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## Remedies against Online Defamation of Public Figures

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### Abstract

In legal literature, the dissemination of false information on the Internet is referred to as online defamation. However, Ukrainian legislation does not enshrine this term, which creates difficulties with respect to legal protection against online defamation. So, the aim of the article is to determine the legal remedies for countering defamation of public figures on the Internet. The research involved the following methods: analysis, case study, graphic methods.

The study revealed the main contradictions in defamation research and identified unexplored aspects of the issue. The legislation of Ukraine and other countries of the world with regard to defamation and protection against libel is examined. International aspects of providing protection against defamation and the researchers' recommendations on how to balance the right to freedom of expression and the right to privacy are studied. Highlighted in the conclusions are that the study established the need to improve Ukraine's legislative framework on defamation issues, make changes in educational programs and improve the media literacy of the population. Prospects for future research include the study of the means of settlement of defamation cases at the international level.

**Keywords:** online defamation; legislation; legal protection; criminal liability; freedom of expression.

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## Recursos contra la difamación en línea de figuras públicas

### Resumen

En la literatura legal, la difusión de información falsa en Internet se conoce como difamación en línea. Sin embargo, la legislación de Ucrania no consagra este término, lo que genera dificultades con respecto a la protección legal contra la difamación en línea. Entonces, el objetivo del artículo es determinar los recursos legales para contrarrestar la difamación de figuras públicas en Internet. La investigación involucró los siguientes métodos: análisis, estudio de casos, métodos gráficos. El estudio reveló las principales contradicciones en la investigación sobre difamación e identificó aspectos inexplorados del tema. Se examina la legislación de Ucrania y otros países del mundo con respecto a la difamación y la protección contra la calumnia. Se estudian los aspectos internacionales de brindar protección contra la difamación y las recomendaciones de los investigadores sobre cómo equilibrar el derecho a la libertad de expresión y el derecho a la privacidad. Destacan en las conclusiones que estudio estableció la necesidad de mejorar el marco legislativo de Ucrania sobre cuestiones de difamación, realizar cambios en los programas educativos y mejorar la alfabetización mediática de la población. Las perspectivas de futuras investigaciones incluyen el estudio de los medios de solución de los casos de difamación a nivel internacional.

**Palabras clave:** difamación online; legislación; protección jurídica; responsabilidad penal; libertad de expresión.

### Introduction

Information has become one of the most valuable resources. The development of means of communication enabled distribution of information among a wide range of users in the shortest possible time and at minimal cost. Information has become a key means of shaping the public attitude to certain events or individuals. A particular political party, personality, programme or decision can win the majority of votes in an election depending on the public attitude (positive or negative). This will further affect the course of the country as a whole, including the international policy (Novytskyi and Novytska, 2016).

The increasingly rapid development of communication tools urges the issue of the contradiction between freedom of speech and the right to the protection of personal data. This contradiction is especially acute when information disseminated in one way or other harms an individual,

business or country. The legal science defines the case when disseminated information causes harm, shames, deprives of a good name in a certain way as defamation.

Many researchers studied defamation, as well as the border between the right to freedom of expression and the right to privacy in its context (Agarwal, 2020; Bevez *et al.*, 2021; Petkova, 2019; Schulz, 2018). They do not, however agree on a number of aspects of the problem. The main one is the reliability of disseminated information. When defining defamation, researchers have no single view on whether the information that injures the reputation should be true or fabricated. Second, there are no clear criteria regarding the harm caused: what can be considered as a harm, how to measure it, etc.

Third, it is not determined who is responsible for defamation and in what cases. The following parties are involved in the dissemination of harmful information: the source of information, the person who disseminated it, and also who used the information to cause harm (Novytskyi and Novytska, 2016). The questions about who bears the responsibility (and should bear it) among them and to what extent remain unsolved.

The issue of protection against the spread of harmful information, in particular online defamation, is extremely urgent, especially in view of the pace and scale of development of Internet communications. It is especially acute because the outlined theoretical aspects of defamation are not certain both in the scientific literature and in the legislation of many countries. In particular, the article examines the legislation of Ukraine because the defamation problem in the country is highly relevant in the course of military confrontation.

So, the aim of the article is to determine the legislative means of countering the spread of harmful information about public figures on the Internet. The aim involves the following objectives:

- clarify the definition of the term “defamation” and some theoretical aspects of the issue;
- examine the legislation of Ukraine regarding defamation and legislative regulation of related issues;
- survey the legislative provision of protection against defamation of individual countries;
- conduct a case-study of defamation cases using the example of spreading harmful information about Ukraine and Ukrainian public figures in the course of military confrontation;
- determine legal remedies against online defamation of public figures.

## 1. Literature Review

The terms “defamation” and “online defamation” are generally similar, they mean dissemination of harmful information about a person, business or country. The difference is in the means of disseminating such information. Xiaobing and Yongfeng (2018) note that compared to traditional defamation, online defamation is characterized by a high degree of “occultism”, high speed of dissemination, and significant attention. Moreover, the cost of legal proceedings is low, which makes defamation crimes easier to implement and more difficult to eliminate.

The fact that the legislation of Ukraine lacks this term is the main reason for the imperfection of means of protection against online defamation, as well as defamation in general. Besides, modern scientific and legal literature provides no single definition of defamation. Disagreements relate to such important criteria as the reliability of information, determining the damage caused, establishing those who are responsible, the type of responsibility, etc.

Rooksby (2018) considers defamation as a ground for bringing an action which, if satisfied, provides monetary compensation for reputational damage, which is caused by false statements made by others. Magalla (2018) defines defamation as an action of tort in which one person provides false information about another person in any way. The person providing the information is known as the defendant before the court, the other is known as the plaintiff. Such information may be published and disclosed by any means, causing damage to reputation or injury to another person.

Moutos *et al.* (2020) consider a false or defamatory statement as one of the key elements of a satisfied defamation claim. With the exception of some nuances, these researchers agree that the information given to third parties shall be primarily false. There is, however a point of view that defamation involves the transfer of any information, including true information. Thus, Sytko and Shapovalenko (2018) reveal defamation as “the public distribution of true or fabricated information that degrades the honour, dignity and harms business reputation of a citizen or organization.”

Some researchers focus not only on the reliability of information, but also on its other characteristics. Telychko and Rekun (2021) believe that the concept of defamation is supposed to mean the illegal collection and distribution of false information about a person’s private life that degrades his/her honour and dignity. So, the researchers interpret defamation as the dissemination of information about private life, not the information related to professional activity or other spheres. According to researchers, defamation implies not only spreading, but also collecting harmful information.

Contrary to this view, some researchers separate the spread of false information from the spread of private information through the use of special terms. For example, Solo (2019) defines defamation as the spread of false statements that harm a person's reputation. The researcher interprets doxing an individual as the publication of a person's private information, such as his/her home address or that of his/her family members.

The issue of measuring damage caused by defamation is also poorly studied. According to Algburi and Igaab (2021), defamation refers to accusations of wrongdoing. Navrotska *et al.* (2021) hold a similar opinion, they refer defamation as slandering an admittedly innocent. In this case, the damage caused by defamation moves to a different level, because it contains accusations of violation of the law. However, most researchers agree that defamation refers rather to the disclosure of information that degrades a person's dignity or harms a person's reputation.

In addition to disagreements about the nature of information and measurement of the harm, researchers do not have a common opinion about responsibility in case of defamation. Novytskyi and Novytska (2016) point out that if defamation is defined as a violation of the right to protect business reputation, the criminal liability occurs.

However, most authors agree Xiaobing and Yongfeng (2018). The authors note that criminal laws and excessive judicial regulation of freedom of speech on the Internet can undermine the right to freedom of expression. In particular, this applies to international legislation. Nielsen (2019) notes that the conflict between defamation, privacy and freedom of speech is very contradictory, even in the EU.

Therefore, the issue of balancing the right to freedom of speech and the right to privacy is extremely important in the modern information society. This applies to both the state and interstate levels. At the international level, conflict resolution is complicated by the differences in the legislation of different countries.

The issue of who shall be responsible for defamation remains unsolved, as well as who was engaged in the collection of information or its distribution, whether this person was aware that the information was false, etc. The next unresolved issue is should website owners, social media users with a certain number of followers, site administrators and so on be held responsible. Some researchers even consider the responsibility of search engine operators (Yew, 2019).

## 2. Methodology

The research involved the following methods: scientific literature survey to clarify the aspects of the studied concepts, as well as the analysis of the legislative framework of Ukraine and other countries to establish the legal aspects of the issue under research; case study to describe an example of the studied problem and its consequences; graphical methods for visual presentation of the obtained results.

The research is comprehensive, so it was divided into separate related stages.

The first stage was to determine that the studied concept of defamation has significant differences in terms of interpretation by researchers. It was established that such discrepancies are explained by the absence of the concept of defamation in Ukrainian legislation. The key controversial aspects of defamation were identified, and the main problem of inadequate legal protection against defamation was revealed. Controversies primarily concern the reliability of the disseminated information, measuring harm caused, and the identification of those guilty of defamation. The problem of legal protection is the imperfection of the legislative framework.

The second stage of the study describes the main legislative acts related to the protection of individuals, businesses, and the country from false information distributed online. The legislative framework of Ukraine and other countries of the world was studied. It was established that the Ukrainian legislative framework provides for ways of protection against the spread of false information and the right to restore honour and dignity.

But it lacks the term “defamation”, which distinguishes Ukrainian legislation from the legal systems of some other countries. The survey of the legislation of these countries lead to the conclusion about the areas of protection against defamation that can be introduced in Ukraine. Such areas relate, in particular, to innovations in the legislative framework, educational programmes in schools, and improving the media literacy of the population.

The third stage of the research involved a case study on the example of the current military and political events in Ukraine. This stage confirms the importance and relevance of protection against false information distributed on the Internet for Ukraine and its public figures. In particular, the importance of the influence of defamation and its role in the development of the military conflict on the territory of Ukraine was determined. Ukraine and its public figures were chosen as an object of study because of the significant impact of defamation on events in the country. This is confirmed by a review of scientific literature and analytical data on the consequences of defamation against a country.

The last stage of the study involved a discussion regarding means of protection against online defamation. International approaches to changes in the legislative framework to be introduced for effective protection against defamation in Ukraine were considered. The recommendations of researchers for improving protection against defamation were studied.

Ways to establish a balance between the protection of the right to freedom of speech and the right to privacy are outlined. Means of measuring damage and determining responsibility, in particular, the categories of persons responsible for defamation were provided. The problem of settlement of defamation cases in international legislation was revealed.

The conclusion of the article provides that further research should focus on establishing the need for criminal liability for defamation. It is also necessary to detail the problems of the international enforcement of court decisions on defamation and to determine the means to solve them.

### **3. Results**

#### **3.1. Problems of defining the concept of defamation**

Information technologies have penetrated into all spheres of human activity in recent decades. Domestic affairs, professional activities, as well as state-level issues are increasingly being carried out and solved online. The so-called digital transformation is a universally recognized necessity as it provides unconditional benefits to society. First, it is an increased mobility due to the acceleration and facilitation of most actions of any nature. Internet technologies are used in virtually all affairs — from purchasing to professional tasks that can be fulfilled anytime and anywhere. Second, it is an increased security, in particular the possibility of cashless payments, information protection technologies, fraud prevention, video surveillance, etc. Third, it is the savings of both individuals, businesses and the state through the introduction of electronic document management, electronic services, production automation, etc. Fourth, they provide wider opportunities in the fields of science and education (in particular, distance learning), medicine, culture and art.

The established fact of the need for the development of information technologies in the world provides not only benefits, but also the lack of alternatives to the introduction of innovations. This poses numerous challenges to modern states, economies, businesses, and individuals. Failure to implement information technology may entail significant losses. Their implementation, however, hides many problematic issues. In addition to the organizational aspect, it is dangerous to significantly strengthen information influence, which increases in the course of digital



transformation. The information can have both positive and negative impact on individuals, businesses, and even on the state. This determined the emergence of the concept of information war.

The distribution of any information is justified by freedom of speech, on the one hand. On the other hand, it may overlap with the violation of the right to privacy. This is ground for the emergence of the institution of defamation. In the most general sense, defamation is the dissemination of information that harms the reputation of a certain subject of information. However, the researchers interpret this term differently, so it needs to be clarified.

The literature review revealed that researchers do not agree on the reliability of harmful information. Some of them believe that defamation is primarily the collection and distribution of false information. Others admit that spreading true information that harms reputation can also be considered defamation.

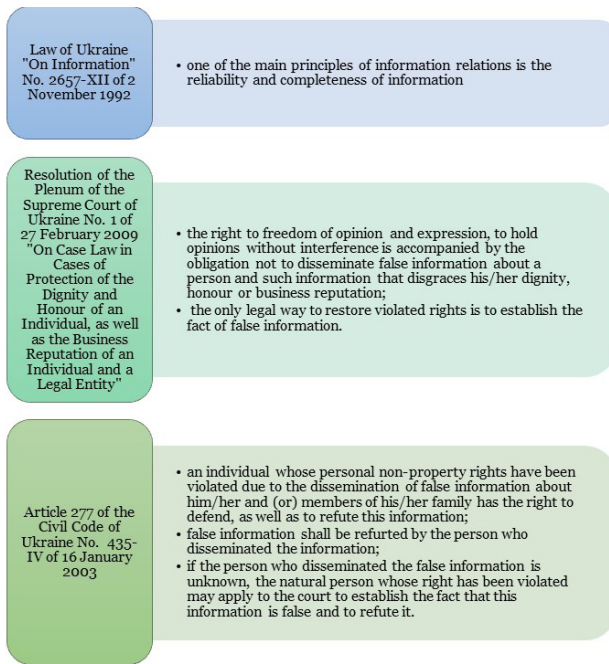
The latter consider that dissemination of false information is denoted by the term “slander”. Besides, there is no single approach to understanding the harm caused by information dissemination. In particular, how to measure the damage, how to confirm the fact of the damage, as well as the scope of damage, etc. Finally, there is no clear indication of who should be liable for defamation and in which cases.

The conflicting views of researchers on aspects of the concept of defamation are explained by the difference in its interpretations in the legal systems of different countries. The legislation of Ukraine lacks this term, which causes certain discrepancies on the definition of defamation by Ukrainian scholars. The problem of inadequate protection against the dissemination of harmful information arises in the absence of clear criteria for defining defamation in the legal system of Ukraine.

### **3.2. Legislative provision of protection against harmful information in Ukraine and the world**

The lack of the concept of defamation in Ukrainian legislation does not mean that the country’s legal system does not provide for legal protection against harmful information in general. Figure 1 shows the legislative acts of Ukraine relating to legal protection against harmful information.

Figure 1 shows that Ukraine provides for responsibility for the dissemination of false and shameful information. The right of the person in relation to whom such information was disseminated to defend and refute the information is also provided.



**Figure 1: Legislative protection against harmful information in Ukraine (Civil Code of Ukraine No. 435-IV, 2003; Law of Ukraine No. 2657-XII, 1992; Resolution of the Plenum of the Supreme Court of Ukraine No. 1, 2009).**

In general, this is in line with the Council of Europe’s standards set out in Resolution 1577 (2007) Towards decriminalisation of defamation. The Resolution states that freedom of expression cannot be unlimited, however:

“Statements or allegations which are made in the public interest, even if they prove to be inaccurate, should not be punishable provided that they were made without knowledge of their inaccuracy, without intention to cause harm, and their truthfulness was checked with proper diligence” (Parliamentary Assembly, 2007).

The Human Rights Committee holds a similar view in its General Comment No. 34 “Article 19. Freedom of expression”: if a person was in good faith mistaken about the information, he/she disseminated, he should not be held criminally liable (Koliver, 2011).

However, the legislation of many countries provides for liability for defamation (Figure 2).



Figure 2: Legislation and anti-defamation measures in different countries (BBC News, 2018; Bundesministerium für Familie, Senioren, Frauen und Jugend, 2017; Etzold, 2017; European Commission, 2018; Telychko and Rekun, 2021; Hacıyakupoglu et al., 2018; Qi et al., 2018; Zharovskiy, 2018)

Figure 2 shows the decisive steps taken by some countries to counter the spread of false information. However, such actions are often opposed by the opposition, whose main argument is the violation of the right to freedom of speech. However, the unrestrained spread of misinformation, especially on major online platforms, can be harmful to both individuals and the country. Disinformation creates wrong views, imposes biased judgments, and can incite unwarranted enmity, promote violence, etc. Therefore, the spread of false information should be limited in a certain way, in particular, through the right to refute such information, as well as through shaping critical thinking among information users.

### 3.3. Case-study on the example of current military and political events in Ukraine

Russian propaganda and defamation of the aggressor in relation to Ukraine is an extremely relevant example of the spread of false and harmful information. This issue is especially acute in the world of catastrophic consequences caused by such information.

Ciuriak (2022) notes that in an information society, the government of a country with more power can formulate and control the narratives of the population. That is, people perceive imposed thoughts as their own views. This is how preparations for war are carried out according to the formula: delegitimization of the target country; “demonization” of the country; submitting complaints that legitimize the use of force; inventing an excuse or pretext for war. Besides, the invasion must be large-scale and interpreted as “liberation”, and the invaders must appear as “saviours”.

These were the principles for the Russian invasion of Ukraine. Ciuriak (2022) reveals the formula he defined regarding the war in Ukraine as follows.

**Table 1: Components of the formula for preparing for war against Ukraine in the context of its defamation by the aggressor (Ciuriak, 2022).**

Components of the formula	Content and main slogans of defamation against Ukraine
Delegitimization	“Ukraine is not a real country”, although it is a founding member of the UN and was recognized by Russia after the collapse of the USSR
Demonization	“Ukraine is full of Nazis”, although the consolidated far-right share of votes in the last Ukrainian elections was only 2.25% of the votes. Besides, the President of Ukraine is a Jew

Complaints	“Russia was robbed by transferring “historical Russian lands” to Ukraine under the Russian-led Soviet Union.” “Russia was betrayed because of NATO expansion” (although Ukraine is not a NATO member). “There is a threat of mass destruction of Russians”, although Ukrainianization does not threaten the 144 million population of Russia. Some Ukrainians speak Russian, but identify themselves mostly as Ukrainians
The reason for the war	“The invasion was necessary to stop the genocide in Donbas.” However, Donbas has been already occupied by Russian troops at that time

Ian Garner (2022) conducted a study of the reaction of users of groups in Russian social networks to the invasion of Ukraine. In particular, the researcher focused on violence and murders in the city of Bucha. His work proves that the “formula” applied by the aggressor works as the leaders of the aggressor country expected. The researcher focuses on three channels, each having more than 60 thousand subscribers. He analysed the publications that appeared within two days after the start of the Bucha discussion in mass media. He selected ten posts by the largest number of comments and top ten comments by user reaction to each post. As a result, Garner determined that at least half of the users in that sample called on the Russian military to be more violent in their offensive in Ukraine. Many messages concerned individual personalities, in particular, Ukrainian President Volodymyr Zelenskyi (Garner, 2022).

The described tragedy is an example of the “successful” use of defamation by one country against another to achieve its goals. This confirms that defamation can have catastrophic consequences. Therefore, the definition and introduction of means of protection against it is an important issue both for individuals and for the country.

## **4. Discussion**

### **4.1. Remedies against online defamation**

The conducted research allows us to identify a number of problems regarding the means of legal protection against online defamation. First, Ukrainian legislation lacks the term “defamation”. Second, there are significant differences in the interpretation of this concept by researchers. The differences relate, first of all, to the reliability of the disseminated information, measuring damage, and the establishment of liability for defamation.

Third, defamation against Ukraine and individual public figures of the country leads to catastrophic consequences. These facts determine the

relevance and necessity of finding and implementing appropriate measures of legal protection against defamation. The analysis of the global practice of protection against defamation suggest that such measures may concern the improvement of the legislative framework, educational programmes, and the improvement of media literacy.

The foregoing justifies the conclusion that Ukrainian legislation requires legislative enshrinement of defamation. The law on defamation should provide for an unambiguous interpretation of this term, an algorithm for determining the damage caused and liability depending on the legally defined conditions. Telychko and Rekun (2021) have a similar opinion on this issue. The researchers note an increase in the number of cases related to the protection of honour, dignity and business reputation on the Internet.

This fact necessitates legal enshrinement of responsibility for defamation. The creators of sites and administrators of web pages for the distribution of false, compromising information shall bear the responsibility. Researchers propose the adoption of the Law on Defamation on the Internet, which has certain nuances compared to traditional defamation.

In the event of a decision to make such changes in the legislation, a dilemma regarding the reliability of information remains the priority issue. As noted, there is a view that defamation can include the dissemination of any information that harms reputation, even true information. In particular, Sytko and Shapovalenko (2018), who are the authors of the legal dictionary, hold this opinion. However, most authors focus on the spread of false information. They associate the disclosure of true information with other terms (for example, doxing) and do not associate it with defamation.

Moutos *et al.* (2020) point out that satisfied defamation actions must establish four key elements: the existence of a false or defamatory statement; guilt that is at least equal to negligence; non-privileged communication to a third party; damage or loss suffered by the plaintiff as a result of the application.

If the opinion that defamation is the dissemination of false information is accepted, the next controversial issue is whether criminal liability occurs for it. Magalla (2018) notes that defamation law depends on whether it is treated as a criminal offense or a civil offence.

Novytskyi and Novytska (2016) consider it logical to establish criminal liability for defamation. This is legitimate when defamation is identified with violation of the right for the protection of business reputation, intentional dissemination of disinformation in order to cause harm. Researchers support their views by the existence of such laws in most democratic countries. They also note that the 1961 Criminal Code of Ukraine contained an article providing for criminal liability for defamation. However, this action was decriminalized in 2001.

It should be noted that the modern world community considers freedom, in particular freedom of expression, as one of the main values. It should, however, be agreed that liability for defamation should be criminal only in particularly serious cases. For example, if we define slandering a person of committing illegal acts as defamation. This is how defamation is considered in the works of Algburi and Igaab (2021) and Navrotska *et al.* (2021). Contrary to this opinion, Rooksby (2018) believes that liability for defamation involves monetary compensation for damage to reputation. Therefore, liability should depend on the scope of damage caused. The scope of damage must be clearly established and its definition must be enshrined in legislation.

Xiaobing and Yongfeng (2018) focus on clarifying the question of who should be liable for defamation. It must be a natural person who has criminal liability and has reached the age of criminal liability. Researchers divide such people into five categories.

The first category includes those who published slander on the Internet, fabricated or falsified the original content of information to the detriment of the reputation of others. The second category consists of those who realize that the information is false and harms the reputation of others. The third category includes persons who fabricated information and organize others to spread it. The fourth category includes persons who falsify the original information of other individuals, organize and manage the distribution of such information. The fifth category consists of network service providers. The study was conducted in China, and the researchers note that the first, third and fourth categories of persons are not controversial in judicial practice. The second and fifth categories require detailed analysis.

Some researchers list search engine operators among others responsible for defamation. They should not be automatically released from liability for search results and autocomplete function. The scope of potential liability should, however, be limited (Yew, 2019).

Drawing up of a plan of measures to combat defamation should be preceded by coordination of the specified aspects of defamation. Solo (2019) offers recommendations for countering defamation and doxing (the study was conducted in the USA). The improvements relate mostly to changes in the legislative framework and are fairly strict methods of countering defamation:

- defamation should entail enforcement of criminal legislation;
- defamation should be recognized as a criminal offense and prosecuted accordingly [in the United States];
- publishing a home address on the Internet without a person's consent should be defined as a crime;

- small claims courts should be authorized to hear defamation or doxing claims;
- website owners must log the IP addresses of their website users for five years;
- website owners should not be able to hide their identity when registering a domain name;
- website owners should be held liable for defamation or doxing by a website user. Liability occurs if the website owner does not remove the relevant information after a complaint by the subject of defamation/doxing;
- search engines should be prohibited from indexing and displaying hyperlinks to websites known for defamation or doxing;
- websites that deal with archiving should stop caching or archiving websites known for defamation or doxing;
- search engines should comply with court orders to remove defamation or doxing hyperlinks on third-party websites;
- foreign defamation or doxing judgments should be enforceable in the US (Solo, 2019).

The improvements referred to above can be applied in practice in relation to changes in Ukrainian legislation by adapting them to Ukrainian realities. It should be noted that defamation of the country's public figures both domestically and internationally is the main problem in Ukrainian practice. This fact should be taken into account when introducing legislative changes.

Nielsen (2019) notes on the issue of international settlement of defamation cases that the cooperation of states will facilitate the enforcement of judgements. The researcher gives the example of the EU, which has special conventions and supranational legislation. But in case that the judgement conflicts with the legislation of the state where its enforcement is required, such a state may refuse to enforce.

## **Conclusions**

The high influence, both positive and negative, of information in modern society determined the relevance of the study of defamation aspects. This especially applies to the dissemination of false information, which is known to be harmful to the reputation of a certain person, business, or country. The problem of defamation in Ukraine is the lack of this term in the national legislation. This causes the differences in the interpretation of the



term by researchers and the difficulties in providing legal protection against defamation.

A survey of the legislation of some countries gave grounds to conclude that the term “defamation” is used in the legal systems of other countries. The countries established different types of responsibility for defamation, in particular, fines and criminal liability. But the problem of balancing the right to freedom of speech and privacy still remains unresolved even in those countries.

The legal protection against online defamation in Ukraine should start with the introduction of changes to the legislative framework. Besides, the example of Italy shows that it is advisable to introduce special programmes for schoolchildren. Those programmes will aim to develop skills of recognizing false information on the Internet. The state should also introduce measures to improve the media literacy of the population.

Further research may detail the means of settling defamation cases at the international level. An important prospect is establishing criminal liability for defamation and the cases in which it may occur.

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