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International Journal of Law, Crime and Justice

journal homepage: www.elsevier.com/locate/ijlcrj

INTERNATIONAL
JOURNAL OF
LAW
CRIME
AND
JUSTICE

Decriminalization of defamation – The Balkans case a temporary remedy or a long term solution?

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ARTICLE INFO

Article history:

Received 11 October 2015

Received in revised form 14 April 2016

Accepted 3 May 2016

Available online 12 May 2016

Keywords:

Defamation

European Court of Human Rights

Imprisonment

Fines

Legislations of Balkan countries

Legislations of EU members

ABSTRACT

This article analyzes the laws on defamation of member countries of the European Union (“EU”) and Balkan countries aspiring to be members of the EU. The article further compares and analyzes the different approaches, sanctions, and consequences of defamation within these countries. The article argues that the diversity in, and at times contrasting, approaches within the legal systems of these countries necessitates the need for a more harmonious and uniform guidelines for the treatment of defamation within the EU and those aspiring to be part of that community. This article undertakes research on defamation in EU countries and aspiring EU countries, including the definition of defamation, limits and conditions for its legislative and judicial treatment throughout the EU countries.

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1. Introduction

There is an old 19th century tale about a young man who, after slandering the town's wise man, went to his home and asked for forgiveness. He was told he would be forgiven on one condition: that he go home, take a pillow from his house, cut it up, and scatter the feathers to the wind. Though puzzled, the young man complied.

“Am I now forgiven?” he asked.

“Just one more thing,” the wise man said. “Go and gather up all the feathers.”

“But that’s impossible. The wind has already scattered them.”

“Precisely,” he answered. “And though you may wish to correct the evil you have done, it is as impossible to repair the damage done by your words as it is to recover the feathers. Your words are out there in the marketplace, spreading hate, even as we speak.”

There are many variations of this story, but the moral is always the same: the harm done by disseminating false or truthful but private information is not only extremely dangerous because of the negative impact on the person's reputation, but also because it is next to impossible to mitigate its consequences (Forest, 1996, p. 156). “Because private mechanisms cannot provide a meaningful solution to today's cyber mobs, a legal response is in order ... Supplementing traditional criminal and tort

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law remedies with civil rights ones is crucial to reach all of the harm that cyber mobs inflict” (Levmore and Nussbaum, 2011, p. 39).

Had the wise old man lived in the 21st century, the age of the internet, search engines, social networks and the disputed “right to be forgotten” (Rosen, 2012, p. 88) – he would probably have asked the young man to get several metric tons of feathers and place them in front of a running airplane engine instead – for never before has it been so easy to spread information around the globe, or so hard to make it disappear afterwards (Levmore and Nussbaum, 2011).

Therefore, if we are facing such challenges – and are aware of the damage to reputation and rights to privacy of defamatory statements in this age of information – the question is what we can do as a society to discourage people from scattering the feathers of personal information to the four winds?

Public concern has increased over the treatment of, and legal responses to, *dissemination of incorrect information that may harm the honor or reputation of a person* (Article 19, 2003). In particular, two important issues are brought to the forefront when dealing with laws regarding defamation: *first*, the right of an individual to protect himself or herself against false statements that damage his or her reputation; and, *second*, how to balance an individual’s privacy rights without unduly restricting another individual’s freedom of expression. Current legislation in most countries seek to achieve the balance of privacy rights with freedom of expression but the practical reality is that it is sometimes difficult to achieve this balance. All countries have legal standards and methods to achieve this balance but the form and content of their approaches differ widely, especially within the context of defamation laws.

This article limits its focus and analysis to the defamation laws of the Balkan nations which have decriminalized defamation under the strong recommendation of the EU: Albania, Bosnia and Herzegovina, and Macedonia. Since Bulgaria, Croatia, and Romania have already been recognized as part of the EU community, they will not be discussed as the central theme of the work, but only when referencing other EU members. One of the main features of transitional countries that aspire to become members of the EU is limited freedom of expression. This central feature of transitional countries will be examined in relation to current legal requirements that member EU have laws that protect freedom of speech and expression.

At the outset, however, it is important to note that even within member nations of the EU, legal standards and requirements for integration have been applied differently by these countries. Thus, despite the clear admonition for the abolition of prison sentences for defamation by the Parliamentary Assembly of the Council of Europe, majority European Union members and aspiring countries still impose the sanction of imprisonment for defamation.

2. Methodology

The LEXIS-NEXIS and WESTLAW databases contain electronic copies of all published relevant EU member states legal texts. A keyword search was conducted in both of these databases to gather relevant laws using the following keywords: “defamation” AND “name EU Country/aspiring EU country” AND “Title VII”; “libel” AND “name EU Country/aspiring Balkan EU country” AND “Title VII.” The study employed inductive legal methodology to identify relevant European laws governing defamatory statements and landmark cases analyzing defamatory actions and penalties in various instances. Based on the analysis, the article discusses convergence and divergence within the various EU legal systems.

3. Analysis

3.1. Comparative perspective of the EU countries

Analysis of the legislative texts of various EU countries shows that majority of members characterize acts of defamation as criminal offenses. Out of 28 EU countries, 25 treat defamation as a criminal offense. Of those 25, 21 impose imprisonment as a sanction. In the vast majority of those 21 countries, imprisonment is imposed on the offender when the defamed person is a public figure.

EU country	Defamation as a criminal offense	Imprisonment for defamation	Source
Austria	Yes	Up to 5months	The offence of “defamation” is regulated in Article 111 and 114 of the Criminal Code of Austria . http://www.coe.int/t/dghl/standardsetting/media/Doc/DH-MM%282003%29006rev_fr.asp#P248_13540
Belgium	Yes	Up to 12 months	Chapter V, Articles 443 to 453 of the Belgian penal code , govern crimes against “honor” also known as slander and libel laws. To supplement the provisions of Articles 443 to 453, the Penal Code punishes any other unforeseen injuries under Article 561.
Bulgaria	Yes	No imprisonment	Articles 108,146, 147 and 148 of the Bulgarian Criminal Code govern defamation.
Croatia	Yes	No imprisonment	Article 149 of the Croatian Penal Code , No. 2498, 2011.
Cyprus	No	–	Amendment 3 of the Cyprus Criminal Code , 2003.
Czech Republic	Yes	Up to 2 years	Sec.169 and 206 CC Czech Republic Criminal Code , 2009.
Denmark	Yes	Up to 4 months	Articles R-621-2, R-624-4 and R-624-5 of French Criminal Code, 1881.
Estonia	Yes	Up to 2 years	Article 245, 247, 249, 275, 305 of the Penal Code of Estonia, as amended up to RT I, 2014

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