

## DEFAMATORY EXPRESSIONS IN THE VIRTUAL SPACE V. THE PROTECTION OF HONOR AND DIGNITY

**Elnur Humbatov\***

### **Abstract**

*The formation of virtual space is not analyzed in a positive way. In the digital age, serious changes are observed in the nature of legal violations through the opportunities provided by new technologies. Violations, which are no longer on the physical plane, but on the virtual plane, cause serious concerns for the modern world population. The problem of defamation, which has a special weight among such violations, is one of the current problems of the time. Due to the lack of clear borders and the possibility of anonymity in the virtual space, it has become possible to easily share and spread defamatory statements insulting the honor and dignity of others. This has resulted in the actualization of the problem of defamation. In the article, the types of expressions historically accepted as defamatory expressions were analyzed in a form interrelated with the protection of honor and dignity, and suggestions were made regarding the legislation of the Republic of Azerbaijan on Media.*

**Keywords:** *defamation, honor, dignity, freedom of expression, judicial practice, insult, slander.*

### **1.1. Introduction**

Defamation poses particular challenges for media reporting and commenting on people and events, both past and present. Three factors in defamation pose a problem for the media. First, the costs of defending an action and the damages payable in the event of failure to defend it can be high. Second, liability for a defamatory statement lies not only with the author, but also with the editor, publisher, and anyone involved in its dissemination. Third, two presumptions are drawn by the court from the fact that the statement is defamatory: the defamatory statement is not true and the onus is on the person defending the action to prove its truth. Therefore, the media has a duty to prove the truth of a statement. The second presumption is that the statement was made in bad faith, which usually cannot be rebutted. A newspaper article or television program can therefore inadvertently defame a person by making a simple mistake and still incur liability [1, p. 59].

Defamation is considered as a behavior directed against human honor and dignity. Honor and dignity, defined as the moral value given to a person by society, are values acquired by birth as a natural consequence of being human. A person's position in society is formed in two ways: by birth and by achievements in life. Being born with this ability is associated with common honor and dignity. In fact, the only reason for a person to gain honor and dignity is because he/she was born as a human. As a result, a person earns the dignity of being a person regardless of whether he is useful or not in the eyes of society. The moral values given to a person by the society are characterized objectively, not subjectively. In other words, it does not matter whether a person himself perceives values that are not considered degrading by society as degrading or not. Similarly, a person's self-worth constitutes a subjective quality. Objective evaluation means that value judgments related to honor and dignity differ depending on a person's position in society and the structure of the society in which he lives. In

---

\* Ph.D in Law, Baku State University

this sense, honor and dignity can be considered as personal values that are changeable and relative in nature.

Since the protection of honor and dignity is an absolute right, any attack on honor and dignity is against the law. Legal systems recognize that honor and dignity must be protected, albeit to varying degrees, by different legal arrangements. Legal systems adopt different approaches to freedom of expression where the law is conflicting. This situation leads to different court decisions. Disputes regarding conflicting rights are resolved by ruling in favor of one right. In case of violation of honor and dignity in virtual space, legal systems must find a common ground for the protection of rights. This denominator can be achieved by harmonizing the substantive legal norms of the states. However, harmony is not easy to achieve in such disputes where conflicting rights exist. Because both rights are protected taking into account the historical and cultural sensitivities of the states. While some states consider the protection of honor and dignity to be a priority, some states have legal regulations in favor of freedom of expression. This situation also shows its influence in the field of international private law. States consider the conflict between the two values when regulating conflict of laws rules.

### **1.2. Legal basis for classification of defamatory statements**

In order for a statement or opinion to be defamatory, it must include the following elements:

- The idea must be false, that is, it must have a character that is not based on truth;
- The opinion should be related to the facts, the reasoning should not be specific;
- As a result of the expression of the opinion, real damage must be caused, that is, it must cause concrete material or moral suffering;
- The idea must be widely disseminated, that is, it must be disseminated in an open form in any form to one or more third parties (group of persons) (except for the person who disseminated the idea and to whom the idea belongs) [11, p. 11-12].

D.Maule and Z.Niu provide a different explanation and define the following signs of defamation:

- not true;
- there is a sign to inform and refer to the pursuer;
- defamatory;
- committed intentionally to cause harm to a person [1, p. 61].

Regarding defamation, Article 10 of the European Convention on Human Rights should be taken into account. The article in question provides for the freedom of thought and speech based on various restrictions, one of which is the protection of the reputation or rights of others. Therefore, the media's freedom of speech is limited to the right to appeal to the court in cases where it harms a person's honor and dignity. The impact of Article 10 on the courts is significant and can be seen particularly in the extension of special privileges to media reports of public interest. In *Reynolds v. Times Newspapers*, Lord Nicholls commented on this issue in a very interesting way: Exceptions to freedom of thought and speech must be justified as necessary in a democracy. In other words, freedom of expression is the law, and regulation of speech is an exception requiring justification. The existence and extent of any exception can be justified only if it is supported by a pressing social need. These are the basic principles governing the balance between freedom of expression and defamation [8].

Not all defamatory allegations are immediately apparent. At first glance, seemingly innocuous phrases can actually have a special meaning. In the case of *Morrison v. Ritch*, the Scotsman published news of the birth of twins to a couple, Mr. and Mrs. Morrison. Anyone who doesn't know Mrs. Morrison can tell there's nothing defamatory about the notice. But those who knew her knew that she was only a month away from getting married. Thus, she was able to successfully sue the newspaper for defamation [7].

In *Tolley v JS Fry and Sons Ltd*, an advertisement for Fry's chocolate featured an amateur golfer. For most people, it wouldn't matter. However, to people familiar with golf, this meant that even though he was an amateur, he would get paid to advertise chocolate, violating his status as an amateur [9].

Certain types of statements have historically been considered defamatory, and this is the basis for the classification of defamatory statements. However, what was considered defamatory in years gone by can change over time, especially regarding moral conduct. Let's look at the types of defamatory statements.

Statements that a person is guilty of a crime. We can consider that criminal behavior is always condemned in society because it is antisocial in nature. Therefore, if any article contains statements that a person is a criminal, this article can be considered defamatory. For example, in a court case taken from the national experience, a store called X store, that is, the defendant, posted a video on his Instagram page that A. allegedly stole from that store, and the mass media using it spread the news that he allegedly stole from that store. The plaintiff states that he has been a teacher, scientist, and intellectual for many years. The mentioned and published news are absolutely not true and do not reflect the truth. Not only had he never stolen from a store, he had never even thought of such a thing. Also, his financial situation is not bad. In a word, he is not in a moral and social state to allow the said action. He believes that the defendant, by sharing such news, humiliated his honor and dignity and damaged his business reputation. For this reason, the defendant should officially apologize to him and refute that information on his page (from the experience of the Baku City Nasimi District Court).

Statements that a person has acted immorally. For example, if an article published on the Internet indicates that a person is in a de facto marriage relationship with someone, that he is homosexual, and other cases where a person is associated with such forms of immoral behavior, we can talk about the existence of defamation. This also applies to statements about situations in which the person did not behave in accordance with his profession. For example, writing about a doctor offering contraceptives to girls under the age of 16 both damages the doctor's business reputation and suggests that he is accused of immoral behavior.

Defamatory statements about a person's profession and position. Falsely accusing a person of being unfit for their profession or position is defamation. For example, accusing a doctor or lawyer of negligence can be considered defamation. However, the statement need not allege incompetence, but rather may reflect the manner in which a person performs a particular task or task.

Sometimes statements contain defamatory information of a mixed nature. For example, a person posted untrue information on his social network account that A. (A is an official) used his position to influence the courts and was also a drug user.

The case law of England on defamation is very interesting. Here, whether a statement is defamatory is not a question of fact, but of law. The test was first set out in

Russell v. Stubbs (1913): Would the writing, in the circumstances in which it was published, be understood by reasonable persons to whom it was published as defamatory? In *Lord Atkins v. Sim Stretch*, this test was further refined: Are words and expressions likely to lower the plaintiff's standing in the estimation of right-thinking members of society? [1, p. 62] - In general, it is important what the person giving the statement thinks the meaning is. What is important is whether or not an ordinary, logical, right-thinking person would consider this statement to harm a person's honor, dignity, and reputation. One of the factors a court must consider in determining whether a statement is defamatory is whether the information has the defamatory meaning attributed to it. In an action, the pursuer must clearly set forth the meaning of the defamation intended by the statement. The court must then determine whether an ordinary, reasonable person would agree that the words could have the meaning attributed to them by the pursuer. A statement must be taken in the context and circumstances in which it is made. For example, it can mean to be taken seriously or have some other completely innocent meaning. A common example of this is where the statement is made in fun or jokingly. In *Macleod v Newsquest (Sunday Herald) Ltd*, a newspaper published a humorous article suggesting an award for the prestigious Tartan Bollocks Award given to the Holyrood hack who committed the biggest gaffe of the year. McLeod, one of the journalists competing for the award, is known for his inventiveness. He sued for defamation, claiming that the description showed that what he had written was fictitious and that he was a disreputable journalist. The court held that the article must be viewed as a whole, and that an ordinary, reasonable reader would have understood it not as defamatory, but as a light-hearted post intended not to be taken seriously. Therefore, the article could not bear the defamatory meaning McLeod attributed to it [6].

The famous John Doe case can be mentioned. John Doe is a day trader. Trading stocks is a hobby that borders on an obsession, and like many other day traders, John Doe prefers to exchange information about stocks through online message boards. But as Doe recently learned, free speech on the Internet may not be as free as he thought. John Doe faced a defamation lawsuit after sending a scathing message accusing the Net Company of defrauding its investors and accusing its CEO of being a liar and fraud. Following the case of *Net Company v. John Doe*, a new and rapidly expanding category of Internet defamation lawsuits emerged. The thing is, unlike most defamation lawsuits, it's clear from the start that the defendant doesn't have that much money to pay for damages. But why are so many wealthy corporations resorting to such lawsuits? - The goals of this new defamation action are largely symbolic, the primary goal being to silence John Doe and others like him [5, p. 860].

Jurisdiction of courts in disputes arising from defamation via the Internet is an issue in comparative international procedural law. The first reason for this problem stems from the unique nature of the internet, which is not available anywhere but can be accessed from anywhere. The existing difficulties in determining the issue of jurisdiction in the cases of insults and defamation in the virtual space have formed defamation (libel) tourism as one of the problems that are characteristic and relevant for the modern era.

In disputes with a foreign element, the plaintiff's choice of the court that best suits his interests among the courts of more than one state that has jurisdiction over the said dispute is called "forum shopping" in Anglo-Saxon law. The equivalent of forum shopping in defamation disputes via online media is defamation tourism. Libel tourism

is when a person is sued for defamation in a foreign jurisdiction with weak defamation laws. For example, the United Kingdom has been a favorite destination for a defamation tourist to sue for defamation, as traditionally the burden of proof under British law rests with the defendant (the party sharing the content) [4].

In disputes arising out of insults to honor and dignity carried out through mass media, the plaintiff's choice of the court of the country that suits his interests, unlike other disputes, creates the risk of restricting freedom of expression and press around the world. It is reported that this problem will create a chilling effect for media subjects and internet providers [2, p. 90].

Although cases of defamation tourism have been encountered since the 1980s, the number of cases of defamation tourism increased and accelerated after the September 11, 2001 terrorist attack in New York City, USA, with the widespread use of the Internet in the 1990s. After the terrorist act, more books were written by American authors that created a connection between terrorist organizations and Muslim businessmen who are alleged to be financial supporters, published by American publishers in many countries, and some books were even partially read on websites that can be accessed from anywhere. Due to the provisions of the US law protecting freedom of expression, American authors and publishers began to be preferred to file lawsuits in English and London courts. That is why English law is called a plaintiff's friend, and London is called the capital of defamation tourism [3, p. 2463].

Threats and blackmail are acts of intimidation used to intimidate someone. People who are threatened and blackmailed can suffer lifelong anxiety and loss of self-confidence. This is because their freedom is limited in a certain sense due to the restriction of their behavior, behavior, and decision-making mechanisms in their natural lives. These and similar violations can be considered as the cause of the crime against emotional personality values, because they have a personal psychological impact [10, p. 81]. In this regard, anti-defamation measures should always be the focus of the states.

### **1.3. Conclusion**

The article analyzed the types of defamatory statements and determined that some types of statements are characterized by their defamatory nature in each case: statements that a person is guilty of a crime; statements that a person has acted immorally; defamatory statements about a person's profession and position.

As a result, it was concluded that there is no need for ranking and enumeration in Article 14 of the Law on Media. During the research, the information in that Article was compared with Article 13-2.3 of the Law on Informatization and Information Protection, and it was concluded that since clause 1.16 of the said Article of the Law on Media refers to the Law on Informatization, the information specified in the previous clauses creates repetition and confusion at application time. Therefore, it is more appropriate to remove most of those clauses from Article 14.

### **References:**

1. Douglas Maule and Zhongdong Niu. *Media Law Essentials*. Edinburgh University Press, 2010. – 200 p.
2. Elmasulu, D.E. *International jurisdiction in Turkish and United States law in liability cases arising from attacks on honor and dignity via the internet / Master's thesis / - Kocaeli, 2018, 197 p. (in Turkish)*

3. Feldman, Michelle. Putting the Brakes on Libel Tourism: Examining the Effects Test as a Basis for Personal Jurisdiction Under New York's Libel Terrorism Protection Act // *Cardozo Law Review*, 2010. Vol. 31, pp. 2457-2463.

4. <https://www.dictionary.com/browse/libel-tourism>, last access – 07.01.2024.

5. Lyrissa, Barnett Lidsky. Silencing John Doe: Defamation & Discourse in Cyberspace // - *Duke Law Journal*, 2000. Vol. 49, No. 4, pp. 855-946.

6. *Macleod v Newsquest (Sunday Herald) Ltd* (2007). [https://www.bailii.org/scot/cases/ScotCS/2007/CSOH\\_04.html](https://www.bailii.org/scot/cases/ScotCS/2007/CSOH_04.html), last access – 14.03.2024.

7. *Morrison v Ritchie and Co*: SCS 12 Mar 1902. <https://swarb.co.uk/morrison-v-ritchie-and-co-scs-12-mar-1902/>, last access – 21.02.2024.

8. *Reynolds v Times Newspapers Ltd and others*: HL 28 Oct 1999. [https://swarb.co.uk/reynolds-v-times-newspapers-ltd-and-others-hl-28-oct-1999/#google\\_vignette](https://swarb.co.uk/reynolds-v-times-newspapers-ltd-and-others-hl-28-oct-1999/#google_vignette), last access – 21.02.2024.

9. *Tolley v J S Fry and Sons Ltd*: HL 1931. <https://swarb.co.uk/tolley-v-j-s-fry-and-sons-ltd-hl-1931/>, last access – 18.01.2024.

10. Ural, S. Violation of privacy of private life and its punishment (Comparison with Modern Law) / Master's Thesis / - İsparta, 2019. – 104 p. (in Turkish)

Walker T. *Reputation Matters: A Practical Legal Guide to Managing Reputation Risk*. New Zealand: Simpson Grierson, 2012, pp. 11-18.

**Date of receipt of the article in the Editorial Office  
(25.03.2024)**