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Public official as a victim of criminal insult and defamation: Comparative Research

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Abstract

The paper analyzes various issues relating to criminal liability for insulting and defaming a public official in several jurisdictions. The objective of this study was to clarify, by comparative reference to the criminal laws of various countries, whether insult and defamation constitute a crime or are perceived as non-criminal conduct. Based on the provisions of criminal legislation and international case law, as well as the case law of the European Court of Human Rights, the fine line between the fundamental principle of freedom of expression and abusive insults (defamation) has been demonstrated. It has been concluded that both public officials and private citizens can be victims of defamation and insult, which can give rise to criminal liability in some states. The specific models of such liability differ significantly. Based on our analysis of legislative and enforcement approaches in various jurisdictions, it is concluded that some countries vigorously protect both public officials and lay citizens from insult and defamation, while other states rely more on the broad principle of "freedom of expression".

Keywords: criminal liability; insult; defamation; defamation; public official; compensation for damages caused by criminal offense.

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El funcionario público como víctima de injurias y calumnias: Investigación comparativa

Resumen

El documento analiza diversas cuestiones relativas a la responsabilidad penal por insultar y difamar a un funcionario público en varias jurisdicciones. El objetivo de este estudio fue aclarar, haciendo referencia comparativa a las leyes penales de varios países, si el insulto y la difamación constituyen un delito o se perciben como conductas no delictivas. Basándose en las disposiciones de la legislación penal y la jurisprudencia internacional, así como en la jurisprudencia del Tribunal Europeo de Derechos Humanos, se ha demostrado la delicada línea que separa el principio fundamental de la libertad de expresión y los insultos abusivos (difamación). Se ha llegado a la conclusión de que tanto los funcionarios públicos como los ciudadanos particulares pueden ser víctimas de difamación e injurias, que pueden dar lugar a responsabilidad penal en algunos Estados. Los modelos específicos de dicha responsabilidad difieren significativamente. Basándonos en nuestros análisis de los enfoques legislativos y de aplicación de la ley en varias jurisdicciones, se ha llegado a la conclusión de que algunos países protegen enérgicamente, tanto a los funcionarios públicos como a los ciudadanos legos de los insultos y difamaciones, mientras que otros Estados, se basan más en el amplio principio de la «libertad de expresión».

Palabras clave: responsabilidad penal; insulto; difamación; funcionario público; indemnización por daños causados por delito penal.

Introduction

> "[…] the imposition of a prison sentence for a press offence will be compatible with journalists' freedom of expression […] only in exceptional circumstances, […] as, for example, in the case of hate speech or incitement to violence"[5]

Any true democracy is founded on the principle of holding those in power accountable for their behavior and actions in public as well in private context. Acceptable criticism with regards to public persons must be considerably higher than that regarding private individuals; elected offices must be open to scrutiny since the powers of the state rest in their hands (Gūtmane, 2018). However, that is not fully reflected in the laws of the

5 Cumpănă and Mazăre v. Romania App no 33348/96 (ECtHR, 17 December 2004), §§ 115.

majority of the EU member states. Fourteen member states have separate provisions protecting public officials and figures against reputational harm, and a dozen states have codified separate provisions against insulting the head of the state, including some symbols of state and authority, its institutions (e.g., flag, anthem, coat of arms).

Moreover, more than ten states provide for procedural advantages to public officials in cases of defamation: whereas private individuals must bring criminal cases to court on their own or must file a complaint in order to initiate a police investigation, public prosecutors can take action on their own when the offended party is a public official. This might lead to the abuse of prosecutorial discretion in public insult and defamation cases. Among the twenty-eight EU members, only Croatia, Cyprus, the Czech Republic, Finland, Ireland, Latvia, Romania and the United Kingdom do not specify for any special form of firmer protection for public officials (Out of Balance, 2015).

When the law talks about public official as a victim of crime, the emphasis should be placed on an employee of state authorities and state institutions, legally authorized within the limits of his competence to make demands, as well as to make decisions, which are mandatory for physical execution and legal entities, regardless of their departmental affiliation or subordination, encroachment on life, health, property and other rights protected by law, which cause significant damage to the image of state authorities. It can be implied that by causing harm to a specific public official, damage is also implicitly done to state authorities, even at a larger scale.

Even brief survey of national models of protecting public officials from various offenses reveals that insults and defamation constitute a significant part of such "anti-government" criminality. As will be further illustrated in this paper, almost any jurisdiction in the world has to deal with offensive behavior against public officials.

1. Methodology

The following research methods have been used extensively while working on this paper. The comparative law method, which has been the leading one, has enabled the authors to research criminal liability for insulting and defaming a public official in various jurisdictions and compare various liability models between themselves. It is worth adding that comparative method has been actively used in legal research recently (Minchenko *et al.*, 2021).

The system-structural method has been used to describe applicable criminal statutes and their structural positions in the national Criminal

Codes. Decisions of various high level courts, as the U.S. Supreme Court and the European Court of Human Rights, also helped to elaborate on the system of national criminal law with regard to protecting public officials from insults and defamation.

The observation method also made it possible to identify legislative trends throughout the world with regard to decriminalization of the offenses discussed and strengthening of the freedom of speech guarantees. The observation method has also indicated the need for further academic research in this evolving area of law.

Finally, the statistical method of collecting and summarizing legally relevant information was also used throughout the paper with the purpose of illustrating how laws against criminal insults and defamation operate in various jurisdictions.

Overall, the chosen combination of research methods has proved to be effective in the sense that it allowed to conduct an in-depth analyses while also to formulate novel conclusions and observations.

2. Discussion

The analysis of foreign literature devoted to the issue of criminal liability for insulting a public servant in connection with the performance of his official functions demonstrates a high level of activity in this area of criminal law regulation. In this research paper we will refer to the normative, doctrinal and law-enforcement experience of certain countries in this specific area of criminal law.

We will start with the international approach to the issue at hand. The U.N. Human Rights Committee's 2011 General Comment 34 recommended against punishing "statements not subject to verification," in other words, expressions of feelings and opinions. Expressions of feelings and opinions do not carry the same risk that the false allegations asserting to be factual carry.

The latter can mislead people into taking specific actions but expression of feelings and opinions are themselves neither false nor true and beyond blame for what happens afterwards. If the hearer takes any action in response, it is the legitimate result of the mental processes in the hearer, which the state has strict obligation not to intervene in under international human rights law (International Covenant on Civil and Political Rights, 2011).

A brief notice on the relevant European jurisprudence. Based on the widely recognized European legal standards, the prohibition of defamation

raises the issue of the appropriate balance to be struck between freedom of expression, as protected by Article 10 of the European Convention of Human Rights (ECHR) Article 19 of the International Covenant on Civil and Political Rights (ICCPR), on the one hand, and the right to respect for private and family life, as protected by Article 8 ECHR, on the other hand. Freedom of expression carries with it duties and responsibilities, which are of particular significance when the reputation of a named individual and the "rights of others" are at risk (Opinion of the European Commission, 2013).

Based on Article 10 (2) ECHR and well-established case law of the European Court of Human Rights, "interference by authorities into the area of freedom of speech must be "prescribed by law", correspond to a "pressing social need", be proportionate to one of the legitimate aims pursued within the meaning of Article 10 (2), and be justified by judicial decisions" that give relevant and sufficient reasoning (Sunday Times v. United Kingdom, 1979).

On the other hand, the right to protection of one's reputation comes under Article 8 ECHR as part of the right to respect private life. The European Court has stressed out that under Article 8, in addition to the primarily negative obligation of the State to abstain from arbitrary interference in the exercise of the right to private and family life, there are also positive obligations to ensure effective respect for private life, in particular the right to protection of one's reputation (Somesan and Butiuc v. Romania, 2013).

Thus, we observe a rather delicate balance between the freedom of speech and respect for one's private (family) life and reputation. Legal protection of private life, including the right to confidentiality of correspondence has been widely accepted in international and domestic law; a lot has been written on the subject (Oliinyk *et al.*, 2020).

L. Gūtmane is to the point in this regard: although European states, especially those, which are part of the European Union, advocate for democracy and fundamental freedoms around the globe, they are still behind with reference to international standards on freedom of expression.

> Too often the nature of the violation does not match the proposed penalty; in short, the punishment disproportionately restricts the freedom of expression. This has a chilling effect on press, which holds a fundamental role in educating public, demanding the responsibility from public servants and contributing to public debate in general. However, this is not to say that infringement upon somebody's right to reputation and public image should not be followed by fair consequences, but it is necessary to weigh out the effect of the punishment against the legitimate aim of the law in a democratic society (Gūtmane, 2018: 17).

As one Ukrainian commentator put it, many world legislators (though not all of them) consider insult and defamation to be crimes against honor and dignity. He continues by noting that in recent decades developed

countries have demonstrated a rather restrained attitude to the application of criminal liability for defamation, since the corresponding practice of criminal prosecution is often incompatible with the freedom of expression and its guarantees. For example, in Australia, the last known case of imprisonment for defamation took place more than 50 years ago, while in Norway – in 1933.

Today the majority approach in Western Europe is that civil-law sanctions for defamation are more appropriate than criminal enforcement; the latter is no longer justified given the widely recognized and protected freedom of speech principle (Andrushko, 2020).

Criminal law of some states also contains special norms on liability for insulting the head of state, judges and other representatives of the authorities, for insulting national, racial and other groups, as well as for insulting the nation and the state as a whole. Structurally, such norms are commonly contained in chapters of the national Criminal Codes, which protect authority and dignity of the government and its officials.

According to IPI (International Press Institute) report, only two out of twenty-eight Union member states have changed their legislation to fit the situation nowadays, while other twenty-five have kept some form of defamation and insult laws as a part of their Criminal Codes. Although it may seem that criminal penalties exist only on paper and in reality, other (non-criminal) laws are applied in the relevant cases, the IPI report has found that within the last decade in at least fifteen EU countries journalists have been convicted under criminal defamation laws, where criminal fines or prison terms have been imposed) (Out of Balance, 2015).

It is worth adding that, depending on specific jurisdiction, insults and defamation may trigger not only criminal but also civil or administrative liability. Knowing both parameters and enforcement advantages of any given type of legal liability becomes very important (Pidgorodynskyi *et al.*, 2021).

A lot has been written on the subject of criminal liability for insulting or defaming a public official. Hungarian commentator Z. Toth provides the in-depth overview of the legal framework for regulation of defamation and insult in various European jurisdictions. His research covers Germany, Austria, Switzerland, Italy, France, Benelux countries, Scandinavian, Central and Eastern European countries.

This author implies that Europe has a long-standing tradition of using criminal law tools to protect human dignity and self-respect, and this tradition is still preserved in most European legal systems. Out of the 29 European countries (28 EU Member States plus Switzerland) reviewed, a total of 24 countries applies civil law damages and *solatium doloris* in combination with penal sanctions against persons who violate the dignity

or honor of other natural persons by asserting or disseminating true or false statements of fact, or by other acts of similar nature.

However, he implies, an opposite trend also seems to emerge in the last ten to fifteen years as more and more countries cease to apply criminal law to sanction such actions. Such abolition process is most apparent in the countries of Eastern and South-Eastern Europe (countries, which reject criminal sanctions include Ukraine, Bosnia-Herzegovina, Cyprus, Georgia, Estonia, Montenegro, Macedonia, Tajikistan, Armenia, Romania, and – standing for partial abolition – Moldova, Kyrgyzstan, and Serbia), while the traditional punitive approach is more common – at least at the formal legislative level – in the Central, Southern, Northern, and Western parts of Europe (Toth, 2015).

The following text will cover criminal insult and defamation laws in various world jurisdictions. The idea is to demonstrate how the balance between the freedom of speech and the right to privacy and good reputation is kept in different countries, even more so when we talk about speech 'attacks' on a public official in his or her formal capacity.

A. The United States of America

Historically in the United States, criminalizing speech is negatively perceived by the citizens because of their deep respect for the First Amendment of the Constitution (freedom of speech); Americans strongly believe in an unlimited variety of ideas as one of the best guarantees of freedom. Freedom, however, is not inherently inconsistent with the restrictions; every society necessarily outlaws behaviors which "harm" others and, in so doing, threaten the elemental fabric of social order (Brenner, 2004). Nowadays, with the ever-increasing access to various Internet resources it is worth rethinking how people use legal rules to deter harmful speech.

The drafters of the U.S. Model Penal Code concluded that personal calumny is inappropriate for penal reaction "and that this probably accounts for the paucity of prosecutions and the near desuetude of criminal libel legislation in this country." (Model Penal Code § 250.7, 1961). They therefore chose not to include a criminal libel provision in the final version of the Model Penal Code, which appeared in 1962.

Herbert Wechsler, the main figure behind the code development, argued in the Supreme Court on behalf of the New York Times in a landmark civil libel case, New York Times Co. v. Sullivan (1964). Although *Sullivan* involved civil libel, the decision also influenced criminal libel. In *Sullivan*, the Supreme Court held that the First Amendment requires that public officials, in order to recover damages in a civil libel trial, must show that a defendant acted with the element of "actual malice". It means that

defendants either knew that an alleged defamatory statement was false, or they acted with "reckless disregard" for the truth or falsity of the statement (New York Times Co. v. Sullivan, 1964).

Later, in Garrison v. Louisiana (1964), the Supreme Court ruled that truth must be an absolute defense to criminal libel. In that case the Appellant, who served as a District Attorney in Louisiana, during a dispute with certain state court judges of his parish, accused them at a press conference of laziness and inefficiency and of hampering his efforts to enforce the vice laws.

He was convicted by the state court of violating the Louisiana Criminal Defamation Statute, which, in the context of criticism of official conduct, includes punishment for true statements made with "actual malice" in the sense of ill-will, as well as false statements if made with ill-will or without reasonable belief that they were true. The state supreme court affirmed that conviction, holding that the statute did not unconstitutionally abridge appellant's rights of free expression.

However, the U.S. Supreme Court, while relying on the prior *Sullivan* ruling, has reversed the guilty verdict by holding that the Constitution limits state power to impose sanctions for criticism of the official conduct of public officials, in criminal cases as in civil cases, *only* to false statements concerning official conduct made with knowledge of their falsity or with reckless disregard of whether they were false or not (Garrison v. Louisiana, 1964).

As we see from this decision, public officials are protected by the federal Constitution's 'freedom of speech' clause in the sense that they can speak freely within their official capacity so long as they speak truth or, otherwise, are genuinely mistaken in the falsehood of the official statements made.

Finally, in Ashton v. Kentucky (1966) the Supreme Court held that Kentucky's unwritten, common-law crime of libel was too indefinite and uncertain to be prosecuted. That ruling had effectively 'killed' the common law criminal libel. The result of the three mentioned decisions is that criminal liability for libel can be imposed only if: 1) it is enacted by a specific statute; 2) does not place limits on truth as a defense (cannot require "good motives and justifiable ends" to use truth as a defense) – merely truth is enough; and 3) requires "actual malice" for conviction for statements regarding public officials (Ashton v. Kentucky, 1966).

As put but one commentator: "These rulings, and the influence of the restatement, has led several state jurisdictions to repeal their criminal libel provisions", while in other places "courts struck down these provisions, either totally or as they applied to statements regarding public officials and matters of public concern" (Robinson, 2009: 22).

According to S. Brenner, a narrowly focused defamation offense should be incorporated into the criminal law, in part because civil liability is not an effective means of controlling online defamation. This author adds: some may point out that efforts to impose criminal liability will encounter at least some of the same obstacles that impair civil liability's efficacy in this context.

The fact that a perpetrator is judgment-proof is not relevant when criminal liability is involved, but his/her ability to remain anonymous is. Another issue which can complicate enforcement – one that also arises in civil defamation suits – is the problem of jurisdiction, which becomes particularly difficult when online publication is involved (Brenner, 2007).

From the comparative perspective, it is worth adding that there have been several legislative attempts to introduce criminal liability for defamation in the national criminal law. One such draft law provided, within Article 151-1 of the Criminal Code of Ukraine, legal grounds for such liability. It defined defamation as dissemination of deliberate fabrications, which defame another person.

Aggravated liability should be imposed, according to the draft authors, for: 1) defamation in a printed or otherwise reproduced work, in an anonymous letter, as well as committed by a person previously tried for defamation; 2) defamation, combined with accusations of committing a crime against the foundations of national security of Ukraine or other grave or particularly grave crime (Draft Law of Ukraine, 2010). So far, such legislative initiatives have not been transformed into the law itself.

B. South Korea

The South Korean approach to imposing criminal liability for defamation and insult is also worth exploring in some detail.

In Korea, ordinary citizens can easily be brought to criminal liability for defamation, often in overzealous defense of reputation of public officials.

Under Art. 138 (Contempt of Court or National Assembly) of the Criminal Code of the Republic of Korea a person who, among other violations, insults a court or the National Assembly "for the purpose of disturbing or threatening the conduct of a court or the discussion of the Assembly, shall be punished by imprisonment for not more than three years or by a fine not exceeding seven million won."

Furthermore, under Art. 311 (Insult), "a person who publicly insults another shall be punished by imprisonment or imprisonment without prison labor for not more than one year or by a fine not exceeding two million won."

According to the congressional disclosure made by the Korean Supreme Court, 136 people were incarcerated over a fifty-five-month period between January 1, 2005 through July 2009 (Ho, 2009).

The harsh enforcement trend continues to this date and with greater intensity. For instance, in 2011, 3,340 people were tried for criminal defamation and forty-seven were actually incarcerated (this is a conservative estimate, since the number does not include sixty-three people who received deferred sentences). In 2010, 2,193 people were indicted for defamation, including forty-three incarcerations for defamation (Park and You, 2017).

As the U.N. Special Rapporteur of Freedom of Expression and Opinion Frank La Rue pointed out in his report on Korea, many of these criminal prosecutions are cases where private persons are subjected to criminal prosecution for defamation in defense of public officials' reputation (U.N. Human Rights Commission, 2011). There are strong speculations about the political nature of such prosecutions, backed up by facts from law enforcement realities.

According to K. Sin Park, the crime of insult is also vigorously prosecuted in Korea at alarming growth. Insult law has been used by government officials to crack down on the people who shared negative feelings and opinions against the police. In 2013 alone, out of 9,417 indictments for the crime of insult, 1,038 of them (about 11%) were for insulting police officers. These "police insult" cases have been used to suppress participants of demonstrations and assemblies concerning government policies.

This law has not been vigorously used by the Korean government for the specific purpose of action against government criticism. The reason is that insult is a crime, which requires a formal accusation to be filed with the police by the insulted person. As Park writes, "the socially established victims, who are the likely victims of the insult, have been deterred from filing such formal accusations for fear that such filing might trigger negative publicity" (Park, 2017: 15).

C. United Kingdom

In the historical perspective, the early English law recognized a distinction between seditious libel and criminal libel (untrue defamatory statement that is made in writing). Criminal statutes punishing defamatory statements date from as early as the thirteenth century in England. Criminal libel law can be traced directly to the English Star Chamber, which, during the time of King Henry VIII (1509–1547), became a forum for prosecuting critics of the monarch. Although the Star Chamber dealt primarily with prosecution of seditious libel against the state, it also increasingly applied the developing law of libel to defamatory statements made by one private individual about another (Robinson, 2009).

After 1605, when defamation involved a public official, it was considered a direct threat to the security of the state' and prosecuted as seditious libel; and when it involved a private person, 'it was considered to risk a breach of the peace' and prosecuted as criminal libel.

The crimes of defamation were abolished in the United Kingdom (in England, Wales, and Northern Ireland) by the Coroners and Justice Act 2009 – after blasphemous libel was abolished by the Criminal Justice and Immigration Act in 2008. For comparison and in contrast, the Defamation Act 2013 only amended the conditions of awarding compensation for damages under civil law.

In Ireland, the Defamation Act 2009 also abolished the penalization of common law crimes regarding defamation, as well as the practical applicability of blasphemous defamation ('publication or utterance of blasphemous matter'), while the latter remained punishable only in such a narrow field that its practical use seems to be questionable (Toth, 2015).

D. Hong Kong

In Hong Kong, the mere act of verbally insulting another person (including a public officer) is not currently a criminal offence, as long as it does not involve offenses stipulated in other ordinances (primarily at the local, municipal level), such as assault, obstructing police officers in execution of duty and provoking a breach of peace. In the most recent years, there have been increasing reports that police officers on duty were insulted by abusive language or gestures, mostly in demonstrations and protests, and especially in 2019. As a result, there have been increasing calls for new statutory provisions against insults to public officers, as seen in some other jurisdictions (Legislation against insults to public officers, 2021).

Members of the Hong Kong's Legislative Council (expert draft legislation body) have discussed this pressing subject at least seven times over the past several years. The key question to decide is whether it is prudent and timely to introduce criminal liability for insults and defamation of public officials, especially law enforcement agents. In its March 2017 response, the Government declared that it would extensively study foreign legislation against acts of insulting public officers on duty, but without a specific legislative road map for doing this.

In May 2017, three Members announced their intention to amend the Public Order Ordinance through a private Member's bill and make insults to law enforcement officers a criminal offence – but the lawmaking process have not moved anywhere since. As of April 2021, the Security Bureau indicated that it was still working on the study and was consulting the Department of Justice.

However, criminalization agenda on insults was not given a "very high priority", as the Government has recognized that it needed to be cautious and expedient in striking the much-needed balance between protection of public officers, on the one hand, and "rights of individuals including freedom of speech, freedom of expression, freedom of assembly", on the other hand (Insulting public officers Enforcing the Laws, 2017).

E. Germany

The Federal Republic of Germany, with its strong legal tradition and established criminal law system, serves as a role model for many other European jurisdictions, including liability for insult and defamation. The discussed crimes are punishable under Chapter 14 (Libel and Slander Beleidigung) of the German Criminal Code (Strafgezetzbuch or StGB).

According to Section 185 on insults, an insult shall be punished with imprisonment not exceeding one year or a fine and, if the insult is committed by means of an assault, with imprisonment not exceeding two years or a fine. And with reference to Section 186 on defamation, whosoever asserts or disseminates a fact related to another person which may defame him or negatively affect public opinion about him, shall, unless this fact can be proven to be true, be subject to punishment.

In aggravated cases, where the offense is committed publicly or through the dissemination of written materials, the punishment is imprisonment not exceeding two years or a fine. Insult may also be committed by asserting or disseminating certain facts. However, in such cases proof of truth does not exclude punishment, if the insult to the victim is triggered by the specific assertion or dissemination or the nature of circumstances under which it was made (German Criminal Code, 2021).

Furthermore, the crime of 'intentional defamation' is recognized as a serious crime under Section 187 of the Criminal Code. This crime is quite similar to insult as defined in Section 186.

The main differences include the criterion that, with regard to intentional defamation, the act defined therein must be specifically committed with an intent to defame ('knowingly' by the perpetrator; in other words, defamation under Section 186 may be committed with an oblique (indirect) intention, but direct intention is required for the crime specified in Section 187), and the fact must be untrue. Another difference is that the actual humiliation of the victim and negative public opinion about him/her is not required, and the act does not need to be capable of having such impacts, as it is enough that the committed act may simply endanger the good name of the victim.

Nowadays, there are not many legal systems where public figures and politicians are specifically given not less, but more protection than

citizens in general. The substantive criminal law of Germany is one of such exemptions, as Section 188 of the STGB defamation of persons in the political arena defines as a *sui generis* crime. This delict is present if an offense of defamation (Section 186) is committed publicly, in a meeting or through dissemination of written materials against a person involved in public political life, and if the offense may make their public activities substantially more difficult; the penalty shall be imprisonment from three months to five years.

If the act against such public figure constitutes 'intentional defamation' under Section 187, the penalty is imprisonment for between six months and five years. Apparently, defamation committed against public figures entails imprisonment under all circumstances (at least in the base case), while the perpetrators of similar acts against other persons may 'get away' with a fine up to 10,800,000 euros (Toth, 2015).

German law enforcement statistics provides some interesting numbers with regard to prosecuting discussed crimes. For example, defendants in 30,508 such cases were sentenced in 2012 (1,720 crimes were committed by minors and 26,109 crimes by men). Most of the 30,508 cases were defamation cases (Section 185 –29,594 cases); there were 450 insult cases (Section 186), 450 intentional defamation cases (Section 187), 5 cases of defamation of persons in the political arena (Section 188), and 9 cases of the violation of the memory of the dead (Section 188) (Police Crime Statistics of Germany, 2021).

F. Italy

Like many other European legal systems, Italian criminal law also distinguishes between insult and defamation offenses, but the distinction does not seem to be clear enough. According to Article 594 of the Penal Code (*Codice Penale*), the crime of insult is committed by a person who insults the honor or dignity or another person (for which they can be imprisoned for up to six months or to a fine of up to 516 euros). The law recognizes that insult can be made verbally (being present in person), via phone, telegraph, or any other written form or depiction. An aggravated type of insult is where the insult is caused by asserting a specific fact (in such cases, the punishment may be imprisonment for up to one year or a fine of up to 1,032 euros). Article 594 of the Italian Criminal Code embodies a specific sentencing principle, according to which insults caused in front of several persons are to be punished more harshly than other insulting acts (Toth, 2015).

Under Article 595 of the Criminal Code, the delict of defamation is committed by a person who harms reputation of another person before others (in communication with others) without committing offensive insult.

In general cases, the punishment is imprisonment for up to one year or a fine of up to 1,032 euros; aggravated cases (which are the same as for insult, meaning the insult is caused by asserting a specific fact) may be punished by imprisonment for up to two years or a fine of up to 2,065 euros.

Defamation can also be committed in an aggravated form: if the crime is committed in the press or by any other similar means that is publicly available, or by a public act (e.g., a concert, public rally, other open gathering), the perpetrator may be sentenced to imprisonment for a period of between six months and three years or they may be punished with a fine of at least 516 euros (Codice Penale, 1930).

Similar to German approach, Article 595 of the Italian Criminal Code provides: if the act is directed against a political body (e.g., the Parliament), a public administrative body, or a court (or any member or unit thereof), the perpetrator is punished more harshly (but still within the punishment limits described above) than a perpetrator of the 'general' crime aimed against an ordinary citizen.

These two crimes are of great practical significance in Italy. Recently, the Constitutional Court of the country had made public its position by urging lawmakers to initiate a comprehensive reform of defamation provisions and ruling that incarceration in such cases is unconstitutional and should be envisioned exclusively in criminal defamation cases of 'exceptional severity' (Italy, 2022).

In addition, reforms to the law of defamation have been elaborated by the Italian legislator for several years now. Such approach toward significant changes was caused, in part, by the 2013 opinion of the European Commission for Democracy through Law (Venice Commission) on the Legislation on Defamation of Italy (Opinion of the European Commission, 2013).

Since then, many international human rights watchdog organizations in Italy had taken a stand that Italy must fully decriminalize defamation, undertake comprehensive reform of civil defamation law and adopt other comprehensive measures against encroachments on the freedom of speech principle by the powerful political figures (Italy, 2022). As for 2023, the issue remains somewhat controversial in the society.

G. France

In France, the freedom of expression was enshrined by the proclamation of the Declaration of the Rights of Man and of the Citizen in 1789, the spirit of which can be summarized by its article 4:

> Liberty consists in the freedom to do everything which injures no one else; hence the exercise of the natural rights of each man has no limits except those

which assure to the other members of the society the enjoyment of the same rights. These limits can only be determined by law (Guedj, 2021: 16).

The French penal code (Code pénal) does not provide for any crime against the dignity of persons. However, such offenses are defined by the Act of 29 July 1881 on the Freedom of the Press. Chapter 4 of the act specifies certain acts that are punishable under criminal law, while Section 3 defines crimes against individuals. Article 29 is the first article of this section and sets forth the prohibition of defamation and libel.

Under French law, defamation is committed by a person who asserts a fact about another (person, organization, or group) that harms the honor or goodwill of the given person or entity. Even attempting to communicate or disseminate such a fact (as a targeted act) is punishable, even if the victim is not mentioned by name specifically but can be easily identified. Although the crime is defined in the Act on the Liberty of the Press, it may be committed by publication in the press (in a broad sense) or even by verbal communication (Toth, 2015).

Defamation under French law is not punishable by imprisonment, although a significant fine may be imposed on the wrongdoer. The maximum amount of the fine depends on legal characteristics of the victims: the fine is 45,000 euros (Articles 30–31) for defaming state bodies (constitutional and government bodies, armed forces and courts, and members of such bodies, if the insult is related to the operation of the body or the official function of the person, and any other person acting under the mandate of the state).

However, the fine is 12,000 euros for private persons; the fine is 45,000 euros if the victim is a private person or a group of private persons and the offense is related to the origin, ethnic group membership or non-membership, nationality, race, religion, gender, sexual orientation, or disability of such a person or group (Article 32). For insult, the maximum amount of fine is 12,000 euros for any victim as a general rule; however, the fine goes up to 22,500 euros or imprisonment for up to six months for hate crimes.

Finally, public insult is covered by Article 33 of the 1881 Act. It is distinguished from defamation insofar as defamation supposes the allegation of a specific fact, the truth or falsehood of which may be proved without difficulty. The offense of defamation or insult is established only if the allegations or expressions causing outrage have been made public by one of the means stipulated in the 1881 Act (Press Freedom Act, 2014).

As an interesting side note: the former Article 26 of the French Freedom of the Press Act, which punished injuries to the honor and reputation of the President of the Republic of France, was repealed in 2013. However, acts against the President of the Republic remain punishable under Article 29, similarly to other constitutional bodies.

Again, based on the French approach, one can see that every country decides for itself on how to best address the issue of liability for insult and defamation against public officials, even the heads of the state. Some jurisdictions are silent on the issue, while other chose a direct or hybrid approach. There seems to be no best practice solution here – every single country chooses how to address the balance of "freedom of speech v. private life and reputation" in the best possible way.

As an illustrative example, the maximum criminal penalties for insult in several world jurisdictions are demonstrated in Figure 1.

	Country	Penalties for general insults		Penalties for insults to public officials	
		Fine	Imprisonment (months)	Fine	Imprisonment (months)
1.	South Korea	₩ 2,000,000	12	₩ 7,000,000	36
2.	France	€ 38	-	€ 30,000	24
3.	The Netherlands	€ 4,100	3	€ 5, 467	4
4.	Italy	€ 516	6	-	24
5.	Singapore	S$ 10,000	12	S$ 10,000	24
6.	Germany	not specified	24	-	36
7.	China	-	60	-	-
8.	India	not specified	24	₹ 1,000	6

Fig. 1. Maximum criminal penalties for insult offenses in some world jurisdictions. Source: Criminal Codes of the respective countries.

Conclusions

Under foreign criminal law, both public officials and private citizens can become victims of illegal defamation and insult, which may trigger criminal liability in some states. The specific models of such liability differ significantly. Based on our analyses of legislative and law enforcement approaches in the United States, Germany, South Korea, Italy, France, Hong Kong and Ukraine a broad conclusion can be drawn: some countries vigorously protect both public officials and lay citizens from insults and defamations; other nations rely more on the "freedom of speech principle"; while yet other states try to maintain a healthy balance between these two conflicting concepts.

The criminal laws for insult and defamation United States, as we have discussed earlier in this paper, have gradually evolved to the current standard: public officials are protected by the federal Constitution's 'freedom of speech' clause in the sense that they can speak freely within

their official capacity so long as they speak truth or are genuinely mistaken in the falsehood of the official statements made. At the same time, American officials are protected from deliberately false accusations and insults by means of criminal law. Thus, freedom of speech is a very broad constitutional concept in this country.

While Europe, and the United Kingdom in particular, has an established tradition of using criminal law tools to protect human dignity, nowadays the trend is not to enforce insult and defamation laws as aggressively, as was the case before. There are still such criminal prosecutions, especially in Italy, but the European community looks upon them negatively. Within the last ten to fifteen years, more and more countries have ceased to apply criminal law to sanction such actions.

Also, case-law of the European Court of Human Rights indicates that imprisonment can be replaced, via step-by-step approach, during the next several years by other forms of criminal punishment (especially fines), which do not involve restriction of liberty.

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