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**Study on the alignment of laws and practices concerning
defamation
with the relevant case-law of the European Court of Human
Rights on freedom of expression, particularly with regard to the
principle of proportionality**

Document prepared by the Media Division

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DETAILED INFORMATION ON THE LEGISLATION AND PRACTICES RELATING TO DEFAMATION IN THE COUNCIL OF EUROPE MEMBER STATES	

I. INTRODUCTION

This document, which was prepared by the secretariat of the Steering Committee on Media and Information Society (CDMSI), is an update and revision of the working document prepared by the Steering Committee on the Media and New Communication Services (CDMC), published on 15 March 2006.¹ It investigates, among other things, the case-law of the European Court of Human Rights (“the Court”) on freedom of expression in the context of defamation cases and reviews Council of Europe and other international standards on defamation. It contains information on the legal provisions on defamation in various Council of Europe member states. It also attempts to identify trends in the development of rules on defamation, both in national legal systems and in international law.

The purpose of provisions on defamation is to protect persons’ reputations from damage caused by the dissemination of information or opinions about them to third parties. The aim of the provisions in question may also be to protect specific state symbols (such as the national flag or anthem). They may be both criminal and civil and relate both to oral defamation (slander) and written defamation (libel). Among the other expressions used in the member states’ legislation to describe the offence to which this document generally refers to as “defamation” are insult, abuse, affronts to honour and dignity and calumny. Although in theory there is a difference between defamation (the inaccurate assertion of facts) and insult (hurtful, rude and/or untruthful words), the distinction is not always clearly made in practice; legislation on defamation is often applied to insult because it is not clearly worded or not properly interpreted.²

Appended to this study is a list of information on the legislation on defamation in the 47 Council of Europe member states.³

¹ The document in question is the final version of CDMC (2005)007 by the Steering Committee on the Media and New Communication Services (CDMC).

In its report of 25 June 2007, prepared by the Committee on Legal Affairs and Human Rights and entitled “Towards decriminalisation of defamation” (Doc. 11305), the Parliamentary Assembly of the Council of Europe (PACE) referred to this document. In turn, this report formed the basis for Assembly Resolution No. 1577 (2007), which has the same title.

In its Declaration on measures to promote the respect of Article 10 of the European Convention on Human Rights, Ministers invited the Secretary General to make arrangements for improved collection and sharing of information and enhanced co-ordination between the secretariats of the different Council of Europe bodies and institutions, without prejudice to their respective mandates and to the independence of those bodies and institutions.

On 1 January 2012, the Steering Committee on the Media and New Communication Services (CDMC) was replaced by the new Steering Committee on Media and Information Society (CDMSI).

One of the CDMSI’s main tasks is to contribute to the implementation of the Declaration of 13 January 2010.

² Ruth Walden, *Insult laws: an insult to press freedom* (2000) p 7.

³ Defamation against religions or blasphemy, which is included as an offence in many countries’ laws, is not covered by this study. On this subject, see Parliamentary Assembly Resolution 1510 (2006) and Recommendation 1805 (2007), the Venice Commission’s report on the links between freedom of expression and freedom of religion at [http://www.venice.coe.int/docs/2008/CDL-AD\(2008\)026-e.pdf](http://www.venice.coe.int/docs/2008/CDL-AD(2008)026-e.pdf) and the viewpoint of the Council of Europe Commissioner for Human Rights at http://www.coe.int/t/commissioner/Viewpoints/070611_en.asp.

For the position of the UN Human Rights Committee, see General comments n° 34, point 48. <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>.

Similarly, legislation on hate speech and incitement to hatred and/or violence, which sets the limits on “ordinary defamation”, are not covered by this study. Reference is made to the work of various Council of Europe bodies on these two subjects in section IV below.

The objective of this study is to set out the situation of the legislation on defamation in Council of Europe member states, to make a global analysis in respect of these legislations and their application in the light of the relevant case-law of the European Court of Human Rights. The report also aims at gathering information about international trends in respect of decriminalisation of defamation.

II. GENERAL SURVEY OF LEGISLATION ON DEFAMATION IN THE COUNCIL OF EUROPE MEMBER STATES AND THE APPLICATION OF THIS LEGISLATION

Criminal provisions on defamation still feature in the legislation of most Council of Europe member States. Sanctions involving imprisonment range from three months to seven years but are generally in the region of one to two years.

In practice, in the great majority of these countries, criminal penalties are rarely applied to defamation.

In several states, however, criminal prosecutions continue to be brought on a regular basis, particularly against journalists. Moreover, media professionals continue to be given custodial sentences in certain countries.

In the last few years, several Council of Europe member states (mostly states which joined the Organisation fairly recently but also some long-standing members) have undertaken reforms of their legislation regarding defamation with a view to decriminalising it or bringing in lighter penalties. The matter remains under consideration in a number of other member states. In all, it would appear that about half of the Council of Europe member states have taken concrete action or are considering steps to either decriminalise defamation or alleviate the sanctions that can be imposed.

In some countries, following debates in parliament and in the absence of a majority, the authorities have preferred not to decriminalise defamation. In two countries which have already decriminalised defamation, there have been recent moves towards “recriminalisation”.

While we cannot talk of decriminalisation on a mass scale (only 10 of the 47 member states have fully decriminalised defamation to date), there is a clear trend towards abolition of sentences restricting freedom of expression and a lightening of sentences in general.

In the countries which have partially decriminalised defamation, it remains a criminal offence where certain institutions or figures are concerned, such as heads of state, or state symbols such as the flag or national anthem.

According to the information available, in not less than one third of the Council of Europe member States, the law specifically stipulates that truth, public interest and, in certain cases, good faith may be relied on in defence against accusations of defamation; on occasion, these legal provisions refer to journalists.

In some countries, including those which have decriminalised defamation, journalists frequently face civil proceedings which sometimes result in large or disproportionate awards of damages.

It might be added that, according to reports available, given the legal position or the approach followed in practice with regard to defamation in a number of Council of Europe member states, journalists do not feel that they can freely report certain facts or give their opinion in the media, or that they can do so without risk.

In some countries, journalists refer to a kind of judicial harassment and self-censorship engendered by abuses of anti-defamation legislation and advance that decriminalising

defamation will not suffice to overcome this problem. Further, the excessive amounts awarded by courts in civil defamation proceedings and the inadequacy of related procedural safeguards before civil courts continue to form serious impediments to freedom of expression and media freedom.

III. EUROPEAN COURT OF HUMAN RIGHTS CASE-LAW CONCERNING DEFAMATION

1. Preliminary remarks

Article 10 of the European Convention on Human Rights, on freedom of expression, reads as follows:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

The protection of the reputation and rights of others is the reason or "legitimate aim" most frequently cited by national authorities for restricting freedom of expression⁴.

The Court has developed a large corpus of case-law to protect freedom of expression, emphasising the importance of transmission of information and debate on matters of public interest. Freedom of expression and political debate lie *“at the very core of the concept of a democratic society, which prevails throughout the Convention”*.

When the Court examines defamation cases, it undertakes a textual and contextual analysis of the circumstances of the case before it and, as its case-law has developed, the Court has refined the criteria governing that analysis at all stages of case examination (the existence of interference and tests of quality of the law, legitimacy of action and the necessity of interference in a democratic society). In virtually all cases, it is this latter test of "necessity" which is decisive in the Court's judgment. The "necessity" test entails autonomous notions that do not appear in the Convention text but have been developed in the Court's case-law. These include "a pressing social need", "states' margin of appreciation", "the potential impact of the remarks found to be defamatory" and, most important, the notion of "the proportionality of the interference in relation to the legitimate aim pursued".

The section below considers the bases underpinning the Court's examination of cases at all the respective stages, as evidenced by case-law principles which are cited. However, this exposé is not exhaustive.

This is the examination which should be carried out by domestic courts – and must be reflected in their reasoning: relevant and adequate reasoning⁵ - to comply with the Court's case-law in defamation cases.

⁴ For ECHR statistics of violations by article, see http://www.echr.coe.int/NR/rdonlyres/2B783BFF-39C9-455C-B7C7-F821056BF32A/0/TABLEAU_VIOLATIONS_EN_2011.pdf

⁵ See, for example, Brunet Lecomte and Lyon Mag v. France, no. 17265/05, 6 May 2010.

2. General principles and limits to freedom of expression regarding defamation

A. Stages of the examination

a. Existence of interference with freedom of expression

Where this first stage of examination is concerned, the Court's case-law has evolved significantly over the last decade. To establish interference with freedom of expression, the Court no longer looks for a sentence or execution of a sanction. Based on the notion of "chilling effect", the Court believes that even when the execution of a sentence or the judgment is suspended, the mere fact of having been prosecuted may mean that a person has suffered interference in their freedom of expression. Furthermore, this effect is more acute in the case of media professionals or individuals whose profession is closely linked to the disclosure of information or the expression of their opinions (lawyers, politicians, writers, publishers, etc.)⁶.

In line with this evolving case-law, the Court recently concluded that there had been interference in a case where the applicant had not even been actually prosecuted in court. A real risk that a person might be prosecuted under a law that had been drafted and interpreted by domestic courts in a vague manner, in the particular circumstances of the case, prompted the Court to find, first, that there had been interference and, second, a violation of the applicant's right to freedom of expression.⁷

b. Foreseeability of norms restricting freedom of expression

The Court also reiterates that "*the scope of the notion of foreseeability depends to a considerable degree on the content of the text in issue, the field it is designed to cover and the number and status of those to whom it is addressed. A law may still satisfy the requirement of foreseeability even if the person concerned has to take appropriate legal advice to assess, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. This is particularly true in relation to persons carrying on a professional activity, who are used to having to proceed with a high degree of caution when pursuing their occupation. They can on this account be expected to take special care in assessing the risks that such activity entails.*"⁸

In a recent judgment, the Court restricted its examination to the test of the quality of the law and found a violation of Article 10 of the Convention owing to the fact that the wording of the law was too general to enable citizens to regulate their conduct.⁹

c. Legitimacy of the aim sought in interference

While "protection of the reputation or rights of others" is the legitimate aim most frequently cited by defending governments among those listed in the second paragraph of Article 10, in defamation cases, other legitimate aims such as "prevention of disorder", "prevention of crime" or "protection of health or morals" may also be a factor, depending of the qualification

⁶ For example, *Erdogdu v. Turkey*, no. 25723/94, 15 June 2000.

⁷ *Altug Taner Akcam v. Turkey*, no. 27520/07, 25 October 2001.

⁸ *Chauvy and others v. France*, no. 64915/01, ECHR 2004-VI, 29 June 2004.

⁹ *Altug Taner Akcam v. Turkey*, no. 27520/07, 25 October 2001. See also the communicated case of *Jürgen Hösl-Daum and others v. Poland* (no. 10613/07),

of the speech made by domestic courts. It is necessary to underline that the interest protected by defamation laws is by definition the “reputation” or “rights” of others.

d. Interference proportionate to the legitimate aim sought

Proportionality is a complex notion, made up of many components, in European Court of Human Rights case-law. This study will focus on the nature and severity of sanctions, although it will also address other components.

i. Nature and severity of sanctions

In a number of judgments, the Court has concluded that interference, regardless of the form and extent, was disproportionate to the aim sought.¹⁰

In others, the Court held that: “*the nature and severity of the penalties imposed are also factors to be taken into account when assessing the proportionality of the interference*”.¹¹

The Court's case-law suggests that the following levels may be used to gauge the severity of a sanction: criminal sanction with restriction of liberty; criminal sanction of a pecuniary nature, civil and other sanctions.

Criminal sanctions

In "straightforward" defamation cases (i.e. regarding remarks not containing any hate speech or incitement to violence), it has been stressed by the Court that the mere fact that a sanction is of a criminal nature has in itself a disproportionate chilling effect¹². Furthermore, the Court has already referred to the Council of Europe's activities in the area of decriminalisation of defamation in some of its judgments.¹³

The Court has also laid strong emphasis on the adverse effect of criminal sanctions themselves, and particularly the potential impact of a criminal record on an individual's future.¹⁴

A criminal sanction with restriction of liberty is *a fortiori* a grave restriction of freedom of expression. Indeed, it appears that the Court has never recognised that imposing a prison sentence is well-founded or acceptable in defamation cases (that, by definition, do not entail incitement to violence or hate speech). It has stated that “*although sentencing is in principle a matter for the national courts, the Court considers that the imposition of a prison sentence for a press offence will be compatible with journalists’ freedom of expression as guaranteed by Article 10 of the Convention only in exceptional circumstances, notably where other fundamental rights have been seriously impaired, as, for example, in the case of hate speech or incitement to violence*”.¹⁵

¹⁰ For example, *Dammann v. Switzerland*, no. 77551/01, 25 April 2006.

¹¹ *Okçuoğlu v. Turkey* (1999), § 49

¹² See, for example, *Cumpăna and Mazăre v. Romania*, n°[GC], no 33348/96, 17 December 2004; *Azevedo v. Portugal*, no. 20620/04, 27 March 2008.

¹³ For example, *Otegi Mondragon v. Spain*, no. 2034/07, 15 March 2011.

¹⁴ *Scharsach and News Verlagsgesellschaft v. Austria* (2003), §32

¹⁵ *Cumpăna and Mazăre v. Romania*, no.[GC], no 33348/96, 17 December 2004

The Court has heavily stressed "*the great importance of not discouraging members of the public, for fear of criminal or other sanctions, from voicing their opinions on issues of public concern*".¹⁶ It follows, as previously mentioned, that "*the dominant position which the Government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries or the media*".¹⁷

Moreover, even if suspended, criminal sentences may have a lasting impact on journalists' pursuit of their legitimate activity.

In its *Şener v. Turkey* judgment, the Court pointed this out in the following terms: "*The Istanbul State Security Court suspended the imposition of a final sentence on the applicant on condition that she did not commit any further offence as an editor within three years of its decision. If the applicant fails to comply with that condition, she will automatically be sentenced for the original offence. In other words, the decision in question did not remove her status as a 'victim'. On the contrary, the conditional suspended sentence had the effect of restricting the applicant's work as an editor and reducing her ability to offer the public views which have their place in a public debate whose existence cannot be denied.*"¹⁸

Civil sanctions

In civil proceedings, compensation could entail a sanction aspect if the amounts awarded are disproportionate. The Court has also emphasised the weight of considerations of a punitive nature in the reasoning of a civil compensation judgment¹⁹.

In the civil law field, the European Court of Human Rights "*accepts that national laws concerning the calculation of damages for injury to reputation must make allowance for an open-ended variety of factual situations. A considerable degree of flexibility may be called for to enable juries to assess damages tailored to the facts of the particular case.*" Nevertheless, a "*disproportionately large award*" (damages of 1.5 million pounds sterling) was found to be a violation of the rights guaranteed to the applicant under Article 10 of the European Convention on Human Rights; the Court also drew attention to "*the lack of adequate and effective safeguards at the relevant time against a disproportionately large award*".²⁰

The approach taken by the Court in this respect is borne out by more recent judgments. In particular, the Court has demonstrated readiness to examine the manner in which damages are assessed and to rule out those where "*the reasons relied on by the domestic courts do not appear sufficiently convincing to justify the relatively high amount of compensation awarded to the claimants*".²¹

Other sanctions

Other punitive measures may entail seizing material and enforced ceasing of activities.

¹⁶ *Barfod v. Denmark* (no.11508/85), 22 February 1989

¹⁷ *Castells v. Spain* (no. 11798/85), 23 April 1992

¹⁸ *Şener v. Turkey* (no. 26680/95), 18 July 2000

¹⁹ *Pakdemirli v. Turkey*, (no. 35839/97), 22 February 2005.

²⁰ *Tolstoy Miloslavsky v. United Kingdom* (no. 18139/91), 13 July 1995.

²¹ *Maronek v. Slovakia* (no. 32686/96), 19 April 2001

The Court found that measures involving the confiscation or seizure of materials belonging to a newspaper constitute disproportionate interference with freedom of expression. It also found a violation of Article 10, paragraph 2, as a result of the seizure of three consecutive editions of a fortnightly review.²²

The Court has also considered the case of views expressed in the context of employer-employee relations and the resulting disciplinary sanctions²³.

ii. Other relevant considerations regarding the proportionality of interference

Analysis of proportionality often calls for the balancing of the different conflicting interests in the particular circumstances of a defamation case. The factors that may come into play in the analysis include:

- respect for all procedural guarantees, including the right to defence, the periods of limitation applicable to defamation suits, *exceptio veritatis* and the burden of proof, presumption of good faith (for further details, see the section on "rights and duties of journalists" below);
- the censoring nature of interference (measure prior to the dissemination of a text);
- the particularly powerful chilling effect of a measure in the specific circumstances of a case;
- the fact of the information in question already being in the public domain, etc.

One major development in the Court's case-law regarding the right to freedom of expression is the elaboration of a procedural obligation under article 10. The Court has emphasised requirements of fair trial as guaranteed in Article 6 of the Convention, making these an integral component of Article 10. Accordingly, in recent cases, it has restricted its examination to the procedural obligations incumbent on the State before finding a violation of Article 10, on that account without examining the substance of the case.²⁴

iii. Particular measures: right of reply, publication of a rectification, a retraction, an apology

The Court has considered the right of reply or the obligation to publish a rectification in different ways according to the circumstances of a particular case.

²² *Öztürk v. Turkey* [GC], no 22479/93, ECHR 1999-VI

²³ *Palomo Sanchez and others v. Spain* (GC), nos. 28955/06, 28957/06, 28959/06 and 28964/06, 12 September 2011; to be compared with *Fuentes Bobo v. Spain*, no. 39293/98, 29 February 2000. For a whistle-blowing case, see *Heinisch v. Germany*, no. 28274/08, 21 July 2011.

²⁴ See ECHR judgments *Lombardi Vallauri v. Italy*, no. 39128/05, 20 October 2009; *Nur Radyo and Televizyon Yayinciligi A.S. v. Turkey* (no. 2) no. N2284/05, 12 October 2010.

Prior to this recent development, the Court had already found a violation of Article 10 of the Convention where the scope of a measure restricting freedom of expression had been vague or insufficiently detailed reasons had been provided for such a measure and its application had not been adequately supervised by a court (see *Association Ekin v. France*, no. 39288/98, ECHR 2001-VIII, § 58, and *Saygılı and Seyman v. Turkey*, no. 51041/99, 27 June 2006, §§ 24-25). It had already included elements relating to fairness of procedure in its reasoning concerning the proportionality of interference (see *Kyprianou v. Cyprus* (GC); no. 73797/01, 15 December 2005; *Boldea v. Romania*, no. 19997/02, 15 February 2007).

It has considered that the right of reply falls under the protection of reputation, which is an element of the right to private life guaranteed by article 8 of the Convention²⁵. It has also noted that the publication of a right of reply relates to the right to freedom of expression guaranteed by article 10 of the Convention²⁶. In the respect the Court has considered that “*the right of reply, as an important element of freedom of expression, falls within the scope of Article 10 of the Convention. This flows from the need not only to be able to contest untruthful information, but also to ensure a plurality of opinions, especially in matters of general interest.*”

The Court has however recalled that the restrictions and limitations of the second paragraph of Article 10 apply equally to the exercise of this right “*It should be borne in mind that the State’s obligation to ensure the individual’s freedom of expression does not give private citizens or organisations an unfettered right of access to the media in order to put forward opinions (...)*”²⁷, asserting that newspapers and other privately owned media must be free to exercise editorial discretion in deciding whether to publish articles, comments and letters submitted by private individuals.

According to the Court, it is only in exceptional circumstances that “a newspaper can be legitimately required to publish a retraction, an apology or a judicial decision in a case concerning defamation”²⁸.

An order to publish a rectification following civil proceedings has accordingly been considered a disproportionate measure²⁹.

e. Relevant and sufficient reasoning stated by domestic courts

Failure on the part of the domestic courts to state the grounds to justifying an interference has already resulted in the Court finding violations of Article 10 of the Convention.³⁰

However; more often, violations of Article 10 are found in cases where the reasoning does not comply with the criteria constituting relevant and sufficient grounds

B. The bases of the Court's examination and the basic principles elaborated in its case-law

a. Content of remarks considered as defamatory

In ample case-law, the European Court of Human Rights has made it clear that, in the context of “*political debate on matters of general interest [...]restrictions on the freedom of expression must be interpreted narrowly*”.³¹

Where debate of public interest is concerned, States have a limited margin of appreciation.

²⁵ Gourguenidze v. Georgia, no. 71678/01, 17 Octobre 2006.

²⁶ Melnychuk v. Ukraine (Dec.), no. 28743/03, CEDH 2005 -IX.

²⁷ ibid

²⁸ ibid

²⁹ Karsai v. Hungary, no. 5380/07, 1 December 2009

³⁰ Boldea v. Romania, no. 19997/02 , 15 February 2007

³¹ Lopes Gomes da Silva v. Portugal(no. 37698/97), 28 September 2000.

It should be stressed in this respect that, in the Court's view, matters of public interest extend beyond the sphere of political debate. The Court considers that *"there is no warrant in its case-law for distinguishing [...] between political discussion and discussion of other matters of public concern"* and where questions of such importance are concerned, restriction of the exercise of freedom of expression *"must fulfil the requirements of paragraph 2 (art. 10-2)."*³²

On the other hand, the State does enjoy a broad margin of appreciation for restricting critical comments where these incite violence against an individual or a public official or a sector of the population: *"it certainly remains open to the competent State authorities to adopt, in their capacity as guarantors of public order, measures, even of a criminal-law nature, intended to react appropriately and without excess to such remarks (see the Incal v. Turkey judgment of 9 June 1998, Reports 1998-IV, p. 1567, § 54). Finally, where such remarks constitute an incitement to violence against an individual or a public official or a sector of the population, the State authorities enjoy a wider margin of appreciation when examining the need for an interference with freedom of expression"*.³³

Lastly, Article 10 of the Convention protects not only the substance of comments but also the form in which they are conveyed: *"... it is not for this Court, nor for the national courts for that matter, to substitute their own views for those of the press as to what technique of reporting should be adopted by journalists. Article 10 protects not only the substance of the ideas and information expressed but also the form in which they are conveyed"*.³⁴

b. The context

i. The persons targeted in remarks considered as defamatory

The Government

The Court has held that *"the limits of permissible criticism are wider with regard to the Government than in relation to a private citizen, or even a politician. In a democratic system the actions or omissions of the Government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of the press and public opinion"*.³⁵

Regarding the lodging of court proceedings for the dissemination of information or expression of opinions on the government, the European Court of Human Rights points out that *"the dominant position which the Government occupies makes it necessary for it to display*

³² Regarding debates considered to be of public interest, see the judgments in the cases of *Mamère v. France*, 12697/03, 7 November 2006 (public health), *Dink v. Turkey*, nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, 14 September 2010; *Chauvy and others v. France*, no. 64915/01, 29 June 2004 (historical facts); *Editions Plon v. France*, no. 58148/00 (medical secrecy in the context of the fitness of a president of the Republic for the country's highest office), 18 May 2004; *Axel Springer AG v. Germany*, no. 39954/08, 7 February 2012 (context of criminal proceedings against a person of public notoriety), *Kayasu v. Turkey*, 64119/00 and 76292/01, 13 November 2008 (historical, political and legal debate).

See also the arguments concerning questions of sport or performing artists (*Nikowitz and Verlagsgruppe News GmbH v. Austria*, no. 5266/03, 22 February 2007; *Colaço Mestre and SIC – Sociedade Independente de Comunicação, S.A. v. Portugal*, nos. 11182/03 and 11319/03, 26 April 2007; and *Sapan v. Turkey*, no. 44102/04, § 34, 8 June 2010).

³³ *Okçuoğlu v. Turkey* [GC], no. 24246/94, ECHR 1999-IV, 8 July 1999

³⁴ *Karataş v. Turkey* [GC], no. 23168/94, ECHR 1999-IV, 8 July 1999

³⁵ *Castells v. Spain* (no. 11798/85), 23 April 1992

restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries or the media."³⁶

Politicians

In a landmark judgment (*Lingens v. Austria*), the Court specifies that "*freedom of the press [...] affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. [...] The limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance.*"³⁷

Nonetheless, the Court has accepted that political figures conserve a right, like any citizen, to adequate protection of their private life. For example, it held that the impugned terms in relation to a public figure's private life were not "*justified by considerations of public concern or that they bore on a matter of general importance*"³⁸.

Officials

Civil servants "*acting in an official capacity are, like politicians, subject to the wider limits of acceptable criticism. Admittedly those limits may in some circumstances be wider with regard to civil servants exercising their powers than in relation to private individuals. However, it cannot be said that civil servants knowingly lay themselves open to close scrutiny of their every word and deed to the extent to which politicians do and should therefore be treated on an equal footing with the latter when it comes to the criticism of their actions [...] civil servants must enjoy public confidence in conditions free of undue perturbation if they are to be successful in performing their tasks and it may therefore prove necessary to protect them from offensive and abusive verbal attacks when on duty*".³⁹

However, prerogatives granted by law to certain individuals - such as Heads of State - to limit admissible criticism are not compatible with the right guaranteed under Article 10⁴⁰.

ii. Other contextual aspects

Other contextual aspects that have occasionally come into play in the Court's analysis include the possibility for the applicant to reformulate, adjust or withdraw statements before they are made public (this might apply to oral statements made during live broadcasts or written statements for example)⁴¹; or the potential impact of the statements at issue (qualifications of the target audience, characteristics of the medium used – audiovisual media

³⁶ *Castells v. Spain* (no. 11798/85), 23 April 1992, *Tusalp v. Turkey*, 32131/08 and 41617/08, 21 February 2012 ; *Cihan Öztürk v. Turkey*, no. 17095/03, 9 June 2009.

³⁷ *Lingens v. Austria* no. 9815/82, 8 July 1986 ; *Vides Aizsardzības Klubs v. Latvia*, no. 57829/00, § 40, 27 May 2004 ; *Lopes Gomes da Silva v. Portugal*, no. 37698/97, § 30, ECHR 2000-X .

³⁸ *Tammer v. Estonia* , no. 41205/98, 6 February 2001.

³⁹ *Janowski v. Poland*, [GC] no. 25716/94), 21 January 1999 ; *Mamère v. France*, no. 12697/03, 7 November 2006 ; for the judicial context, see *Poyraz v. Turkey*, no. 15966/06, 7 December 2010.

⁴⁰ *Colombani v. France*, no. 51279/99, 25 June 2002 ; *Pakdemirli v. Turkey*, 35839/97, 22 February 2005; *Otegi Mondragon v. Spain*, no. 2034/07, 15 March 2011.

⁴¹ *Nilsen and Johnsen v. Norway*, [GC], no. 23118/93, 25 November 1999.

or the Internet being known to have a more immediate and powerful impact than printed press; the time of broadcast; the circulation of a newspaper, etc.).

c. Rights, duties and responsibilities of journalists⁴²

It is the job of the press to communicate information and ideas on matters of public interest. *"Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of 'watchdog' in a democratic society"*.⁴³

"The most careful scrutiny on the part of the Court is called for when [...] the measures taken or sanctions imposed by the national authority are capable of discouraging the participation of the press in debates over matters of legitimate public concern".⁴⁴

Further, the Court reiterates that *"particularly strong reasons must be provided for any measure [...] limiting access to information which the public has the right to receive"*.⁴⁵

The scope of Article 10 where information is concerned is not limited to news: *"In light of its accessibility and its capacity to store and communicate vast amounts of information, the Internet plays an important role in enhancing the public's access to news and facilitating the dissemination of information generally. The maintenance of Internet archives is a critical aspect of this role and the Court therefore considers that such archives fall within the ambit of the protection afforded by Article 10"*.⁴⁶

The role played by journalists in a democratic society accordingly confers upon them increased protection under Article 10 of the Convention.

Reference should be made of the corollary of journalists' duty to inform: the right not to reveal their information sources. *"The Court has found various acts of the authorities compelling journalists to give up their privilege and provide information on their sources or to obtain access to journalistic information to constitute interferences with journalistic freedom of expression"*.⁴⁷

It should be noted that Article 10 is the only article of the European Convention on Human Rights stipulating, in its second paragraph, that the exercise of the freedoms it guarantees carries with it duties and responsibilities. Indeed, *"when exercising its right to freedom of expression, the press must act in a manner consistent with its duties and responsibilities [...]. These duties and responsibilities assume particular significance when [...] information imparted by the press is likely to have a serious impact on the reputation and rights of private*

⁴² Although this study refers to "journalists" as the authors of allegedly defamatory comments, "ordinary citizens" are of course covered as persons amenable to the law. The question of how the principles relating to the specific rights and duties of journalists may apply to new forms of the media (see the "media criteria and indicators" set out in Recommendation CM/Rec(2011)7 of the Committee of Ministers to member States on a new notion of media) is a matter that has not yet been examined by the Court.

⁴³ See, for example, *Riolo v. Italy*, no. 42211/07, 17 July 2008.

⁴⁴ *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 64, ECHR 1999-III.

⁴⁵ *Timpul Info-Magazin and Anghel v. Moldova*, no. 42864/05, § 31, 27 November 2007.

⁴⁶ *Times Newspapers Ltd v. United Kingdom* (Nos. 1 and 2), application nos. 3002/03 and 23676/03, 10 March 2009.

⁴⁷ For further details, see *Sanoma Uitgevers B.V. v. the Netherlands*, no. 38224/03, 14 September 2010.

*individuals. Furthermore, the protection afforded by Article 10 to journalists is subject to the proviso that they act in good faith in order to provide accurate and reliable information in accordance with responsible journalism"*⁴⁸

Presumption of good faith, extent of checking required regarding the accuracy of information, ethics of journalism

When reporting facts, journalists must “*act in good faith and on an accurate factual basis and provide ‘reliable and precise’ information in accordance with the ethics of journalism*”.⁴⁹ That said, “*the press should normally be entitled, when contributing to public debate on matters of legitimate concern, to rely on the content of official reports without having to undertake independent research*”.⁵⁰

The Court defines information as “*a perishable commodity*”, pointing out that “*to delay its publication, even for a short period, may well deprive it of all its value and interest. Consequently, a journalist cannot in principle be required to defer publishing information on a subject of general interest without compelling reasons relating to the public interest or protection of the rights of others*”⁵¹.

Exceptio veritatis and burden of proof

Moreover, journalists should be “*able to rely on a defence of justification – that is to say proving the truth of the allegation – to escape criminal liability*”.⁵²

In the eyes of the Court, “*a careful distinction needs to be made between facts and value-judgments. The existence of facts can be demonstrated, whereas the truth of value-judgments is not susceptible of proof*”.⁵³

Where value-judgements are concerned, the Court has rejected the idea of a journalist being debarred from expressing critical value-judgements unless he or she could prove their truth.⁵⁴ More specifically, “*where a statement amounts to a value-judgement, the proportionality of an interference may depend on whether there exists a sufficient factual basis for the impugned statement*”.⁵⁵ In other words, the threshold set by the Court for the factual basis required to justify an opinion is very low; an opinion “*may, however, be excessive, in particular in the absence of any factual basis*”.⁵⁶

⁴⁸ Times Newspapers Ltd v. United Kingdom (Nos. 1 and 2), application nos. 3002/03 and 23676/03, 10 March 2009; Fressoz and Roire v. France [GC], no. 29183/95, ECHR 1999 I; and Bladet Tromsø and Stensaas v. Norway (GC), 20 May 1999.

⁴⁹ Fressoz and Roire v. France (1999), § 54 ; See also in this connection Goodwin v. United Kingdom (1996), and Schwabe v. Austria (1992)

⁵⁰ Colombani and others v. France (2002), § 65

⁵¹ Stoll v. Switzerland, no. 69698/01, 10 December 2007; Editions Plon v. France, no. 58148/00, 18 May 2004.

⁵² Colombani and others v. France (2002), § 66

⁵³ Lingens v. Austria (1986), § 46

⁵⁴ Dalban v. Romania (1999), § 49

⁵⁵ Jerusalem v. Austria (2001), § 43

⁵⁶ De Haes and Gijssels v. Belgium (1997), § 47 ; see also, for burden of proof, McVicar v. United Kingdom, no. 46311/99, 7 May 2002; Europapress Holding d.O.O. v. Croatia; no. 25333/06, 22 October 2009.

Distance between the journalist and the information

Counterbalancing elements are necessary in order to distance oneself from the ideas of racist or terrorist groups etc. when a journalist "provides it with a platform"⁵⁷.

*"Punishment of a journalist for assisting in the dissemination of statements made by another person in an interview would seriously hamper the contribution of the press to discussion of matters of public interest and should not be envisaged unless there are particularly strong reasons for doing so. A general requirement for journalists systematically and formally to distance themselves from the content of a quotation that might insult or provoke others or damage their reputation is not reconcilable with the press's role of providing information on current events, opinions and ideas."*⁵⁸

3. Recapitulation

In its case-law regarding the right to freedom of expression in general and defamation in particular, the European Court of Human Rights bases its view on the notion of democracy. While it does not give a precise definition of the notion of democracy, the Court mentions constituent aspects of it -pluralism, tolerance and broadmindedness- without which there could be no "democratic society". It is clear from the Court's case-law that achieving a democratic society hinges above all on the existence of open public debate. Accordingly, it is equally clear that States' margin for manoeuvre for restricting the right to freedom of expression and information on matters of public interest, including political issues, is very limited.

In addition, it follows from the Court's case-law that any legal provision which, through special (or more severe) penalties, affords politicians, members of the government and senior officials enhanced protection against defamation is incompatible with Article 10 of the European Convention on Human Rights.

Moreover, from the Lingens judgment (1986) to the Otegi Mondragon or Tusalp judgments (both in 2012), the Court has consistently applied the notion of a high tolerance threshold for criticism where politicians, members of the government and heads of state are concerned.

The European Court of Human Rights has not proscribed criminal provisions on defamation but it has unequivocally criticised the use of criminal sanctions in response to acts considered to be defamatory. The Court's stance is grounded in the importance it attaches to citizens in general and journalists in particular not being dissuaded from voicing their opinions on issues of public interest for fear of criminal or other sanctions.

The Court has criticised the excessive use of criminal provisions, noting that even the application of a light criminal sanction has major repercussions for journalists' capacity to exercise their duties; in this context the mere existence of criminal law provisions on defamation is likely to have a chilling effect, and therefore impinge on freedom of expression and information.

⁵⁷ Jersild v. Denmark, no. 15890/89, 23 September 1994.

⁵⁸ see inter alia Pedersen and Baadsgaard v. Denmark (GC), no. 49017/99, 17 December 2004; Brunet-Lecomte and others v. France, no. 42117/04, 5 February 2009.

The criteria of proportionality and adequate nature of the restriction impugned are equally applicable to civil law provisions and lawsuits claiming damages for harm suffered as a result of defamation.

According to the Court, civil sanctions, when so severe as to be punitive in nature or coming at the end of a procedure that fails to respect the procedural guarantees of Article 6 of the Convention, also constitute major obstacles to the exercise of the right to freedom of expression.

Findings of violations in the Court's case-law in the area of defamation are prompted by both the normative framework and the manner in which those norms are applied by domestic courts.

In this context, not only must the law offer adequate and effective safeguards against disproportionate sanctions or awards, but judges applying the law must also make it clear in their argumentation that they have taken account of the criteria and principles set out in section 2 above (General principals and limits to freedom of expression regarding defamation) whenever these are relevant in the circumstances of the case.

IV. OTHER COUNCIL OF EUROPE STANDARDS

1. The Committee of Ministers

On 12 February 2004, the Council of Europe's highest decision-making body- the Committee of Ministers – adopted a “Declaration on freedom of political debate in the media”, which deals with political debate, pluralist democracy and the right of the media to disseminate negative information and critical opinions concerning political figures and public officials. This Declaration is addressed to member states of the Council of Europe. In the Declaration, the Committee of Ministers recalls the basic right of the media to disseminate negative information and critical opinions in the context of political debate and the right of the public to receive such information, and strongly reiterates the principles arising from the case-law of the European Court of Human Rights.

Earlier, the Committee of Ministers adopted Recommendation No R (97) 20 on “hate speech”, which contains the following principles:

“(1) The governments of the member states, public authorities and public institutions at the national, regional and local levels, as well as officials, have a special responsibility to refrain from statements, in particular to the media, which may reasonably be understood as hate speech, or as speech likely to produce the effect of legitimising, spreading or promoting racial hatred, xenophobia, antisemitism or other forms of discrimination or hatred based on intolerance. Such statements should be prohibited and publicly disavowed whenever they occur.

(2) The governments of the member states should establish or maintain a sound legal framework consisting of civil, criminal and administrative law provisions on hate speech which enable administrative and judicial authorities to reconcile in each case respect for freedom of expression with respect for human dignity and the protection of the reputation or the rights of others. (...)

(3) The governments of the member states should ensure that in the legal framework referred to in Principle 2 interferences with freedom of expression are narrowly circumscribed and applied in a lawful and non-arbitrary manner on the basis of objective criteria. Moreover, in accordance with the fundamental requirement of the rule of law, any limitation of or interference with freedom of expression must be subject to independent judicial control. This requirement is particularly important in cases where freedom of expression must be reconciled with respect for human dignity and the protection of the reputation or the rights of others.

(4) National law and practice should allow the courts to bear in mind that specific instances of hate speech may be so insulting to individuals or groups as not to enjoy the level of protection afforded by Article 10 of the European Convention on Human Rights to other forms of expression. This is the case where hate speech is aimed at the destruction of the rights and freedoms laid down in the Convention or at their limitation to a greater extent than provided therein.

(5) National law and practice should allow the competent prosecution authorities to give special attention, as far as their discretion permits, to cases involving hate speech. In this regard, these authorities should, in particular, give careful consideration to the suspect's

right to freedom of expression given that the imposition of criminal sanctions generally constitutes a serious interference with that freedom. The competent courts should, when imposing criminal sanctions on persons convicted of hate speech offences, ensure strict respect for the principle of proportionality.

(6) National law and practice in the area of hate speech should take due account of the role of the media in communicating information and ideas which expose, analyse and explain specific instances of hate speech and the underlying phenomenon in general as well as the right of the public to receive such information and ideas. To this end, national law and practice should distinguish clearly between the responsibility of the author of expressions of hate speech on the one hand and any responsibility of the media and media professionals contributing to their dissemination as part of their mission to communicate information and ideas on matters of public interest on the other hand.”

More recently, in its Recommendation to member States on a new notion of media (CM/Rec(2011)7) adopted on 21 September 2011, the Committee of Ministers stressed the following points:

"Libel and defamation laws can be misused to interfere with, or by way of reprisal against, media. They can have a strong chilling effect. According to the case-law of the European Court of Human Rights, expressions (or content) which disturb, shock or offend must be tolerated. Subject to the respect or clearing of pertinent intellectual property rights, media should be able to rely on prior media reports or published material without risk. However, in the new ecosystem, consideration needs to be given to the accumulated or multiplied impact and the possible need to apportion responsibility in case of damage (for example resulting from dissemination by a first outlet as compared to the enhanced or multiplied impact when the same content is disseminated by other, including mainstream, media).

All media in the new ecosystem should be entitled to use the defences of truthfulness and accuracy of information, good faith or public interest (in particular in the context of scrutiny of the conduct of public or political figures and public officials, and also in respect of matters a priori covered by state secrets or by corporate confidentiality rules). Media should be confident that, when assessing content, fact will be treated differently from opinion (the latter allowing for greater freedom). Media should also be able to rely on freedom of satire and the right to exaggeration."

Lastly, in its Declaration of 4 July 2012 on “the desirability of international standards dealing with forum shopping in respect of defamation, ‘libel tourism’, to ensure freedom of expression”, the Committee of Ministers emphasises in particular the need to enhance the legal predictability and certainty of the law applicable to defamation.⁵⁹

In this context, the Committee of Ministers’ Recommendation No R (74) 26 on the right of reply stated:

“1. In relation to information concerning individuals published in any medium, the individual concerned shall have an effective possibility for the correction, without undue delay, of

⁵⁹[https://wcd.coe.int/ViewDoc.jsp?Ref=Decl\(04.07.2012\)&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=Decl(04.07.2012)&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864)

incorrect facts relating to him which he has a justified interest in having corrected, such corrections being given, as far as possible, the same prominence as the original publication.

2. In relation to information concerning individuals published in any medium, the individual concerned shall have an effective remedy against the publication of facts and opinions which constitute:

i. an interference with his privacy except where this is justified by an overriding, legitimate public interest, where the individual has expressly or tacitly consented to the publication or where publication is in the circumstances a generally accepted practice and not inconsistent with law;

ii. an attack upon his dignity, honour or reputation, unless the information is published with the express or tacit consent of the individual concerned or is justified by an overriding, legitimate public interest and is a fair criticism based on accurate facts.

3. Nothing in the above principles should be interpreted to justify censorship.”

2. The Parliamentary Assembly

In 1993, the Parliamentary Assembly of the Council of Europe reiterated the basic principles pertaining to defamation elaborated by the European Court of Human Rights, with reference to the rights and responsibilities of journalists (Resolution 1003 (1993) on the ethics of journalism).

The Parliamentary Assembly subsequently adopted two Recommendations on freedom of expression in the media and information in Europe: Recommendations 1506 (2001) and 1589 (2003). In Recommendation 1506 (2001), the Parliamentary Assembly also recommended that the Committee of Ministers encourage member States to follow the Council of Europe standards concerning the protection of freedom of expression and, in particular, to “*make public the findings of its monitoring procedure in the field of personal and editorial freedom of expression, formulate on this basis specific recommendations to individual member States and make these States publicly accountable for their implementation*” and “*ensure that the expertise provided by the Council of Europe in the field of media legislation is duly taken into account by member States, particularly on points challenging attempts at political control over the media*”.

In Recommendation 1589 (2003), the Parliamentary Assembly referred to defamation proceedings, which it assimilates with a form of legal harassment against media and journalists, in the following terms: “*Other forms of legal harassment, such as defamation suits or disproportionately high fines that bring media outlets to the brink of extinction, continue to proliferate in several countries. Such cases were recently recorded in Azerbaijan, Belarus, Croatia, Russia and Ukraine. A dozen lawsuits have been brought against Presspublica, the publisher of the major Polish daily, Rzeczpospolita. Intimidation of the media also takes the form of police raids, tax inspections and other kinds of economic pressure.*”

The Parliamentary Assembly also pointed out that “*media legislation in some [Western European] countries is outdated (for instance the French press law dates back to 1881) and although restrictive provisions are no longer applied in practice, they provide a suitable*

excuse for new democracies not willing to democratise their own media legislation.” It asked the Committee of Ministers to take action in order to encourage European States, where appropriate, *“to revise their media legislation according to Council of Europe standards and recommendations and to ensure its proper implementation”* and *“to incorporate the case-law of the European Court of Human Rights in the field of freedom of expression into their domestic legislation and ensure the relevant training of judges”*.

When examining developments in specific Council of Europe member states in the context of the implementation of Council of Europe standards, the Parliamentary Assembly has gone a step further and adopted resolutions on a number of countries under its monitoring, encouraging the relevant countries to repeal or substantially review the criminal defamation laws and reform civil defamation laws, in order to prevent their abusive application, making it clear that offences of defaming or insulting the principal organs of State, should no longer be liable to imprisonment.

In Resolution 1577 (2007) entitled *“Towards decriminalisation of defamation”* the Assembly calls on member states to apply legislation with the utmost restraint and insists on procedural safeguards enabling anyone charged with defamation to substantiate their statements in order to absolve themselves of possible criminal responsibility. It further emphasises that 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.

The Assembly deplores the fact that, in a number of member states, prosecution for defamation is misused in what could be seen as attempts by the authorities to silence media criticism. The Assembly calls on the member states to *“abolish prison sentences for defamation without delay; guarantee that there is no misuse of criminal prosecutions for defamation and safeguard the independence of prosecutors in these cases; define the concept of defamation more precisely in their legislation so as to avoid an arbitrary application of the law and to ensure that civil law provides effective protection of the dignity of persons affected by defamation (...)”*.

In the same Resolution, the Assembly invites the states to *“make it a criminal offence to publicly incite to violence, hatred or discrimination, or to threaten an individual or group of persons, for reasons of race, colour, language, religion, nationality or national or ethnic origin where those acts are deliberate, in accordance with General Policy Recommendation No. 7 of the European Commission against Racism and Intolerance (ECRI); make only incitement to violence, hate speech and promotion of negationism punishable by imprisonment and remove from their defamation legislation any increased protection for public figures, in accordance with the Court’s case-law (...)”*.

The Assembly consequently takes the view that *“prison sentences for defamation should be abolished without further delay. In particular it exhorts States whose laws still provide for prison sentences – although prison sentences are not actually imposed – to abolish them without delay so as not to give any excuse, however unjustified, to those countries which continue to impose them, thus provoking a corrosion of fundamental freedoms”*.

The Assembly likewise condemns abusive recourse to unreasonably large awards for damages in defamation cases and points out that a compensation award of a disproportionate amount may also contravene Article 10 of the European Convention on Human Rights.

In Recommendation 1814(2007), the Parliamentary Assembly, referring to Resolution 1577 (2007), calls on the Committee of Ministers “*to urge all member states to review their defamation laws and, where necessary, make amendments in order to bring them into line with the case-law of the European Court of Human Rights, with a view to removing any risk of abuse or unjustified prosecutions*”.

The Assembly urges the Committee of Ministers to instruct the competent intergovernmental committee to prepare, following its considerable amount of work on this question and in the light of the Court’s case-law, a draft recommendation to member states laying down detailed rules on defamation with a view to eradicating abusive recourse to criminal proceedings.

In its reply of 11 June 2008 to Parliamentary Assembly Recommendation 1814(2007), the Committee of Ministers endorsed the Parliamentary Assembly’s views and called on member states to take “*a proactive approach in respect of defamation by examining domestic legislation against the case-law of the European Court of Human Rights [...] and, where appropriate, aligning criminal, administrative and civil legislation with those standards*”.

The Parliamentary Assembly adopted “indicators for media in a democracy” in its Resolution 1636 (2008), which includes the following:

“8.2. *state officials shall not be protected against criticism and insult at a higher level than ordinary people, for instance through penal laws that carry a higher penalty. Journalists should not be imprisoned, or media outlets closed, for critical comment;*”

In its Recommendation 1897 (2010) on respect for media freedom, the Assembly stated:

“7. *The Assembly welcomes amendments made to Article 301 of the Turkish Penal Code but deplores the fact that Turkey has neither abolished Article 301 nor completed investigations into the murder of Hrant Dink in Istanbul on 19 January 2007, especially as regards possible failures of the police and security forces. Criminal charges have been brought against many journalists under the slightly revised Article 301, which still violates Article 10 of the European Convention on Human Rights.*”⁶⁰

“8. *Referring to its [Resolution 1577](#) (2007) “Towards decriminalisation of defamation”, the Assembly reaffirms that defamation and insult laws must not be used to silence critical comment and irony in the media. The reputation of a nation, the military, historic figures or a religion cannot and must not be protected by defamation or insult laws. Governments and parliaments should clearly and openly reject false notions of national interest evoked against the work of journalists. Nationalism must never again become the misguided reason for killing journalists, or depriving them of their rights or liberty.*”

“11. *The Assembly therefore recommends that the Committee of Ministers: (...)*

⁶⁰ See also, the ECtHR judgment of 25 October 2011 in the case of Altuğ Taner Akçam v. Turkey (Application no. 27520/07) at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-107206>

11.4. call on the governments of all member states, and in particular those of Azerbaijan, the Russian Federation and Turkey, to revise their defamation and insult laws and their practical application in accordance with Assembly Resolution 1577 (2007)”.

3. Commissioner for Human Rights

In his introduction to the work “Human rights and a changing media landscape” published in December 2011, the Council of Europe Commissioner for Human Rights said that he believed that defamation should be decriminalised and that unreasonably high fines should be avoided in civil cases relating to the media.

Already in 2007 the Commissioner referred, in his annual activity report, to the work of the Parliamentary Assembly of the Council of Europe and the OSCE on the decriminalisation of defamation, and suggested that the way out of criminalisation should include a debate on the role of “self-regulatory mechanisms” within the media. He said that there had been “encouraging results in countries where media representatives have developed Codes of Ethics and designed their own special procedures to enforce professional standards, for instance, through Press Councils or Press Ombudsmen”. He also pointed to the need to make more systematic use of the system of “responsible publishers”, whereby legal responsibilities are assigned to one clearly defined authority within the media enterprise. The effect of such a system is to protect journalists from the risk of having to pay damages in a civil procedure.

Since then, the Commissioner has reiterated his desire for decriminalisation of defamation to be taken forward. For instance, in his 2011 annual activity report, he clearly stated that criminalisation of defamation was one of the means used to stifle media freedom. In several country reports, he has asked public figures to refrain from initiating defamation proceedings which have serious chilling effects on media freedom and emphasised the need to decriminalise defamation and avoid excessively high fines in media-related civil cases.

4. The European Commission for Democracy through Law (Venice Commission)

In a report adopted on 17-18 October 2008, entitled “Report on the relationship between freedom of expression and freedom of religion: the issue of regulation and prosecution of blasphemy, religious insult and incitement to religious hatred”, the Venice Commission points out that *“in a true democracy, imposing limitations on freedom of expression should not be used as a means of preserving society from dissenting views, even if they are extreme. Ensuring and protecting open public debate, should be the primary means of protecting inalienable fundamental values such freedom of expression and religion at the same time as protecting society and individuals against discrimination. It is only the publication or utterance of those ideas which are fundamentally incompatible with a democratic regime because they incite to hatred that should be prohibited”.*

5. The European Commission against Racism and Intolerance (ECRI)

In various country monitoring reports, ECRI has stressed the importance, when combating racism and racial discrimination, of criminalising the public dissemination or public distribution, with a racist aim, of written, pictorial or other material containing manifestations of incitement to violence, hatred or discrimination, insults or defamation, or threats to an

individual or group of persons, for reasons of race, colour, language, religion, nationality or national or ethnic origin.⁶¹

⁶¹ See also, General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination by the European Commission against Racism and Intolerance (ECRI), adopted on 13 December 2002.

V. INTERNATIONAL STANDARDS AND DEVELOPMENTS

1. The UN International Covenant on Civil and Political Rights

Article 19 of the United Nations International Covenant on Civil and Political Rights (ICCPR), adopted in 1966 and ratified by all member States of the Council of Europe, reads as follows:

- “1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
(a) For respect of the rights or reputations of others;
(b) For the protection of national security or of public order (ordre public), or of public health or morals.”*

The United Nations Human Rights Committee is entrusted with the examination of state reports submitted under Article 40 of the Covenant and communications from States and individuals under the ICCPR’s optional protocol. Moreover, through its comments and other statements, the Human Rights Committee interprets and expounds the provisions of the ICCPR.

In this connection, the Human Rights Committee has expressed concern about the possibility which exists in a number of countries of sanctioning defamation with measures involving deprivation of liberty⁶². Further, in several concluding observations on state reports, the Committee has been critical as regards the use of criminal law provisions against journalists in the context of defamation.

By way of example, with reference to particular states, the Committee has expressed concern *“about instances of harassment and physical violence against journalists as well as about threats of defamation suits against them, and with the lack of information provided by the State party about those situations”*⁶³ or about *“the high number of proceedings initiated against journalists for media-related offences, in particular as a result of complaints filed by political personalities who feel that they have been subject to defamation because of their functions”*.⁶⁴ On the latter point, the Committee added that the *“State party, in its application of the law on criminal defamation, should take into consideration on the one hand the principle that the limits for acceptable criticism for public figures are wider than for private individuals, and on the other hand the provisions of article 19 (3), which do not allow restrictions to freedom of expression for political purposes.”*

⁶² Report by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr Abid Hussain, submitted in accordance with Commission resolution 1999/36, E/CN.4/2000/63, 18 January 2000

⁶³ Concluding observations of the Human Rights Committee: Albania. 02/12/2004. CCPR/CO/82/ALB

⁶⁴ Concluding observations of the Human Rights Committee: Serbia and Montenegro. 12/08/2004. CCPR/CO/81/SEMO

More specifically, the Human Rights Committee has called for the abolition of the offence of *"defamation of the State"*.⁶⁵

2. United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression

In his 1999 report⁶⁶, the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression of the United Nations Commission on Human Rights elaborated extensively on criminal defamation. He noted that, in a number of instances, libel and defamation suits, or even the threat of such suits, has had, or may potentially have, a direct and negative impact on freedom of expression, access to information and the free exchange of ideas. His report sets out certain minimum standards.

In subsequent reports, the Special Rapporteur was *"astonished and alarmed at the number of communications received in the past year referring to accusations of libel and defamation against media professionals (publishers, managing editors and journalists)"*. He also stressed that *"the climate created by such suits causes writers, editors and publishers to be reluctant to report on and publish matters of public interest not only because of the large awards granted in these cases but also because of the high costs of defending such actions"*.

The Special Rapporteur categorically stated that *"criminal defamation laws represent a potentially serious threat to freedom of expression because of the very sanctions that often accompany conviction"* and recommended that all states parties abolish criminal law provisions on defamation and replace them, where necessary, with civil law provisions.⁶⁷

3. The Organization for Security and Co-operation in Europe (OSCE)

The Parliamentary Assembly of the Organization for Security and Co-operation in Europe (OSCE) has repeatedly called on participating states to *"repeal laws which provide criminal penalties for the defamation of public figures, or which penalise the defamation of the State, State organs or public officials as such"*.⁶⁸

In his statement at the Fourth Winter Meeting of the OSCE Parliamentary Assembly (25 February 2005), the organisation's Representative on Freedom of the Media indicated that, according to information gathered by his office, *"at least 30 thousand people [journalists and non-journalists] in the OSCE area have been convicted for libel and insult under criminal charges within two and a half years"*.

He called for support for his *"campaign against criminal libel and insult laws and disproportionate civil damages"*, affirming that *"criminal defamation laws remain the major instrument of oppression which is constantly used against journalists and editors in the OSCE area"*.

⁶⁵ Concluding observations of the Human Rights Committee: Serbia and Montenegro. 12/08/2004. CCPR/CO/81/SEMO

⁶⁶ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr Abid Hussain, E/CN.4/1999/64 29 January 1999

⁶⁷ Report by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr Abid Hussain, submitted in accordance with Commission resolution 1999/36, E/CN.4/2000/63, 18 January 2000.

⁶⁸ Warsaw Declaration, 1997; Bucharest Declaration, 2000; Paris Declaration, 2001

In particular, the OSCE Representative called on the “*members of the European Union to abolish all their criminal libel and insult laws*” given that, “*even though they rarely, if ever, apply these laws, their mere existence allows new democracies to use this fact to justify having similar laws on their books and applying them. The possibility for them to point fingers at the established democracies should be eliminated.*”⁶⁹

From a practical standpoint, the OSCE’s Representative on Freedom of the Media has suggested that “*de-prisonment*” of defamation can be regarded as an intermediary step on the way to “*de-criminalisation*” and “*de-harshening*” of criminal and civil defamation laws.⁷⁰

In this connection, the Representative welcomed moves by certain States to decriminalise. Moreover, his “*optimism is boosted by the results of the comprehensive study on defamation provisions and court practices in the OSCE area. It revealed a few remarkable trends [...] First of all, around 70 per cent of the OSCE participating States have realised that the application of their obsolete defamation laws is against free speech. They have been, to different extents, involved in reform liberalizing their defamation legislation within the past ten years. [...] Second, the liberalization is continuing, with current plans to amend criminal provisions in at least 14 OSCE participating States. Third, only nine out of the 55 countries of the OSCE region admitted having applied the actual incarceration for defamation. This shows that actual court practices in most of the countries of the OSCE area follow the case-law of the European Court of Human Rights. The Court has always ruled against imprisonment as a disproportionate punishment for libel and insult.*”

Nonetheless, the Representative finds it understandable that the abolition of defamation laws is a lengthy process.

In 2012, the current OSCE Representative has also endorsed draft laws on defamation and lauded countries which have decriminalised defamation.⁷¹

⁶⁹ Statement at the Fourth Winter Meeting of the OSCE Parliamentary Assembly, 25 February 2005.

⁷⁰ Ending the chilling effect. Working to repeal criminal libel and insult laws. OSCE Vienna 2004, p. 9

⁷¹ <http://www.osce.org/baku/77483>; <http://www.osce.org/fom/90392>; <http://www.osce.org/fom/85154>

VI. POSITION OF INTERNATIONAL NON-GOVERNMENTAL ORGANISATIONS

International non-governmental organisations specialising in media freedom co-operate very actively with intergovernmental partners for the repeal of criminal defamation laws.

In their communiqués, these organisations state their objection in principle to all laws that make defamation a criminal offence, pointing out that in some countries these laws are systematically used and abused to harass, intimidate and punish any media which criticise the government. They also highlight the self-censorship among journalists to which the existence of these laws gives rise.

They alert the public to situations both in which criminal legislation is abused and in which civil sanctions for defamation are applied disproportionately.

On the whole, the position advocated by international NGOs is consistent with that adopted by the specialised bodies of international or regional organisations.

VII. CONCLUSIONS

There is a general consensus among the different specialised bodies of international and regional organisations that not only the application of criminal sanctions but also the mere fact that such sanctions could be applied have substantial undesirable effects on freedom of expression and information. This phenomenon is referred to as "judicial harassment".

Further, it is considered that the application of custodial sentences for acts of defamation is in principle disproportionate. This consideration is valid *mutatis mutandis* regarding damages awarded in civil cases if they have a punitive dimension. There is general concern regarding the abusive application, in practice, of defamation laws.

The specialised bodies of international and regional organisations have been increasingly insistent that in democratic countries defamation is no longer a matter for criminal law but for civil provisions devoid of any punitive dimension.

This frequently echoed trend is illustrated by a declaration of 25 March 2010 submitted to the UN Human Rights Council, which is entitled "Ten key challenges to freedom of expression in the next decade"⁷². The declaration refers to the abuse of legislation on defamation as one of the traditional threats to freedom of expression and states that all criminal defamation laws are problematic.

This declaration is fully in line with the principles derived from the case-law of the European Court of Human Rights and the standards adopted in various Council of Europe instruments.

The data collected on anti-defamation legislation in the Council of Europe member States reveals a constantly evolving situation. Besides the data on legislation set out in the Appendix, there are other current noteworthy trends in the situation as regards decriminalisation of defamation.

In many countries where criminal legislation includes provisions on defamation, these provisions are not or only very rarely applied.

On the other hand, in some countries where defamation has been decriminalised, there has been a sharp increase in the number of civil lawsuits and excessive awards of damages, frequently higher than the fines imposed under criminal law.

Journalists in certain countries have pointed out that criminalisation affords guarantees in terms of a fair trial which the media do not enjoy under civil procedure. Accordingly, they fear that decriminalisation will have adverse effects, by depriving them of the safeguards they need to protect their rights.

The overview of rules and practices with regard to defamation in all the Council of Europe member states reveals a heterogeneous situation, in which the decriminalisation of defamation

⁷² Declaration drawn up jointly by the United Nations Special Rapporteur on the promotion and protection of the rights to freedom of opinion and expression, the Representative on Freedom of the Media of the OSCE, the Special Rapporteur on Freedom of Expression of the Organization of American States and the African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information.

is not a very reliable indicator with regards to the actual situation concerning the judicial harassment of journalists through defamation proceedings.

Beyond the necessary decriminalisation of the defamation, this highlights the paramount importance of implementing the principle of proportionality as conceived in the case-law of the European Court of Human Rights. It should first be pointed out that this principle is applicable both to criminal sanctions and to other forms of interference (civil or administrative sanctions or any other restrictive measure). Implementing fully the principle of proportionality, which has far more to it than merely gauging the nature and severity of sanctions, contains the major component of respect for a fair trial (see section III above).

The alignment of rules and practices concerning defamation with the case-law of the European Court of Human Rights is a multi-faceted task, requiring the efforts of the legislature, the judiciary and the media.

The legislator is obliged to take account of the consensus on the decriminalisation of defamation in international organisations and attend to the quality of the law governing defamation, so that citizens may foresee the consequences which a given action may entail and regulate their conduct. The laws must also include the necessary procedural safeguards to provide proper protection for the exercise of the right to freedom of expression. In other terms *“(...) any regulation should itself comply with the requirements set out in Article 10 of the European Convention on Human Rights and the standards that stem from the relevant case law of the European Court of Human Rights”*.⁷³

As to the courts, the alignment process requires them to exercise considerable restraint in the application of provisions which restrict freedom of expression and to apply the principle of proportionality with due rigour.

Lastly, genuine alignment is not conceivable unless there is a debate within the media on the role of “self-regulatory mechanisms” with regard to defamation.

⁷³ Recommendation CM/Rec(2011)7 of the Committee of Ministers to member states on a new notion of media adopted by the Committee of Ministers on 21 September 2011, para 4.

APPENDIX

DETAILED INFORMATION ON THE LEGISLATION AND PRACTICES RELATING TO DEFAMATION IN THE COUNCIL OF EUROPE MEMBER STATES

This appendix is a compilation of information on the legislation in force in September 2012, taken from various sources but mainly from the Registry of the European Court of Human Rights, other Council of Europe directorates and information provided by the members of the CDMSI concerning their own countries. This text presents the information in its unprocessed form, which varies from country to country, along with a short summary in bold in each case.

References to the relevant case-law of the European Court of Human Rights are incorporated in the footnotes.

Albania

Prison sentences for the criminal offence of defamation were changed to fines by the last legislative amendments of 2012 (Law no. 23/2012).

Defamation of the President or foreign senior officials remains a criminal offence punishable by three years' imprisonment. The relevant provisions make specific reference to politicians and officials as well as state symbols, the national anthem and flag⁷⁴.

In June 2012, the Albanian Government expressed its desire to decriminalise defamation in the near future.

Information on relevant legal provisions on defamation

Criminal Code

Albanian Criminal Defamation Law consists of 5 Articles of the Criminal Code. Arguably, another 3 Articles (227, 229 and 268) could be added to the corpus of Albanian defamation Law. Articles 119 (Insult) and 120 (libel) make up the core of Albanian Criminal Defamation Law.

⁷⁴ See the case communicated by the ECHR on 31 May 2010, Fredi Beleri and others v. Albania, no. 39468/09, which concerned defamation of the Republic and its symbols.

Article 119 criminalises insult as follows:

"Intentionally insulting a person shall be a criminal contravention (petty offence) punishable by a fine between 50,000 and 1,000,000 leks.

The same offence, when committed publicly to the detriment of several people, or more than once, shall be a criminal contravention punishable by a fine between 50,000 and 3,000,000 leks."

Article 120 (Libel) reads as follows:

"Intentional dissemination of utterances and/or any other information, which are knowingly false, and which affect the honour and dignity of a person, shall be a criminal misdemeanour and is punishable by a fine between 50,000 and 1,500,000 leks.

The same offence, when committed publicly, shall be a criminal contravention punishable by a fine between 50,000 and 3,000,000 leks."

Article 239 insulting a public official on duty:

Insulting intentionally an official acting in the discharge of a state duty or public service, because of his state activity or service, constitutes criminal contravention and is sentenced to a fine or up to six months imprisonment.

When the same act is committed publicly, it constitutes a criminal contravention and is sentenced to a fine or up to one year imprisonment.

Article 240 libelling of a public official on duty:

Intentional defamation committed toward an official acting in the discharge of a state duty or public service, because of his state activity or service, constitutes criminal contravention and is sentenced to a fine or up to one year imprisonment.

When the same act is committed publicly, it constitutes criminal contravention and is sentenced to a fine or up to two years imprisonment.

Article 241 defamation of the President of the Republic:

Intentional defamation committed toward the President of the Republic is sentenced to a fine or up to three years imprisonment.

Some provisions in Albanian criminal law link defamation to official persons and objects:

Article 227 Insulting representatives of foreign countries:

Insulting prime ministers, cabinet members, parliamentarians or foreign states, diplomatic representatives, or recognized international bodies that are officially in the Republic of Albania, is sentenced to a fine or up to three years imprisonment.

Article 229 Insolent acts against the anthem and the flag:

Using words or committing acts which publicly insult the flag, emblem, anthem of foreign states and recognized international bodies, as well as taking away, breaking, irreparably damaging the flag or emblem, which are displayed in official institutions, constitutes criminal contravention and is sentenced to a fine or up to one year imprisonment.

Article 268 Defamation of the Republic and its symbols.

Defamation, made publicly or through publications or distribution of writings, of the Republic of Albania and her constitutional order, flag, emblem, anthem, martyrs of the nation or abolishing, damaging, destroying, making indistinct or unusable the flag or emblem of the Republic of Albania exposed by official institutions, constitutes criminal contravention and is sentenced to a fine or up to two years imprisonment.

Civil Code

Under Article 625 of the Albanian Civil Code, a person who has suffered 'harm to the honour of his personality' has a right to compensation.

Developments in the application of criminal and civil law provisions concerning defamation at domestic level

During 2003, several lawsuits had been reported against journalists and newspapers (IPI-AR, 2003; IHF-AR, 2004), while a number of defamation trials are ongoing. A19 expressed concern on a recent civil defamation case involving the owner and editor of the newspaper Koha Jone and the Prime Minister, denouncing the absence of proportionality, alleged procedural violations and the unduly harsh nature of the fine imposed, i.e. 2 million leke (approx. 20,000 USD). The newspaper had published an editorial alleging that the award of 6 months' salary to public officials, including the Prime Minister, for work on the privatisation of Albania's National Savings Bank, amounted to corruption (A19, Open Letter, 01.06.2004).

A working group established to amend defamation law in both the Criminal and Civil Codes presented its first draft in July 2004. A final draft is to be issued by September 2004 (see CEAD, Conference on Defamation, 28-29.03.2003; AMI, Albanian Media Newsletter, April 2004; SP, July 2004).

Andorra

Defamation is a criminal offence, carrying a maximum sentence of three years' imprisonment.

Constitution

Defamation is dealt with by the Constitution, which guarantees the right to privacy, honour and one's own image (Article 14).

Criminal Code

It is also covered by Part III, Chapter III, of the Criminal Code, which refers to offences against people's honour.

Under the Criminal Code a sentence of up to two years and one month's imprisonment is imposed on those who disseminate serious insults or defamation through public statements, written publications or a means of social communication (Article 200). Up to three years' imprisonment may also be imposed on anyone who, in writing or by a means of social communication, imputes an offence to another person (Article 201).

Part III, Chapter V, of the Criminal Code establishes the laws protecting personal privacy. It provides that anyone who has disclosed information on the private life of a person with a view to damaging or undermining his or her reputation shall be liable to up to three years'

imprisonment (Article 218). It also provides that anyone who has infringed a person's privacy by taking or disclosing documents is liable to up to three years' imprisonment (Article 220).

Lastly, it states that where the offences described in this chapter have been committed by means of printing or any other means which facilitates publication, the criminal responsibility for them lies with both the author and the editor (Article 221).

Part V, Chapter II of the Criminal Code deals with offences against persons' honour, dignity and freedom and provides that persons who disseminate serious insults, defamation or slander, but not through public statements, written publications or a means of social communication, shall be liable to up to one year's imprisonment (Article 312). In addition, the disclosure of all confidential personal information, whether official or professional, is punished with up to one year's imprisonment (Article 314).

Armenia

In Armenia, defamation is no longer a criminal offence as of May 2010. Nevertheless, a great many civil suits in which journalists have been sentenced to pay exorbitant damages have been reported.⁷⁵

Information on relevant legal provisions on defamation

Press Law

1991 Law of the Press, Art. 7: Prohibits the use of the mass media for encroaching upon the personal lives of citizens, their honour or dignity.

Civil Code

Article 19

Protection of Honour, Dignity, and Business Reputation

1. A citizen has the right to demand in court the retraction of communications impugning on his honour, dignity or business reputation, unless the person who disseminated such communications proves that they correspond to reality.

On demand of interested persons, the protection of honour and dignity of a citizen is permitted also after his death.

2. If the communications impugning the honour, dignity or business reputation of a citizen were distributed in media of mass information, they must be retracted in the same media of mass information.

If the aforementioned communications are contained in a document emanating from an organisation, such a document is subject to replacement or recall. The procedure for retraction in other cases shall be established by the court.

⁷⁵ <http://www.osce.org/fom/84878>

3. A citizen with respect to whom a medium of mass information has published communications infringing on his rights or interests protected by statute has the right to publication of his answer in the same medium of mass information.
4. A citizen with respect to whom communications have been disseminated impugning his honour, dignity or business reputation, has the right together with the retraction of such information also to demand compensation for the damages caused by their dissemination.
5. If it is impossible to identify the person who disseminated communications impugning the honour, dignity or business reputation of a citizen, the person with respect to whom such information was disseminated has the right to apply to court with a request for the recognition of the communications that were disseminated as not corresponding to reality.
6. The rules of the present article on the protection of the business reputation of a citizen shall be applied correspondingly to the protection of the legal reputation of a legal person.

Developments in the application of criminal and civil law provisions concerning defamation at domestic level

In his report following his visit to Armenia from 18 to 21 January 2011, Thomas Hammarberg, the Commissioner for Human Rights of the Council of Europe, welcomes the fact that the National Assembly adopted on 18 May 2010 amendments to the Armenian Criminal and Civil Codes, decriminalising libel and insult. However, civil society actors have pointed out to the Commissioner that this was only a partial decriminalisation as, for example, the application of the criminal provisions on “false crime reporting” (Section 333 of the Armenian Criminal Code) still leaves open the possibility of undue restrictions of freedom of expression. There are also concerns related to the introduction of amendments to the Armenian Civil Code which foresee high monetary fines for insult and defamation through civil suits, which can be imposed upon media outlets.³⁴ NGOs have also referred to an increase in the number of lawsuits against Armenian media outlets for infringing upon a person’s honour, dignity and business reputation, as well as the high amounts of compensation ordered by courts in this context, which could jeopardise the very tenability of the media outlet concerned.

Austria

Defamation is a criminal offence. The relevant provisions make specific reference to politicians and officials. The law stipulates that major public interest may be relied on by journalists in their defence against accusations of defamation.⁷⁶

Information on relevant legal provisions on defamation

⁷⁶ See ECHR judgments *Standard Verlags GmbH v. Austria* (no. 3), no. 34702/07, 10 January 2012; *Krone Verlag GmbH and Krone Multimedia GmbH v. Austria*, no. 33497/07 and *Kurier Zeitungsverlags und Druckereio GmbH v. Austria*, no. 3401/07, 17 January 2012, *Verlagsgruppe News GmbH v. Austria*, no. 76918/01, 20 October 2008.

Both civil and criminal liability are provided for by the law.

Defence. Under Article 29 of the Media Act (1981), the strict burden of proof of the truth (in criminal cases) has been relieved; under the 1981 Media Act, journalists are not guilty of libel if they are able to establish both that they observed journalistic care and that there was a major public interest in the publication.

Public Figures. The relevant provisions of the Criminal Law (Article 111 of the Penal Code) and of the civil law (Article 1330 of the Civil Code) apply to value judgments as well as to statements of fact. Following decisions of the European Court of Human Rights, the status of the insulted person is considered and the courts have shown readiness to require politicians to accept a greater degree of criticism and scrutiny regarding matters, which may affect their qualifications for public service than private persons.

Invasion of privacy. The 1981 Media Act introduced a separate cause of action for invasion of privacy: Article 7 provides that a media organ is obliged to grant compensation if matters concerning the private life of a person are presented in such a way as to degrade him or her in public opinion. Publication is permitted in any case where there is a "connection with public life". However, little use has so far been made of Article 7. It appears that reporting on matters of legitimate public interest is not inhibited by this provision.

Article 78 of the Copyright Act forbids the publication of pictures which violate legitimate interests of the person shown. A few courts have found that there was no violation in case of pictures of "public figures".

Criminal Code

The offence of "defamation" is regulated in Article 111 of the Criminal Code. It is committed if a person accuses another, in such a way that it may be perceived by a third person, of possessing a contemptible character or attitude or of dishonourable behavior or of behavior contrary to morality which is suited to make him contemptible or otherwise lower him in public esteem.

This offence carries a higher punishment if committed in a printed document, by broadcasting or otherwise in such a way as to make the defamation accessible to a broad section of the public.

Article 113 prohibits a person from reproaching another for having committed a criminal offence in respect of which the sentence has already been served or provisionally suspended, or in respect of which the determination of the sentence has been provisionally adjourned. Reproach is only justified (pursuant to Article 114) if required by a legal duty, protected by a legal right, or compelled for special reasons. In the case of *Schwabe v. Austria*, the European Court of Human Rights ruled that a conviction under Article 113 violated Article 10 of the ECHR because the Austrian courts refused to consider it as a defence that the reproach was in the public interest (namely, that a politician's prior conviction for a driving accident which resulted in the death of a person could be relevant to his fitness for political office).

Moreover, the Criminal Code contains a provision on "slander and assault" (Article 115). This offence is committed if a person insults, mocks, mistreats or threatens with ill-treatment another one in public or in the presence of several other, unless the offender is liable to a more severe punishment under a different provision. The offence must take place in public or

in the presence of several other persons and the offender must have taken his fact into account when committing the offence.

In addition, the Criminal Code contains a provision on “malicious falsehood” (Article 297). This offence is committed if a person falsely accuses a specific person or several other specific persons in such a way as to expose such person or persons to the risk of prosecution. The offender is not liable to punishment if he removes the risk of prosecution voluntarily and in due time.

Article 248 of the Criminal Code deals with the “disparagement of the State and its symbols”. This offence is committed if the Republic of Austria or one of its constituent States is maliciously insulted or degraded in such a way that it is perceived by a broad section of the public. Similarly, a person commits this offence if he maliciously insults, degrades or disparages in the mentioned manner the flag of the Republic of Austria or one of its States shown on a public occasion or at a publicly accessible event, a national emblem attached by an Austrian authority, the federal anthem or a State anthem.

The offence of “prohibited publication (Article 301) is committed if, in contravention of a statutory prohibition, a statement on the content of a non-public hearing before a court of law or an administrative authority is published in a printed document, by broadcast or otherwise in such a way as to make the statement accessible to a broad section of the public.

Insults to Government institutions or officials. Certain public authorities and organisations (including the Federal Parliament and the national army) are protected against defamation by Article 116 of the Criminal Code. National courts have not used these provisions against the press.

Developments in the application of criminal and civil law provisions concerning defamation at domestic level

There is no information available about a possible change of Article 111 of the Penal Code.

On 13.11.2003, the ECtHR found Austria in violation of Article 10 ECHR in Scharsach and News Verlagsgesellschaft mbH case. The applicants were respectively a journalist and the owner and publisher of a weekly newspaper who, in 1995, published an article criticising members of a political party and mentioning a number of them by name. The article alleged that those persons had not been able to dissociate themselves from the extreme right. One of the persons referred to in the article, at the time member of a Regional Parliament and now member of the Austrian Parliament, brought criminal proceedings against the applicants. The domestic courts held that the article insinuated that the person was engaged in neo-Nazi activities but had not proved that this was the case. Hence, they found the applicants guilty of defamation and ordered them to pay a fine. The ECtHR considered that the article had been written in a political context and observed that the limit of criticism was wider for a politician than for a private individual. The Court decided that the article was not to be regarded as a statement of fact, but as a judgment of value on an important subject of public interest and concluded that the interference with the applicants’ rights had been disproportionate to the aim pursued and was not “necessary in a democratic society” (ECtHR, Press Release, 13.11.2003).

Azerbaijan

Defamation is a criminal offence, carrying a maximum sentence of five years' imprisonment (in case of defamation of the President). The relevant provisions make specific reference to politicians and officials. Changes to the relevant legal provisions are apparently being considered. Over the last few years, in a significant number of cases, defamation charges have been brought against journalists.⁷⁷

Information on relevant legal provisions on defamation

Criminal Code

The Criminal Code from September 2000 contains three provisions on insults. While Article 147 provides for punishment of insults in the form of information that the author knew to be false, Article 148 sanctions insults, i.e. statements that undermine someone's reputation or dignity, even if the statement is true.

Article 323 provides for the punishment of anyone who discredits or undermines the reputation of the President of the Republic. The penalty may be up to two years of forced labour or imprisonment. For particularly serious crimes, the sentence is two to five years imprisonment.

Developments in the application of criminal and civil law provisions concerning defamation at domestic level

A19 criticises, inter alia, the existence of specific provisions to protect the "honour and dignity of the President" (Article 106 of the Constitution, Article 323 of the Criminal Code), the fact that defamation and insults are criminal offences (Articles 147 and 148 of the Criminal Code), the lack of any distinction between statements of facts and value judgments and the fact that the burden of proof rests solely on the defence. Similarly, the Civil Code makes provision for compensation for non-pecuniary damage, but sets no upper limit for this, a fact which may give rise to the imposition of fines which might jeopardise the very existence of certain media organisations. Furthermore, Article 50 of the Law on Mass Media provides for an additional penalty of journalists being stripped of their accreditation if they publish defamatory information (A19, Memorandum on Laws of the Republic of Azerbaijan Relating to the Protection of Reputation, 08.2004; A19, 10.06.2004). In September 2003, in a joint statement, the Secretary General of the CoE and the OSCE Representative on Freedom of the Media had already asked the Azerbaijani authorities to bring their legislation on libel into line with European standards. Subsequently, in the spring of 2004, a working group was set up, including journalists and MPs, to revise the relevant legislation (GT-SUIVI.AGO(2004)6 final).

In July 2004, the OSCE Mission in Baku expressed concern about the continuing use of defamation lawsuits against the media (OSCE Baku Office, Press Release, 22.07.2004, see

⁷⁷ See ECHR judgments *Mahmoudov and Agazade v. Azerbaijan*, no. 35877/04, § 49, 18 December 2008 and *Fatullayev v. Azerbaijan*, 40984/07, 18/03/2009 and 04/10/2010, see also the review of action taken by the Government following those judgments: DH-DD(2011)1078).

also OSCE-FOM). According to IHF-AR, there were 40 prosecutions for defamation in 2003 against 18 media outlets, 11 of these against the radical opposition newspaper "Yeni Musavat", and 7 against a more moderate opposition newspaper, "Azadliq" (IHF-AR, 2004). Consequently, following the imposition of crippling fines, a number of opposition newspapers faced serious financial difficulties and had reduced their print run (HRW, 04.08.2004; see also RSF, 26.02.2004).

The following are extracts from Resolution 1614 (2008) of the Parliamentary Assembly of the Council of Europe on the functioning of democratic institutions in Azerbaijan:

“19. As regards freedom of expression, the Azerbaijani authorities should:

19.1. initiate the legal reform aimed at decriminalising defamation and revise the relevant civil law provisions to ensure respect for the principle of proportionality, as recommended in Resolution 1545 (2007); in the meantime, a political moratorium should be reintroduced so as to put an end to the use of defamation lawsuits as a means of intimidating journalists ...”

The following are extracts from the report by the Council of Europe Commissioner for Human Rights, Mr Thomas Hammarberg, on his visit to Azerbaijan, from 3 to 7 September 2007 (CommDH(2008)2, 20 February 2008):

“B. A matter of urgency: the decriminalisation of defamation

69. At the time of the Commissioner's visit, it was reported that there were seven journalists in prison, out of whom four were for libel or defamation under Articles 147 and 148 of the Criminal Code. Both international monitoring bodies and local NGOs claimed that charging individuals for defamation was used as a means to avoid the dissemination of news that could be detrimental to high-ranking officials or to other influential people. According to the parliamentary assembly of the Council of Europe rapporteurs, the number of charges has grown in the last few years. Out of fear of imprisonment journalists are compelled to resort to self-censorship. In 2005, the President, Mr Ilham Aliyev had called for abandoning the use of criminal provisions in matters of defamation, but this was not respected. Some cases, which the Commissioner was informed about point to abusive or unfair imprisonment of journalists.

70. ... Indeed, many journalists remain incarcerated. Mr Eynulla Fatullayev, who was held at the pre-trial detention centres on the premises of the Ministry for National Security is still incarcerated. This journalist had criticised the authorities' and armed forces' conduct during the siege of Khojaly. His critical analysis of the handling of the crisis cost him a two and half year sentence for libel. Furthermore, in a concerning stacking of incriminations, he was sentenced on 30 October 2007 to an additional eight and a half years, this time on charges of terrorism and incitement to racial hatred. When this journalist met the Commissioner, he said that the fact that he had been jailed was evidence of political pressure on him as a journalist. After the decision on this second sentence, he reiterated this comment. The Commissioner mentioned his imprisonment for libel to the authorities and called for his immediate release. The Commissioner once again urges the authorities to release Mr Eynulla Fatullayev.

71. The authorities' response to questions regarding this issue is that actions against journalists are caused by their lack of professionalism, which leads them to writing in a non-responsible manner and ignoring their legal and ethical duties. There should indeed be proper training and education of journalists, who have a responsibility in the exercise of their profession and should follow a code of ethics in line with European standards. At the same time, officials should allow easy access to information and accept criticism inherent to their position of accountability in society.

72. Nevertheless, the fundamental issue here is whether people, in particular but not only journalists, should be deprived of liberty and other criminal law consequences on account of views expressed. The supplementary issue, as already dealt with, is whether, where it still exists as an offence under criminal law, as it is the case in Azerbaijan, the prosecution of

defamation does not in fact lead to instances of abusive prosecution and/or excessive sentences. There is clearly a general trend to move towards a decriminalisation of defamation in Europe today. International standards allow the penalisation of defamation through criminal law but only in cases of hate speech directly intended at inciting violence. To corroborate the requirement of intention, there has to be a direct link between the intention and the likeliness of the violence. ... In most countries, the criminal route is not used: there is a moratorium on such laws. The criminalisation of defamation has a chilling effect on freedom of expression. The legal framework in Azerbaijan provides for a wide range of possibilities for criminalisation, notably for 'damage to honour and reputation'. Work on a draft law on defamation has been going on for more than a year, involving a working group of parliamentarians and media experts, with the support of the OSCE. Emphasis would be shifted from criminal law to civil law.

73. The Commissioner was encouraged by talks he had on this issue with the Minister of Justice. He recommends the launching of an open public debate that would help define a rights-based approach that would remove defamation from the criminal books and offer alternative protection to other rights and interests. Council of Europe experts could provide assistance in that respect. In order to support the holding of that debate, the President could reiterate his 2005 declaration on a moratorium on the use of the criminal provision. The Commissioner recommends, as a first step, the release of all those, who have been criminally prosecuted under the relevant provisions of the criminal code.”

Belgium

Defamation is a criminal offence. The relevant provisions make specific reference to politicians and officials.

Information on relevant legal provisions on defamation

Criminal Code

Chapter V of Part VIII of Book II of the Criminal Code covers offences which damage persons' moral integrity. A shared characteristic of the various offences described in this chapter of the Criminal Code is that they damage the integrity of the person concerned through certain specific features stemming from a failure to provide any detailed information or evidence regarding the alleged offence, or from the way in which the allegation is expressed or publicised or from the relationship between the insulted person and the person making the allegation.

In the Criminal Code, attacks on a person's honour are divided into the following categories: slander and defamation (Articles 443, 444, 446, 447, 450 and 451), malicious disclosure (Article 449), malicious prosecution and slanderous allegation against a subordinate (Article 445) and criminal insult (Article 448). To complete the provisions of Articles 443 to 453, Article 561, 7° of the Criminal Code punishes all insults not provided for otherwise.

Articles 275 et seq. of the Criminal Code deal in particular with abuse directed at ministers, members of legislative chambers and persons exercising public authority or enforcing the law.

Additions were made to Article 447 of the Criminal Code, which sets out the penalties for slanderous allegations against public officials, so as to provide more protection for persons subject to such allegations. The amendment stems from the finding that, in practice, it is often impossible to establish the falsehood of the alleged facts by a decision on the merits in criminal or disciplinary proceedings because the prosecuting authorities decide to discontinue the proceedings concerned, a discharge order is issued by the investigating judge or the time limit for prosecution has lapsed. As a result it was decided to make an addition to Article 447 which now makes it possible to rule on a complaint of slander even when the proceedings in relation to the alleged offence have not given rise to a decision on the merits.

Other measures

Alongside these main measures, there are other texts in Belgian legislation which punish forms of insult or abuse. They relate in particular to insults or abuse aimed at certain people because of their rank or position. They include the Law of 6 April 1847 on insults against the King and members of the royal family, the Law of 20 December 1852 on insults against foreign heads of government, the Law of 12 March 1858 on abuse of diplomatic staff, the Royal Decree of 19 July 1926, as supplemented by Royal Decree No. 36 of 3 December 1934, on damage to the state's reputation or the stability of its currency, and the Law of 10 January 1955 on the disclosure of inventions or manufacturing secrets concerning national defence or state security.

Bosnia and Herzegovina

Defamation was decriminalised in 2002 but the number of civil suits is rising rapidly.

Information on relevant legal provisions on defamation

Only civil liability is provided for by the law.

Pursuant to the Articles 213 to 220 of the Criminal Code of the Bosnia and Herzegovina Federation, and Articles 80 to 87 of the Penal law of the Republic of Srpska, prison sentences were determined for libel and defamation. Considering that the existence and implementation of these provisions had a discouraging effect on journalistic freedoms in Bosnia and Herzegovina, the High Representative for Bosnia and Herzegovina suspended these Articles at the beginning of August 1999. He also ordered the entities (Bosnia and Herzegovina Federation and Republic of Srpska) to adopt, in association with the Office of the High Representative, necessary laws in order to establish legal remedies for libel, defamation and blasphemy in civil suits, following the European Convention of Human Rights.

On 1 November 2002, the High Representative imposed the Law on Protection Against Defamation of the Federation of Bosnia and Herzegovina. The Law entered into force on an interim basis, until such time as the Parliament of the Federation of Bosnia and Herzegovina adopts the same in due form, without amendment and with no conditions attached.

This Law regulates civil liability for damage caused to the reputation of a natural or legal person by making or disseminating a statement of false fact identifying that legal or natural person to a third person. Compensation to victims has to be proportionate to the damage exerted to an individual's reputation

Simultaneously, the High Representative issued a decision to amend the Criminal Code of the Federation of Bosnia and Herzegovina (O.G. Federation of Bosnia and Herzegovina Nos 43/98, 2/99, 15/99 and 29/00) by repealing Chapter XX, Criminal Offences Against Honour and Reputation (Articles 213 through 220).

Developments in the application of criminal and civil law provisions concerning defamation at domestic level

Decriminalisation of defamation and libel has reportedly ended most attempts at limiting freedom of expression through the use of relevant legislation (FH-NT, 2004). However, the number of civil cases is rising rapidly (SP-ML, February 2004; MO, 24.08.2004). Compensation granted has been between 1.000 and 7.000 KM but has on one occasion reached 20.000 KM.

Bulgaria

Defamation is a criminal offence. The relevant provisions make specific reference to politicians and officials. The law stipulates that truth may be relied on in defence against accusations of defamation. Imprisonment for defamation was repealed in 2000

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Information on relevant legal provisions on defamation

Criminal Code

Art. 146: (1) “Anyone who, through word or deed, insults the honour or dignity of a person in his or her presence” shall be punished by a fine. (2) “If the person insulted returns the insult immediately, the court may set both free.”

Art. 147: (1) Criminal defamation, that is “making public infamous information about another person or attributing a crime to another person,” is punishable with a fine. (2) Truth is a defence.

Art. 148: (1) Public insult, that is “spread through printed material or in a different manner, of an official or representative of the public during or in connection with the fulfilment of his duties or function,” is punishable by a fine. (2) Defamation of public officials under the same circumstances and defamation “with severe consequences,” is punishable by a fine.

As part of the 1998 reform, the penalty was changed from imprisonment to criminal fines, which courts, in accordance with Article 78 a of the Penal Code, frequently change to administrative fines.

On 22 July 1999, Parliament amended the Criminal Code so as to eliminate imprisonment as a penalty for insult and defamation. Six months later, Parliament decided to replace prison sentences with fines of 5,000 to 30,000 revalued levas (c. \$2,500-\$15,000 U.S). However,

⁷⁸ For further details, see ECHR judgment *Kasabova v. Bulgaria*, no. 22385/03, §§ 35-39, 19 April 2011.

President Petar Stoyanov vetoed those levels of fines, on the grounds that they were too high in the light of journalists' salaries. As a result, insult and defamation remain criminal offences but are no longer punishable by prison sentences.

Article 147 of the 1968 Criminal Code, as in force since March 2000, provides as follows:

“1. Any person who disseminates an injurious statement of fact about another or imputes an offence to him or her shall be punished for defamation by a fine ranging from three to seven thousand levs, as well as by public reprimand.

2. The perpetrator shall not be punished if he or she proves the truth of the said statement or imputation.”

If the defamation is committed through the printed press, or if the defamed parties are public officials carrying out their duties, it is punishable by a fine ranging from BGN 5,000 to BGN 15,000, as well as by public reprimand (Article 148 §§ 1 (2) and (3) and 2, as in force since March 2000). Since March 2000 all instances of defamation are privately prosecutable offences (Article 161, as in force since March 2000). In 1998 Article 148 survived a challenge of unconstitutionality, with the Constitutional Court ruling that increased penalties where the defamed parties were public officials did not disproportionately restrict freedom of expression (реш. № 20 от 14 юли 1998 г. по к. д. № 16 от 1998 г., обн., ДВ, бр. 83 от 21 юли 1998 г.).

The mens rea for the offence of defamation can only be direct intent or oblique intent (recklessness), not negligence (Article 11(4)). Mens rea, in the form of intent or negligence, is an essential element of any criminal offence (Article 9 § 1 and Article 11 §§ 1, 2 and 3).

1. In a judgment of 26 May 2000 (реш. № 111 от 26 май 2000 г. по н. д. № 23/2000 г., ВКС, II н. о.) the Supreme Court of Cassation held that provided that, prior to publication, journalists checked their information in line with the practice established in the profession or with the internal rules of the relevant medium, by using the sources available in practice, they could not be held to have acted wilfully or even negligently and were not guilty of defamation. It went on to say that, owing to the accessory nature of a civil party claim, the general rule of tort law that fault was presumed was not applicable to the examination of tort claims in criminal defamation proceedings. In such proceedings, the rules governing fault as an element of the tort of defamation were those of the criminal law. The court also held that under Bulgarian law strict liability could not be applied in respect of defamation, and referred to the constitutional principle that public officials were subject to wider limits of acceptable criticism than private individuals.

Article 78a § 1, as in force at the relevant time, mandated the courts to replace convicted persons' criminal liability with an administrative punishment – a fine ranging from 500 to 1,000 levs – if (i) the offence of which they had been convicted was punishable by up to two years' imprisonment or a lesser penalty, in respect of an intentional offence, (ii) they had not previously been convicted of a publicly prosecutable offence and their criminal liability had not previously been replaced by an administrative punishment, and (iii) the pecuniary damage caused by the criminal act had been made good. The administrative fine could not be higher than the criminal fine envisaged for the offence (Article 78a § 5). Along with the fine the court could impose occupational disqualification of up to three years, if such a punishment was envisaged for the offence (Article 78a § 4).

According to the doctrine, to make out the defence of truth under Article 147 § 2, defendants do not need to prove that a complainant has been convicted by means of a final decision; the institution and outcome of criminal proceedings against the complainant are irrelevant (Раймундов, П., Обида и клевета, София, 2009 г., стр. 157 58).

Civil Code

Under civil law, both natural and legal persons may institute proceedings for insult, slander and libel. Natural persons can claim moral as well as material damages; legal persons can only claim material damages. The defendant bears the burden of proof on the issue of truth.

Developments in the application of criminal and civil law provisions concerning defamation at domestic level

In July 1998, the Constitutional Court rejected a motion of the members of Parliament for full decriminalization of defamation, arguing that there was a need for effective protection of human dignity in a democratic society and that human dignity was of central value and right in the Bulgarian constitution. The Constitutional justices justified the special protection afforded by the Penal Code to public officials and other government representatives with the explanation that "the criminal provision protects not only the individual but also the prestige of the relevant institution".

In an official statement, the Ministry of the Judiciary maintains that the Bulgarian defamation law is in conformity with the obligations following from the international human rights treaties ratified by the state and having become a part of its domestic legislation pursuant to Article 4 of the Constitution and more precisely with the provisions of the European Convention on Human Rights and Fundamental Freedoms.

According to the Bulgarian authorities, the amount of fines imposed upon journalists in libel cases seems to have decreased following amendments to the Criminal Code in 2000. Some courts continue to impose heavy sentences with disproportionate fines. (Several NGOs criticise this situation (Bulgarian Helsinki Committee, AR 2003 ; RSF-AR, 2004).

While, the number of defamation cases has increased between 2001 and 2003 (Bulgarian Helsinki Committee, AR 2003) the number of convicted journalists is relatively low. According to the Bulgarian Statistical Institute only eleven people were sentenced for libel in 2004. Seven people were sentenced under Article 148, paragraph 1 and one person under Article 148, paragraph 2. Information in the Country Reports on Human Rights Practices – 2004 (Bureau of Democracy, Human Rights and Labour, February, 28, 2005) shows that fines imposed can be considered reasonable and range from 2000 \$ (3000 leva) to 6670 \$ (10 000) leva for libel and 3335 \$ (5000 leva) to 10000 \$ (15000 leva) for slander.

RSF reports, in its Annual Report 2003, that Articles 146, 147 and 148 of the current Media Law, providing for fines, were used against journalists who criticised political figures for corruption (RSF-AR, 2003).

Croatia

Defamation is a criminal offence, carrying a maximum sentence of one year's imprisonment. The law stipulates that truth may be relied on in defence against accusations of defamation. In 2004, the scope of criminal liability was reduced to exclude, under certain circumstances, the media. In recent times, several cases of defamation charges brought against journalists have been reported.

A new criminal code was passed on 26 October 2011 and will enter into force on 1 January 2013. Both this forthcoming version and the existing version of the criminal code consider acts of defamation as criminal offences. However, such acts are only punishable by fines and may only be prosecuted through individual complaints. Article

203 of the current criminal code rules out criminal liability for journalists in the event of disclosure of defamatory content in the context of official public duties, on the grounds that defamation could not be considered the sole aim underlying disclosure of such information⁷⁹.

Information on relevant legal provisions on defamation

In Article 35, the Constitution of the Republic of Croatia explicitly guarantees to everyone respect for and the legal protection of their personal and family life (i.e. the privacy), dignity, reputation and honour.

Criminal Code

A private criminal law suit for alleged violation of reputation can be brought against the author of the defamatory information not only by natural persons (individuals), but also by legal persons (business enterprises, trade unions, political parties, various citizens' associations), even by bodies which do not have the status of legal persons (the so-called *ius standi in iudicio*), like the Government or Ministries. Only a factual allegation (never a value judgment), whose truth or falsity may be determined for all people mostly in the same manner, may be termed a defamatory allegation. The private plaintiff has to prove that the only aim of the factual allegation on the part of the accused was to harm the honour and reputation of the private plaintiff. (Criminal Code, Article 203, amended July 2004). This way the burden of proof for the criminal offence of defamation is placed on the private plaintiff.

Article 200 of the Criminal Code provides for a fine up to 150 daily incomes or by imprisonment not exceeding six months for whoever exposes or disseminates a matter which is false and can damage honour or reputation (paragraph 1), and if this has been done through the press, radio, television, in front of a number of persons, at a public assembly or in another way in which the defamation becomes accessible to a large number of persons (paragraph 2) – a fine up to 300 daily incomes or imprisonment not exceeding one year. Also, paragraph 3 prescribes that, if the defendant in pending criminal proceedings proves the truth of his allegation or the existence of justified reasons for belief in the veracity of the matter he has asserted or disseminated, he shall not be punished for defamation (but may be punished for insult in line with Article 199 or for reproaching someone with a criminal offence in line with Article 202).

Article 203 of the Criminal Code prescribes that there shall be no criminal offence of defamation if the allegation is realized and made accessible to other persons in journalistic work (as well as scientific or literary works, works of art or public information, political or other public or social activity etc., i .e. public defamation), unless, from the manner of expression and other circumstances, it clearly follows that such conduct was only aimed at damaging the honour or reputation of another. This leads the Croatian authorities to conclude that, publishing information of public interest or acting in public interest shall not be prosecuted as the criminal act of defamation.

⁷⁹ See ECHR judgment *Europapress Holding d.o.o. v. Croatia*, no 25333/06, 22 October 2009.

Due to couple of recent (first degree) suspended sentences for public defamation, the Croatian authorities have prepared amendments to the Criminal Code. The so-called "public defamation" (through media or at a public assembly for instance) as an aggravated form of the offense have been deleted (Paragraph 2 of Article 200). Additionally, prison sentence for defamation (Paragraph 1 of Article 200) has been deleted and the perpetrator, according to this proposal, shall be punished only by fine. The amendments have been sent to the regular parliamentary procedure.

Civil Code

Civil law liability for defamation has been prescribed by means of liability for damage – the law entitles the injured party to compensation for pecuniary and non-pecuniary damage. The general piece of legislation regulating the liability for damage is the Civil Obligations Act.

The Civil Obligations Act valid until recently prescribed that in civil cases the financial compensation for non-material damages could be awarded only to natural persons (as a compensation for actual mental anguish and fear caused by the violation of one's reputation) and not to legal persons.

The new Civil Obligations Act (in force since 1 January 2006) introduces new elements in the concept of damage, namely the concept of non-pecuniary damage: it states that the violation of personality rights itself represents non-pecuniary damage. Both natural and legal persons are entitled to the protection of their personality rights. As compensation for non-pecuniary damage, the Act prescribes the right to the publication of a judgement or correction (Article 1099), the right to just monetary compensation and the conditions for the award of monetary compensation (Article 1110) and makes possible the submission of a request for the termination of the violation of personality rights and elimination of its consequences (Article 1048).

In addition to the Civil Obligations Act, civil law liability for defamation is also regulated by the Media Act (2004) which applies if the damage in question is caused by the publication of information in the media. Non-pecuniary damage, pursuant to this Act, is as a rule compensated by the publication of the correction of the information and of the apology from the publisher (or by monetary compensation in accordance with general legislation). The right to bring action for compensation for non-pecuniary damage is granted to a person who previously requested the publisher to publish a correction of the disputed information, or to apologize when the correction is not possible.

Developments in the application of criminal and civil law provisions concerning defamation at domestic level

With the Act on Amendments to the Criminal Code of July 2004 and the abolition of the provision concerning what is known as the "cascade liability" of editors-in-chief and other persons (Article 48), the Croatian legislation concerning defamation was modernized, and the possibility for the compensation of damage through a civil lawsuit in relation to the editor-in-chief and other persons remained outside the application of criminal law repression.

Several cases of suspended prison sentences in defamation cases have been signalled by IGOs and NGOs, such as that of a former editor of a bi-weekly magazine who was sentenced to 70

days imprisonment for refusal to pay a fine after having been condemned for libel; however, the journalist did not serve the prison term because the fine was paid by the Ministry of Justice (SP-ML, June 2004; OSCE, 13.07.2004; RSF, 15.07.2004; SEEMO, 20.07.2004; MO, 17.08.2004).

In 2004, out of 311 persons indicted for the criminal offence of defamation, 59 were found guilty. The Croatian authorities point out the fact that no journalist has ever served a prison sentence for defamation in Croatia⁸⁰.

Cyprus

Defamation was decriminalised in 2003, except as regards foreign heads of State and foreign officials and the National Guard. Insulting the latter is a criminal offence carrying a maximum sentence of two years' imprisonment⁸¹.

Information on relevant legal provisions on defamation

On 18 June 2003, the criminal legislation for defamation, libel and insult was amended by Law 84(I)/2003 which repealed Criminal liability and imprisonment provisions for defamation, libel and insult in the Criminal Code (Cap. 154). Cypriot Defamation Law now falls within the sphere of civil law.

In the Criminal Code, however, there is a specific provision (section 68) which envisages criminal liability for insulting a foreign sovereign, ambassador or any other foreign state official. Further, section 50D of the code provides for criminal liability for insulting the National Guard. Such an offence is punishable with imprisonment not exceeding two years, or with a fine not exceeding 1,500 Cyprus pounds, or with both such penalties.

Czech Republic

Defamation is a criminal offence, carrying a maximum sentence of two years' imprisonment. The law stipulates that truth may be relied on as a means of defence.

Information on relevant legal provisions on defamation

Criminal Code

Art. 199: "Spreading false, alarming information," is punishable by up to one year imprisonment or a fine.

Art. 206: "Defamation, which consists of communicating false information that damages a person's standing within the community or causes other serious harm," is punishable by up to one year imprisonment. If the defamation is communicated through the mass media, the punishment is up to two years imprisonment.

⁸⁰ For more recent developments, see <http://www.osce.org/fom/90347>.

⁸¹ See ECHR judgment *Alithia Publishing Company Ltd and Constantinides v. Cyprus*, no. 17550/03, 22 May 2008.

Other provisions of the criminal code specify that the information disseminated has to be false and that the information was communicated with the intention of harm the claimant.

Defamation cases are only dealt with by criminal law, if it can be proven that the alleged defamation was so grave that civil law procedures are not adequate.

The criminal code also protects the reputation and standing of state bodies.

A provision of the Czech Criminal Code making defamation of the President punishable by up to two years in prison was repealed as from January 1998.

A similar provision criminalising defamation of the Government, Parliament and Constitutional Court was struck down by the Constitutional Court in 1994.

Civil Code

A person's reputation and human dignity are protected under civil law.

Developments in the application of criminal and civil law provisions concerning defamation at domestic level

The Constitutional Court has in the past made frequent reference to the case law of the European Court of Human Rights.

In 2004, 501 cases on alleged violations of a person's reputation under civil law were decided. They mostly involved cases brought against journalists by celebrities. In the same year, 24 cases of defamation under the criminal code were ruled in courts, of which 19 ended in the conviction of the defendant but none in imprisonment.

Parliament did not include defamation and insult of the state body in its draft for the new criminal code. However, the Constitutional and legal Committee during its discussion of the law, added the crime of defamation to the draft code, because it was doubted whether protection through civil law would provide sufficient protection. A final version of the criminal code has not been approved yet.

Denmark

Defamation is a criminal offence, carrying a maximum sentence of two years' imprisonment. The law stipulates that public interest and truth may be relied on in defence against accusations of defamation.

Information on relevant legal provisions on defamation

Criminal Code

The Danish legal provisions on defamation appear in sections 267-273 of the Criminal Code. These offences are liable to private prosecution.

Section 267. “Any person who violates the personal honour of another by offensive words or conduct or by making or spreading allegations of an act likely to disparage him in the esteem of his fellow citizens, shall be liable to a fine or to imprisonment for any term not exceeding four months.”

Section 268. “If an allegation has been made or disseminated in spite of one's knowledge to the contrary, or if the author has had no reasonable ground to regard it as true, he shall be guilty of defamation and liable to imprisonment for any term not exceeding two years. If the allegation has not been made or disseminated publicly, the punishment may, in mitigating circumstances, be reduced to a fine.”

Section 269. “An allegation shall not be punishable if its truth has been established or if the author of the allegation in good faith has been under an obligation to speak or has acted in lawful protection of obvious public interest or of the interest of himself or of others.

(2) Punishment may be remitted where evidence is produced which justifies the grounds for regarding the allegation as true.”

Section 270. “Where the form in which the allegation is made is unduly offensive, the penalty described in Section 267(1) of this Act may be inflicted, even where the allegation is true; the same shall apply if the author had no reasonable grounds for making the insult.

(2) If the injured party demands punishment only under this section, the offender shall not be allowed to prove the truth of the accusation, unless this is clearly justified by considerations of public policy.”

Section 271. “In the case of an allegation of a punishable act, the person who made the allegation shall not be allowed to prove the committing of such an act if the accused has already been acquitted of it in the home country or abroad.

(2) Proof of conviction of a punishable act shall not exempt the author of the allegation from punishment if, having regard to the nature of the offence, the person convicted of it had a reasonable claim that the act in question should not now have been revealed.”

Section 272. “The penalty prescribed in Section 267 of this Act may be remitted if the act has been provoked by improper behaviour on the part of the injured person or if he is guilty of retaliation.”

Section 273. “If a defamatory allegation is unjustified, a statement to that effect shall, at the request of the injured party, be mentioned in the judgment.

(2) Any person who is found guilty of any defamatory allegation may, at the request of the injured party, be ordered to pay a sum fixed by the court to meet the cost of publishing, in one or several public papers, either the full report of the sentence of this together with the court's reasoning. This shall apply even though the judgment was merely one of annulment of the allegation under Subsection (1) above.”

Section 121 of the Criminal Code provides that a person who assaults a public servant with insults, abusive language or other offensive words or gestures is liable to a fine or a maximum sentence of 6 months imprisonment. It is the public prosecutor who initiates the proceedings. According to information provided by the Danish authorities, it appears from its wording that the scope of application of section 121 is not defamation as such, but rather verbal attacks on the categories of persons mentioned by means of insults, abusive language or other offensive words or gestures (e.g. spitting).

Furthermore, section 266 b) provides that “any person who, publicly or with the intention of wider dissemination, makes a statement or imparts other information by which a group of people are threatened, insulted or degraded on account of their race, colour, national or ethnic origin, religion or sexual inclination shall be liable to a fine or to imprisonment for a term not exceeding two years”. The Danish authorities specify that this provision deals with information by which certain groups of people threatened, insulted or degraded (so-called hate speech).

Developments in the application of criminal and civil law provisions concerning defamation at domestic level

Section 267, paras. 2 and 3, and section 267a of the Criminal Code, which made specific mentioning of public officials, were revoked in 2004.

When Danish courts decide on a case concerning defamation, they examine the case in the light of the European Convention on Human Rights and they apply the test laid down in the case law of the European Court of Human Rights. The provisions on defamation are thus applied and sanctions measured out within in the limits set out by the European Court on Human Rights. The courts therefore very often specifically refer to the European Convention for Human Rights.

For example, in 2003, the Danish Supreme Court acquitted a defendant from the charge of defamation, making reference inter alia to Article 10 of the European Convention on Human Rights and specifically to judgment of 26 February 2002 from the European Court of Human Rights, *Unabhängige Initiative Informationsvielfalt v. Austria*. (Ugeskrift for Retsvæsen, 2003, pp. 2044)

Estonia

Defamation was decriminalised in 2002, except in the following cases: defamation of persons enjoying international immunity of the State (article 247), state authorities (article 275), official symbols of the Republic of Estonia (article 245), a judge or a court (article 305); the maximum sentence is two years' imprisonment⁸².

Information on relevant legal provisions on defamation

Constitution

Article 17

“No one's honour or good name shall be defamed.”

⁸² See the application communicated by the ECHR on 11 February 2011, *Delfi AS v. Estonia*, no. 64569/09, concerning the conviction of the operator of an information portal on the Internet, for a comment posted by a user using a pseudonym.

Article 19

“(1) Everyone has the right to free self-realisation.

(2) Everyone shall honour and consider the rights and freedoms of others, and shall observe the law in exercising his or her rights and freedoms and in fulfilling his or her duties.”

Article 45

“(1) Everyone has the right to freely disseminate ideas, opinions, beliefs and other information by word, print, picture or other means. This right may be restricted by law to protect public order, morals, and the rights and freedoms, health, honour and the good name of others. This right may also be restricted by law for state and local government public servants, to protect a state or business secret or information received in confidence, which has become known to them by reason of their office, and the family and private life of others, as well as in the interests of justice.

(2) There is to be no censorship.”

Penal Code

The Penal code entered into force on 1 September 2002 decriminalised defamation, except as regards defamation towards the state and state authorities, which is punishable up to two years of imprisonment or fine.

§ 245. Defamation of official symbols of Republic of Estonia

“A person who tears down, damages, profanes or otherwise defames the national flag, national coat of arms or any other official symbol of the Republic of Estonia, or defames the national anthem, shall be punished by a pecuniary punishment or up to one year of imprisonment.”

§ 247. Defamation and insulting of persons enjoying international immunity

(1) “Defamation or insulting of a person enjoying international immunity or of a family member of such person is punishable by a pecuniary punishment or up to 2 years’ imprisonment.

(2) The same act, if committed by a legal person, is punishable by a pecuniary punishment.”

§ 275. Defamation or insult of representative of state authority or other person protecting public order

“Defaming or insulting a representative of state authority or any other person protecting public order, if committed in connection with the performance of his or her official duties by such person, is punishable by a pecuniary punishment or up to 2 years’ imprisonment.”

§ 305. Defamation and insulting of court or judge

“Defamation or insulting of a court or judge in connection with their participation in administration of justice is punishable by a pecuniary punishment or up to 2 years’ imprisonment.”

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 83, 557)

Civil Code

§ 23. Defamation

“(1) A person has the right to demand the termination of defamation, the refutation of defamatory information concerning this person and compensation for moral and proprietary damage caused by the defamation by a court proceeding, unless the defamer proves the accuracy of the information.

(2) If inaccurate information is disseminated through a mass medium, it shall be refuted in the same mass medium.

(3) A document which contains inaccurate information shall be replaced.

(4) If defamatory information is disseminated in a manner different from that provided for in subsections (2) and (3), a court shall specify the manner in which the information is to be refuted.”

§ 42. Defamation

“(1) A legal person has the right to demand the termination of defamation, the refutation of defamatory information concerning this person and compensation for proprietary damage caused by the defamation by a court proceeding, unless the defamer proves the accuracy of the information.

(2) Defamatory information shall be refuted pursuant to the procedure provided for in subsections 23 (2)-(4).

(3) The provisions of subsection (1) do not apply to the state or local governments or in other cases prescribed by law.”

Law of Obligations Act

Paragraph 2 of section 134 of the Obligations Act (Võlaõigusseadus) provides:

“In the case of an obligation to compensate for damage arising from ... violation of a personality right, in particular from defamation, the obligated person shall compensate the aggrieved person for non-pecuniary damage only if this is justified by the gravity of the violation, in particular by physical or emotional distress.”

Section 1045 of the Obligations Act stipulates that the causing of damage is unlawful if, inter alia, the damage is caused by violation of a personality right of the victim. The Obligations Act further provides:

Section 1046 – Unlawfulness of damaging personality rights

“(1) The defamation of a person, inter alia by passing undue judgment, by the unjustified use of the name or image of the person, or by breaching the inviolability of the private life or another personality right of the person, is unlawful unless otherwise provided by law. Upon the establishment of unlawfulness, the type of violation, the reason and motive for the violation and the gravity of the violation relative to the aim pursued thereby shall be taken into consideration.

(2) The violation of a personality right is not unlawful if the violation is justified considering other legal rights protected by law and the rights of third parties or public interests. In such case, unlawfulness shall be established on the basis of the comparative assessment of different legal rights and interests protected by law.”

Section 1047 – Unlawfulness of disclosure of incorrect information

“(1) The violation of personality rights or interference with the economic or professional activities of a person by way of disclosure of incorrect information or by incomplete or misleading disclosure of information concerning the person or the activities of the person, is

unlawful unless the person who discloses such information proves that, upon the disclosure thereof, the person was not aware and was not required to be aware that such information was incorrect or incomplete.

(2) The disclosure of defamatory matters concerning a person, or matters which may adversely affect the economic situation of a person, is deemed to be unlawful unless the person who discloses such matters proves that the statement is true.

(3) Regardless of the provisions of subsections (1) and (2) of this section, the disclosure of information or other matters is not deemed to be unlawful if the person who discloses the information or other matters or the person to whom such matters are disclosed has a legitimate interest in the disclosure, and if the person who discloses the information has checked the information or other matters with a thoroughness which corresponds to the gravity of the potential violation.

(4) In the case of the disclosure of incorrect information, the victim may demand that the person who disclosed such information refute the information or publish a correction at the person's expense, regardless of whether the disclosure of the information was unlawful or not."

Section 1055 – Prohibition on damaging actions

"(1) If unlawful damage is caused continually or a threat is made that unlawful damage will be caused, the victim or the person who is threatened has the right to demand that behaviour which causes damage be terminated or the making of threats of such behaviour be refrained from. In the case of bodily injury, damage to health, violation of inviolability of personal life or any other personality rights, it may be demanded, inter alia, that the tortfeasor be prohibited from approaching others (restraining order), the use of housing or communication be regulated, or other similar measures be applied.

(2) The right to demand that behaviour which causes damage as specified in subsection (1) of this section be terminated does not apply if it is reasonable to expect that such behaviour can be tolerated in human coexistence or due to significant public interest. In such a case the victim has the right to make a claim for compensation for damage caused unlawfully.

..."

Information Society Services Act (Infoühiskonna teenuse seadus) provides as follows:

Section 8 – Restricted liability upon mere transmission of information and provision of access to public data communications network

"(1) Where a service is provided that consists of the mere transmission in a public data communication network of information provided by a recipient of the service, or the provision of access to a public data communication network, the service provider is not liable for the information transmitted, on condition that the provider:

- 1) does not initiate the transmission;
- 2) does not select the receiver of the transmission;
- 3) does not select or modify the information contained in the transmission.

(2) The acts of transmission and of provision of access in the meaning of paragraph 1 of this section include the automatic, intermediate and transient storage of the information transmitted, in so far as this takes place for the sole purpose of carrying out the transmission in the public data communication network, and provided that the information is not stored for any period longer than is reasonably necessary for the transmission."

Section 9 – Restricted liability upon temporary storage of information in cache memory

"(1) Where a service is provided that consists of the transmission in a public data communication network of information provided by a recipient of the service, the service provider is not liable for the automatic, intermediate and temporary storage of that information, if the method of transmission concerned requires caching for technical reasons

and the caching is performed for the sole purpose of making more efficient the information's onward transmission to other recipients of the service at their request, on condition that:

- 1) the provider does not modify the information;
- 2) the provider complies with conditions on access to the information;
- 3) the provider complies with rules regarding the updating of the information, specified in a manner widely recognised and used in the industry;
- 4) the provider does not interfere with the lawful use of technology, widely recognised and used by the industry, to obtain data on the use of the information;
- 5) the provider acts expeditiously to remove or to disable access to the information it has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a court, the police or a state supervisory authority has ordered such removal."

Section 10 – Restricted liability upon provision of information storage service

"(1) Where a service is provided that consists of the storage of information provided by a recipient of the service, the service provider is not liable for the information stored at the request of a recipient of the service, on condition that:

- 1) the provider does not have actual knowledge of the contents of the information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent;
- 2) the provider, upon obtaining knowledge or awareness of the facts specified in subparagraph 1 of this paragraph, acts expeditiously to remove or to disable access to the information.

(2) Paragraph 1 of this section shall not apply when the recipient of the service is acting under the authority or the control of the provider."

Section 11 – No obligation to monitor

"(1) A service provider specified in sections 8 to 10 of this Act is not obliged to monitor information upon the mere transmission thereof or provision of access thereto, temporary storage thereof in cache memory or storage thereof at the request of the recipient of the service, nor is the service provider obliged to actively seek information or circumstances indicating illegal activity.

(2) The provisions of paragraph 1 of this section do not restrict the right of an official exercising supervision to request the disclosure of such information by a service provider.

(3) Service providers are required to promptly inform the competent supervisory authorities of alleged illegal activities undertaken or information provided by recipients of their services specified in sections 8 to 10 of this Act, and to communicate to the competent authorities information enabling the identification of recipients of their service with whom they have storage agreements.

Developments in the application of criminal and civil law provisions concerning defamation at domestic level

Questions concerning an information published by a journalist can be solved by an independent body established by the Estonian Newspaper Association called Pressinõukogu (Estonian Press Council).

Finland

Defamation is a criminal offence. The relevant provisions make specific reference to the Finnish flag. The law stipulates that public interest may be relied on in defence against accusations of defamation.

Information on relevant legal provisions on defamation

Criminal Code

In Finland, the libel of State authorities and symbols as such has not been established as a criminal offence. Under section 8 of the Act concerning the Finnish flag (Statutes of Finland 380/1978), a person who ruins or disrespectfully uses the Finnish flag will be sentenced with a fine.

Criticism against politicians and public servants is only punishable subject to certain conditions. Under chapter 24, section 9, subsection 1, paragraph 1 of the Criminal Code (Statutes of Finland 531/2000), a person who spreads false information or a false insinuation about another person so that the act is conducive to causing damage or suffering to that person, or subjecting that person to contempt, shall be sentenced for defamation. Under paragraph 2, a person who makes a derogatory comment on another person otherwise than in a manner referred to in subparagraph 1 shall also be sentenced for defamation. Under section 9, subsection 2, criticism that is directed at a person's activities in politics, business, public office, public position, science, art or in a comparable public position and that does not obviously overstep the limits of correctness shall not constitute defamation under paragraph 2 of section 1.

Developments in the application of criminal and civil law provisions concerning defamation at domestic level

The number of persecutions, convictions and fines imposed on media companies and journalists have reportedly increased in defamation cases over the past 10 years (FH-FP, 2004; IPI-AR, 2003).

France

Defamation is a criminal offence, with penalties limited to a fine (a prison sentence of one year and / or a fine applies solely to cases relating to a person or group's origin, belonging or not belonging to an ethnic group, nation, race, religion or to their gender, sexual orientation or disability). The relevant provisions make specific reference to political figures and public officials. Since 2004, defamation of foreign heads of State is no longer a criminal offence . The law stipulates that truth and good faith may be relied on in defence against accusations of defamation.⁸³

⁸³ Ultimately, the idea of decriminalising defamation in French law to make it a civil offence, deriving from the work of the Guinchard committee and mentioned in 2008 by the President of the Republic, was not followed up. This offence still appears in the law of 1881 (articles 29 to 32) and has been left untouched by any recent legislative measures. The draft of the new code of criminal procedure being prepared at the Ministry of Justice does not provide for any changes to the scope of offences committed via the media.

Information on relevant legal provisions on defamation

In French law, defamation is both a tort (a civil wrong) and a criminal offence. It consists of any allegation of fact which constitutes an attack on the honour or reputation of a person (Article 29 of the 1881 Press Act). If found guilty, the editor, publisher or author may be ordered to pay a criminal fine to the State in addition to civil damages to the aggrieved party.

The major amendment under the Law dated 9 March 2004 was the abrogation of such a crime as insult against the head of a foreign state. The amendment was enacted pursuant to the relevant ruling of the European Court of Human Rights .

Under the Law dated 15 June 2000 most terms of imprisonment for libel or insult were repealed.

Criminal Code

Article R. 621-1 of the Criminal Code:

“Non-public defamation of a person shall be punishable by the fine imposed for 1st-category summary offences.

The truth of defamatory facts may be established in accordance with the legislation on freedom of the press.”

Article R. 624-3 of the Criminal Code (as amended by Decree No. 2005-284 of 25 March 2005):

“Non-public defamation of a person or group of persons on the ground of their origin or their actual or assumed membership or non-membership of a specific ethnic group, nation, race or religion shall be punishable by the fine imposed for 4th-category summary offences.

The same penalty shall apply for non-public defamation of a person or group of persons on the ground of their sex, sexual orientation or disability.”

Law of 29 July 1881 on the Freedom of the Press

Article 23 (as amended by Law 2004-575 of 21 June 2004):

“Persons who, in speeches, shouts or threats made or uttered in public places or meetings, or in written or printed matter, drawings, engravings, paintings, emblems, images or any other written, spoken or pictorial medium sold or distributed, offered for sale or exhibited in public places or meetings, or on placards or posters on public display, or through any means of communication to the public by electronic means, have directly and successfully incited another or others to commit an offence shall be liable to punishment as accomplices to a serious or lesser indictable offence.”

Article 24 (as amended by Law 2004-1486 of 30 December 2004):

“ ... Persons who, by one of the means referred to in Article 23, have incited others to discrimination, hatred or violence towards a person or a group of persons on the ground of their origin or their membership or non-membership of a specific ethnic group, nation, race or religion, shall be liable to a term of imprisonment of one year and/or a fine of € 45 000.

The penalties described in the previous paragraph shall be applied to persons who, by the same means, have incited others to hatred or violence towards a person or a group of persons on the ground of their sex, sexual orientation or disability and caused, with regard to the same people, the type of discrimination described in Articles 225-2 and 432-7 of the Criminal Code. ...”

Article 26

“Insults to the President of the Republic by one of the means described in Article 23 shall be punished by a fine of € 45 000. ...”.

Article 29

“It shall be defamatory to make any statement or allegation of a fact that damages the honour or reputation of the person or body of whom the fact is alleged. The direct publication or reproduction of such a statement or allegation shall be an offence, even if expressed in tentative terms or if made about a person or body not expressly named but identifiable by the terms of the impugned speeches, shouts, threats, written or printed matter, placards or posters.

Any abusive or contemptuous language or invective not containing an allegation of fact shall constitute an insult.”

Article 30

“Defamation committed by one of the means referred to in Article 23 against courts, tribunals, the army, the navy or the air force, State institutions and public authorities shall be punished by a fine of € 45 000”.

Article 31

“The same penalty shall apply to defamation committed by the same means by reference to the functions or capacity of one or more members of a government department, one or more members of one of the two legislative chambers, a civil servant, a representative or officer of the law, a minister of religion in receipt of a State salary, a citizen temporarily or permanently responsible for a public service or discharging a public mandate, a member of a jury or a witness on the basis of his/her witness statement.

Defamation relating to the private lives of these persons is covered by Article 32 below.”

Article 32 (as amended by Law 2004-1486 of 30 December 2004):

“Defamation of private individuals by one of the means referred to in Article 23 shall be punished by a fine of € 12 000.

Defamation by one of these means of a person or group of persons on the ground of their origin or their membership or non-membership of a specific ethnic group, nation, race or religion shall be liable to a term of imprisonment of one year and/or a fine of €45 000.

The penalty described in the previous paragraph shall also apply for defamation by the same means of a person or group of persons on the ground of their sex, sexual orientation or disability. ...”

Article 35

“The truth of the defamatory allegation, but only when it relates to functions, may be established in the ordinary way in the case of allegations against State institutions, the army, navy or air force, the public authorities and any of the persons listed in Article 31.

The truth of defamatory and insulting allegations may also be established against directors or administrators of any public industrial, commercial or financial company.

The truth of the defamatory allegations may always be established except:

- a) when the allegation concerns the person’s private life;
- b) when the allegation refers to events dating back more than ten years;
- c) when the allegation refers to events in respect of which an amnesty has been granted or which are time-barred or gave rise to a conviction which has been expunged by rehabilitation or review.

Subparagraphs (a) and (b) above shall not apply when the facts are offences provided for and punishable under Articles 222-23 to 222-32 and 227-22 to 227-27 of the Criminal Code and were committed against a minor.

In the cases provided for in the previous two paragraphs, rebutting evidence is reserved. If proof of the defamatory allegation is established, the defendant shall be acquitted. In any other circumstances and in respect of any other unspecified person, when the allegation has given rise to proceedings brought by the prosecution service or a complaint lodged by the defendant, while the resulting investigation takes its course the proceedings and trial for defamation shall be suspended.”

Developments in the application of criminal and civil law provisions concerning defamation at domestic level

Following the ECtHR’s judgment in the Colombani case (judgment of 25 June 2002), the offence of insulting a foreign Head of State was repealed and Article 36 of the Press Law was abrogated in March 2004.

No progress can be noted concerning the specific offences of protecting public institutions and authorities against defamation, provided in the Press Law of 1881.

On 22 December 2004, the Senate passed legislation creating a council against discrimination and for equality (HALDE). Organisations fighting sexism and homophobia will be able to bring complaints for insult or defamation if they took place within the last five years. The new law, that carries penalties of prison sentences, brings legislation into line with that on racism and anti-Semitism. (RSF 23/12/04)

Following a judgment of the Court of Cassation of 11.06.2002, in the course of court proceedings in a libel case, journalists are now allowed, for their defence, to provide documents which would normally be covered by the rule of secrecy of preliminary investigations pending in other cases (such as information from preliminary investigations) (Cour de Cassation, appeal n° 01-85.237, 11.06.2002).

In 2003, 422 people were convicted on cases of insult and defamation.

Georgia

Defamation was decriminalised in 2004.

Information on relevant legal provisions on defamation

Criminal liability for libel was revoked by the Parliament of Georgia on 26 June 2004.

Developments in the application of criminal and civil law provisions concerning defamation at domestic level

Adopted on 15 July 2004, the Law on Freedom of Speech and Expression introduced a new approach to the defamation cases. Under the Law, the burden of proving that information is incorrect lies with the plaintiff. It also draws a distinction between defamation of a private person (Article 13) and defamation of a public person (Article 14), setting stricter requirements for proving the defendant's guilt in the latter case. By the earlier legislative amendments of 26 June 2004, the Parliament of Georgia repealed Article 148 of the Criminal Code (defamation) and reformulated Article 18 § 2 of the Civil Code (lifting the defendant's burden of proof in defamation cases).

Germany

Defamation is a criminal offence, carrying a maximum sentence of five years' imprisonment. The relevant provisions make specific reference to politicians and officials. The law stipulates that truth and (in certain cases) good faith may be relied on in defence against accusations of defamation.⁸⁴

Information on relevant legal provisions on defamation

Defamation is both a criminal offence and a tort.

Insults and defamation in the narrower sense are defined in Sections 185ff. of the German Criminal Code (Strafgesetzbuch) (StGB). The wording is as follows:

Section 185 Insult

“Insult shall be punished with imprisonment for not more than one year or a fine and, if the insult is committed by means of violence, with imprisonment for not more than two years or a fine.”

Section 186 Malicious Gossip

“Whoever asserts or disseminates a fact in relation to another, which is capable of maligning him or disparaging him in the public opinion, shall, if this fact is not demonstrably true, be

⁸⁴ See the ECHR decision of inadmissibility, Metzger v. Germany, no. 56720/00, 17 November 2005

punished with imprisonment for not more than one year or a fine and, if the act was committed publicly or through the dissemination of writings (Section 11 subsection (3)), with imprisonment for not more than two years or a fine.”

Section 187 Defamation

“Whoever, against his better judgment, asserts or disseminates an untrue fact in relation to another, which maligns him or disparages him in the public opinion or is capable of endangering his credit, shall be punished with imprisonment for not more than two years or a fine, and, if the act was committed publicly, in a meeting or through dissemination of writings (Section 11 subsection (3)), with imprisonment for not more than five years or a fine.”

Section 188 Malicious Gossip and Defamation Against Persons in Political Life

(1) “If malicious gossip (Section 186) is committed publicly, in a meeting or through dissemination of writings (Section 11 subsection (3)) against a person involved in the political life of the people with a motive connected with the position of the insulted person in public life, and the act is capable of making his public work substantially more difficult, then the punishment shall be imprisonment from three months to five years.

(2) A defamation (Section 187) under the same prerequisites shall be punished with imprisonment from six months to five years.”

Section 189 Disparagement of the Memory of Deceased Persons

“Whoever disparages the memory of a deceased person shall be punished with imprisonment for not more than two years or a fine.”

Section 190 Judgment of Conviction as Proof of Truth

“If the asserted or disseminated fact is a crime, then the proof of the truth thereof shall be considered to have been provided, if a final judgment of conviction for the act has been entered against the person insulted. The proof of the truth is, on the other hand, excluded, if the insulted person had been acquitted in a final judgment before the assertion or dissemination.”

Section 191 (Deleted)

Section 192 Insult Despite Proof of Truth

“The proof of the truth of the asserted or disseminated fact shall not exclude punishment under Section 185, if the existence of an insult results from the form of the assertion or dissemination or the circumstances under which it occurred.”

Section 193 Safeguarding Legitimate Interests

“Critical judgments about scientific, artistic or commercial achievements, similar utterances which are made in order to exercise or protect rights or to safeguard legitimate interests, as well as remonstrances and reprimands of superiors to their subordinates, official reports or judgments by a civil servant and similar cases are only punishable to the extent that the existence of an insult results from the form of the utterance or the circumstances under which it occurred.”

Section 194 Application for Criminal Prosecution

(1) “An insult shall be prosecuted only upon complaint. If the act was committed through dissemination of writings (Section 11 subsection (3)) or making them publicly accessible in a

meeting or through a presentation by radio, then a complaint is not required if the aggrieved party was persecuted as a member of a group under the National Socialist or another rule by force and decree, this group is a part of the population and the insult is connected with this persecution. The act may not, however, be prosecuted ex officio if the aggrieved party objects. The objection may not be withdrawn. If the aggrieved party dies, then the right to file a complaint and the right to object pass to the relatives indicated in Section 77 subsection (2).

(2) If the memory of a deceased person has been disparaged, then the relatives indicated in Section 77, par. 2, are entitled to file a complaint. If the act was committed through dissemination of writings (Section 11 subsection (3)) or making them publicly accessible in a meeting or through a presentation by radio, then a complaint is not required if the deceased person lost his life as a victim of the National Socialist or another rule by force and decree and the disparagement is connected therewith. The act may not, however, be prosecuted ex officio if a person entitled to file a complaint objects. The objection may not be withdrawn.

(3) If the insult has been committed against a public official, a person with special public service obligations, or a soldier of the Federal Armed Forces while discharging his duties or in relation to his duties, then it may also be prosecuted upon complaint of his superior in government service. If the act is directed against a public authority or other agency, which performs duties of public administration, then it may be prosecuted upon complaint of the head of the public authority or the head of the public supervisory authority. The same applies to public officials and public authorities of churches and other religious societies under public law.

(4) If the act is directed against a legislative body of the Federation or a Land or another political body within the territorial area of application of this law, then it may be prosecuted only with authorization of the affected body.”

In the wider sense, Section 166 of the German Criminal Code also covers insults and defamation. This Section protects public peace and is worded as follows:

Section 166 Insulting of Faiths, Religious Societies and Organizations Dedicated to a Philosophy of Life

(1) “Whoever publicly or through dissemination of writings (Section 11 subsection (3)) insults the content of others’ religious faith or faith related to a philosophy of life in a manner that is capable of disturbing the public peace, shall be punished with imprisonment for not more than three years or a fine.

(2) Whoever publicly or through dissemination of writings (Section 11 subsection (3)) insults a church, other religious society, or organization dedicated to a philosophy of life located in Germany, or their institutions or customs in a manner that is capable of disturbing the public peace, shall be similarly punished.”

These legal norms have not been amended for quite some time.

Developments in the application of criminal and civil law provisions concerning defamation at domestic level

According to the German authorities freedom of opinion and expression, which is also emphasised by the European Court of Human Rights, is protected by and large by Section 193 of the German Criminal Code cited above. They advance that the latter, in respect of the category relating to the consideration of legitimate interests, requires thorough consideration

of values and interests in individual cases, which, based on the precedents set by the Federal Constitutional Court, must take into account the fundamental importance of freedom of opinion and expression for the constitution of a democratic body politic. That particularly applies to all matters of public interest and in a political battle of opinions. In this area, the Federal Constitutional Court accepts an assumption in favour of freedom of opinion and expression. Based on this precedent, derogatory utterances may be permissible in this area and, in view of the overexposure, catchy, even strong wording must be accepted unless it appears excessive in a particular case based on the facts and circumstances. This precedence accorded to the freedom of opinion and expression may, however, be limited depending on the individual circumstances of the case if so-called malicious insult is involved where the focus is not on the matter itself but rather on the defamation of a person or if claimed facts are clearly, or in the offender's view, untrue. Based on this jurisdiction, freedom of expression, freedom of the press and freedom of artistic expression are afforded extensive protection in the interpretation and application of penal provisions relating to insult and defamation.

In 2003 15,311 people were convicted for insult, 142 for malicious gossip, 145 for defamation; 1 person was convicted for malicious gossip and defamation against a person in political life, and 5 for the disparagement of the memory of a deceased person.

Greece

Defamation is a criminal offence, carrying a maximum sentence of two years' imprisonment. The relevant provisions make specific reference to politicians, officials and foreign heads of State. The law stipulates that truth and good faith may be relied on in defence against accusations of defamation. Numerous defamation charges have been brought against journalists in recent times. Information on relevant legal provisions on defamation

Penal Code

The law provides for criminal liability for insult and defamation.

Pursuant to Art.361(1) of the Penal Code ("PC") "insult" is a criminal offence punished with a maximum one-year imprisonment and/or a pecuniary penalty of 150 - 15,000 Euro (Art.57 PC). "Unprovoked criminal insult" is punished with a minimum three-month imprisonment (Art.361A(1) PC) and when it is committed by two or more persons the penalties are higher - minimum six-month imprisonment (Art.361A(2) PC).

Defamation is punished with a maximum two-year imprisonment and/or a pecuniary penalty (Art.362 PC). Aggravated defamation is punished with imprisonment of at least three months (Art. 363 PC), to which a pecuniary penalty can be added. The offender can also be punished with deprivation of his/her civil rights.

Defamation of a public limited company ("anonymi eteria" – "AE") is punished with imprisonment of up to a year or with a pecuniary penalty (Art.364(1) PC), while aggravated defamation of an AE is necessarily punished with imprisonment (Art.364(3)).

Defamation of deceased persons is punished with imprisonment of up to six months (Art.365 PC)

Charges for the aforementioned crimes can be brought only if there is a prior complaint filed by the victims (Art.368 (1) PC). There are limitations to the defendant's right of appeal against a criminal court decision which are set out in Art.489 Criminal Procedure Code and are relative to the severity of the punishment and the type of court involved. These limitations

apply to all criminal court decisions regardless of whether the crime concerned was defamation or insult.

The law provides for more severe sentences in cases of libel and defamation of public officials than of ordinary citizens. Defamation of the President of the Republic and of the Parliament is punished with imprisonment of not less than three months (Arts.157(3) and 168(2) PC). Insult to local authority council members is punished with imprisonment of up to two years (Art.157(3) PC). These punishments may also be accompanied by dismissal from public office where applicable (Art.157(4) PC). Defamation of a foreign Head of State is punished with imprisonment (Art.153(1)b PC).

Journalists can invoke the notions of proof, good faith and public interest in their defence against charges of insult or defamation. According to the Art.366(1) PC, defamation is not punished where it is based on true information, though punishment for insult is not excluded even if the intent to insult is proven beyond reasonable doubt (Art.366(3) PC).

Disapproving criticism of scientific, artistic or professional work, or criticism as part of the fulfilment of lawful duties, the exercise of lawful authority or the protection of a right or some other justified interest, do not constitute an unlawful act (Art.367(1) PC), unless they contain aggravating elements of aggravating defamation or an apparent intention to insult. (Art.367(2)b PC).

Civil Code

Provisions dealing with Defamation are also contained in the Civil Code (“CC”).

Art.920 CC (“Defamatory rumours”) provides that persons who intentionally disseminate false information which can be damaging to someone else are liable to compensate the person harmed (plaintiff).

In addition, pursuant to Art.57 CC (“right to personality”) a person whose personality is unlawfully offended has the right to demand the withdrawal of the offensive act and its non-repetition in the future. Compensation may also be sought cumulatively.

Art.59 CC (“Damages for Mental Distress”) provides that based on a claim by the plaintiff the court may also award damages for mental distress or order the public revocation of the offensive material. The defendant’s obligation to compensate the plaintiff is also prescribed in Arts.919 (“offence to public decency”) and 932 (“damages for mental distress” in cases of unlawful acts) CC. Moreover, pursuant to the Law 1178/1981 on Civil Liability of the Press (as amended) media owners and chief editors may be held liable to compensation as well as for damages for mental distress for injury inflicted to the plaintiff’s personality, irrespective of whether that was done knowingly or whether the editor of the offensive publication was known to them. The minimum sum for mental distress damages in this case is 29,347 Euro.

Finally, Art.681D of the Civil Procedure Code (“CPC”) provides a special procedure for all disputes concerning offensive publications or broadcasts, which is much speedier than the standard civil procedure – the court hearing must take place within a maximum of 30 days from the filing of the complaint and the decision must be issued within a maximum of one month from the day of the hearing.

Developments in the application of criminal and civil law provisions concerning defamation at domestic level

According to RSF, the number of cases brought against journalists for libel was still rather high and sometimes resulted in very heavy fines (RSF-AR, 2004).

There have been some recent instances where the provisions concerning the crimes of defamation and insult were examined by the ECtHR in the light of Arts.6 and 10 ECHR.

For instance, on 27.05.2004, in the Rizos and Daskas case, concerning newspaper publications containing allegations about certain prosecutors, the ECtHR reviewed the special civil procedure followed pursuant to Art.681D CPC and held that there was no violation of Art.6 EHCR. However, in this case Greece was found in violation of Art.10 ECHR, because the ECtHR considered that there had not been a reasonable balance between the restrictions on the applicants' right to freedom of expression and the legitimate aim pursued (ECtHR, Press Release, 27.05.2004).

The Greek authorities also draw attention to the case of Pasalaris and Idryma Typou S.A., which was declared inadmissible by the ECtHR. The case involved the defamation of a public prosecutor and in the decision reference was made inter alia to the fact that the fine involved was not considered disproportionate and to the need to preserve the credibility of the judiciary.

Finally, concerning the decriminalization of offences of defamation and insult, it should be mentioned that until today there hasn't been any relevant legislative initiative, nor is it envisaged for the near future.

Hungary

Defamation is a criminal offence, carrying a maximum sentence of two years' imprisonment. The relevant provisions make specific reference to politicians and officials and state symbols. The law stipulates that truth may be relied on in defence against accusations of defamation.⁸⁵

Information on relevant legal provisions on defamation

Libel and defamation – based on Articles 179 (and 180) of Act IV of 1978 on the Criminal Code – are currently criminal offences in Hungary.

Criminal Code

Libel (Article 179):

(1) “The person who states or rumours a fact likely to harm the honour, or uses an expression directly referring to such a fact, about somebody, before somebody else, commits a misdemeanour, and shall be punishable with imprisonment of up to one year.

(2) The punishment shall be imprisonment of up to two years, if the defamation is committed for a base reason or purpose, before big publicity, or causing considerable harm.”

“Rumouring” means the transmission of facts stated by someone else. The facts transmitted are not known by the transmitter himself. This crime can be committed by question form as well.

“An expression directly referring to a fact” means the transmission of a characteristic element of the facts from which the whole event can be deduced or reconstructed.

⁸⁵ See ECHR judgment *Uj v. Hungary*, no. 23954/10, 19 July 2011.

Defamation (Article 180):

(1) “The person who, apart from the case set forth in Article 179, uses an expression which may harm the honour or commits another act of such a type, in connection with the job, performance of public mandate or in connection with the activity of public concern of the injured party, before big publicity, shall be punishable for a misdemeanour with imprisonment of up to one year.

(2) The officer who commits slander with assault shall be punishable in accordance with subsection (1).”

Libel and defamation are punishable upon a private motion. Defamation or slander committed to the detriment of a person enjoying diplomatic or other personal immunity based on international law is punishable upon the so-called “wish” of the injured party declared through diplomatic channels.

The legal object of defamation is identical with the object of libel (human dignity, honour and social respect). The law regards defamation less serious crime than libel. The two provisions are subsidiary in nature therefore the judge shall first determine whether the conduct complained of constitutes libel.

Similarly to libel, if the factual content of the impugned piece of criticism or expression of opinion proves to be true then the conduct shall not constitute defamation. However, defamatory statements violating human dignity may amount to defamation even in cases when the statements have formally been brought to publicity in the form of criticism.

Impiety (Article 181)

“Whosoever outrages a dead person or his memory in a way defined under Article 179 or 180 shall commit an offence and shall be punishable with the punishment specified there.”

The conduct incriminated under this Article (outraging a dead person or his memory) constitutes gross violation of honour therefore what has been said in connection with libel and defamation shall apply to this conduct as well.

Violation of national symbols (Article 269A)

“Whosoever uses an expression outraging or humiliating the national anthem, the flag or the coat of arms of the Republic of Hungary or commits any other similar act before great publicity shall, unless a graver crime has been committed, be punishable for an offence with imprisonment of up to one year.”

The national symbols of the Republic of Hungary are regulated under Section I of the Constitution (new Constitution in force since 1 January 2012).

In its ruling of 12/2000 (V.12) the Constitutional Court interpreted the meaning and significance of the national symbols. It held that these symbols are, on the one hand, the outer representations of the state and the sovereignty of the state and, on the other hand, they manifest the fact of belonging to the nation as a community.

This crime is of subsidiary nature which means that it can be established only in that case if no heavier crime has been committed. If the conduct performed outrages the Hungarian nation and incites to hatred against the Hungarian nation it shall be determined on the basis of Article 269 governing the crime of incitement against a community.

Defamation is also regulated as petty offence under Article 134 of Act nr. 2 of 2012 on petty offences (in force since 15 April 2012):

Article 134

1. “Anyone who uses an expression suitable for impairing honour or commits another act of such a type commits a petty offence.”

Punishments in the new Petty Offences Act are listed in section 7, and include confinement, fine and community service, and the most appropriate form of punishment is chosen.

On the basis of this legal provision, the responsibility of those perpetrators shall be established who perform invective, rude and tactless conduct or make indecent gestures which do not amount to gross violation of honour, but infringe it.

Verbal acts motivated by racism and xenophobia that offend or humiliate a given social group, may be currently punished on the basis of Article 269 of the Criminal Code governing incitement against the community.

The Hungarian authorities would like to call attention to the fact that the legal circumstances of libel and defamation determine the sanction of imprisonment only as an alternative to imposing a fine and community service, and the duration of imprisonment may be no more than one year. Surveying the relevant parts of the Criminal Code it is obvious that the period of no more than one year is the sanction of the shortest duration amongst the penal framework of the Criminal Code. Exceptions to this are the three qualified cases of libel (libel with vicious intent, public libel and causing considerable harm by libel), when the Criminal Code stipulates imprisonment of up to two years.

On June 24 1994, the Hungarian Constitutional Law Court declared unconstitutional Art. 232 of the Criminal Code, which had made publication of statements likely to damage the reputation of a public official or the honour of a public authority a criminal offence punishable by up to two years imprisonment.

Civil Code

The system of civil liability is more complicated. The most likely infringement of inherent rights in connection with freedom of expression is defamation under Article 78 of Act IV of 1959 on the Civil Code: “The protection of inherent rights shall also include protection against defamation. The statement, publication, or dissemination of an injurious untrue fact pertaining to another person or a true fact with an untrue implication that pertains to another person shall be deemed defamation”. However, other inherent rights (such as human dignity, right to the individual’s likeness or recorded voice) might also be concerned. The general redress for the infringement of inherent rights is provided for by Article 84 of the Civil Code:

(1) “A person whose inherent rights have been violated may have the following options under civil law, depending on the circumstances of the case:

- a) demand a court declaration of the occurrence of the infringement;
- b) demand to have the infringement discontinued and the perpetrator restrained from further infringement;

- c) demand that the perpetrator make restitution in a statement or by some other suitable means and, if necessary, that the perpetrator, at his own expense, make an appropriate public disclosure for restitution;
- d) demand the termination of the injurious situation and the restoration of the previous state by and at the expense of the perpetrator and, furthermore, to have the effects of the infringement nullified or deprived of their injurious nature;
- e) file charges for punitive damages in accordance with the liability regulations under civil law.”

(2) “If the amount of punitive damages that can be imposed is insufficient to mitigate the gravity of the actionable conduct, the court shall also be entitled to penalise the perpetrator by ordering him to pay a fine to be used for public purposes.”

The most effective of these measures is the institution of punitive damages. The maximum sum of such damages is between one and two million Forints (4000-8000 USD), while the average is between 100 and 500 thousand Forints (400-2000 USD). There is another legal institution specially designed for infringements committed via the press. This is “publication of a correction in the press” regulated by Article 79. Detailed rules of the latter remedy are to be found in Act No. 104 of 2010 on Media Liberty.

Developments in the application of criminal and civil law provisions concerning defamation at domestic level

IFEX reported that, for the first time since the restoration of democracy, an editor-in-chief of a weekly magazine was sentenced, on 21.01.2004, to ten months of imprisonment for libelling a member of Parliament (IFEX, 23.01.04). On 09.07.04, with reference to the same sentence, the OSCE Representative on Freedom of the Media asked the authorities to remove prison sentences from libel law (OSCE-FOM, 09.07.04).

The Hungarian authorities would like to remark in connection with the above that the circumstances of both cases protect human dignity and Hungary is not the only state in Europe in which the provisions of criminal substantive law enable the imposing of sanctions against these. Examples are the German, Austrian and Swiss Criminal Codes, which have had a substantial influence on the development of Hungarian criminal law. All three Criminal Codes order the punishment of defamation and libel using degrees and types of punishment similar to those imposed by Hungarian regulations (mainly by imprisonment and imposing fines).

According to the EU-MR 2003, the Constitutional Court (CC) declared disproportionate a draft legislation which would have restricted the freedom of the print media to publish critical opinions about public persons (EU-MR Hungary, 2003).

Statistical information on the practice is not at the disposal of the Hungarian Government.

Iceland

Defamation is a criminal offence, carrying a maximum sentence of one year's imprisonment.

Information on relevant legal provisions on defamation

Criminal Code

According to Article 234 and 235 of the Criminal Code from 1940, libel and insult are punishable with up to one year imprisonment. As a matter of principle, cases can only be brought by natural or legal persons who claim that they have been victims of libel or insult. An exception is provided in Article 242 for public officials, if the libel or insult concerns their conduct of public office.

In that case, the public prosecutor brings a case upon demand by the public official concerned.

Developments in the application of criminal and civil law provisions concerning defamation at domestic level

Prison sentences have not been handed down by the courts on the basis of these provisions for decades. The most widely used remedy is to declare "improper statements null and void", as provided for in Article 241, and to grant damages for tort.

Recently, the national courts, influenced by the European Court of Human Rights case law, have also accepted good faith defence and granted special protection to value judgments.

Courts have generally acquitted the defendant if he or she proves the truth of the statement; this is, however, not stipulated in law.

Between 15 October 2003 and 15 October 2005, judgments have been rendered in three defamation cases by the District Court of Reykjavik. The Supreme Court of Iceland has rendered one judgment during the period.

The courts did not make direct reference to the case-law of the European Court of Human Rights in these defamation cases.

Ireland

Ireland decriminalised defamation, "seditious libel" and also "obscene libel" by abolishing these common law offences in the Defamation Act 2009 (section 35). This law entered into force on 1 January 2010.

Information on relevant legal provisions on defamation

Defamation Act 2009: <http://www.attorneygeneral.ie/eAct/2009/a3109.pdf>

Italy

Defamation is a criminal offence, carrying a maximum sentence of five years' imprisonment (in case of defamation of the President). The relevant provisions make specific reference to politicians and officials. There have been recent reports of a number of cases against journalists, who received prison sentences.⁸⁶

Information on relevant legal provisions on defamation

Criminal code

Articles 278, 290, 290 bis and 291 of the Criminal Code provide for protection of the dignity and honour of the President of the Republic, the Italian nation, the Republic, legislature and other public officials. Defamation of the President is punishable by imprisonment of up to five years.

The offences provided for by the Criminal Code to protect people's honour and reputation are insult and defamation.

Insult is the act of offending the honour of a person who is present (Article 594) while defamation consists of undermining the reputation of an absent person (Article 595).

Under Article 595 of the Criminal Code, in the event of defamation via the press in which a specific allegation is made (aggravated defamation), the maximum sentence provided for is a prison term of up to three years or a fine of up to €516.

Developments in the application of criminal and civil law provisions concerning defamation at domestic level

The requirement to protect people's honour and reputation very often has to be reconciled with the exercise of the right to report and comment, which are manifestations of the right to freedom of expression guaranteed by Article 21 of the Italian Constitution.

The Court of Cassation has ruled several times on the question of the limits to the right to report and comment in the light of the need to protect people's honour. With regard to the right to report (or in other words the manifestation of the right to free expression pertaining to journalists, which includes the right not only to disseminate information but also to comment on it), the Court of Cassation considers that it applies when the following conditions are met: 1. the report is in the public interest; 2. the facts described are true; 3. the ideas are expressed in courteous terms (judgment 3999/2005). As to the right to comment, the Court of Cassation considers that this must be exercised within the following limits: 1. appropriate language; 2. respect for the rights of others (judgment 10135/2002). According to the Italian authorities, it goes without saying that for comments on politics and trade union activities, the limits are applied more flexibly.

In this context, the Italian authorities would point out that in the case of *Perna v. Italy* (application no. 48898/99, Grand Chamber judgment of 6 May 2003), the European Court of Human Rights found that there had been no violation of Article 10. In this case, which related

⁸⁶ For further details, see ECHR judgments *Onorato v. Italy*, n° 26218/06, § 24, 24 May 2011, and *Perna v. Italy*, n° 48898/99, 6 May 2003 (Grand Chamber).

to unproven defamatory pronouncements against a judge, for which the author was ordered to pay a small fine and substantial damages (ITL 60 000 000), the Court found that the interference in the applicant's freedom of expression was provided for by the Criminal Code and the law on the press of 8 February 1948, that it pursued the legitimate aim of protecting the reputation and rights of others and that it could be reasonably considered to be necessary in a democratic society.

A bill (A.S.3176) on rules concerning defamation via the press or through another means of dissemination and insult ..., which includes amendments to Law No. 47 of 8 February 1948, was approved by the Chamber of Deputies on 26 October 2004 and is currently being discussed by the Senate.

The bill amends Article 595 of the Criminal Code and provides that in the event of defamation via the press in which a specific allegation is made (aggravated defamation), the maximum penalty is now a fine of €5 000 to €10 000.

Furthermore, the transitional provision (Article 4 of the bill) provides that "in cases in which a custodial sentence for the offences covered by this law is still to be enforced before the entry into force of the law itself or is already being enforced on that date, the custodial sentence shall be commuted to a pecuniary fine under Article 135 of the Criminal Code".

In August and September 2012, three journalists working for Italian daily newspapers were sentenced to prison for criminal defamation.

Latvia

Article 156 of the criminal code entitled "Defamation" and article 158 entitled "Defamation and bringing into disrepute in mass media" were repealed on 23 December 2009. Article 157 entitled "Bringing into disrepute" has been amended. Other instruments, such as the law on the press and other mass media and the law on electronic mass media, also regulate inter alia questions of damage to a person's reputation, honour or dignity .⁸⁷

Information on relevant legal provisions on defamation

Criminal Code

Section 156 titled "defamation" was deleted and section 157 was last amended on 23.12.2009 and currently reads as follows.

Section 157. Bringing into Disrepute

(1) The deliberate public dissemination of invented falsehoods defamatory of another person in printed form or otherwise reproduced material, or orally, knowing them to be untrue

⁸⁷ ECHR judgment A/S Diena and Ozolins v. Latvia, no. 16657/03, which found a violation of Article 10 on the basis of a conviction for a civil offence, appears to have had an impact on legislative amendments in Latvia, via the principle of proportionality underlying the court's finding.

(bringing into disrepute) is punishable by community service or a fine of up to sixty times the minimum monthly wage.

(2) Bringing into disrepute in the mass media is punishable by custodial arrest or community service, or a fine of up to eighty times the minimum monthly wage.

Section 158 titled “defamation and bringing into disrepute in Mass Media was deleted as from 23.12.2009

Law on the Press and Other Mass Media⁸⁸

Section 7 Information that cannot be published

It is prohibited to publish information that is a state or other secret specially protected by law, information that incites violence and the overthrow of the existing order, propagandises war, cruelty, racial, national or religious supremacy, intolerance or incites the commission of other crimes.

[..]

It is prohibited to publish information that injures the honour and dignity of natural and legal persons or brings them into disrepute.

Electronic Mass Media Law⁸⁹

Section 66. Programmes of the Public Electronic Mass Media

(3) In the creation of their programmes, the public electronic mass media shall take into account the diversity of society in Latvia in social, economic, regional, educational, cultural and religious terms while respecting human rights and fundamental freedoms, the equality of all before the law, the freedom of opinion and expression, the right to receive and distribute information freely, the presumption of innocence, inviolability of personal life, honour and dignity.

Civil Code

II Right to Compensation for Offences against Personal Freedom, Reputation, Dignity and Chastity of Women

Article 2352a.

“Each person has the right to bring court action for retraction of information that injures his or her reputation and dignity, if the disseminator of the information does not prove that such information is true.

If information, which injures a person’s reputation and dignity, is published in the press, then where such information is not true, it shall also be retracted in the press.

If information, which injures a person’s reputation and dignity, is included in a document, such document shall be replaced. In other cases, a court shall determine the procedures for retraction.

⁸⁸ The Law on the Press and Other Mass Media was amended on 22.09.2011 (entry into force on 20.10.2011). An Internet website can now be registered as a mass medium. (Section 2). The first part of Section 7 is also relevant.

⁸⁹ The Electronic Mass Media Law replaced the Radio and Television Law on 12 August 2010.

If someone unlawfully injures a person's reputation and dignity orally, in writing or by acts, he or she shall provide compensation (financial compensation). A court shall determine the amount of the compensation.”

Sub-chapter 4 Exclusion from Inheritance

428. “An ascendant may exclude a descendant if the latter:

1) has perpetrated a criminal act against the life, health, liberty or honour of the testator, his or her spouse or his or her ascendant.”

Administrative Offences Code

Article 201.4 states that if somebody uses the mass media to interfere with a person's private life he can be charged a fine of up to 250 LVL .

Developments in the application of criminal and civil law provisions concerning defamation at domestic level

Criminal Law

For the period 2003 – 2004 two people were convicted and fined under Article 156; two people were convicted and fined under Article 157 but there were no convictions under Article 158.

Civil Law

Court of first instance – 57 actions in 2003, 58 in 2004 and 25 in the first half of 2005.

Appeal court – 38 actions examined in 2003, 43 in 2004 and 18 in the first half of 2005.

Administrative Offences Code

Between 2003 and the first half of 2005 no cases were heard by the courts under Article 201.4 of the Administrative Offences Code.

On 12.06.2003, Article 91 of the Criminal Code providing for the protection from defamation of candidates to the Parliament was repealed with effect on 15.07.2003. On 29.10.2003, the Constitutional Court decided on the incompatibility of Article 271 of the Criminal Code with the Constitution. Article 271 provided for the protection of state officials from defamation and conferred upon them a privileged status, which reportedly had encouraged self-censorship. The Court declared the provision null and void as of 01.02.2004 if up to that time a legislative amendment had not specified the range of state officials who need the protection of the Criminal Law (Constitutional Court, case No. 2003-05-01, 29.10.2003). As from 01.02.2004, Article 271 is no longer in force.

In its judgment of 27.05.2004 in the case of *Vides Aizsardzibas Klubs v. Latvia*, the ECtHR found a violation of Article 10 ECHR. The applicant, an NGO named the Club for the Protection of Environment, adopted a resolution and published it in the regional newspaper *Talsu Vestis*, in which it denounced the irresponsible and illegal activities of the administration of the municipality Mersrags and the decisions taken by the mayor. The applicant NGO was successfully sued for defamation and ordered to publish an official apology and pay damages to the mayor. The Strasbourg Court decided that public authorities

were, as a rule, exposed to permanent scrutiny by citizens and, subject to acting in good faith, everyone had to be able to draw the public's attention to situations considered unlawful. Also, the Court held that criticism of the mayor for the policy of an entire local authority could not be regarded as an abuse of the freedom of expression (ECtHR, Press Release, 27.05.2004).

Liechtenstein

Defamation is a criminal offence. The relevant provisions make specific reference to politicians and officials.

Information on relevant legal provisions on defamation

Penal Code

Articles 111-117 of the Penal Code make slander, libel, and defamation punishable offences. Criminal offences against honour are in general only prosecuted on request of the person whose honour has been violated. The right to legal redress and damages is governed by the Law on Persons and Companies (Personen- und Gesellschaftsrecht, PGR), LGBl. 1926 No. 4. Article 40(3) of the PGR states in this connection that the judge may, in case of malice, award non monetary damages in addition to or instead of monetary damages, such as a public apology by order of the court, publication of the judgment at the expense of the losing party, contribution of a sum of money to a charitable foundation or institution designated by the injured party or to a poverty alleviation fund, and so on.

The Law on Persons and Companies

The Law on Persons and Companies also governs the right of counterstatement. Natural persons, legal entities, and authorities thereby have the right of counterstatement if they are immediately affected in their personality by factual presentations in periodic media, in particular the press, radio, and television. Factual presentations are information that can be verified with regard to accuracy and completeness and the essential message of which does not consist in an expression of personal opinion, a judgment, or a warning about the behaviour of another person. The counterstatement shall be published as soon as possible in a manner that reaches the same circle as the presentation of facts complained about. The counterstatement must have the same publication value as the publication it refers to.

Lithuania

Defamation is a criminal offence, carrying a maximum sentence of two years' imprisonment. The relevant provisions make specific reference to the President. A number of cases have been reported of politicians calling for criminal charges to be brought against journalists.⁹⁰

⁹⁰ See ECHR judgment *Balsytė-Lideikienė v. Lithuania*, no. 72596/01, 4 November 2008, finding that there was no violation on the basis of an administrative sanction for comments considered as incitement to hatred. See also the ECHR's decision of inadmissibility *Lietuvos radijas ir televizija...* (no. 27930/05), 6 July 2010.

Information on relevant legal provisions on defamation

Criminal Code

Article 154. Libel

1. "Any person who spreads false information about another person or a group of people, which could arouse contempt for that person or persons, undermine trust or humiliate them, shall be punished by fine or restriction of liberty, or imprisonment for a term for up to 1 year.
2. Any person who defamed another person about felony through the use of the mass media or the press, shall be punished by a fine, or detention, or imprisonment for a term of up to 2 years.
3. Prosecution for the acts specified in paragraphs 1 and 2 of this Article shall be instituted subject to a complaint being filed by the victim."

Insult

Article 155 provides for liability for the public humiliation of another person by action, word or in print. This offence is punishable by fine, custodial arrest or imprisonment up to one year.

Code of Administrative offences

Article 214 (6) provides for liability for the defamation or insult of the President of the Republic, which is punishable up to three thousand litas.

Civil Code

Article 2.24 of the Civil Code regarding the protection of honour and dignity reads as follows:

"1. A person shall have the right to demand the refutation, in judicial proceedings, of publicised data which abase his honour and dignity and which are erroneous, as well as the redress of pecuniary and non-pecuniary damage incurred by the public announcement of the said data. Data which has been made public shall be presumed to be erroneous unless the publisher proves the opposite to be true.

2. Where erroneous data have been publicised in the mass media (press, television, radio, etc.) the person about whom those data were published shall have the right to file a correction and demand that the media publish the said correction free of charge, or make it public in some other way...

...

4. Where the mass media refuse to publish the correction or to make it public in some other way ... the [aggrieved] person has the right to apply to a court in accordance with the procedure established in paragraph 1 of the given Article. The court shall establish the procedure and the terms of the refutation of the erroneous data which prejudiced that person's reputation.

5. The mass media which have publicised erroneous data prejudicing a person's reputation shall provide redress for any pecuniary and non-pecuniary damage incurred by that person only in cases when they knew, or should have known, that the data were erroneous, including those cases where the data were made public by their employees or ... anonymously, and the media refuse to name their source.

...

6. The person who publicly disseminates erroneous data shall be exempted from civil liability in cases when the publicised data relate to a public person and his State or public activities and the person who made them public can demonstrate that his actions were in good faith and intended to introduce the person and his activities to the public."

The relevant sections of the Law on the Provision of Information to the Public read as follows:

Article 45. Refutation of published information

“1. The producers and/or disseminators of public information must correct published, false information which prejudices the honour and dignity of a physical person or damages the legitimate interests of a legal person, in particular their reputation.

2. A request to correct information shall be submitted to the producer or disseminator of the publicised information in writing not later than two months after the publication ... The request shall specify the false information which requires correction, when and where it was published, and which statements ... are degrading to the honour and dignity of the person concerned ...

3. After receiving a reasoned request to correct published false information prejudicing the honour and dignity of a person, the producer or disseminator of that information must publish the correction free of charge and without comment, in an equivalent place, of an equivalent size and in the same form, in the nearest possible publication, television or radio broadcast, or in any other media where such information was published. A subsequent refutation shall not release the producer of that information from liability.”

Article 55. Exemption from compensation for damage

“1. A producer of public information shall not be liable for the publication of false information if he indicates his source ... and that the information has been: ...

3) published previously in other mass media, if the information has not been corrected by the mass media in which it was published. ”

Law on the Provision of Information to the Public

On 29 August 2000, the Law on Amending the Law on the Provision of Information to the Public of 1996 was adopted. This law provides responsibility for violations of the procedure of dissemination of public information. Article 54 states that a producer and (or) disseminator of public information who publishes information about an individual's private life without the natural person's consent, as well as the producer who publishes false information degrading the honour and dignity of the person, shall pay a compensation for moral damage to that person, in the manner set forth by law.

Developments in the application of criminal and civil law provisions concerning defamation at domestic level

A number of cases were reported of politicians calling for criminal charges to be brought against journalists.

According to information by the National Court Administration 95 criminal cases on crimes and misdemeanours to honour and dignity were considered in 2004. 34 natural persons were convicted, 43 natural persons and 1 juridical person were acquitted, 35 criminal cases were suspended.

In a cassation complaint (Criminal Code Article 154 part 2, Case number 2K-295/2005) the Lithuanian High Court inter alia referred to Article 10 of the European Convention of Human Rights and to cases of *Lingens v. Austria* and *Castells v. Spain*.

Luxembourg

Defamation is a criminal offence. No amendments to the relevant provisions of the criminal code are planned.

Information on relevant legal provisions on defamation

Penal Code

The provisions of the Penal Code are still in force.

Law on freedom of expression in the media

On June 8, 2004, the law on freedom of expression in the media was enacted. This law abolished the law dated 20 July 1869 concerning the press and offences committed by other means of publication, which featured specific provisions with respect to insult, outrage, defamation and slander against the Grand Duc and his family as well as against foreign Heads of State. The law of 2004 does not contain specific criminal provisions.

Malta

Defamation is a criminal offence, carrying a maximum sentence of six months' imprisonment. The relevant provisions make specific reference to politicians and officials. The law stipulates that defence of truth in the public interest may be relied on against a defamation charge.⁹¹

Information on relevant legal provisions on defamation

Press Act 1996

Part 2 press offences:

3. "Means whereby offences under this Act are committed

The offences mentioned in this Part of this Act are committed by means of the publication or distribution in Malta of printed matter, from whatsoever place such matter may originate, or by means of any broadcast."

5. Imputation of ulterior motives to acts of the President of Malta

(1) "Whosoever, by any means mentioned in section 3 of this Act, shall impute ulterior motives to the acts of the President of Malta or shall insult, revile or bring into hatred or contempt or excite disaffection against, the person of the President of Malta, shall be liable on conviction to imprisonment for a term not exceeding three months and to a fine (multa) not exceeding two hundred liri."

11. Defamatory libel

"Save as otherwise provided in this Act, whosoever shall, by any means mentioned in section 3 of this Act, libel any person, shall be liable on conviction:

⁹¹ See ECHR judgments Aquilina and others v. Malta, no. 28040/08, 14 June 2011; John Anthony Mizzi v. Malta, no. 17320/10, 22 November 2011.

- a. if the libel contains specific imputations against such person tending to injure his character and reputation, or to expose him to public ridicule or contempt, to imprisonment for a term not exceeding three months or to a fine (multa) or to both such imprisonment and fine;
- b. in any other case, to imprisonment for a term not exceeding one month or to a fine.”

12. Plea of justification

(1) “In any action for a defamatory libel under section 11 of this act, the truth of the matters charged may be enquired into if the accused, in the preliminary stage of the proceedings, assumes full responsibility for the alleged libel and declares in his defence that he wishes to prove the truth of the facts attributed by him to the aggrieved party:

Provided that the truth of the matters charged may be enquired into only if the person aggrieved:

- a. is a public officer or servant and the facts attributed to him refer to the exercise of his functions; or
- b. is a candidate for a public office and the facts attributed to him refer to his honesty, ability or competency to fill that office; or
- c. habitually exercises a profession, an art or a trade, and the facts attributed to him refer to the exercise of such profession, art or trade; or
- d. takes an active part in politics and the facts attributed to him refer to his so taking part in politics; or
- e. occupies a position of trust in a matter of general public interest;

Provided further that the truth of the matters charged may not be enquired into if such matters refer to the domestic life of the aggrieved party.

(2) Where the truth of the matters charged is enquired into in accordance with the foregoing provisions of this section:

(a) if the truth of the matters charged is substantially proved, the defendant shall not be liable to punishment if the court is satisfied that the proof of the truth has been for the public benefit and he shall be entitled to recover from the complainant or plaintiff the costs sustained by him in any criminal or civil proceedings:

Provided that the proof of the truth of the matters charged shall not exempt the defendant from punishment for any insult, imputation or allegation which the court shall consider to have been unnecessary in attributing to the person aggrieved the facts the proof of the truth whereof shall have been allowed;

(b) if the truth of the matters charged is not substantially proved, the accused shall be liable to imprisonment for a term not exceeding six months or to a fine (multa) not exceeding five hundred liri or to both such imprisonment and fine.”

Section 28 of the Press Act, Chapter 248 of the Laws of Malta, relates to damages for defamatory libel. Subsection 2 reads as follows:

“In any case to which this article applies, the defendant may, in mitigation of damages, prove that he made or offered to make an apology to the plaintiff for such defamation before the commencement of the action for damages or, as soon afterwards as he had an opportunity of doing so where the action commenced before there was an opportunity of making or offering such apology:

Provided that the defendant shall not be allowed to adduce such proof in mitigation of damages if he has raised a plea of justification in terms of section 12.”

2. According to section 33 (d) of the Press Act, in so far as relevant, the following are privileged publications, in that no action shall lie in respect of them:

“Publications of reports of any proceedings in a court of justice in Malta provided such reports are fair reports of the proceedings and the publication of such reports or proceedings is not prohibited by law or by the court...”

Section 3

“The offences mentioned in this Part of this Act are committed by means of the publication or distribution in Malta of printed matter, from whatsoever place such matter may originate, or by means of any broadcast.”

Section 11

“Save as otherwise provided in this Act, whosoever shall, by any means mentioned in section 3, libel any person, shall be liable on conviction to a fine (multa).”

Section 23

“Criminal proceedings for any offence under Part II and civil proceedings under Part III of this Act may be instituted against each of the following persons:

- (a) the author, if he shall have composed the work for the purpose of its being published, or if he shall have consented thereto;
- (b) the editor; or, if the said persons cannot be identified,
- (c) the publisher.”

Section 27

“Criminal proceedings are independent of civil proceedings. Both proceedings may be instituted at the same time or separately.”

Section 28

“(1) In the case of defamation, ... , the object of which is to take away or injure the reputation of any person, the competent civil court may, in addition to the damages which may be due under any law for the time being in force in respect of any actual loss, or injury, grant to the person libelled a sum not exceeding eleven thousand six hundred and forty-six euros and eighty-seven cents (EUR 11,646.87).”

3. Articles 255 and 256 of the Criminal Code, Chapter 9 of the Laws of Malta, read as follows:

Article 255

“No proceedings shall be instituted for defamation except on the complaint of the party aggrieved:

Provided that where the party aggrieved dies before having made the complaint, or where the offence is committed against the memory of a deceased person, it shall be lawful for the husband or wife, the ascendants, descendants, brothers and sisters, and for the immediate heirs, to make the complaint.”

Article 256

“(1) In cases of defamation committed by means of printed matter, the provisions contained in the Press Act shall apply.

(2) Where, according to the said Act, proceedings may only be instituted on the complaint of the party aggrieved, the provisions contained in the proviso to the last preceding article shall also apply.”

Moldova

Defamation was decriminalised in 2004, except as regards state authorities or symbols, with a maximum sentence of seven years' imprisonment.

Information on relevant legal provisions on defamation

Classic calumny was decriminalised on 7 May 2004. Criminal legislation in force since 12 June 2003 does not sanction classic insult, except the insult of the military by another

military. The sanctions for calumny of a judge or other person who contributes to the achievement of justice in the Criminal Code in force since 12 June 2003 increased in terms of pecuniary fine (from up to 480 MDL to up to 10000 MDL), but decreased in terms of imprisonment term (from no more than three to no more than two years).

The Code of administrative contraventions still allows imprisonment for insult or calumny for up to 30 days.

A penalty of up to seven years imprisonment is foreseen in cases of defamation of state symbols.

Developments in the application of criminal and civil law provisions concerning defamation at domestic level

There has been no progress concerning the provisions of the Criminal Code designed to protect national and state symbols (Article 347) and making defamation of judges and investigating authorities (Article 304) and insult of a member of the armed forces by another member of the armed forces (Article 366) criminal offences (A19, Moldova repeals criminal defamation provision, 23.04.2004). However, significant progress has been noted regarding the decriminalisation of defamation: on 07.05.2004, Article 170 of the new Criminal Code, which punished “slander” (knowingly spreading false information alleging serious and particularly serious crimes) with a prison sentence, was repealed. According to A19, criminal proceedings for defamation have, however, been fairly uncommon in Moldova (A19, Moldova Bulletin, 01-04.2004).

As regards civil-law aspects, the introduction of a right to denial in the new Civil Code in 2003 could reduce the number of actions brought for defamation, which are particularly frequent against independent newspapers such as Flux, Accente, Chisinau Journal and, more recently, Timpul (A19, Moldova Bulletin, 01-04.2004 ; RSF, 09.02.2004). In this context, the lack of any upper limit on damages leads journalists to practice self-censorship, given the economic fragility of Moldovan media outlets. In this connection, the President’s proposal at the end of March 2004 concerning the reintroduction of a ceiling is to be welcomed (A19, Statement on Moldovan Defamation Law and proposed amendments, 20.04.2004).

The obligation on journalists to prove the accuracy of their information (Article 34-4 of the Constitution and Article 1 of the 1994 Law on the Press), without being able to distinguish between facts and value judgments, remains highly controversial

On 20.04.04, the ECtHR found a violation of Article 10 of the Convention in the case of Amihalachioaie v. Moldova. The applicant, President of the Union of Lawyers of Moldova, had criticised in an interview a decision by the Constitutional Court relating to the profession of lawyer. The Constitutional Court imposed an administrative fine on him for being disrespectful towards it (see Amihalachioaie v. Moldova, ECtHR, Press Release, 20.04.2004).

Monaco

Articles 24, 25 and 26 of Law no. 1.299 of 15 July 2005 on freedom of public expression provide for prison sentences ranging from one month to one year and fines for defamation and insult.

Information on relevant legal provisions on defamation

Critical reporting as regards the ruling family is forbidden.

Montenegro

Defamation was decriminalised in Montenegro in 2011.⁹²

Netherlands

Defamation is a criminal offence, carrying a maximum sentence of six months' imprisonment (five years in case of defamation of the King and four years in case of defamation of the royal family). The relevant provisions make specific reference to politicians and officials. The law stipulates that good faith and public interest may be relied on in defence against accusations of defamation.

In 2011, a draft law seeking to abolish criminalisation of defamation did not obtain the necessary backing.

Information on relevant legal provisions on defamation

Criminal Code

Title XVI of the Second Book of the Criminal Code contains provisions on defamation (articles 261, 262, 266, 267, 268, 270, 271). The specific subject of these different articles is as follows:

Libel (art. 261 and 262), 'simple defamation' (art. 266), defamation of public authorities or the head of a friendly state (art. 267), defamatory written false complaint or declaration reported to the government (art. 268), defamation of a deceased person (art. 270), libel inflicted upon a deceased person (art. 271).

A charge may only be brought by a private party filing a complaint with the prosecutor, who then has the discretion to dismiss frivolous complaints.

Crimes under Title XVI can be punished with a prison sentence of between 3 months and 2 years, or alternatively with fines of different categories.

Apart from the provisions under Title XIV, Defamation, the Second Book of the Criminal Code also contains provisions on crimes against Royal dignity (Title II), crimes against heads of friendly nations and other internationally protected persons (Title III) and crimes against public order (discrimination) (Title V).

⁹² See ECHR judgment *Sabanovic v. Montenegro and Serbia*, no. 5995/06 relating to the period prior to decriminalisation, 31 May 2011. See also the pending communicated case of *Koprivica v. Montenegro*, no. 41158/09.

Public figures. Public figures, including politicians, are often expected to accept more criticism than private persons. They are, however, protected against rash accusations. The concept of "public figure" is applied by both the courts and the Press Council.

Insults to government institutions or officials. The Criminal Code penalises the "deliberate insult" of the King or Queen or other members of the Royal Family as well as the insulting behaviour toward the friend of a friendly nation or ambassadors of such nations, while that person is staying in the Netherlands in an official capacity. However, there have been no recent cases concerning the press under any of these charges.

Defence. Journalists do not need to prove the truth of their accusations; it is sufficient that they have assumed the accuracy of their statements in good faith and that they made them in the public's interest (Articles 261 (3) and 271).

Civil Code

Defamation is covered by the Civil Code, Book 6, Title 3, Article 162: tort (wrongful act).

- Under the civil code, the defendant can equally call to his defence that disclosure of the defamatory statements was in the general interest. This happens particularly frequently when it concerns statements expressed through the media.
- In the case-law of the Supreme Court it is explicitly recognized that a judgement debt in cases concerning statements expressed via the media constitutes an interference in the right the freedom of expression, and therefore the case law of the ECHR on legitimate grounds for this interference (Art. 10.2 ECHR) needs to be taken into account.
- When the defamatory statement in question is not a fact but a publicly expressed opinion, the Court will be particularly reserved about demanding a sentence.

Possible sanctions for defamation under civil law are:

- 1) compensation of material or immaterial damages
- 2) declaration of the wrongful or defamatory nature of the statements (by publication of the Courts judgement)
- 3) prohibition of the expression of the statements or repetition of the statements
- 4) publication of the verdict or a rectification

Developments in the application of criminal and civil law provisions concerning defamation at domestic level

According to information provided by the Dutch authorities, a person will only be prosecuted and sentenced on the basis of defamation offences, if such a prosecution or sentence is compatible with the case-law of the European Court of Human Rights; this applies in particular with regard to the right to freedom of expression.

No progress has been reported concerning the fact that journalists may face up to 5 years imprisonment for intentional defamation of the Monarch and the royal family (FH-FP, 2004).

In the period between 2002 and 2004, a total of 4276 defamation cases were dealt with by criminal courts. In 104 of these cases, a prison sentence was imposed, of which the average

duration was 13 days. The maximum prison sentence imposed was 2 months. In 3217 cases, a fine was imposed (average € 206, maximum € 1000).

It is not possible to distinguish an exact separate figure for defamation cases against journalists or media professionals, as this is not separately registered. However, the Ministry of Justice has indicated that this figure is very low and that prison sentences in these type of cases are extremely rare.

Norway

Defamation is a criminal offence, carrying a maximum sentence of three years' imprisonment (five years in case of defamation of the royal family). The relevant provisions make specific reference to politicians and officials. Changes to the relevant legal provisions are being studied.

Norway is in the process of decriminalising defamation. The corresponding amendments have been passed by Parliament but have yet to enter into force⁹³.

Information on relevant legal provisions on defamation

With the Human Rights Act of 21 May 1999 no. 30, several international human rights instruments were incorporated into Norwegian domestic law. Provisions in these instruments are now part of the domestic law – and will prevail in case of a conflict with another provision in the domestic law. Among the incorporated human rights instruments are the European Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights. Both of them protect the freedom of expression and through this, also set limits for criminalization and punishment for defamation, libel and insult. In a case from 2003, the Norwegian Supreme Court stated that another case from 2002 marks that it is the European Convention and the case law of the European Court of Human Rights that today is the primary source of law when Norwegian courts are deciding how far defamatory statements can be subjected to criminal punishment or other reactions.

In 2000, chapter 19 relating to sexual felonies in the Penal Code was revised. In this process, a provision was amended stating that any person who accuses any other person of having committed some specified sexual offences, cannot be held liable pursuant to the provisions about defamation, if the accusations are made in a formal report to the police or in a confidential conversation.

A completely revised version of Section 100 of the Norwegian Constitution concerning freedom of speech was adopted by the Parliament 30 September 2004 and entered into force the same day. The general aim of this revision has been to strengthen the constitutional protection for freedom of speech, including in the area of defamatory statements. This will enhance the effect of the developments that have already taken place in Norwegian case law.

The Penal Code is currently under revision – which also comprises the penal provisions for defamation, libel and insult. In a report to the Parliament 19 March 2004 that was presented in

⁹³ See ECHR judgment *Tonsbergs Blad As and Haukom v. Norway*, no. 510/04, §§ 41-47, 1 March 2007.

connection with the revision of Section 100 of the Constitution, the Government has announced that it will also propose a complete revision of the penal provisions on defamation with the aim of getting an updated legal framework. Thus the Penal Code will better express the changes that have already taken place in Norwegian case law. The Government also intends to revise the provisions concerning the protection of the security of the state, including those related to freedom of expression.

In this report, the Government is also of the opinion that criminal sanctions should be given a less prominent role in the law of defamation. In general, Norwegian criminal law is based on the view that other, less serious reactions should be considered before provisions on criminal liability are introduced or maintained. In addition, criminal liability is not considered to be an appropriate reaction when it comes to defamatory statements in particular (except for the most serious defamations). Other sanctions are considered to be more appropriate (e.g. compensation for economic losses caused by unlawful defamatory statements).

In the same report, the Government states that the possibility that individuals today have to institute criminal proceedings in defamation cases should be repealed, so that only the Public Prosecutor can institute criminal proceedings in defamation cases.

The Articles of the General Civil Penal Code which apply to the press include provisions prohibiting:

Defamation (including libel): Even if a statement is true, it may be punishable if the court finds that it was made without respectable intent or was otherwise improper. Sentences can be severe: in one case a newspaper was obliged to pay NOK 6 million in damages, fines and legal costs. Please refer to question 2 for statistics on recent developments.

Insults to government institutions or officials: Although this provision has not been applied for a great many years, it has not been repealed.

General Civil Penal Code

Chapter 23. Defamation

§ 246. “Any person who by word or deed unlawfully defames another person, or who is accessory thereto, shall be liable to fines or imprisonment for a term not exceeding six months.”

§ 247. “Any person, who by word or deed behaves in a manner that is likely to harm another person's good name and reputation or to expose him to hatred, contempt, or loss of the confidence necessary for his position or business, or who is accessory thereto, shall be liable to fines or imprisonment for a term not exceeding one year. If the defamation is committed in print or in broadcasting or otherwise under especially aggravating circumstances, imprisonment for a term not exceeding two years may be imposed.”

These provisions generally apply without regard to the position of the aggrieved person. The Norwegian Supreme Court has ruled that the right to freedom of expression is particularly important where public officials are concerned, and has stressed the importance of the mass media focusing on possible abuses of public authority and other unlawful acts committed by persons exercising such authority (Supreme Court Report 1999 p. 1541, 1995 p. 1127 and 1993 p. 537). The same principles have been applied when the aggrieved person is a politician, (cf. Supreme Court Report 1990 p. 257.)

§ 248. “If an offender under section 247 has acted against his better judgment, he shall be liable to imprisonment for a term not exceeding three years.

Under especially extenuating circumstances, fines may be imposed.”

§ 249.

1. “No penalty pursuant to sections 246 and 247 shall be imposed if the allegation is proved to be true.

2. Even if the truth is proved as stated in subsection 1, the allegation is criminal if it is made without any respectable reason for doing so, or if it is otherwise unwarranted because of the form or manner in which it is made or for other reasons.

3. No penalty pursuant to sections 246 and 247 shall be on any person who is under a duty or obligation to express his opinion or who has expressed his opinion in legitimately taking care of his own or another's interests if it is established that he has shown proper care in all respects.

4. Evidence of the truth of an allegation may not be given

a) for a criminal act of which the accused has been acquitted by a final Norwegian or foreign judgment,

b) if the court unanimously finds that the allegation is undoubtedly unwarranted regardless of its truth and that refusal to admit such evidence is desirable in the interests of the aggrieved person. Admission of such evidence must never be refused if the prosecuting authority or the plaintiff has indicated in advance that a penalty pursuant to section 248 will be demanded or that only civil legal claims will be pursued.

5. When evidence of the truth of an allegation is not admitted, evidence concerning whether the person indicted (the defendant) believed in or had reason to believe in the truth of the allegation is also inadmissible.”

§ 250. “If the defamation is provoked by improper conduct on the part of the aggrieved person himself, or retaliated with bodily assault or defamation, any penalty may be waived.”

§ 251. “Felonies dealt with in this chapter shall be subject to public prosecution only when the aggrieved person so requests and it is so required in the public interest. The prosecution may be limited to the submission of a demand that the defamatory statement be declared null and void (cf. section 253).

Public authorities may, however, without a request from any aggrieved person prosecute a defamatory statement that is directed against an indefinite group or a large number of persons if it is so required in the public interest.

The same applies when the defamation is committed against any person during the performance of a public service or in connection with any public service, or when any person who is or was at the time in question a public servant is accused of an act or matter which might make him liable to a penalty or loss of office.”

§ 252. “The acts that are defined as criminal in sections 247 and 248 are also punishable when committed against the memory of a deceased person. The penalty shall, however, in the cases referred to in section 247 be reduced to fines and in the cases referred to in section 248 to fines or imprisonment for a term not exceeding three months.

The spouse, parents, children, siblings, and heirs of the deceased person are entitled to request and institute a prosecution.”

§ 253.

1. “When evidence of the truth of an allegation is admissible and such evidence has not been produced, the aggrieved person may demand that the allegation be declared null and void unless it is otherwise provided by statute.
2. A claim that the allegation be declared null and void shall be summarily dismissed when the person who has made the allegation withdraws it before the main hearing in a manner that the court finds satisfactory to the aggrieved person.
3. A claim that the allegation be declared null and void shall also be summarily dismissed:
 - a) when the allegation is made in a judgment, order, judicial decision or other judicial act,
 - b) when the allegation is made by a witness during a statement in a court sitting or to the police or the prosecution authority, or by a party, legal representative, prosecutor, defence counsel, appointed expert or social inquirer or by an official employed by the prosecuting authority or the police during legal proceedings or investigation. In these cases the claim that the allegation be declared null and void shall, nevertheless, not be summarily dismissed when the court finds that the aggrieved person should have the truth of the allegation tried in declaration proceedings against the defendant or that the statement falls outside the limits of the case.
 - c) when the allegation is made in a written statement from the Storting's ombudsman for the public administration.
4. When a penalty for the allegation has been demanded, a claim that a statement be declared null and void cannot be summarily dismissed pursuant to subsection 2 or 3 unless the demand for a penalty is summarily dismissed or rejected.”

§ 254. “Liability for any defamation committed in a magazine or periodical printed in the realm shall not extend to any person who has only taken part in the technical production or distribution of the publication. The same applies to broadcasting.”

The two following provisions from the General Civil Penal Code concern defamatory statements against the King and the royal family, however they are dormant.

§ 101. “Any person who commits violence or any other assault against the King or the Regent, or is accessory thereto, shall be liable to imprisonment for a term of not less than two years. If serious injury to body or health is caused or attempted, imprisonment for a term not exceeding 21 years may be imposed.

Any person who defames the King or the Regent shall be liable to detention or imprisonment for a term not exceeding five years.”

§ 102. “If any felony mentioned in chapters 19,20,21,22 or 23 is committed against any member of the royal family, the custodial penalty prescribed for such felony may be doubled and imprisonment for a term not exceeding 21 years may be imposed if the usual penalty is as high as eight years' imprisonment.”

Developments in the application of criminal and civil law provisions concerning defamation at domestic level

The Media Archive of the Norwegian Institute of Journalism has recorded 20 court decisions involving defamation the last 24 months. The defendants have won all of these cases. In 16 of the cases, media enterprises (including broadcasting companies) have been among the

defendants. In two of the cases, a politician was sued, and in another two cases a journalistic source was sued. Among the alleged victims have been politicians (twice), public employees, various business people or business enterprises or private individuals.

According to oral information obtained from The Norwegian Press Association, it is likely that none of the abovementioned cases involved criminal sanctions, but rather claims for declaring the statements null and void (“mortifikasjon” in accordance with Section 253 of the General Civil Penal Code) or economic compensation for pecuniary or non-pecuniary loss.

Today it is common practice among Norwegian courts to refer to the case law of the European Court, or they refer to the recent case law of the Supreme Court that is based on the case law of the European Court. Case law from the European Court of Human Rights has thus been decisive for the state of recent Norwegian law on defamation.

Poland

Defamation is a criminal offence. An application (Jürgen Hösl-Daum and others v. Poland no. 10613/07) was communicated on 30 January 2012 to the Polish Government by the ECHR, with a specific question concerning the foreseeability of article 133 of the Criminal Code, which provides for a sentence of up to 3 years' imprisonment for any person publicly insulting the Polish nation or Republic. ⁹⁴

Information on relevant legal provisions on defamation

Criminal Code

The offence of defamation (Article 212 of the Criminal Code of 1997, Chapter XXVII) is still on the books. The Criminal Code was amended on 8 June 2010 and the penalties for the offence of defamation were reduced, but the offence as such remains. For example, now there is no possibility to impose a prison sentence in case of standard defamation; this however is still possible if defamation was effected by the mass-media (up to 1 year of imprisonment). There is a campaign led by some NGOs (supported by the Ombudsman) to decriminalise this offence but recently the Minister of Justice responded that he was in favour of maintaining it. The Constitutional Court reviewed the constitutionality of this provision but found by a significant majority that it was compatible with the Constitution (judgment of 30 October 2006, case no. P 10/06; the summary should be available in the database of the Venice Commission). Thus, currently the chances of decriminalisation of defamation are rather slim.

There are provisions in the Criminal Code which deal with the defamation of the State institutions.

Article 133 of the Criminal Code

⁹⁴ “Did Article 133 of the Criminal Code meet the “quality of the law” requirements established in the Court’s case-law (cf. *Dink v. Turkey*, nos. . 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, §§ 112-116, 14 September 2010; and *Altuğ Taner Akçam v. Turkey*, no. 27520/07, § 85-96, 25 October 2011)?”

“Anyone who insults the Nation or the Republic of Poland in public shall be subject to deprivation of liberty for up to three years.”

Article 135 § 2 of the Criminal Code

“Anyone who insults the President of the Republic of Poland in public shall be subject to the penalty of the deprivation of liberty for up to 3 years.

This provision was reviewed by the Constitutional Court on 6 July 2011 (case no. P 12/09) which found that it was compatible with the Constitutional and Article 10 of the Convention.

Article 136 § 1 Anyone who, on the territory of the Republic of Poland, commits an active assault upon the head of a foreign State, upon the head of the diplomatic representation of a foreign State, who is accredited to the Republic of Poland, or upon a person enjoying similar protection by virtue of law, treaty or generally accepted international custom, shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years.

§ 2. Whoever on the territory of the Republic of Poland, commits an active assault upon a person belonging to the diplomatic personnel of a mission of a foreign country to Poland, or on a consular official of a foreign country in connection with the performance of their official duties

shall be subject to the penalty of the deprivation of liberty for up to 3 years.

§ 3. The punishment specified in § 2 shall be imposed on anyone, who, on the territory of the Republic of Poland, insults the person referred to in § 1, in public,

Art. 226

Paragraph 1 penalises defamation of a public official or a person called upon to assist him, in the course of and in connection with the performance of official duties and provides a fine, restriction of liberty or deprivation of liberty for up to one year for this offence.

Paragraph 3 penalises public defamation or humiliation of the constitutional authority of the Republic of Poland and provides a fine, restriction of liberty or deprivation of liberty for up to two years for this offence.

Art. 236: “Insulting a public official or one assisting a public official in the course of and in connection with the performance of official duties,” shall be punishable by up to two years imprisonment or a fine.

Art. 270: “Publicly insulting, ridiculing and deriding the Polish nation, the Polish Republic, its political system or its principal organs,” shall be punishable by six months to eight years imprisonment.

Art. 273: If the acts prohibited in Art. 270 are committed in print or through the mass media, the punishment is one to ten years imprisonment.

Portugal

Defamation is a criminal offence, carrying a maximum sentence of six months' imprisonment (two years if the offence is committed via the media). The penalties may

be increased by half in the case of defamation of a state official. The law stipulates that truth and public interest may be relied on in defence against accusations of defamation.⁹⁵

Information on relevant legal provisions on defamation

Penal Code

Article 180 of the Penal Code stipulates a penalty for defamation of up to six months of imprisonment (no minimum limit) or of a fine of up to 240 days (no minimum limit). Defamation is defined as a judgment about someone or the imputation to a person of a fact that is offensive of her honour or consideration when the perpetrator is addressing a third party. Suspicion and the reproduction of one offensive imputation or judgement are also considered defamation.

The aforementioned conduct shall not, however, be punished when the imputation is made in order to fulfil legitimate interests and the author proves the veracity of such imputation or if he has a serious basis to believe, in good faith, this imputation to be truthful (180 nr 2). Is the assertion however related to a fact concerning the intimacy of private and family life, legitimate interest and truth are not considered adequate defences, unless the defendant made the assertion in the exercise of a right, in the accomplishment of a duty imposed by law or legitimate order of authority or with the consent of the envisaged person (Article 180 nr 3 conjugated with Article 31 al. b) c) and d)).

Legal provisions concerning defamation are established under the assumption that the author who addresses a third party with a conscientious intention to harm, imputes facts or suspicions to another person with prejudice of her honour or consideration. The author can claim good faith as a defence, except in those cases where he did not accomplish the information duty about the truth of the imputation imposed by the circumstances (Article 180 nr 4).

Article 184 in connection with Article 132 nr 2 j of the Penal Code, establishes that the penalty may be increased to the double of its maximum and minimum limits whenever the victim is a member of a body that exercises sovereign power, of the State's Council, Minister of the republic, magistrate, member of an organ of the government of one of the Autonomous Regions, Justice Purveyor, civil governor, member of an organ of the local autarchies or of an organ or service of public authority, commander of a public force, member of a court's jury, witness, lawyer, agent of security forces or security services, public officer civil or military, public forces agent or a citizen in charged of public service, teacher or examiner or a minister of religious cult, and the claim relates to the victim, being in the exercise of his/her functions or the offence is made because of them. The same applies if the author is a public officer and acts with serious abuse of authority (Article 184 coordinated with Article 132 nr 2 j).

Article 183, nr 1 states that if the defamation is committed through means or in circumstances that facilitate its public diffusion or when the defamation is about the imputation of facts, and it is determined that the author knew that those facts where not true, the penalty shall be increased by 1/3 of its minimum and maximum limits. If the crime is committed through the media, the author may be punished with an imprisonment penalty of up to 2 years or with a fine never inferior to 120 days (Article 183 nr 2).

The court, nevertheless, may refrain from a penalty if the author explains the offensive claim before the court and the claimant considers it as satisfactory. The court refrain from a penalty if the offence was provoked by an illicit or a reprehensible act by the offended claimant.

⁹⁵ See, for example, ECHR judgments *Conceição Letria v. Portugal*, no 4049/08, 12 April 2011, *Azevedo v. Portugal*, no. 20620/04, 27 March 2008.

Article 328 nr 1 provides a penalty of a maximum imprisonment of up to 3 years or a fine for offending the President of the Republic or the person who constitutionally replaces him. If the insult or defamation against the head of state are made through public speech, published writing or drawing, or through any technical public communication method (technical means that allows communication with the public), the author may be punished with an imprisonment penalty from 6 months up to 3 years or with a fine never inferior to 60 days.

In the Portuguese legal framework, defamation is considered a private crime. This means that in order to the alleged crime be submitted to trial a private accusation is required ⁹⁶ (Article 188 nr 1). Such requirement does not, however, exist in those cases in which the victim is a member of a body that exercises sovereign power, of the State's Council, Minister of the republic, magistrate, member of an organ of the government of one of the Autonomous Regions, Justice Purveyor, civil governor, member of an organ of the local autarchies or of an organ or service of public authority, commander of a public force, member of a court's jury, witness, lawyer, agent of security forces or security services, public officer civil or military, public forces agent or a citizen in charged of public service, teacher or examiner or a minister of religious cult in the exercise of his/her functions or because of those functions (Article 188 nr 1 a)).

Civil Code

Article 483 of the Civil Code imposes civil liability on the authors of illicit facts. If a person violates someone else's rights or any legal rule that protects the interests of others with prejudicial intention or negligently illicitly is obliged to compensate the harmed person for the damage caused. Article 484 of the Civil Code also foresees liability for an offence against somebody else's reputation or good name.

Developments in the application of criminal and civil law provisions concerning defamation at domestic level

In 2003, 3 971 cases of defamation, injury and other crimes against a person's honour were brought before courts and 1 494 defendants were convicted.

Currently the question of decriminalisation of defamation is still under consideration by the Portuguese authorities.

Romania

Defamation was decriminalised in Romania in 2006.

Furthermore, the new criminal code, adopted in 2010 but not yet in force, contains no provisions criminalising insult or defamation.⁹⁷

⁹⁶ In general, when there is a crime, the responsibility to prosecute its author lies on a public prosecutor.

⁹⁷.For further information, see the final resolution of the Committee of Ministers of the Council of Europe in the case of Dalban v. Romania:

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=3&portal=hbkm&action=html&highlight=dalban&sessionid=94975550&skin=hudoc-fr>

Information on relevant legal provisions on defamation

Constitution

Art. 30: “6. Freedom of expression shall not be prejudicial to the dignity, honour, privacy of person, and the right to one’s own image. 7. Any defamation of the country and the nation, any instigation to a war of aggression, to national, racial, class, or religious hatred, any incitement to discrimination, territorial separatism, or public violence, as well as any obscene conduct contrary to morality shall be prohibited by law.”

Civil Code

Defamation, libel and insult are also civil offences. However, there are no fines for civil defamation and insult, the injured party may be granted a compensation for moral and material damages.

Developments in the application of criminal and civil law provisions concerning defamation at domestic level

MMA refers to statistics of the Ministry of Justice with respect to the existence, at the end of 2003, of hundreds of pending criminal cases involving journalists, mostly sued on the basis of previous Articles 205 and 206 referring to slander and insult (FreeEx Program, MMA, Annual Report, 2003). FH evaluates this number to more than 400 cases (FH-FP, 2004).

The ECtHR decided in its judgment *Cumpana and Mazare v Romania* of 10.06.2003 that the interference with the applicants’ (journalists) freedom of expression was not disproportionate to the legitimate aims pursued, i.e. the protection of rights of others, especially the private life and the authority of the judiciary and concluded to the non-violation of Article 10 ECHR. A request to refer the case to the Grand Chamber was accepted on 03.12.2003 and the case was heard on the merits on 01.09.2004 (ECtHR, Press Release, 01.09.2004).

Russian Federation

The Russian Federation decriminalised defamation and also insult in 2011.⁹⁸

On 12 July 2012, draft amendments reinstating libel provisions in the Criminal Code has been adopted in a first reading by the Russian State Duma. The law has been promulgated in end July and entered into force in August 2012 (Article 128_1 of the Criminal Code).

Information on relevant legal provisions on defamation

Constitution

Article 23:

⁹⁸ See ECHR judgment *Aleksey Ovchinnikov v. Russia*, no. 24061/04, 16 December 2010; *Chemodurov v. Russia*, no. 72683/01, 31 July 2007.

1) Each person has the right to the inviolability of his private life, individual and family privacy, and defence of his honour and good name.

Federal Criminal Code

Article 128_1 of the Criminal Code reintroduce defamation as a felony punishable by fines in an amount equal to approximately US\$170,000 or by forced correctional labor for a period of up to 12 weeks. The original bill, which was not passed by the legislature in that form, had provided for a five-year term of imprisonment.

The Law defines defamation as "knowing dissemination of false information hurting one's dignity and reputation" and lists four situations in which the crime is considered more serious: defamation contained in public speech, defamation conducted by an official who used his/her position, false information about one's health, and false accusations of committing a serious crime.

Civil Code

Article 152

Defamation and Business Reputation

(1) "A citizen can demand in a court trial the refutation of the information denigrating his honour and dignity and business reputation, if the person responsible for disseminating this information does not prove that it corresponds to reality. On request of interested persons, the protection of a deceased person's dignity and honour can be admitted.

(2) If information denigrating a citizen's honour, dignity and business reputation was disseminated by means of mass media, it shall be refuted in the same means of mass media. If this information is contained in a document which is sent out by an organisation, this document should be changed or withdrawn. In other cases, the court shall determine the way in which this information shall be refuted.

(3) A citizen, whose rights or other interests protected by law have been denigrated by a means of mass media, has the right to reply in the same means of mass media.

(4) If the court decision is not executed, the court can impose a fine on the responsible person to be paid to the State. The amount of the fine is determined by procedural legislation. The fine does not waive the responsible person's duty to carry out the court decision.

(5) A citizen, whose honour, dignity and business reputation as protected by law have been denigrated by a means of mass media can demand not only the refutation of the information but also compensation of his/her moral damages.

(6) If the person who disseminated the information denigrating the plaintiff's honour, dignity and business reputation cannot be identified, he has the right to file a law suit to determine that the information does not correspond to reality.

(7) The provisions of this Article about the protection of a citizen's business reputation apply correspondingly to the protection of the business reputation of a legal entity."

Resolution of the Plenum of the Supreme Court of the Russian Federation

"About some questions arising in the court practice dealing with the defamation cases"

(2) The term "disseminating information", denigrating honour, dignity and business reputation of the citizen or organisations ... shall be defined as publishing such information in print media, broadcast media, documentary programmes and other mass media, and as contained in employment references, public speeches, statements addressed to officials, or information

disclosed, including orally, to several or even one person. If such information is addressed only to the person it concerns, it shall not be considered as dissemination.

The term "discrediting" information shall be considered as information that does not correspond to reality, denigrates a citizen's honour and dignity, contains statements which accuse a citizen or an organisation of violating the law or moral principles (such as dishonest act, improper behaviour at work, at home, and other information discrediting business or public activity, reputation, etc.

Developments in the application of criminal and civil law provisions concerning defamation at domestic level

In August 2003, the Secretary General of the Council of Europe and the OSCE Representative on Freedom of the Media called on the Russian authorities to reconsider the provisions concerning libel contained in the Criminal Code (SG / OSCE-FOM, 29.08.2003). No information is available on initiatives taken by the authorities in this context.

Articles 151 and 152 of the Civil Code and Articles 129 and 130 of the Criminal Code are still being used by public figures in order to intimidate or silence hostile media. They are a serious impediment to the practice of investigative journalism, with its potential to publicise and thus to reduce incidents of corruption and wrongdoing in public life.

On 24 February 2005 the Plenary Supreme Court of the Russian Federation adopted Resolution no. 3, which required the courts examining defamation claims to distinguish between statements of facts which can be checked for veracity, and value judgments, opinions and convictions which are not actionable under Article 152 of the Civil Code because they are expressions of a defendant's subjective opinion and views and cannot be checked for veracity (paragraph 9). Furthermore, it prohibited the courts from ordering defendants to extend an apology to a claimant, because that form of redress had no basis under Russian law, including Article 152 of the Civil Code (paragraph 18).

San Marino

Defamation is a criminal offence, carrying a maximum sentence of one year's imprisonment. The relevant provisions make specific reference to politicians and officials.

Information on relevant legal provisions on defamation

The relevant provisions make specific reference to political figures and public officials.

Developments in the application of criminal and civil law provisions concerning defamation at domestic level

According to HRP, the law provides for freedom of speech and of the press, and the authorities generally respect these rights. An independent press, an effective judiciary, and a functioning democratic political system to ensure freedom of speech and of the press (HRP, 2003).

Serbia

In Serbia defamation is a criminal offence, carrying a maximum sentence of three months' imprisonment. A prison sentence is applied only in certain cases (defamation of the State and its symbols for example). A great many prosecutions of journalists have been reported.⁹⁹

Information on relevant legal provisions on defamation

Many of the provisions in the repressive 1998 Public Information Law were found to be unconstitutional and the law was repealed in February 2001. Criminal defamation laws remain in force.

Criminal Code

Defamation remains a criminal offence in Serbia, although following the promulgation of the new Serbian Criminal Code on 29 September 2005, prison sentences can no longer be imposed in defamation and insult cases. Imprisonment for up to three months is, however, still foreseen in cases of exposure to ridicule of the State and State symbols, foreign States and their symbols, selected international organisations, and national and ethnic groups (Articles 173 and 175).

Under the previous Criminal Code, penalties in defamation cases involved imprisonment for up to six months for insult (Article 170) and for up to three years for defamation (Article 171). The relevant changes were brought about following a long campaign by journalists and civil society groups for the replacement of prison sentences with monetary fines.

Slovakia

Defamation remains a criminal offence, carrying a maximum sentence of five years' imprisonment, although the penalties applicable were significantly reduced in 2003. Amendments to the provisions relating to defamation were adopted in 2006, with the entry into force of the "new criminal code" (law no. 300/2005).

Accordingly, Article 154 providing for the offences of insult and defamation against an official during the exercise of their duties has been abolished.

A new amendment to the criminal code entered into force on 1 September 2009, providing for the new offence of incitement, defamation and threat on the basis of race, nation, nationality, skin colour, gender or ethnic affiliation. This offence is punishable by imprisonment for a period of between one and five years. Information on relevant legal provisions on defamation

⁹⁹ See ECHR judgment *Filipovic v. Serbia*, 20 December 2007 and *Lepojic v. Serbia*, 6 November 2007.

Criminal Code

In 2005 the new Criminal Code (Act No. 300/2005) had been adopted, which came into effect on 1st January 2006 and cancelled former Criminal Code (Act No. 140/1961). New Criminal Code has brought decriminalization of defamation in following aspects:

- According to Section 154, sub. 3 of Criminal Code No. 140/1961 as amended “Gross insults or defamation of a public officer in the exercise of his/her functions or in connection with his/her function are punishable by up to one year imprisonment or by pecuniary punishment”. This provision had not been transposed to the new criminal legislation.

- In Section 206 of Criminal Code No. 140/1961 as amended was crime of Defamation regulated as follows:

“(1) Dissemination false information about another person, able to jeopardize his/her reputation among another citizens, namely to discredit him/her in occupation or disturb his/her family relations or cause other serious damage is punishable by up to two years imprisonment.

(2) By imprisonment from one to five years or by pecuniary punishment or by disqualification shall be punished the perpetrator, if the act stipulated under paragraph 1 has committed through press, film, radio, television or other similarly effective way.”

New definition of Defamation in Section 373 of Criminal Code No.300/2005 provides:

“(1) Dissemination false information about another person, able to jeopardize his/her reputation among another citizens, namely to discredit him/her in occupation or disturb his/her family relations or cause other serious damage is punishable by up to two years.

(2) By imprisonment from one to five years shall be punished the perpetrator, if he/she has committed act stipulated under paragraph 1

a) and causes substantial damage,

b) of a special motive,

c) publicly or

d) in the business by serious misconduct.

(3) By imprisonment from three to eight years shall be punished the perpetrator, if he/she has committed act stipulated under paragraph 1

a) and causes large scale damage or

b) and causes another person loss of employment, decline in business or divorce.”

It means that according to new legislation the pecuniary punishment and disqualification are not applicable for defamation any more. According to new Criminal Code defamation committed via media does not fall into special category, the court does not examine the means by which the act was committed but its consequences.

On the other hand new Criminal Code brought stricter measures in regards to Defamation of a nation, race or conviction. While Section 198 of former Criminal Code (No. 140/1961) provided: “Public defamation of

a) a nation, its language, race or an ethnic group or

b) a group of inhabitants of the republic on the grounds of their religion or because they are without any religion

is punishable by up to one year imprisonment or by pecuniary punishment.

(2) By imprisonment by up to one year shall be punished the perpetrator, if he/she has committed act stipulated under paragraph 1 with at least two other people”, new Criminal Code (No. 300/2005) in its Section 423 states:

“(1) Public defamation of

c) a nation, its language, race or an ethnic group or

d) an individual or a group of inhabitants of the republic on the grounds of their race, nation, nationality, skin colour, ethnic group, origin of a genus, religion or because they are without any religion

is punishable by imprisonment for from one to three years.

(2) By imprisonment from two to five years shall be punished the perpetrator, if he/she has committed act stipulated under paragraph 1

a) with at least two other people,

b) in conjunction with a foreign power or foreign actor,

c) as a public official

d) in a crisis situation or

b) of a special motive.”

New criminal codex extends subject matter of Defamation of a nation, race or conviction and also sets stricter punishments. Not only the group of inhabitants but also an individual is protected by law against this crime.

On 1st September 2009 came into effect the amendment of Criminal code which inter alia brought new subject matter “Incitement, defamation and menace of person on the ground of their race, nation, nationality, skin colour, ethnic group or origin of a genus”. This crime is punished by imprisonment from one to five years.

Civil Code

Law No. 40/1964 of the Official Gazette.

Protection of personality

Article 11

“Any natural person has the right to protection of his or her personality, in particular of his or her life and health, civil and human dignity, privacy, name and personal characteristics.”

Article 13

(1) “any natural person has the right to request that unjustified infringement of his or her personal rights should be stopped and the consequences of such infringement eliminated, and to obtain appropriate satisfaction.”

(2) “In cases when the satisfaction obtained under Article 13 (1) is insufficient, in particular because a person’s dignity and position in society has been considerably diminished, the injured person is entitled to compensation for non-pecuniary damage.”

Developments in the application of criminal and civil law provisions concerning defamation at domestic level

In April 2003, Parliament repealed a controversial section in the Criminal Code that allowed public officials to press criminal charges for defamation, which ended an ongoing case against a journalist (HRP, 2003). According to the authorities, Article 154/2 of the Code is now the only provision of the Criminal Code, among those criticised on this subject, which remains in force (INDEX, 02.2002).

A new draft Criminal Code is currently being elaborated in Parliament and should enter into force by April 2005. This reform should fully integrate European standards.

On 20.07.2004, the ECtHR found a violation of Article 10 ECHR in the *Hrico v. Slovakia* case. The applicant was a publisher and editor-in-chief of a newspaper which, in 1994 and 1995, published three articles concerning an action in defamation that had been brought before the Slovak courts by a Minister against a writer who had published a statement alleging, among other things, that the Minister had a fascist past. The applicant expressed in his articles the view that the judge, who presided over the Supreme Court in the defamation case, had reached his decision in the case well before judgment was delivered. Reference was also made to the fact that the name of the judge was on the list of candidates of a political party, which had specific views on the period with which the case was concerned. The domestic courts held that the terms used clearly showed that the purpose of the statements had been to offend, humiliate and discredit the person criticised. The ECtHR noted that the regional court expressly recognised that where a judge failed to withdraw from a case in which the decision was linked to his political views, he deliberately exposed himself to the threat of criticism by the public. The ECtHR considered that it could not be said that the purpose of the statements in question had been to offend, humiliate and discredit the person criticised

Slovenia

Defamation is a criminal offence. In certain cases truth and good faith may be relied upon in defence. The relevant provisions make specific reference to the President, the Republic and state symbols as well as foreign heads of States. Information on relevant legal provisions on defamation.

Criminal Code

Chapter 18 of the Criminal Code (Ur. I. RS., Nos. 63/94, 70/94 – amendments, 23/99) is devoted to criminal offences against the honour and reputation. The object of the legal protection against criminal offences provided in this chapter is the honour, good name and reputation of various subjects.

Five basic criminal offences involving various types of attack against the honour and reputation are defined (Articles 169 to 173 of the Criminal Code). Two alternative penalties of a fine or a prison sentence (of varying lengths) are always provided for. All criminal offences listed below are committed against individuals; however, the criminal offences of insult, slander or defamation can be committed against legal entities or bodies which are not legal entities (for example, state authorities) as well. For any of the five offences prosecution is instigated upon the filing of a private motion. When such actions are committed against a state body or official or a military official in connection with the performance of their office in an individual body, prosecution is instigated at the initiative of the injured party in the case in question. In these cases, prosecution is carried out *ex officio*, but only provided the injured party has filed a complaint.

Art. 169: Insult

An insult may be verbal, real or symbolic and must be directed against a specific person. It is committed either verbally or expressed through action and is not supported by fact, which is

why it is not permitted to ascertain the truth in the procedure. The second paragraph of Article 169 of the Criminal Code defines so-called “qualified insult”, which is an insult committed through the press, radio, television or other means of mass media; the third paragraph defines exclusion of unlawfulness under certain conditions.

Art. 170: Libel

The criminal offence of libel is committed by making assertions or circulating false information about events, characteristics, relationships or situations when the perpetrator is aware that these are false. A prison sentence is prescribed for libel of such a nature when it can have grave consequences for the victim (no alternative penalty of a fine is provided for here).

Art. 171: Slandorous accusations

This criminal offence relates to making false assertions and circulating untruths when the perpetrator is unaware that they are false. The perpetrator may during the procedure prove either that the assertions he made were true or that he had justified reasons for believing that what he was asserting or circulating was true.

Art. 172: Gossiping

The criminal offence of gossiping encroaches on the most personal sphere of human beings, i.e. their intimate and family lives. With the exception of cases from the fifth paragraph of this Article, it is not permitted to ascertain the truth in the procedure. The fifth paragraph of the Article 172 provides that whoever asserts or circulates any matter concerning the personal or family affairs of another person in the exercise of an official duty, political or other public activity, at the defence of any right or the protection of justified benefits, shall not be punished, provided he proves either the truth of his assertions or that he had reasonable grounds for believing in the truthfulness of what was asserted or circulated.

Art. 173: Reproaching of a criminal offence

As indicated, these criminal offences can also be committed against legal entities and state authorities, which is why there should be no need to define special criminal offences to protect the honour and reputation of specific individuals or legal entities. However, the Slovenian Criminal Code defines as criminal special offences committed against the honour and reputation of the Republic of Slovenia, its symbols and the President of the Republic, as well as against the presidents of other countries, their representatives and symbols. The protection provided by the provisions cited herein is narrower in its scope, since criminal offences under Articles 174 to 176 of the Criminal Code need to be committed publicly to be an offence.

Art. 174: Disparagement of the Republic of Slovenia

In addition to the Republic of Slovenia, protection against this type of criminal offence is enjoyed by the President of the Republic only and not by other high-ranking bodies or their representatives – these are guaranteed protection within the provisions on basic criminal offences. If a criminal offence under Article 174 of the Criminal Code has been committed, the prosecution is instigated ex officio.

Art. 175: Disparagement to a foreign country or international organisation

Foreign countries, international organisations and their representatives and symbols are afforded the same protection as the Republic of Slovenia and its President; prosecution for

such criminal offences can only be instigated by the public prosecutor with the permission of the minister of justice.

Art. 176: Disparagement of the Slovene people or national communities

This Article provides that whoever publicly commits any of the offences under Articles 169 to 173 against the people of Slovenia or against the Hungarian or Italian national communities living in the Republic of Slovenia, shall be punished by a fine or prison sentence of not more than one year.

Spain

Defamation (known as "insult" and "calumny") is a criminal offence; the maximum prison sentence is two years. The law stipulates that truth and good faith may be relied on in defence.

The Spanish criminal code provides for the offence of insult in Articles 208-210 and the offence of calumny in Articles 205-207. Article 211 stipulates a heavier sentence for these offences when committed via the press, television broadcasts or any other similar medium. Injury to the King is a further offence, provided for in Article 490 of the Spanish criminal code.¹⁰⁰

Information on relevant legal provisions on defamation

Criminal Code

In Spain, defamation is regulated in the Criminal Code of 1995, in its XI Title, under the heading of "Crimes against honour".

The code distinguishes between calumny (Article 205 - 207) and insult (Article 208 - 210).

Calumny (slander) is attributing a crime to another knowing that it is false or with reckless disrespect for the truth. It can be punished with prison sentences between six months and two years or fines.

The defence for a person accused of slander will be proving that the crime was committed. In such cases, the person will be exempted from any penalty.

Insult is harming another person's dignity, fame or damaging his/her self-esteem. Insult is only considered as a crime when by its nature, effects and circumstances, it is considered as serious. Insult will not be considered serious unless it is committed with knowledge of its falsehood or reckless disrespect for truth.

Serious insult committed with publicity will be punished with fines (of varying amounts).

¹⁰⁰ For further details, see ECHR judgment *Otegi Mondragon v. Spain*, no. 2034/07, §§ 27-29, 15 March 2011. This judgment also contains references to the relevant Council of Europe texts in paragraphs 30-31.

The person accused of insult will be exempted from all responsibility by proving the truth of the accusations when these were made against civil servants concerning the exercise of their functions or related to administrative infractions.

The general provisions on defamation, applicable to both calumny and insult, appear in Articles 211-216. In these provisions it is inter alia stipulated that calumny/insult will be considered public when the accusation was disseminated via the press, broadcasting or similar means. In the latter circumstances, the owner of the media entity can be made jointly responsible (civil responsibility).

The relevant provisions of the Criminal Code (as amended by Organic Law No. 10/1995 of 23 November 1995) are as follows:

Article 208

“Acts or expressions which undermine another’s dignity by attacking his or her reputation or self-esteem shall constitute insult.

Only insults which, by virtue of their nature, effects and context, are generally acknowledged to be serious shall constitute an offence ...”

Article 209

“The offence of serious public insult shall be punishable by a day-fine payable for between six and fourteen months. Where the insult is not proffered publicly, the fine shall be payable for between three and seven months.”

Article 490 of the Criminal Code provides for the following penalties for the offence of insult against the King:

Article 490

“... 3. Anyone who falsely accuses or insults the King or any of his ascendants or descendants, the Queen consort or the consort of the Queen, the Regent or any member of the Regency, or the Crown Prince, in the exercise of his or her duties or on account of or in connection with them, shall be liable to a term of imprisonment of between six months and two years if the false accusation or insult is of a serious nature, and otherwise to a day-fine payable for between six and twelve months.”

This provision is contained in Title XXI of Book II of the Criminal Code (“Offences against the Constitution”), under Chapter II (“Offences against the Crown”).

Articles 496 and 504 of the Criminal Code deal with the offence of serious insult against Parliament, the Government or other State institutions. These provisions feature in Title XXI of Book II of the Criminal Code (“Offences against the Constitution”), under Chapter III (“Offences against State institutions and the separation of powers”).

Article 496

“Anyone who seriously insults the Cortes Generales [Congress of Deputies and Senate] or the legislative assembly of an Autonomous Community ... shall be liable to a day-fine payable for between twelve and eighteen months ...”.

Article 504

“Anyone who seriously threatens, falsely accuses or insults the nation’s Government, the General Council of the Judiciary, the Constitutional Court, the Supreme Court, or the Governing Council or High Court of Justice of an Autonomous Community shall be liable to a day-fine payable for between twelve and eighteen months ...”.

Civil Code

In addition to its criminal regulations, Spain provides civil protection from defamation through Organic Law No. 1/1982 on civil protection of the right to honour, personal and family privacy and to one's own image (Ley Orgánica 1/1982, de 5 de mayo, de Protección civil del derecho al honor, a la intimidad personal y familiar y a la propia imagen).

This law protects this right in civil law in the event of any unlawful interference, and one of the instances of such interference is described in Article 7 of the law as follows: the allegation of facts or the expression of value judgments through actions or expressions which may undermine the dignity of another person by harming his or her reputation or reducing his or her self-esteem.

According to Article 9.2, this civil protection consists in an order to compensate for any harm caused while Article 9.3 states that it is presumed that some harm has been caused every time an unlawful interference is found to have occurred and the compensation will be adjusted in accordance with the non-pecuniary damage incurred bearing in mind the circumstances of the cases and the seriousness of the injury actually caused. For this purpose account will be taken, at all events, of the level of circulation of the media through which the defamation has occurred.

Developments in the application of criminal and civil law provisions concerning defamation at domestic level

Organic Law No. 15/2003 of 25 November made some amendments to the description of this type of offence in the Criminal Code, particularly in Article 206, where the minimum amount of the fine applied for public slander and the minimum and maximum amounts of the fine for non-public slander were increased. Automatic prosecution for these types of offence was introduced for cases in which the injured parties are public officials or authorities carrying out their duties.

In the civil law system, it is worth noting that Final Provision 4a of Organic Law 10/1995 of 23 November, which was adopted in the Criminal Code, gave a new wording to Article 7.7 of Organic Law No. 1/1982. As a result allegations of facts or expressions of value judgments which may undermine the dignity of another person by harming his or her reputation or reducing his or her self-esteem are now considered unlawful interference with a person's honour.

The purpose of this amendment is to bring unlawful interference into line with the new criminal category of insult set out in Article 208 of the Criminal Code.

RSF and IPI reported (IPI, 21.07.2004; RSF, 21.07.2004) that, in June 2004, the Supreme Court upheld the conviction of a daily newspaper for insulting the former King of Morocco. The daily had written that the former King had been involved in drug-trafficking and although the court recognised that the accusations were truthful, it convicted the daily for having harmed the former King's reputation. Reference has to be made to the ECtHR judgment *Colombani and others v. France* of 26.02.2002, in which a violation of Article 10 ECHR was found on similar grounds.

Sweden

Defamation is a criminal offence established in the Law on freedom of expression, a constitutional act. The law stipulates that truth and public interest may be relied on in defence against accusations of defamation.

Information on relevant legal provisions on defamation

The Freedom of the Press Act (Constitutional provision)

Chapter 7 on offences against the freedom of the press

Art. 4. "With due regard to the purpose of a universal freedom of the press as set forth in Chapter 1, the following acts shall be regarded as offences against the freedom of the press if they are committed by way of printed matter and if they are punishable under law:

14. libel, whereby a person alleges another is a criminal or is blameworthy in his way of life, or otherwise communicates information liable to expose the other to the contempt of others, and, if the person libelled is deceased, to cause offence to his survivors or which might otherwise be considered to violate the sanctity of the grave except, however, in cases in which it is justifiable having regard to the circumstances, or in order to provide information in the matter concerned, and proof is presented that the information was correct or that there were reasonable grounds for it; and

15. insulting words or behaviour, whereby a person insults another by means of offensive invective or allegations or by any other insulting behaviour towards him."

Both criminal and civil actions may be brought under the law on libel. Criminal actions may be brought by either public or private prosecution. Public prosecutions are rare and must be conducted by the Chancellor of Justice. Normally, public prosecutions are only brought when the injured party is a civil servant in this capacity. For example, the Chancellor has prosecuted cases where police officers were libelled in the line of duty. Individuals normally sue jointly for criminal liability and civil damages.

Opinions. Opinions or value judgements about a person can never be libellous. If formulated in a very insulting way, they may be judged as an affront (although there are few cases to illustrate this). If an opinion is based on implicitly expressed facts, it may thereby constitute a libel.

Defence: Truth, Public Interest and Public Figures

The key issue in many libel actions is whether the publication was "justifiable". A publication is justifiable when the public interest in the information (not to be confused with the interest of the public or general curiosity) overrides the interest in protecting the person concerned. For example, it would be considered justifiable to publish information about a minor tax fraud committed by a politician, whereas it would be considered unjustifiable to publish the same information concerning a person with no public record.

Institutions. Companies, organisations and government authorities have no rights under the law on libel. As a result, the press enjoys great freedom in scrutinizing and criticizing government, business corporations, unions and other institutions.

Insults to government institutions or officials. There is no criminal law protecting government institutions from insults or libellous statements.

The last remnant of such legislation disappeared in the mid 1970s when a provision which prohibited the "belying of state authority" was abolished on the grounds that, in a democratic society, government institutions should be open and responsive to all criticism, even when based on lies. Although government officials enjoy protection under the law on libel, actions on their behalf are rarely brought.

Developments in the application of criminal and civil law provisions concerning defamation at domestic level

According to HRP, the independent media remained active and expressed a wide variety of views without restriction (HRP, 2003).

Switzerland

Defamation is a criminal offence punishable by a maximum of 180 "day-fines". Up to 2007, the criminal code provided for a six-month prison sentence (article 173 of the criminal code).

The law stipulates that truth and good faith may be relied on in defence against accusations of defamation only where public interest is proven.

Information on relevant legal provisions on defamation

Criminal Code

21 December 1937 (as amended at 24 September 2002)

Book 2: Specific provisions

Part 3: Offences against Personal Honour and in Breach of Secrecy or Privacy

Article 173

1. "All persons who in addressing a third party, accuse or cast suspicion on others of dishonourable conduct or of other conduct that is liable to damage those persons' reputation or persons who disseminate such accusations or suspicions shall on complaint be liable to a prison sentence not exceeding six months or a fine.
2. Accused persons shall not be liable to any penalty if they prove that allegations they made or disseminated correspond to the truth or they had substantial grounds to consider them sincerely to be true.
3. Accused persons shall not be permitted to present such evidence and shall be criminally liable if their allegations are made or disseminated without regard for the public interest or without any other justified cause and with the primary intention of speaking ill of others, particularly where they relate to a person's private or family life.
4. If the offender recognises that his or her allegations were false and withdraws them, the court may impose a more lenient penalty or no penalty at all.
5. If the accused has failed to prove the truth of his or her allegations or the allegations were untrue or the accused has withdrawn them, the court must state this in its judgment or in another document."

Article 174

“1. All persons who, in addressing a third party and knowing their allegations to be untrue, accuse or cast suspicion on others of dishonourable conduct or any other action liable to damage their reputation, or persons who disseminate such accusations or suspicions knowing them to be unfounded shall on complaint be liable to imprisonment or a fine.

2. If the offender has deliberately sought to undermine the victim’s reputation, he or she shall be liable to a prison sentence not exceeding one month.

3. If the offender recognises the falsehood of his or her allegations in court and withdraws them, the court may impose a more lenient penalty. The court must officially notify the injured party of any such withdrawal.”

Article 175

“1. If the defamation or slander is directed at a deceased person or a person who has been declared missing, the right to make a complaint shall lie with the relatives of the deceased or missing person.

2. However, no penalty may be applied if more than thirty years have lapsed since the person died or was declared missing.”

Article 176

“Defamation expressed in writing, pictures, gestures or any other manner shall be regarded as the equivalent of verbal defamation.”

Article 177

“1. All persons who, in any other manner, have attacked the honour of another verbally, in writing, in pictures, through gestures or through acts of aggression shall on complaint be liable to a prison sentence not exceeding three months or a fine.

2. The court may exempt the offender of any penalty if the insulted party has directly provoked the insult through improper behaviour.

3. If the insulted party has retaliated immediately with an insult or acts of aggression, the court may exempt both offenders or either one of them from any penalty”.

Article 178

“1. The right to prosecute offences against personal honour is subject to a limitation period of four years.

2. Article 29 applies to the expiry of the right to file a complaint.”

"The Former Yugoslav Republic of Macedonia"

Defamation remains a criminal offence carrying a maximum sentence of three years' imprisonment. The relevant provisions make specific reference to the nation, its flag, coat of arms or anthem and its people or offending the reputation of a foreign State or an international organisation. Numerous defamation cases continue to be brought against journalists.

Information on relevant legal provisions on defamation

The latest legislative changes concerning defamation were made in September 2009. According to the amendments of the Criminal Code as of May 2006 (“Official Gazette of the Republic of Macedonia” No. 60/2006), prison sentence could no longer be imposed for plain libel and insult. However, imprisonment could be ordered for aggravated form of libel, namely in case it causes severe consequences for the life or health of the damaged or a person close to him and for an insult via a computer system, mocking a person or a group on the basis of race, skin colour, national or ethnic background. The Criminal Code provides for a three-year maximum prison sentence for libel and for insult, a year. There are no specific provisions protecting government officials and/or public figures, but imprisonment is provided in case of defamatory statements made against the State, the Macedonian people and members of other ethnic communities, against judiciary and a foreign State and its symbols, as well as against an international organisation and its representatives.

Defamation is regulated by the Criminal Code (the criminal aspects) and the Law on Obligations (the civil aspects, namely compensation of damages).

The 1996 Criminal Code (“Official Gazette of the Republic of Macedonia” No. 37/96) has so far been amended on several occasions. For instance, the 1999 amendments (“Official Gazette of the Republic of Macedonia” No. 80/99) reduced the fine, the amount of which remained considerably high compared to the average salary (twice to six times the average salary). According to the 2004 amendments of the Criminal Code (“Official Gazette of the Republic of Macedonia” No. 19/2004), a fine may be imposed and its amount is determined by a court.

Criminal Code

Crimes against honour and reputation are regulated in Chapter 18 (Articles 172 - 185). Articles 172-177 were amended in 2004, 2006 and 2009. Articles 178-183 have not been changed in substance since 1996 (Insult of the reputation of the state, mockery of the nation and the ethnic communities; insult to the reputation of the court and the judge; insult of the reputation of the foreign state, its flag, coat of arms, anthem or a foreign state leader or diplomatic representative; insult of an international organisation).

18. Crimes against honour and reputation

Defamation

Article 172

(1) “A person who expresses or spreads some untruth about another, which could damage his honour and reputation, shall be punished with a fine.”

(2) “If the untruth that is expressed or spread is of such significance that it caused or could have caused severe consequences for the life and health of the damaged, the offender shall be punished with imprisonment of three months to three years.”

(3) “If the accused proves the truth of his statement, or if he proves that he had founded reason to believe in the truthfulness of what he had stated or spread, he shall not be punished for defamation.”

(5) “A person who falsely expresses or spreads about another that he has committed a crime which is prosecuted in the line of duty, shall be punished for defamation, even though he had had founded reason to believe in the truthfulness of what he expressed or spread, if the expression or spreading is not done under the conditions from article 176, item 2. The

truthfulness of the fact that another has committed a crime for which he is prosecuted in line of duty may be proved only with a sentence that has come into effect and with other evidence only if the prosecution of the trial is not possible or is not allowed.”

Insult

Article 173

(1) “A person who insults another shall be punished with a fine.”

(2) A person who exposes another to a public mockery, by means of information system, because of his belonging to a group different in its race, skin colour, national or ethnic background, or exposes the group of persons characterized with one of these features to mockery, shall be punished with a fine or with imprisonment of up to one year.”

Expressing personal or family circumstances

Article 174

(1) “A person who expresses or spreads something from the personal or family life of some person which could harm the reputation of that person, shall be punished with a fine.”

(2) “If what is expressed or spread is of such significance that it caused or could have caused severe consequences for the damaged, the offender shall be punished with imprisonment of three months to three years.”

(3) “The truthfulness or falsehood of what is being expressed or spread in regard to the personal or family life of some person cannot be proven, except in the case of article 176, item 3.”

Slight with reproach about a crime

Article 175

(1) “A person who intending to slight another, reproaches him that he has committed some kind of crime, or that he has been sentenced for some kind of crime, or he expresses this to another with the same intention, shall be punished with a fine, or with imprisonment of up to three months.”

No punishment of crimes from articles 172 to 175

Article 176

(1) “A person shall not be punished who expresses himself insultingly about another in a scientific, literary or artistic work, in a serious piece of critics, in performing an official duty, journalist vocation, political or some other social activity, in defence of the freedom of public expression of opinion or other rights or during protection of public interest or other justified interest, if it can be concluded from the manner of expression or from other circumstances, that it does not have the meaning of insult and has not caused significant damage to the honour and reputation of the person”

(2) In the cases from item 1 of this Article, a person reporting about something publicly announced by another, as well as a person prevented from exercising the right to access to information of public character against the provisions on free access to information, which he calls upon in his defence, shall not be sentenced for defamation.

(3) In the cases from item 1, no sentence shall be imposed to a person expressing or spreading that another has committed a crime being ex officio prosecuted, although lacking final judgment (Article 172, paragraph 4), if he/she proves to have firm grounds to believe in the truthfulness of what was expressed or spread.

(4) The offender shall not be sentenced for expressing or spreading personal or family conditions, as referred to in the cases of paragraph 1, if he proves the truthfulness of his claim

or if he proves to have firm grounds to believe in the truthfulness of what he has expressed or spread.

(5) No sentence shall be imposed for slight with reproach for crime to a person who reproaches another to have committed a crime or to have been convicted for crime in defence of a right or protection of the public interest."

Pronouncing a court reprimand for crimes from articles 172 to 175

Article 177

(1) "The court may pronounce a court reprimand to the perpetrator of a crime from articles 172 to 175, especially if the offender was provoked with an indecent or rude behaviour by the damaged."

(2) "If the insulted person returned the insult, the court may punish both or one side or it may pronounce a court reprimand."

(3) If the offender apologizes to the damaged at court, in cases regarding the acts stipulated in Articles 172 item 1, 173 item 1, 174 item 1 and 175, and in cases of acts stipulated in the Article 172 item 1 and 174 item 1 if at court he recalls the expressed and spread, his punishment shall be acquitted."

Offending the reputation of the Republic of Macedonia

Article 178

"A person, who with the intention to ridicule shall publicly make a mockery of the Republic of Macedonia, its flag, arm or anthem, shall be punished with imprisonment of three months to three years."

Ridiculing the Macedonian people and the nationalities

Article 179

"A person, who with the intention to ridicule shall publicly make a mockery of the Macedonian people and the nationalities, shall be punished with imprisonment of three months to three years."

Offending the reputation of the court

Article 180

"A person who in a procedure before the court ridicules the court, the judge or the jury-judge, or who commits this in a written submitted paper to the court, shall be punished with a fine, or with imprisonment of up to one year."

Offending the reputation of a foreign state

Article 181

"A person, who with the intention to ridicule shall publicly make a mockery of a foreign state, its flag, arm or anthem, or the head of a foreign state or a diplomatic representative of a foreign state in the Republic of Macedonia, shall be punished with a fine, or with imprisonment of up to three years."

Offending the reputation of an international organization

Article 182

"A person, who with the intention to ridicule shall publicly make a mockery of an international organization, or its representatives, shall be punished with a fine, or with imprisonment of up to three years."

Prosecution for crimes against the reputation of a foreign state and an international organization

Article 183

“The prosecution of crimes from articles 181 and 182 is undertaken upon request from the foreign state, respectively the international organization, and after permission from the Minister of Justice.”

Prosecution of crimes against the honour and reputation

Article 184

(1) “The prosecution of crimes from articles 172 to 175 is undertaken upon private suit.

(2) If the crimes from articles 172, 173 and 174 are committed against a deceased person, the prosecution is undertaken upon private suit from the marital partner, the children, parents, brothers or sisters of the deceased person, adopter, adoptee or another person with which the deceased person lived in a common household with the deceased person.”

”

Publication of a court sentence

Article 185

“When sentencing a crime perpetrated through the public media, the court shall decide, upon the request from the complainant, that the court sentence or an excerpt from it to be published, for the account of the condemned, through the same media or in other appropriate manner if the publication through that media is not possible.”

Current situation (May 2012)

- The liability of companies and editors for defamation/insult is excluded or extremely restricted. This means that journalists, rather than media owners or editors in chief, are personally liable in defamation cases relating to media. According to statistics from the Ministry of Justice, the average fine imposed in 2010 was € 320 in cases not involving journalists and € 1,000 in cases involving journalists. In October 2011 the editor of Fokus magazine was ordered to pay €15,000 to Mr Milososki, former Minister of Foreign Affairs, for insulting him in a headline.
- According to Ministry of Justice figures, 13 prison sentences were pronounced for defamation/insult in 2009, 9 in 2010 and 1 in the first half of 2011. These did not involve journalists. We have no information on what types of cases would have been so aggravated as to warrant a prison sentence.
- The number of defamation/insult cases raised in court every year is around 500-600, with a steady proportion of around 20-25% of such proceedings being initiated against journalists. Around 40-50% are dismissed. Only a small proportion result in penalties of fines/damages against journalists.
- One way of reducing the number of (unsuccessful) defamation/insult cases clogging up the criminal courts would be to strengthen other means for injured parties to get a remedy (eg. through "right to reply or correction", complaint to a regulatory body, civil litigation etc).
- The Association of Journalists and NGOs claim that most defamation actions against journalists (up to 90%) are filed by politicians or persons representing them. The authorities claim that most actions against journalists are filed by other journalists.

- The Ministry of Justice has been working with the Association of Journalists to discuss concrete proposals including either amending the Criminal Code to make the definitions more precise or shifting them to the civil legislation; as well as discussing issues like the high level of fines, the need for courts to apply ECtHR principles and the unreasonable length of court proceedings.

Turkey

Under the criminal code of 2005, defamation is a criminal offence; the maximum prison sentence is two years for insult and three years for defamation (four years for defamation of and insult to the President). The relevant dispositions make specific reference to politicians, officials, state symbols and also Turkish nationality and the Turkish Republic. A number of journalists are currently in prison or facing criminal proceedings for defamation. ¹⁰¹

Information on relevant legal provisions on defamation

Criminal Law

The Turkish Criminal Law No. 5237 was adopted by the Turkish Grand National Assembly on 26 September 2004. The Law came into force on 1 June 2005.

Article 125 of the new Criminal Law, which is part of the section of crimes against persons, regulates acts of defamation and libel. Paragraph 1 of the Article foresees a penalty of a maximum of 2 years imprisonment for defamation. If the act is committed publicly, the penalty will be increased by 1/6.

On 8 July 2005, Law No. 5377 was introduced and deleted a provision in the Criminal Law which had foreseen an increase in a penalty for defamation and libel made via the press and electronic media by 1/3.

Article 299 of the new Criminal Law stipulates increased criminal liability (from 1 to 4 years imprisonment) for defaming, libelling and insulting the President of the Republic.

Article 300 of the new Criminal Law stipulates from one to three years imprisonment for publicly insulting state symbols.

Former Article 301 of the Turkish Criminal Code reads as follows:

“1. A person who publicly denigrates Turkishness, the State of the Republic of Turkey or the Grand National Assembly of Turkey shall be sentenced to a penalty of imprisonment for a term of six months to three years.

¹⁰¹ See ECHR judgments *Firat Dink v. Turkey*, nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, 14 September 2010; *Altug Taner Akçam v. Turkey*, no. 27520/07, 25 October 2011; *Artun and Güvener v. Turkey*, no. 75510/01, 26 June 2007, where reference is also made to the Council of Europe texts concerning the decriminalisation of defamation (par. 16)

2. A person who publicly degrades the Government of the Republic of Turkey, the judicial bodies of the State or the military or security organisations of the State shall be sentenced to a penalty of imprisonment for a term of six months to two years.

3. In cases where denigration of Turkishness is committed by a Turkish citizen in another country the punishment shall be increased by one third.

4. The expression of an opinion for the purpose of criticism does not constitute an offence.”
The new text of Article 301 of the Turkish Criminal Code, as amended on 29 April 2008, reads as follows:

“1. A person who publicly degrades the Turkish nation, the State of the Republic of Turkey, the Grand National Assembly of Turkey, the Government of the Republic of Turkey or the judicial bodies of the State, shall be sentenced to a penalty of imprisonment for a term of six months to two years.

2. A person who publicly degrades the military or security organisations of the State shall be sentenced to a penalty in accordance with paragraph 1 above.

3. The expression of an opinion for the purpose of criticism does not constitute an offence.

4. The conduct of an investigation into such an offence shall be subject to the permission of the Minister of Justice.”

Law of Obligations

The Law of Obligations gives a person the right to request material and / or moral compensation for damages arising from defamation. A new Law of Obligations will enter in force on 1st July 2012.

Law No. 3984 on the Establishment of Radio and Television Enterprises and their Broadcasts (“RTÜK”) has been modified on 15 february 2001 (law no 6112).

A person who is a victim of defamation can request the right of reply or a rectification.

Developments in the application of criminal and civil law provisions concerning defamation at domestic level.

Ukraine

Defamation was decriminalised in 2001¹⁰². However, a number of claims were brought (in 2003) under civil law for defamation of the President or public officials, resulting in the award of disproportionately high damages. The relevant provisions make specific reference to state symbols.

The law on radio and television broadcasting was revised on 12 January 2006.

Information on relevant legal provisions on defamation¹⁰³

¹⁰² On October 2012, a draft law re-criminalising defamation has been withdrawn from the procedure in the Verkhovna Rada of Ukraine.

¹⁰³ See ECHR judgment Editorial Board of Pravoye Delo and Shtekel v. Ukraine, no. 33014/05, 5 May 2011, with references to Recommendation CM/Rec(2007)16 of the Committee of Ministers to member States on measures to promote the public service value of the Internet.

Constitution (1996)

Chapter II: Human and Citizens' Rights, Freedoms and Duties

Article 32

“Everyone is guaranteed judicial protection of the right to rectify incorrect information about himself or herself and members of his/her family, and of the right to demand that any type of information be expunged, and also the right to compensation for material and moral damages inflicted by the collection, storage, use and dissemination of such incorrect information.”

Article 338. Outrage against state symbols

1. “Public outrage against the National Flag of Ukraine, the National Coat of Arms of Ukraine or the National Anthem of Ukraine, shall be punishable by a fine up to 50 tax-free minimum incomes, or arrest for a term up to six months.
2. public outrage against an officially installed or raised flag or coat of arms of a foreign state, shall be punishable by a fine up to 50 tax-free minimum incomes, or arrest for a term up to six months.”

Civil Code

Article 277. Disproof of Untruthful Information

1. “A natural person, whose personal non-property rights were violated due to dissemination of untruthful information about him/her and his/her family members, shall have the right to response and to disprove this information.
2. The right to response and disprove the untruthful information about the person who is dead shall belong to his/her family members, relatives and other concerned persons.
3. Disseminated negative information about the person shall be considered untruthful.
4. Disproof of untruthful information shall be realised by the person who disseminated such information.

Disseminator of the information submitted by an official person performing his/her official duties shall be a legal entity, for which such an official person works.

If the person who disseminated untruthful information is unknown, the natural person whose right is violated may go to court to ascertain the fact of untruthful information and to disprove it.

5. If a document issued by a legal entity contains untruthful information, such document must be withdrawn.
6. A natural person whose personal non-property rights were violated in the press or other mass media shall have the right to response, as well as to disprove such information in the same mass medium by the procedure stipulated by the law.
If the response and disproof in the same mass medium is impossible due its termination, such response and disproof must be promulgated in the other mass medium at the expense of the person who disseminated the untruthful information.
Disproof of untruthful information shall be realized irrespective of the blame of the person who disseminated it.
7. Disproof of untruthful information shall be made in the same manner as its dissemination.”

Article 302. The Right to Information

1. “A natural person shall be entitled to freely collect, store, use and disseminate information.

Collecting, storage and dissemination of information on private life of a natural person without his/her consent shall be inadmissible, except for the cases established by the law and only to the benefit of the national security, economic welfare and human rights. It is also inadmissible to collect information that is state secret or confidential information of a legal entity.

2. A natural person disseminating information shall be obliged to make sure in its reliability.

3. It is presumed that information presented by an official performing his/her official duties, as well as information contained in official sources (reports, shorthand records, mass media reports) founded by the respective state bodies and self-governments is reliable.

A natural person disseminating such information shall not be obliged to verify its reliability and shall not be liable in case of its refuting.”

Law on Television and Radio Broadcasting was rewarded completely on 12 January 2006¹⁰⁴.

Article 64. Right of retraction

1. Any citizen or legal person shall have the right to demand that the broadcasting organisation retract any information distributed in its program or transmission which does not represent the facts and/or is degrading to honour and dignity of the person.

2. The same right shall be enjoyed by official representatives of a citizen if the citizen is unable to demand such retraction.

3. A written complaint with the demand to retract may be lodged with the broadcasting organisation within 14 days from the date of distribution of such information, of which a written notice should be served on the National Council.

4. The broadcasting organisation must consider such application within seven day of its receipt, unless otherwise provided for by the legislation of Ukraine.

5. The broadcasting organisation shall be under the obligation, if so requested by the applicant, to afford him free-of-charge an opportunity to listen in to (preview) the relevant portion of the program or transmission or to provide for a fee a copy of such fragment.

6. If a broadcasting organisation lacks sufficient evidence that the information which it has distributed represented the facts, it shall be obliged to promptly retract such.

7. The retraction must be distributed by the same broadcasting organisation and in the same program or transmission, as the information which does not represent the facts, or at such other time as may agreed upon with he aggrieved person.

8. The retraction must indicate which information does not represent the facts, and also when and in which program or transmission it was distributed by the broadcasting organisation.

¹⁰⁴ official web-site of the National Television and Radio Broadcasting Council of Ukraine:
<http://www.nrada.gov.ua/en/medialegislation/1289837604.html>

9. If the citizen or legal person has submitted the text of retraction, it shall be subject to distribution provided that it conforms to the requirements of this Law. Reductions or other changes in the text of the retraction submitted by the complainant shall only be made with his consent.

10. Where a broadcasting organisation is under the obligation to distribute the text of a retraction, it must, if so requested by the citizen or a representative of the legal person, grant him an opportunity to present such text and broadcast it in record.

11. The broadcasting organisation must notify the complainant on the tentative time of distribution of such retraction or text.

12. The broadcasting organisation must promptly notify the complainant of its refusal to publish a retraction.

13. In the event that a retraction is ordered by a court decision, the text of the retraction shall be distributed by the broadcasting organisation in a manner set down in this Law.

14. A broadcasting organisation may refuse a person to retract information disseminated if the request for retraction has been made in breach of the requirements of this Law.

Article 65. Right of reply

1. A physical or legal person in whose respect a broadcasting organisation has distributed in its program or broadcast any information which does not represent the facts or violates any rights or legitimate interests of such person, notwithstanding any request for retraction that such person may have lodged, shall be entitled to a reply (comment or own interpretation of the case) in a program or broadcast of such broadcasting organisation.

2. The procedure of filing a request claiming the right of reply (commentary or interpretation of the facts) shall be governed by article 64 of this Law.

Article 66. Compensation of moral damages

1. Any moral (non-property) damages shall be compensated in conformity with the Civil Code of Ukraine.

Article 67. Exemption from liability for distribution of information which is contrary to facts

1. Broadcasting organisations and their personnel shall not be liable for distribution of any information which is contrary to facts where:

a) such information was contained in an official communication or was received in writing from a public authority or body of local government.

b) such information is a verbatim quotation of any statement or speech (oral or printed) of any public official, of officer of local self-government, or a People's Deputy of Ukraine, candidate

for the office of the President of Ukraine, candidate for a People's Deputy of Ukraine or a deputy of any assembly or council, or a candidate for a mayor;

c) such information was contained in a personalised statement broadcast without prior recording or in a statement made by a person other than members of the broadcasting organisation's personnel.

d) such information is a verbatim reproduction of any material distributed by another media outlet or news agency, where a clear reference to such is made;

e) exemption from liability is provided for by another law.

The Law on Printed Mass Communication Media (Press)

Article 42 Exemption from Liability

“The editorial staff and journalists shall not be liable for publishing information that is untruthful, abasing for the honour and dignity of citizens and organisations, infringes the rights and lawful interests of citizens or abuses the freedom of printed mass communication media and the rights of journalists if such information:

- 1) was received from news agencies or the founder (co-founders);
- 2) is contained in a reply to a request for access to official documents and request for written or oral information provided in accordance with the requirements of Law Ukraine on Information;
- 3) is a word-for-word reproduction of official statements by functionaries of state bodies, organisations and associations of citizens;
- 4) is a word-for-word reproduction of materials published in another printed mass communication medium and contains a reference thereto;
- 5) discloses a secret protected by law but was not obtained illegally by the journalist.”

The Law on Information

Article 31 Citizens' Access to Information Relating to these Citizens

“All organisations collecting information relating to the person shall, prior to handling this information, have the relevant databases officially registered, in keeping with procedures established by the Cabinet of Ministers of Ukraine.

The required amount of information relating to the person that can be legally obtained shall be reduced to a minimum and used only for reaching a lawfully set target.

Denial of access to such information, its concealment, or its unlawful collection, use, storage or dissemination may be appealed to the law court.”

Developments in the application of criminal and civil law provisions concerning defamation at domestic level

A cause of concern has been found in respect of Articles 277 and 302 of the Civil Code, which could lead journalists to engage in self-censorship in order to avoid prosecution (doc. SG/Inf(2004)12; see also IHF-AR, 2004, A19, Ukraine Bulletin, January – April 2004).

According to IHF, the wide use of civil defamation provisions is of serious concern (IHF-AR, 2004); 46 civil lawsuits were brought against journalists and media outlets in 2003 (FH-FP,

2004). Reportedly, disproportionate sentences have been imposed for the protection of the President and public officials (see IHF-AR, 2004).

Law on Information - new wording starting from 13 January 2011:

"Article 11. Information about a private person.

... 2. It is prohibited to collect, store, use or spread confidential information about a person without his/her consent, save in cases defined by law and only in the interests of the national security, economic welfare and protection of human rights. Confidential information about a person includes, in particular, the information about his/her nationality, education, family status, religious beliefs, health condition, as well as the address and the place and date of birth.

Any person shall have free access to information concerning him/herself personally except in cases defined by law."

Another law, On Access to Public Information, was adopted on 13 January 2011¹⁰⁵.

United Kingdom

Defamation was decriminalised in the United Kingdom in 2009.

On 12 November 2009, the United Kingdom Parliament adopted a new law on defamation covering England, Wales and Northern Ireland, which came into force two months later.¹⁰⁶

Information on relevant legal provisions on defamation

The Queen announced in the UK Parliament, 9 May 2012, a new defamation bill.

The bill proposes a test of "serious harm" to reputation for statements to be considered defamatory and places the common law defences of fair comment, justification and responsible publication on matter of public interest on a statutory footing. It also creates new statutory privileges for peer-reviewed scientific and academic publications and website operators. It introduces a single publication rule (abolishing the current rule, which was considered in *Times Newspapers Ltd v. the United Kingdom* (nos. 1 and 2), nos. 3002/03 and 23676/03, ECHR 2009). Finally, it seeks to address a perceived problem of libel tourism by providing that courts in England and Wales should not deal with defamation actions brought against people not domiciled in the UK or a European Union state unless it is satisfied that, of all the places in which the statement complained of has been published, England and Wales is clearly the most appropriate place in which to bring an action in respect of the statement.

¹⁰⁵ For more detailed information, see <http://merlin.obs.coe.int/iris/2011/3/article30.en.html>.

¹⁰⁶ See ECHR judgments *Mosley v. United Kingdom*, no. 48009/08, 10 May 2011. *Times Newspapers Ltd v. United Kingdom* (no.1 and 2), no. 3002/03 and 23676/03, 10 March 2009.

