation of committing a grave or especially grave crime, is flagged by a fine not exceeding 5 million rubles (1.22 million UAH) or the equivalent of the salary or other income of the convicted person for a period of up to three years, or compulsory working hours for up to 480 hours. Now in the Code of Administrative Offences of the Russian Federation are provided several fines for the citizens for offences against the honour and dignity of the person ranging from 2 to 3 thousand rubles (490–730 UAH) [12, 13].

In German Law, as well as in the legislation of most countries in Europe, the defamation is a criminal punished crime. Paragraph 90 of the CC establishes criminal liability in Germany specifically for slandering the “Federal President”, and paragraph 188-for slandering the politicians. The penalty is up to five years in prison. In some European countries, such as France, the Czech Republic, Poland, Austria, is provided the criminal liability for the libel [14].

Contents of Art. 151-1 “The Slander” introduced to the CC of Ukraine are at variance with the international standards of freedom of speech and the obligations assumed by Ukraine to the Council of Europe. The additions to the Criminal Code are illogical, taking into account the previous history of the decriminalization of libel and such bills, as well as unwarranted according to their meaning and in terms of international democratic practices that directly condemns the criminal penalties for the difamation. The Civil Code contains adequate instruments for the protection of the rights of a person in the case of dissemination of inaccurate information.

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