



**Organization for Security and Co-operation in Europe
The Representative on Freedom of the Media
Dunja Mijatović**

**Defamation and Insult Laws in the OSCE Region:
A Comparative Study**

(Commissioned by the OSCE Representative on Freedom of the Media)

March 2017

Author/Lead Researcher: Scott Griffen, Director of Press Freedom Programmes,
International Press Institute
Managing Editor: Barbara Trionfi, Executive Director, International Press Institute

About This Study

This study examines the existence of criminal defamation and insult laws in the territory of the 57 participating States of the Organization for Security and Co-operation in Europe (OSCE). In doing so, it offers a broad, comparative overview of the compliance of OSCE participating States' legislation with international standards and best practices in the field of defamation law and freedom of expression.

The primary purpose of the study is to identify relevant provisions in law. Although the study does include examples of the usage of these provisions, it is not an analysis of legal practice. Where prudent, the study provides basic information about national courts' interpretation of the law insofar as is necessary to understand the objective component of the provision. However, due to constraints of time and resources, the study does not delve into court standards on application in any great detail.

The study is divided into two sections. The first section offers conclusions according to each of the principal categories researched and in reference to international standards on freedom of expression. The second section provides the detailed research findings for each country, including relevant examples.

As the study's title suggests, the primary research category is general criminal laws on defamation and insult. However, this study also covers special laws protecting the reputation or honour of particular persons or groups of people (e.g., presidents, public officials, deceased persons); special laws protecting the 'honour' of the state and state symbols; and blasphemy and religious insult laws.

While this study attempts to offer a comparative view of the situation in the OSCE region, numbers presented in this report (e.g., *x* number of OSCE participating States have criminal defamation laws on the statute books) should be approached with some caution. Due to differences in the objective components of the provisions researched, subjective determinations as to whether a provision falls into a certain category are inevitable. For example, whether a provision on flag 'desecration' covers verbal insult of the flag will vary from country to country according to court practice and legal interpretation. In a number of cases, a lack of court practice means that interpretation remains a matter of some speculation. It is therefore recommended that such numbers be used for guidance only.

Data was collected by the authors and in coordination with national legal experts. Every effort has been made to ensure accuracy. Nevertheless, the authors accept no liability for the information provided here. This information is for informational and research purposes only and under no circumstances may be construed as legal advice or opinion. Corrections or clarifications, however, are, of course, more than welcome.

Information on previous versions of this study can be found in the Acknowledgements section.

(The views expressed in this report are solely those of the authors and not necessarily those of the OSCE Representative on Freedom of the Media).

Part I: Overview of Findings

1. Criminal defamation and insult laws
 - a. Law
 - b. Practice
2. Criminal defamation of public officials
3. Criminal defamation of the head of state
4. Criminal defamation of the state, state symbols and state institutions
 - a. Criminal laws prohibiting insult of the State
 - b. Criminal laws prohibiting insult of state symbols
 - c. Criminal laws prohibiting insult of state institutions
5. Criminal defamation of foreign heads of state and other foreign officials
6. Criminal defamation of foreign states and symbols
7. Criminal defamation of the deceased
8. Criminal blasphemy and religious insult laws
9. Recent legal changes
10. Overview of provisions by OSCE participating state
11. Acknowledgements

Part II: Detailed Information by Country

Research Template

Albania
Andorra
Armenia
Austria
Azerbaijan
Belarus
Belgium
Bosnia and Herzegovina
Bulgaria
Canada
Croatia
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Georgia
Germany
Greece
Holy See
Hungary
Iceland
Ireland
Italy
Kazakhstan

Kyrgyzstan
Latvia
Liechtenstein
Lithuania
Luxembourg
Malta
Moldova
Monaco
Mongolia
Montenegro
Netherlands
Norway
Poland
Portugal
Romania
Russian Federation
San Marino
Serbia
Slovakia
Slovenia
Spain
Sweden
Switzerland
Tajikistan
the former Yugoslav Republic of Macedonia
Turkey
Turkmenistan
Ukraine
United Kingdom
United States
Uzbekistan
Vatican City

Executive Summary

Despite recommendations by international human rights bodies, including the OSCE Office of the Representative on Freedom of the Media, criminal defamation and insult laws are on the statute books in three-quarters of OSCE participating States. Imprisonment is a possible sanction in the vast majority of cases; other types of sanctions include fines and, less commonly, corrective labour and the loss of certain political rights. Most OSCE states that have repealed criminal defamation laws are common law countries or are located in South East Europe and Central Asia.

Criminal defamation laws continue to be applied with some degree of regularity across the OSCE region, including against the media. Particular problem areas remain Southern Europe (especially Greece, Italy, Portugal and Turkey), Central Europe (especially Hungary), Central Asia and Azerbaijan, although occasional convictions of journalists continue to take place in states typically considered strong defenders of media freedom such as Denmark, Germany and Switzerland.

Nine OSCE participating States sanction defamation more harshly if the victim is a public official, a clear breach of international standards. Nearly all of these states are located in Western Europe. Another 15 states provide for criminal liability for various forms of insult against public officials, usually in connection with the exercise of official function.

Despite the obvious contradiction with the democratic pillars of public scrutiny and accountability, nearly half of OSCE participating States offer special protection to the reputation and honour of the head of state. Penalties for these acts are frequently much more severe than for general defamation and insult, especially in Western and Northern European monarchies and in Central Asia. Turkey stands out for the extraordinary use of criminal law to punish criticism of the President by journalists and average citizens alike.

Sixteen OSCE countries punish insult or defamation of the state. Criminal laws prohibiting offence to state symbols are fairly common in the OSCE region, although it is frequently difficult to differentiate between physical desecration and verbal or written insult, with the latter being more relevant for the media. Imprisonment is typically a sanction, and terms can be lengthy (up to five years in Germany). Another 16 states explicitly prohibit insult to state bodies such as parliaments, governments and public authorities.

Largely forgotten prior to the Böhmermann affair in Germany in 2016, special laws protecting foreign heads of state are on the statute books in 18 OSCE participating States. Several states provide severe sanctions, e.g., up to six years in prison. Overall, these laws are not often applied. Most states that provide protection for foreign heads of state also extend this protection to other foreign officials such as ambassadors. Seven OSCE participating States criminalise insult to foreign states, while around one-third have laws on offence toward the symbols of foreign states or international organisations.

A handful of OSCE states maintain separate criminal provisions on insulting the deceased or the ‘memory of the dead’. These provisions frequently do not require living persons to be harmed and provide extensive periods for filing charges.

Blasphemy and religious insult laws exist in around one-third of OSCE participating States, although these provisions are varied in nature and in some cases combine blasphemy and/or religious insult with elements of hate speech legislation.

The picture with regards to recent legal development in the OSCE region is mixed. On the one hand, criminal defamation and insult laws have been repealed in nearly a dozen states since 2009, and there has been incremental progress in other areas such as blasphemy. On the other, several states have recently strengthened criminal defamation laws or reintroduced them altogether, such as the Russian Federation. International outcry has helped prevent problematic new measures in states such as Italy and Albania. Incipient government efforts to counter online ‘hate speech’ and cyberbullying have included proposals to strengthen elements of criminal defamation laws which may present a challenge for the future. High courts have sent mixed signals when it comes to criminal defamation and freedom of expression and the European Court of Human Rights (ECtHR) has had a limited influence in encouraging legal reforms in line with the Court’s standards.

Part I: Overview of Findings

1. Criminal defamation and insult laws

a. Law

Various European and international human rights bodies, including international and regional courts and IGOs that have a mandate in the area of human rights protection, have criticised the imposition of criminal sanctions in defamation cases. This criticism is rooted partly in fears that criminal sanctions, when compared to civil remedies, carry a greater potential to generate a chilling effect on the media and on freedom of expression more broadly. In addition, criminal defamation laws, which involve the exercise of state power and the use of state resources, are particularly prone to abuse in order to silence opponents and critics. Monitoring by press freedom groups indicates that, at a global level, criminal defamation cases continue to be brought against journalists in retaliation for unwanted investigations or commentary.

The UN Human Rights Committee has said that all states “should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty”¹.

Representatives of regional inter-governmental bodies have been even more straightforward in their opposition to criminal defamation laws. In 2002, the Representative on Freedom of the Media of the OSCE (OSCE RFoM) joined similar figures in the UN and Inter-American systems in stating²: “Criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws.” In 2010, the same group, in addition to the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and People’s Rights, declared criminal defamation one of the ten key threats to freedom of expression in the coming decade³. Moreover, the OSCE RFoM regularly calls on OSCE participating States to repeal all criminal defamation laws.

The European Court of Human Rights (ECtHR) has never explicitly excluded the possibility of maintaining criminal defamation laws. However, it has criticised the usage of such laws on numerous occasions. On occasion, the Court has suggested that the imposition of a criminal sanction alone may be sufficient for the finding of a disproportionate remedy and, therefore, a violation of Article 10 of the European Convention on Human Rights (ECHR).

The Court’s jurisprudence is more clear when it comes to the type of criminal sanction imposed. While the Court has on occasion implicitly accepted criminal fines, in a landmark decision in 2004 regarding Romania it ruled⁴: “The imposition of a prison sentence for a press offence will be compatible with journalists’ freedom of expression ... only in exceptional

¹ “General comment No. 34”, U.N. Human Rights Committee, 102nd session, published 12 September 2011, www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf.

² Joint Declaration on Freedom of Expression and the Administration of Justice, Commercialisation and Freedom of Expression, and Criminal Defamation (2002), available at www.oas.org/en/iachr/expression/showarticle.asp?artID=87&IID=1.

³ Tenth Anniversary Joint Declaration: Ten Key Challenges to Freedom Of Expression in the Next Decade (2010), <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=784&IID=1>.

⁴ *Cumpănă and Mazăre v. Romania*, no. 33348/96 (2004)

circumstances, notably where other fundamental rights have been seriously impaired as, for example, in the case of hate speech or incitement to violence.” In subsequent cases, the Court has found that the imposition of a prison sentence in a defamation cases amounts to a violation of Art. 10 (“Freedom of Expression”) of the European Convention on Human Rights⁵ regardless of whether or not the finding of criminal liability itself could be justified⁶.

Despite the aforementioned standards, three-quarters (42) of the 57 OSCE participating States maintain general criminal defamation laws. In the vast majority of these cases, defamation and/or insult carries a potential penalty of imprisonment.

This study considers only the following 15 OSCE participating States to have repealed all general provisions on criminal defamation and insult: Armenia, Bosnia and Herzegovina, Cyprus, Estonia, Georgia, Ireland, Kyrgyzstan, Moldova, Montenegro, Norway, Romania, Tajikistan, the former Yugoslav Republic of Macedonia, the United Kingdom and Ukraine. The United States has no criminal defamation laws at the federal level, but such laws continue to exist at the state level.

Several comments can be made about this list. First, the fact that most of these states have repealed their criminal provisions within the past 10 years suggests some momentum within the OSCE region away from criminal defamation. (At the same, criminal defamation laws in several states have been strengthened; see section on recent legal changes.)

Second, two groups of countries are well-represented in this list. The first group consists of common law countries (the UK, Ireland, Cyprus and the United States) where criminal defamation laws had largely fallen into disuse. The second group consists of countries that emerged from the former Soviet Union or the former Yugoslavia and that have been under greater pressure to protect freedom of expression in law, in many cases due to clear abuses. By contrast, virtually all Western European civil law countries⁷ – Norway is the only exception, and a very recent one – retain criminal defamation provisions. In many of these states, criminal defamation is fairly well embedded in the legal culture. Moreover, certain governments, in resisting direct calls for repeal, have taken the view that the obligation to protect citizens’ reputation necessitates the existence of criminal defamation laws.

Among the countries in which defamation remains a criminal offence, nearly all foresee the possibility of imprisonment. The states that do not are: Albania, Bulgaria, Croatia, France, the Russian Federation and Serbia. Maximum prison sentences are generally in the range of two years, but there are exceptions. Germany, for instance, punishes slander committed through

⁵ The article is 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."

⁶ See, e.g., *Affaire Belpietro c. Italie*, no. 43612/10 (2013), *Affaire Mika c. Grèce*, no. 10347/10 (2013), *Mariapori v. Finland*, no. 37751/07 (2013).

⁷ All Western European countries except for Ireland and the UK (with the exception of Scotland, which has a mixed system) are civil law countries. Cyprus, which no longer has criminal defamation, has largely a common law system. Malta has a mixed system.

the media with up to five years in prison. The Canadian Criminal Code foresees up to five years in prison for defamatory libel known to be false.

In Slovakia, defamation that causes “large-scale damage”, e.g. loss of employment or divorce, offenders face up to eight years behind bars. Under certain qualifying circumstances, those convicted of the offence of “false accusation” in Portugal (Criminal Code Art. 365) also face up to eight years in prison. These are the most severe sanctions for defamation-related offences encountered in this study⁸.

Fines and incarceration are the most common types of criminal sanctions foreseen for defamation and insult. In some Central Asian countries (e.g., Kazakhstan and Uzbekistan), correctional labour is a possible sanction. Particularly troubling are laws that provide for the stripping of political and civil rights in the case of a defamation conviction. One example is the Netherlands, where persons convicted of aggravated defamation may lose the right to hold political office or serve in the armed forces.

In terms of the objective components, the criminal codes of many OSCE states differentiate between defamation consisting of the accusation of a particular fact and insult consisting of offensive expression. Accordingly, two separate provisions on ‘defamation’ and ‘insult’ are frequently provided (e.g., Belarus, Bulgaria, France). Notably, criminal defamation provisions in the OSCE region commonly do not (explicitly) require the impugned content to be false⁹.

A number of states expand this basic structure to include a third offence that covers defamation in which the speaker knows the fact to be false (e.g., Germany, Greece, Switzerland).

There is divergence in terms of what ‘insult’ provisions cover. As noted above, the distinction between defamation and insult is commonly one of specific accusations versus offensive expressions that may, in court practice, resemble the facts/value judgments dichotomy. In a range of countries, insult provisions protect highly subjective concepts such as ‘honour’ and ‘dignity’ and the wording in many cases is extremely broad¹⁰. Some criminal codes, however, establish the distinction between defamation and insult at least partially in terms of whether the offence was committed in the victim’s presence or not¹¹. Although these considerations can make cross-border comparisons more difficult, it is clear that insult provisions pose a serious challenge to freedom of expression.

Independently from these differences in content, terminology also presents a challenge for comparative study. There is no standard usage for the English-language terms ‘defamation’, ‘libel’, ‘slander’, ‘insult’, etc., in official and unofficial translations of national criminal legislation. For this reason, it is essential to examine descriptions and legal definitions. Terminology differs even within single languages. For instance, the Austrian and German criminal codes both provide the offence of *Verleumdung* but with respect to different conduct.

⁸ More extreme incarceration terms can be observed in the Canadian offence of seditious libel (up to 14 years) and a potential life sentence in Turkmenistan under a 2003 regulatory act, now in desuetude, on attempting to seed doubts on the president’s internal and external policies.

⁹ E.g., the Austrian Criminal Code defines defamation (*üble Nachrede*) as “asserting or disseminating a fact related to another person that may defame him or negatively affect public opinion about him”. By contrast, defamation offences in, e.g., the Czech Republic, Finland and Latvia specifically require that only *false* information can lead to criminal liability.

¹⁰ E.g., the Spanish Criminal Code defines the offence of “injuria” as any accusation, expression or action that harms the dignity of another person, detracting from his reputation or attacking his self-esteem”.

¹¹ E.g., in Portugal.

While this report did not look systematically at the issue of procedure with respect to criminal defamation laws, it is important to keep in mind that different models exist. Examples: (1) a public prosecutor investigates a crime *ex officio* and brings charges; (2) an individual files charges and a public prosecutor prosecutes the case; (3) a individual prosecutes a case without the involvement of a public prosecutor ('private prosecution'). In all cases, criminal sanctions can apply. Traditionally, press freedom advocates have warned against the participation of public prosecutors in criminal defamation cases, although it can also be argued that prosecutors can act as a filter against frivolous litigation.

The system of private prosecution is fairly common for defamation cases in the OSCE region, and most states at least require that charges can only be brought upon the request of the party claiming to have been defamed. *Ex officio* prosecutions are typically reserved for alleged defamation committed against public officials. Combined 'civil-criminal cases' are also common practice in some OSCE states.

b. Practice

While arguments have been brought that criminal defamation laws, to the extent that they exist, pose no real threat to freedom of the media and expression, this study offers evidence to the contrary by showing that these laws continue to be applied in the OSCE participating States, including against the media, albeit with varying degrees of regularity.

OSCE states that are also members of the European Union are no exception. Particularly troubling is the situation in Italy and Greece, as recent investigations by the groups Ossigeno per l'Informazione (for Italy)¹² and the International Press Institute¹³ (for Greece) have revealed. Both states continue to sentence journalists to prison for defamation, even if these sentences are in practice converted into criminal fines. Notably, the ECtHR has ruled in cases involving both countries that the imposition of (suspended) prison sentences for defamation constitutes a violation of Art. 10 of the European Convention on Human Rights¹⁴. Legal reform attempts have either stalled/gone backward (Italy) or are non-existent (Greece).

Italy and Greece are not alone in the EU, however. A 2015 report by the International Press Institute¹⁵ documented numerous decisions in Strasbourg against Portugal for violating the right to freedom of expression in criminal defamation cases involving journalists. In Hungary and Slovakia, politicians and judges continue to turn to criminal libel as an avenue for responding to criticism. Moreover, criminal sanctions in defamation cases have also been applied in recent years in countries typically seen as global guarantors of freedom of expression such as Denmark, Finland, and Germany.

Only in a very small handful of EU countries is the use of criminal sanctions in cases involving the media truly unheard of in modern times. A prominent example is Belgium, likely due in part to unique procedural requirements.

¹² See "Shut Up or I'll Sue You!", Dossier produced by Ossigeno per l'Informazione, October 2016, http://notiziario.ossigeno.info/wp-content/uploads/2016/10/DOSSIER_Shut-up-or-I%E2%80%99ll-sue-you.pdf.

¹³ See, e.g., <https://ipi.media/in-greece-judges-poor-application-of-european-libel-law-seen-as-obstacle/>.

¹⁴ See *Affaire Belpietro c. Italie*, no. 43612/10 (2013) and *Affaire Mika c. Grèce*, no. 10347/10 (2013).

¹⁵ "Briefing: Criminal Defamation in Portugal", IPI, June 2015, https://ipi.media/wp-content/uploads/2016/08/PortugalCriminalDef_IPI_ENG.pdf.

Elsewhere, the situation varies. All current non-EU states in Western Europe have criminal defamation and insult laws on the statute books with the single exception of Norway. This report contains several examples of criminal sanctions for defamation applied against journalists in Switzerland. As for the European microstates, readily available evidence suggests very limited application. The Andorran government has reported that no journalist has been charged with criminal defamation in the history of the country. In Liechtenstein, there were 10 convictions for defamation, slander and insult combined between 2013 and 2015, none of which necessarily involve the media.

Most non-EU member states in South East Europe have fully repealed general criminal provisions on defamation and insult. The glaring exception is Turkey, where media and civil society organisations (CSO) monitoring has focused in particular on the abuse of provisions protecting the president and other public officials. Nevertheless, official data show 58,201 convictions in 2015 alone under the country's general insult law.

With regards to non-EU member states in Eastern Europe, only Belarus and the Russian Federation retain general criminal defamation laws. These provisions are in use and impact on freedom of expression. At least in the case of the Russian Federation, the statistical level of application is on average higher than in Western Europe, but still comparable to, e.g., Germany.

General criminal defamation laws exist only in Azerbaijan among the post-Soviet Caucasus states. Azerbaijan's provisions have a considerable impact on freedom of the media and expression and have recently been strengthened, despite various attempts by the Venice Commission, the OSCE and other actors to push for repeal in line with international standards. Azerbaijani investigative journalist Khadija Isamyilova has been one prominent target of the country's criminal libel laws.

In Central Asia, both Kyrgyzstan and Tajikistan have repealed general criminal defamation laws, although the latter retains hefty provisions for defaming the head of state. Kazakhstan retained criminal defamation in its new 2015 Criminal Code despite years of advocacy by human rights activists, journalists and media experts. The Kazakh provisions are applied against journalists, and in 2014 a court issued an arrest warrant for a journalist on defamation charges for the first time. Experts note that, in practice, there has been a recent trend toward using the country's criminal law on 'inciting hatred' as the preferred tool to silence freedom of expression. In Turkmenistan, broad censorship and state monopoly over the press essentially obviates the possibility of defamation through the media.

Outside of Europe, criminal defamation convictions occur at a relatively low level in Mongolia, but a significant proportion of cases are directed against media, according to monitoring by the CSO Globe International Center¹⁶. Mongolian lawmakers have repealed general criminal defamation provisions as part of a new criminal code that has not yet taken effect.

The vast majority of libel cases in Canada are brought in civil court. Overall prosecutions for criminal defamation are rare – although not unheard of – in modern times, and prosecutions

¹⁶ See e.g., Globe International Center, "Media Freedom Report 2015", available at <http://www.globeinter.org.mn/images/upld/Hevleliinerhcholoo2016eng.pdf>.

against journalists even more so. Some research has suggested a rise in the number of criminal convictions and indicated a rising threat to freedom of expression¹⁷.

In the United States of America, studies have shown that state-level criminal libel provisions are rarely applied and only seldom have a public component¹⁸.

Certainly, frequency of use can be a poor factor in predicting the potential impact of criminal defamation laws on freedom of expression. Provisions that fall into obscurity can very quickly regain relevance, as the threatened prosecution of the satirist Jan Böhmermann in 2016 for allegedly insulting a foreign head of state proved.

2. Criminal defamation of public officials

There is widespread agreement among courts, international standard-setting bodies, and CSOs that defamation laws should reflect the concept that public officials must be more, not less, tolerant of criticism than private persons.

Most famously, the ECtHR in its landmark 1986 judgment *Lingens v. Austria* stated¹⁹:

The “limits of acceptable criticism are wider as regards public or political figures than as regards a private individual. In a democratic society, the government’s actions must be subject to the close scrutiny not only of the legislative authorities but also of the press and public opinion”.

In the view of the UN Human Rights Committee²⁰:

“[I]n circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high. Thus, the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties, albeit public figures may also benefit from the provisions of the Covenant.”

The OSCE Representative on Freedom of the Media, together with similar figures in the UN and Inter-American systems, has opined²¹:

“[D]efamation laws should reflect... the principle that public figures are required to accept a greater degree of criticism than private citizens; in particular, laws which provide special protection for public figures, such as desacato laws, should be repealed.”

In the view of the Parliamentary Assembly of the Council of Europe, states should “remove from their defamation legislation any increased protection for public figures”²².

This study examined two categories of defamation and insult laws that pertain to public officials. The first category includes special laws that increase the penalty for defamation and insult as legislated under general laws in the case that the act is committed against a public

¹⁷ Maija Kappler, “Canada’s criminal libel laws threaten free speech, says Ryerson journalism professor”, Ryerson Journalism, <http://ryersonjournalism.ca/2016/11/16/canadas-criminal-libel-laws-threaten-free-speech-says-ryerson-journalism-professor/>.

¹⁸ A. Jay Wagner and Anthony L. Fargo, “Criminal Libel in the Land of the First Amendment, IPI, September 2015, <https://ipi.media/criminal-libel-in-the-land-of-the-first-amendment/>.

¹⁹ *Lingens v. Austria*, no. 9815/82 (1986).

²⁰ General comment no. 34, para 38.

²¹ Joint Declaration about Censorship by Killing and Defamation (2000). The Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and People’s Rights has joined more recent, similar statements.

²² Resolution 1577 (2007).

official. The second category consists of provisions that are not grouped with general provisions on defamation within national legislation but that nevertheless relate to shielding public officials from insulting, abusive or defamatory conduct. Laws that punish verbal insult of public officials in the course of official duty fall into this latter category.

For the purposes of international standards on freedom of expression, the first category is arguably the more serious. **Nine OSCE participating States (Andorra, Bulgaria, France, Germany, Italy, Monaco, the Netherlands, Portugal and Turkey) provide that defamation and/or insult committed against a public official carries a harsher punishment than the same act committed against a private person.** Imprisonment is a possible punishment in each case except for Bulgaria and France. These provisions directly contradict the principles established by international courts and the RFoM.

Typically, these laws provide protection to public officials only: e.g., the Dutch Criminal Code states that maximum prison sentences for defamation offences are increased by one-third if the offence was committed against, inter alia, the public authorities, a public body, a public institution or a public official in relation to the lawful exercise of public office. The German Criminal Code, however, foresees increased penalties – up to five years in prison – for defaming “a person involved in the popular political life” in a way that may make that person’s public activities “substantially more difficult”.

State	Nature of increased penalty if victim is public official
Andorra	Penalty for defamation increased from one year to two years (Criminal Code Art. 173)
Bulgaria	Increased fine for insult and slander (Criminal Code Art. 148)
France	Increased fine for insult (Lib Presse Art. 32)
Germany	Increased prison terms and higher minimum prison terms for defamation and slander (Criminal Code Art. 188)
Italy	Increased prison terms and fines as “aggravated” defamation (Criminal Code Art. 595)
Monaco	Increased prison terms for defamation and insult (PFE 23, 25)
Netherlands	Maximum prison terms for defamation, libel, intentional libel, insult increased by one-third (Criminal Code Art. 267)
Portugal	Minimum and maximum penalties for defamation and insult raised by one-half (Criminal Code Art. 184)
Turkey	Minimum penalty of one year in prison to be imposed (Criminal Code Art. (3))

Arguably, such provisions are problematic not only in and of themselves, but also in terms of the contradictory standard they set for other states. Indeed, it is striking that nearly all of these provisions are found in established Western European democracies that defend media freedom in bilateral and multilateral global fora as well as, in several cases, through significant CSO funding.

The provisions included in the second category are heterogeneous, but generally penalise abusive, offensive or insulting conduct directed at public officials in the course of official business. While arguably related to defamation and insult laws, these provisions are usually grouped separately in criminal legislation and are therefore analysed separately here. **In total, 15 OSCE states (Belarus, Belgium, Denmark, Estonia, Kazakhstan, Luxembourg, Malta,**

Monaco, Mongolia, Poland, the Russian Federation, San Marino, Tajikistan, Turkmenistan and Vatican City (Holy See)²³ maintain such provisions.

Examples include:

Denmark: Attacking a public servant with insult, abusive language or other offensive words or gestures in the course of official duties (Criminal Code Art. 121)

Poland: Insulting a public official or a person called upon to assist him in the course of or in connection with the performance of official duties (Criminal Code Art. 226(1))

Russian Federation: Public insult of a representative of the authority during the discharge of official duties (Criminal Code Art. 319)

San Marino: Offending the honour or dignity of a public official in the official's presence or direct communication with him, in relation to official function (Criminal Code Art. 382)

Special note should be made of the identified law in Malta, which provides criminal liability for imputing misconduct, in a public speech or in comments at a public meeting, to a person employed or concerned in administering Malta's government (Criminal Code Art. 75). Likewise, the provision in Tajikistan clearly goes beyond insulting content in the course of official business, as it provides for liability for insulting a public official in a public speech, publicly demonstrated work, in the media or on the Internet (Criminal Code Art. 330).

With the exception of Tajikistan, these provisions appear to have limited, if any, application to media content. Nevertheless, they raise questions in terms of freedom of expression, particularly if interpreted in a broad manner or abused by officials to punish criticism.

As noted above, procedural law regarding criminal defamation and insult varies from state-to-state. Typically, however, private persons who claim to have been defamed are required to either request prosecution or carry out the prosecution themselves. In a number of states, the law increases the role of state prosecutors if the offence was committed against public officials. Consider, for instance, Art. 368(1) of the Greek Criminal Code, which provides that prosecution for defamation-related offences is generally to be prosecuted upon complaint only; if the victim is a public official, however, the case may be prosecuted *ex officio*. Similarly, according to Art. 117 of the Austrian Criminal Code, defamation or insult committed against civil servants, the Austrian president, and ministers of nationally recognised churches or religious communities may take place *ex officio*.

Additional research would be required to ascertain the extent and impact of these procedural differences in practice.

Finally, this study also recorded criminal laws prohibiting insult to courts and other court officials. The criminal codes of 14 OSCE participating States (Albania, Armenia, Azerbaijan, Belarus, Belgium, Estonia, Kazakhstan, Kyrgyzstan, Lithuania, Malta, Mongolia, the Russian Federation, Turkmenistan, San Marino) contain such provisions. While these provisions are sometimes rendered in English as 'contempt of court', they may also be compared to the narrower common law concept of 'scandalising the court'.

Examples include:

²³ Vatican City State is under the sovereignty of the Holy See, which is an OSCE participating state.

Belarus: Insulting a judge or people’s assessor in connection with executing justice (Criminal Code Art. 391)

Estonia: Insulting a court, judge or lay judge in connection with their participation in administration of justice (Criminal Code Art. 305)

Lithuania: Humiliating in an abusive manner by an action, word of mouth or in writing a court or judge executing justice (Criminal Code Art. 232)

Note that the scope of application of these provisions is certain to differ from state to state, a topic for which there is no space here to investigate. Moreover, these laws are likely to be at least partially underpinned by a need to protect public confidence in the court system, the right to a fair trial, the effective administration of justice, and other similar considerations. For this reason, despite obvious potential threats to freedom of expression, ‘contempt of court’ insult laws are treated separately in this report and not included in the summary table in this report.

3. Criminal defamation of the head of state

Defamation laws protecting heads of state are subject to the same scrutiny and principles as defamation laws protecting public officials more broadly.

The OSCE RFoM has spoken out on several occasions specifically against laws protecting heads of state. Criticising a conviction in Poland in 2012, the RFoM stated²⁴:

“In a modern democracy criminal sanctions for insulting heads of state are out of place, especially since the European Court of Human Rights has for decades overturned such verdicts ... Due to the nature of their work, public officials must tolerate a greater degree of criticism and satirical remarks than ordinary individuals.”

The ECtHR has ruled²⁵:

A state’s interest in protecting the head of state “cannot justify conferring on him or her a privilege or special protection vis-à-vis the right to report and express opinions about him or her. To think otherwise would be to depart from today’s political practice and conception”.

Notably, the ECtHR has also suggested that principles related to criticism of heads of state apply not only to republican heads of state but also to non-elected monarchs. In a 2011 decision, the Court held in a case involving Spain²⁶:

“... the fact that the King occupies a neutral position in political debate and acts as an arbitrator and a symbol of State unity should not shield him from all criticism in the exercise of his official duties or – as in the instant case – in his capacity as representative of the State which he symbolises, in particular from persons who challenge in a legitimate manner the constitutional structures of the State, including the monarchy [...] the fact that the King is “not liable” under the Spanish Constitution, particularly with regard to criminal law, should not in itself as a bar to free debate concerning possible institutional or even symbolic responsibility on his part in his position at the helm of the State, subject to respect for his personal reputation.”

For its part, the UN Human Rights Committee has expressed “concern regarding laws on such matters as, lese majesty ... defamation of the head of state ...”²⁷.

²⁴ “Poland should abolish criminal defamation, says OSCE media freedom representative following conviction of editor”, OSCE, 17 September 2012, <http://www.osce.org/fom/93797>.

²⁵ *Artun and Güvener v. Turkey*, no 75510/01 [2007].

²⁶ *Otegi Mondragon v. Spain*, no. 2034/07 [2011].

Nevertheless, despite the obvious contradiction in a democracy of offering special protection to the reputation and honour of the head of state, 24 OSCE participating States do so. Those states are: Andorra, Azerbaijan, Belarus, Belgium, Denmark, Germany, Greece, Iceland, Italy, Kazakhstan, Malta, Monaco, the Netherlands, Poland, Portugal, San Marino, Slovenia, Spain, Sweden, Tajikistan, Turkey, Turkmenistan, Uzbekistan and Vatican City (Holy See). **In all of these cases, insult or defamation of the head of state is punishable with imprisonment.**

These laws can be divided into two main groups:

Lèse-majesté laws: Belgium, Denmark, Sweden, Spain, Netherlands, Monaco. Notably, these provisions foresee some of the harshest criminal penalties for defamation and insult of any kind in the OSCE region. In Sweden, *lèse-majesté* carries a potential six-year prison sentence; in Denmark, four; and in the Netherlands, five. Typically, these laws also provide criminal liability, albeit with a slightly less harsh jail term, for insult against other members of the royal family.

It is worth pointing out the disproportionate sanctions these provisions sometimes carry even in comparison to other forms of criminal libel. In Sweden, the potential six-year sentence *lèse-majesté* is three times the maximum possible jail term for aggravated defamation against private persons.

Despite their archaic nature, the OSCE's *lèse-majesté* laws continue to be applied. In 2015, for instance, in a case that made international headlines, Dutch prosecutors announced that criminal charges would be pursued against an activist who was heard on television using swear words to refer to King Willem-Alexander during a protest against the Dutch figure Black Pete. Spain has seen several cases in recent years, including the 2007 conviction of the satirical magazine *El Jueves* over an image depicting then-Crown Prince Felipe and his wife having sexual intercourse.

It is also worth noting the offence of *sedition libel* in Canada, which criminalises words or writing with a “seditious intention” and which carries a potential jail term of 14 years. The law provides that “no person shall be deemed to have a seditious intention by reason only that he intends, in good faith, to show that Her Majesty has been misled or mistaken in her measures”.

Special laws prohibiting insult/defamation of republican heads of state: Andorra, Azerbaijan, Belarus, Germany, Greece, Iceland, Italy, Kazakhstan, Malta, Poland, Portugal, San Marino, Slovenia, Tajikistan, Turkey, Turkmenistan, Uzbekistan and Vatican City (Holy See).

This category includes laws modifying criminal penalties for general defamation and insult in case the victim is the head of state as well as special laws prohibiting insult to the head of state that are not necessarily grouped together with general defamation and insult laws.

France repealed its criminal defamation law protecting the French president following the ECtHR's decision in *Eon*. However, French law provides that insult directed against certain public officials, including the president, is sanctioned more harshly (increased fine) than

²⁷ General Comment 34, para 38.

insult against private persons. Note also that Lithuania provides administrative penalties for insult of the head of state.

As a general rule, criminal penalties for defaming/insulting heads of state are higher than criminal penalties for insulting private persons. Compare the following examples:

State	General provision	Provision related to head of state
Azerbaijan	Libel penalised with up to three years in prison (Criminal Code Art. 147)	Discrediting or humiliating the honour and dignity of the head of state penalised with up to five years in prison (Criminal Code Art. 323)
Belarus	Libel penalised with up to three years in prison (Criminal Code Art. 188)	Libel penalised with up to three years in prison (CRIMINAL CODE 188)
Iceland	Defamation and slander penalised with one and two years in prison, respectively (Criminal Code Arts. 235-236)	Penalties for defamation and slander can be doubled if the victim is the president (Criminal Code Art. 101)
Poland	Defamation and insult penalised with up to one year in prison (Criminal Code Arts. 212, 216)	Publicly insulting the president penalised with up to three years in prison (Criminal Code Art. 135(2))
San Marino	Aggravated defamation penalised with up to imprisonment of the first degree (Criminal Code Art. 185)	Offence to the Captains Regent penalised with up to imprisonment of the third degree (Criminal Code Art. 342)

One exception to this rule is Greece, where the maximum penalty for insulting or defaming the president (three months) is less than the maximum penalty for general defamation. However, the Greek Constitution (Art. 14(3b)) also allows for the seizure of material (both pre- and post-publication) that contains insults to the president.

Application of these laws is uneven within the OSCE region: in some states they appear to be a dead letter in practice, while in others they remain in vigorous use. In Turkey, application – and abuse – of the country’s presidential insult law grew at a staggering pace under current President. Between August 2014 and March 2016 alone, 1,845 cases were reported to have been filed under this law, Art. 299 of the Turkish Criminal Code. This application has cast a wide net: those charged have included writers, politicians, athletes, students, academics and schoolchildren. In July 2016, the President announced a one-time withdrawal of charges filed under Art. 299, but reserved the right to bring cases in the future. Indeed, in December 2016, police arrested the cafeteria manager of the secular newspaper Cumhuriyet under Art. 299 for reportedly saying he would refuse to serve tea to the President.

Notably, despite the avalanche of cases obviously intended to suppress criticism of the president, the Turkish Constitutional Court upheld the constitutionality of Art. 299 in December 2016, ruling²⁸ that “the said restriction ... does not pose any obstacle to express ideas and thoughts as long as they do not harm others’ reputation or rights”.

While the most prominent example, Turkey is not alone in the application of presidential insult laws. Belarus’s provision on defamation of the head of state, Art. 367, is also applied

²⁸ Constitutional Court of the Republic of Turkey, Judgement No. 2016/186, 14.12.2016.

with relative frequency. Most notably, Andrzej Poczobut, a correspondent for the Polish newspaper *Gazeta Wyborcza*, was given a three-year suspended prison sentence for libelling President Alexander Lukashenko in articles published in 2010 and 2011.

Prosecutions or attempted prosecutions have also occurred in EU member states in recent years, including in Poland and Germany (note that, in the latter, those convicted of “disparaging the German president” under Criminal Code Art. 90 may also be stripped of certain political rights).

With the exception of Kyrgyzstan, the Central Asian states are notable for elaborate protections accorded to heads of state. Sanctions can be severe, reaching up to five years behind for insult against the president in Uzbekistan, for instance. At least in terms of this category, trends in this region seem to be heading in the wrong direction. In November 2016, Tajikistan, which already possessed a special law sanctioning defamation of the president with up to five years in prison (Criminal Code Art. 137) despite having no general criminal defamation laws, added a provision to its Criminal Code on “Public insult of the Founder of Peace and National Unity – Leader of the Nation or slander against him” (Criminal Code Art. 137¹), carrying a penalty of two to five years in prison.

4. Criminal defamation of the state, state symbols and state institutions

In general, laws falling under this category raise the same issues as criminal defamation and insult laws that offer special or increased protection to public officials and heads of state. However, the laws under this category differ in that they aim to protect either objects (e.g., flags) or non-natural entities (the ‘State’ or state bodies such as parliaments, rather than the individuals who form or run such bodies).

The OSCE RFoM, together with analogous figures in the Inter-American and U.N. systems, has stated clearly²⁹ that “[t]he State, objects such as flags or symbols, government bodies, and public authorities of all kinds should be prevented from bringing defamation actions”.

The UN Special Rapporteur on Freedom of Expression has further expressed the view that “international human rights law protects individuals and groups of people, not abstract notions or institutions that are subject to scrutiny, comment or criticism”³⁰.

For its part, the UN Human Rights Committee has expressed “concern regarding laws on such matters as... disrespect for flags and symbols”. It has stated that “States parties should not prohibit criticism of institutions, such as the army or the administration”³¹ and that it “deplores the existence of the offence of ‘defamation of the State’”³².

The Parliamentary Assembly of the Council of Europe has also criticised state insult and similar laws³³:

²⁹ Joint Declaration about Censorship by Killing and Defamation (2000). The Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and People’s Rights has joined more recent, similar statements.

³⁰ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Human Rights Council, Fourteenth Session, 20 April 2010, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.23.pdf>.

³¹ General Comment 34, para 38.

³² See e.g., Concluding observations of the Human Rights Committee on Mexico, CCPR/C/79/Add.109, 27 July 1999, available at http://www.univie.ac.at/bimtor/dateien/mexico_ccpr_1999_concob.pdf.

³³ Resolution 1577 (2007).

“ ... 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.”

a. Criminal laws prohibiting insult of the State

At least 14 OSCE participating States have criminal laws prohibiting insult of the state: Austria, Belarus, Croatia, Germany, Italy, the former Yugoslav Republic of Macedonia, Montenegro, Poland, Portugal, San Marino, Serbia, Slovenia, Spain and Turkey. With the exception of Italy, Spain and the former Yugoslav Republic of Macedonia, imprisonment is a possible penalty in all cases. These provisions clearly clash with the principles set forth by the RFoM and other international human rights bodies.

Examples include:

State	Offence	Sanction
Austria	Publicly and in a hateful manner insulting or disparaging the Republic of Austria or one of its federal states (Criminal Code Art. 248(2))	Up to one year in prison or fine
Croatia	Publicly mocking, roughly disparaging or exposing to hatred the Republic of Croatia (Criminal Code Art. 349)	Up to one year in prison
Germany	Insulting or maliciously expressing contempt toward Germany or one of its states [...] (Criminal Code Art. 90a)	Up to three years in prison; up to five years in prison if act supports efforts against the continued exist of the Federal Republic of Germany or against its constitutional principles
Turkey	Insult against the Turkish Nation, the State of the Republic of Turkey [...] (Criminal Code Art. 301)	Up to two years in prison

A small number of states also provide criminal liability for acts that undermine the economy or damage the ‘creditworthiness’ of the state. For instance, in Belgium, a 1928 royal decree sanctions reports that “may negatively affect the creditworthiness of the State” with up to two years in prison. Similar provisions exist in Monaco (“attack on the economic reputation of the State”, Criminal Code Art. 71) and San Marino (“Damage to the good name of the Republic by citizens abroad”, Criminal Code Art. 333). This report also considers these laws to fall under the umbrella of insult to the state, brining the total in this category to 16.

Further, while the Romanian Criminal Code does not have a specific provision on insult of the state, Art. 30(7) of the Romanian Constitution provides that defamation of the state and the nation shall be prohibited by law.

Finally, a few states have laws prohibiting defamation of “nations”. For instance, Art. 290 of the Italian Criminal Code prohibits defamation of the “Italian Republic”, while Criminal Code Art. 291 prohibits defamation of the “Italian nation”. The Slovak Criminal Code provides criminal liability for defamation of a “nation, its language or any race or ethnic group”

(Criminal Code Art. 423). A similar law is on the statute books in the Czech Republic (Criminal Code Art. 355).

Criminal justice statistics collected for this report for available countries show that convictions for insult to the state do occur in a few selected countries in the OSCE region (e.g., Turkey and Germany), albeit at relatively low levels. However, in the majority of the states listed above these laws appear to be dormant.

The majority of states with state insult laws are located in Western Europe. However, it should not escape notice that several states that lack state insult laws (such as Kazakhstan and Azerbaijan) or that apply them rarely (such as Belarus) arguably compensate with elaborate protections for a head of state who in practice may be closely connected with the concept of the state itself.

b. Criminal laws prohibiting insult of state symbols

This category presents particular challenges for comparative analysis. In general, this study aimed to identify provisions that sanction verbal or written insult of symbols, as opposed to those that only sanction physical desecration, such as destroying, damaging or removing state symbols. This decision was taken in order to provide continuity with the other categories researched and to highlight provisions that could be relevant for the media. It is by no means intended to minimise the danger that laws on physical desecration pose to freedom of expression.

Unfortunately, the laws of many OSCE participating States do not make a clear distinction between verbal or written ‘insult’ and physical ‘desecration’ regarding state symbols. A lack of court practice further complicates categorisation.

In some cases, the broad language used (“defaming”, “insulting”, “expressing contempt for”) suggests that liability could conceivably extend to offensive media content. In other instances, the objective content focuses primarily on physical desecration, but appears to leave the door open for other uses.

For instance, Art. 128 of the Lithuanian Criminal Code provides criminal liability for “tearing down, tattering, breaking, destroying, soiling or otherwise desecrating an officially displayed state flag or state emblem of the Republic of Lithuania [...]”. While this law appears to sanction primarily physical actions, legal experts suggest that the phrase “otherwise desecrating” functions as a ‘catch-all’ clause that could theoretically be used to prosecute verbal forms of insult.

This study found that the criminal codes of 36 OSCE participating States contain provisions on insult and/or desecration to state symbols. Among these 36 states, there is a continuum that ranges from provisions that clearly relate to physical desecration only (e.g., Switzerland), to provisions that primarily cover physical acts but that could extend to verbal or written insult (e.g., Moldova, Lithuania) to provisions that more clearly admit the possibility of liability for media content (see examples below). Symbols typically granted protection are flags, anthems and coats of arms. In the vast majority of cases, imprisonment is a possible sanction.

A few states provide criminal or administrative sanctions for offences toward state symbols in separate legislation. In only one case, Iceland, does the provision in question appear to be potentially relevant for the media.

State	Offence	Sanction
Bulgaria	Defaming the coat of arms, the flag or the anthem of the Republic of Bulgaria (Criminal Code Art. 108(2))	Up to two years in prison or fine
Greece	Expressing hatred or contempt for, removing, destroying, deforming or desecrating the official flag of the State or emblem of its sovereignty (Criminal Code Art. 181)	Up to two years in prison
Iceland	Defaming the Icelandic flag in word or deed (Flag Act Art. 1)	Up to one year in prison or fine
Poland	Publicly insulting, destroying or removing a symbol of the state (Criminal Code Art. 137(1))	Up to one year in prison, fine or restriction of liberty
Portugal	Insulting the State, the national flag or anthem, or the symbols of Portuguese sovereignty, or failing to give the State or its symbols the respect owed to them (Criminal Code Art. 332)	Up to two years in prison or fine
Serbia	Publicly mocking the Republic of Serbia, its flag, coat of arms or national anthem (Criminal Code Art. 173)	Up to three months in prison or fine
Spain	Verbal or written offences or insults against Spain, its Autonomous Communities or the symbols or emblems thereof (Criminal Code Art. 543)	Fine of seven to 12 months

As is the case for state insult laws, criminal justice statistics collected for this report for available countries indicate that convictions for insult to state symbols are comparatively rare. A small number of convictions can be seen again in Germany and Turkey, for example.

c. Criminal laws prohibiting insult of state institutions

Sixteen OSCE participating States explicitly criminalise 'defamation' and/or insult of state bodies and institutions: Andorra, Austria, Belgium, Cyprus, Germany, Greece, Italy, Liechtenstein, Luxembourg, Monaco, the Netherlands, Poland, Portugal, Spain, Turkey and Vatican City (Holy See). The institutions covered under these laws vary widely, but include governments, parliaments, courts, the armed forces and public bodies or public authorities generally.

This category includes the following types of laws:

- *first*, provisions that extend the application of general criminal defamation and insult laws to state bodies and state institutions. For instance, Art. 116 of the Austrian Criminal Code provides that general criminal laws on defamation and insult also cover acts against the national or state parliaments, the armed forces and government offices
- *second*, separate provisions that specifically prohibit insult to state bodies and state institutions generally. the Polish Criminal Code provides a separate provision on “publicly insulting or humiliating a constitutional authority” (Criminal Code Art. 226(3)).

- *third*, provisions analogous to criminal laws prohibiting insult to public officials in the exercise of public office. For instance, the Belgian Criminal Code allows for the prosecution of verbal insult (*outrage/smaad*) against constitutional bodies in the course of official function (Criminal Code Art. 277).

Additional examples:

State	Offence	Sanction
Andorra	Public allegations that may damage the prestige of the General Council, the government, the Superior Court of Justice [...] (Criminal Code Art. 325)	Fine, ban on holding public office
Germany	Publicly disparaging the constitutional organs of the German state (Criminal Code Art. 90b)	Up to five years in prison, possibly stripping of certain civil rights and the right to practice profession
Liechtenstein	General provisions on criminal defamation, slander or insult cover acts directed at Parliament, the government or another official body (Criminal Code Art. 116)	Same as penalties for general criminal defamation, slander and insult
Spain	(1) Defamation of Parliament, or the legislature of an autonomous community, or its laws (Criminal Code Art. 496); (2) serious slander or defamation of the national government, the General Council of the Judiciary, the Constitutional and Supreme Courts [...] (Criminal Code Art. 504)	(1) Fine of 12 to 18 months; (2) Fine of 12 to 18 months
Turkey	Insult against the Turkish Nation, the State of the Republic of Turkey, the Grand National Assembly of Turkey, the Government of the Republic of Turkey and the judicial bodies of the State (Criminal Code Art. 301)	Up to two years in prison

Application of these provisions appears to be rare. Available statistics generally show negligible levels of convictions. One exception may be Turkey, where there were 14 convictions for insult to the state and state bodies in 2015. Anecdotal evidence for the widespread use of these provisions is similarly slim.

5. Criminal defamation of foreign heads of state and other foreign officials

Human rights bodies have criticised special criminal defamation and insult laws that provide protection specifically to foreign heads of state.

In its 2002 judgment *Colombani and others v. France*, the ECtHR ruled³⁴:

The offence of insult to foreign leaders "... is to confer a special legal status on heads of State, shielding them from criticism solely on account of their function or status, irrespective of whether the criticism is warranted. That, in [this Court's] view, amounts to conferring on foreign heads of State a special privilege that cannot be reconciled with modern practice and

³⁴ *Colombani and Others v. France*, no. 51279/99 [2002].

political conceptions. Whatever the obvious interest which every State has in maintaining friendly relations based on trust with the leaders of other States, such a privilege exceeds what is necessary for that objective to be obtained. Accordingly, the offence of insulting a foreign head of State is liable to inhibit freedom of expression without meeting any “pressing social need” capable of justifying such a restriction. It is the special protection afforded foreign heads of State by section 36 that undermines freedom of expression, not their right to use the standard procedure available to everyone to complain if their honour or reputation has been attacked or they are subjected to insulting remarks.”

Following the Turkish government’s request to prosecute the German satirist Jan Böhmermann in April 2016, the OSCE RFoM published a communique³⁵ on criminal defamation laws protecting foreign heads of state. The communique reads, in part:

“To confer a special legal status on such figures, shielding them from criticism solely because of their function or status and irrespective of whether the criticism is warranted, provides them with a special privilege that cannot be reconciled with democratic practice. A civil law defence is a sufficient instrument to protect one’s reputation and compensate possible harm made.

Therefore the Representative on Freedom of the Media recommends that the OSCE participating States: (i) recognize that wherever they exist, criminal provisions that protect heads of foreign states impinge on the right of media to freely publish news as well as the public’s right to receive information and ideas; (ii) accept that criminal provisions must be interpreted in the context of international obligations and best practices in the OSCE region on media freedom; (iii) encourage legislatures to repeal laws shielding of heads of foreign states from criticism solely because of their function or status.”

This study indicates that these principles are not fully respected within the OSCE region. **Eighteen OSCE participating States maintain criminal defamation laws protecting foreign heads of state:** Andorra, Cyprus, Denmark, Estonia, Germany, Greece, Iceland, the Netherlands, Norway, Poland, Portugal, San Marino, Slovenia, Sweden³⁶, Switzerland, the former Yugoslav Republic of Macedonia, Turkey and Vatican City (Holy See). **With the single exception of Cyprus, imprisonment is a possible punishment in all cases.**

As in the case of laws protecting national heads of state, penalties in some cases appear to be staggeringly disproportionate in relation not only to the offence itself, but also to other forms of criminal defamation. In Iceland, the maximum penalty for criminal defamation against private persons is two years in prison. Under Art. 94 of the Icelandic Criminal Code, however, the penalties for defamation and insult are to be increased by one-half if the victim is a foreign head of state. Moreover, under Art. 95, publicly insulting, inter alia, the “supreme official or head of state” of a foreign state carries a penalty of six years in prison for serious offences. This sanction is the highest in the OSCE for defamation against foreign heads of state and is among the highest for any type of criminal defamation reviewed in this study.

A number of states justify criminalising insult toward foreign heads of state by referring to the need to protect international relations. The law in Cyprus, for instance, criminalises acts that aim to “humiliate, insult or expose to hatred or contempt a foreign head of state ... with the goal of compromising the peace and friendship between Cyprus and the foreign country in

³⁵ Communique by the OSCE Representative on Freedom of the Media on criminal defamation laws protecting foreign heads of state (Communiqué No.5/2016), OSCE, 14 June 2016, <http://www.osce.org/fom/246521?download=true>.

³⁶ Note that, in the case of Sweden, the provision is procedural in nature. The law provides a special procedural rule in the case that general defamation or insult is committed against a foreign head of state.

question”. Similarly, several other laws frame the objective component as covering insult to the head of state of a *friendly* power.

As noted above, however, the ECtHR has ruled that special privileges accorded to foreign heads of state – to say nothing of extreme sanctions such as in the Icelandic case – do not strike a proper balance between the need to preserve positive international relations and the obligation to protect freedom of expression.

Note also that some laws (e.g., San Marino) appear to require that the offended head of state be present in the country at the time of the act.

Further examples include:

State	Offence	Sanction
Denmark	Defamation committed against a foreign head of state or head of a foreign diplomatic mission (Criminal Code Art. 110d)	Criminal penalties for general defamation are doubled
Greece	Insulting the honour of the head of state of a foreign country that is at peace with Greece (Criminal Code Art. 153)	Imprisonment for up to two years
Netherlands	Intentional insult to the head or a member of government of a friendly nation, present in the Netherlands in his official capacity (Criminal Code Art. 118(1))	Imprisonment for up to two years or fine; loss of certain political rights
Switzerland	Offending a foreign state by insulting its head of state [...] (Criminal Code Art. 296)	Imprisonment for up to three years or fine

The Böhmermann case in Germany shone a sudden light on provisions protecting foreign heads of state, many of which were presumed to be a dead letter, if they were perceived as extant at all. On the one hand, available evidence confirms that many of these provisions are, in fact, dormant: the most recent prosecution under the Danish provision occurred in 1934, when a group of persons were sanctioned for calling for an end to the “Nazi’s bloody horror regime” – an example that also illustrates the potential for these laws to be abused.

On the other hand, in some cases these provisions are applied more often than perhaps realised. In 2010, the Swiss government – bizarrely – granted permission for the prosecution of a political activist for offending the late Libyan dictator Muammar Gaddafi. The activist had put up posters stating that Gaddafi wanted to “destroy Switzerland”, which in turn was a response to a motion Gaddafi filed at the UN that indeed proposed the “abolition” of Switzerland. Further back, in 1977, the publisher of a Swiss satirical magazine was convicted of insulting the Shah of Iran and sentenced to pay a fine.

In Germany, a man was convicted of insulting Swiss President Micheline Calmy-Rey in 2007 and ordered to pay a fine. In 1977, a court in North Rhine-Westphalia handed down a conviction over posters that referred to the Pinochet government as a “gang of murderers”, although in that case it was reportedly the Chilean ambassador who felt offended.

Most states that provide special protection for foreign heads of state also extend this protection to other foreign officials, such as ambassadors. There are a few exceptions. Belgium repealed a law criminalising insult to foreign heads of state in 2005. A separate provision criminalising insult against accredited foreign diplomats remains in effect, however.

Similarly, in the wake of the *Colombani* decision reference above, France repealed Art. 36 of its press law, which penalised insult against foreign heads of state. Art. 37, which penalises insult against ambassadors or other official representatives of foreign countries in France, remains in effect.

6. Criminal defamation of foreign states and symbols

This study also examined the existence of criminal insult laws that protect foreign states and their symbols, which are frequently analogous provisions to laws protecting national symbols.

Seven OSCE participating States prohibit insult to foreign states: Croatia, Denmark, Iceland, Montenegro, Serbia, Slovenia and the former Yugoslav Republic of Macedonia. Imprisonment is a possible sanction in all cases except Montenegro and the former Yugoslav Republic of Macedonia.

An additional state, Switzerland, provides the offence of “publicly insulting a foreign state in the person of its head of state [...]” (Criminal Code Art. 296) and could potentially also be included in this list.

Twenty-two participating States maintain criminal laws protecting the symbols of foreign states. Imprisonment is a possible sanction in the vast majority of these cases. As in the case of laws related to national symbols, these provisions exist on a continuum ranging from physical desecration only to verbal and written insult, potentially including media content.

Examples:

State	Offence	Sanction
Austria	Insulting, disparaging or otherwise denigrating the flag or symbol or a foreign state or of an intergovernmental body (Criminal Code Art. 317)	Up to six months in prison or fine
Iceland	Publicly insulting a foreign nation or foreign state ... its flag or other recognised national symbol, or the flag of the United Nations or the flag of the European Union (Criminal Code Art. 95)	Up to two years in prison; up to six years in prison for serious offences
Montenegro	Publicly exposing to mockery a foreign state or its flag, coat of arms or national anthem. [Also applies to] the United Nations, the International Red Cross or any other organisation of which Montenegro is a member (Criminal Code Art. 200)	Fine
Portugal	Insulting the flag or official symbol of a foreign state or international organisation of which Portugal is a member (Criminal Code Art. 323)	Up to one year in prison or fine

As these examples indicate, numerous states also include protection for the symbols of international organisations such as the United Nations and the European Union.

Anecdotal evidence for the use of these provisions is rare. Available statistics suggest their application is uncommon.

7. Criminal defamation of the deceased

This study examined special criminal laws shielding deceased persons from defamation and insult, whereby emphasis was placed on separate provisions in law establishing sanctions specifically for this offence, rather than (merely) procedural provisions that establish whether or not family members of a deceased person may bring charges for general defamation on the latter's behalf.

Examples of provisions identified include:

State	Offence	Sanction
Denmark	Defamation against deceased persons (Criminal Code Art. 274)	Up to four years in prison; limitations period is 20 years, unless malice is present
Germany	Disparaging the memory of a deceased person (Criminal Code Art. 189)	Up to two years in prison or fine
Greece	Insulting the memory of the dead with cruel or malicious defamation or libel (Criminal Code Art. 365)	Up to six months in prison
Lithuania	Making false statements about the deceased that could arouse contempt for or undermine respect to the memory of the deceased (Criminal Code Art. 313)	Community service, fine, restriction of liberty, arrest
Portugal	Seriously offending the dead (Criminal Code Art. 185)	Up to six months in prison or fine; limitations period is 50 years

As these examples indicate, many of the provisions in this category are framed as intending to protect the “memory of the dead”. They typically do not contain a requirement in statute that the reputation of a living person be harmed. Problematic are also generous timelines for bringing charges, which raises obvious potential for abuse.

Relatively few clear statements on this issue have been made by international human rights bodies. The ECtHR has stated that it “can accept ... that the reputation of a deceased member of a person's family may, in certain circumstances, affect that person's private life and identity, and thus come within the scope of Article”. But, as commentators have noted³⁷, the Court has “suggested that a defamation suit on behalf of a deceased person would only succeed if the living claimant had been directly affected by the impugned publication”.

The Parliamentary Assembly of the Council of Europe has resolved³⁸ that the “reputation of a nation, the military, *historic figures* or a religion cannot and must not be protected by defamation or insult laws” [emphasis added].

³⁷ Freedom of Expression, Media Law and Defamation, IPI and MLDI, 2015.

³⁸ Resolution 1577 (2007).

The document *Defining Defamation*, published by Article 19³⁹ in coordination with international experts, has taken argued⁴⁰: “Harm to reputation is direct and personal. Unlike property, it cannot be inherited; any interest surviving relatives may have in the reputation of a deceased person is fundamentally different from that of a living person in their own reputation.”

8. Criminal blasphemy and religious insult laws

Blasphemy and religious insult laws aim to protect particular belief systems and their practices, dogma, deities, objects of worship, as well as feelings of their followers. These are separate from laws that ban the incitement of discrimination or hatred on the basis of religion, although this distinction is not always clearly established in national legislation.

Blasphemy laws raise a host of problems, not least the fact that there is generally no adequate basis for determining what belief systems merit protection from insult. Moreover, as religion continues to exert a strong influence on contemporary societies and political structures, critical expression and media coverage regarding a religion’s practice are in the public interest. Generally speaking, no belief system, however strongly held, should be accorded protection from criticism, and no one has a right not to be ‘offended’.

Defamation laws that extend special protection to religious leaders are also problematic, as these persons may be considered public figures due to the moral, political and economic power they may wield.

The OSCE RFoM, together with similar figures in the UN, Inter-American and African human rights systems, has stated⁴¹:

“The concept of ‘defamation of religions’ does not accord with international standards regarding defamation, which refer to the protection of reputation of individuals, while religions, like all beliefs, cannot be said to have a reputation of their own. Restrictions on freedom of expression should be limited in scope to the protection of overriding individual rights and social interests, and should never be used to protect particular institutions, or abstract notions, concepts or beliefs, including religious ones.” (2008).

In 2010, the same group expressed particular concern over the “protection of beliefs, schools of thought, ideologies, religions, religious symbols or ideas”⁴².

For its part, the UN Human Rights Committee has established⁴³:

“Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant. Such prohibitions must also comply with the strict requirements of article 19, paragraph 3, as well as such articles as 2, 5, 17, 18 and 26. Thus, for instance, it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers. Nor would it be permissible for such prohibitions to

³⁹ <https://www.article19.org/pages/en/who-we-are.html>

⁴⁰ “Defining Defamation: Principles on Freedom of Expression and the Protection of Reputation”, ARTICLE 19, available at <http://www.article19.org/data/files/pdfs/standards/definingdefamation.pdf>.

⁴¹ [Joint Declaration on Defamation of Religions, and Anti-Terrorism and Anti-Extremism Legislation](#), December 2008.

⁴² Tenth Anniversary Joint Declaration: Ten Key Challenges to Freedom Of Expression in the Next Decade (2010), <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=784&IID=1>.

⁴³ General Comment 34, para 48.

be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.”

It is also worth noting the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, which consists of a series of expert recommendations developed under the auspices of the U.N. Office of the High Commissioner on Human Rights in 2012. The Plan of Action concludes⁴⁴:

“At the national level, blasphemy laws are counter-productive, since they may result in the de facto censure of all inter-religious/belief and intra-religious/belief dialogue, debate, and also criticism, most of which could be constructive, healthy and needed. In addition, many of these blasphemy laws afford different levels of protection to different religions and have often proved to be applied in a discriminatory manner. There are numerous examples of persecution of religious minorities or dissenters, but also of atheists and non-theists, as a result of legislation on religious offences or overzealous application of various laws that use a neutral language. Moreover, the right to freedom of religion or belief, as enshrined in relevant international legal standards, does not include the right to have a religion or a belief that is free from criticism or ridicule.”

Despite these admonitions, this study concludes that approximately 20 OSCE participating States can be considered to have criminal blasphemy laws or religious insult laws on the statute books. Those states are Andorra, Austria, Canada, Cyprus, Denmark, Finland, Germany, Greece, Ireland, Italy, Kazakhstan, Liechtenstein, Poland, Portugal, the Russian Federation, San Marino, Spain, Switzerland, Turkey, the United Kingdom (N. Ireland and Scotland only) and Vatican City (Holy See). In the vast majority of cases, imprisonment is a possible sanction.

Certain narrower provisions could also arguably be included in the above list. Belgium and Luxembourg, for instance, prohibit insult of the objects of a religion in places of worship or public ceremonies.

While many of the laws in question are ‘classic’ blasphemy provisions about which there can be little disagreement, in a few cases there is bound to be debate as to whether the law in question fits the category of blasphemy or religious insult or not. In practice, the classification of blasphemy laws can be difficult, as terminology varies from state to state and the lines among blasphemy, religious insult, group defamation and incitement to hatred or discrimination are often blurred.

Examples include:

State	Offence	Sanction
Austria	Ridiculing or denigrating a religious doctrine, a religious custom, or a person or object that constitutes an object of worship by a nationally recognised church or religious community if the act may cause justified indignation (Criminal Code Art. 188)	Up to six months in prison or fine
Finland	Publicly blaspheming against God or, for the purpose of offending, publicly defaming or desecrating what is held to be sacred by a	Up to six months in prison or fine

⁴⁴ See http://www.un.org/en/preventgenocide/adviser/pdf/Rabat_draft_outcome.pdf.

	church or religious community (Criminal Code Art. 17.10(1))	
Ireland	Blasphemy, defined as matter that is grossly abusive or insulting in relation to matters held sacred by any religion, thereby causing outrage among a substantial number of the adherents of that religion (Def Act 2009 Art. 36)	Fine not exceeding €25,000
Spain	Offending the feelings of members of religious groups or publicly disparaging their dogmas, beliefs, rites or ceremonies (Criminal Code Art. 525)	Fine
Switzerland	Publicly and maliciously insulting or mocking the religious convictions of others, especially the belief in God; dishonouring objects of religious veneration [...] (Criminal Code Art. 261)	Fine
Turkey	Inter alia, (a) insulting a person on account of religious, political, social or philosophical beliefs, thoughts or convictions ... or insult regarding subject matter deemed sacred to a person's religion (Criminal Code Art. 125(3)); (b) publicly degrading the religious values of a section of the public (Criminal Code Art. 216(3))	General penalty for insult increased; six months to one year in prison

The situation in Central Asia appears to be fairly complicated. Kazakhstan provides criminal liability for inciting religious hatred, which in practice is interpreted broadly and has reportedly been used to punish criticism of religion broadly defined.⁴⁵ Tajikistan and Uzbekistan have similar provisions that may likewise be subject to overly broad interpretations.

9. Recent legal changes

The overall picture with respect to the recent development of criminal defamation and insult laws in the OSCE region is mixed.

On the one hand, in recent years a number of states have progressively repealed provisions that do not meet international standards. Examples include:

- **Repeal of all general criminal defamation and insult laws** in, among others, Republic of Ireland (2009), England, Wales and Northern Ireland (2009), Moldova (2009), Armenia (2010), Montenegro (2011), Kyrgyzstan (2011/2015), Tajikistan (2012), the former Yugoslav Republic of Macedonia (2012), Romania (2014) and Norway (in effect 2015).
- **Partial repeal** in Serbia (defamation, 2013), Lithuania (insult and insult of a civil servant, 2015), and Italy (insult, 2016).

⁴⁵ For instance, Art. 174 of the Kazakh Criminal Code, which purports to sanction hate speech, has been increasingly widely used against critical activists, including atheist writers.

- **Repeal of criminal blasphemy laws** in the Netherlands (2014), Iceland (2015), Malta (2016), and France (Alsace-Moselle, 2017).
- **Abolition of imprisonment as a sanction for defamation** in France (2000), Croatia (2006), and Finland (2014, except in cases of aggravated defamation).
- Repeal of **lèse-majesté** (Norway, in effect 2015) and insult laws protecting **foreign heads of state** (France, 2004; Belgium, 2005)

At the time of this writing, several states are considering additional repeal proposals. In February 2017, the government of Malta announced a planned overhaul to defamation law that would include the repeal of criminal defamation. In Germany, the government has said it intends to repeal Art. 103 (insult to foreign officials) in 2018. The Mongolian Parliament repealed general criminal defamation provisions in 2015 as part of a new Criminal Code that has not yet come into effect.

On the other hand, legislators in a number of states have strengthened criminal defamation laws. Examples include:

- Reintroduction of the criminal offence of slander in the Russian Federation (2012)
- Introduction of new criminal offence on public insult or slander of the head of state of Tajikistan (2016)
- Expansion of general provisions on defamation and insult to include liability for online content in Azerbaijan (2013); analogous amendment to defamation of the president (2016)
- Introduction of the criminal offence of ‘shaming’ in Croatia (2013), later modified to exclude liability for journalist work (2015)
- Introduction of the offence of making fake video or sound recordings with the purpose of harming another’s reputation in Hungary (2013)

Several states have recently considered proposals to strengthen criminal defamation laws:

- Proposal in Italy, approved by the Senate (2016) but later withdrawn, to elevate maximum possible prison term for defamation by up to one-half when the alleged victim is a public, administrative or judicial official.
- Proposal in the Czech Republic to make defamation of the president a criminal offence (2016)
- Draft proposal in Denmark (2015) to triple criminal penalties for violations of the right to private life and defamatory/false stories in the media
- Proposal to reintroduce criminal defamation in Albania (2015)
- Proposals in a number of states, including Austria, Italy and Sweden, that contemplate strengthening of elements of defamation laws in an effort to combat online ‘hate speech’, cyberbullying and related phenomena

In several cases, international pressure was key to preventing these proposals from becoming law, underscoring the importance of continued scrutiny of criminal defamation and insult laws in the OSCE region.

Court decisions in recent years have also contributed to uneven progress in the repeal of criminal defamation laws. Notable decisions include:

- Decision of the Polish Constitutional Court: Criminal defamation does not violate the Polish Constitution (2006)
- Decision of the French Constitutional Council: Exceptions to the proof of truth in defamation cases unconstitutional (2011/2013)
- Decision of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic: Criminal insult violates the Kyrgyz Constitution (2013)
- Decision of the Polish Constitutional Court: Challenge to sanction of imprisonment for criminal defamation dismissed (2013)
- Decision of the Turkish Constitutional Court: Art. 299 on insulting the president of Turkey compatible with the Turkish Constitution (2016)

Likewise, ECtHR decisions have had a mixed effect on the repeal of national-level laws on criminal defamation. The Court's decisions, for example, in *Colombani and others* and *Eon* led to the repeal of criminal insult of foreign heads of state and the president, respectively, in France. ECtHR rulings were instrumental in the repeal of criminal defamation in, among other states, Moldova. Elsewhere, however, national legislators have not heeded the Court's implicit recommendations. For instance, the ruling in *Mika v. Greece* (2013) that a suspended prison sentence for defamation violated the right to freedom of expression has had no effect on Greek legislation; indeed, Greek courts continue to hand down such sentences, including against journalists. Similarly, consistent decisions from Strasbourg have not prompted the Portuguese government to repeal criminal defamation laws.

10. Overview of selected provisions in criminal law by OSCE participating state

State	1	2	3	4	5	6	7	8	9
Albania									
Andorra	•	•		•			•		•
Armenia			•						
Austria	•				•	•			•
Azerbaijan	•			•					
Belarus	•		•	•	•				
Belgium	•		•	•	•	•			•
Bosnia and Herzegovina									
Bulgaria									
Canada	•			•					•
Croatia					•			•	
Cyprus						•	•		•
Czech Rep.	•								
Denmark	•		•	•			•	•	•
Estonia			•				•		
Finland	•								•
France									
Georgia									•
Germany	•	•		•	•	•	•		•
Greece	•			•		•	•		•
Hungary	•								
Iceland	•			•			•	•	
Ireland									
Italy	•	•		•					
Kazakhstan	•		•	•					•
Kyrgyzstan									
Latvia	•								
Liechtenstein	•					•			•
Lithuania	•								
Luxembourg	•		•			•			•
Malta	•		•	•					
Moldova									
Monaco	•	•	•	•	•	•			•
Mongolia									
Montenegro					•				•
Netherlands	•	•		•		•	•		
Norway							•		
Poland	•		•	•	•	•	•		•
Portugal	•	•		•	•	•	•		•
Romania									
Russia			•						•
San Marino	•		•	•	•		•		•
Serbia					•			•	
Slovakia	•								
Slovenia	•			•	•		•	•	
Spain	•			•					
Sweden	•			•			•		

Switzerland	•						•	•	•
Tajikistan			•	•					•
TFYROM ⁴⁶									
Turkey	•	•		•	•	•	•		•
Turkmenistan	•		•	•					•
UK									
Ukraine									
United States									
Uzbekistan	•			•					•
Vatican City	•		•	•		•	•		•

Key:

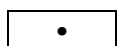
1. Criminal defamation and insult
2. Increased protection for public officials under general defamation and insult law⁴⁷
3. Other special law on insult to public officials⁴⁸
4. Criminal defamation of the head of state
5. Criminal defamation of the state (excluding laws on state symbols)
6. Criminal defamation of state bodies/state institutions
7. Criminal defamation of foreign heads of state (excluding laws on state symbols)
8. Criminal defamation of foreign states
9. Criminal blasphemy/religious insult



Law on the statute books



Similar law on the statute books /unclear extent or application



Custodial sentence (arrest, imprisonment, etc.) as possible sanction

11. Acknowledgements

This study incorporates previous research conducted by the International Press Institute (IPI) that covered criminal defamation law and practice in the 28 EU countries plus Serbia, Montenegro, the former Yugoslav Republic of Macedonia, Turkey, and Iceland. That research, released in January 2015 as the report “Out of Balance” and published on IPI’s legal database website, was funded by the European Commission and by a grant from the Foundation Open Society Institute in cooperation with the Program on Independent Journalism of the Open Society foundation. The Out of Balance report included data collected by the Center for Media, Data and Society at Central European University in Budapest and by the SHARE Foundation in Belgrade. The Out of Balance report acknowledges the contribution of a number of legal experts to the report’s findings.

⁴⁶ TFYROM stands for the former Yugoslav Republic of Macedonia.

⁴⁷ Excluding provisions on contempt of court.

⁴⁸ Excluding provisions on contempt of court.

Data for the 33 countries included in the Out of Balance report have been updated as part of this present OSCE study.

The following legal experts extensively contributed to the findings of this present OSCE study:

Nadejda Alisheva (Media Policy Institute, Kyrgyzstan), Andrey Aranbaev (independent expert, Turkmenistan), Vusal Behbudov (independent expert, Azerbaijan), Bojan Perkov (Policy Researcher, SHARE Foundation), Gulmira Birzhanova (Media lawyer, “Legal media-center”, Kazakhstan), Angelo Coccia (attorney qualified with the Roman Rota), Munkhburen Dash (defence lawyer and law programme coordinator, Globe International Center, Mongolia), Farrukhsho Dzhunaydov (independent expert, Tajikistan), Movses Hakobyan (director, Grandlex Law Firm, Armenia), Gulnora Ishankhanova (independent expert, Uzbekistan), Nevena Krivokapic (Online Media and Freedom of Expression Coordinator, SHARE Foundation), Giorgi Meladze (associate professor, Ilia State University, Georgia), Tumas Misakyan (criminal law expert, Mass Media Defence Centre; Russian Federation), Tatiana Puiu (media lawyer and Freedom House representative, Moldova), Volha Siakhovich (expert for the law center of the Belarusian Association of Journalists, Belarus), Begaim Usenova (Media Policy Institute, Kyrgyzstan).

Part II: Detailed Information by Country

1. Research template

I. Law

1. Criminal defamation and insult laws

General criminal defamation and insult laws.

2. Criminal defamation of public officials

Special criminal laws covering defamation or insult to public officials, including provisions that modify penalties for general defamation and insult when the victim is a public official.

This category also includes provisions grouped separately in national legislation but that nevertheless relate to shielding public officials from insulting, abusive or defamatory conduct. Typically, such laws sanction insult of public officials in the course of official duty.

Additionally, criminal insult laws protecting judges and other court officials (sometimes rendered as ‘contempt of court’ laws) are included here, to the extent that they are provided for in a state’s criminal code.

Finally, information on criminal procedure may be included here when relevant, e.g., when criminal defamation cases involving public officials are prosecuted differently than cases involving private citizens.

3. Criminal defamation of the head of state

Criminal laws on defamation and/or insult of the head of state.

4. Criminal defamation of the state, state symbols and state institutions

Criminal laws on defamation and/or insult of the state, state symbols (flags, anthems, coats of arms, etc.) and state institutions (such as parliaments, courts and public authorities).

5. Criminal defamation of foreign heads of state

Criminal laws on defamation and/or insult of foreign heads of state and other foreign officials.

6. Criminal defamation of foreign states and symbols and international organisations and their symbols

Criminal laws on defamation and/or insult of a foreign state, the symbols (flags, anthems, coats of arms, etc.) of those states and of international organisations (UN, EU, etc.) and their symbols.

7. Criminal defamation of the deceased

Criminal laws on defamation and/or insult of the deceased and laws prohibiting offence to the memory of the dead. Merely procedural provisions may be included additionally.

8. Criminal blasphemy

Blasphemy and religious insult laws, i.e., laws that criminalise offence to particular belief systems and their practices, dogma, deities, objects of worship, as well as to feelings of their followers.

9. Recent legal changes

Recent legal changes related to criminal defamation and insult law, generally within the last 10 years.

II. Practice

1. General notes

General notes and principles on the application of criminal defamation and insult laws in the respective country.

2. Statistics

Where possible, this study includes official criminal justice statistics on convictions for selected articles. Generally, these statistics present a snapshot of a single year. However, comparative results for previous years are available on the legal database website of the International Press Institute, <http://legaldb.freemedia.at/>.

In most cases, statistics reflect convictions for all types of defendants and there cannot be used to determine the number of convictions against media organisations or journalists. As different statistics agencies may use different methodologies, these figures should be taken as guidance only

3. Selected cases

This section highlights prominent cases of the use of criminal defamation laws, generally within the last 10 years. While cases involving journalists or the media have been prioritised, cases involving other types of defendants are included here to indicate the scope of the impact on freedom of expression.

ALBANIA

I. Law

1. Criminal defamation and insult laws

The Albanian Criminal Code⁴⁹ foresees the following offences:

Insult (Art. 119): Intentional insult is punishable by a fine of 50,000 to one million lek⁵⁰. When committed in public, insult is punishable by a fine of 50,000 to three million lek.

Libel (Art. 120): Intentionally disseminating statements affecting a person's honour or dignity with the knowledge that the statements are false. Libel is punishable by a fine of 50,000 to 1,500,000 lek. When committed in the public, the act is punishable by a fine of 50,000 to three million lek.

2. Criminal defamation of public officials

Insult of judges (Art. 318): Insulting a judge or members of a judicial panel, prosecutor, defence lawyer or member of the arbitration, because of their activity in a case is punishable by a fine or imprisonment of up to three months.

Additional provisions repealed in 2012.

3. Criminal defamation of the head of state

No provisions.

4. Criminal defamation of the state and its symbols

Humiliation of the Republic and its symbols (Art. 268): Intentional damage to the flag or emblem of the Republic, exhibited in public institutions, shall constitute a criminal offence and is punishable by a fine or imprisonment of up to three months. Public humiliation of the flag or national anthem, during an activity organised by state authorities, shall constitute a criminal offence and is punishable by a fine or imprisonment of up to three months.

5. Criminal defamation of foreign heads of state

No provisions.

6. Criminal defamation of foreign states and symbols

No provisions.

⁴⁹ Criminal Code of the Republic of Albania (Law 7895, dated 27/01/1995), English translation available at: https://www.ecoi.net/file_upload/1226_1478856256_albania-cc-1995-am2015-en.pdf.

⁵⁰ 1 lek = approx. € .0074 (March 2017).

7. Criminal defamation of the deceased

No provisions.

8. Criminal blasphemy

No provisions.

9. Recent legal changes

Law No.23/2012, dated 01 March 2012, Art. 57 brought wide-ranging changes to Albanian defamation law, including the repeal of the following articles:

Art. 229 Insulting acts against the anthem and flag

Art. 227 Insulting representatives of foreign countries

Art. 241 Defamation towards the President of the Republic

Art. 240 Defamation because of duty

Art. 239 Insulting because of duty

In November 2015, following domestic and international criticism, the Albanian government withdrew a draft bill that would have established a criminal provision on “libel against a high state official or elected person”. The penalty had included imprisonment for up to three years.⁵¹

II. Practice

1. General notes

n/a

2. Statistics

n/a

3. Selected cases

In February 2012, shortly before amendments on criminal defamation took effect, Gjovalin Prenga, the head of the department of communication in the office of the prime minister, filed criminal libel charges against journalist Lindita Cela of the newspaper Shekuli. The charges were in relation to Cela’s coverage of a list distributed to media containing the names of persons who allegedly collaborated with the Communist-era secret services. Prenga’s name appeared on that list. The charges were dropped in April 2012⁵².

⁵¹ Fatjona Mejdini, “Albania Backs off From Restoring Defamation Crime”, Balkan Insight, 12 November 2015, <http://www.balkaninsight.com/en/Article/albania-steps-back-on-defamation-criminalization-11-12-2015>.

“Albania should reject bill introducing imprisonment for libel of public officials, says OSCE Representative and calls for full decriminalization”, OSCE, 12 November 2015, <http://www.osce.org/fom/199446>.

⁵² Besar Likmeta , “Charges Dropped Against Albanian Reporter”, Balkan Insight, 5 April 2012, <http://www.balkaninsight.com/en/Article/albania-official-withdraws-charges-against-reporter>. “Journalist charged with slander despite defamation reforms”, IPI, 2 April 2012, https://www.ifex.org/albania/2012/04/02/cela_criminal_defamation_charges/.

ANDORRA

I. Law

1. Criminal defamation and insult laws

The Andorran Criminal Code⁵³ foresees the following offences:

Slander (Art. 172): Accusing another person of a crime while knowing that the accusation is false or acting with reckless disregard for the truth.

Slander is punished with arrest. If committed publicly, the act is punishable with between three months and three years in prison. The act is exempt from criminal liability if the accusation is proven true (some exceptions apply).

Defamation (Art. 173): Alleging a fact that seriously harms another person's reputation or self-esteem while knowing the fact to be false or acting with reckless disregard for the truth.

Defamation is punished with arrest or up to one year in prison. If directed against authorities or civil servants in relation to the exercise of official duties, the act is punished with up to two years in prison or with arrest in less serious cases. Defamation is exempt from criminal liability if the allegation is proven true.

Insult (Art. 174): Gravely insulting another person, or slightly or gravely insulting an authority or civil servant in relation to the exercise of official duties. The act is punishable with arrest.

2. Criminal defamation of public officials

The Andorran Criminal Code provides for special dispensation in the form of a higher punishment for defamation (Art. 173) and a more expansive objective scope of insult (Art. 174) committed against public officials in relation to the exercise of official duties.

In addition, regarding procedure, Criminal Code Art. 179 provides that the offended party must file charges before a court, but if the offence is directed against authorities or civil servants regarding facts related to the exercise of their office, a complaint made to the police is sufficient for prosecution.

3. Criminal defamation of the head of state/head of government

Slander, defamation or insult against the co-princes (Art. 320): Offending a co-prince through acts or expressions constituting defamation or insult is punishable with three months to three years in prison. Slander under the same circumstances is punishable with up to four years in prison.

4. Criminal defamation of the state and its symbols

⁵³ Criminal Code of Andorra (Llei 9/2005, del 21 de febrer, qualificada del Codi penal), last amended 29 April 2015. Official version (Catalan) available at <https://goo.gl/PKqo1t>.

Offences against the prestige of state institutions (Art. 325): Making public allegations that may damage the prestige of the General Council, the government, the Superior Court of Justice, judicial bodies, the public prosecutor's office or regional administrative bodies, while knowing these allegations to be false or acting with reckless disregard for the truth.

The act is punishable with a fine of 30,000 euros and a ban on holding public office for up to four years, without prejudice to any punishments that may apply for damaging the honour of individuals.

5. Criminal defamation of foreign heads of state

Slander, defamation and insult against foreign heads of state (Art. 452). Offending a foreign head of state through acts or expressions constituting defamation or insult is punishable with three months to three years in prison. Slander under the same circumstances is punishable with up to four years in prison.

6. Criminal defamation of foreign states and symbols

No provisions.

7. Criminal defamation of the deceased

No provisions.

8. Criminal blasphemy

Art. 339⁵⁴ of the Criminal Code punishes acts or expressions, committed publicly and with intent to insult, that are gravely offensive toward members of, i.a., a religious group.

9. Recent legal changes

II. Practice

1. General notes

According to answers provided by Andorra to the “Draft list of questions for CDMSI members on the implementation of Council of Europe standards related to safety of journalists” of the Council of Europe⁵⁵:

“The Andorran Criminal Code has provisions against defamation/libel although no case has been submitted before the Andorran Tribunals against journalists or other media actors in the history of Andorra.”

2. Statistics

⁵⁴ Delicte d’ofensa a un grup El qui, amb ànim injuriós i amb publicitat, realitzi actes o profereixi expressions greument ofensives per als membres d’un grup religiós, nacional, ètnic, sindical, polític, o de persones que professin una determinada creença o ideologia, ha de ser castigat amb pena d’arrest.

⁵⁵ “Draft list of questions for CDMSI members on the implementation of COE standards related to safety of journalists”, 13 March 2015, rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168063e873.

n/a

3. Selected cases

n/a

ARMENIA⁵⁶

I. Law

1. Criminal defamation and insult laws

No provisions.

General criminal provisions on defamation were repealed by the National Assembly of Armenia on 18 May 2010 (Art. 135 – Libel, Law Amendment ՀՕ-98-Ն, Art. 136 – Insult, Law Amendment ՀՕ-98-Ն). Matters related to libel and insult were moved to civil law jurisdiction.

2. Criminal defamation of public officials

The legal norm criminalising the insult of representative of the state authority envisaged by Art. 318 of the Criminal Code⁵⁷ was abolished on 19 May 2008 by Law Amendment No ՀՕ-67-Ն.

However, there are provisions (Arts. 332², 344) in the Criminal Code protecting the honour and reputation of the Human Rights Defender and representatives of the judiciary, such as judges, prosecutors, investigators, interrogators, and judicial bailiffs.

Threat or contempt toward the Human Rights Defender (Art. 332): “Threatening or insulting or demonstrating overt contempt against the Human Rights Defender in the course of performance of his/her duties is punishable by fine in the amount of 200 to 500 minimal salaries or arrest for the term of two to three months.”

Slandering judges, prosecutors, investigators, interrogators or judicial bailiffs (Art. 344):

“1. Slandering the prosecutor, the investigator or the person in charge of inquiry, judicial bailiff, in relation to the preliminary investigation, execution of the court sentence, the verdict or another court act, is punished with a fine in the amount of 100 to 300 minimal salaries or with arrest for the term of one to three months, or imprisonment for up to two years.

2. The same action committed in relation to a judge concerning the trial of the case or its materials in court, is punished with a fine in the amount of 300 to 500 minimal salaries or with arrest for the term of one to three months, or with imprisonment for the term of up to three years.

3. The actions envisaged in parts 1 or 2 of this article, which were accompanied with accusing a person of a grave or particularly grave crime, is punished with imprisonment for the term of up to four years.”

3. Criminal defamation of the head of state

No provisions.

⁵⁶ Information on Armenia is provided with the expert assistance of Movses Hakobyan, Director, Grandlex Law Firm, Yerevan.

⁵⁷ Criminal Code of Armenia, version in effect as of 1 January 2017. Available online (in Armenian) at: <http://www.arlis.am/DocumentView.aspx?DocID=109643>.

The legal norm criminalising the insult of representative of the state authority (including the head of state) was envisaged by Art. 318 of the Criminal Code and abolished on 19 May 2008 by the Law Amendment No ՀՕ-67-Ն.

4. Criminal defamation of the state and its symbols

Contempt of state symbols (Criminal Code Art. 331): Contempt of the coat of arms of the Republic of Armenia, the national flag of the Republic of Armenia, the national anthem of the Republic of Armenia. The penalty is a fine of 100 to 250 minimal salaries (equivalent of approx. €200 to 500), arrest (temporary detention) for one to three months, or imprisonment for up to one year. This provision also applies to the state symbols of other states.

5. Criminal defamation of foreign heads of state

No provisions.

6. Criminal defamation of foreign states and symbols

Contempt of state symbols (Criminal Code Art. 331): Contempt of the coat of arms of the Republic of Armenia, the national flag of the Republic of Armenia, the national anthem of the Republic of Armenia. The penalty is a fine of 100 to 250 minimal salaries (equivalent of approx. €200 to 500), arrest (temporary detention) for one to three months, or imprisonment for up to one year. *This provision also applies to the state symbols of other states.*

7. Criminal defamation of the deceased

No provisions.

Note that Art. 19(2) of the Armenian Civil Code⁵⁸ states that protection of the honour and dignity of a citizen may, upon the request of interested parties, be permitted also following his/her death.

8. Criminal blasphemy

No provisions.

9. Recent legal changes

The Criminal Code as relates to libel and insult has not been amended or otherwise changed since criminal libel and insult were repealed on 18 May 2010. The provisions of the Civil Code concerning defamation (Art. 19 Protection of honour, dignity and business reputation and Art. 1087.1 on Order and Conditions of Compensation of Damage to the Honour, Dignity or Business Reputation.) have not been changed or amended since the adoption of relevant amendment on 18 May 2010.

⁵⁸ Civil Code of Armenia, in effect as of 1 January 2017. Available online (in Armenian) at: <http://www.arlis.am/DocumentView.aspx?DocID=109845>.

It is, however, worth noting that the offence (formerly Criminal Code Art. 151 of disseminating libellous information about a candidate, political party (association of parties) during elections was also repealed by Law Amendment 20-57-ᠤ on 25 May 2016.

II. Practice

1. General notes

n/a

2. Statistics

n/a

3. Notable cases

n/a

AUSTRIA⁵⁹

I. Law

1. Criminal defamation and insult laws

The Austrian Criminal Code (*Strafgesetzbuch*)⁶⁰ foresees the following offences:

Defamation (üble Nachrede, Art. 111): Accusing someone of a disreputable characteristic or disposition, dishonourable behaviour or of a behaviour offensive to good morals that may denigrate that person or bring him/her into disrepute in the eyes of the public. The penalty is six months in prison or a fine⁶¹ of 360 times the daily rate. For defamation committed through print, broadcasting “or by any other means by which the defamatory content is made accessible to a wider public”, the possible penalty is up to one year in prison and a fine of up to 760 times the daily rate.

Insult (Beleidigung, Art. 115): Insulting, ridiculing, physically mistreating, or threatening a person with physical mistreatment before at least three other individuals. The penalty is up to three months in prison or a fine of up to 180 times the daily rate.

Slander (Verleumdung, Art. 297): Falsely and knowingly accusing another person of a criminal offence of the failure to fulfil an official duty in such a way that puts the person in danger of criminal prosecution. The penalty is up to one year in prison or a fine of up to 720 times the daily rate. However, if the accusation relates to a criminal act that is punishable by over a year in prison, the penalty is imprisonment from six months to five years.

2. Criminal defamation of public officials

No provisions.

Note, however, that certain public officials have a procedural advantage in criminal defamation cases. Art. 117 of the Austrian Criminal Code states that defamation or insult committed against civil servants, the Austrian President, and ministers of nationally recognised churches or religious communities is to be prosecuted *ex officio*. The same rule applies to insult committed against individuals on account of their “religion or worldview” as well as on account of characteristics such as race and ethnic origin.

3. Criminal defamation of the head of state

No provisions.

⁵⁹ Information on Austria originally published as part of the International Press Institute’s Media Law Database and has been revised/updated for this present study.

⁶⁰ Criminal Code of Austria (Bundesgesetz vom 23. Jänner 1974 über die mit gerichtlicher Strafe bedrohten Handlungen (Strafgesetzbuch - StGB) StF: BGBl. Nr. 60/1974), last amended by Law Nr. 154/2015. Available online at the Office of the Federal Chancellor: <https://goo.gl/BiyLCs> (last accessed 5 January 2017).

⁶¹ Section 19, par. 2 of the Criminal Code explains that the daily rate (*Tagessatz*) is a variable rate conditional on a number of factors including the financial situation of the offender. However, the minimum and maximum rates are set at €4 and €5,000, respectively.

However, the Austrian President has a procedural advantage in criminal defamation cases. See above under "Criminal defamation of public officials".

4. Criminal defamation of the state and its symbols

Publicly and in a hateful manner insulting or disparaging the Republic of Austria or one of its federal states is a criminal offence under Art. 248(1) of the Austrian Criminal Code. The penalty is up to one year in prison or a fine of up to 720 times the daily rate.

Insulting or disparaging the Austrian federal flag or an Austrian state flag as displayed at an official or public event, or a national emblem or the national or state anthems is an offence under Art. 248(2). The penalty is up to six months in prison or a fine of up to 360 times the daily rate.

Additionally, Art. 116 of the Criminal Code provides that criminal provisions on defamation and insult also apply to *expressions directed at the national or state parliaments, the armed forces or a government office*.

5. Criminal defamation of foreign heads of state

No provisions.

6. Criminal defamation of foreign states and symbols

Insulting, disparaging or otherwise denigrating the flag or symbol of a foreign state or of an intergovernmental body is an offence under Criminal Code Art. 317. The penalty is up to six months in prison or a fine of up to 360 times the daily rate.

7. Criminal defamation of the deceased

No provisions.

8. Criminal blasphemy

Ridiculing or denigrating a religious doctrine, a religious custom or a person or object that constitutes an object of worship by a nationally recognised church or religious community is an offence under Art. 188 if the act may cause "justified indignation". The penalty is imprisonment for up to six months or a fine of up to 360 times the daily rate.

9. Recent legal changes

The Criminal Code Amendment Act of 2015⁶² brought minor changes to provisions on defamation and insult:

- The maximum fine for defamation (Art. 111) was increased from 360 to 720 times the daily rate.
- The possibility of a fine (max. 720 times the daily rate) was introduced as a punishment for insulting the state; previously, the only penalty foreseen was imprisonment for up to six months.

⁶² Criminal Code Amendment Act 2015, <https://goo.gl/0SzKrR>.

- The possibility of a fine (max. 720 times the daily rate) was introduced as a penalty for some forms of slander (Art. 297).

II. Practice

1. General notes

n/a

2. Statistics

The following are official data on criminal convictions for the year **2013** from the Austrian Statistics Agency (Statistik Austria).

- For **Art. 111** (defamation), there were 23 convictions, resulting in six prison sentences and 18 fines.
- For **Art. 115** (insult), there were 35 convictions, resulting in 17 prison sentences and 25 fines.
- For **Art. 297** (slander), there were 320 convictions, resulting in 220 prison sentences and 64 fines.
- For **Art. 248** (denigration of the state and its symbols), there were 0 convictions.
- For **Art. 317** (denigration of a foreign state and its symbols), there were 0 convictions.
- For **Art. 188** (blasphemy), there were 0 convictions.

The most recent year for which statistics are publicly available is **2015**. However, detailed results per article of the Criminal Code are not provided. However, statistics indicate that there 42 convictions for Arts. 111 to 117 (defamation and insult) in 2015.

Official statistics also offer an overview of the development of criminal justice regarding defamation insult through time. In the year 1975, there were 344 convictions for Arts. 111 – 117. In 1985, 298; in 1995, 169; in 2005, 77. The overall trend clearly shows a decline in convictions.

3. Selected cases

Criminal prosecutions for defamation or insult are unusual, but not obsolete. In 2001, a well-known satirical columnist, Rainer Nikowitz, of the weekly magazine Profil was convicted of having criminally defamed the skier Stefan Eberharter. Nikowitz was sentenced to a pay a total fine of 20,000 Austrian schillings (approx. €1,450). In 2007, the European Court of Human Rights found a violation of Art. 10, noting (par. 27)⁶³:

“Moreover, the Court, having regard to the fact that the Austrian courts convicted the first applicant of defamation and ordered the applicant company to pay compensation and to publish the judgment, cannot adhere to the Government's argument that the Austrian courts showed moderation in interfering with the applicants' rights in the present case. In particular, as regards the first applicant, what matters is not that he was sentenced to a relatively minor suspended penalty, but that he was convicted at all (see *Lopez Gomez da Silva*, cited above, § 36).”

⁶³ *Nikowitz and Verlagsgruppe News GmbH* (Application no. 5266/03, 22 February 2007).

AZERBAIJAN⁶⁴

I. Law

1. Criminal defamation and insult laws

The Criminal Code of the Republic of Azerbaijan⁶⁵ includes the offences of libel and insult.

Libel (Criminal Code Art. 147) is defined as “dissemination, in a public statement, publicly exhibited work of art, through the mass media or a publicly displayed Internet information resource, of knowingly false information discrediting the honour and dignity of a person or damaging his or her reputation”.

The penalty is a fine of 100 to 500 manat (approx. €55 to €275), or by a community service for a term of 240 to 480 hours, or by corrective labour for a term of up to one year, or by imprisonment for a term of up to six months.

According to Art. 147(2), libel becomes punishable by corrective labour for a term of up to two years, or by imprisonment for a term of up to three years when it consists of “accusing [a person] of having committed a serious or especially serious crime”.

Insult (Criminal Code Art. 148) is defined as “deliberate humiliation of the honour and dignity of a person, expressed in an obscene manner in a public statement, publicly exhibited work of art, in mass media or through a publicly displaced Internet information resource”. The penalty for insult is a fine of 300 to 1,000 manat (approx. €167 to €555), or by a community service for a term of 240 to 480 hours, or by corrective labour for a term of up to one year, or by imprisonment for a term of up to six months.

With the most recent amendments to the Criminal Code that entered into force on Nov. 26, 2016, a provision was added to Art. 148 encompassing an act of insult disseminated through Internet under fake user names, profiles or online accounts⁶⁶. According to this amendment, “insult or slander publicly expressed through a publicly displaced Internet information resource under fake user names, profile or online accounts” carries the penalty of a fine of 1,000 to 1,500 manat (approx. €555 to 830), or by a community service for a term of 360 to 480 hours, or by corrective labour for a term of up to two years, or by imprisonment for a term of up to one year.

2. Criminal defamation of public officials

Criminal Code Art. 289 provides criminal liability for showing disrespect to a court by insulting participants in proceedings. The penalty is a fine of up to 300 manat (approx. €160), community service for 320 to 400 hours or imprisonment for up to six months.

⁶⁴ Information on Azerbaijan is provided with the expert assistance of Vusal Behbudov, independent expert.

⁶⁵ The Criminal Code of the Republic of Azerbaijan (as last amended on 26 November 2016, with Law № 444-VQD), available at (in Azerbaijani) <http://e-qanun.az/code/11>.

⁶⁶ According to Art. 148 (1), the term “fake user names, profiles or accounts” implies those that cannot be identified online or in social media through verification of personal information such as first names, surname or patronymic, which can be false or hidden, or the user names, profiles or accounts created based on the information that belongs to other individuals without prior permission.

If the act is committed by insulting a judge, the penalty is a fine of 300 to 500 manat (approx. €160 to €175), corrective labour for up to two years or imprisonment for up to six months.

3. Criminal defamation of the head of state

Discrediting or humiliating the honour and dignity of the Head of the Azerbaijani State “in a public statement, publicly exhibited work of art, through the mass media or a publicly displaced Internet information resource” is a crime under Art. 323(1) of the Criminal Code. The penalty is a fine of 500 to 1,000 manat (approx. €275 to €830), or corrective labour for a term of up to two years, or an imprisonment for the same term.

Additionally, Criminal Code Art. 323(1-1) prescribes a fine of 1,000 to 1,500 manat (approx. €555 to €830) or a prison term of up to three years for the commitment of acts envisaged in Art. 323(1) through a publicly displaced Internet information resource under fake user names, profiles or accounts.

Should the acts envisaged in Art. 323(1) consist in accusing the Head of State “of having committed a serious or especially serious crime” the penalty is imprisonment for a term of three to five years (Art. 323(2)).

Note that according to the Criminal Code, the provisions of Art. 323 do not apply to public statements related to critical views about the activities of the Head of Azerbaijani State – the President of the Republic of Azerbaijan, and the policies pursued under his leadership.

4. Criminal defamation of the state and its symbols

Offence to the state flag or state emblem (Criminal Code Art. 324): Defamatory acts (insult) against the state flag or the state emblem of the Republic of Azerbaijan are punishable by imprisonment for up to one year.

5. Criminal defamation of foreign heads of state

No provisions.

6. Criminal defamation of foreign states and symbols

No provisions.

7. Criminal defamation of the deceased

No provisions.

There is no specific law related to criminal defamation of the deceased. Note that Criminal Code Arts. 147 and 148 can be applicable if a deceased person’s heirs lodge appeals to protect his/her reputation. Criminal Code Art. 245 prescribes corrective labour or imprisonment for up to five years for offensive acts committed on the grave of a deceased person or on the body of a deceased person.

8. Criminal blasphemy

No provisions.

8. Recent legal changes

On 14 May 2013, the Parliament of the Republic of Azerbaijan adopted amendments (promulgated by the President of Azerbaijan on 4 June 2013) to Arts. 147 (Libel) and 148 (Insult) of the Criminal Code of Azerbaijan, introducing criminal liability for defamation committed “through a publicly displayed Internet information resource⁶⁷”. The maximum term of involvement in public works was increased from 240 hours to 480 hours⁶⁸.

On 26 November 2016, the President signed amendments to the Criminal Code that introduced an additional provision under Art. 148(1) encompassing an act of insult disseminated through the Internet under fake user names, profiles or online accounts. According to the amendments, content constituting libel or insult produced from fake profiles or accounts is punishable by a fine of 1,000 to 1,500 manat (approx. €555 to €830), a community service for 360 to 480 hours, corrective labour of up to two years, or imprisonment for up to one year.

The same amendments also affected Art. 323(1) of the Criminal Code, which is concerned with defamation of the Head of the State. According to the amendment, the scope of criminal liability for defamation of the President was also extended to online media by adding “through the mass media or a publicly displaced Internet information resource” under Art. 323(1).

In addition, the new amendment to Art. 323(1-1) imposed a fine of 1,000 to 1,500 manat (approx. €555 to €830) or a prison term of up to three years for defamation of the president through a publicly displaced Internet information resource under fake user names, profiles or accounts.

On 19 September 2012, the Presidential Administration of the Republic of Azerbaijan requested the assistance of the Venice Commission in drafting a Law on Defamation, as part of the National Programme for Action to Raise Effectiveness of Protection of Human Rights and Freedoms and as a result of two judgments of the European Court of Human Rights against Azerbaijan, in which the Court found violations by Azerbaijan of Art. 10 of the European Convention on Human Rights.

Upon the review of the proposed draft law of the Presidential Administration, the Venice Commission concluded that the draft law was insufficiently concerned with the key principles set out by the Court’s case law⁶⁹. On 19 May 2013, preliminary comments and recommendations of the rapporteurs were sent to the authorities of Azerbaijan, who committed themselves, by official letter sent to the Council of Europe on 29 May 2013, to submitting a revised draft law before the end of June 2013; a working meeting was to follow.

⁶⁷ These amendments read as follows:

“1. In article 147.1 to replace the words “or through a mass medium” with the words “, through a mass medium or through a publicly displayed Internet information resource”

2. In article 148 to replace the words “or through a mass medium” with the words “, through a mass medium or through a publicly displayed Internet information resource””.

⁶⁸ The Criminal Code of the Republic of Azerbaijan (as last amended on 26 November 2016, with Law № 444-VQD), available at (in Azerbaijani) <http://e-qanun.az/code/11>.

⁶⁹ Opinion on the Legislation Pertaining to the Protection against Defamation of the Republic of Azerbaijan; Adopted by the Venice Commission at its 96th Plenary Session, (Venice, 11 to 12 October 2013), available at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2013\)024-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)024-e).

No revised draft was submitted, however. This was the Government of Azerbaijan's only attempt toward reforming defamation law.

However, since 2005 the OSCE, in partnership with the local media organisations, has produced several draft laws and held working meetings with the Government of Azerbaijan at various levels. In 2010, the OSCE in Azerbaijan partnered with the Azerbaijani Press Council and presented a new draft law on decriminalisation of defamation⁷⁰, which did not result in an effective law.

II. Practice

1. General notes

n/a

2. Statistics

n/a

3. Selected cases

In 2010, Ayyub Karimov, editor-in-chief of the newspaper Femida 007 was convicted of libelling Interior Minister Ramil Usubov. Karimov was given an 18-month suspended prison sentence. The court further ordered that this salary be reduced by 15 percent during the length of the sentence⁷¹.

In January 2016, journalist Elnur Maharramli was convicted of defaming Nushiravan Safarov, head of the Baku police's traffic department. The charges related to an article in August 2015 on the news website AzPolitika. Maharramli was sentenced to 18 months of corrective labour. The court also ordered that 15 percent of his salary be deducted for the length of the sentence⁷².

In February 2015, Azerbaijani investigative journalist Khadija Ismayilova was convicted of libelling former opposition activist Elman Hasanov and sentenced to pay a fine of 2,500 manat⁷³. The sentence was handed down while Ismayilova was in pretrial detention on an array of charges including tax evasion, illegal business activity and abuse of power. Later in 2015, a court sentenced her to seven-and-a-half years in prison on the various charges. Ismayilova's supporters described the accusations against her were spurious and said that the charges against Ismayilova came in retribution for her lengthy career unveiling alleged corruption by government officials. Ismayilova was released from prison in May 2015⁷⁴.

⁷⁰ "OSCE promotes decriminalization of defamation in Azerbaijan", available at <http://www.osce.org/baku/77483>

⁷¹ Azerbaijani Journalist Convicted Of Libel, Radio Free Europe/Radio Liberty, 4 February 2010, http://www.rferl.org/a/Azerbaijani_Journalist_Convicted_Of_Libel/1949038.html.

⁷² Journalist Convicted on Defamation Charges, IRFS, 14 January 2016, <https://www.irfs.org/news-feed/journalist-convicted-on-defamation-charges/>.

⁷³ Jailed Azerbaijani Journalist Ismayilova Fined In Libel Case, Radio Free Europe/Radio Liberty, 23 February 2015, <http://www.rferl.org/a/ismayilova-fined-in-a-libel-case-in-baku/26864433.html>.

⁷⁴ Order to free Azerbaijan's Khadija Ismayilova welcomed, IPI, 25 May 2016, <https://ipi.media/order-to-free-azerbaijans-khadija-ismayilova-welcomed/>.

In 2007, the late journalist Eynulla Fatullayev was convicted of defaming the Azerbaijani people and sentenced to 30 months in prison. The charges related to an online article, which Fatullayev denied posting, that blamed Azerbaijan for a 1992 massacre in the disputed region of Nagorno-Karabakh⁷⁵.

⁷⁵ Azerbaijan: Opposition Editor Sentenced to Prison, HRW, 25 April 2007, <https://www.hrw.org/news/2007/04/25/azerbaijan-opposition-editor-sentenced-prison>.

BELARUS⁷⁶

I. Law

1. Criminal defamation and insult laws

The Code of Administrative Offences of the Republic of Belarus⁷⁷ provides for two misdemeanours of defamation: libel (Art. 9.2) and insult (Art. 9.3). Additionally, the Criminal Code of the Republic of Belarus⁷⁸ provides for two offences of defamation: libel (Art. 188) and insult (Art. 189).

Libel is defined as “disseminating false defamatory information about a person” (Art. 9.2 of the Code on Administrative Offences, Art. 188 of the Criminal Code).

Under Art. 9.2 of the Code of Administrative Offences, libel is punished by a fine⁷⁹ of up to 30 base units. To be punished under the Criminal Code crime of libel must be committed for a second or more time within one year after the imposition of administrative penalties⁸⁰ for libel or insult.

The penalty for libel under the Criminal Code is public works, fine, correctional labour for up to one year, arrest⁸¹ or imprisonment up to two years.

In the case of libel through public speech or through the media or other publication including on the web as well as libel joined with the accusation of committing grave or especially grave crimes, the penalty is a fine, correctional labour for up to two years, arrest or imprisonment for up to three years.

Insult is defined as “deliberately humiliating a person’s honour and dignity in an abusive manner” (Art. 9.3 of the Code of Administrative Offences, Art. 189 of the Criminal Code). The essential feature of insult is the humiliation of the offended person in an abusive manner. Normally this occurs through expressions that are not related to that person specifically, but that rather would be insulting to anyone (e.g. labels, curse words).

Under Art. 9.3 of the Code of Administrative Offences, the penalty for insult is a fine of up to 20 base amounts. To be punished under the Criminal Code, the crime of insult should be committed a second or more time within one year after the imposition of administrative penalties for libel or insult. The penalty for insult under the Criminal Code is public works, a fine, correctional labour for up to one year or by imprisonment for up to two years.

⁷⁶ Information on Belarus is provided with the expert assistance of Volha Siakhovich, expert for the law center of the Belarusian Association of Journalists.

⁷⁷ Code of Administrative Offences of the Republic of Belarus (as last amended on 19 July 2016, with Law No. 407-3), available at (Russian): http://etalonline.by/?type=text®num=Hk0300194#load_text_none_1_.

⁷⁸ Criminal Code of the Republic of Belarus (as last amended on 19 July 2016 by Law No. 407-3), available at (Russian): http://etalonline.by/?type=text®num=HK9900275#load_text_none_1_.

⁷⁹ Under Belarusian legislation, fines are calculated in terms of “base unit” as determined by the court. A base unit is periodically established by the government. In 2016, it was the equivalent of approximately 10 euros.

⁸⁰ I.e., the penalties imposed under the Code of Administrative Offences.

⁸¹ An arrest refers to the holding of a person in custody in strict isolation for a term of from one to three months (Art. 54 of the Criminal Code).

In the case of insult through public speech or through the media or other publication, the penalty is a fine, correctional labour for up to two years, arrest or imprisonment for up to three years.

2. Criminal defamation of public officials

Art. 23.5 of the Code of Administrative Offences punishes *insult of a public official* in the exercise of official authority by a person not subordinated to him/her with a fine ranging from twenty to fifty base units.

Under Art. 369 of the Criminal Code (“Insult of a public agent”), *public insult of a public agent* in connection with the exercise of official duties shall be punished by public works, a fine, correctional labour for up to two years, arrest or imprisonment for up to three years.

Art. 391 of the Criminal Code sets forth criminal liability for *insult of a judge or a people’s assessor* in connection with executing justice by them. The penalty is a fine, correctional labour for up to two years, arrest or imprisonment for up to three years.

3. Criminal defamation of the head of state

Art. 23.33 of the Code of Administrative Offences provides that disseminating through the media *false information humiliating the honour and dignity of the president of the Republic of Belarus* is punishable by a fine. The fine ranges from 20 to 50 base units for an individual and to 500 hundred base units for a legal entity.

Under Art. 367 of Criminal Code, *libel in relation to the president of Belarus* through public speech or through the media or other publication including on the web is punishable by fine, correctional labour for up to two years, restriction of liberty for up to four years or imprisonment for the same term. If the offence is committed by a person previously convicted of libel or insult, or if the offence is joined with the accusation of committing grave or especially grave crimes, the penalty is restriction of liberty for up to five years or by imprisonment for the same term.

Under Art. 368 of the Criminal Code, *public insult of the president of Belarus* is punishable by fine, correctional labour for up to two years, arrest, restriction of liberty for up to two years, or by imprisonment for the same term. If the offence is committed by a person previously convicted of libel or insult, or if the offence is joined with the accusation of committing grave or especially grave crimes, the penalty is a fine, correctional labour for up to two years, restriction of liberty for up to three years or by imprisonment for the same term.

4. Criminal defamation of the state and its symbols

Discredit to the Republic of Belarus: Criminal Code Art. 369 states that “providing to a foreign state, a foreign or international organisation false information about political, economic, social, military or international situation of the Republic of Belarus, legal status of citizens of the Republic of Belarus discrediting the Republic of Belarus or its authorities (discrediting the Republic of Belarus)” shall be punished by arrest or imprisonment for a term of up to two years. It should be noted that this article has never been applied by courts.

There are no provisions penalising defamation of state symbols. But in practice defamation of state symbols can be punished under Art. 17.1 (“Disorderly conduct”) of the Code of Administrative Offences.

5. Criminal defamation of foreign heads of state

No provisions

6. Criminal defamation of foreign states and symbols

No provisions.

7. Criminal defamation of the deceased

No provisions.

8. Criminal blasphemy

No provisions.

9. Recent legal changes

The Law of the Republic of Belarus of 4 January 2014⁸² amended Art. 9.2 (“Libel”) and Art. 9.3 (“Insult”) of the Code of Administrative Offences. It abolished the minimum rate of penalty for libel (10 base units) and insult (four base units).

The Law of the Republic of Belarus of 5 January 2015⁸³ amended Art. 188 (“Libel”) and Art. 367 (“Libel in relation to the president of the Republic of Belarus”) of the Criminal Code to include references to information published on the web.

II. Practice

1. General notes

n/a

2. Statistics

n/a

3. Selected cases

The provision relating to defamation of the head of state is applied frequently in Belarus.

In 2002, Mikola Markevich, editor-in-chief of Pahonya weekly, and Pavel Mazheiko, a journalist for the same newspaper, were convicted of libelling president Alexander Lukashenko under Art. 367 of the Criminal Code for an article published in the run-up to the

⁸² Law of the Republic of Belarus of 4 January 2014, №120-3, available at (Russian): <http://www.pravo.by/main.aspx?guid=12551&p0=H11400120&p1=1&p5=0>.

⁸³ Law of the Republic of Belarus of 5 January 2015, №241-3, available at (Russian): <http://www.pravo.by/main.aspx?guid=12551&p0=H11500241&p1=1&p5=0>.

presidential elections calling on voters not to support Lukashenko⁸⁴. The 11,000 issues of the newspaper were seized in the printing house before they could be distributed. Markevich and Mazheiko were sentenced to two-and-a-half years and two years, respectively, of restriction of liberty. The sentences were later cut on appeal to one year for each journalist.

In 2011, journalist Andrzej Poczobut, correspondent for the Polish newspaper Gazeta Wyborcza, was charged under two articles of the Criminal Code: Art. 368 "Insult of the president of the Republic of Belarus" and Art. 367 "Libel in relation to the President of the Republic of Belarus". The criminal case was based on articles by the journalist published by the newspaper Gazeta Wyborcza, on the web site Belorusskij Partizan and on journalist's blog in LiveJournal in 2010 and 2011. Andrzej Poczobut was found guilty of libelling the president and given a three-year suspended prison sentence⁸⁵.

⁸⁴ See <http://spring96.org/en/news/11548>.

⁸⁵ OSCE media freedom representative condemns arrest and new charges against Andrzej Poczobut, calls for immediate release, OSCE, 22 June 2012, <http://www.osce.org/fom/91540>. Andrei Pochobut released, repression continues, FIDH, 2 July 2012, <https://www.fidh.org/en/region/europe-central-asia/belarus/Andrei-Pochobut-released>.

BELGIUM⁸⁶

I. Law

1. Criminal defamation and insult laws

There are two main defamation-related offences in the Belgian Criminal Code⁸⁷: slander and insult.

Slander/defamation (Criminal Code Art. 443) consists of “maliciously imputing to another person a precise fact that may damage that person’s honour or expose him/her to public contempt”. This act is described as “slander” in cases in which the law admits proof of the act but such proof is not provided. It is described as “defamation” in cases in which the law does not admit proof of the act.

The penalty for the act under Art. 443 is imprisonment from eight days to one year and a fine of €26 to €200 if the act is committed in meetings or public places; in the presence of several individuals in a place that is not public but is open to a certain number of people; in any place in the presence of the offended person and in front of witnesses; through writings or images distributed or communicated publicly or addressed to several persons (Criminal Code Art. 444).

Insult (Criminal Code Art. 448) against a person through acts, writings, images or emblems, committed with publicity according to Criminal Code Art. 444, carries a penalty of imprisonment for a term of eight days to two months and/or a fine of €26 to €500. The term “insult” is not defined in statute, but, in general, is constituted by an imprecise accusation that may damage a person’s honour. In practice, insult also requires an element of malice.

It should be noted that, under Criminal Code Art. 449, if the proof of an accusation in question is established but it is concluded that the offender “made the accusation without any motive of public or private interest but with the sole aim of causing harm”, the offender shall be guilty of *malicious disclosure*. The penalty in this case is eight days to two months in prison and/or a fine of €26 to €400.

Note that the minimum punishment for slander, defamation and insult can be doubled if motivated by hate, contempt or hostility against persons due to their supposed race, skin colour, heritage, national or ethnic origin, birth, age, fortune, religious or philosophical conviction, present or future state of health, disability, language, political conviction, union conviction, physical or genetic characteristic or social origin (Criminal Code Art. 453bis).

2. Criminal defamation of public officials

Criminal Code Art. 275 provides criminal liability for *insult (outrage/smaad)* directed at a member of legislative chambers, a government minister, a member of the Constitutional Court or other judicial office, an active-duty police officer, all with respect to official function. The penalty is 15 days to six months in prison or a fine of €50 to €300. The punishment is elevated

⁸⁶ Information on Belgium originally published as part of the International Press Institute’s Media Law Database and has been revised/updated for this present study.

⁸⁷ Criminal Code of Belgium (Law of 8 June 1867), version as of 22 December 2016. Available at: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1867060801&table_name=loi.

to imprisonment of two months to two years, or a fine of €200 to €1,000 if the act occurs during a sitting of the Chamber or during court.

Criminal Code Art. 276 provides liability for *insult directed at a public officials*. The penalty is a imprisonment from eight days to one month and a fine of €26 to €200.

Insult against juries and witnesses in relation to their function is an offence under Criminal Code Art. 282. The penalties under Art. 275 apply.

According to Art. 277, *insult against “constitutional bodies”* shall be punished in the same manner as insult committed against members of those bodies.

However, it should be noted that these provisions (Arts. 275 to 277, 282) apply to words, threats and gestures, etc., directed at public officials in their physical presence and in the course of performing their public function (and not, for example, to media content).

The Act of 20 July 1831 on the Press⁸⁸ states that *slander or insult committed against public officials* is subject to the same provisions as regarding private individuals, subject to a few exceptions, most notably that while criminal proceedings for slander and insult can normally only be prosecuted upon request, in the case of the king, the royal family, or public authorities with respect to their official function, prosecution may be conducted ex officio.

3. Criminal defamation of the head of state

Offence toward the monarch and the royal family (lèse-majesté) remains a criminal offence in Belgium under Law of 6 April 1847 on Offence toward the King⁸⁹.

Art. 1 punishes insult toward the King by any means, including writings or images sold or distributed in public with imprisonment from six months to three years and a fine⁹⁰.

Art. 2 punishes insult toward other members of the royal family with imprisonment from three months to two years and a fine⁹¹.

In addition, those convicted of lèse-majesté may be stripped of certain political rights according to the Belgian Criminal Code.

4. Criminal defamation of the state, state symbols and state bodies

Criminal prosecutions for slander and defamation directed at “constitutional bodies” (*corps constitué*) are explicitly permitted by Art. 446 of the Belgian Criminal Code, subject to the same conditions as defamation against individuals.

⁸⁸ Decree of 20 July 1831 on the Press, available at:

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1831072030&table_name=loi.

⁸⁹ Law of 6 April 1847 on Offences against the King, available at

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1847040630&table_name=loi.

⁹⁰ The Law foresees a fine of 300 to 3,000 Belgian francs for insult of the king and a fine of 100 to 2,000 Belgian francs for insult of royal family members. According to a currency conversion law, the maximum fines for lèse-majesté are €3,000 and €2,000, respectively.

⁹¹ See foregoing note.

Art. 277 of the Criminal Code also foresees criminal liability for *insult against constitutional bodies*, punished under the same terms as insult of public officials in their physical presence (see under “Criminal defamation of public officials”).

Regarding insult of the State, the Royal Decree of 19 July 1926⁹² states that whoever knowingly and intentionally publishes a *report that may negatively affect the creditworthiness of the State* will be punished with imprisonment from three months to two years and a fine.

5. Criminal defamation of foreign heads of state

The Law of 12 March 1858 on Crimes against International Relations⁹³ contains a provision on insulting accredited foreign diplomats through actions, writings, images or symbols. The penalty is imprisonment from two months to 18 months and a fine.

A law prohibiting insult toward foreign heads of state was abolished in 2005⁹⁴.

6. Criminal defamation of foreign states and symbols

No provisions.

7. Criminal defamation of the deceased

No provisions.

Art. 450 of the Criminal Code states that spouses or descendants (up to and including the third degree) may file criminal defamation charges on behalf of a deceased person.

8. Criminal blasphemy

Art. 144 of the Criminal Code provides criminal liability for insult through “actions, words, gestures or threats” of the objects of a religion “whether in places destined for or habitually used for the exercise thereof, or in public ceremonies of this religion”. The penalty is imprisonment for 15 days to six months and a fine of €50 to €500.

Under Art. 145, similar insult against the minister of a religion, in the exercise of his ministry, shall be punished with imprisonment for two months to two years and a fine of €50 to €500.

9. Recent legal changes

⁹² Royal Decree of 19 July 1926 on measures intended to repress opinions or information likely to undermine the credit of the State, available at:

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1926071930&table_name=loi.

⁹³ Law of 12 March 1858 amending the second book of the Criminal Code regarding crimes and delicts against international relation, available at:

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1858031230&table_name=loi.

⁹⁴ Law of 20 December 1852 on repressing offences towards foreign heads of state, repealed 5 March 2005. See:

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1852122030&table_name=loi.

Prior to repeal there were very few instances of the use of this law. It was invoked a handful of times in the 20th century to remove public posters containing insults to foreign heads of state, including Pope John Paul II and Mobutu Sese Seko. See, e.g., Dirk Voorhoof, *Majesteitsschennis strafbaar, maar nauwelijks vervolgd*. In: *De Juristenkrant* 2007/156, 6.

II. Practice

1. General notes

Criminal press offences in Belgium can only be heard by a Court of Assize, a jury-based tribunal that is reserved for serious felonies. Due to cost, length and publicity concerns, press proceedings before the Court of Assize are extremely rare (the last such proceeding is believed to have taken place more than 70 years ago). As a result, the media enjoy a de facto exemption from criminal defamation laws, including lèse-majesté. In practice, virtually all defamation cases brought against the media are handled in civil court (under the tort rules of Arts. 1382 to 1384 of the Civil Code).

2. Statistics

As regards the broader application of the criminal provisions noted above, according to official statistics from Belgium's Criminal Policy Service⁹⁵, for the year 2015, the most recent year for which statistics are available, there were:

- 21 convictions for insult (Criminal Code Art. 448), none of which were for insult “in meetings or public places”.
- 35 convictions for defamation (Criminal Code Art. 444), of which:
 - 31 were for defamation in “meetings or public places”
 - One for defamation “in a non-public place in the presence of other persons”,
 - Three for defamation “in any place in front of the offended persons at witnesses”
- One conviction for malicious disclosure (Criminal Code Art. 449)
- 15 convictions for insult under Criminal Code Art. 275
- 524 convictions for insult under Criminal Code Art. 276

Since 1995, there have been only two convictions for defamation directed against constitutional bodies (Criminal Code Art. 446). Additionally, since 1995 there have been only five convictions for insult against constitutional bodies (Criminal Code Art. 277). Arts. 275/276 are applied most often in cases of insult against police officers, particularly while the offender is being arrested.

Historical statistics suggest that figures for insult and defamation have remained broadly constant over the past 20 years.

3. Selected cases

n/a

⁹⁵ See http://www.dsb-sCriminal Code.be/web/index.php?option=com_wrapper&Itemid=163.

BOSNIA AND HERZEGOVINA⁹⁶

I. Law

Introductory Note: According to the Dayton Peace Agreement (1995), which ended the war in Bosnia and Herzegovina (1992 to 1995), the structure of the country has become rather complex and follows the ethnic lines that emerged after the conflict. Bosnia and Herzegovina consists of two entities and one district: the Federation of Bosnia and Herzegovina (FB-H, predominantly Bosniak and Croat population), Republika Srpska (RS, predominantly Serbian population) and the Brčko District of Bosnia and Herzegovina. The Federation is divided into 10 cantons, while Republika Srpska is divided into 63 municipalities. The Dayton Peace Agreement acknowledged Bosniaks, Croats and Serbs as constituent peoples and introduced the category of Others. The official languages are Bosnian, Serbian and Croatian. Both Cyrillic and Latin scripts are used.

Due to the structure of the country, there are three levels of law: at the level of the Federation of Bosnia and Herzegovina (FB-H), at the level of Republika Srpska (RS) and at the level the Brčko District of Bosnia and Herzegovina (BD).

1. Criminal defamation and insult laws

No provisions.

Insult and defamation are no longer criminal offences in Bosnia and Herzegovina.

Both entities (Republic of Srpska⁹⁷ and Federation of Bosnia and Herzegovina⁹⁸) as well as Brčko District of Bosnia and Herzegovina⁹⁹ have adopted civil laws on protection from defamation.

As the international community acted on introduction of media legislation in Bosnia and Herzegovina, it was in fact the Office of the High Representative to Bosnia and Herzegovina that had the biggest role. The Decision on Freedom of Information and Decriminalization of Libel and Defamation¹⁰⁰ passed in 1999, required that both entities, under the guidance of the Office of the High Representative, adopt the necessary legislation to create civil remedies for defamation, libel and slander in accordance with the European Convention on Human Rights.

⁹⁶ Information on Bosnia and Herzegovina is provided with the expert assistance of Nevena Krivokapic, Online Media and Freedom of Expression Coordinatorm SHARE Foundation; and Bojan Perkov, Policy Researcher, SHARE Foundation.

⁹⁷ Law on Protection against Defamation of Republic of Srpska, (Banja Luka, July 2001, Official Gazette of RS No. 37/01, entered into force on 1 August 2001), available in English at:

http://english.vzs.ba/index.php?option=com_content&view=Art.&id=210%3Azakon-o-zatiti-od-klevete-rs&catid=9%3Ajournalists-laws&Itemid=12&lang=en

⁹⁸ Law on Protection against Defamation of FBiH (Sarajevo, 2002, Official Gazette of FBiH No. 59/02, entered into force in 2002), available in English at:

http://english.vzs.ba/index.php?option=com_content&view=Art.&id=209%3Azakon-o-zatiti-od-klevete-fbih&catid=9%3Ajournalists-laws&Itemid=12&lang=en

⁹⁹ Law on Protection against Defamation of Brčko District BiH (Brčko, 2003, Official Gazette of Brčko District of BiH No.14/03, entered into force in 2003), available in local languages:

<http://skupstinabd.ba/ba/zakon.html?lang=ba&id=/Zakon%20o%20zas--titi%20od%20klevete>

¹⁰⁰ OSCE Mission to Bosnia and Herzegovina, Results of freedom of information consulting process announced in Bosnia and Herzegovina, 5 October 2000. Available at: <http://www.osce.org/bih/52949>

Ultimately, the three defamation laws in Bosnia and Herzegovina were adopted only in the period between 2001 and 2002, because discussions and pressures coming from political elites significantly prolonged the entire process of decriminalisation.

Nevertheless, this analysis indicates several criminal provisions that exhibit differing degrees of connection to defamation and/or insult.

Federal level - Criminal Code of Bosnia and Herzegovina:

Provisions in the Criminal Code of Bosnia and Herzegovina¹⁰¹:

Criminal Code Art. 246e(2) (Coercion against a Military Person Discharging Official Duty) states that if anyone by force or threat of immediate use of force, prevents a military person in the execution of official duty, or coerces a military person in the same way to execute an official duty and if a military person is *seriously offended* during the perpetration of this criminal act, the perpetrator will be punished by imprisonment for a term between three months and three years.

Also, Art. 181 (Violating the Protection Granted to Bearers of Flags of Truce) of the Criminal Code states that if anyone, in violation of the rules of international law in time of war or armed conflict, *insults*, maltreats or detains the bearer of the flag of truce or his escort, or prevents them from returning, or in any other way violates their privilege of inviolability, s/he shall be punished with a prison term between six months and five years.

Republic of Srpska:

Provisions in the Criminal Code of the Republic of Srpska¹⁰²:

Art. 319(2) (Use of Force Against a Military Officer While Executing His Duty) states that if anyone *grossly insults* military personnel while using force or threatening to use force to prevent military personnel from performing their official duty, or in the same manner coerces them to perform their official duty, s/he shall be punished with imprisonment ranging from six months to five years.

Art. 385(1) of the Criminal Code of the Republic of Srpska (Violent Behaviour) prescribes that whoever *harshly insults* or otherwise endangers security of others, and by doing so causes serious disturbances and fear among citizens or seriously disturbs public order, shall be punished with a fine (amount is not specified) or a prison sentence not exceeding two years. Regarding the monetary fine in Art. 35 it is stated that fines can be imposed in daily amounts and if that is not possible, they can be imposed in a certain amount. If the above mentioned criminal offence was committed by two or more persons or if a number of people have been seriously insulted, the punishment is a prison sentence between three months and three years (Art. 385(2)).

¹⁰¹ Criminal Code of Bosnia and Herzegovina - unofficial consolidated version in English, "Official Gazette of the Bosnia and Herzegovina", no. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10, available at: http://www.tuzilastvobih.gov.ba/files/docs/Criminal_Code_of_BH_-_Consolidated_text_8_10.pdf.

¹⁰² Criminal Code of the Republic of Srpska, "Official Gazette of the Republic of Srpska", no. 49/03, 108/04, available in English at: http://tuzilastvobih.gov.ba/files/docs/zakoni/RS_Criminal_Code_49_03,108_04_web.pdf.

There is also a criminal act of Preventing an Official Person in Execution of His Official Duty, prescribed in Art. 387 of the Criminal Code, which in paragraph 2 states that whoever by force or threat of immediate use of force prevents an official person from carrying out or compels him to carry out any official duty within the scope of his powers, and by doing so *insults* or abuses the official person, the punishment is imprisonment for a term not exceeding three years. Paragraph 3 of Art. 387 prescribes that if the criminal acts referred to in paragraphs 1 and 2 of the same article are committed against a judge or public prosecutor in discharge of their duties or against official person or a person assisting an official in performing duties of security or apprehending perpetrators or guarding detained persons, the perpetrator shall be punished by imprisonment for a term between six months and five years. Also, a possible defence is provided in paragraph 5 of Art. 387, which states that if the perpetrator of the offenses referred to in Paragraphs 1 through 3 of this article was provoked by unlawful or harsh treatment on the part of the official person, he/she may be released from punishment.

Federation of Bosnia and Herzegovina:

Provisions in the Criminal Code of the Federation of Bosnia and Herzegovina¹⁰³:

Art. 182 of Criminal Code (Maltreatment in Discharge of Duty) prescribes that if an official person who is performing his official duty *insults* another shall be punished by a prison term between three months and five years.

Criminal Code Art. 277(1) (Obstructing a Tax Official in Performing Official Action) prescribes that whoever, by force or threat of use of force, prevents or tries to prevent a tax official from performing his official duty, in the same manner coerces or tries to coerce him not to perform an official duty, will be punished with a prison term between three months and three years. Paragraph 2 of the same article states that if in perpetrating the criminal offence referred to in paragraph, the offender *insults* or abuses the tax official, s/he shall be punished by imprisonment for a term between six months and three years. A possible defence is prescribed in Art. 277(3), which states that if the perpetrator of criminal act in paragraphs 1 and 2 of Art. 277 has been provoked by illegal or brutal treatment on the part of the tax official, s/he may be released from of punishment.

Criminal Code Art. 358(2) (Obstructing an Official Person in Execution of Official Activity) prescribes that if anyone by force or threat of immediate use of force prevents an official person from performing an official act falling within the scope of his authority or, by using the same means, coerces him to perform an official act, and the official person is *insulted*, s/he shall be punished by imprisonment for a term between six months and three years. Per Art. 358, paragraph 3, if the criminal act from paragraph 2 is committed against an official person engaged in the work related to public security or to the security of the Federation or to the maintenance of public order, apprehension of perpetrators of criminal offences or to the guarding of confined persons, the punishment is imprisonment ranging from three months to five years. A possible defence is prescribed in Art. 358(4), which states that if the perpetrator of the criminal acts referred to in paragraphs 1 through 3 of Art. 385 is provoked by illegal or rude treatment on the part of the official person, s/he may be released from punishment.

¹⁰³ Criminal Code of the Federation of Bosnia and Herzegovina, "Official Gazette of the Federation of Bosnia and Herzegovina", no. 36/03. Available in English at:
http://www.tuzilastvobih.gov.ba/files/docs/zakoni/FBH_CRIMINAL_CODE_36_03.pdf.

Art. 362(1) (Violent Behaviour) states that if anyone by *harsh insult* or maltreatment of another disturbs the public peace, the punishment is imprisonment for a term between three months and three years. Paragraph 2 of the same article states that if the criminal offence is committed within a group of people or if, a serious humiliation of number of persons is caused, the perpetrator will be punished by a prison term between six months and five years.

Art. 402(2) (Coercion against a Military Person Discharging his Official Duty) states that if a perpetrator by force or threat of immediate use of force, prevents a military person in the execution of his official duty, or coerces such a person in the same way to execute his official duty, and a military person *is seriously offended* when the criminal act is committed, the perpetrator shall be punished by imprisonment for a term between six months and five years. A possible defence is provided in Art. 402(3), which states that if the perpetrator is provoked by the illegal or rude conduct of the military person, s/he may be punished less severely or released from punishment. However, this defence is only applied to Art. 402(1) so it is difficult to estimate if it applicable to Art. 402(2) as well, but a wider legal interpretation of this article could mean that the defence is also applied to paragraph 2 of Art. 402.

Brcko District:

Provisions in the Criminal Code of Brcko District¹⁰⁴:

Art. 179 (Abuse in Performance of Duties) prescribes that an official who while performing his/her duties *insults* another person shall be sentenced to imprisonment for a term of three months to five years.

Art. 271(2) states that whoever, by use of force or threat to use force, prevents or tries to prevent a tax official from performing his official duties, or in the same way forces or tries to force an official not to perform official duties and during the perpetration *offends* or mistreats a tax official, s/he shall be sentenced to prison from six months to three years. A possible defence is provided in Art. 271(3), which states that if the perpetrator of the criminal act referred to in paragraphs 1 and 2 of Art. 271 was provoked by illegal or rude conduct of a tax official, s/he may be released from punishment.

Also, in Art. 352(2) (Obstructing an Official in Execution of an Official Duty) it is stated that a person who by using force, or threat of immediate use of force, prevents an official in executing of an official duty within the scope of his powers, or a person who, in the same way, compels an official to perform an official duty, in the course of the criminal act *insults* the official, s/he shall be sentenced to six months to three years in prison. Art. 352(3) states that if a person who commits the criminal acts prescribed in paragraphs (1) and (2) of this article against an official in performing duties of public safety, or safety of Brcko District of Bosnia and Herzegovina, or duties of keeping of public order, apprehension of the perpetrator of a criminal offence or guarding a person, deprived of liberty, will be sentenced with three months to five years in prison. A possible defence is prescribed in paragraph 4 of this article, which states that if the perpetrator was provoked by unlawful or brutal conduct of the official, s/he may be released from punishment; this defence is applicable both to paragraphs 2 and 3.

¹⁰⁴ Criminal Code of Brcko District, "Official Gazette of the Brcko District of Bosnia and Herzegovina" nos. 10/03, 45/04. Available in English at: http://www.tuzilastvobih.gov.ba/files/docs/zakoni/BD_Criminal_Code_10_03_45_04_eng_web.pdf.

Art. 356 (Violent Behaviour) states that a person who jeopardises the peace of citizens by *rude insult* will be punished with a sentence ranging three months to three years in prison. If the criminal act referred to in this article is committed within a group of persons, or if the criminal offence from Paragraph 1 of this Article caused severe humiliation of several persons, the perpetrators will be sentenced to a prison term ranging from six months to five years (Art. 356(2)).

2. Criminal defamation of public officials

There are no provisions related specifically to defamation or insult of public officials.

The following provisions contain elements that exhibit a connection to defamation and/or insult. These provisions are described in greater detail under “Criminal defamation and insult laws”.

Federal level (Criminal Code of Bosnia and Herzegovina):

- Coercion against a Military Person Discharging Official Duty (Art. 246e)

Republic of Srpska (Criminal Code):

- Use of Force Against a Military Officer While Executing His Duty (Art. 319(2))
- Preventing an Official Person in Execution of His Official Duty (Art. 387)

Federation of Bosnia and Herzegovina (Criminal Code):

- Obstructing a Tax Official in Performing Official Action (Art. 277(1))
- Obstructing an Official Person in Execution of Official Activity (Art. 358(2))
- Coercion against a Military Person Discharging his Official Duty (Art. 402(2))

Brcko District (Criminal Code):

- Preventing a Tax Official From Performing his Official Duties (Art. 271(2))
- Obstructing an Official in Execution of an Official Duty (Art. 352(2))

3. Criminal defamation of the head of state

No provisions.

4. Criminal defamation of the state, state symbols and state institutions

No provisions.

5. Criminal defamation of foreign heads of state

No provisions.

6. Criminal defamation of foreign states and symbols

No provisions.

7. Criminal defamation of the deceased

No provisions.

8. Criminal blasphemy

No provisions¹⁰⁵.

9. Recent legal changes

Relevant to mention here is the adoption of the Law on Public Peace and Order¹⁰⁶ in Republika Srpska in 2015. Among other things, this law punishes the “performance or reproduction of musical content or texts, wearing or showing symbols, images, drawing or texts of indecent, offensive or disturbing nature” (Art. 7); as well “gross offending or other reckless behaviour which causes the feeling of physical endangerment or disturbance of citizens” (Art. 8)¹⁰⁷. The law states that liability under the law covers actions “against the functioning of state organs and other public services” as well as “offences committed in a public place” (Art. 2).

Concern over the law has focused in particular on the potential for “public place” to be interpreted so as to include the Internet and social media. The OSCE Representative on Freedom of the Media said of the law in February 2015: “These provisions can create self-censorship among social media users in order to stop criticism and differing views, which is not applicable in a democratic society.”

Fear that the law would be used to cover the Internet was further prompted by statements from the president of *Republika Srpska*, who stated in connection with the law that there were no limitations on freedom of speech in the entity, but that no form of communication should be misused either.

II. Practice

1. General notes

n/a

2. Practice

n/a

¹⁰⁵ It is worth noting that all criminal codes in Bosnia and Herzegovina have provisions providing criminal liability for inciting national, racial or religious hatred, discord or hostility. Those are Art. 145a of the Criminal Code of Bosnia and Herzegovina, Art. 163 of the Criminal Code of Federation of Bosnia and Herzegovina, Art. 390 of the Criminal Code of Republic of Srpska, and Art. 160 of the Criminal Code of Brcko District.

¹⁰⁶ RS Law on Public Peace and Order (Official Gazette number 11/15 on 05/02/2015), available in local languages at: [http://www.mup.vladars.net/zakoni/rs_cir/ZAKON%20O%20JAVNOM%20REDU%20I%20MIRU\(Sluzbeni%20Oglasnik%20RS%20broj%2011.15\).pdf](http://www.mup.vladars.net/zakoni/rs_cir/ZAKON%20O%20JAVNOM%20REDU%20I%20MIRU(Sluzbeni%20Oglasnik%20RS%20broj%2011.15).pdf).

¹⁰⁷ Republic of Srpska trying to enforce “public order” on the Internet, SHARE, 30 January 2015, <http://www.shareconference.net/en/defense/republic-srpska-trying-enforce-public-order-internet>. New law devastating for free expression and free media on the Internet in Republika Srpska, Bosnia and Herzegovina, Mijatović says, OSCE, 5 February 2015, <http://www.osce.org/fom/139191>.

3. Selected cases

n/a

BULGARIA¹⁰⁸

I. Law

1. Criminal defamation and insult laws

The Bulgarian Criminal Code¹⁰⁹ foresees the following offences:

Insult (Art. 146): Consisting of saying or doing something degrading to the honour and dignity of another in that person's presence. The penalty is a fine of 1,000 to 3,000 levs¹¹⁰. The penalty for insult committed publicly or via printed matter (Art. 148(1)) is increased to a fine of 3,000 to 10,000 levs.

Slander (Art. 147): Making public a disgraceful fact about someone or ascribing to someone a crime. The penalty is a fine of 3,000 to 7,000 levs. The penalty for insult committed publicly or via printed matter (Art. 148(1)) is increased to a fine of 5,000 to 15,000 levs

In several defamation cases involving journalists, Bulgarian courts have applied Art. 78a of the Criminal Code, which, under certain conditions, allows for the substitution of criminal fines with an administrative fine between 1,000 and 5,000 levs. Art. 78a also allows courts to deprive a defendant of the right to practice a particular profession.

2. Criminal defamation of public officials

According to Art. 148 of the Bulgarian Criminal Code, when *insult or slander is directed at a public official during or in connection with the fulfilment of his/her duties or function*, the penalty for insult is increased to a fine of 3,000 to 10,000 levs and the punishment for slander is increased to a fine of 5,000 to 15,000 levs. Public censure may also be ordered.

The same article also increases punishment to the same degree, including possible censure, when insult or slander was committed *by a public official during or in connection with the fulfilment of his/her duties or function*.

3. Criminal defamation of the head of state

No provisions.

4. Criminal defamation of the state, state symbols and state institutions

Defaming the coat of arms, the flag or the anthem of the Republic of Bulgaria is an offence under Art. 108(2). The penalty is up to two years in prison or a fine of up to 3,000 levs. Liability also applies to defamation of the flag or anthem of the European Union.

5. Criminal defamation of foreign heads of state

¹⁰⁸ Information on Bulgaria originally published as part of the International Press Institute's Media Law Database and has been revised/updated for this present study.

¹⁰⁹ Bulgarian Criminal Code, Publication State Gazette No. 26/02.04.1968, last amended November 2016. Online at <https://goo.gl/Rjzx15> (last accessed 5 January 2017).

¹¹⁰ 1 lev = approx. €0.51 (March 2017).

No provisions.

6. Criminal defamation of foreign states and symbols

No provisions.

7. Criminal defamation of the deceased

No provisions.

8. Criminal blasphemy

No provisions.

9. Recent legal changes

None.

II. Practice

1. General notes

In a key judgment dated 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 ruled that journalists who verified their information in accordance with established journalistic rules and practices, or according to their media outlet's internal code of conduct, could not be held criminally or civilly liable for defamation. The Court stated that, in such cases, the journalist could not be considered to have acted with intent or negligently.

According to previous studies¹¹¹, the Court stated that in civil cases the usual tort rule that guilt is presumed until proven otherwise could not apply for defamation. The Court also excluded the application of strict liability in defamation cases.

Finally, it confirmed that the limits of acceptable criticism were wider for public officials than for private individuals.

It is also noted that in 1998 the Bulgarian Constitutional Court (реш. № 20 от 14 юли 1998 г. по к. д. № 16 от 1998 г., обн., ДВ, бр. 83 от 21 юли 1998 г.) upheld the constitutionality of Criminal Code Art. 148's increased punishments for defamation committed against a public official in virtue of his or her function. The Court reportedly stated that "the criminal provision protects not only the individual but also the prestige of the relevant institution¹¹²".

In 1997, the Court of Cassation (Five Member Body Decision No. 340 in civil case no. 178/1997 upheld a lower court ruling that found the editor of a newspaper guilty under Art. 49 of the LOC because of the actions of his journalists, who had damaged MM's reputation and

¹¹¹ "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" [Draft], 2012, Media Division, Directorate General of Human Rights and Legal Affairs, Secretariat General, Council of Europe, CDMSI(2012)Misc11.

¹¹² Ibid.

dignity in their publications. The court of second instance upheld the decision and confirmed that the publications in question harmed MM's dignity and reputation by spreading negative comments about her professional activity, as she worked as a journalist on the Bulgarian national TV station, and about her moral qualities. The Court of Cassation found¹¹³ that the editor failed to prove that the statements were true, so the appeal was rejected and the decision of the court in the second instance awarding non-pecuniary damages was upheld.

2. Statistics

According to official figures from Bulgaria's National Statistics Institute, there were 26 criminal convictions for insult and libel in 2014 (publicly available statistics amalgamate insult and libel into a single figure). For 2015, there were 20 convictions¹¹⁴.

3. Selected cases

In June 2012, a Bulgarian court found Asya Pencheva, a journalist working for the newspaper *Utro*, guilty of defaming an employee of a local orphanage, Tsenka Blagoeva. The charges were related to an interview Pencheva published in which an orphanage employee alleged that orphans had been abused at the institution and in which Blagoeva's name was mentioned. Blagoeva sued for libel, claiming 3,000 levs in damages. The Ruse Regional Court ordered Pencheva to pay a fine of 5,000 levs and awarded 1,000 levs in damages to Blagoeva. The Regional Court also ordered Pencheva to be censured on a local radio station. Pencheva appealed the verdict to the Ruse District Court, which in October 2012 revoked the lower court's ruling and ordered a new trial, reportedly due to "flawed application of the law." The Ruse Regional Court then threw out the case against Pencheva, determining the charges to have been filed past the statute of limitations¹¹⁵.

In May 2002, a Bulgarian court found Katya Kasabova, a journalist working for the newspaper *Compass*, guilty of defaming four officials connected to the Ministry of Education in an article she had written alleging corruption in the admissions process to elite secondary schools in the Burgas area. The paper published a reply from the officials concerned, claiming that Kasabova's allegations were untrue, and Kasabova issued her own response apologising for any information that might turn out to be false. The Burgas District Court absolved Kasabova of criminal liability, but ordered her to pay an administrative fine of 2800 levs, plus 1,000 levs in damages to each of the plaintiffs (each one had sought 5,000 levs) and 512 levs in legal costs. The District Court determined that Kasabova had failed to provide evidence that the allegations were true and that she had not properly fulfilled her journalistic duty in researching the veracity of the allegations. In 2011, the European Court of Human Rights overturned the judgment in *Kasabova v. Bulgaria* (2011)¹¹⁶. While the Court found that the Bulgarian courts' judgment that Kasabova had not fulfilled her journalistic duty was reasonable under the circumstances, it held that the total financial penalty imposed (7,472 levs) was disproportionate, given that it was more than 35 times Kasabova's monthly salary.

¹¹³ See B. Winiger, H. Koziol, B.A. Koch, R. Zimmerman (eds): "Digest of European Tort Law, Volume 2: Essential Cases on Damage", De Gruyter, Berlin/Boston, 2011, pp. 652-653.

¹¹⁴ "Persons convicted by chapters of penal code and some kind of crimes and by age and sex of perpetrators", National Statistics Institute of the Republic of Bulgaria, last accessed 19 January 2017
<http://www.nsi.bg/en/content/6260/persons-convicted-chapters-penal-code-and-some-kind-crimes-and-age-and-sex-perpetrators>.

¹¹⁵ "Despite libel prosecution, Bulgarian journalist committed to her mission," IPI, 28 August 2014, <https://ipi.media/despite-libel-prosecution-bulgarian-journalist-remains-committed-to-her-mission/>.

¹¹⁶ *Kasabova v. Bulgaria*, App. No. 22385/03, 19 April 2011.

CANADA

I. Law

1. Criminal defamation and insult laws

The Criminal Code of Canada provides the following offence¹¹⁷:

Defamatory libel: Criminal Code Art. 297 defines “defamatory libel” as “matter published, without lawful justification or excuse, that is likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or that is designed to insult the person of or concerning whom it is published”.

Persons found guilty of publishing defamatory libel are liable to imprisonment for a term not exceeding two years (Art. 301). In the case that a person publishes a defamatory libel that the person knows to be false, the person is liable to imprisonment for a term not exceeding five years (Art. 300).

According to Art. 299, a person “publishes” a libel when he exhibits it in public, causes it to be read or seen, or shows or delivers it, or causes it to be shown or delivered, with intent that it should be read or seen by the person whom it defames or by any other person.

Under Art. 302, a person, who, with intent to extort money from any person, or to induce a person to confer on or procure for another person an appointment or office of profit or trust, publishes or threatens to publish or offers to abstain from publishing or to prevent the publication of a defamatory libel is guilty of *extortion by libel*. The offender is liable to imprisonment for a term not exceeding five years.

The Criminal Code provides various grounds for exemption from criminal liability, including:

- Selling a publication containing defamatory matter without knowledge thereof (Art. 304)
- Publishing proceedings of courts of justice (Art. 305)
- Publishing defamatory matter contained in parliamentary papers (Art. 306)
- Fair report of parliamentary or judicial proceedings (Art. 307)
- Fair report of a public meeting (Art. 308)
- Public benefit: “No person shall be deemed to publish a defamatory libel by reason only that he publishes defamatory matter that, on reasonable grounds, he believes is true, and that is relevant to any subject of public interest, the public discussion of which is for the public benefit” (Art. 309)
- Fair comment on public person or work of art (Art. 310)
- Truth (qualified): “No person shall be deemed to publish a defamatory libel where he proves that the publication of the defamatory matter in the manner in which it was published was for the public benefit at the time when it was published and that the matter itself was true” (Art. 311)
- Publication invited or necessary (Art. 312)

¹¹⁷ Criminal Code of Canada (R.S.C., 1985, c. C-46), last amended on 17 June 2016, available at: <http://laws-lois.justice.gc.ca/eng/acts/C-46/>.

- Answer to inquiries (Art. 313)
- Giving information to person interested (Art. 314)
- Publication in good faith for redress of wrong (Art. 315)
- Proving publication by order of legislature (Art. 316)

2. Criminal defamation of public officials

No provisions.

3. Criminal defamation of the head of state/head of government

Seditious libel is an offence of the Criminal Code of Canada. According to Art. 61, any person who speaks seditious words, publishes a seditious libel, or is a party to a seditious conspiracy, is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

Criminal Code Art. 59 defines seditious words as “words that express a seditious intention”; seditious libel as “a libel that expresses a seditious intention”; and seditious conspiracy as “an agreement between two or more parties to carry out a seditious intention”. Under Art. 59(4), “Without limiting the generality of the meaning of the expression ‘seditious intention’, every one shall be presumed to have a seditious intention who teaches or advocates, or publishes or circulates any writing that advocates, the use, without the authority of law, of force as a means of accomplishing a governmental change within Canada.”

An exception is provided under Art. 60 as follows: “Notwithstanding subsection 59(4), no person shall be deemed to have a seditious intention by reason only that he intends, in good faith, to show that Her Majesty has been misled or mistaken in her measures; to point out errors or defects in the government or constitution of Canada or a province, Parliament or the legislature of a province, or the administration of justice in Canada; to procure, by lawful means, the alteration of any matter of government in Canada; or to point out, for the purpose of removal, matters that produce or tend to produce feelings of hostility and ill-will between different classes of persons in Canada.”

4. Criminal defamation of the state, state symbols and state institutions

No provisions.

See, however, the offence of seditious libel under “Criminal defamation of the head of state”.

5. Criminal defamation of foreign heads of state

No provisions.

6. Criminal defamation of foreign states and symbols

No provisions.

7. Criminal defamation of the deceased

No provisions.

8. Criminal blasphemy

Blasphemous libel (Criminal Code Art. 296): Persons who publish a blasphemous libel are liable to imprisonment for a term not exceeding two years.

The Criminal Code provides that “It is a question of fact whether or not any matter that is published is a blasphemous libel” (Art. 296(2)); and

“No person shall be convicted of an offence under this section for expressing in good faith and in decent language, or attempting to establish by argument used in good faith and conveyed in decent language, an opinion on a religious subject” (Art. 296 (3)).

9. Recent legal changes

II. Practice

1. General notes

The vast majority of libel cases in Canada are brought in civil court and prosecutions for criminal defamation are rare, although not unheard of¹¹⁸. Recent research, however, has suggested that the number of convictions for criminal defamation are on the rise and being used “with increasing frequency to shut down political dissent and criticism of police officers, judges and powerful institutions, relatively speaking.¹¹⁹ Reports have highlighted, for example, the prosecution of a woman in Alberta for calling a local politician and a prosecutor “repulsive, corrupted, lying, thieving, deviant bastards both”¹²⁰.

In 2012, a restaurant owner in Ottawa was sentenced to 90 days in jail for libelling a woman who posted bad reviews of the restaurant online. The restaurant owner retaliated through various measures including “sending lewd emails” to the woman’s boss and setting up a face account under name on an “adult dating site”. The court reportedly also ordered the restaurant owner to take an anger management course, undergo counselling and perform 200 hours of community service¹²¹.

There are very few examples of criminal defamation cases brought against the media. As noted by the Committee to Protect Journalists, in 2011 Canadian fashion designer Peter Nygard filed criminal defamation charges against the Canadian Broadcasting Company over a

¹¹⁸ Kendyl Sebesta, “Bayfield man faces rare criminal libel charge”, Law Times, 27 August 2012, <http://www.lawtimesnews.com/201208272069/headline-news/bayfield-man-faces-rare-criminal-libel-charge>; “Canada’s criminal libel laws may threaten free speech”, J Source, 14 November 2016, <http://www.j-source.ca/Art/canada%E2%80%99s-criminal-libel-laws-may-threaten-free-speech>; Maija Kappler, “Canada’s criminal libel laws threaten free speech, says Ryerson journalism professor”, Ryerson Journalism, <http://ryersonjournalism.ca/2016/11/16/canadas-criminal-libel-laws-threaten-free-speech-says-ryerson-journalism-professor/>.

¹¹⁹ Maija Kappler, “Canada’s criminal libel laws threaten free speech, says Ryerson journalism professor”, Ryerson Journalism, <http://ryersonjournalism.ca/2016/11/16/canadas-criminal-libel-laws-threaten-free-speech-says-ryerson-journalism-professor/>.

¹²⁰ “Canada’s criminal libel laws may threaten free speech”, J Source, 14 November 2016, <http://www.j-source.ca/article/canada%E2%80%99s-criminal-libel-laws-may-threaten-free-speech>

¹²¹ “Cyberbullying restaurant owner gets 90 days in jail”, CBC, 16 November 2012, <http://www.cbc.ca/news/canada/ottawa/cyberbullying-restaurant-owner-gets-90-days-in-jail-1.1297395>.

documentary on Nygard aired in April 2010. A judge in Manitoba allowed the case to proceed in July 2015. The current status of proceedings is not known¹²².

In its 1998 ruling in *R. v. Lucas*, the Canadian Supreme Court upheld the constitutionality of Criminal Code Art. 300, which punishes defamatory libel known to be false. The Court stated: “Although it is important to recognize the right of the person defamed to sue for monetary damages it is equally if not more important that society discourage the intentional publication of lies calculated to expose another individual to hatred and contempt. The harm addressed by s. 300 is so grave and serious that the imposition of a criminal sanction is not excessive but rather an appropriate response. Defamatory libel can cause long-lasting or permanent injuries to the victim. The victim may be forever demeaned and diminished in the eyes of her community. The conduct which injures reputation by criminal libel is just as blameworthy as other conduct readily accepted as criminal, such as a deliberate assault or causing damage to property [...] The other reason for the existence of both a criminal and a civil remedy for defamation lies in a recognition of the problems and weaknesses that exist in civil proceedings in our present society. Civil proceedings can be prohibitively expensive for many Canadians. Even if a victim can afford to bring an action before the civil courts, a civil action will have little, if any, deterrent effect on impecunious defendants [...] Further, to accept the position that because offensive conduct can be pursued through private litigation it cannot be prosecuted criminally would seriously undermine Parliament’s authority to determine what conduct amounts to a public wrong. As far as defamation is concerned, civil and criminal processes can effectively co-exist. The criminal offence is not overbroad or ineffectual simply because a civil remedy exists¹²³.”

The Court’s ruling contrasted with the findings in 1984 of the Law Reform Commission of Canada, whose report stated: “We do not feel that a crime of defamation would be able to do better than which is already done by the civil law of defamation. Accordingly, we recommend that our Criminal Code should contain no crime of defamation, even in a restricted form¹²⁴.”

It should be noted, however, that the Supreme Court has not yet considered the constitutionality of Art. 301, which punishes defamatory libel, even in cases in which the allegedly libellous content may be true. However, a number of provincial courts (Alberta, Saskatchewan, Ontario, New Brunswick and Newfoundland and Labrador) have ruled that Art. 301 is unconstitutional¹²⁵. The government did not appeal the rulings in those cases.

2. Statistics

n/a

3. Selected cases

n/a

¹²² “Critics are Not Criminals”, CPJ, “Canada”, <https://cpj.org/reports/2016/03/north-america.php>. “Peter Nygard gains 2 court victories”, MyToba, 3 August 2015, <http://mytoba.ca/news/nygard-gets-great-news-n-y-federal-judge-and-manitoba-justice/>.

¹²³ *R. v. Lucas*, [1998] 1 S.C.R. 439, paras. 73-76, available at: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1606/index.do>.

¹²⁴ Arshy Mann, “The trouble with criminal speech”, Canadian Lawyer, 29 September 2014, <http://canadianlawyermag.com/5299/The-trouble-with-criminal-speech.html>.

¹²⁵ Arshy Mann, “The trouble with criminal speech”, Canadian Lawyer, 29 September 2014, <http://canadianlawyermag.com/5299/The-trouble-with-criminal-speech.html>.

CROATIA¹²⁶

I. Law

1. Criminal defamation and insult laws

The Croatian Criminal Code¹²⁷ recognises three forms of offences to honour of individuals.

Insult (Criminal Code Art. 147), defined as insulting another person. The penalty is a fine up to 90 times the daily rate.

Shaming (Criminal Code Art. 148) is defined as the presentation or dissemination of facts about a person before a third party that may harm that person's honour or reputation. The penalty is a fine up to 180 times the daily rate.

Criminal liability for insult and shaming is excluded if the offending content was disseminated in the course of journalistic work or if these statements were disseminated in the public interest or for some other justifiable reason, including scientific, literary and artistic work (Art. 148a).

Defamation (Criminal Code Art. 149) is defined as knowingly presenting or disseminating untrue facts about a person before a third party that may harm that person's honour or reputation. The penalty is a fine up to 360 times the daily rate.

If any of these offences is committed through the press, television, radio, computer system or network, at a public gathering or otherwise in a manner accessible to a large number of people, the penalties are increased to fines of 180, 360, and 500 times the daily rate for insult, shaming, and defamation, respectively. Also, according to Criminal Code Art. 151 the damaged party can request the publication of the judgment. If possible, the Court will order the judgment to be published in the same media outlet where the criminal act was committed.

According to Art. 150 of the Croatian Criminal Code, all criminal cases for insult, shaming, and defamation shall be prosecuted privately.

2. Criminal defamation of public officials

No provisions.

3. Criminal defamation of the head of state/head of government

No provisions.

4. Criminal defamation of the state and its symbols

¹²⁶ Information on Croatia originally published as part of the International Press Institute's Media Law Database and has been revised/updated for this present study.

¹²⁷ Criminal Code of Croatia, version in force as of 30 May 2015, available at <http://zakon.hr/z/98/Kazneni-zakon>.

Anyone who *publicly mocks, roughly disparages or exposes to hatred the Republic of Croatia, its flag, coat of arms or national anthem*, is liable to a punishment of imprisonment for up to one year (Criminal Code Art. 349).

5. Criminal defamation of foreign heads of state

No provisions.

6. Criminal defamation of foreign states and symbols

Anyone who *publicly mocks, roughly disparages or exposes to hatred a foreign state, its flag, coat of arms or national anthem*, is liable to a punishment of imprisonment for up to one year (Criminal Code Art. 356).

The same provision applies to the United Nations, European Union, Council of Europe, International Red Cross or any other internationally recognised organisation.

7. Criminal defamation of the deceased

If insult, shaming, or defamation is committed against a deceased person, a close relation of the person may bring a private criminal action (Criminal Code, Art. 150(2)).

8. Criminal blasphemy

No provisions.

9. Recent legal changes

In 2006, imprisonment as a possible punishment for defamation was abolished from the Criminal Code.

On 1 January 2013, new provisions of the Criminal Code entered into force. The revised Code introduced the new criminal act of “shaming”.

In 2015, Parliament passed an amendment¹²⁸ excluding criminal liability for Art. 148 (shaming) and Art. 147 (insult) when the offending content was disseminated in the course of journalistic work or if these statements were disseminated in the public interest or for some other justifiable reason, including scientific, literary and artistic work.

II. Practice

1. General notes

n/a

2. Statistics

¹²⁸ See http://narodne-novine.nn.hr/clanci/sluzbeni/2015_05_56_1095.html.

The following data are for the year **2013**¹²⁹ on criminal convictions from the Croatian Bureau of Statistics:

- For **Art. 147, par. 1** (insult, general), there were 41 convictions, resulting in 25 criminal fines.
- For **Art. 147, par. 2** (insult committed publicly or through the media), there were 18 convictions, resulting in 9 criminal fines.
- For **Art. 148, par. 1** (shaming, general), there were 2 convictions, resulting in 2 criminal fines.
- For **Art. 148, par. 2** (shaming committed publicly or through the media), there were 0 convictions.
- For **Art. 149, par. 1** (defamation, general), there were 16 convictions, resulting in 11 criminal fines.
- For **Art. 149, par. 2** (defamation committed publicly or through the media), there were 54 convictions, resulting in 42 criminal fines.
- Data do not show any convictions for **Arts. 349** (defamation of the Croatian state and state symbols) or **356** (defamation of foreign states or international organisations).

The following are the data for the year **2015**¹³⁰ on criminal convictions from the Croatian Bureau of Statistics:

- For **Art. 147, par. 1** (insult, general), there were 19 convictions, resulting in 18 criminal fines (of which 15 suspended) and one judicial admonition.
- For **Art. 147, par. 2** (insult committed publicly or through the media), there were 12 convictions, resulting in 11 criminal fines (of which 6 suspended) and 1 judicial admonition.
- For **Art. 148, par. 1** (shaming, general), there was 1 conviction, resulting in 1 criminal fine (suspended).
- For **Art. 148, par. 2** (shaming committed publicly or through the media), there was 1 conviction resulting in 1 criminal fine.
- For **Art. 149, par. 1** (defamation, general), there were 17 convictions, resulting in 16 criminal fines (of which 13 suspended) and 1 judicial admonition.
- For **Art. 149, par. 2** (defamation committed publicly or through the media), there were 33 convictions, resulting in 32 criminal fines (of which 18 suspended) and 1 judicial admonition.
- For **Art. 349** (publicly mocking/exposing to hatred the Republic of Croatia, its flag, coat of arms or national anthem), there were 2 convictions, resulting in 1 prison sentence ranging from 6 to 12 months and 1 prison sentence ranging from 2 to 3 months (both sentences were suspended).

Data do not show any convictions for **Art. 356** (defamation of foreign states or international organisations).

3. Selected cases

¹²⁹ Source: "Adult Perpetrators of Criminal Offences, Reports, Accusations and Convictions, 2013", Croatian Bureau of Statistics, published 31 October 2014, last accessed 20 August 2015. http://www.dzs.hr/default_e.htm.

¹³⁰ Source: "Adult Perpetrators of Criminal Offences, Reports, Accusations and Convictions, 2015", Croatian Bureau of Statistics, published 29 July 2016. http://www.dzs.hr/default_e.htm.

In April 2014, the Municipal Court in Zagreb found journalist Slavica Lukic of *Jutarnji list* guilty of criminal “shaming”, after Ivanka Trstenjak Rajkovic, co-owner of a private clinic, Medikol, filed a lawsuit against her. Lukic reported that Medikol although a private clinic, received 500 million Croatian kuna¹³¹ in public funds from 2007 to 2013, and still operated with losses. Later, the owners of Medikol initiated insolvency proceedings. The judge in the case reportedly ruled¹³² that Lukic could only be regularly investigating the activities of Medikol for some unknown, unjustified reason. According to the court’s decision, an individual can be held liable for “shaming” even if he/she reports the truth if it is the court’s opinion that the truth was not in the public interest. An appeals court later overturned the verdict against Lukic and ordered a new trial. In 2016, the Municipal Court acquitted Lukic under the amended version of the Criminal Code (see above under “Recent Legal Changes”). The plaintiff’s appeal was rejected.

In March 2012, a court in Zagreb found¹³³ political analyst and publicist Darko Petricic not guilty of libelling former Croatian President Stjepan Mesic. The latter had filed criminal charges after Petricic claimed that Mesic’s 2000 campaign for president had been financed by the Albanian mafia and that Mesic was one of the three richest persons in Croatia. However, the court ruled that Petricic’s statement only represented serious criticism of a politician, without the intent to defame. Additionally, the court in particular emphasised that the 2000 campaign had lacked transparency with regards to funding and, as such, it could not be established who the financial backers of Mesic’s campaign were; additionally, Petricic’s statement as to Mesic’s being one of the three richest persons in Croatia was an opinion that was not punishable.

¹³¹ 1 kuna = approx. €0.13 (March 2017).

¹³² Journalists’ Society of Croatia: “[We demand the removal of “shaming” from the Criminal Code](#)”, 4 July 2014. Also see (English): “[Vuksic: Defamation conviction of journalist Slavica Lukic is a disgrace](#)”, dalje.com, 4 September 2014. Interviews with Slavica Lukic and attorney in June 2016.

¹³³ “[Court: Darko Petricic didn’t defame Mesic or damage his honour and reputation](#)”, *Jutarnji list*, 29 March 2012. See also “[Stipe Mesic scheitert mit Verleumdungsklage](#)”, APA, 29 March 2012.

CYPRUS¹³⁴

I. Law

1. Criminal defamation and insult laws

No provisions. Criminal defamation was repealed in Cyprus in 2003 by Law 84(I)/2003.

The following offences may be noted, although not strictly related to defamation:

Public vilification: According to Art. 99 of the Criminal Code¹³⁵, publicly insulting another person so as to provoke an assault is a criminal offence punishable with imprisonment for up to one month or a fine.

False news: Art. 50 of the Cyprus Criminal Code states that any person who publishes, in any form, false news, or information that may otherwise undermine public order or the public's confidence in the state or organs or cause fear or concern to the public or interfere with any way the common peace and orderliness is guilty of a misdemeanour. The punishment is imprisonment for up to two years or a fine. However, the article states that if the court is satisfied that the publication was made in good faith or in circumstances justifying its publication, there will be no punishment.

2. Criminal defamation of public officials

No provisions.

3. Criminal defamation of the head of state/head of government

No provisions.

4. Criminal defamation of the state and its symbols

Insult of the armed forces (Criminal Code Art. 50D): Publicly insulting the army (Army of the Republic, National Guard or any other military force established by law) is a criminal offence under Art. 50D of the Cyprus Criminal Code. The punishment is imprisonment for up to two years or a fine of up to (formerly) 1,500 Cypriot pounds (approx. €2,500) or both.

5. Criminal defamation of foreign heads of state

Insult of foreign heads of state (Criminal Code Art. 68): Publishing anything intended to be read, or any sign or visible representation, that aims to humiliate, insult or expose to hatred or contempt a foreign head of state, ambassador or other foreign dignitary with the goal of

¹³⁴ Information on Cyprus originally published as part of the International Press Institute's Media Law Database and has been revised/updated for this present study.

¹³⁵ Criminal Code of Cyprus, (KEF.154), last amendments 43(I)/2016, available at: http://www.cylaw.org/nomoi/enop/non-ind/0_154/full.html.

compromising the peace and friendship between Cyprus and the foreign country in question is a misdemeanour¹³⁶.

6. Criminal defamation of foreign states and symbols

No provisions.

7. Criminal defamation of the deceased

Libelling the memory of a deceased person is a criminal offence under Art. 202A of the Cyprus Criminal Code. The punishment is imprisonment for up to one year. Criminal prosecution is only possible when the relatives of the deceased file a complaint.

8. Criminal blasphemy

Deliberately offending a person's religious sentiments is a criminal offence under Art. 141 of the Cyprus Criminal Code. The penalty is imprisonment for up to one year.

Additionally, publishing books, pamphlets, letters or articles in magazines and newspapers *with the intent of humiliating a religion or insult those who follow it* is a misdemeanour under Art. 142.

9. Recent legal changes

In 2003, defamation (libel, insult, etc.) was removed from the Cyprus Criminal Code by Law 84(I)/2003. In Cyprus, defamation is now exclusively handled by civil law.

II. Practice

1. General notes

n/a

2. Statistics

n/a

3. Selected cases

With regards to Criminal Code Art. 68 on foreign heads of state, there is no case law history, according to legal experts consulted by the authors of this study. A database search of decisions by both trial and appeals courts, including the Supreme Court, yielded no such cases.

¹³⁶ Meaning of misdemeanour (Πλημμέλημα): A non-serious breach of the law, punishable with a fine or short term imprisonment.

CZECH REPUBLIC¹³⁷

I. Law

1. Criminal defamation and insult laws

A new Czech Criminal Code¹³⁸ entered into force in 2009. It contains only one defamation-related offence.

Defamation (Criminal Code Art. 184) is defined as communicating false information that can seriously endanger another person's respect among his fellow citizens, in particular damaging his position in employment, and relations with his family, or causing him some other serious harm. Under Art. 184, it is punished with imprisonment for up to one year or a fine¹³⁹.

When defamation is committed through the press, film, television, publicly available computer networks or other similar media, the potential maximum punishment is increased to imprisonment for up to two years. A person may also be prohibited from practicing¹⁴⁰ a certain profession.

Note also that under Criminal Code Art. 355, public defamation of a nation, its language, any race or ethnic group, or a group of people based on their actual or perceived race, ethnicity, nationality, political opinion, religion or because they are actually or supposedly non-denominational, is punishable with imprisonment for up to two years. If the act is committed through the press, film, radio, television, publicly accessible computer network or other similarly effective manner, the punishment shall be imprisonment for up to three years.

2. Criminal defamation of public officials

No provisions.

3. Criminal defamation of the head of state

No provisions.

4. Criminal defamation of the state, state symbols and state institutions

No provisions¹⁴¹.

¹³⁷ Information on the Czech Republic originally published as part of the International Press Institute's Media Law Database and has been revised/updated for this present study.

¹³⁸ Criminal Code of the Czech Republic (*Zákon trestní zákoník*) Předpis č. 40/2009. Available online at: <https://www.zakonyprolidi.cz/cs/2009-40>.

¹³⁹ In the case that a criminal fine is ordered, the Criminal Code (Art. 68) provides that fines shall be imposed at a daily rate of between 100 and 50,000 Czech crowns for between 20 and 730 days. The daily rate is determined by the court taking into account the nature and seriousness of the offence as well as the personal financial circumstances of the offender, usually with regard to the person's net income.

¹⁴⁰ Prohibition of specific activity is usually used in connection to state-licensed activities (such as driving with a state-issued driving license). Currently, only electronic media are licensed by the state in the Czech Republic

¹⁴¹ The Czech Republic does have an administrative law that covers the physical misuse of symbols ("ZÁKON ze dne 18. září 2001 o užívání státních symbolů České republiky a o změně některých zákonů", available at www.epravo.cz/top/zakony/sbirka-zakonu/zakon-ze-dne-18-zari-2001-o-uzivani-statnich-symbolu-ceske

5. Criminal defamation of foreign heads of state

No provisions.

6. Criminal defamation of foreign states and symbols

No provisions.

7. Criminal defamation of the deceased

No provisions.

8. Criminal blasphemy

No provisions.

9. Recent legal changes

In late 2016, it was reported that Czech lawmakers were considering a bill that would criminalise defamation of the president. The OSCE RFoM responded: “This draft amendment would allow prosecution of critics of the president and poses a threat to freedom of expression and media freedom in the country,” she said. “The bill also contains a broad definition of what constitutes defamation of the president and denigration of his reputation¹⁴².”

II. Practice

1. General notes

n/a

2. Statistics

The following are official data on criminal convictions for the year **2014** from the statistics portal¹⁴³ of the Czech Ministry of Justice. The statistics are divided between convictions under the current Czech Criminal Code (entry into force: 2009) and the previous criminal code.

- For **Art. 184** (defamation) under the current criminal code, there were 23 convictions, resulting in 22 suspended prison sentences, and 1 sentence of community service.
- For **Art. 206** (defamation) under the previous criminal code, there were 16 convictions, resulting in 14 suspended prison sentences, 1 sentence of community service and 1 remitted sentence.

[republiky-a-o-zmene-nekterych-zakonu-2792.html](#)). In 2013/2014, Czech authorities fined a Slovak artist, Tomáš Rafa, under this law after Rafa displayed a series of Czech flags defaced with symbols of the Roma community. See Jan Richter, “Artist fined over designs of “Czech-Romany” flags”, 3 January 2014, Radio Praha, available at www.radio.cz/en/section/curraffrs/artist-fined-over-designs-of-czech-romany-flags.

¹⁴² “OSCE Representative urges Czech Parliament to abolish amendment criminalizing defamation of president”, OSCE, 16 November 2016, <http://www.osce.org/fom/282016>.

¹⁴³ See <http://cslav.justice.cz/InfoData/statisticke-rocenky.html>.

- Total for 2014: 39 convictions for criminal defamation, resulting in 36 suspended prison sentences, 2 sentences of community service, and 1 remitted sentence.

Statistics for the year **2013**:

- For **Art. 184** (defamation) under the current criminal code, there were 15 convictions, resulting in 1 unconditional prison sentence (of less than 1 year), 13 suspended prison sentences, and 1 sentence of community service.
- For **Art. 206** (defamation) under the previous criminal code, there were 17 convictions, resulting in 1 unconditional prison sentence (of between 1-5 years), 14 suspended prison sentences, 1 criminal fine, and 1 sentence of community service.
- Total for 2013: 32 convictions, resulting in 2 unconditional prison sentences, 27 suspended prison sentences, 1 criminal fine, and 2 sentences of community service.

In terms of **Art. 355** of the Criminal Code (group defamation), in 2013 there were 45 convictions, resulting in 36 suspended prison sentences, 7 sentences of community service, and two remitted sentences. In 2014, there were 23 convictions, resulting in 1 unconditional prison sentence (of between 1 and 5 years), 13 suspended prison sentences, and two sentences of community service (7 cases had alternative outcomes).

3. Selected cases

In general, criminal libel cases against journalists are uncommon in the Czech Republic, as most offended parties will press civil claims instead.

However, in 2012, the Constitutional Court confirmed (Decision II.ÚS 2042/12) the criminal defamation conviction of a journalist working for the tabloid newspaper Blesk (“Flash”).¹⁴⁴ In 2008, the journalist had covered the brutal murder of a woman and her one-and-a-half-year old child in the small town of Luh nad Svatavou, near the German border. The alleged killer had hung himself in the woman’s home. In his article, the journalist reported that, based on information he had obtained about the crime scene, the woman had had sex before being killed. The woman’s husband brought charges for defamation, claiming that the article insinuated that the alleged sexual encounter between the woman and her murderer was consensual. The sentenced upheld by the Constitutional Court ordered the journalist to pay a fine of 80,000 Czech crowns¹⁴⁵; in the case of non-payment the Court specified that the journalist would be sent to prison for three months. Although the newspaper ultimately paid the fine on the journalist’s behalf, it was noted that the latter’s monthly salary was 20,000 crowns.

¹⁴⁴ See also “[Soud potvrdil novináři trest za zprávu o tragédii se třemi mrtvými](#)”, Novinky.cz, 5 November 2012.

¹⁴⁵ 1 crown = €0.037 (March 2017).

DENMARK¹⁴⁶

I. Law

1. Criminal defamation and insult laws

The relevant offence in the Danish Criminal Code¹⁴⁷ is Art. 267 on *defamation*, defined as “violat[ing] 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”. The scope of this article includes both factual allegations as well as “terms of abuse”. The penalty for acts under this article is a fine or imprisonment for up to for months¹⁴⁸.

Art. 268 stipulates that defamation committed in bad faith (maliciously), or in cases in which the offender at least had good reason to think the information was false, the possible penalty increases to a prison term of up to two years. Art. 269 provides an exemption from criminal liability if the act under Art. 267 involves a fact-based allegation that is true of “if the issuer 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 personal interest of himself or of others”.

Under Art. 270, even true statements may be liable under Art. 267 if they are considered gratuitously insulting.

2. Criminal defamation of public officials

Art. 121 of the Danish Criminal Code sanctions “*attack[ing] a public servant with insult, abusive language or other offensive words or gestures*” in the course of the public servant’s duties. The penalty is a fine or imprisonment for up to six months.

3. Criminal defamation of the head of state

The criminal penalties for defamation are doubled if *committed against the Danish king or the head of government*, according to Criminal Code Art. 115. Hence, offenders face up to four years in prison. If the victim *the queen, the queen mother, or the heir to the throne*, punishment is increased by 50 percent (which corresponds to up to three years in prison).

4. Criminal defamation of the state, state symbols and state institutions

No provisions.

5. Criminal defamation of foreign heads of state

¹⁴⁶ Information on Denmark originally published as part of the International Press Institute’s Media Law Database and has been revised/updated for this present study.

¹⁴⁷ Criminal Code of Denmark, version as of 4 January 2017, available online at: <https://www.retsinformation.dk/Forms/r0710.aspx?id=181992>. Last accessed 12 January 2017.

¹⁴⁸ See Søren Sandfeld Jakobsen, Sten Schaumburg-Müller, *Media Law in Denmark* (2011: Kluwers Law International, Alphen aan den Rijn). Quoted English translations from the Danish Code in this document are taken from this source.

The criminal penalties for defamation are doubled if *committed against a foreign head of state or head of a foreign diplomatic mission* are doubled, according to Criminal Code Art. 110d. This corresponds to imprisonment for up to four years.

6. Criminal defamation of foreign states and symbols

Art. 110e of the Danish Criminal Code punishes the *public insult of a foreign state, its flag or other recognised symbol, or the flag of the United Nations or the European Council*. The punishment is a fine or imprisonment for up to two years.

7. Criminal defamation of the deceased

Art. 274 of the Danish Criminal Code sanctions defamation against deceased persons with up to four years in prison. The statute of limitations for this crime is 20 years, unless the element of malice as outlined in Art. 268 applies.

8. Criminal blasphemy

Under Art. 140 of the Danish Criminal Code, *mocking a person's religion or the doctrine of a faith* is a criminal offence punishable by imprisonment for up to four months.

Note that Art. 266b of the Danish Criminal Code covers 'hate speech'. Hate speech is defined as publicly making threatening, degrading or spiteful statements about a group of people, on the basis of their race, colour, national or ethnic origin, faith or sexual orientation. The punishment provided is fines or imprisonment for up to two years.

9. Recent legal changes

Following instances in which Danish flags were burned by protesters, MPs from the Danish People's Party have requested in recent years that Art. 110e be modified to include criminal liability for insulting Denmark or its symbols¹⁴⁹.

In February 2015, Danish Justice Minister Mette Frederiksen announced the government would not seek repeal of the country's blasphemy law. According to media accounts, Frederiksen based the decision on a recent report issued by Denmark's Criminal Law Council (Straffelovrådet), which had been asked to examine the issue in 2011. The report concluded that Art. 140 did not forbid sharp criticism of religion and suggested that, in the event of repeal, it would be difficult for the state to prosecute public burnings of the Bible or Koran¹⁵⁰.

In March 2015, the Danish government considered a draft proposal that would have tripled criminal penalties for violations of the right to private life and defamatory/false stories in the media. The proposal followed the publication of controversial articles by tabloid media¹⁵¹.

II. Practice

1. General notes

¹⁴⁹ See <https://www.retsinformation.dk/Forms/R0710.aspx?id=98608> and http://www.ft.dk/samling/20111/beslutningsforslag/b82/html_som_fremsat.htm.

¹⁵⁰ "IPI urges Denmark to reconsider decision to keep blasphemy law", IPI, 9 March 2015, <https://ipi.media/ipi-urges-denmark-to-reconsider-decision-to-keep-blasphemy-law/>.

¹⁵¹ See http://www.ft.dk/samling/20141/beslutningsforslag/b126/html_som_fremsat.htm.

The Danish Criminal Code's provision on insulting foreign heads of state (Art. 110d) has been applied extremely rarely. Experts believe that the law was last applied in 1934, when a group of persons "delivered a note to the German chargé d'affaires criticizing the then Nazi regime, i.e. 'down with the Nazi's bloody horror regime'" and were sanctioned under this article¹⁵².

The situation regarding Art. 110e (public insult of a foreign state or its symbols). This provision has not been applied since the Second World War. There were two reported cases prior to that time: in 1934, a person was charged for tearing down the Nazi flag (UfR 1934.589Ø) but acquitted as that flag was not the official German flag at the time. In 1936, a person was convicted for removing the Soviet flag from a Soviet delegation house (UfR 1936.820Ø).

Prosecutions under Arts. 110d and 110e are considered unlikely today. However, prosecutions under Art. 140 (blasphemy) were also previously thought unlikely, but in February 2017 prosecutors charged a man with blasphemy for burning a copy of the Koran¹⁵³.

2. Statistics

The following are official data on convictions for selected articles of the Criminal Code for the year **2014** from Statistics Denmark, provided upon request to the International Press Institute¹⁵⁴.

- For **Arts. 267-270** (defamation and insult), there was 1 conviction resulting in 1 criminal fine.
- For **Art. 121** (insult of a public official), there were 43 convictions, resulting in 7 prison sentences and 9 criminal fines. These numbers do not include data for insult of a police officer, considered under the same article, for which there were 289 convictions resulting in 46 prison sentences and 217 fines.
- For **Art. 115** (lèse-majesté), there were 0 convictions.
- For **Art. 140** (blasphemy), there were 0 convictions.
- For **Art. 274** (insulting the honour of the dead), there were 0 convictions.

3. Selected cases

In 2014, an appeals court sentenced¹⁵⁵ four journalists working for Denmark's public broadcaster to pay criminal fines for defamation in relation to a 2009 radio broadcast that had criticised a housing association. The court overturned a district court ruling that had found in favour of the journalists.

¹⁵² *Media Law in Denmark* (see above). See also Sarah Kot, "Omstridt tysk komiker ville også kunne blive straffet i Danmark", *Jyllands-Posten*, 19 April 2016, <http://jyllands-posten.dk/international/europa/ECE8596093/omstridt-tysk-komiker-ville-ogsaa-kunne-blive-straffet-i-danmark/>.

¹⁵³ See e.g. Kimiko de Freytas-Tamura, "Danish Man Who Burned Quran Is Prosecuted for Blasphemy", *The New York Times*, 23 February 2017, https://www.nytimes.com/2017/02/23/world/europe/denmark-quran-burning.html?_r=0.

¹⁵⁴ Historical data for the years 2007 to 2014 can be accessed via IPI here <http://legaldb.freemedia.at/legal-database/denmark/>.

¹⁵⁵ [OSCE representative concerned about defamation sentences in Denmark, urges decriminalization](#)", OSCE, 13 May 2014.

In 2007, a Danish historian named Bent Jensen gave an interview to the newspaper Jyllands-Posten in which he stated that there was evidence that a Danish journalist well known for his reporting on the Cold War, Jørgen Dragsdahl, was a KGB spy. Dragsdahl sued Jensen and the paper for libel. In 2010, a court in Svendborg sentenced¹⁵⁶ Jensen to pay a criminal fine of 40,000 and 200,000 kroner¹⁵⁷ in damages. Jyllands-Posten was acquitted by the same court. Bent appealed, and in October 2013, Denmark's Eastern High Court overturned the lower court's verdict. The High Court ruled¹⁵⁸ that Dragsdahl's actions were a subject of public interest and that Jensen had sufficient factual basis for making his claim; as such, under the circumstances, Jensen's right to freedom of expression overruled Dragsdahl's right to privacy. Dragsdahl appealed to the Danish Supreme Court, which in 2015 overturned the High Court's ruling and restored the criminal conviction. Jensen was ordered to pay 10 daily fines at a rate of 1,000 kroner, in addition to compensation of 100,000 and 502,700 kroner in legal costs. Jensen announced that he would take the case to the European Court of Human Rights¹⁵⁹.

¹⁵⁶ Bo Maltesen, "[Dragsdahl vinder injuriersag mod historiker](#)", 7 May 2010, *Politiken*.

¹⁵⁷ 1 krone = approx. €0.13 (March 2017).

¹⁵⁸ "[Domsresumé: Historiker frifundet for injurier mod journalist på grund af udtalelser om agentvirksomhed for KGB og desinformation under Den Kolde Krig](#)", Østre Landsret, 25 October 2013. [Full decision](#) (17. afd. nr. B-2018-10: *Bent Jensen mod Jørgen Dragsdahl*) of the Eastern High Court.

¹⁵⁹ "Danish historian takes KGB claims to EU court", *The Local*, 17 June 2015, <http://www.thelocal.dk/20150617/danish-historian-takes-kgb-claims-to-european-court>.

ESTONIA¹⁶⁰

I. Law

1. Criminal defamation and insult laws

No provisions.

2. Criminal defamation of public officials

Insult of representative of state authority (Criminal Code¹⁶¹ Art. 275): (1) Insult to a representative of state authority protecting public order in connection with performance of his or her official duties is punishable by a fine of up to 300 fine units or by detention. (2) The same act, if committed by a legal person, is punishable by a fine of up to €3200.

Defamation of representative of state authority (Criminal Code Art. 275¹): (1) Defamation of a representative of state authority in connection with performance of his or her official duties is punishable by a fine or up to two years' imprisonment. (2) The same act, if committed by a legal person, is punishable by a fine

Insult of court or judge (Criminal Code Art. 305): (1) Insult of a court, judge or lay judge in connection with their participation in administration of justice is punishable by a fine of up to 300 fine units or by detention. (2) The same act, if committed by a legal person, is punishable by a fine of up to €3200.

Defamation of court or judge (Criminal Code Art. 305¹): (1) Defamation of a court, judge or lay judge in connection with their participation in administration of justice is punishable by a fine or up to two years' imprisonment. (2) The same act, if committed by a legal person, is punishable by fine.

3. Criminal defamation of the head of state

No provisions.

4. Criminal defamation of the state, state symbols and state institutions

Defamation of official symbols (Criminal Code Art. 245): (1) A person who tears down, damages, profanes or otherwise defames the Estonian flag, national coat of arms or any other official symbol of the Republic of Estonia, or defames the national anthem, is punishable by a fine or up to one year's imprisonment. (2) The same act, if committed by a legal person, is punishable by a fine.

5. Criminal defamation of foreign heads of state

¹⁶⁰Information on Estonia originally published as part of the International Press Institute's Media Law Database and has been revised/updated for this present study.

¹⁶¹ Criminal Code of Estonia (RT I 2001, 61, 364), version as of 10 January 2017. This analysis quotes from the official English translation available at <https://www.riigiteataja.ee/en/eli/ee/522012015002/consolide/current>.

Defamation and insult of persons enjoying international immunity (Criminal Code Art. 247): (1) Defamation or insult of a person enjoying international immunity or of a family member of such person is punishable by a pecuniary punishment or up to two years' imprisonment. (2) The same act, if committed by a legal person, is punishable by a fine.

According to legal experts, this provision would include protection for heads of state or government and their family members according to diplomatic conventions as well as representatives of international organisations who enjoy diplomatic protection. Legal commentary on this article indicates that its primary justification is the protection of Estonia's international relations.

6. Criminal defamation of foreign states and symbols

Defamation of official symbols of foreign state or international organisation (Criminal Code Art. 249): (1) A person who tears down, damages, profanes or otherwise defames the national flag, national coat of arms or any other official symbol of a foreign state, or an official symbol of an international organisation, or defames the national anthem of a foreign state, is punishable by a pecuniary punishment or up to one year's imprisonment. (2) The same act, if committed by a legal person, is punishable by a pecuniary punishment.

7. Criminal defamation of the deceased

No provisions.

8. Criminal blasphemy

No provisions.

9. Recent legal changes

II. Practice

1. General notes

n/a

2. Statistics

n/a

3. Selected cases

n/a

FINLAND¹⁶²

I. Law

1. Criminal defamation and insult laws

The Finnish Criminal Code¹⁶³ establishes the following offences:

Defamation (Criminal Code Art. 24(9)): Defamation is defined as either spreading “false information or a false insinuation of another person so that the act is conducive to causing damage or suffering to that person, or subjecting that person to contempt” or “disparag[ing] another person in any other manner”.

Defamation is punished by a fine¹⁶⁴ only.

Aggravated defamation (Criminal Code Art. 24(10)): Defined as an act of defamation that causes “considerable suffering or particularly significant damage”, it is considered “aggravated”. The penalty is a fine or imprisonment for up to two years (Art. 24(10)).

According to Art. 24.12 of the Finnish Criminal Code, the “public prosecutor may not bring charges for dissemination of information violating personal privacy, defamation or aggravated defamation, unless the injured party has reported the offence for the bringing of charges. However, the Prosecutor-General may order that charges be brought, if the offence has been committed through the use of the mass media and a very important public interest requires that charges be brought.”

Also worth noting is Art. 11.10 of the Criminal Code, which punishes “ethnic agitation” with a fine or a prison term of maximum two years. “Ethnic agitation” is defined as spreading or making publicly available “an expression of opinion... where a certain group is threatened, defamed or insulted on the basis of its race, skin colour, birth status, national or ethnic origin, religion or belief, sexual orientation or disability or a comparable basis”.

2. Criminal defamation of public officials

No provisions.

3. Criminal defamation of the head of state

No provisions.

4. Criminal defamation of the state, state symbols and state institutions

¹⁶² Information on Finland originally published as part of the International Press Institute’s Media Law Database and has been revised/updated for this present study.

¹⁶³ Criminal Code of Finland (19.12.1889/39), last amended by Law 42/2017, available at: <http://www.finlex.fi/fi/laki/ajantasa/1889/18890039001>. English translation (last amended by Law 766/2015), available at: <http://www.finlex.fi/en/laki/kaannokset/1889/en18890039.pdf>.

¹⁶⁴ Criminal fines in Finland are calculated as “day fines”, i.e., a set amount multiplied by a number of days between one and 120. The amount itself is not subject to any minimum or maximum limits but is rather calculated based on a person’s particular financial situation.

No provisions in the Criminal Code.

Note, however, that the Act on the Finnish Flag provides the possibility of a fine for flag desecration and disrespectful use of the flag¹⁶⁵.

5. Criminal defamation of foreign heads of state

No provisions.

6. Criminal defamation of foreign states and symbols

No provisions.

7. Criminal defamation of the deceased

Art. 24.9(3) of the Finnish Criminal Code specifies that defamation charges can also be brought for spreading "false information or a false insinuation about a deceased person", but only insofar as the statement is "conducive to causing suffering to a person to whom the deceased was particularly close". The penalty is a fine.

8. Criminal blasphemy

Art. 17.10(1) of the Finnish Criminal Code prohibits "*publicly blasphemes against God* or, for the purpose of offending, *publicly defames or desecrates what is otherwise held to be sacred by a church or religious community*". The penalty is a fine or imprisonment for up to six months.

9. Recent legal changes

In 2014, the Finnish Criminal Code was amended to abolish the possibility of imprisonment for defamation, except in cases of "aggravated" defamation. In addition, the definition of "aggravated" defamation was altered in that, previously, any defamation offence "committed by using the mass media" was considered to be such; under the current code, only defamation that causes "considerable or long-lasting" suffering or damage can be considered "aggravated".

II. Practice

1. General notes

Note that under Finnish law, private claims for damages resulting from defamation can only be brought in conjunction with criminal charges, and any compensation awarded is dependent upon the outcome of the criminal case.

2. Statistics

¹⁶⁵ See <http://www.finlex.fi/sv/laki/ajantasa/1978/19780380>.

The following are official data on criminal convictions for the year **2013** (most recent complete data available) from Statistics Finland, provided upon request to the International Press Institute¹⁶⁶.

- For **Art. 24, par. 9** (defamation), there were 165 sentences at trial, resulting in 3 suspended prison sentences, 157 criminal fines, and 5 waived sentences. Additionally, there were 54 summary penal judgments. In total, 4,950 alleged instances of defamation were reported to the police.
- For **Art. 24, par. 10** (aggravated defamation), there were 12 sentences at trial, resulting in 1 unconditional prison sentence, 5 suspended prison sentences, 5 criminal fines, and 1 sentence of community service. In total, 78 alleged instances of aggravated defamation were reported to the police.
- For **Art. 17, par. 10** (blasphemy), there were no sentences of any kind. (There were two summary penal judgments each in 2011 and 2012.) In total, 6 instances of alleged instances of blasphemy were reported to the police in 2013.

3. Selected cases

In 2008, the Helsinki District Court convicted two editors at a Finnish television broadcaster of criminally defaming a well-known Finnish businessman (“K.U.”) over a report truthfully stating that the country’s tax authority had previously refused a police request to investigate K.U.’s connections to a sports centre under police investigation. The broadcaster had used the case an example of the lack of cooperation between those two government bodies. At the time, K.U. was on trial for unrelated charges of money laundering, and footage from that trial was used during the broadcaster’s report. The public prosecutor in the case accused the editors of deliberately making false insinuations about K.U. and, given the station’s wide reach, charged the pair with “aggravated” defamation, carrying a maximum prison sentence of two years. In addition, K.U. sought civil damages for pain and suffering.

The District Court ruled that although nothing in the report was false (it was established that, in fact, the tax authority had refused the police request), the circumstances in which it was presented “create[d] an impression that [K.U.] had made himself guilty of a crime by investing his assets in the sports centre business”. The District Court held that the editors should have known that the report amounted to a “false insinuation” that could and should have been verified as to its truthfulness. The District Court did find the editors not guilty of “aggravated” defamation; this was due in part to the Court’s observation that K.U. had been on trial for a not dissimilar crime to the one the broadcaster had allegedly insinuated.

The editors were ordered to pay criminal fines of €810 and €1,230, respectively. In addition, they and the broadcaster’s editor-in-chief were ordered to pay K.U. €1,800 in moral damages and €1,500 in legal costs. Both the Helsinki Court of Appeal and the Finnish Supreme Court dismissed the editors’ appeal without comment. The editors appealed to the European Court of Human Rights, which in 2013 ruled in their favour¹⁶⁷ citing public interest in the report, the fact that K.U. had been in the public limelight, and that the information had been presented in a balanced manner. This case was notable in that the Court explicitly applied privacy standards to a defamation case.

¹⁶⁶ Full data on sentences from 2011 to 2013 and on offences reported to the police from 2005 to 2014 can be downloaded via IPI at: <http://legaldb.freemedia.at/legal-database/finland/>.

¹⁶⁷ *Ristamäki and Korvola v. Finland*, no. 66456/09 (2013)

In a similar case, the Helsinki District Court convicted, Tiina Johanna Salumäki, a journalist working for the Finnish tabloid newspaper *Ilta-Sanomat*, and her editor of criminally defaming another “well-known Finnish businessman” by means of “false insinuation”. The charges related to a 2004 article in which Salumäki had reported that the businessman had connections to the victim of a recent homicide; specifically, she reported (accurately) that the victim and the businessman were being jointly investigated by the police for money smuggling. The article, which was entitled “Cruel killing in Vantaa: The executed man had connections with K.U.?” and which later specified that the businessman was not a suspect in the victim’s killing, was accompanied by a biographical column on the businessman.

Prosecutors claimed that the presentation of the article amounted to an insinuation that the businessman “might have had a motive to commission the killing”. The District Court agreed, ruling that although the businessman was a public figure and although “each piece of information contained [in the article] was true”, by the presentation of the information Salumäki had effectively asked whether or not the businessman was involved in the victim’s murder and “had left the answers open”. Ruling that “[c]onnecting a person groundlessly with a contract killing violates his honour”, the District Court sentenced Salumäki to a criminal fine of €720 and ordered her to pay jointly with the editor €2,000 in moral damages and €1,500 in legal costs to the businessman.

The Helsinki Court of Appeal upheld the judgment, adding, “The heading of the article and its tone were such that the fact that [K.U.] was not, strictly speaking, an accomplice to the homicide only became clear on reading through the article more closely.” The Supreme Court denied an appeal. The Court of Appeal also reportedly found that, as a professional journalist, Salumäki should “have considered it probably that her article contained a false insinuation.”

In 2014, the European Court of Human Rights upheld¹⁶⁸ Salumäki’s conviction, invoking the privacy standards the Court had developed in its 2012 *Axel Springer* decision. The Court stated that there “was no evidence, or indeed any allegation, of factual errors, misrepresentation or bad faith on the part of [Salumäki]. It also agreed that homicide was “clearly a matter of legitimate public interest” and that the businessman “had already been in the limelight”. However, the Court found that the “juxtaposition of two unrelated criminal investigations, with headlines which clearly suggested to the ordinary reader that there was more to [murder] than what was actually being stated in the text of the articles” was “damaging to the reputation of [the businessman]”. The Court also noted that Salumäki had not sought to verify the accuracy of her “insinuation.” Finally, in the Court’s opinion, that fact that the conviction would not go on Salumäki’s criminal record because it was only a fine (as per Finnish law), the punishment could not be considered overly severe.

In 2014, the Eastern Finland Court of Appeal confirmed the conviction for aggravated defamation of Urpo Airaksinen, the publisher of a local news site called *Liperi News*. Airaksinen, who was also the vice member of a local government body, had criticised leaders of the body on the site. The North Karelia District Court had handed the man a six-month suspended prison sentence. He was also ordered to pay a substantial sum in damages and legal costs¹⁶⁹.

¹⁶⁸ *Salumäki v. Finland*, no. 23605/09 (2014).

¹⁶⁹ See Matti Asikainen, “Vankeutta Liperin Uutisten julkaisijalle”, YLE, 3 May 2013, <http://yle.fi/uutiset/3-6617334>.

FRANCE¹⁷⁰

I. Law

1. Criminal defamation and insult laws

France's Law of 29 July 1881 on the Freedom of the Press¹⁷¹ establishes the following "delicts", or criminal wrongs.

Defamation (Art. 32), defined as any allegation or accusation of a fact that causes an attack on the honour or consideration of a person. When directed at private persons, defamation is punishable with a fine of €12,000.

Insult (Art. 33), defined as "any offensive expression, scornful word, or invective that does not contain the accusation of a fact". The penalty is a fine of €12,000.

The French Criminal Code¹⁷² also establishes two related "contraventions", or petty offences, related to private acts. Art. R621-1 punishes "non-public defamation toward a person" with a fine of the first degree. Art. R621-2 also punishes "unprovoked" non-public insult toward a person" with a fine of the first degree.

Public prosecution can normally only be undertaken upon request of the offended party. The only exception to this is defamation based on group characteristic, which may be undertaken at the prosecutor's own initiative (Art. 48). All complainants also have the right to initiate a private criminal prosecution. The Constitutional Council recently extended¹⁷³ this right to public bodies and members of government.

Under Art. 32 of the Law on Freedom of the Press, defamation directed against a class of people based on their race, ethnicity, religion, sex, sexual orientation or handicap is punishable by one year in prison and/or a fine of €45,000; in the case of insult, the punishment is six months in prison and a fine of €22,500.

2. Criminal defamation of public officials

When criminal defamation is committed against public officials, the maximum fine increases to €45,000. The list of officials includes the French president, ministers, legislators, and ministers of religions subsidised by the state (Law of 29 July 1881 on the Freedom of the Press Arts. 30-31).

In addition, the French Criminal Code punishes non-public grave insult (*outrage*) in the form of words, gestures, threats, writings or images of any kind against a person invested with a

¹⁷⁰ Information on France originally published as part of the International Press Institute's Media Law Database and has been revised/updated for this present study.

¹⁷¹ Loi du 29 juillet 1881 sur la liberté de la presse, version as of 29 January 2017, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006070722>.

¹⁷² Criminal Code of France, version as of 17 February 2017, <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070719>.

¹⁷³ Conseil constitutionnel, [Décision n° 2013-350 QPC du 25 octobre 2013](#).

public-service mission with a fine of up to €7,500. In certain, specific cases outlined by the law, *outrage* may also be punished with imprisonment of up to one year.

3. Criminal defamation of the head of state/head of government

In 2013, France abolished Art. 26 of the Law of 29 July 1881 on the Freedom of the Press, which had criminalised offence toward the French president. However, it should be noted that, at the same time, the French president was added to the list of public officials receiving increased protection from defamation (see under "Criminal defamation of public officials").

4. Criminal defamation of the state, state symbols and state institutions

Art. 433-5-1 of the French Criminal Code punishes *outrage* (grave insult) of the national anthem or tricolour flag "at a demonstration organised or regulated by the public authorities" with a fine of €7,500 and six months in prison if "committed as a group action"¹⁷⁴.

5. Criminal defamation of foreign heads of state

Insult (*outrage*) committed against ambassadors or other official representatives of foreign countries in France is punishable with a fine of up to €45,000 (Law of 29 July 1881 on the Freedom of the Press Art. 37).

6. Criminal defamation of foreign states and symbols

No provisions.

7. Criminal defamation of the deceased

No provisions.

Art. 34 of the Law of 29 July 1881 on the Freedom of the Press states that no charges can be brought for defamation or insult against the dead unless the offender "intended to attack the honour or the consideration of their descendants, spouses, or legal heirs".

8. Criminal blasphemy

No provisions.

Previously, blasphemy was a criminal offence in France only in the region of Alsace-Moselle (départements Haut-Rhin, Bas-Rhin, and Moselle). The relevant provisions were repealed in October 2016.

9. Recent legal changes

French defamation law has undergone some notable changes over the past 15 years, much of which was prompted by rulings of the European Court of Human Rights (ECtHR).

¹⁷⁴ Note that according to Décret n° 2010-835 du 21 juillet 2010 relatif à l'incrimination de l'outrage au drapeau tricolore, in addition to the cases covered by Criminal Code Art. 433-5-1, desecration of the flag is punishable with a fine of €1,500 (about US\$1,900).

Nearly all prison sentences for defamation and insult were removed in 2000; only defamation and insult on account of race or other group characteristic remain punishable with imprisonment (one year and six months, respectively).

In 2013, the ECtHR ruled¹⁷⁵ that France had violated Art. 10 of the European Convention on Human Rights after a French citizen was fined €30 for violating Art. 26 of the Law on Freedom of the Press, which prohibits offence toward the French president. The defendant, Hervé Eon, as was already noted above, was convicted for holding up a sign reading “Get lost, you prat” during a visit by then-President Nicholas Sarkozy – an allusion to Sarkozy’s use of a similar phrase when confronted by a man who refused to shake Sarkozy’s hand. The Court found that prosecutions under Art. 26 were “likely to have a chilling effect on satirical forms of expression relating to topical issues”. The article was abolished in 2013 in a move widely reported to have decriminalised insult toward the French president. However, the Law on Freedom of the Press was in fact modified to include the French president in the list of public officials receiving increased protection from defamation under Arts. 30-31.

In 2011, France’s Constitutional Council (*Conseil constitutionnel*) ruled¹⁷⁶ that an exception to the defence of truth contained in the Law on Freedom of the Press for matters more than 10 years old was unconstitutional. In 2013, the Constitutional Council threw out¹⁷⁷ another exception to the defence of truth, for matters relating to a person’s pardoned or expunged criminal record. The Council’s decision followed a 2007 Council of Europe Parliamentary Resolution in which France was specifically urged to modify its truth defence.

In October 2016, the France abolished criminal blasphemy laws in the region of Alsace-Moselle (départements Haut-Rhin, Bas-Rhin, and Moselle). These provisions had been the only remaining blasphemy laws in France. Their peculiarity stemmed from the preservation of laws enacted when the region was under German control. Art. 166 of the local criminal code (*droit local*) provided that whoever commits “public blasphemy against God” or “publicly offended one of the Christian religions” or other established religious community was to be punished with up to three years in prison¹⁷⁸. The repeal took effect on 27 January 2017¹⁷⁹.

II. Practice

1. General notes

n/a

2. Statistics

n/a

3. Selected cases

In 2006, the Paris Court of Appeals convicted an editor and a journalist at the magazine Paris Match of criminal defamation after printing an interview with a former insurance executive,

¹⁷⁵ *Eon v. France*, no. 26118/10 (2013).

¹⁷⁶ Conseil constitutionnel, Décision n° 2011-131 QPC du 20 mai 2011.

¹⁷⁷ Conseil constitutionnel, Décision n° 2013-319 QPC du 07 juin 2013.

¹⁷⁸ See, e.g., Philippe Dezempte, “Le délit de blasphème abrogé au sénat”, France3, 14 October 2016, <http://france3-regions.francetvinfo.fr/grand-est/delit-blaspheme-abroge-au-senat-1108889.html>.

¹⁷⁹ [Code pénal local](#) (Alsace-Moselle).

François Marland, who implicated another businessman, Jean-François Henin, in a Franco-Californian insurance fraud scandal known as the Executive Life affair. Marland was convicted along with the two journalists. The appeals court ruled that the three defendants could not plead justification because Marland's revelations appeared objectively motivated by a desire for revenge, thus failing the malice stage of the test. The parties appealed the verdict to the Criminal Chamber of the French Court of Cassation, arguing, among other things, that the public's right to know (the "legitimate aim" in this case) supported the publication of the article in question, even if "the witness [Marland] implicated a third person in a fraudulent financial transaction for personal reasons". In 2008, the Court of Cassation reversed the verdict, ruling that the appeals court had failed to take into account the totality of circumstances surrounding the publication. According to the Court¹⁸⁰, "Considering that the incriminating article concerns a subject of general interest relating to a fraudulent transaction by a banking arm of a foreign insurance company in which the French state had a financial interest", the publication "did not overstep the limits of free expression in the sense of Art. 10 of the European Convention on Human Rights".

Defamation cases ending in criminal fines, in addition to orders for civil compensation, are not altogether uncommon in France. For example:

- In October 2014, an appeals court upheld a lower court ruling ordering three journalists with the television station France 3 Roussillon to pay criminal fines in the amount of €1,000, €1,000 and €500, respectively, for defaming the former mayor of the town of Barcarès¹⁸¹.
- In September 2016, an appeals court upheld a lower court ruling ordering a journalist and an editor from the magazine Marianne to pay criminal fines in the amount of €500 and €1,000, respectively, for defaming a university professor in an article related to genetically modified crops¹⁸².
- In March 2014, an editor and two journalists at Paris Match were sentenced to pay criminal fines (€1,000 and €1,500 each, respectively) as well as €1 in symbolic damages to Teodorin Obiang (Jr.), son of the long-serving dictator of Equatorial Guinea. and €2,000 to cover the latter's legal costs. The charges related to a 2012 article in which the magazine reported that Obiang Jr. had been indicted on drug trafficking charges in the United States but that the scandal had been "quickly snuffed out" ("mais le scandale est vite étouffé"). The conviction was restricted to that single sentence, reportedly because it was based on a rumour; other impugned phrases in the article were deemed not to be libellous¹⁸³.

In September 2011, a court rejected a criminal defamation case brought by Equatorial Guinean dictator Teodoro Obiang (Sr.) against the French charity Catholic Committee against Hunger and for Development (CCFD, Comité catholique contre la faim et pour le

¹⁸⁰ [Arrêt n° 59 du 11 mars 2008](#) (06-84.712), Cour de cassation (Chambre criminelle), pg. 265. See also: "Infractions de presse et droit de savoir du public", Publications de la Cour de cassation.

¹⁸¹ See, e.g., <http://tvmag.lefigaro.fr/le-scan-tele/polemiques/2014/10/03/28003-20141003ARTFIG00148-trois-journalistes-de-france-3-condamnes-pour-diffamation.php>.

¹⁸² See, e.g., <https://www.infogm.org/5878-ogm-journaliste-marianne-condamne-pour-diffamation?lang=fr#nb17-1>.

¹⁸³ See Scott Griffen, "In France, judicial evolution in defamation cases protects work of civil society", IPI, 25 September 2014, <https://ipi.media/in-france-judicial-evolution-in-defamation-cases-protects-work-of-civil-society/>.

développement). The case related to a 2009 CCFD report called “Ill-gotten gains: Who profits from crime?” (“Biens mal acquis: à qui profite le crime?”), which alleged that Obiang’s estimated \$700 million fortune had been acquired by siphoning off the country’s oil revenue. The chapter also included accusations of money laundering via real estate in France and Spain. CCFD’s cited an array of sources to support its claims, including, among others, academic studies, numerous investigative reports by NGOs and media outlets, and the results of a 2004 corruption inquiry by the United States Senate. Obiang requested that the relevant passages be stricken from public view and that the charity be forced to run a court order on its home page entitled “CCFD Convicted” for a minimum of 90 days. He also demanded symbolic damages in the amount of €1 (a common request in French libel cases). The Paris Court of First Instance, however, ruled that CCFD had published the impugned material in good faith. Significantly, the court determined that the criteria for evaluating good-faith reporting were to be less strictly applied when the speaker is not a professional journalist, and that “even more tolerance” is required when evaluating expressions made by activist groups. On the basis of this flexible understanding, the court ruled that CCFD’s reliance on trustworthy and well-documented sources sufficiently met the demand of a “serious investigation”, even if the organisation – as stressed by Obiang Sr.’s lawyers – had done no independent research of its own¹⁸⁴.

In 2013, the ECtHR ruled¹⁸⁵ that France had violated Art. 10 of the European Convention on Human Rights after a French citizen was fined €30 for violating Art. 26 of the Law on Freedom of the Press, which prohibits offence toward the French president. The defendant, Hervé Eon, was convicted for holding up a sign reading “Get lost, you prat” during a visit by then-President Nicholas Sarkozy – an allusion to Sarkozy’s use of a similar phrase when confronted by a man who refused to shake Sarkozy’s hand. The Court found that prosecutions under Art. 26 were “likely to have a chilling effect on satirical forms of expression relating to topical issues”.

In 2014, a French Muslim legal-defence group filed criminal blasphemy charges against the satirical magazine Charlie Hebdo over a 2013 front page that read “The Koran is shit”. The charges were filed in Strasbourg under the Alsace-Moselle blasphemy provisions¹⁸⁶. Those provisions were repealed in October 2016 (see under “Recent legal changes”).

¹⁸⁴ See Scott Griffen, “In France, judicial evolution in defamation cases protects work of civil society”, IPI, 25 September 2014, <https://ipi.media/in-france-judicial-evolution-in-defamation-cases-protects-work-of-civil-society/>.

¹⁸⁵ *Eon v. France*, no. 26118/10 (2013).

¹⁸⁶ “Muslims sue satirical paper for blasphemy, MP for hate speech”, Radio France International, 17 February 2014, www.english.rfi.fr/france/20140217-muslims-sue-satirical-paper-blasphemy-mp-hate-speech.

GEORGIA¹⁸⁷

I. Law

1. Criminal defamation and insult laws

No provisions¹⁸⁸.

2. Criminal defamation of public officials

No provisions.

3. Criminal defamation of the head of state/head of government

No provisions.

4. Criminal defamation of the state, state symbols and state institutions

The Georgian Criminal Code foresees the offence of Desecration of the State Coat of Arms or of the National Flag (Art. 343). The penalty is restriction of liberty for up to two years or with imprisonment for up to two years. However, this offence is interpreted as referring to physical acts only.

5. Criminal defamation of foreign heads of state

No provisions.

6. Criminal defamation of foreign states and symbols

No provisions.

7. Criminal defamation of the deceased

No provisions.

8. Criminal blasphemy

No provisions¹⁸⁹.

¹⁸⁷ Information on Georgia is provided with the expert assistance of Giorgi Meladze, associate professor, Ilia State University.

¹⁸⁸ Criminal Code of Georgia, Law No. 2287 of 22/07/1999, available at <https://matsne.gov.ge/en/document/view/16426?impose=original>. Official English translation: <https://matsne.gov.ge/en/document/download/16426/157/en/pdf>.

¹⁸⁹ The Georgian Criminal Code includes the offence of *Unlawful interference with the performance of divine service (Art. 155)*: 1. Unlawful interference with the performance of divine service or other religious rites or customs using violence or threat of violence, or if accompanied by an insult to a believer's religious feelings, shall be punished by a fine or corrective labour for up to a year, or with imprisonment for up to two years. 2. The same act committed by abusing one's official position, shall be punished by a fine or imprisonment for a term of one to five years, with or without deprivation of the right to hold an official position or to carry out a particular activity for up to three years.

9. Recent legal changes

II. Practice

1. General notes

n/a

2. Statistics

n/a

3. Selected cases

n/a

GERMANY¹⁹⁰

I. Law

1. Criminal defamation and insult laws

The German Criminal Code provides the following three types of defamation-related offences:

Insult (Criminal Code Art. 185) is punishable by up to one year in prison (two if committed “by means of an assault”) or a fine¹⁹¹.

Defamation (Criminal Code Art. 186) is defined as assert[ing] or disseminat[ing] a fact related to another person which may defame him or negatively affect public opinion about him”. It is punished with a fine or imprisonment for up to one year. A sentence of imprisonment for up to two years can be imposed if the act is “committed publicly or through the dissemination of written materials¹⁹²”.

Slander (Criminal Code Art. 187) consists of a defamatory statement that the speaker knows to be false and that is aimed at damaging a person’s reputation “or endanger[ing] his creditworthiness”. The punishment is a fine or imprisonment for up to two years. A sentence of imprisonment for up to five years can be imposed if the act is committed publicly or via media.

2. Criminal defamation of public officials

Under Art. 188 of the German Criminal Code, *defaming “a person involved in the popular political life”* publicly or via the media, in a way that “may make [the person’s] public activities substantially more difficult” is a criminal offence. The penalty is imprisonment for three months to five years. Slander under the same conditions can result in six months to five years behind bars.

3. Criminal defamation of the head of state/head of government

Disparaging the German president publicly or through the media is a criminal offence under Art. 90 of the German Criminal Code. It carries a potential sentence of three months to five years in prison. The punishment may be mitigated in less serious cases, but the minimum punishment is increased to six months in prison if the defamation was an intentional act and was aimed at harming the president’s reputation or “intentionally supports efforts against the continued existence of the Federal Republic of Germany or against its constitutional principles”.

¹⁹⁰ Information on Germany originally published as part of the International Press Institute’s Media Law Database and has been revised/updated for this present study.

¹⁹¹ German criminal fines are determined on a “daily rate” basis. The minimum and maximum daily rates are €1 and €30,000. These may be ordered for a minimum of five days and a maximum of 360 days. The financial situation of the offender may be taken into account.

¹⁹² According to Art. 11(3) of the Criminal Code, the term “written materials” includes “audiovisual media, data storage media, illustrations and other depictions” Hereafter the term “media” will be used as shorthand.

In addition, a court may, at its own discretion, forbid the offender from practicing his/her profession and suspend certain of his/her civil rights, including the ability to hold public office, to vote and be elected in public elections (Art. 92a).

4. Criminal defamation of the state and its symbols

Insulting or maliciously expressing contempt toward Germany or one of its states or its constitutional order; or *toward the colours, flag, coat of arms of Germany* or of a German state is a criminal offence under Art. 90a of the German Criminal Code. The penalty is a fine or imprisonment for up to three years.

The maximum penalty increases to five years in prison “if the offender by the act intentionally supports efforts against the continued existence of the Federal Republic of Germany or against its constitutional principles”. In addition, in either case the court may, at its own discretion, forbid the offender from practicing his/her profession and suspend the offender’s civil rights.

Furthermore, Art. 90b of the Criminal Code prohibits *disparaging the constitutional organs of the German state* (the Bundesrat (federal council), the Bundestag (Federal Parliament), the federal government and the federal constitutional court) or similar organs of a federal state “in a manner detrimental to the respect for the state” which “thereby intentionally supports efforts against the continued existence of [Germany] or its constitutional principles”. The penalty is imprisonment from three months to five years and, at the court’s discretion, the possible suspension of civil rights and the right to practice one’s profession.

5. Criminal defamation of foreign heads of state

Insult to foreign officials (Criminal Code Art. 103): Covers insulting a foreign head of state, or a member of a foreign government in Germany in official capacity, or the accredited head of a foreign diplomatic mission in Germany. The penalty is up to three years in prison or a fine. In the case of slander, the penalty is increased to three months to five years in prison.

6. Criminal defamation of foreign states and symbols

Insult “by mischief” toward a foreign flag or a foreign symbol legally displayed in Germany is a criminal offence under Art. 104 of the Criminal Code. It is punished with a fine or imprisonment for up to two years.

7. Criminal defamation of the deceased

Disparaging the “memory of a deceased person” is a criminal offence under Art. 189 of the German Criminal Code. It is punished with a fine or imprisonment for up to two years.

8. Criminal blasphemy

Art. 166 of the German Criminal Code prohibits *defaming, publicly or via the media, the “religion or ideology of others”* (*Beschimpfung den Inhalt des religiösen oder weltanschaulichen Bekenntnisses*) or “a church or other religious or ideological association

within Germany, or their institutions or customs” in a manner “that is capable of disturbing the public peace”. The punishment is a fine or imprisonment for up to three years.¹⁹³

9. Recent legal changes

In January 2017, the German government announced that it would present a bill to Parliament that would repeal Criminal Code Art. 103 (insult to foreign officials). Under this bill, the repeal would take effect on 1 January 2018.

II. Practice

1. General notes

n/a

2. Statistics

The following are official data¹⁹⁴ on criminal convictions for the year **2013** from the German Statistics Office (Statistisches Bundesamt).

- For **Art. 185** (insult), there were 26,757 criminal cases adjudicated, leading to 21,454 convictions, in turn resulting in 363 unconditional prison sentences, 701 suspended prison sentences, and 20,390 criminal fines.
- For **Art. 186** (defamation), there were 460 criminal cases adjudicated, leading to 267 convictions, in turn resulting in 2 unconditional prison sentences, 7 suspended prison sentences, and 258 criminal fines.
- For **Art. 187** (slander), there were 417 criminal cases adjudicated, leading to 242 convictions, in turn resulting in 4 unconditional prison sentences, 10 suspended prison sentences, and 228 criminal fines.
- For **Art. 188** (defaming a person involved in the popular political life), there were 6 criminal cases adjudicated, leading to 0 convictions.
- For **Art. 189** (defamation of the deceased), there were 8 criminal cases adjudicated, leading to 3 convictions, in turn resulting in 1 unconditional prison sentence and 2 criminal fines.
- For **Art. 90** (defamation of the President), there were 0 criminal cases adjudicated.
- For **Art. 90a** (defamation of the State and its symbols), there were 10 criminal cases adjudicated, leading to 8 convictions, in turn resulting in 8 criminal fines.
- For **Art. 90b** (defamation of the constitutional organs of the State), there was 1 criminal case adjudicated, which did not result in a conviction.
- For **Arts. 103-104** (defamation of foreign officials and foreign states and their symbols), there were two criminal cases adjudicated, leading to 0 convictions.
- For **Art. 166** (blasphemy), there were 25 criminal cases adjudicated, leading to 12 convictions, in turn resulting in 1 suspended prison sentence and 11 criminal fines.

3. Selected cases

Insult to foreign heads of state

¹⁹³ Art. 130 of the German Criminal Code prohibits “insulting, maliciously maligning, or defaming segments of the population” in a manner capable of disturbing the public peace. The punishment is imprisonment from three months to five year.

¹⁹⁴ "[Strafverfolgung](#)", Fachserie 10, Reihe 3, Statistisches Bundesamt, 14 January 2015.

In April 2016 the Turkish government requested that the German government allow prosecution of satirical television presenter Jan Böhmermann under Criminal Code Art. 103 over a vulgar poem Böhmermann read on television ridiculing Turkish President. On 15 April 2016, German Chancellor Angela Merkel announced that she had approved the Turkish government's request.

On 4 October 2016, prosecutors in Mainz announced that the charges against Böhmermann would be dropped as the investigation could not show with the necessary degree of certainty that a crime had been committed. Prosecutors also stated that the poem was protected by artistic freedom, noting: "The fact that a work of art is used to express a certain opinion does not rob it of its quality as art¹⁹⁵".

Art. 103 has been applied on a limited number of occasions in the past, according to reports. In 1977, for example, a court in North Rhine-Westphalia delivered a conviction with regards to a poster held in front of the Chilean Embassy in Bonn during the time of the Pinochet dictatorship with the words "gang of murderers" that had offended the Chilean ambassador¹⁹⁶.

In 2007, a Swiss citizen living in Bavaria was convicted of insulting Swiss President Micheline Calmy-Rey and sentenced to pay a criminal fine. The prosecution was requested by the Swiss Federal Police¹⁹⁷.

Insult to head of state

Prosecutions for defamation of the German president are rare, but not unheard of in modern times. The permission of the president is required for such prosecutions to take place. In 2011, President Christian Wulff granted permission for the prosecution of a blogger over an – apparently photoshopped – image that purported to show the president's wife making a Nazi gesture. Wulff eventually withdrew the permission. Between 1990 and 2004, for instance, permission for prosecution was granted just twice, according to researchers¹⁹⁸.

Criminal defamation

In 2012, the Dresden Regional Court acquitted two journalists of criminal defamation and slander, overturning a 2010 conviction by a lower court ordering the journalists to pay fines of €6,000 each¹⁹⁹. The case was brought in relation to two articles, which appeared in 2008 in the daily *Zeit* and the newsmagazine *Der Spiegel*, investigating alleged links between former high-ranking judicial officials (judges and prosecutors) in the state of Saxony and a brothel. The brothel was closed and its owner sentenced to prison in 1993 for forcibly employing underage girls. In 2000, police began an investigation into links between political figures and the brothel, a scandal that went public in 2007 and was known as the *Sachsensumpf* (Saxony

¹⁹⁵ See, e.g., "Wie geht es weiter in der Affäre Böhmermann?", *Spiegel Online*, 4 October 2016, <http://www.spiegel.de/kultur/tv/jan-boehmermann-wie-geht-es-weiter-in-der-affeere-um-die-erdogan-beleidigung-a-1115152.html>.

¹⁹⁶ See, e.g., Vanessa Steinmetz, "Der Moderator und der Schah-Paragraf", *Spiegel Online*, 11 April 2016, <http://www.spiegel.de/politik/deutschland/boehmermann-rechtliche-grundlagen-moeglicher-ermittlungen-a-1086555.html>.

¹⁹⁷ See, e.g., "Schweizer Fall mit Parallelen zur Affäre Böhmermann", *BlueWin.ch*, 14 April 2016, <https://www.bluewin.ch/de/news/inland/2016/4/14/ehemalige-schweizer-bundespraesidentin-uebel-beschimpft.html>.

¹⁹⁸ See, e.g., Dr. Andrea Grotemeier, "Das Comeback der Majestätsbeleidigung", 11 January 2012, <http://www.lto.de/recht/hintergruende/h/verunglimpfung-des-bundespraesidenten-das-comeback-der-majestaetsbeleidigung/>.

¹⁹⁹ "On trial for criminal defamation, German freelance journalists faced 'existential threat'", IPI, 11 September 2014, <http://ipi.media/on-trial-for-criminal-defamation-german-freelance-journalists-faced-existential-threat/>.

Swamp). The two journalists, Thomas Datt and Arndt Ginzel, based their stories largely on interviews with former prostitutes from the brothel, who also claimed to have identified the officials to the police during the 1993 investigation. The journalists also focused in particular on the claim that although one of the prostitutes had positively identified a judge to police in 2000, the identification was never entered into evidence.

In the Zeit article “Early Release”, Datt and Ginzel presented information to support the prostitute’s claim and asked rhetorically whether the two investigating officers were under internal pressure to protect the judge. The officers later said they did not feel offended by the article, but the respective police commissioner sought defamation charges anyway, and the lower court judge agreed that the rhetorical question contained the “the assertion of a fact damaging the honour” of the officers. The Dresden Regional Court overturned this ruling, finding that the question raised by the journalists was sufficiently grounded in fact.

The Regional Court also rejected the criminal charges of defamation filed by one of the judges implicated in the Spiegel article “Dirty Laundry”, affirming that the story concerned a matter of public interest and that the journalists had sufficiently fulfilled the conditions for reporting suspected facts under German constitutional jurisprudence (see above). The Court affirmed that according to constitutional jurisprudence, “an honour-offending media report can also be allowed if it is later proven to be untrue even if already at the moment of publishing there remain doubts about the reliability of the material used”.

GREECE²⁰⁰

I. Law

1. Criminal defamation and insult laws

The Greek Criminal Code²⁰¹ establishes the following offences:

Insult (Criminal Code Art. 361): Insult is defined as insulting the reputation of another person through word or deed or otherwise, except if the act may be punishable as defamation. The punishment imposed may be either a fine or imprisonment for up to one year, or both. According to Art. 361(2), after taking into consideration the circumstances and the personality of the person offended, if the offence is not particularly severe, the perpetrator shall be punished only with [administrative] detention or a fine.

Unprovoked insult by action (Criminal Code Art. 361a): This offence is defined in the same terms as insult, however in this case the act must be committed through action and not have been provoked. This offence is punishable by imprisonment of up to three months or a fine. If two or more persons committed the act jointly, the punishment imposed shall be at least six months in prison.

Defamation (Criminal Code Art. 362): Defamation is defined as claiming or disseminating before a third party facts about another person that may harm that person's honour or reputation. It is punishable with up to two years in prison or a fine, or both.

Slander (Criminal Code Art. 363): Slander is defined as defamation in which the information was false and the perpetrator knew it to be false. This offence is punishable with imprisonment of at least three months or a fine. In addition, the offender may lose certain political rights described under Art. 63 of the Criminal Code.

Defamation or a corporation (Criminal Code Art. 364): This offence is defined as claiming or disseminating facts about a corporation (S.A.) relevant to its business, financial situation, general activities, or the persons who run and manage it in a way that might damage the public's confidence in the company and generally to corporations. This offence is punishable with up to one year in prison or a fine. However, if the perpetrator knew that the facts claimed were false, the punishment shall be imprisonment only.

Art. 369(1) also provides that the plaintiff may request from the court publication of the court's judgment at the defendant's expense for crimes committed under Arts. 361-365. Furthermore, if the offence was committed by the press, the publication must contain at least the rationale of the court's decision as well as the judgment. According to Art. 369(2), the newspaper or magazine publisher must publish the court's entire decision with eight days from the verdict in the same position as the original offending article. Non-compliance is punishable with up to one year in prison or a fine.

²⁰⁰ Information on Greece originally published as part of the International Press Institute's Media Law Database and has been revised/updated for this present study.

²⁰¹ Criminal Code of 1 January 1951 (last amendments by laws 4254/2014; 4250/2014; 4139/2013 ; 4205/2013) available in Greek [here](#) (last accessed 25 June 2014).

Additionally, Art. 369 provides that the provision of the Criminal Code (Art. 229) that punishes false accusation – the filing of a suit or the lodging of a false accusation of a criminal action with the authorities with the intent to cause prosecution of a person, punishable with up to one year in prison – can also be applied in connection with Arts. 361-365. This offence is punishable with a minimum of one year in prison.

Gender-related defamation

The Greek Criminal Code also contains provisions relevant to dignity of sexual and gender rights, with increased protection for family members, as well as for minors. Art. 337 states: "Anyone who brutally attacks the dignity of another in the field of their sexual life, either with lewd gestures or suggestions concerning indecent acts, is punishable by imprisonment of a maximum of one year or a fine." Art. 337(2-5) provide for heavier punishments when this offence is committed against children under 12, minors, or job seekers and if committed through the Internet or in the workplace.

Additionally, Art. 9 of Law 3500/2006 on Inter-Domestic Offences of Sexual Dignity provides that a person who insults the dignity of a family member with particularly degrading speech or deed referring to their sexual life can be punished with up to two years in prison.

2. Criminal defamation of public officials

No provisions.

However, public officials have a procedural advantage in criminal defamation cases.

According to Art. 368(1) of the Greek Criminal Code, prosecution for the offences described in Arts. 361-365 can only be initiated upon complaint, but may be conducted ex officio when the offended party is a public official. In addition²⁰², if the victim is a police officer, port officer, fire brigade officer or health worker and the act occurred during while the victim was performing his or her duty and the offender acted masked or by altering his or her characteristics, criminal prosecution can also occur ex officio. Furthermore, according to Art. 368(3), if the victim is a civil servant and the act occurred during the execution of his or her official duty or in relation to his or her duties, a complaint can also be submitted with the superior authority of the minister.

In the case of libel of the deceased, the surviving spouse and children also have the right to submit a complaint, and if they are also deceased, this right can be exercised by the surviving parents and siblings. In the case of defamation of a corporation, the right to file charges falls to the managing board or any other person who has a substantial legal interest (Art. 368(2)).

3. Criminal defamation of the head of state

Insulting or defaming the President of Greece is a criminal offence under Art. 168(2) of the Greek Criminal Code. The penalty is imprisonment for up to three months.

In addition, Art. 14(3b) of the Greek Constitution allows the seizure of publications (before or after the fact) that contain insults toward the President of Greece.

4. Criminal defamation of the state, state symbols and state institutions

²⁰² As amended by Law 3772/2009.

Expressing hatred or contempt for, removing, destroying, deforming or desecrating the official flag of the State or emblem of its sovereignty is a criminal offence under Art. 181 of the Greek Criminal Code. The penalty is imprisonment for up to two years.

In addition, *publicly insulting the Greek Parliament* is punishable with imprisonment of at least three months (Art. 157(3)). *Publicly insulting departmental, municipal or other councils of local authority* is punishable with up to two years in prison. Prosecution takes place with permission of the Parliament or council. If applicable, offender may also be punished with dismissal from public office (Art. 157(4)).

5. Criminal defamation of foreign heads of state

Insulting the honour of the head of state of a foreign country that is at peace with Greece is a criminal offence under Art. 153 of the Greek Criminal Code. The punishment is imprisonment for an unspecified term. The act is only prosecuted at the request of the foreign government.

Art. 154 states that if the act referred to in Art. 153 is committed *against an ambassador or any other diplomatic agent of a foreign country*, the perpetrator shall be punished with a prison sentence of up to two years, in case a more severe punishment is not prescribed by some other provision of the law. The prosecution can only be initiated upon complaint from the victim or the foreign government.

6. Criminal defamation of foreign states and symbols

Offending the flag or emblem of sovereignty or interfering with a national anthem of a foreign state that is at peace with Greece and is recognised by it is a criminal offence under Art. 155. The punishment is a fine or imprisonment for up to six months. The prosecution may be initiated only at the request of the foreign government.

7. Criminal defamation of the deceased

Insulting the memory of the dead with cruel or malicious defamation or libel is a criminal offence under Art. 365 of the Greek Criminal Code. It is punished with imprisonment for up to six months.

8. Criminal blasphemy

Malicious blasphemy is a criminal offence under Art. 198 of the Greek Criminal Code. Whoever shows disrespect to the divine by means of blasphemy faces imprisonment for up to three months and a fine of maximum €3,000.

In addition, the act of *publicly reviling the Eastern Orthodox Church of Christ or any other religion tolerated in Greece* ("religious vilification") is a criminal offence under Art. 199 and punishable with up to two years in prison.

The Greek Constitution also allows for allows for the seizure of publications, either before or after circulation, that contain insults against the Christian or any known religion.

9. Recent legal changes

II. Practice

1. General notes

n/a

2. Statistics

The following data were provided upon request to the International Press Institute by EL.STAT., the Hellenic Statistical Authority²⁰³. The data noted here refer to the year **2010**, the most recent year for which information on criminal convictions has been processed and available for sharing²⁰⁴.

- For **Art. 361** (insult), there were 580 convictions, resulting in 561 prison sentences²⁰⁵, 17 criminal fines and two other types of sentences²⁰⁶. In terms of the prison sentences, 10 were for one to five years, 16 for six to 12 months, 109 for three to six months, 189 for up to three months, and 237 for up to one month.
- For **Art. 362** (defamation), there were 19 convictions, resulting in 19 prison sentences, of which two were for six to 12 months, 15 for three to six months, and two for up to two months.
- For **Art. 363** (slander), there were 138 convictions, resulting in 137 prison sentences and one criminal fine. In terms of the prison sentences, 24 were for one to five years, 54 for six to 12 months, 44 for three to six months, 11 for up to three months and four for up to one month.

3. Selected cases

- In 2006, Aggeliki Mika, who was then a municipal councillor in Nigrita, wrote a newspaper article containing allegations that the mayor of Nigrita had shown favouritism while hiring officials. In 2008, a court of first instance convicted Mika of criminal libel and ordered a suspended eight-month prison sentence in addition to €50 in damages. In 2009, the Court of Appeal of Thessaloniki upheld the judgment but reduced the prison sentence to seven months. Mika later appealed to the Court of Cassation, which dismissed her appeal. In 2013, the European Court of Human Rights (ECtHR) found²⁰⁷ that Mika's right to free expression had been violated due to the severity of the punishment.
- In March 2015, a court sentenced²⁰⁸ prominent investigative journalist Kostas Vaxevanis, editor of the investigative magazine HotDoc, to 26 months in prison, suspended for three years. The charges were in relation to an article that analysed a prominent businessman's alleged involvement in the 2012 to 2013 Cypriot financial

²⁰³ <http://www.statistics.gr/>.

²⁰⁴ Complete data for the years 2000 - 2010 can be downloaded via the International Press Institute at <http://legaldb.freemedia.at/legal-database/greece/>.

²⁰⁵ Data provided by EL.STAT. do not distinguish between unconditional and suspended prison sentences.

²⁰⁶ These may include, e.g., reprimand or juvenile probation.

²⁰⁷ *Affaire Mika c. Grèce*, no. 10347/10 (2013).

²⁰⁸ "Greek investigative journalist sentenced to prison for libel", IPI, 13 April 2015, <https://ipi.media/greek-investigative-journalist-sentenced-to-prison-for-libel/>.

crisis. In September 2016, a three-judge panel of the Athens Court of Appeal on Monday unanimously threw out Vaxevanis' conviction²⁰⁹.

- In July 2016, the Northern Aegean Court of Appeals confirmed the criminal conviction for insult of journalist Stratis Balaskas, editor-in-chief of the newspaper *Empros* on the island of Lesbos. The case related to an article Balaskas published in November 2013 in which he referred to the headmaster of a local high school as the "Golden Dawn ... and neo-Nazi headmaster." From a report by the International Press Institute (IPI)²¹⁰:

"The headmaster had previously argued in favour of the "Aryan race" and called on all nationalists – and especially teachers and parents – to unite in order to fight for the preservation of "racial purity" and to give their vote to [the extreme-right-wing Greek political party] Golden Dawn. [...] The headmaster denied any connection with such ideas and organisations, and he filed criminal charges against Balaskas for insult under Art. 361 of the Greek Criminal Code. Police arrested Balaskas and took his fingerprints. Despite the evidence presented by Balaskas' lawyer, the Court of Mytilene sentenced the journalist for using the characterisation "neo-Nazi" to six months in prison, the minimum penalty that allows for appeal. Balaskas appealed, but after two-and-a-half years of waiting, the Northern Aegean Court of Appeals agreed with the lower court that "neo-Nazi" constituted an insult. However, it reduced the punishment and sentenced Balaskas to three months' jail time. [...] The penalty, under the terms of Greek law, was redeemable for €1,603, allowing Balaskas to escape prison time."

- In January 2017, Greek Defence Minister Panos Kammenos, leader of the Independent Greeks (ANEL), brought criminal libel charges against Giannis Kourtakis and Panagiotis Tzenos, the publisher and director, respectively, of the newspaper *Parapolitika*. According to a report by the International Press Institute (IPI)²¹¹:

"Kammenos has accused the pair of criminal libel and attempted extortion through repeated attacks against him on the radio station *Parapolitika* 90.1 FM. The ANEL leader claims that the two journalists tried to blackmail him in order to force him to withdraw accusations that Kourtakis and Tzenos allegedly received nearly €1.5 million in improper funding from the Hellenic Center for Disease Control and Prevention (KEELPNO). Among other things, Kammenos alleges that the broadcasts insinuated links between Kammenos' son and an infamous Greek terrorist, Pola Roupa. Following the suit, approximately 10 police officers, accompanied by a prosecutor, raided *Parapolitika*'s headquarters on 10 January and arrested Tzenos. Kourtakis was also later taken into custody [...]."

²⁰⁹ "Greek journalist's libel conviction overturned on appeal", IPI, 15 September 2016, <https://ipi.media/greek-journalists-libel-conviction-overturned-on-appeal/>.

²¹⁰ Lambrini Papadopoulou, "Greek editor sentenced for criticising school director's extremist views", IPI, 5 September 2016, <https://ipi.media/greek-journalist-sentenced-to-prison-for-criticism-of-school-directors-extremist-views/>.

²¹¹ Lambrini Papadopoulou, "Greek defence minister takes on media in libel cases", IPI, 17 January 2017, <https://ipi.media/greek-defence-minister-takes-on-media-in-libel-cases/>.

- In January 2017, an MP for the extreme right Golden Dawn party, Yiannis Lagos, pressed criminal defamation charges against a television journalist, Tatiana Stefanidou. Stefanidou had played a clip of an incident in which Lagos and several of his supporters raided a school in Perama to protest plans to allow refugee children to attend the school. Stefanidou called Lagos a “bully”. She also declined to take a call on her show from a Golden Dawn supporter, reportedly saying that “she would not allow her show to be used as a platform in support of such actions²¹²”. Police arrived at Stefanidou’s work and home and sought to arrest her. The case is currently under examination by prosecutors.
- In November 2016, a court in Heraklion, Crete acquitted journalist Alekos Andrikakis of libelling the former mayor of Heraklion. According to a report by the International Press Institute²¹³:

“Andrikakis’ ordeal began on April 1, 2013, when he published an article in the local newspaper *Patris* – where he also served as editor-in-chief – revealing that Heraklion’s then-mayor, Yiannis Kourakis, had broken rules by issuing payment orders without the approval of the city’s financial department. [...] The article and its revelations were not a joke. But they were an unpleasant surprise for Kourakis, who reacted swiftly by filing criminal libel charges against Andrikakis. In addition to jail time, Kourakis also requested €10,000 for each time Andrikakis insulted him in the future.”

The court ordered Kourakis to pay €2,300 of Andrikakis’ legal expenses.

²¹² See, e.g., "Justice minister slams Golden Dawn over Perama school attack", *Kathimerini*, 20 January 2017, <http://www.ekathimerini.com/215453/article/ekathimerini/news/justice-minister-slams-golden-dawn-over-perama-school-attack>.

²¹³ Lambrini Papadopoulou, "Bittersweet end for Greek journalist who won libel trial but lost job", *IPI*, 7 December 2016, <https://ipi.media/bittersweet-end-for-greek-journalist-who-won-libel-trial-but-lost-job/>.

HUNGARY²¹⁴

I. Law

1. Criminal defamation and insult laws

There are two defamation-related offences in the Hungarian Criminal Code.

Defamation (Criminal Code Art. 226; *rágalmazás*)²¹⁵: Defined as engaging in the written or oral publication of anything that is injurious to the good name or reputation of another person, or using an expression directly referring to such a fact. The penalty is imprisonment for up to one year.

Offenders are punished with imprisonment for up to two years if the act of defamation is committed “for a malicious motive or purpose”, is published with great publicity, e.g. in the media, or causes “considerable injury” to the claimant.

Libel (Criminal Code Art. 227; *becsületsértés*): Defined as disseminating a false publication orally or any other way tending to harm a person’s reputation either in connection with his professional, public office, or public activity or in broad publicity. The penalty is imprisonment for up to one year.

In practice, prison sentences are often converted into a fine²¹⁶.

A 2013 amendment to the Hungarian Criminal Code (Art. 226A) states that anyone who makes fake video or sound recordings with the purpose of harming another person’s reputation is guilty of a misdemeanour punishable with imprisonment for up to two years.

According to Art. 226B, if such recording is made accessible to the public, the offender shall be punished with imprisonment for up to two years. The punishment can be increased to three years imprisonment if the offence is committed with great publicity (e.g. in the media) or if it causes considerable injury to the claimant.

2. Criminal defamation of public officials

No provisions.

²¹⁴ Information on Hungary originally published as part of the International Press Institute’s Media Law Database and has been revised/updated for this present study.

²¹⁵ This entry follows the standard translation of the Hungarian Criminal Code with respect to Arts. 226 and 227, despite the fact that these terms appear not to match usual English-language usage. Decisions of the ECtHR have also followed the standard translation. Though, at first glance, defamation and libel look the same, in Hungarian law there are several differences between them. To commit defamation, a fact that harms the reputation of a person has to be stated publicly (e.g., A says to B that C has cheated on his wife (assuming that this is untrue). Defamation can be committed orally or in writing. Libel, on the other hand, can be committed more generally: for example by giving the middle finger to someone. Whilst defamation, in the first place, hurts someone’s reputation in society, libel reflects on someone’s honour. Defamation is the more serious crime so if both crimes are committed, the defendant shall be punished for defamation only.

²¹⁶ Criminal fines (Art. 50 of the Criminal Code) are awarded in daily amounts from 1,000 to 500,000 Hungarian forints for a minimum of 30 days and a maximum of 540 days (1 forint = approx. €0.0032 [March 2017]).

Note that according to Art. 52 the Hungarian Code of Criminal Procedure²¹⁷, prosecutions for defamation and libel may only be initiated by the victim as a private accusation. However, when libel or defamation is committed against a public official in connection with official duty or operations, prosecution is carried about by a public prosecutor.

3. Criminal defamation of the head of state

No provisions.

4. Criminal defamation of the state, state symbols and state institutions

Using a harmful or disrespectful expression directed at the Hungarian anthem, flag, coat of arms, or the Holy Crown of Hungary is a criminal offence under Art. 334 of the Hungarian Criminal Code. The punishment is imprisonment for up to one year.

5. Criminal defamation of foreign heads of state

No provisions.

6. Criminal defamation of foreign states and symbols

No provisions.

7. Criminal defamation of the deceased

According to Art. 228 of the Hungarian Criminal Code, the provisions and punishments for defamation or libel can also apply when these acts are directed against the deceased.

8. Criminal blasphemy

No provisions.

9. Recent legal changes

A 2013 amendment to the Hungarian Criminal Code (Art. 226A) states that anyone who makes fake video or sound recordings with the purpose of harming another person's reputation is guilty of a misdemeanour punishable with imprisonment for up to two years. According to Art. 226B, if such recording is made accessible to the public, the offender shall be punished with imprisonment for up to two years. The punishment can be increased to three years imprisonment if the offence is committed with great publicity (e.g., in the media) or if it causes considerable injury to the claimant.

In December 2015, the Justice Committee of the Hungarian Parliament failed to advance a bill that would have repealed criminal defamation laws and established safeguards against the abuse of civil defamation law. 30 international press freedom and freedom of expression organisations had written to the Committee's chairman in support of the bill²¹⁸.

²¹⁷ [Act XIX of 1998 on Criminal Procedure](#).

²¹⁸ "Hungarian Parliament fails to advance defamation reform", IPI, 9 December 2016, [billhttps://ipi.media/hungarian-parliament-fails-to-advance-defamation-reform-bill/](https://ipi.media/hungarian-parliament-fails-to-advance-defamation-reform-bill/).

II. Practice

1. General notes

n/a

2. Statistics

The following criminal justice data were provided upon request to the International Press Institute by the Hungarian Central Statistical Office. The data below refer to the year **2014**²¹⁹.

- For **Art. 226** (defamation), 316 persons were convicted, resulting in 16 prison sentences (suspension not specified), 62 criminal fines, 192 supplementary punishments and measures, 43 sentences of work for public interest, 2 other, and 2 instances in which no punishment was ordered.
- For **Art. 227** (libel), 213 persons were convicted, resulting in 2 prison sentences (suspension not specified), 21 criminal fines, and 119 supplementary punishments and measures.

3. Selected cases

In 2014, the Hungarian Constitutional Court reversed²²⁰ a lower court's ruling convicting Otto Szalai, a magazine owner and politician, of criminally defaming a mayor in an article he wrote for his magazine. In the article, Szalai claimed that certain members of the local government, including the mayor, were rewarded while the city budget was in the loss. Szalai alleged that the officials in question treated taxpayers' money as if it were their own. The lower court determined the article to be a statement of fact and ruled that since Szalai had not proved those facts true he was guilty of defamation. The Constitutional Court overruled the decision. In the Court's view, statements must be differentiated between value judgments and factual allegations. Value judgments are protected by freedom of expression almost without limitation, while allegations of fact are subject to a burden of proof. In this case, the Constitutional Court found that the lower Court had interpreted the definition of a factual statement too broadly and had thus illegitimately restricted Szalai's right to free speech. The Constitutional Court's opinion stressed that, in a democracy, free speech related to public life must enjoy extra protection and that its decision should serve as guidance for future similar cases. It also stated that in criminal cases courts should pay particular attention to the context of the expression, as well as to the circumstances of publication.

In another case, journalist Péter Uj wrote an opinion column for a national daily paper in which he criticised the quality of a well-known variety of Hungarian wine produced by a state-owned corporation. In the column, Uj wondered why "hundreds of thousands of Hungarians drink [this] shit". A lower court found him guilty of defamation, ruling that Uj's criticism went beyond the boundaries of acceptable journalistic criticism and sentenced him to be one-year probationary period. The verdict was eventually upheld by the Hungarian Supreme Court. Uj appealed to the European Court of Human Rights (ECtHR), which in 2011 ruled²²¹ in his favour. The Court observed: "... there is a difference between the commercial reputational interests of a company and the reputation of an individual concerning

²¹⁹ Full data for the years 2010 to 2014 can be downloaded via the International Press Institute at <http://legaldb.freemedia.at/legal-database/hungary/>.

²²⁰ Hungarian Constitutional Court decision [13/2014](#) (IV. 18.).

²²¹ Uj v. Hungary, App. No. 23954/10 (2011).

his or her social status. Whereas the latter might have repercussions on one's dignity, for the Court interests of commercial reputation are devoid of that moral dimension. In the instant application, the reputational interest at stake is that of a State-owned corporation; it is thus a commercial one without relevance to moral character".

ICELAND²²²

I. Law

1. Criminal defamation and insult laws

The Icelandic Criminal Code²²³ provides the following offences:

Insult (Art. 234): Provides criminal liability for “Anyone who defames another person by insults in word or deed and anyone who disseminates such defamation”. The penalty is a fine or imprisonment for up to one year.

Defamation (Art. 235): Defined as “[m]aking insinuations about another person of a nature that would damage his or her reputation, or spreading such insinuations”. The penalty is a fine or imprisonment for up to one year.

Slander (Art. 236): Defined as “[m]aking or disseminating a defamatory insinuation against one’s better knowledge”. The penalty is imprisonment for up to two years. “If an insinuation is made or disseminated publicly even though the person making it had no reason to believe it to be correct”, the penalty is a fine or imprisonment for up to two years.

Upbraiding (Art. 237): Defined as “upbraid[ing] another person with something without any occasion to do so ... even if he or she is telling the truth”. The penalty is a fine.

Insult of close family members (Art. 233b): Provides criminal liability for “[a]nyone who insults or denigrates his or her spouse or ex-spouse, child or other closely-related person, the offence being considered as constituting serious defamation”. The penalty is imprisonment for up to two years.

It should also be noted that Art. 233a provides criminal liability for *mocking, defaming, denigrating* or threatening “a person or group of persons by comments or expressions of another nature, for example by means of pictures or symbols, for their nationality, colour, race, religion, sexual orientation or gender identity, or disseminates such materials”. The penalty is a fine or imprisonment for up to two years.

Criminal Code Art. 241 provides: “Offensive remarks may be judged null and void in an action for libel if the injured party so requests.” The offender may also be required to pay for the publishing of the court’s judgment or a correction.

The Icelandic Criminal Code does not provide explicit defences (grounds for exemption from criminal liability) for the offences mentioned above.

It is worth noting that Iceland’s Media Law²²⁴ contains a clause stating that the press is forbidden from “encourag[ing] hatred” on the grounds of “race, gender, sexual orientation, religious belief, nationality, opinion or cultural, economic, social or other standing in society” (Art. 27). Compliance with this and all other directives in the Law falls within the purview of

²²² Information on Iceland originally published as part of the International Press Institute’s Media Law Database and has been revised/updated for this present study.

²²³ Criminal Code of Iceland, last amended by 1.47/2015, English translation available at: https://eng.innanrikisraduneyti.is/media/Log_og_reglugerdir/AHI.pdf.

²²⁴ [Media Law](#) (*Lög um fjölmiðla*), Law No. 38, 20 April 2011 (Icelandic). Available in [English](#).

the newly established Media Commission, which monitors and licenses all media operating in Iceland. For infractions of Art. 27, the Commission can issue an “executive fine” of up to 10 million Icelandic krónur²²⁵ (Art. 54). Violations can also incur criminal liability resulting in imprisonment for up to six months; police investigations may only begin at the request of the Media Commission (Arts. 55-56). Notably, the Media Commission is a state body. Its five members are appointed by Iceland’s Minister of Education, Culture, and Science, according to the following formula: “Two representatives shall be appointed in accordance with a nomination by the Supreme Court of Iceland, one in accordance with a nomination by the standing Committee of the Rectors of Icelandic Higher Education Institutions and one in accordance with a nomination by the National Union of Icelandic Journalists; the fifth shall be appointed by the minister without nomination” (Art. 8).

2. Criminal defamation of public officials

No provisions.

3. Criminal defamation of the head of state

Under Art. 101(1) of the Icelandic Criminal Code, if *criminal defamation or insult is committed against the President of Iceland*, or a person exercising presidential powers, the usual punishment shall be increased, but not more than doubled. Defamation or insult committed against the President’s “closest relatives in such a way as may be considered to be directed against his or her home” incurs an increased punishment of up to one-half (Art. 101(2)).

4. Criminal defamation of the state, state symbols and state institutions

Defaming the Icelandic flag “in word or deed” is a criminal offence under the Act on the National Flag and Coat of Arms²²⁶. The penalty is a fine or up to one year in prison.

5. Criminal defamation of foreign heads of state

Defamation of foreign head of state and foreign diplomats: Under Art. 94 of the Icelandic Criminal Code, the punishment for criminal defamation or insult may be increased by one-half if directed at the head of a foreign state or foreign ambassadors stationed in Iceland.

Additionally, Art. 95 of the Criminal Code provides criminal liability for “publicly insult[ing] a foreign nation or foreign state, *its supreme official, its head of state*, its flag or other recognized national symbol, or the flag of the United Nations or the flag of the European Union”. The penalty is imprisonment for up to two years. For “serious offences”, however, the penalty is imprisonment for up to six years.

In addition, Art. 95(2) provides: “The same punishment shall be applied to any person who publicly insults or otherwise utters abusive words or other insults, in word or deed, or makes defamatory insinuations regarding *other employees of a foreign state who are present in Iceland*.”

6. Criminal defamation of foreign states and symbols

²²⁵ 1 króna = approx. €0.0088 (March 2017).

²²⁶ [Act on the National Flag and Coat of Arms](#) (*Lög um þjóðfána Íslendinga og ríkisskjaldarmerkið*), 1944 nr. 34 17. júní (Icelandic).

Art. 95 of the Criminal Code provides criminal liability for “publicly insult[ing] a *foreign nation or foreign state*, its supreme official, its head of state, *its flag or other recognized national symbol, or the flag of the United Nations or the flag of the European Union*”. The penalty is imprisonment for up to two years. For “serious offences”, however, the penalty is imprisonment for up to six years.

7. Criminal defamation of the deceased

Art. 240 of the Criminal Code provides that “defamation” against a deceased person shall incur a penalty of a fine or imprisonment for up to one year.

8. Criminal blasphemy

No provisions²²⁷.

Criminal blasphemy was repealed in Iceland in June 2015. Previously, “[r]idiculing or insulting the dogmas or worship of a lawfully existing religious community in Iceland” was a criminal offence under Art. 125 of the Icelandic Criminal Code. The punishment was a fine or imprisonment for up to three months.

9. Recent legal changes

Criminal blasphemy was repealed in Iceland in June 2015. Previously, “[r]idiculing or insulting the dogmas or worship of a lawfully existing religious community in Iceland” was a criminal offence under Art. 125 of the Icelandic Criminal Code. The punishment was a fine or imprisonment for up to three months.

In 2016, a bill was introduced by an opposition MP, Steinunn Þóra Árnadóttir, to repeal Criminal Code Art. 95, with plans to reintroduce the proposal during the 2017 parliamentary season. It is unclear whether the bill will be acted upon²²⁸.

In 2011, Iceland's new Media Law²²⁹ entered into force. Notably, the law included strengthened protections for journalists' sources. It also expressly releases the press from liability for defamatory statements made by third parties, following a series of related ECtHR judgments against Iceland. However, this first success was overshadowed by significant criticism by press freedom groups over other provisions of the law, including the establishment of a “State Media Committee”, which would oversee media legal compliance and registration requirements. Thousands of people signed²³⁰ an unsuccessful petition calling for President Olafur Ragnar Grimsson to veto the measure.

In June 2010, the Icelandic Parliament unanimously approved²³¹ a resolution known as the Icelandic Modern Media Initiative, which called for the country to adopt the world's most

²²⁷ Art. 124 of the Criminal Code provides liability for “improper treatment of items belong to churches and intended for use in church ceremonies”.

²²⁸ See <http://www.althingi.is/altxt/145/s/1177.html>. See also <http://eyjan.pressan.is/frettir/2016/04/18/akvaedi-um-modgun-vid-erlenda-thjodhofdinga-verdi-fellt-a-brott/>.

²²⁹ [Media Law](#) (*Lög um fjölmiðla*), Law No. 38, 20 April 2011 (Icelandic). Available in [English](#).

²³⁰ “[Media law passed by Icelandic parliament](#)”, IceNews, 16 April 2011.

²³¹ Jonathan Stray, “[What will Iceland's new media laws mean for journalists](#)”, Nieman Journalism Lab, 16 June 2010.

progressive laws on transparency and freedom of expression. In addition to source protection and protection for whistleblowers, and a “wide-ranging” freedom of expression law, new legislation was intended²³² to include the abolition of criminal libel and the implementation of safeguards against “libel tourism”. This repeal, however, has not yet been carried out.

II. Practice

1. General notes

In practice nearly all defamation cases in Iceland are brought as so-called “civil-criminal cases”. This means that a person who claims to have been defamed according to the relevant articles in the Criminal Code files a civil law suit, but demands that the defendant be punished according to the terms of the Criminal Code (i.e. with a fine or imprisonment). This suit automatically also consists of a private claim for damages, so that the plaintiff may, at the same time, demand compensation for pain and suffering under the Tort Liability Act.

It is perceived that the main reason why defamation cases are brought as civil-criminal cases and not as purely civil cases is that, in the latter, plaintiffs must pay court fees, which can be substantial, especially if the case is appealed. In order to avoid this, plaintiffs simply file a civil-criminal action and demand criminal punishment, even though it is clear that the courts normally will award only civil damages.

2. Statistics

n/a

3. Selected cases

In 2014, lawyers for an Icelandic Interior Ministry official requested prison time for two journalists who erroneously identified the official as a target in a police investigation into a government leak. In June of that year, journalists Jón Bjarki Magnússon and Jóhann Páll Jóhannsson had incorrectly identified Þórey Vilhjálmsdóttir, a political assistant to Iceland’s interior minister, as “employee B”, who the investigation appeared to suggest had leaked documents last year containing sensitive information related to a Nigerian asylum seeker. The publication of the documents, which were later found to have been partially doctored, occurred shortly before the man’s deportation from Iceland. The journalists’ newspaper, DV, issued a correction and apology on the same day the report was published and, according to reports, promptly informed other Icelandic media houses of the mistake. The police investigation had, in fact, identified a different Interior Ministry official as “employee B”. Reports also stated that the journalists had “repeatedly” sought comment from Vilhjálmsdóttir prior to publication, but that she declined to respond. Despite the apology, Vilhjálmsdóttir opted to press charges under Arts. 234 (insult) and 235 (defamation) of the Icelandic Penal Code. Her lawyers announced they would seek the “maximum punishment”, which is one year in prison for each offence. Vilhjálmsdóttir is also requesting damages in the amount of 3 million krónur (approx. €20,000), in addition to 900,000 krónur (approx. €5,500) in legal costs²³³.

²³² Afua Hirsch, “[Iceland aims to become a legal safe haven for journalists](#)”, *The Guardian*, 12 July 2010.

²³³ “Icelandic official seeks prison time for journalists in libel case”, IPI, 3 November 2014, <https://ipi.media/icelandic-official-seeks-prison-time-for-journalists-in-libel-case/>.

IRELAND²³⁴

I. Law

1. Criminal defamation and insult laws

No provisions.

The Defamation Act 2009²³⁵ abolished defamation, seditious libel, and obscene libel as criminal offences.

2. Criminal defamation of public officials

No provisions.

3. Criminal defamation of the head of state

No provisions.

4. Criminal defamation of the state, state symbols and state institutions

No provisions.

5. Criminal defamation of foreign heads of state

No provisions.

6. Criminal defamation of foreign states and symbols

No provisions.

7. Criminal defamation of the deceased

No provisions.

8. Criminal blasphemy

Art. 40 of the Irish Constitution²³⁶ provides that “[t]he publication or utterance of blasphemous, seditious, or indecent matter is an offence which shall be punishable in accordance with law”.

Art. 36 of the Defamation Act 2009 punishes blasphemy with a fine not exceeding €25,000. The Act defines blasphemy as "matter that is grossly abusive or insulting in relation to matters held sacred by any religion, thereby causing outrage among a substantial number of the adherents of that religion." The offender must have intentionally sought to cause such outrage.

²³⁴ Information on Ireland originally published as part of the International Press Institute’s Media Law Database and has been revised/updated for this present study.

²³⁵ Defamation Act 2009 (Law No. 31 of 2009), available at <http://www.irishstatutebook.ie/eli/2009/act/31>.

²³⁶ Constitution of Ireland, available at <http://www.irishstatutebook.ie/eli/cons/en/html>.

There is no liability for blasphemy if the offender can "prove that a reasonable person would find genuine literary, artistic, political, scientific, or academic value" in the allegedly blasphemous content.

9. Recent legal changes

In 2009, Ireland adopted the Defamation Act 2009 to modernise the regulation of libel, including the repeal of criminal defamation laws.

II. Practice

1. General notes

n/a

2. Statistics

n/a

3. Selected cases

n/a

ITALY²³⁷

I. Law

1. Criminal defamation and insult laws

The Italian Criminal Code²³⁸ foresees the following criminal offences:

Defamation (Criminal Code Art. 595): Defined as injuring the reputation of an absent person via communication with others. The penalty is a fine of up to one year. If the act of insult or defamation consists in the allegation of a specific fact, the potential penalty is increased to imprisonment for up to two years or a fine of €2,065. If committed by means of the press or otherwise publicly, the penalty is a fine of at least €516 or imprisonment from six months to three years. Penalties are also increased if the defamatory statement is directed at a political, administrative or judicial body or at a representative thereof or an authority constituted in college.

Defamation is also considered a criminal offence under Law No. 47/1948²³⁹ (Provisions on the Press, Defamation, Crimes Committed against the Profession and Criminal Procedure, hereinafter “Press Law”). According to Art. 13 of the Press Law, *defamation committed by the press* is punishable by a fine of no less than 10,000 lire (€5.16) or imprisonment from one to six years. In order for defamation to be liable under the Press Law, it must involve an accusation of fact (*attribuzione di un fatto determinato*).

2. Criminal defamation of public officials

According to Art. 595 of the Italian Criminal Code, *defamation committed against a political, administrative or judicial body or a representative thereof* is considered as aggravated defamation, resulting in higher penalties as compared to defamation committed against private persons.

3. Criminal defamation of the head of state

Offending the honour or prestige of the President of Italy is a criminal offence under Art. 278 of the Italian Criminal Code. The penalty is imprisonment from one to five years.

4. Criminal defamation of the state, state symbols and state institutions

²³⁷ Information on Italy originally published as part of the International Press Institute’s Media Law Database and has been revised/updated for this present study.

²³⁸ Italian Criminal Code, last amended by Legislative Decree No. 202 of 29 October 2016, <http://www.altalex.com/documents/codici-altalex/2014/10/30/codice-penale>.

²³⁹ Legge N. 47/1948 (*Disposizioni sulla stampa, diffamazione, reati attinenti alla professione e processo penale*), <http://www.odg.it/content/legge-n-471948>.

Defamation of the Italian Republic, the legislative assembly, the government, the Constitutional Court or other courts and the armed forces is criminalised under Art. 290 of the Italian Criminal Code. The penalty is a fine of €1,000 to €5,000.

Defamation of the Italian nation is a crime under Art. 291 of the Criminal Code. The penalty is a fine of €1,000 to €5,000.

Insulting or damaging the flag or other emblem of the state is a criminal act under Art. 292 of the Criminal Code. The penalty is a fine ranging from €1,000 to €5,000, or from €5,000 to €10,000 if the act is committed at a public celebration or official ceremony. Smearing or publicly destroying or damaging the national flag or state symbol is punishable with imprisonment for up to two years.

5. Criminal defamation of foreign heads of state

No provisions.

6. Criminal defamation of foreign states and symbols

The Italian Criminal Code, under Art. 299, prohibits *publicly insulting the flag or emblem of a foreign state*, used in accordance with Italian domestic law. The punishment is a fine of €100 to €1,000. This, however, only applies insofar as the law of the relevant foreign state provides reciprocal protection for the Italian flag under criminal law.

7. Criminal defamation of the deceased

While there is no specific criminal offence, Art. 597(2) of the Italian Criminal Code explicitly provides that where there has *been insult to the memory of a deceased person*, or the defamed dies before bringing a suit the case can be brought by their next of kin as long as it falls within the statute of limitation.

Art. 724 of the Criminal Code makes it an administrative offence to *publicly insult the dead*. The punishment is a fine between €51 and €309.

8. Criminal blasphemy

Blasphemy is an administrative offence under Art. 724 of the Italian Criminal Code. The punishment is a fine between €51 and €309.

Additionally, *publicly insulting a religion by expressing contempt for those who profess it* is a criminal offence under Art. 403 of the Criminal Code. The punishment is a fine ranging from €1,000 to €5,000. Higher fines (€2,000 to €6,000) apply when the offence is committed via contempt of a minister. Additionally, whoever, in a place of worship or in a public place, vilifies a religion via insulting objects of worship, may be punished with a fine ranging from €1,000 to €5,000 (Art. 404).

Art. 402 of the Criminal Code, which banned insult of state religions, was declared unconstitutional by the Constitutional Court in 2000.

9. Recent legal changes

The criminal offence of insult (*ingiuria*) was repealed²⁴⁰ in June 2016.

Proposed increase criminal penalties for defamation

In May 2016, the Justice Committee of the Italian Senate unanimously approved a bill to elevate the maximum possible prison term for defamation by up to one-half when the alleged victim is a public, administrative or judicial official. If passed, journalists accused of defaming public officials would have risked up to nine years in prison²⁴¹.

An international outcry followed the Justice Committee's approval and various press freedom groups elevated the issue via the Council of Europe's Platform to promote the protection of journalism and safety of journalists. According to the Platform²⁴² on 8 June 2016, the plenary of the Senate has decided to remove from the Bill the provision which would have increased prison terms from six to nine years in case of defamation of elected officials and judges - given the risk of chilling effect on media freedom.

Proposed reform of defamation law

In October 2013, the Chamber of Deputies passed a bill that aimed to bring Italian defamation law more in line with international and European standards, including by abolishing the possibility of imprisonment for the offence of defamation. This bill was the subject of several independent analyses, notably by the Venice Commission²⁴³ and Article 19²⁴⁴.

The bill would apply to online and audiovisual media, as opposed to the current law. It would remove the possibility of imprisonment for defamation offences and cap criminal fines (in the Criminal Code, fines would be capped at €10,000 [€15,000 when alleging a specific fact], doubled when committed by the media; in the Press Law, defamatory allegations known to be untrue would incur a fine of €20,000 to €60,000). These proposed changes were welcomed by the Venice Commission, which nevertheless underscored the need to adhere to a principle of proportionality when assigning any fines to avoid a chilling effect.

A "very positive development" for the Commission was the proposed removal of a clause punishing defamation more harshly when directed at public institutions and agencies. By contrast, the Commission expressed concern over a proposed amendment to the Press Law allowing courts to punish journalists by prohibiting them from practising their profession. The Commission stated that this provision was "problematic from the standpoint of the principle that the press must be able to perform the role of a public watchdog in a democratic society" and suggested referral of this issue to media self-regulatory bodies.

For its part, the CSO Article 19, although it welcomed the Italian governments efforts to modernise its defamation legislation, stated that it found the reform only "partial". The organisation expressed particular concern over *et al*:

- the failure to completely decriminalise defamation and insult
- the threat of "excessive fines" and the possible prohibition on exercising journalist

²⁴⁰ See <http://www.altalex.com/documents/news/2016/01/25/depenalizzazioni-decreto-7>.

²⁴¹ See, e.g., "Italian Senate considers bill to increase prison time for defamation", 31 May 2016, <http://ipi.media/italian-senate-considers-bill-to-increase-prison-time-for-defamation/>.

²⁴² "Italy: Draft Bill to Tighten Criminal Penalties for Defamation", <https://go.coe.int/1r3mi>.

²⁴³ "Opinion on the Legislation on Defamation of Italy", European Commission for Democracy through Law (Venice Commission), Opinion n° 715/2013, Strasbourg, 9 December 2013, [www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2013\)038-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)038-e).

²⁴⁴ "Legal Analysis of Law no. 925 of 17 October 2013 Concerning the Defamation Legislation in Italy, OSCE, <http://www.osce.org/fom/108108>.

- failure to guarantee, in statute, defences for journalists targeted in defamation proceedings
- the retention of criminal provisions punishing insult of the Italian state, the president, and constitutional bodies
- the lack of a cap on civil compensation and the lack of a statute of limitations for filing damage claims

As of January 2017, progress on this bill has stalled. It is unclear whether it will be considered again.

II. Practice

1. General notes

n/a

2. Statistics

While monitoring work by press freedom organisations and anecdotal accounts have long raised concerns about the application of criminal defamation laws in Italy, hard evidence on the scope of problem were previously difficult to obtain. A request filed by the International Press Institute in 2015 for criminal justice data went unanswered by the Italian statistics agency.

However, in 2016, the Italian monitoring group Ossigeno per l'Informazione succeeded for the first time in obtaining detailed statistical data on the application of criminal defamation laws in Italy. The data reveal a far more sobering picture than previously thought.

According to the report²⁴⁵ published by Ossigeno per l'Informazione in October 2016, on average over 5,000 criminal libel complaints are filed in Italy annually. In 2015 alone, 475 journalists were convicted of libel, of which 320 were sentenced to a fine and 155 to imprisonment. The report notes: “Prudently estimating an average sentence of eight months in detention, it can be said that every year there were issued sentences totalling 103 years in prison.”

The report also raised concerns about the length of trial proceedings. On average, preliminary inquiries in libel cases take two and a half years, and it takes courts nearly four years to issue a first-degree sentence. Despite the extensive duration of proceedings, the overall rate of convictions is low. The report stated:

“In the 2014-2015 period only 8 per cent of the defined criminal proceedings have concluded the trial with a condemnation of the accused (5.8 in Court and 1.6 per cent in preliminary stages), while in 87 per cent of cases the courts have acquitted the charged journalist with the different formulas set out in the procedural code. For the remaining 5 per cent of cases, the solutions do not fall into either of these two categories.”

3. Selected cases

²⁴⁵ “Shut Up or I’ll Sue You!”, Dossier produced by Ossigeno per l'Informazione, October 2016, http://notiziario.ossigeno.info/wp-content/uploads/2016/10/DOSSIER_Shut-up-or-I%E2%80%99ll-sue-you.pdf.

In 2015, an Italian court sentenced the editor of a news website to nine months in prison for defaming a public prosecutor. Roberto D'Agostino, founder of the site Dagospia, was convicted in late February 2015 of defaming a Genoa prosecutor, Alberto Lari, after republishing an article from the Italian newspaper L'Espresso that raised questions over the prosecutor's wife's recent promotion. According to reports, the version of the L'Espresso article that appeared on Dagospia contained an altered title that explicitly suggested that the former president of the Ligurian legislature had promoted Lari's wife in exchange for the prosecutor's agreeing not to prosecute the president on embezzlement charges. News reports state that D'Agostino denied having intended to defame the prosecutor, to whom he later apologised in court. A Milan judge last week disagreed, reportedly citing the changed title. D'Agostino was also sentenced to pay €10,000 in damages²⁴⁶.

In 2012, a court in South Tyrol sentenced²⁴⁷ journalist Orfeo Donatini and editor Tiziano Marson of the newspaper Alto Adige to four months in prison after reporting that a provincial councillor, Sven Knoll, was under police investigation for alleged connections to neo-Nazi groups. The information had already been published in the weekly magazine L'Espresso and had come from a confidential police report. The defendants had originally been acquitted, but Italy's Court of Cassation ordered the lower court to review its ruling. The defendants were also ordered to pay Knoll €15,000 in damages.

In 2012, the Court of Cassation upheld²⁴⁸ the conviction, and 14-month prison sentence, of Alessandro Sallusti, former editor of the magazine *Libero* over a column that appeared in *Libero* expressing outrage at a judge's decision to grant an abortion to a 13-year-old girl. The column reportedly suggested, among other things, the use of the death penalty for the judge, the girls' parents, and the gynaecologist. Although the column was written under an anonymous pseudonym, following Sallusti's conviction it was revealed that the author was Renato Farina, a member of former Prime Minister Silvio Berlusconi's party. The prison sentence was widely criticised in Italy and was later commuted by Italian President Giorgio Napolitano.

In 2013, a 79-year-old magazine editor, Francesco Gangemi, was sentenced²⁴⁹ to two years in prison after having been convicted for libel eight times in the last seven years. Reports stated that Gangemi failed to file a timely application seeking an alternative to imprisonment.

Also in 2013, editor Giorgio Mule and journalists Andrea Marcenaro and Riccardo Arena of a Milan-based weekly magazine *Panorama* were sentenced²⁵⁰ to eight months and one year in prison, respectively, in relation to a 2009 article focusing on alleged connections between the family of a Palermo state prosecutor and organised crime. The court also ordered Mule to pay €20,000 in damages to the prosecutor.

In 2009, the Court of Cassation confirmed the four-month prison sentence of editor Maurizio Belpietro after Belpietro published an article written by an Italian senator, Raffaele Iannuzzi, that was held to contain defamatory claims with respect to two prosecutors. The Court of

²⁴⁶ "Italian journalist given prison sentence for defamation", International Press Institute, 5 March 2015, <http://ipi.media/italian-journalist-given-prison-sentence-for-defamation/>.

²⁴⁷ See Marie-Andree Weiss, "Defamation, Italian Style", Digital Media Law Project, 1 October 2012. Also see: Sasu Siegelbaum, "[Court gives Italian journalists prison time](#)", IPI, 29 May 2013.

²⁴⁸ Sasu Siegelbaum, "[Court gives Italian journalists prison time](#)", IPI, 29 May 2013.

²⁴⁹ Steven M. Ellis, "[Italian journalist imprisoned for libel](#)", IPI, 9 October 2013.

²⁵⁰ Sasu Siegelbaum, "[Court gives Italian journalists prison time](#)", IPI, 29 May 2013.

Cassation stated that Iannuzzi's parliamentary immunity did not extend to Belpietro, who was additionally sentenced to pay costs and damages in the amount of €110,000. The case was appealed to the European Court of Human Rights, which ruled²⁵¹ that the prison sentence amounted to a violation of Art. 10, but stated that newspaper editors had a responsibility to ensure that they did not publish defamatory content, even when written by a parliamentarian.

Prior to the Sallusti case, another journalist, Gianluigi Guarino, in 2010 served 43 days in prison for criminal defamation before his pardon and subsequent release stemming from his reported accumulation of more than a dozen un-appealed convictions during his tenure as director of the *Corriere di Caserta*.

In May 2011, a court in Chieti sentenced three Italian journalists to prison for their reports about an alleged investigation of the mayor of Sulmona by the Financial Crime Investigation Unit (Guardia di Finanza). Walter Nerone and Claudio Lattanzio, who were employed by the *Il Centro* newspaper, were each sentenced to one year in prison without parole, while Luigi Vicinanza, former editor-in-chief of *Il Centro*, received an eight-month prison sentence, also without parole. The journalists were additionally ordered to pay €12,000 in damages and cover the costs of the trial.

²⁵¹ [*Belpietro c. Italie*](#), no. 43612/10 ECHR 2013.

KAZAKHSTAN²⁵²

I. Law

1. Criminal defamation and insult laws

In 2014, Kazakhstan adopted a new criminal code²⁵³. This code, as the previous one, contains provisions on criminal responsibility for defamation and insult.

Defamation (Criminal Code Art. 130): The spreading of deliberately falsified information that denigrates the honour and dignity of another person or undermines his/her reputation. Defamation is a crime of private prosecution and can be initiated only at the request of the victim (an individual).

In order for defamation to constitute a crime, it is imperative that the information was false, i.e., that it was untrue and discredited the honour and dignity of a person or undermined his/her reputation. "Information" should include a description of specific facts, rather than a description of general assessment of the victim's personality and behaviour. There must be dissemination to at least one third party. Direct intent is imperative. The guilty person must be aware of the falsity of the disseminated information as well as of the fact that this information defames the honour and dignity of another person and undermines that person's reputation. The motives of the guilty person for disseminating the false information (jealousy, revenge, etc.) are irrelevant for criminal liability. A person who had a false perception of the situation in good faith shall not be liable for defamation.

Since there is a presumption of innocence, the defendant should not have to prove anything as part of the criminal procedure, including his/her innocence. According to the Constitution of the Republic of Kazakhstan a person is considered innocent until conviction. The State as represented by the prosecution has to prove guilt.

The Criminal Code identifies three types of defamation:

- *Defamation committed through public speech*, for which the penalty is a fine, correctional labour for up to one year, or restriction of liberty for up to one year²⁵⁴.
- *Defamation committed through a publicly displayed production or through the mass media*, for which the penalty is a fine, correctional labour for up to two years, or restriction of liberty for up to two years.

²⁵² Information on Kazakhstan is provided with the expert assistance of Gulmira Birzhanova, media lawyer, "Legal media-center".

²⁵³ Criminal Code of the Republic of Kazakhstan of 3 July 2014 № 226-V (with amendments and additions as of 26.07.2016 г.). Available online (in Russian) at: <https://goo.gl/w81vJt>.

²⁵⁴ The Kazakhstan Criminal Code differentiates among restriction of liberty, arrest and deprivation of liberty (imprisonment). Restriction of liberty refers to the restrictions on movement (e.g., a person sentenced to restriction of liberty may be barred from leaving the country, leaving home at night, going to restaurants). However, persons sentenced to restriction to liberty are not isolated from society, i.e., they are not placed in prison. Arrest is a form of short-term detention for up to 90 days. It differs from deprivation of liberty (imprisonment) by the duration and conditions of detention. Deprivation of liberty (imprisonment) refers to detention for more than 90 days during which the time the person is held in special detention facilities (e.g. prisons).

- *Defamation consisting of the accusation of a serious or extremely serious crime (slander)*, for which the penalty is a fine, correctional labour, restriction of liberty for up to three years or deprivation of liberty (imprisonment) for up to three years.

Insult (Criminal Code Art. 131): The denigration of the honour and dignity of another person, expressed in indecent form. The object of the crime is the honour and dignity of the citizen. A victim under this article can only be a private individual.

In contrast to defamation, the crime of insult does not depend on whether the statement in question was valid (true or false), but rather whether it was expressed in an indecent manner. In deciding this question, courts take into account public morals rather than the perception of the victim him/herself, as s/he may have a high self-conceit and consider any criticism addressed to him/her as insult.

The penalty for insult is a fine, correctional labour, or community service for a term of up to 120 hours. When insulted is committed through public speech or through the mass media, the potential community service term increases to 180 hours.

Insult is distinguished from defamation in that, in the case of insult, the honour and dignity of a person are humiliated by the abusive language of a general nature. Slander, on the other hand, concerns the dissemination of false information about specific facts.

2. Criminal defamation of public officials

In addition to the general provisions on insult and defamation, the Criminal Code of Kazakhstan contains certain articles providing special protection for public officials.

Infringement of honour and dignity of the deputy of the Parliament of the Republic of Kazakhstan and impeding their activity (Criminal Code Art. 376): Provides for the crime of public insult of a MP of the Republic of Kazakhstan in the performance of their parliamentary duties or in connection with this performance. The penalty is a fine, correctional labour, community service for a period of up to 240 hours, or imprisonment for up to 75 days.

The second part of Art. 376 provides liability for public insult against MPs using the mass media or telecommunications networks, the penalty is a fine, correctional labour, restriction of liberty for up to two years, or deprivation of liberty (imprisonment) for up to two years.

The last part of Art. 376 provides for liability for any form of attempt to influence an MP of the Republic of Kazakhstan or an MP's close relatives, with the aim of impeding execution of the MP's duties. The penalty in this case is a fine, correctional labour, restriction of liberty for up to three years, or imprisonment for up to three years.

It should be noted that the article includes a provision stating that any public statement containing criticism of the parliamentary activities of an MP of the Republic of Kazakhstan does not entail criminal liability.

Insult of a public officer (Criminal Code Art. 378): Insulting a government official in the performance of his/her duties or in connection with the execution thereof. The penalty is a fine, correctional labour, community service for up to 120 hours, or imprisonment for up to 45 days. If the act is committed publicly or through the media, the Internet, or other means of

telecommunications, the possible penalty, in addition to the above sanctions under this article is arrest for up to 75 days.

It should be noted that this article states that any public statements containing criticism of the official activities of a public officer do not entail criminal liability under this article.

Defamation against a judge, juror, prosecutor, person carrying out pre-trial investigation, expert, bailiff, or judicial custodian (Criminal Code Art. 411)

- Defamation committed against a judge or a jury must be related to the hearing of cases or materials in court. The penalty is a fine, correctional labour, restriction of liberty for up to two years, or imprisonment for up to two years (Art. 411(1)).
- Defamation committed against a prosecutor, a person carrying out pre-trial investigations, an expert, a bailiff or judicial custodian in connection with a pre-trial investigation, forensic examination or the execution of a court sentenced or any other judicial act is punishable by a fine, corrective labour, restriction of liberty for up to two years, or imprisonment for up to two years (Art. 411(2)).
- When the acts described under paragraphs 1 and 2 of Art. 411 are committed in connection with the accusation of serious or extremely serious charges, the penalty is a fine, corrective labour, restriction of liberty for up to four years or imprisonment for up to four years (Art. 411(3)).

3. Criminal defamation of the head of state

A separate chapter of the Criminal Code – Chapter 16 – provides for criminal liability in the case of infringement upon the honour and dignity of the President of the Republic of Kazakhstan, obstruction of the president’s activities and influencing his close relatives to prevent the president’s execution of his duties.

Criminal Code Art. 373 criminalises infringing upon the honour and dignity of the president and implies influence in whatever form, greatly expanding the possibility of pressure on the news media.

The article covers the following: *Public insult and other infringement on the honour and dignity of the First President of the Republic of Kazakhstan - Leader of the Nation, desecration of the image of the First President of the Republic of Kazakhstan - Leader of the Nation, and obstruction of the lawful activity of the First President of Kazakhstan - Leader of the Nation*

The target of the crime is activities of the First President of the Republic of Kazakhstan to ensure coherent functioning of all branches of government. The objective aspect of the crime is expressed in public insult or other encroachment on the honour and dignity of the president.

“Insult” refers to acts that insult not only the personal, human, professional, employment-related, and official dignity of the president as a representative of authority, but also the dignity of the president as the head of state, i.e., the highest official tasked with determining the main directions of domestic and foreign policy and representing Kazakhstan within the country and in international relations.

The insult must be public. Note that liability under this article does not apply to offensive actions or statements that are aimed at government agencies, enterprises or organisations in general, but not specifically at the president.

The penalty for this article is a fine, correctional labour, restriction of liberty for up to two years or imprisonment for up to two years. For insult committed via the media or telecommunications networks, the possible prison term is three years.

Art. 373 also provides liability for influencing members of the president's family who live together with him. The punishment for this offence is a fine, correctional labour, restriction of liberty for up to five years, or imprisonment for up to five years.

In addition, Art. 375 of the Criminal Code also punishes *infringement on the honour and dignity of the President of the Republic of Kazakhstan and obstruction of his activities*.

This article is nearly the same as Art. 373 in terms of composition and sanctions. However, in Art. 375 there is a note, not included in Art. 373, stating that public speeches containing critical statements on the policy pursued by the president do not entail criminal liability under this article.

A well-known example of the application of provisions protecting the head of state is the sentencing in 1998 of opposition activist Madel Ismailov to one year in prison for insulting the president. Speaking at a rally, Ismailov called the president a scoundrel.

4. Criminal defamation of the state, state symbols and state institutions

Under its constitution, the Republic of Kazakhstan has the following state symbols: flag, coat of arms and anthem. The description and the order of official use of these symbols are to be established by the Constitutional Law of the Republic of Kazakhstan "On state symbols of the Republic of Kazakhstan" of 24 January 1996. According to Art. 3 of this law, citizens and other persons on Kazakh territory are obliged to honour the national flag, coat of arms and anthem of Kazakhstan.

In addition, the Criminal Code provides liability for abuse of state symbols.

Desecration of state symbols (Criminal Code Art. 372): Stipulates that the penalty for desecrating state symbols is a fine, correctional labour, restriction of liberty for up to two years, or imprisonment for up to two years.

The objective aspect of this crime is the abuse (desecration) of state symbols. This must be an active form of behaviour, evidencing explicit disrespect for symbols and insult to symbols. Desecration can be expressed through ripping the coat of arms or flag, interrupting the sound of the anthem, destroying or damaging symbols, or expressing a clear disrespect for symbols accompanied by violence or the threat of violence or offence of gross indecency. The Criminal Code does not strictly separate physical and verbal desecration, but implies that verbal desecration may also be penalised. However, to date there are not believed to have been any criminal prosecutions under this article

The offense should be considered as completed from the moment of action, expressed in the desecration of state symbols. Actions should be public, with a demonstrative character.

Specific intent is the obligatory condition. The subject of the crime is an individual who has reached the age of 16 and sane participant in a crime.

5. Criminal defamation of foreign heads of state

No provisions.

However, Art. 174 of the Criminal Code, which provides liability for inciting ethnic hatred, has been applied in cases concerning criticism of policies pursued by the president of a foreign state. For example, in December 2016, a Kazakh citizen was reported to face three years in prison for comments in which he called Russian President Vladimir Putin and the United States fascists who were responsible for the deaths of millions²⁵⁵.

6. Criminal defamation of foreign states and symbols

No provisions.

7. Criminal defamation of the deceased

No provisions.

However, a successor of a deceased person has the possibility of filing a case based on Art. 130 of the Criminal Code for defamation. However, there is no precedent for this in Kazakhstan.

8. Criminal blasphemy

There is no separate article in the Criminal Code of Kazakhstan that provides liability for religious criticism or insult. General criminal liability for insult is provided in Art. 174. This article also provides liability for inciting social, national, tribal, racial, class and religious discord. This is the most commonly litigated article in Kazakhstan. Unfortunately, in many cases it is used against civil society activists.

This article establishes criminal liability for deliberate actions aimed at inciting religious hatred, which involves insult to the religious feelings of citizens as well as propaganda of exclusivity, superiority or inferiority of citizens based on their attitude toward religion. Acts under this article must be committed publicly, through the media/telecommunications networks, through producing or distributing literature or through other media.

Incitement of religious hatred or discord is understood to be an attempt to create conflicts between citizens of different nationalities, tribes, races or religions. This can involve hate speech, physical violence or the threat thereof, destruction or damage to property, isolation, exclusion or restrictions in rights, privileges, benefits, etc.

The penalty for acts covered by this article is restriction of liberty for two to seven years or imprisonment for two to seven years.

²⁵⁵ See <http://www.diapazon.kz/aktobe/aktobe-city/88011-aktyubinca-sudyat-za-komentarii-ob-islame-kafirah-putine-i-amerike.html>.

If the act is committed by a group of persons, a group of persons in collusion, or repeatedly, or in connection with violence or the threat of violence, or committed by a person exercising the powers vested in them by virtue of their office, or leaders of a non-government association, including with the use of funds received from foreign sources, the penalty is imprisonment for a term of five to 10 years with or without a ban on holding certain positions or practicing certain professions for up to three years.

If the act is committed by a criminal group or entailed grave consequences, the penalty is imprisonment for a term of 12 to 20 years, with or without a ban on holding certain positions or practicing certain professions for up to three years.

Grave consequences shall be understood to be a person's death, grievous bodily harm, causing a major financial or other material damage to organizations and institutions, individual citizens; destruction of buildings, disruption of transportation routes or normal activities of enterprises or institutions; involuntary resettlement of people from permanent places of their residence, disruption of important events, etc.

9. Recent legal changes

In January 2015, a new criminal code came into effect in Kazakhstan. Unfortunately, criminal liability for defamation and insult was preserved in the new code despite years of advocacy by human rights activists, journalists and media experts.

The code also includes a new Art. 274, which punishes spreading false information with up to seven years in prison. The penalty is up to 10 years in prison if the information creates the risk of disturbance of public peace, or causes substantial harm to the rights and legitimate interests of citizens or organizations or legally protected interests of society or the state. Unfortunately, this article can be interpreted broadly and, in accordance with its sense, any person can be held liable for the dissemination of opinions (although not true facts).

In addition, Art. 174 of the Criminal Code on incitement to hatred does not comply with international standards. It was created exclusively to deal with objectionable activists and journalists.

A further novelty of the new criminal code is the new concept of 'leader of a public association'. This concept is used as a special subject for a number of crimes and entails more severe liability. This is considered to discriminate against leaders and members of public associations on the basis of their social status.

II. Practice

1. General notes

n/a

2. Statistics

n/a

3. Selected cases

Defamation

- In 2015, a court heard a criminal defamation case brought by a public prosecution service officer against a civil activist, A. Batyrbekov. The latter had published an article in the newspaper *Adilet* in which he accused the public prosecutor of illegally and without foundation taking a criminal case to court related to robbery. The court ruled that the information contained in the article had not been proven, and was therefore false and constituted defamation. It found Batyrbekov guilty of defamation and sentenced him to one year and six months in prison. The court further ordered Batyrbekov and the newspaper *Adilet* to refute the false information. However, an appeals court overturned the conviction, ruling that the information in the article had been directly related to the officer's official activities as a prosecutor. Therefore, the prosecutor should have filed charges under Criminal Code Art. 411, which provides criminal liability for defamation of prosecutors and other court officials, and not as a private prosecutor.
- In 2011, journalist Valery Surganov was found guilty of libel and sentenced to one year and six months of custodial restraint [restriction of freedom]²⁵⁶. The charges related to an article titled “Strongmen of the Financial Police”, posted on the news site *Guljan* and that reported on the alleged rape of a girl by a financial police officer. Surganov pled not guilty and showed that in publishing the article he used all available resources, including Internet resources. However, the court ruled that Surganov presented no written evidence or testimony or audio or video recordings or any other evidence that confirmed the veracity of the information claimed. On appeal, Surganov argued that the article was written in a critical tone and that he did not knowingly or intentionally disseminate defamatory information. The appeals court did not change the sentence.
- In March 2014, for the first time in Kazakhstan, a court issued a warrant for the arrest of a journalist on libel charges. A former member of Kazakhstan's lower house of Parliament (*Majilis*), Maral Itegulov, accused the journalist Natalia Sadykova of intentionally defaming him and damaging his reputation in an article on the news site *Respublika*. The article, “Not enough tenders for everyone”, was written using a pseudonym. Sadykova has denied she wrote the article. A court issued an arrest warrant in absentia for Sadykova and placed the journalist on a wanted list. The warrant was ordered due to the fact that, despite proper notice, Sadykova failed to appear in court without providing an excuse. Currently, Sadykova is in Ukraine. She says that she left Kazakhstan out of fear for the safety of her two young children, having learned from official sources about the impending trial²⁵⁷.

Article 174

- In 2016, civil society activists Max Bokayev, head of the NGO “Arlan”, and Talgat Ayan, a lawyer, were sentenced to five years' imprisonment and to disqualification from public activities for three years. They were sentenced under Criminal Code Art. 174, as well as under Arts. 274 (“dissemination of knowingly false information”) and 400 (“violation of the procedure of an organisation and holding of meetings, rallies, pickets, street processions and demonstrations”). The criminal prosecution was related

²⁵⁶ For additional information, see “Kazakh reporter sentenced to 'restriction of freedom'”, Committee to Protect Journalists (CPJ), 7 November 2011, <https://goo.gl/GzZRuw>.

²⁵⁷ For additional information, see coverage of this case by CPJ (<https://goo.gl/5CdqvD>), Adilsoz (<https://goo.gl/uoeSW6>) and Open Dialogue Foundation (<https://goo.gl/3UjpLM>).

to posts on Bokayev and Ayan's personal Facebook pages in which they reported they had applied for a permit to hold a rally related to the Land Code on 21 May 2016, and discussed how to behave at the rally so as not to violate the law. Human rights activists have called the charges against Bokayev and Alan politically motivated²⁵⁸.

- In 2013, police arrested an atheist journalist, blogger and civil activist named Aleksandr Kharlamov for allegedly inciting religious hatred through articles critical of religious though in general. Investigators reportedly conducted searches of Kharlamov's apartment and the offices of the local newspaper. At this trial, prosecutors stated: "The presence of negative and critical evaluation in the materials, due to the heterogeneity of the audience, i.e. the readers, to whom the materials are addressed, their different cultural background, educational level, world view and life experience may lead to a point where the analysed texts achieve not only a functional effect, but also a dysfunctional effect, resulting in the formation of a negative and critical attitude towards the existing religious system and religion in general". Kharlamov was detained for several months and forced to undergo a psychiatric evaluation²⁵⁹.

²⁵⁸ See "Kazakhstan: Sentencing to five years in prison of Mr. Max Bokayev and Mr. Talgat Ayan", FIDH, 29 November 2016, <https://goo.gl/k9BzMf>. See also: <http://www.adilsoz.kz/monitoring/show/id/132>.

²⁵⁹ See "Kazakhstan", EndBlasphemyLaws.org, <http://end-blasphemy-laws.org/countries/asia-central-southern-and-south-eastern/kazakhstan/>.

KYRGYZSTAN²⁶⁰

I. Law

1. Criminal defamation and insult laws

No provisions.

2. Criminal defamation of public officials

Insult of judges and participants in court proceedings (Criminal Code Art. 321²⁶¹). The minimum penalty for this offence is a fine of 100 to 200 specified rates²⁶² or correctional labour for up to one year. The maximum penalty is 200 to 500 specified rates or correctional labour for up to two years.

3. Criminal defamation of the head of state

No provisions.

4. Criminal defamation of the state, state symbols and state institutions

Desecration of the state emblem of the Kyrgyz Republic or the state flag of the Kyrgyz Republic (Criminal Code Art. 352) is punished with a fine of 50 to 100 specified rates or imprisonment for up to one year.

There is not believed to be any court practice regarding this provision. However, it is considered possible that it could be used to prosecute verbal or written insult.

5. Criminal defamation of foreign heads of state

No provisions.

6. Criminal defamation of foreign states and symbols

No provisions.

7. Criminal defamation of the deceased

No provisions.

8. Criminal blasphemy

No provisions.

²⁶⁰ Information on Kyrgyzstan is provided with the expert assistance of Nadejda Alisheva, Media Policy Institute; and Begaim Usenova, Media Policy Institute.

²⁶¹ Criminal Code of the Kyrgyz Republic, Law No. 68 of 1 October 1997, last amended by Law No. 188 of 24 November 2016. Available online (Russian) at: <http://cbd.minjust.gov.kg/act/view/ru-ru/568?cl=ru-ru>.

²⁶² One specified rate is 100 som (approx. €1.35).

It should be noted that the Law of 31 December 2008 “On Freedom of Religion and Religious Organisations in the Kyrgyz Republic” contains provisions (Art. 4) on the responsibility for “the deliberate insult of citizens' feelings in connection with their religious beliefs²⁶³”. However, Art. 146 of the Criminal Code regarding the “obstruction of implementing the right to freedom of conscience and religion” prescribes responsibility only for “illegal obstruction of activities of religious organizations or performance of religious rites”. This provision does not contain responsibility for insulting the feelings of citizens in connection with their religious beliefs.

9. Recent legal changes

Criminal provisions on defamation and insult were recently repealed in Kyrgyzstan.

The trend of declining criminal prosecution for defamation in Kyrgyzstan began in 2010 with the adoption of a new constitution following a national referendum. The current Constitution of the Kyrgyz Republic bans criminal prosecution for slander: “The prohibition guarantees on criminal prosecution for the dissemination of information that impugns the honour and injures the dignity of a person, established by this Constitution, is not subject to any restrictions”.

However, the article in the Criminal Code of the Kyrgyz Republic on slander (Art. 127) was repealed only in 2011. This was a significant event, as the campaign for the decriminalisation of this provision began in late 1997. Kyrgyzstan’s Jogorku Kenesh (Parliament) rejected an attempt to exclude the possibility of imprisonment for slander four times (in 1997, 2001, 2003 and 2007). Legislators believed that such articles on “slander” and “insult” had to be part of the Criminal Code, because as a matter of practice in most cases these articles were applied in relation to members of the media and journalists. This view caused concern to both media organisations and civil society, as such provisions had been used to intimidate the media and journalists.

In 1995, the chief editor of the newspaper Respublika (Республика) and his deputy were sentenced to one-and-a-half years in prison for slander based on charges brought by then-President A. Akayev (А. Акаев). As an additional punishment they were deprived of their right to engage in professional activities for one year. In two years’ time (1997), the chief editor and a columnist of the newspaper “Respublika” were sentenced to one-and-a-half years in a prison settlement. Further, two journalists of the same newspaper were banned from professional activities for one-and-a-half years.

In 2010, a political analyst from the Kyrgyz-speaking newspaper Achyk sayasat («Ачык саясат») was sentenced to one year in prison for slander. The sentencing came on the eve of the referendum on adopting the new Constitution, which already contained a ban on criminal prosecution for the dissemination of information that impugns the honour and injures the dignity of a person.

Organizations such as the Public Foundation “Media Policy Institute” (ОФ «Институт Медиа Полиси») had repeatedly argued that criminal punishment as a form of responsibility for the dissemination of false, insulting information in form of words by journalists was not necessary in a democratic society and that the sanction of imprisonment for slander exceeded

²⁶³ The full text of Art. 4(4) “The right to freedom of religion”: “The restriction of rights or the establishment of any privileges for citizens depending on their religious beliefs, as well as provoking enmity and hatred, or deliberate insult of citizens' feelings in connection with their religious beliefs, and desecration of veneratad religious cult objects are punishable in accordance with the laws of the Kyrgyz Republic”.

the legitimate objective pursued. Furthermore, it was argued that civil law provisions were sufficient to prevent possible abuse of freedom of speech and media.

The now-repealed Art. 127 defined “slander” as the “dissemination of information known to be false that impugns the honour and injures the dignity of another person or damages his/her reputation” or “that is contained in a public statement, publicly performed work or mass media”. An additional form of slander was slander “in connection with an accusation of the commission of a serious or particularly serious offence”. The maximum provided penalty was arrest for a term of three to six months or imprisonment for up to three years.

It should be noted that Kyrgyz legislation does not contain such definitions as “honour”, “dignity” and “business reputation”, as these refer to moral and ethical categories. At the same time, these concepts are recognised as personal non-property rights, which within the meaning of the law are independent objects of judicial protection. The honour and dignity of a citizen of the Kyrgyz Republic are of inestimable value.

In February 2015 the Plenum of the Supreme Court of the Kyrgyz Republic adopted a resolution “On judicial practice in the resolution of disputes on protection of honour, dignity and business reputation” (N 4, dated 13 February 2015), which incorporated the definition of “honour”²⁶⁴, “dignity”²⁶⁵ and “business reputation”²⁶⁶. On 30 June 2016 the President of the Republic signed the amendments to the Law “On the Supreme Court of the Kyrgyz Republic and local courts”, which stipulates that all Resolutions of the Plenum of the Supreme Court of the Kyrgyz Republic are binding for the courts of the Kyrgyz Republic²⁶⁷.

The next step was to repeal Art. 128 of the Criminal Code on insult. On 6 November 2013, with the decision of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic, Art. 128 of the Criminal Code of the Kyrgyz Republic was recognised as inconsistent with Art. 20, Part 4, Par. 6 and Art. 33, Part 5 of the Constitution of the Kyrgyz Republic, which state that “the prohibition guarantees on criminal prosecution for the dissemination of information that impugns the honour and injures the dignity of a person, established by this Constitution, are not subject to any restrictions” (Art. 20) and “no one may be prosecuted for disseminating information that impugns the honour and injures the dignity of a person” (Art. 33).

The Constitutional Chamber noted that honour and dignity are among the most significant non-property rights and require effective protection, i.e., effective ways and means to defend and protect the honour and dignity of citizens must be provided. The Constitutional Chamber established the need to consider an effective mechanism to protect the honour and dignity of a

²⁶⁴ Honour is defined as a socially significant characteristic of a set of mental, moral, ethical, business and other personal qualities, which is based on a positive social status of an individual and on compliance of his/her behaviour with public principles and concepts prevailing in the society.

²⁶⁵ Dignity is defined a reflection of this status in the consciousness of an individual, i. e., the subjective evaluation (self-evaluation), based on socially significant criteria of mental, moral, ethical and professional personal qualities.

²⁶⁶ Business reputation of an individual entrepreneur, a juridical person, is defined as the public assessment of entrepreneurial, social, professional or other activity, which is performed by that person as a participant of social relations. Business reputation of a natural person is the public assessment of business and professional qualities of that person that is based on his performance of labour, service, public or other functions and (or) duties. Business reputation of an individual entrepreneur, a juridical person, is the public assessment of entrepreneurial, social, professional or other activity, which is performed by that person as a participant of social relations.

²⁶⁷ See: <http://www.media.kg/news/postanovleniya-verxovnogo-suda-kr-teper-imeyut-obyzatelnyj-xarakter-primeneniya/>.

person by making changes to the Civil Code of the Kyrgyz Republic, including protective measures against insult. Moreover, it was noted actions of defaming and injuring the honour and dignity of citizens that pose no danger to society in terms of content may be regarded as administrative offences²⁶⁸.

Despite the fact that this decision was made in 2013, Art. 128 was officially repealed only in 2015²⁶⁹.

II. Practice

1. General notes

n/a

2. Statistics

n/a

3. Selected cases

n/a

²⁶⁸ Decision of the Constitutional Chamber of the Kyrgyz Republic of 6 November 2013 on the constitutionality of article 128 of the Criminal Code of the Kyrgyz Republic.

²⁶⁹ Law № 53 of 10 March 2015 “On Amendments to Certain Legislative Acts of the Kyrgyz Republic”.

LATVIA²⁷⁰

I. Law

1. Criminal defamation and insult laws

Defamation (Criminal Code Art. 157)²⁷¹: Defined as “knowingly commit[ing] intentional distribution of fictions, knowing them to be untrue and defamatory of another person, in printed or otherwise reproduced material, as well as orally, if such has been committed publicly”.

Criminal defamation is normally punished with fines or community service. However, if defamation is committed by means of the mass media, the punishment²⁷² is increased and may include temporary deprivation of liberty, community service, or a fine (Art. 157(2)).

2. Criminal defamation of public officials

No provisions.

3. Criminal defamation of the head of state

No provisions.

4. Criminal defamation of the state, state symbols and state institutions

Art. 93 of the Latvian Criminal Code prohibits the pulling down, tearing, breaking or destroying the Latvian Coat of Arms or the national flag of Latvia, or other desecration²⁷³ (*zaimošana*) thereof. Public desecration (*zaimošana*) of the national anthem of Latvia is likewise prohibited. The punishment in such cases is imprisonment for up to three years, temporary detention²⁷⁴, community service or a fine.

5. Criminal defamation of foreign heads of state

No provisions.

7. Criminal defamation of the deceased

No provisions.

²⁷⁰ Information on Latvia originally published as part of the International Press Institute’s Media Law Database and has been revised/updated for this present study.

²⁷¹ Criminal Code of Latvia, in effect as of 12 January 2017, available at: <http://likumi.lv/doc.php?id=88966>. English translation in effect from 12 February 2015 available through same portal.

²⁷² Under Latvia’s crime classification scheme (cf. Art. 7), defamation is considered a “criminal violation”. Art. 38 of the Criminal Code provides that “temporary” deprivation of liberty shall not exceed three months. According to the Criminal Code (Arts. 7, par. 2) and 41, par. 2) a maximum term of imprisonment for a criminal violation is three months and the maximum fine is one hundred times the minimum monthly wage prescribed in the Republic of Latvia. In 2014, the minimal monthly wage in the Republic of Latvia is €320.

²⁷³ According to Latvian legal experts consulted by IPI, Art. 93 should be understood as applying to both verbal and physical “insult” of state symbols. The Riga District Court has reportedly ruled in previous cases that “*zaimošana*” refers to any kind of insult.

²⁷⁴ Art. 38 of the Criminal Code provides that “temporary” deprivation of liberty shall not exceed three months.

8. Criminal blasphemy

No provisions.

9. Recent legal changes

Latvia in recent years has taken steps toward the repeal of criminal defamation laws:

- In 2009, Arts. 156 (intentional defamation) and 158 (defamation through the mass media) of the Latvian Criminal Code were repealed.
- In 2003, the Latvian Supreme Court declared unconstitutional Art. 271 of the Criminal Code, which prohibited defamation of state officials.

In addition, the Law on Criminal Procedure was amended in 2010 such that criminal defamation is now prosecuted in the same manner as any other criminal violation, i.e., by a public prosecutor.

In 2014, Art. 150 of the Criminal Code was amended. Previously, Art. 150(1) punished “violating the religious feelings of a person or inciting hatred toward a person in connection with his or her attitude toward religion” with temporary deprivation of liberty, community service or a fine. This provision was repealed and replaced with a provision on “Incitement of Social Hatred and Enmity”, which provides criminal liability for committing “an act oriented towards inciting hatred or enmity depending on the gender, age, disability of a person or any other characteristics, if substantial harm has been caused thereby”.

II. Practice

1. General notes

n/a

2. Statistics

The following data were provided upon request to the International Press Institute by the Central Statistical Bureau of Latvia²⁷⁵.

The data below relate to the year **2014**.

- For **Art. 157(1)** (defamation), there were zero convictions.
- For **Art. 157(2)** (defamation committed by the mass media), there were zero convictions.
- For **Art. 150(1)** (violating religious feelings or inciting hatred on account of attitude toward religion), there were zero convictions.

Full data for the years 2011 to 2014 can be downloaded through the legal database of the International Press Institute²⁷⁶. Notably, Latvian authorities registered only a single alleged instance of criminal defamation in this time period and not a single conviction.

Following a 2010 amendment to Latvia's Law on Criminal Procedure, criminal defamation is now prosecuted in the same manner as any other criminal violation, i.e. by a public

²⁷⁵ <http://www.csb.gov.lv/en>.

²⁷⁶ See <http://legaldb.freemedia.at/legal-database/latvia/>.

prosecutor. Latvian experts consulted by IPI have suggested that there are now fewer cases of criminal defamation before the courts. This is apparently due to a high dismissal rate given the difficulty of proving that person “*knowingly committed intentional distribution of fictions*”.

3. Selected cases

In 2009, then newly elected MEP Aleksandrs Mirskis filed a criminal libel complaint against Latvian journalist Gunta Sloga over a report in which Sloga appeared to question claims regarding Mirskis’s biography. Likening him to the German nobleman Baron Münchhausen, whose name has become synonymous with the relating of tall tales, Sloga cast doubt in particular on Mirskis’s reported military accomplishments. The Jurmala City Court acquitted Sloga in 2011 after a lengthy trial. Mirskis appealed to the Riga Court of Appeals, which confirmed the lower court’s ruling in 2013²⁷⁷.

²⁷⁷ "Latvian journalist fights off criminal libel charges", IPI, 30 September 2014, <https://ipi.media/latvian-journalist-fights-off-criminal-libel-charges-with-help-from-london-based-mldi/>.

LIECHTENSTEIN

I. Law

1. Criminal defamation and insult laws

The Liechtenstein Criminal Code²⁷⁸ foresees the following offences:

Defamation (Art. 111): Accusing a person of a disreputable characteristic or dishonourable behaviour that would lower the person's public standing.

Defamation is punishable with up to six months in prison or a fine of 360 times the daily rate. If committed via a print medium, radio or television, or any other channel by which the defamatory content would reach a broad audience, the act is punishable with up to one year in prison or a fine of 360 times the daily rate.

True statements or statements for which the offender had good grounds to believe true are exempt from criminal liability (Art. 111(3)). This exemption, however, does not apply in certain cases listed in Art. 111(4), including for factual accusations related to private or family life.

Slander (Art. 112): Accusing a person of a disreputable characteristic or dishonourable behaviour that would lower the person's public standing while knowing that the accusation is false.

Slander is punishable with up to two years in prison or a fine of up to 360 times the daily rate. If committed via a print medium, radio or television, or any other channel by which the defamatory content would reach a broad audience, the act is punishable with up to three years in a prison or a fine of 360 times the daily rate.

Acts of slander and defamation are exempt from criminal punishment if these were carried out to fulfil a legal duty or exercise a right (Art. 114).

Insult (Art. 115): Ridiculing, verbally abusing or physically mistreating a person in a manner accessible to a third party.

Insult is punishable with up to one month in prison or a fine of up to 60 times the daily rate. Insult committed publicly is punishable with up to three months in prison or a fine of up to 60 times the daily rate.

The following offence should also be noted:

Damage to business reputation (Art. 152): Making false claims that damage or endanger a person's creditworthiness, business activity or professional advancement.

²⁷⁸ Criminal Code of Liechtenstein (*Strafgesetzbuch vom 24. Juni 1987*), LGBl-Nr 1988.037. Last amended 6 June 2016. Official version available online (German) at: <https://goo.gl/PMhQw4>. (Last accessed 23 December 2016).

Damage to business reputation is punishable with up to six months in prison and/or a fine of up to 360 times the daily rate.

2. Criminal defamation of public officials

No provisions.

It should be noted that criminal offences against honour are generally prosecuted upon the request of the offended party. When the offence is committed against the Prince, the parliament, the government or any other public authority, prosecution occurs *ex officio* (Criminal Code Art. 119).

3. Criminal defamation of the head of state

No provisions.

4. Criminal defamation of the state, state symbols and state institutions

Public defamation, slander or insult directed at the Landtag, the government or another official body constitutes a criminal offence (Art. 116 Criminal Code) and is punishable under the terms of Arts. 111, 112 and 115.

Denigration of the State and its symbols (Art. 248): Insulting or bringing into disrepute the Principality of Liechtenstein in a hateful manner and through means accessible to a wider public, and/or insulting or denigrating the national flag (when displayed at an official or public event), national symbol or national anthem. Either act is punished with up to six months in prison or a fine of up to 360 times the daily rate.

5. Criminal defamation of foreign heads of state

No provisions.

6. Criminal defamation of foreign states and symbols

Denigration of foreign symbols (Art. 317): Insulting or denigrating an officially displayed flag or symbol of a foreign state or international body or publicly performed anthem of a foreign state.

The act is punishable with up to six months in prison or a fine of up to 360 times the daily rate.

7. Criminal defamation of the deceased

No provisions.

8. Criminal blasphemy

Denigration of religious teachings (Art. 188): Publicly ridiculing or denigrating a person, thing, teaching, custom or place of worship of a domestic church or religious group in a way that may cause justified indignation.

The act is punishable with up to six months in prison or a fine of up to 360 times the daily rate.

9. Recent legal changes

II. Practice

1. General notes

n/a

2. Statistics

According to official statistics, police in Liechtenstein recorded the following numbers of offences in the years noted²⁷⁹:

article of Criminal Code	2013	2014	2015
111 – defamation	0	1	3
112 – slander	1	0	1
115 – insult	2	0	2
116 ²⁸⁰ – insult to govt. bodies	0	0	0
188 – blasphemy	2	0	0
152 – damage to business reputation	0	0	0
248 – denigration of state and state symbols	0	1	1
317 ²⁸¹ – denigration of foreign symbols	0	0	0

3. Selected cases

n/a

²⁷⁹ "Polizeilich erfasste Tatbestände, nach Gesetz - Details, 2005 - 2015", available at <http://www.llv.li/#/12064/-rechtspflege-und-politik>.

²⁸⁰ The most recent conviction under this article was in 2007.

²⁸¹ No conviction for this article since at least 2005.

LITHUANIA²⁸²

I. Law

1. Criminal defamation and insult laws

The Lithuanian Criminal Code²⁸³ provides the following offence:

Libel (Art. 154): Libel is defined as the spreading of “false information about another person that could arouse contempt for this person or humiliate him or undermine trust in him”. The penalty²⁸⁴ for libel is a fine²⁸⁵, arrest²⁸⁶ or imprisonment for up to one year.

When libel consists of an accusation of the “commission of a serious or grave crime” and is committed via the media or other publication, the penalty is a fine or imprisonment for up to two years.

In Lithuania, libel is generally concerned with the dissemination of information (facts and data), but the Lithuanian Supreme Court has emphasised that the essential characteristic is the existence of “objective criteria”. Libel can thus refer to dissemination of specific, false information (e.g. that an official committed a particular act of bribery) that can be verified, but also, as frequently noted in the Court’s case law, to generalised statements unaccompanied by precise accusations or concrete facts that are nevertheless objective in the sense of being verifiable (e.g. the vague accusation that an official is corrupt).

2. Criminal defamation of public officials

Humiliating “in an abusive manner by an action, word of mouth or in writing” a court or judge executing justice is a criminal offence under Art. 232 of the Lithuanian Criminal Code. The punishment is a fine, arrest or imprisonment for up to two years.

Additionally, the Lithuanian Code of Administrative Offences²⁸⁷ prescribes administrative penalties for insulting bailiffs and police officers.

²⁸² Information on Lithuania originally published as part of the International Press Institute’s Media Law Database and has been revised/updated for this present study.

²⁸³ Criminal Code of Lithuania (Žin. 2000, Nr. 89-2741), version as of 1 January 2017, available at: <https://www.e-tar.lt/portal/en/legalAct/TAR.2B866DFF7D43/xEUhPgLmWt>.

²⁸⁴ It should be noted that under the Lithuanian Criminal Code, some criminal offences can be treated either as crimes or as misdemeanors, depending on the sanction provided for committing the offence. A crime is a dangerous act or omission forbidden under the Lithuanian Criminal Code punishable with custodial sentence, while a misdemeanor is a dangerous act or omission forbidden under the Lithuanian Criminal Code punishable with non-custodial sentence, with the exception of arrest (Arts. 11 and 12). Under the provisions of Art. 154, libel is considered a crime in all cases.

²⁸⁵ Under the Criminal Code, fines are calculated in terms of “minimum standard of living” as determined by the court. As both libel is considered to be a misdemeanour or minor crimes, the maximum fine in either case will be 100 MSLs (Art. 47).

²⁸⁶ An arrest refers to “short-term imprisonment served in a short-term detention facility”. The term of such imprisonment shall be set by the court, but shall range from 15 to 90 days for a crime and 10 to 45 days for a misdemeanour (Art. 49).

²⁸⁷ Code of Administrative Offences, version as of 1 January 2017, available at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.FC2B71C84492>.

Note that Lithuania's Law on the Provision of Information to the Public states that every person “shall have the right to publicly criticise the activities of State and local government institutions and agencies, as well as the activity of officers”. It also prohibits prosecution for criticism.

3. Criminal defamation of the head of state

No (criminal) provisions.

Defaming of insulting the President of Lithuania through the media is an administrative offence under Art. 214(6) of the Lithuanian Code of Administrative Offences. The punishment is a fine of €144 to €289. Repeat offenders face a higher fine.

4. Criminal defamation of the state, state symbols and state institutions

Publicly tearing down, tattering, breaking, destroying, soiling, or *otherwise desecrating the state flag or state emblem of the Republic of Lithuania*, or publicly ridiculing the national anthem of Lithuania, is a criminal offence under Art. 127 of the Lithuanian Criminal Code. The punishment is a fine, restriction of liberty, arrest or imprisonment for up to two years.

It should be noted that this law primarily punishes physically damaging or misusing state symbols, but also contains a “catch-all” clause that could theoretically be applied to verbal forms of insult.

5. Criminal defamation of foreign heads of state

No provisions.

6. Criminal defamation of foreign states and symbols

Tearing down, tattering, breaking, destroying, soiling or *otherwise desecrating an officially displayed state emblem or flag of a foreign state, the flag of the European Union or of an international public organisation* is a criminal offence under Art. 128 of the Lithuanian Criminal Code. The punishment is a fine, restriction of liberty, arrest, or imprisonment for up to two years.

It should be noted that this law primarily punishes physically damaging or misusing state symbols, but also contains a “catch-all” clause that could theoretically be applied to verbal forms of insult.

7. Criminal defamation of the deceased

Making false statements about the deceased that "could arouse contempt for or undermine respect to the memory of the deceased" is a criminal offence under Art. 313 of the Lithuanian Criminal Code. The punishment is community service, fine, restriction of liberty or arrest.”

8. Criminal blasphemy

No provisions.

However, Art. 170 of the Lithuanian Criminal Code prohibits “ridiculing, expressing contempt for, urging hatred of, or inciting discrimination against” persons on account of their “religions, convictions or views”. The punishment is restriction of liberty of imprisonment for up to one year. If committed publicly, the maximum term of imprisonment is increased to three years.

9. Recent legal changes

In June 2015, the Lithuanian Parliament repealed Arts. 155 (insult) and 290 (insult of a civil servant) of the Lithuanian Criminal Code²⁸⁸.

II. Practice

1. General notes

The Supreme Court of Lithuania often takes into account, cites and applies the standards developed in the jurisprudence of the European Court of Human Rights (ECtHR) and the European Court of Justice.

The Supreme Court has emphasised²⁸⁹ in both criminal and civil libel cases, that Art. 25 of the Constitution of the Republic of Lithuania and Art. 10 of the European Convention on Human Rights (ECHR) guarantee the right to freedom of expression, which encompasses the right to have personal beliefs and freely express them, to freely hold (have) an opinion, and to receive and disseminate information and ideas. However, the Court has noted that both instruments allow for the restriction of this right, so long as such a restriction is provided in law and necessary to achieving certain aims in democratic society, namely, to preserve human health, dignity, honour or morals, or to protect the constitutional order.

Application of criminal law

The Supreme Court has held that the imposition of criminal liability for offences to reputation is a particularly severe measure, which should only be applied where necessary and proportionate in a democratic society and to protect other human rights and public interests. In the Court’s view²⁹⁰, less severe measures of the limitation of the right to expression have to be exhausted before turning to criminal punishment (for example, those enshrined in Art. 2.24 of the Civil Code, such as the right to refutation).

Definition of criminal libel; defence of truth

The Supreme Court has held²⁹¹ that libel is an intentional crime. The object of this crime is the honour and dignity of a person, which are violated when, according to objective criteria, negative information about a person is disseminated that may humiliate him or undermine confidence in him or bring him into disrepute in the eyes of society. This information must also be untrue. The crime of libel is also committed in cases when information is disseminated indicating that the person has (falsely) committed a severe or very severe crime. In general, information refers to facts and data about phenomena, events, or a person’s actions or qualities. Such facts and data are susceptible to proof of truth, the existence of which may be verified by evidence and objectively stated.

²⁸⁸ Natalie Rowthorn, "Lithuania removes insult articles from Criminal Code", IPI, 8 July 2015, <https://ipi.media/lithuania-removes-insult-articles-from-criminal-code/>.

²⁸⁹ See rulings of 24 April 2012, No. 2A-3/2012, and 23 March 2005, No. 3K-3-205.

²⁹⁰ Supreme Court ruling of 24 April 2012, No. 2A-3/2012.

²⁹¹ 30 December 2008, No. 2K-7-437/2008.

Separation of fact and value

The Supreme Court has held that when qualifying certain actions as libel, it is important to distinguish between information (facts and data) and opinion. An opinion represents an understanding or evaluation of, or a point of view toward, certain facts and values, comments, observations or remarks. An opinion is subjective, and the criterion of truth is not applicable to one's opinion; however, the opinion has to be based on facts and must be provided without deliberately distorting those facts. There is no criminal responsibility for voicing (disseminating) one's opinion on certain real (correct/accurate) information²⁹².

Public figures

Specifically referencing ECtHR case law, the Supreme Court has emphasised²⁹³ that when criminal liability for the protection of honour and dignity is applied to information regarding a person whose activities may potentially be of public interest (e. g. politicians, other public persons), such protection must be evaluated keeping in mind the interests of free discussion on political issues. The limits of criticizing a politician may therefore in some instances be regarded as broader than those of a private person.

2. Statistics

n/a

3. Selected cases

In 2011, the Vilnius District Court convicted journalist Gintaras Visockas²⁹⁴ of criminally libelling former Lithuanian presidential candidate Ceslovas Jezerkas, a former general in the Soviet Army who had also been a wrestling champion. In an article published on the web portal Slaptai ("Secret"), Visockas wrote that, in the Soviet Union, combat-sport athletes had been controlled by the KGB. Jezerkas sued for libel and the court agreed that an average reader would have interpreted that Jezerkas had worked for the KGB. Visockas was ordered to pay court fees, legal costs, and non-pecuniary damages amounting nearly 25,000 litas²⁹⁵. Visockas requested to replace the court fees with a jail term, but this request was denied by the courts.

In June 2012, Dainius Radzevičius, president of the Lithuanian Journalists' Union, was convicted of criminally libelling Vitas Tomkus, editor of the newspaper On his personal blog, Radzevičius had commented on a WikiLeaks cable that claimed certain Lithuanian media outlets, including Respublika, had blackmailed businesses in order to secure advertising contracts. Radzevičius was ordered²⁹⁶ to pay a fine of 2,600 litas and pay 10,000 litas in moral damages to Tomkus, who had requested 1 million litas.

²⁹² See rulings of 2 April 2013, No. 2K-171/2013, and 30 December 2008, No. 2K-7-437/2008)

²⁹³ Supreme Court ruling of 24 April 2012, No. 2A-3/2012.

²⁹⁴ Grayson Harbou, "In Lithuania, journalist faces lingering consequences of libel conviction", IPI, 19 August 2014,

<https://ipi.media/in-lithuania-journalist-faces-lingering-consequences-of-criminal-libel-conviction/>.

²⁹⁵ 1 lita equaled approx. €0.31.

²⁹⁶ "[Head of journalists' union acquitted of libel against media group owner](#)", BNS, 26 October 2012.

LUXEMBOURG²⁹⁷

I. Law

1. Criminal defamation and insult laws

The Luxembourg Criminal Code²⁹⁸ provides the following offences:

Slander/defamation (Criminal Code Art. 443) consists of “maliciously imputing to another person a precise fact that may damage that person’s honour or expose him/her to public contempt”. This act is described as “slander” (*calomnie*) in cases in which the law admits proof of the act but such proof is not provided. It is described as “defamation” (*diffamation*) in cases in which the law does not admit proof of the act.

The penalty for the act under Art. 443 is imprisonment from eight days to one year and a fine of €251 to €2,000 if the act is committed in meetings or public places; in the presences of several individuals in a place that is not public but is open to a certain number of people; in any place in the presence of the offended person and in front of witnesses; through writings or images distributed or communicated publicly or addressed to several persons (Criminal Code Art. 444(1)).

The penalty for slander/defamation is increased to imprisonment for one month to one year and a fine of €251 to €25,000 if the act, under the conditions of publicity outlined in Art. 444(1), is committed on account of a person’s origin, skin colour, gender, sexual orientation, gender change, family situation, age, health condition, disability, mores (*mœurs*), political or philosophical opinions, union activities, or accurate or supposed belonging or non-belonging to an ethnicity, nation, race or religion.

Note also that the Criminal Code, in Art. 443, provides grounds for the exemption from criminal liability for the relevant person within a media organisation in the case that the accusation in question is not established as true but was made in good faith and in the public interest; was made live; or is an accurate quote from a third party.

Insult (Criminal Code Art. 448) against a person or a “constitutional body” (*corps constitué*), committed with publicity according to Criminal Code Art. 444, carries a penalty of imprisonment for a term of eight days to two months and/or a fine of €26 to €500. Minimum penalties are increased in case of insult directed at certain family members and others defined by law.

It should be noted that, under Criminal Code Art. 449, if the proof of an accusation in question is established but it is concluded that the offender “made the accusation without any motive of public or private interest but with the sole aim of causing harm”, the offender shall be guilty of *malicious disclosure* (*divulgation méchante*). The penalty in this case is eight days to two months in prison and/or a fine of €251 to €4,000.

²⁹⁷ Information on Luxembourg originally published as part of the International Press Institute’s Media Law Database and has been revised/updated for this present study.

²⁹⁸ Criminal Code of Luxembourg, version as of 10 July 2016, available at: <http://legilux.public.lu/eli/etat/leg/code/penal>.

2. Criminal defamation of public officials

The following provisions on *insult (outrage)* should be noted:

- Under Criminal Code Art. 275, insult through “acts, words, gestures, threats, writings or drawings” directed at an MP “in the exercise or on the occasion of the exercise of his/her function, a member of government or a judge [...] in the exercise or on the occasion of the exercise of their functions” shall be punished with imprisonment for 15 days to six months or a fine of €500 to €3,000. If the act took place during a meeting of the Chamber of Deputies or at a court hearing, the penalty shall be imprisonment from two months to two years and a fine of €500 to €10,000.
- Under Criminal Code Art. 276, insult through “words, acts, gestures, threats, writings or drawings, directed, in the exercise or on the occasion of the exercise of their functions, against a professional officer (*officier ministériel*), or an officer of public authority or the police, or against any other person having a public character” shall be punished with imprisonment from eight days to one month and a fine of €251 to €2,000.
- Under Criminal Code Art. 277, “insult committed against constitutional bodies shall be published in the same manner as insult committed against members of these bodies”.

3. Criminal defamation of the head of state

No provisions.

4. Criminal defamation of the state, state symbols and state institutions

Criminal Code Art. 446 establishes that “slander and defamation directed at “constitutional bodies” (*corps constitué*) are punished in the same manner as slander and defamation directed against individuals”.

Insult (Criminal Code Art. 448) against a person or a “*constitutional body*” (*corps constitué*), committed with publicity according to Criminal Code Art. 444, carries a penalty of imprisonment for a term of eight days to two months and/or a fine of €26 to €500.

See also the “*outrage*” provisions under “Criminal defamation of public officials”.

5. Criminal defamation of foreign heads of state

No provisions.

6. Criminal defamation of foreign states and symbols

No provisions.

7. Criminal defamation of the deceased

Art. 450 of the Luxembourg Criminal Code states that spouses or descendants (up to and including the third degree) may file criminal defamation charges on behalf of a deceased person.

8. Criminal blasphemy

No provisions.

Note, however, that Art. 144 of the Luxembourg Criminal Code provides criminal liability for insult through “actions, words, gestures, threats, writings or drawings” of the objects of a religion “whether in places destined for or habitually used for the exercise thereof, or in public ceremonies of this religion”. The penalty is imprisonment for 15 days to six months and a fine of €251 to €5,000.

Under Art. 145, similar insult against the minister of a religion, in the exercise of his ministry, shall be punished with imprisonment for two months to two years and a fine of €500 to €5,000.

9. Recent legal changes

II. Practice

1. General notes

According to Luxembourg experts, Luxembourg courts generally follow the case law of the European Court of Human Rights, and criminal defamation prosecutions against the press, much less convictions, are rare.

A longstanding principle of defamation jurisprudence in Luxembourg is the separation between fact and value. Slander can only be constituted by a statement whose or falsity can be demonstrated. Value judgments, on the other hand, are only actionable as insult.

2. Statistics

n/a

3. Selected cases

In 2013, the Luxembourg Court of Appeal dismissed criminal slander and insult charges against Josée Hansen, a journalist working for the weekly newspaper d’Lëtzebuurger Land. The charges had been filed by Jean Nicholas, the owner of several Luxembourg media outlets including the tabloid Lëtzebuerg Privat. In a 2011 article, Hansen wrote that Nicholas’s media outlets served as “liaison agencies” (*organes de liaison*) for “xenophobia”.

The Court of Appeal, following a lower court’s decision in Hansen’s favour, emphasised that in order for a statement to be considered slanderous, it must contain the accusation of a “precise fact”. The Court clarified that a precise fact was one “whose truth or falsity can be the subject of proof” and found that Hansen’s comment presented “a very general and vague point of view and did not allow for proof of its truth or falsity” and therefore could not constitute slander.

The Court in contrast defined insult as “more or less vague acts or expressions that, according to common opinion, cause damage to a person’s honour or standing”. In this respect, the

Court ruled²⁹⁹ that Hansen’s article “[did] not overstep the bounds of journalistic criticism on a topical matter and therefore must be allowed to fall within the bounds of press freedom and freedom of expression.”

²⁹⁹ Cour d’appel du Grand-Duché de Luxembourg, Arrêt N. 483/13 V. du 15 octobre 2013.

MALTA³⁰⁰

I. Law

1. Criminal defamation and insult laws

Defamation (Criminal Code³⁰¹ Art. 252): Defined as offending a person "with the object of destroying or damaging" that person's reputation. The penalty is imprisonment for up to three months or a fine³⁰² (*multa*). However, when the defamatory content is "divulged or exhibited to the public" the maximum punishment increases to one year in prison. Defamation consisting of "vague expressions or indeterminate reproaches, or in words or acts which are merely indecent" is punishable only as a contravention.

Art. 256 of the Criminal Code states that defamation committed by means of the media is subject to the terms³⁰³ of the Press Act³⁰⁴.

Defamation (Press Act Art. 11): According to this provision, defamatory libel is punished with a fine. However, if a person seeks to prove the truth³⁰⁵ of the allegation, and cannot do so, a prison sentence of up to six months may be imposed (Press Act Art. 12).

Additionally, according to Criminal Code Art. 339, par. e, any person who "utters insults or threats not otherwise provided for in this Code, or being provoked, carries his insult beyond the limit warranted by his provocation" is guilty of a contravention.

It is also worth noting that Press Act Art. 7 punishes "obscene libel" – i.e., the use of expressions harming "public morals or decency" – with up to three months in prison and/or a fine (*multa*).

Under Maltese Criminal Code Arts. 255 and 373, and Press Act Art. 31, prosecutions for defamation are generally only at the behest of the offended party.

³⁰⁰ Information on Malta originally published as part of the International Press Institute's Media Law Database and has been revised/updated for this present study.

³⁰¹ Criminal Code of Malta, last amended by Acts XXVIII, XLIX and LI of 2016, available at <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8574>.

³⁰² The Maltese Criminal Code provides for two types of fines, *multa* and *ammenda*. Art. 11 explains that, unless otherwise indicated, the maximum and minimum fines in the *multa* category are €1,164.69 and €23.29, respectively.

³⁰³ Although the Criminal Code explicitly refers all press offences to the Press Act, the latter states in Art. 22 that if an offence under the Criminal Code "is punishable with a higher punishment than that imposed by this Act", the higher punishment applies. This appears to suggest that, theoretically, the prison sentences under the Criminal Code could still be applied against the media.

³⁰⁴ Press Act, last amended by Legal Notice 426 of 2012, available at <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8743&l=1>.

³⁰⁵ It should be noted that, according to Art. 12 of the Press Law, truth is generally only a defence if the alleged victim is a) "a public officer" in virtue of his function; b) a candidate for a public office "and the facts attributed to him refer to his honesty, ability or competency to fill that office"; c) "habitually exercises a profession, an art, or a trade" and the facts refer to the exercise of such; (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".

The Press Act in Art. 32 sets a one-year limitation period for bringing either criminal or civil actions for defamation.

2. Criminal defamation of public officials

Imputing misconduct to government: Anyone who, in a public speech or in comments at a public meeting, imputes misconduct to a person employed or concerned in administering Malta's government is guilty of a criminal offence under Art. 75 of the Maltese Criminal Code and faces up to one year in prison or a fine.

Reviling judges and other public officials: Criminal Code Art. 93 punishes "reviling" or threatening a judge, the attorney general, or a magistrate or juror with a prison sentence of nine to 18 months and a fine of €500 to €1,500. However, someone who seeks to "damage or diminish" the reputation of one of those people faces 12 months to two years in prison and a fine of €700 to €2,500. Art. 95 similarly punishes vilification of other public officials.

3. Criminal defamation of the head of state

Defamation and insult of the president: Under Art. 72 of the Maltese Criminal Code, "whosoever shall use any defamatory, insulting, or disparaging words, acts or gestures in contempt [of the President] or shall censure or disrespectfully mention or represent [the President] by words, signs, or visible representations" faces up to three months in prison or a fine (*multa*).

Imputing ulterior motives to the president: Whoever "shall impute ulterior motives [to the President of Malta]... or shall insult, revile, or bring into hatred or contempt or excite disaffection" against him or her via print or broadcast faces up to three months in prison or a fine of up to €465.87 under Art. 5 of the Press Act.

Seditious libel: Unlawful assembly with the intent, via speech or other means, to "excite hatred or contempt" toward the president or the government is an offence under Art. 73 of the Maltese Criminal Code. In addition, Art. 74 punishes conspiracy "to excite hatred or contempt toward the person of the President of Malta or towards the Government of Malta" with between six and 18 months in prison.

4. Criminal defamation of the state, state symbols and state institutions

Insulting or showing contempt for the Maltese flag is an offence under Art. 5, par. 2 of the Press Act. The punishment is a fine not exceeding €465.87 or imprisonment for up to three months.

5. Criminal defamation of foreign heads of state

No provisions.

6. Criminal defamation of foreign states and symbols

No provisions.

7. Criminal defamation of the deceased

Art. 255 of the Maltese Criminal Code implies that it is possible for family members to file a claim for defamation when “the offence is committed against the memory of a deceased person”.

8. Criminal blasphemy

No provisions.

Note that uttering an insult, "even though in a state of intoxication", that consists of "blasphemous words or expressions" is a contravention under Art. 342 of the Criminal Code. The minimum penalty is a fine³⁰⁶ (*ammenda*) of €11.65 and the maximum penalty is three months in prison.

9. Recent legal changes

Malta repealed its criminal blasphemy provisions in 2016³⁰⁷. Previously, vilifying or offending the Roman Catholic Church or any object of worship thereof was a criminal offence under Art. 163 of the Maltese Criminal Code. Offenders faced a prison sentence of between one and six months. Under Art. 164, vilifying or offending any other religion “tolerated by law” was punishable by one to three months in prison.

In February 2017, the Maltese government announced plans to repeal criminal libel³⁰⁸. On 17 February 2017 the OSCE RFoM received a letter from the Maltese authorities noting that there were on-going legislative reforms in Malta, including the drafting of an Act on Media and Defamation. An official copy of the bill was shared with the RFoM, and the Government expressed a willingness to follow up with discussions on this subject. On 21 February the RFoM replied to the authorities welcoming that the draft would decriminalise defamation, a step she said that all governments of OSCE participating States should undertake. In the following days, Minister of Justice Owen Bonnici and the RFoM engaged in very positive and direct communications over the next steps of co-operation. At the request of the Minister, the RFoM commissioned a review of the draft Media and Defamation Act, forwarded to the authorities on 28 February 2017. On 1 March the RFoM issued a public statement commenting on the legal review, welcoming several provisions of the draft law, which, if adopted, would offer increased protection for journalistic work and pointed to certain elements in the draft law that need further improvement³⁰⁹. If passed, the Media and Defamation Act would replace the current Press Act.

II. Practice

1. General notes

n/a

³⁰⁶ *Ammenda* fines normally have a minimum of €6.99 and maximum of €58.23, unless otherwise stated (Criminal Code Art. 13).

³⁰⁷ Act XXXVII of 2016

³⁰⁸ Gabriel Schembri, “Updated: Press law revamp will abolish criminal libel, civil libel fine to increase to €20,000”, Independent, 14 February 2017, <http://www.independent.com.mt/articles/2017-02-14/local-news/Press-law-revamp-will-abolish-criminal-libel-civil-libel-fine-to-increase-to-20-000-6736170394>.

³⁰⁹ Organization for Security and Co-operation in Europe. The Representative on Freedom of the Media Dunja Mijatović. Regular Report to the Permanent Council for the period from 2 December 2016 to through 9 March 2017, <http://www.osce.org/fom/66084>.

2. Statistics

n/a

3. Selected cases

The use of criminal libel laws is relatively common in Malta, including against the media. The following are examples of this usage only.

Malta Independent columnist Daphne Caruana Galizia has been the subject of several criminal libel actions. For example, in 2010, she was fined³¹⁰ €1,165 over a 2003 article critical of then-Labour Party deputy leader Anglu Farrugia. The court reportedly found that Caruana Galizia had practiced “militant journalism” with the intent to harm Farrugia’s reputation. In November 2016, Caruana Galizia was of criminally defaming a former Maltese Labour Party politician in a series of articles that noted the politician’s alleged involvement in a plot to kill a former Libyan prime minister in Egypt in 1984. The court ruled that the allegedly defamatory statements were backed up by strong evidence and were the result of a careful investigation on Caruana Galizia’s part³¹¹.

In 2012, criminal libel charges were filed³¹² against Labour MP Joe Mizzi and the editor of the party’s news programme ONE News, on a complaint by Richard Cachia Caruana, former ambassador to the EU. The charges arose over comments Mizzi made on the programme about allegations that Caruana had pressured Mizzi to have the country’s head of Security Services removed, allegedly for personal reasons.

In October 2011, Saviour Balzan, managing editor of MediaToday, instituted criminal libel proceedings against Steve Mallia, editor of The Sunday Times, after Mallia in an editorial accused Balzan of using his opinion column to target clients who refused to advertise with MediaToday. (28 October 2011). Balzan later dropped the case after the two reportedly agreed that refraining from attacking one another was in the best interest of their readers and media organisations, and they issued³¹³ a joint call for the decriminalisation of defamation.

In 2012, Malta’s Olympic Committee chairman Justice Lino Farrugia Sacco brought³¹⁴ criminal libel charges against Times of Malta editor Ray Bugeja and journalist Christian Peregin after the latter reported about a U.K. Sunday Times article on the sale of Olympics tickets that Farrugia Sacco said falsely implied that he was under investigation for corruption.

In 2013, Lawrence Zammit, the chairman of Malta Enterprise, the national development agency, filed³¹⁵ six libel cases over media reports published from 1 to 3 January that year linking him to a company being investigated in Italy for money laundering. Zammit filed one civil and one criminal defamation suit, each, against Josef Caruana, editor of L-Orizzont; Alexander Balzan, editor of inewsmalta.com; and Alternattiva Demokratika Deputy Chairman Carmel Cacopardo, who made the allegations in a blog post.

³¹⁰ “[Caruana Galizia fined in criminal libel case](#)”, *Times of Malta*, 7 October 2010.

³¹¹ “Q&A: the abuse of libel laws in Malta”, IPI, 1 February 2017, <https://ipi.media/qa-the-abuse-of-libel-laws-in-malta/>.

³¹² “[Cachia Caruana institutes criminal proceedings against Joe Mizzi](#)”, *Times of Malta*, 14 July 2012.

³¹³ “[Joint statement by the editors of The Sunday Times and Malta Today](#)”, *Times of Malta*, 7 October 2012.

³¹⁴ “[MOC president explains his position in libel case](#)”, *Times of Malta*, 17 January 2013.

³¹⁵ “[Six libel suits on Italy probe](#)”, *Times of Malta*, 5 January 2013.

In 2011, editor Mark Camilleri and author Alex Vella Gera were acquitted³¹⁶ of violating Criminal Code Art. 208 (distributing pornographic or obscene material) after publishing a sexually explicit story in student newspaper *Realtà*. The judge ruled that simply because the piece was shocking and evoked disgust in readers did not mean that it could be qualified as obscene and pornographic. Malta's criminal obscenity laws were later reformed in 2016.

³¹⁶ Waylon Johnston, "[Court rules explicit story not 'obscene'](#)", *Times of Malta*, 15 March 2011.

MOLDOVA³¹⁷

I. Law

1. Criminal defamation and insult laws

No provisions. Moldova repealed general criminal provisions on defamation and insult in 2009.

Note, however, that the Contravention Code of the Republic of Moldova³¹⁸ provides for the following defamation-related offences:

Insult (Art. 69): Defined as “words or acts that humiliate a person’s honour or dignity made in public”. The penalty for insult is a fine of 20 to 60 conventional units³¹⁹, or by unpaid community service work for up to 60 hours (Art. 69(1)). The penalty for insults made through the media is a fine of 50 to 100 conventional units or by unpaid community service for up to 60 hour (Art. 69(2)).

Defamation (Art. 70): Defined as “the deliberate dissemination of fabrications that defame another person, accompanied by an allegation of the commission of an extremely serious crime or an exceptionally serious crime, or that has serious consequences”. The penalty for defamation is a fine of 80 to 120 conventional units, or unpaid community work for 20 to 60 hours, or by arrest for up to 15 days and by a fine of 120 to 250 conventional units for responsible persons with the deprivation of the right to hold certain positions or of the right to carry out certain activities for a period of three months to one year.

2. Criminal defamation of public officials

Art. 9 of the Law on Freedom of Expression³²⁰ provides the freedom to criticise the state and any public authorities and persons holding public positions:

“(1) Any person shall have the right to criticise the state and the public authorities.

(2) The state and the executive, legislative and judicial authorities may not file lawsuits on matters of defamation.

(3) The state and the executive or legislative authorities shall not be protected by either criminal or administrative law against defamatory statements.

(4) The persons exercising public functions may be subject to criticism, and their actions verified by the mass media concerning the way in which they exercise or have exercised their functions, if this is necessary in order to ensure the transparency and responsible discharge of their functions.”

³¹⁷ Information on Armenia is provided with the expert assistance of Tatiana Puiu, media lawyer and Freedom House representative.

³¹⁸The Contravention Code of the Republic of Moldova, No. 218-XVI of 24 October 2008, Official Monitor of the Republic of Moldova No.3-6/15 dated 16 January 2009, available at (English): <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/86500/97673/F144678591/MDA86500.pdf> (last visited 31 December 2016).

³¹⁹ One conventional unit equals 50 lei (1 leu = approx. €0.047 [March 2017]).

³²⁰ The Law on freedom of expression of the Republic of Moldova, No. 64 from 23.04.2010 (Official Monitor 117-118/355, 09.07.2010).

Par. 3 refers to the kind of defamation of public authority that may result in contravention or criminal liability. It is assumed that only judicial authorities could be protected by criminal law against defamation or minor offence, not the executive, legislative or the state as a legal entity. Therefore, damage to the image of the state cannot be considered as a circumstance that would affect qualification or punishment by public law.

Art. 366 of the Criminal Code of the Republic of Moldova punishes “*insulting a superior by a subordinate and insulting a subordinate by a superior* in the course of the performance of duties related to military service” by community service for 60 to 240 hours or by imprisonment for up to six months.

Art. 317, par. 1 of the Contravention Code of the Republic of Moldova punishes showing disrespect in a court of law or to the Constitutional Court with a fine of 10 to 50 conventional units for individuals and by a fine of 50 to 100 conventional units for responsible persons.

3. Criminal defamation of the head of state

No provisions.

4. Criminal defamation of the state, state symbols and state institutions

Profanation of state symbols (Criminal Code Art. 347):

- 1) Profanation of state symbols (coat of arms, flag, hymn) of the Republic of Moldova or of another state hoisted, used or intoned, shall be sanctioned by a fine of up to 850 conventional units or by community service for 100 to 200 hours.
- 2) The same action committed by two or more persons shall be punished by a fine in the amount of 350 to 1050 conventional units or by community service for 150 to 220 hours or by imprisonment for up to one year.
- 3) The actions set forth in pars. (1) or (2) committed by an official responsible for compliance with procedures on the use of state symbols shall be punished by a fine in the amount of 850 to 1,150 conventional units or by community service for 180 to 240 hours or by imprisonment for up to three years, in all cases with the deprivation of the right to hold certain positions or to practice certain activities for up to five years.”

It is considered possible that verbal insult of symbols could also be considered “profanation”. It is noted that in 2000 there were calls to prosecute former President Vladimir Voronin after he called the flag of the Republic of Moldova “fascist”³²¹.

Violations of procedures for the use of state symbols (Contravention Code Art. 322)

- 1) Deliberate violations of the procedures for the use of state symbols (flag, coat of arms, hymn) of the Republic of Moldova or of another state shall be sanctioned by a fine of 20 to 40 conventional units for individuals, by a fine of 35 to 75 conventional units for responsible persons and by a fine of 50 to 100 conventional units for legal entities.
- 2) Profanation of national symbols of the Republic of Moldova or of another state, others than indicated in para (1), if such actions do not constitute an infraction, or of territorial symbols or deliberate violations for the use of these symbols shall be sanctioned by a fine of 15 to 35 conventional units for individuals, by a fine of 30 to

³²¹ See, e.g.,

<http://www.ziaruldeiasi.ro/local/chisinau/liderul-comunistilor-a-numit-tricolorul-drapel-fascist-ni-lhtq>.

60 conventional units for responsible persons and by a fine of 50 to 100 conventional units for legal entities.

- 3) Deliberate violations of the procedures for the use of corporate symbols of central specialised bodies of public administration, of corporate symbols of another central administrative authorities or of the National Army shall be sanctioned by a fine of 10 to 20 conventional units for individuals or by community service for 20 to 40 hours, by a fine of 15 to 35 conventional units for responsible persons and by a fine of 40 to 75 conventional units for legal entities.
- 4) Unauthorised use of registered private symbols shall be punished by a fine of 5 to 10 conventional units for individuals, by a fine of 10 to 20 conventional units for responsible persons and by a fine of 30 to 50 conventional units for legal entities.
- 5) Display or use in any way of signs unregistered as established by the legislation on the state as a national symbol, territorial or as a symbol of corporate specialised body of central public administration, as a symbol of another corporate administrative authorities central or National Army, shall be punished by a fine of 15 to 35 conventional units for individuals, by a fine of 30 to 60 conventional units for responsible persons, by a fine of 50 to 100 conventional units for legal entities.

5. Criminal defamation of foreign heads of state

No provisions.

6. Criminal defamation of foreign states and symbols

The following provisions on profanation of the symbols of the Republic of Moldova also apply to the symbols of other (foreign) states.

Profanation of state symbols (Criminal Code Art. 347):

- 4) Profanation of state symbols (coat of arms, flag, hymn) of the Republic of Moldova *or of another* state hoisted, used or intoned, shall be sanctioned by a fine of up to 850 conventional units or by community service for 100 to 200 hours.
- 5) The same action committed by two or more persons shall be punished by a fine in the amount of 350 to 1050 conventional units or by community service for 150 to 220 hours or by imprisonment for up to one year.
- 6) The actions set forth in pars. (1) or (2) committed by an official responsible for compliance with procedures on the use of state symbols shall be punished by a fine in the amount of 850 to 1,150 conventional units or by community service for 180 to 240 hours or by imprisonment for up to three years, in all cases with the deprivation of the right to hold certain positions or to practice certain activities for up to five years.”

Violations of procedures for the use of state symbols (Contravention Code Art. 322)

- 6) Deliberate violations of the procedures for the use of state symbols (flag, coat of arms, hymn) of the Republic of Moldova *or of another state* shall be sanctioned by a fine of 20 to 40 conventional units for individuals, by a fine of 35 to 75 conventional units for responsible persons and by a fine of 50 to 100 conventional units for legal entities.
- 7) Profanation of national symbols of the Republic of Moldova or of another state, others than indicated in para (1), if such actions do not constitute an infraction, or of territorial symbols or deliberate violations for the use of these symbols shall be sanctioned by a fine of 15 to 35 conventional units for individuals, by a fine of 30 to 60 conventional units for responsible persons and by a fine of 50 to 100 conventional units for legal entities.

- 8) Deliberate violations of the procedures for the use of corporate symbols of central specialised bodies of public administration, of corporate symbols of another central administrative authorities or of the National Army shall be sanctioned by a fine of 10 to 20 conventional units for individuals or by community service for 20 to 40 hours, by a fine of 15 to 35 conventional units for responsible persons and by a fine of 40 to 75 conventional units for legal entities.
- 9) Unauthorised use of registered private symbols shall be punished by a fine of 5 to 10 conventional units for individuals, by a fine of 10 to 20 conventional units for responsible persons and by a fine of 30 to 50 conventional units for legal entities.
- 10) Display or use in any way of signs unregistered as established by the legislation on the state as a national symbol, territorial or as a symbol of corporate specialised body of central public administration, as a symbol of another corporate administrative authorities central or National Army, shall be punished by a fine of 15 to 35 conventional units for individuals, by a fine of 30 to 60 conventional units for responsible persons, by a fine of 50 to 100 conventional units for legal entities.

7. Criminal defamation of the deceased

No provisions.

8. Criminal blasphemy

No provisions.

Note that the Contravention Code of the Republic of Moldova provides in Art. 54(5): “Offending the religious feelings of individuals; the desecration of objects venerated by them or of their locales, monuments or their symbols shall be sanctioned by a fine of 20 to 30 conventional units or by unpaid community work for 40 to 60 hours.”

9. Recent legal changes

Moldova repealed general criminal defamation laws in 2009 and adopted the Law on Freedom of Expression in 2010. These moves were a response to the fact that the European Court of Human Rights had found in more than 10 decisions that Moldovan courts had settled defamation cases in a way that violated freedom of expression.

Despite the positive changes noted above, Moldova has still not fully repealed criminal defamation laws, with the following provisions still on the statute books: Art. 347, prohibiting the ‘profanation of national and State symbols’; and Art. 366, punishing those who are involved in the military for the offence of ‘insulting a military person’ by a subordinate.

II. Practice

1. General notes

n/a

2. Statistics

n/a

3. Selected cases

n/a

MONACO

I. Law

1. Criminal defamation and insult laws

The Law of 15 July 2005 on Public Freedom of Expression³²² foresees the following offences:

Defamation (Art. 24): Defamation committed against private individuals through the press or other forms of public dissemination is punishable with imprisonment from one month to one year and/or with a fine according to Art. 26(2) of the Criminal Code. When committed against candidates for national or local office, the penalties for defamation against public officials apply.

Defamation is defined in Art. 21 as the allegation or imputation of a fact that harms a person's honour or good name.

Defamatory allegations can always be proved true except in circumstances listed in Art. 27³²³, including if the allegation concerns a person's private life, or refers to facts that occurred more than 10 years prior or refers to an

Insult (Art. 25): Insult committed against private individuals is punishable with six days to two months in prison and/or a fine according to Art. 26(2) of the Criminal Code.

Insult is defined in Art. 21 as any insulting or denigrating expression that does not involve the imputation of a fact.

2. Criminal defamation of public officials

Art. 23 of the Law of 15 July 2005 on Public Freedom of Expression criminalises *defamation committed via the press or other means of public dissemination against a public official* or other person with a public mandate, an elected member of the National Council or a municipal council or a religious minister paid by the state. The act is punished with imprisonment from three months to two years and/or with a fine according to Art. 26(4) of the Criminal Code.

³²² Law No. 1.299 of 15 July 2005 on Public Freedom of Expression (*Loi n. 1.299 du 15/07/2005 sur la liberté d'expression publique*). Official version (French) available at:

<https://goo.gl/uZKMqd>. (Last accessed 23 December 2016). Criminal Code of Monaco (*Code pénal*). Official version (French) available at: <https://goo.gl/89sLMf>. (Last accessed 23 December 2016).

³²³ Art. 27.- La vérité des faits diffamatoires peut toujours être prouvée, sauf :

- * a) lorsque l'imputation concerne la vie privée de la personne ;
- * b) lorsque l'imputation se réfère à des faits qui remontent à plus de dix années ;
- * c) lorsque l'imputation se réfère à un fait constituant une infraction amnistiée ou prescrite ou qui a donné lieu à une condamnation effacée par la réhabilitation ou au terme d'une reprise de procès au sens des [Art. 508 et suivants du Code de procédure pénale](#). Les dispositions des lettres a) et b) du précédent alinéa ne s'appliquent pas lorsque les faits sont constitutifs de viol ou d'attentat à la pudeur et ont été commis contre un mineur. Hors les exceptions prévues aux lettres a) , b) et c) du premier alinéa, la preuve contraire est réservée. Si la preuve des faits diffamatoires est rapportée, le prévenu est renvoyé des fins de la plainte. Lorsque le fait imputé est l'objet de poursuites commencées à la requête du ministère public ou d'une plainte de la part du prévenu, la procédure en diffamation est suspendue jusqu'à l'issue de celles-ci.

Art. 25 of the Law of 15 July 2005 on Public Freedom of Expression criminalises *insult committed via the same means against the bodies or persons defined in Arts. 22 and 23*. The act is punished with imprisonment from six days to six months and/or a fine according to Art. 26(3) of the Criminal Code.

Aggravated insult (outrage) against public officials (Art. 164 Criminal Code): Aggravated non-public insult via words, gestures or threats against public officials, including government officials and members of the National Council or municipal councils. The act is punishable with imprisonment from three months to one year and/or a fine according to Art. 26(3) of the Criminal Code.

Aggravated insult (outrage) against members of police forces (Art. 165 Criminal Code) is punishable with imprisonment from one to six months and a fine according to Art. 26(2) of the Criminal Code.

3. Criminal defamation of the head of state/head of government

Offence toward the Prince (Art. 58 Criminal Code): Publicly offending the Prince is punishable with imprisonment from six months to five years and a fine according to Art. 26(4) of the Criminal Code. If not committed publicly, the act is punished with imprisonment from six months to three years and a fine according to Art. 26(3) of the Criminal Code.

Offence toward the family of the Prince (Art. 59 Criminal Code): Publicly offending the family of the Prince is punishable with imprisonment from six months to three years and a fine according to Art. 26(3) of the Criminal Code. If not committed publicly, the act is punishable with imprisonment from three months to one year and a fine according to Art. 26(2) of the Criminal Code.

4. Criminal defamation of the state, state symbols and state institutions

Art. 22 of the Law of 15 July 2005 on Public Freedom of Expression criminalises *defamation committed via the press or other means of public dissemination against bodies of public administration, courts and military institutions*. The act is punished with imprisonment from three months to two years and/or with a fine according to Art. 26(4) of the Criminal Code.

Art. 25 of the Law of 15 July 2005 on Public Freedom of Expression criminalises *insult committed via the same means against the bodies or persons defined in Arts. 22 and 23*. The act is punished with imprisonment from six days to six months and/or a fine according to Art. 26(3) of the Criminal Code.

Attack on the economic reputation of the State (Art. 71(1)): Publicly disseminating false accusations or information liable to directly or indirectly undermine public confidence in the financial and economic situation of the Principality. The penalty is imprisonment from six months to three years and a fine.

5. Criminal defamation of foreign heads of state

No provisions.

6. Criminal defamation of foreign states and symbols

No provisions.

7. Criminal defamation of the deceased

No provisions.

According to Art. 26 of the Law of 15 July 2005 on Public Freedom of Expression, acts of defamation and insult committed against the memory of the dead are not subject to liability unless the accused intended to harm the honour of the living heirs.

8. Criminal blasphemy

Profaning the objects of a religion (Art. 207 Criminal Code) through words or gestures, on occasion of a religious ceremony, whether inside or outside places of worship; or insulting religious ministers in relation to their function. Either act is punishable with imprisonment of one to six months and/or a fine according to Art. 26(2) of the Criminal Code.

9. Recent legal changes

II. Practice

1. General notes

n/a

2. Statistics

n/a

3. Selected cases

n/a

MONGOLIA³²⁴

I. Law

On 4 December 2015, the Mongolian Parliament adopted a new Criminal Code. Among other things, the new Code repealed the general criminal defamation provisions on defamation. The new Criminal Code was scheduled to take effect on 1 September 2016. However, in July 2016, Parliament voted to re-discuss the new Criminal Code. At the time of this writing (January 2017), this discussion is still ongoing. This analysis therefore reflects provisions contained within the previous (still valid) Criminal Code, indicating some, but not necessarily all, of the changes planned for the new criminal code.

1. Criminal defamation and insult laws

Slander (Criminal Code³²⁵ Art. 110): Defined as “wilful humiliation of an individual’s honour or dignity expressed in the means of mass media”. The penalty is a fine equal to 20 to 50 times the minimum salary or imprisonment for one to three months.

Defamation (Criminal Code Art. 111): Defined as the “spreading of knowingly false fabrications defaming another individual”. The penalty is a fine of 20 to 50 times the minimum salary or imprisonment for one to three months.

For defamation committed by means of the mass media or by a person upon whom an administrative penalty for defamation was previously imposed, the penalty is a fine of 51 to 150 times the minimum salary or imprisonment for three to six months (Art. 111(1)).

In the case of defamation connected with the accusation “of a commission of a serious or grave crime”, the penalty is a fine of 151 to 250 times the minimum salary or imprisonment for two to five years.

New Criminal Code

The new Criminal Code approved by Parliament on 4 December 2015 provides for the repeal of general criminal provisions on defamation. The enactment of this code has been delayed.

The new Administrative Code contains the following provisions related to defamation:

Art. 7.3.1: In the case that information defaming the honour and dignity of person is disclosed and distributed through media and social media, the individual shall be fined in amount of *tögrög* equal to 1000 units and legal entities shall be fined in an amount of *tögrög* equal to 10,000 units.

2. Criminal defamation of public officials

³²⁴ Information on Mongolia is provided with the expert assistance of Munkhburen Dash, defence lawyer and law programme coordinator, Globe International Center.

³²⁵ Criminal Code of Mongolia, English version available at: <http://gana2011.blogmn.net/97825/-angli-hel-deer-mongol-ulsiiin--eruugiin-huuli-.html>.

Insult of a state official or a public order public inspector (Art. 231): Defined as the insult of “a state official or a public order public inspector in public in connection with performance of their duties”. The penalty is a fine of five to 50 times the monthly salary, 100 to 150 hours of forced labour or imprisonment for one to three months.

Slander of judge, citizens’ representative, inquirer, investigator, prosecutor, advocate or court decision executor (Art. 259): Defined as slandering one of the named figures “in connection with consideration of the case in court, conduct of inquiry and investigation or execution of the court decision”: The penalty is a fine of five to 50 times the minimum salary, 100 to 150 hours of forced labour or by incarceration for one to three months.

New Criminal Code. Defamation of political parties and candidates (Criminal Code 2015 Art. 14.8.1): In the case that the reputation of political parties, coalitions and candidates participating in the election is defamed and clear false information disseminated, a penalty of fine of tögrög equal to 450-5400 units shall be imposed and [the offender] shall be imprisoned from one month to one year”.

3. Criminal defamation of the head of state

No provisions.

4. Criminal defamation of the state, state symbols and state institutions

No provisions.

5. Criminal defamation of foreign heads of state

No provisions.

6. Criminal defamation of foreign states and symbols

No provisions.

7. Criminal defamation of the deceased

No provisions.

8. Criminal blasphemy

No provisions.

9. Recent legal changes

On 4 December 2015, the Mongolian Parliament adopted a new Criminal Code. Among other things, the new Code repealed the general criminal defamation provisions on defamation. The new Criminal Code was scheduled to take effect on 1 September 2016. However, in July 2016, Parliament voted to re-discuss the new Criminal Code. At the time of this writing (January 2017) this discussion was still ongoing.

II. Practice

1. General notes

n/a

2. Statistics

According to the Globe International Center's Media Freedom Report 2015³²⁶, in the year 2015 Mongolian courts heard a total of 14 criminal defamation cases, five of which were against media outlets. In 2014, media were targeted in nine out of 12 criminal defamation cases; in 2013, three out of nine; and in 2012, four out of eight³²⁷. The report noted that out of a total of 738 civil and criminal defamation cases filed between 1999 and 2015, 54.3 percent were against media and journalists.

It further noted:

"As to criminal penalties, fine amounting to 9 792 000 tugrugs (equaling to minimum wages increased by 51 times) was the highest amount of fine. In 2015, criminal penalty included 3 months and 1 day of detention in accordance with provision 111.2 of the Criminal Code; 22 days of detention and 4 200 000 tugrugs of fine for a journalist."

3. Selected cases

The Globe International Center's report highlighted several examples of criminal defamation cases against journalists³²⁸:

- Journalist S. Battulga of info.mn faced criminal defamation charges "due to publishing a statement issued by Noyod Group LLC. She was arrested on 5 July 2015 [...] The journalist was found guilty of insult of ordered to pay compensation of 21 million tögrög (approx. US\$11000)".
- "S.Nergui, Representative of Citizens Representative Khural of Nalaikh District filed criminal defamation case against D.Batchimeg, journalist from Nalaikhiin Amidral newspaper. The journalist had published an interview with O.Ganbold, Democratic Party Group head. However the criminal case was dismissed."
- A governor, B. Shineregel, filed a criminal defamation lawsuit against TV5 station after the station "reported from Bayan soum's Citizens Representative Khural meeting and aired the reportage on news & current affairs programme 'Tsag'. The station reported critical positions of the meeting's representatives."

³²⁶ Globe International Center, "Media Freedom Report 2015", available at <http://www.globeinter.org.mn/images/upld/Hevleliinerhcholoo2016eng.pdf>.

³²⁷ See complete statistics in the Globe International Center report.

³²⁸ See the Globe International Center report for full case descriptions.

MONTENEGRO³²⁹

I. Law

1. Criminal defamation and insult laws

No provisions. Criminal defamation was repealed in Montenegro in 2011.

However, the following criminal provisions are worth noting:

Dissemination of information on personal and family life: Still a criminal offence in Montenegro is the “dissemination of information on personal and family life”, defined as the presentation or dissemination of information on anyone’s personal or family life that may harm his honour or reputation. It is punishable with a fine between €3,000 and €10,000 (Art. 197 of the Montenegrin Criminal Code³³⁰). If this offence is committed through the media or other similar means or at a public gathering, the punishment increases to a fine between €5,000 and €14,000. Additionally, if the offence resulted in grave consequences for the offended person, the minimum fine is €8,000.

Offence to minorities: Art. 199 prescribes that whoever publicly exposes to mockery a nation, minority nation or other minority ethnic community living in Montenegro will be punished with a fine ranging from €3,000 to €10,000.

Offending honour and reputation through copyright violations: According to Art. 233(3) of the Criminal Code, anyone who without permission changes or re-makes someone else's copyrighted work or recorded performance in a way that it offends the honour and reputation of the author shall be punished with a fine or an imprisonment for up to six months.

2. Criminal defamation of public officials

No provisions.

3. Criminal defamation of the head of state

No provisions.

4. Criminal defamation of the state, state symbols and state institutions

Publicly mocking the Republic of Montenegro, its flag, coat of arms or national anthem is a criminal offence under Art. 198 of the Montenegrin Criminal Code. The punishment is a fine or imprisonment for up to one year.

5. Criminal defamation of foreign heads of state

³²⁹ Information on Montenegro originally published as part of the International Press Institute’s Media Law Database and has been revised/updated for this present study.

³³⁰ Criminal Code of Montenegro, Criminal Code of Montenegro, Official Gazette no 70/93, 13/04, 47/06 and Official Gazette no 40/08, 25/10, 32/11, 40/13, 14/2015 42/2015 and 58/2015, available at <http://www.pravda.gov.me/biblioteka/zakoni?query=krivicni%20zakon&sortDirection=desc>.

No provisions.

6. Criminal defamation of foreign states and symbols

Publicly exposing to mockery a foreign state or its flag, coat of arms of national anthem is a criminal offence under Art. 200 of the Montenegrin Criminal Code if Montenegro has diplomatic relations with that state. The punishment is a fine from €3,000 to €10,000. The same provision applies to *publicly mocking the United Nations, International Red Cross or any other international organisation* of which Montenegro is a member.

7. Criminal defamation of the deceased

No provisions.

However, Art. 202 of the Montenegrin Criminal Code (“Prosecution for Offences against Honour and Reputation”) states that if a defamation-related criminal offence is committed against a deceased person (offence of dissemination of information on personal and family life), prosecution may be initiated (via private action) by the spouse of the deceased or person cohabiting with the deceased, lineal descendant, adoptive parent, adopted child, or the deceased person’s sibling.

8. Criminal blasphemy

No provisions.

Note that publicly inciting violence or hatred toward persons or groups based on, i.a., religion is an offence under Art. 370 of the Montenegrin Criminal Code, punishable with imprisonment from six months to five years. If the offence is committed by exposing religious symbols to mockery, the punishment will be a prison sentence ranging from one to eight years. These punishments are further increased (up to 10 years in prison in the case of exposing religious symbols to mockery) if these respective acts are followed by riots, violence or other severe consequences.

9. Recent legal changes

Criminal defamation and slander were repealed in Montenegro in 2011.

II. Practice

1. General notes

n/a

2. Statistics

n/a

3. Selected cases

In 2011, Petar Komnenic, a Montenegrin journalist, was sentenced to pay a fine of €3,000 or serve four months in prison after being found guilty of libel over a 2007 story in the

newspaper Monitor in which Komnenic reported that the Montenegrin authorities had placed several senior judges under unlawful surveillance. The charges were brought by the President of the High Court, Ivica Stankovic. Komnenic refused to pay the fine and appealed the prison term, with a second court stating that his sentence should be replaced by community service. However, in 2012 – a year after defamation had been decriminalised in Montenegro – the court confirmed³³¹ the original sentence.

³³¹ See “[Montenegrin journalist given prison term for libel](#)”, Reuters, 18 April 2012; Katica Djurovic, “[Journalist's jail sentence raises media freedom concerns](#)”, *Southeast European Times*, 8 May 2012.

NETHERLANDS³³²

I. Law

1. Criminal defamation and insult laws

The Dutch Criminal Code³³³ provides the following relevant provisions:

Slander (Art. 261(1); *smaad*) is defined as intentionally harming a person's honour or reputation through the allegation of a particular fact with the aim of making that fact public. The penalty is a fine³³⁴ of the third degree or imprisonment for up to six months.

Libel (Art. 261(2); *smaadschrift*) is an act of defamation that occurs by means of publicly accessible writing or images. It is punishable with a fine of the third degree of imprisonment for up to one year.

There is no liability for criminal slander or libel if the act was necessary to defend the offender's interests or the interests of others or the offender believed in good faith that the allegation was true and was necessary in the public interest (Art. 261(3)).

Aggravated defamation (Art. 262; *laster*) is an act of slander or libel in which the offender knows that the statement or assertion in question is false. The penalty is a fine of the fourth degree or imprisonment for up to two years. In addition, a conviction for aggravated defamation may result in the loss of civil rights (1) and (2) under the list of rights enumerated in Art. 28 of the Criminal Code³³⁵.

Simple insult (Art. 266; *eenvoudige belediging*) includes any intentional insult that is not classifiable as defamation or libel. It is punished with a fine of the second degree or imprisonment for up to three months.

Distribution of insulting or slanderous material (Art. 271):

"1. Any person who distributes, publicly displays or posts, or has in store to be distributed, publicly displayed or posted, written matter or an image whose contents are insulting or, with regard to a deceased person, slanderous or libellous, if he knows or has serious reason to suspect that the written matter or the image contains such, shall be liable to a term of imprisonment not exceeding three months or a fine of the second category.

³³² Information on the Netherlands originally published as part of the International Press Institute's Media Law Database and has been revised/updated for this present study.

³³³ Criminal Code of the Netherlands, version as of 1 January 2017, available online at: <http://wetten.overheid.nl/BWBR0001854/2017-01-01#BoekEerste>. English translation according to the version of 10 October 2012 available via the European Judicial Training Network (EJTN) at http://www.ejtn.eu/PageFiles/6533/2014%20seminars/Omsenie/WetboekvanStrafrecht_ENG_PV.pdf. Legal provision in this analysis in quotes are taken from the EJTN version unless otherwise noted.

³³⁴ The Dutch Criminal Code (Art. 23) foresees six degrees of fines. The minimum fine for any category is €3, while the maximum fines are currently, as of January 2016: €410 (first degree); €4,100 (second degree); 8, 200 (third degree); €20,500 (fourth degree); €82,000 (fifth degree); and €820,000 (sixth degree). No defamation-related offence indicates a fine greater than the fourth degree.

³³⁵ . Criminal Code Art. 28 states: "The rights, from which the offender may be disqualified by judgment, in the cases prescribed by law, are: 1°. holding offices or certain offices; 2°. serving in the armed services; 3°. electing the members of general representative bodies and standing for election to these bodies; 4°. serving as a defence counsel or court-appointed administrator; 5°. practising certain professions."

2. Any person who, with the same knowledge or reason to suspect such, publicly utters the contents of such written matter shall be liable to the same punishment.
3. If the offender commits any of the serious offences defined in this section in the practice of his profession and if at the time of commission of the serious offence two years have not yet expired since a previous conviction of the offender for any of these serious offences became final, he may be disqualified from the practice of that profession.
4. The serious offences shall be prosecuted only on complaint of the persons designated in Section 269 and Section 270(2), except for the cases provided for in the opening lines of section 267 and in (1°) and (2°).”

It should be noted that Art. 268 of the Criminal Code provides criminal liability for *defamatory accusation*, defined as “intentionally submit[ting] a “false written complaint or report against a particular person to the authorities, thereby injuring the honour or reputation of that person”. The penalty is imprisonment for up to two years or a fine of the fourth degree.

Finally, it is worth noting Criminal Code Art. 137c, which provides:

- “1. Any person who in public, either verbally or in writing or through images, intentionally makes an insulting statement about a group of persons because of their race, religion or beliefs, their hetero- or homosexual orientation or their physical, mental or intellectual disability, shall be liable to a term of imprisonment not exceeding one year or a fine of the third category.
2. If the offence is committed by a person who makes a profession or habit of it or by two or more persons in concert, a term of imprisonment not exceeding two years or a fine of the fourth category shall be imposed.”

The objective aspect of this crime should be differentiated from that set forth in Art. 137d, which punishes the incitement of *hatred or discrimination* against persons based on the same group identities listed in Art. 137c.

2. Criminal defamation of public officials

Art. 267 of the Dutch Criminal Code states that the maximum prison sentences for the offences under Arts. 261 – 266 (defamation, libel, intentional libel, insult) may be increased by one-third if the offence was committed against:

1. “*the public authorities, a public body or a public institution*”
2. *a public official in relation to the lawful exercise of his office*; or
3. the head or a member of the government of a friendly state.

3. Criminal defamation of the head of state

Offence toward the monarch and the royal family (*lèse-majesté*) remains a criminal offence in the Netherlands under the Dutch Criminal Code.

Art. 111 punishes *intentional insult of the King* with up a fine of the fourth degree or imprisonment for up to five years.

Art. 112 punishes *intentional insult of the King’s spouse, the heir apparent, the heir apparent’s spouse, or of the Regent* with a fine of the fourth degree or imprisonment for up to four years.

According to Art. 114(2), conviction under Art. 111 or Art. 112 may also lead to the loss of civil rights (1), (2) and (3) of the rights enumerated in Art. 28 of the Criminal Code³³⁶.

Distribution of material insulting to the King and members of the royal family (Art. 113):

“1. Any person who distributes, publicly displays or posts, or has in store to be distributed, publicly displayed or posted, written matter or an image defaming the King, the King's consort, the King's heir apparent or his spouse, or the Regent, shall be liable to a term of imprisonment not exceeding one year or a fine of the third category, if he knows or has serious reason to suspect such defamatory content of the written matter or image.

2. Any person who, with the same knowledge or reason to suspect such, publicly utters the content of such written matter shall be liable to the same punishment.

3. If the offender commits any of the serious offences defined in this section in the practice of his profession and if at the time of commission of the serious offence two years have not yet expired since a previous conviction of the offender for any of these serious offences became final, he may be disqualified from the practice of that profession.”

4. Criminal defamation of the state, state symbols and state institutions

Art. 267 of the Criminal Code provides that, in the case of slander, libel, aggravated defamation or simple insult committed against “*the public authorities, a public body or a public institution*”, the usual punishments for these offences may be increased by one-third.

5. Criminal defamation of foreign heads of state

Criminal Code Art. 118(1) provides criminal liability for *international insult of “the head or a member of government of a friendly nation, present in the Netherlands in his official capacity”*. The penalty is imprisonment for up to two years or a fine of the fourth degree.

The same punishment applies to intentional insult “of a person in his capacity as a *representative of a friendly nation accredited to the Dutch government*” (Art. 118(2)).

A conviction under Art. 118 may also lead to the loss of civil rights (1) and (2) in the list of rights enumerated in Criminal Code Art. 28³³⁷.

Distribution of material insulting to foreign officials (Art. 119):

“1. Any person who distributes, publicly displays or posts written matter or an image defaming a head or a member of the government of a friendly nation, present in the Netherlands in his official capacity, or who publicly utters the content of such written matter, shall be liable to a term of imprisonment not exceeding six months or a fine of the third category, if he knows or has serious reason to suspect such defamatory content of the written matter or image.

2. Any person who distributes, publicly displays or posts, or has in store to be distributed, publicly displayed or posted, written matter or an image defaming a person in his capacity as a representative of a friendly nation accredited to the Dutch government or who publicly utters the content of such written matter, shall be liable to the same punishment, if he knows or has serious reason to suspect such defamatory content of the written matter or image.

3. If the offender commits any of the serious offences defined in this section in the practice of his profession and if at the time of commission of the serious offence two years have not yet

³³⁶ See earlier note.

³³⁷ See earlier note.

expired since a previous conviction of the offender for any of these serious offences became final, he may be disqualified from practising that profession.”

In addition, Art. 267 of the Dutch Criminal Code states that the maximum prison sentences for the offences under Arts. 261 – 266 (defamation, libel, intentional libel, insult) may be increased by one-third if the offence was committed against:

1. “the public authorities, a public body or a public institution”
2. a public official in relation to the lawful exercise of his office; or
3. *the head or a member of the government of a friendly state.*

6. Criminal defamation of foreign states and symbols

No provisions.

7. Criminal defamation of the deceased

Criminal Code Art. 270 provides that “[a]ny person who, with regard to a deceased person, commits an act that would constitute libel or slander if that person were still alive, shall be liable to a term of imprisonment not exceeding three months or a fine of the second category”.

Prosecution under Art. 270 must be based on a complaint filed by certain relatives described by the law (Art. 270(1)).

8. Criminal blasphemy

No provisions.

Blasphemy was previously a criminal offence under Arts. 147, 147a, and 429bis of the Dutch Criminal Code. All three articles were officially removed on 1 March 2014.

9. Recent legal changes

On 1 March 2014, the Dutch Criminal Code was amended to repeal criminal blasphemy (formerly Arts. 147, 147a, and 429bis). It had reportedly been last invoked in 1968.

II. Practice

1. General notes

Criminal prosecutions for defamation involving the press are rare in the Netherlands, and in general Dutch courts follow the principles of ECtHR case law. A 2012 Council of Europe report³³⁸ quoted Dutch authorities as stating that “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.”

2. Statistics

³³⁸ “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” [Draft], 2012, Media Division, Directorate General of Human Rights and Legal Affairs, Secretariat General, Council of Europe, CDMSI(2012)Misc11.

The following official data were provided upon request to the International Press Institute by Statistics Netherlands³³⁹.

The data below refer to the year **2013** (most recent available at time of request).

- For **Art. 261, par. 1** (defamation), there were 30 convictions, resulting in 5 prison sentences, 10 criminal fines, 15 sentences of community service, 5 other, and 5 instances in which no punishment was ordered.
- For **Art. 261, par. 2** (libel), there were 25 convictions, resulting in 5 prison sentences, 10 criminal fines, 15 sentences of community service, and 5 other.
- For **Art. 262** (intentional libel), there were 15 convictions, resulting in 5 prison sentences, 5 criminal fines, 5 sentences of community service, and 5 other.
- For **Art. 266** (simple insult), there were 165 convictions, resulting in 25 prison sentences, 85 criminal fines, 50 sentences of community service, 35 other, and 10 instances in which no punishment was ordered.
- For **Art. 267** (defamation of public officials, public bodies, and foreign officials), there were 1,445 convictions, resulting in 255 prison sentences, 865 criminal fines, 430 sentences of community service, 170 other, and 45 instances in which no punishment was ordered.
- There were 0-5 convictions for **Arts. 111 - 113** (lèse-majesté), and **118** (insult of foreign officials), and **270** (defamation of the deceased).

The data below refer to the year **2012**:

- For **Art. 261, par. 1** (defamation), there were 10 convictions, resulting in 0 prison sentences, 5 criminal fines, 5 sentences of community service, and 10 other.
- For **Art. 261, par. 2** (libel), there were 20 convictions, resulting in 5 prison sentences, 10 criminal fines, 10 sentences of community service, and 5 other.
- For **Art. 262** (intentional libel), there were 20 convictions, resulting in 5 prison sentences, 10 criminal fines, 10 sentences of community service, and 10 other.
- For **Art. 266** (simple insult), there were 200 convictions, resulting in 20 prison sentences, 130 criminal fines, 50 sentences of community service, 50 other, and 20 instances in which no punishment was ordered.
- For **Art. 267** (defamation of public officials, public bodies, and foreign officials), there were 1,850 convictions, resulting in 270 prison sentences, 1,125 criminal fines, 555 sentences of community service, 195 other, and 60 instances in which no punishment was ordered.
- There were 0-5 convictions for **Arts. 111 - 113** (lèse-majesté), and **118** (insult of foreign officials), and **270** (defamation of the deceased).

3. Selected cases

Lèse-majesté

³³⁹ Explanatory notes (provided by Statistics Netherlands):

- Figures are rounded to the nearest 5.
- The total number of punishments differs from the total number of convictions, as one conviction may carry more than one punishment.
- These data concern only cases tried by a judge. In the Netherlands, certain offences can be settled by the Public Prosecutor.

Data originally published by the International Press Institute here: <http://legaldb.freemedia.at/legal-database/netherlands/>.

In 2007, a 17-year-old journalist working for the magazine *Spunk* was arrested³⁴⁰ for wearing a T-shirt with the words “Queen Beatrix is a whore”. The journalist was ultimately not charged, while *Spunk*’s editor explained that the incident was meant to draw attention to free speech after an Amsterdam man was fined €400 for insulting Queen Beatrix a week earlier, using the same slogan.

In May 2015, Dutch prosecutors said³⁴¹ that lèse-majesté charges would be pursued against an activist who was heard on television using swear words to refer to the Dutch King Willem-Alexander. The activist, Abulkasim al-Jaberi, was taking part in a protest against the popular Dutch holiday figure Black Pete.

³⁴⁰ “Young reporter arrested for insulting queen”, Dutchnews.nl, 1 August 2007, http://www.dutchnews.nl/news/archives/2007/08/young_reporter_arrested_for_in/.

³⁴¹ Dan Bilefsky, "Dutch Activist Faces Trial Over Profanity-Laced Tirade Against King", New York Times, 7 May 2015, <https://www.nytimes.com/2015/05/08/world/europe/dutch-prosecuting-abulkasim-al-jaberi-over-insults-to-king-willem-alexander.html? r=0>.

NORWAY

I. Law

1. Criminal defamation and insult laws

No provisions³⁴².

2. Criminal defamation of public officials

No provisions.

3. Criminal defamation of the head of state

No provisions.

4. Criminal defamation of the state, state symbols and state institutions

No provisions.

5. Criminal defamation of foreign heads of state

Art. 184 of the Norwegian Criminal Code provides criminal liability for “actions of violence or threatening or insulting acts towards representatives of foreign states”. The penalty is a fine or imprisonment for up to one year.

6. Criminal defamation of foreign states and symbols

No provisions.

7. Criminal defamation of the deceased

No provision.

8. Criminal blasphemy

No provisions.

9. Recent legal changes

A new criminal code came into effect in Norway on 1 October 2015, after having been approved in 2005. The new code introduced sweeping changes to Norwegian defamation law, repealing virtually all forms of criminal defamation insult, including lèse-majesté provisions³⁴³.

³⁴² Norwegian Criminal Code (*Lov om straff*), last amended 1 July 2016. Official version (Norwegian) available at: <https://goo.gl/qrtJzk>. (Last accessed 23 December 2016).

³⁴³ Unofficial translation of the previous Norwegian Criminal Code can be found here: <http://app.uio.no/ub/ujur/oversatte-lover/data/lov-19020522-010-eng.pdf>.

II. Practice

1. General notes

The Norwegian Criminal Code contains only one provision related to defamation and insult, namely, Art. 184 related to acts against representatives of foreign states. Prosecution under this provision does not require permission from the government.

While the objective aspect of this crime is considered to include insults to foreign heads of state or other representatives of foreign states, experts suggest that it is unlikely that this provision, when read together with protections for freedom of expression in the Norwegian Constitution and the European Convention on Human Rights, would be invoked to prosecute such insults. Preparatory works for this provision show that the primary aim is to protect foreign state representatives visiting Norway.

2. Statistics

n/a

3. Selected cases

n/a

POLAND³⁴⁴

I. Law

1. Criminal defamation and insult laws

The Polish Criminal Code³⁴⁵ provides the following offences:

Defamation (Criminal Code Art. 212): Defamation is defined as imputing “to another person, a group of persons, an institution or organisational unit, conduct or characteristics that may discredit them in the face of public opinion”. The penalty for defamation is a fine³⁴⁶ or restriction of liberty³⁴⁷.

Insult (Criminal Code Art. 216): Insult consists in insulting another person in their presence, or in their absence but with the intention of having the insult reach them. The penalty for insult is a fine or restriction of liberty.

For both offences, the penalty is stricter if committed through the mass media. In such cases, the punishment may be a fine, restriction of liberty, or imprisonment for up to one year. In addition to these penalties, the court can, in the case of both defamation and insult, also award a supplementary payment either for the offended party, the Polish Red Cross or another social cause indicated by the offended party. According to Art. 215 the offended party can also require publication of the court’s judgment.

2. Criminal defamation of public officials

Insulting a public official or a person called upon to assist him in the course of or in connection with the performance of official duties is a criminal offence under Art. 226(1) of the Polish Criminal Code. The penalty is a fine, restriction of liberty or imprisonment for up to one year.

3. Criminal defamation of the head of state

Publicly insulting the President of Poland is a criminal offence under Art. 135(2) of the Polish Criminal Code. The penalty is imprisonment for up to three years.

4. Criminal defamation of the state, state symbols and state institutions

³⁴⁴ Information on Poland originally published as part of the International Press Institute’s Media Law Database and has been revised/updated for this present study.

³⁴⁵ Criminal Code of Poland (last amended z 2016 r. poz. 189, 428, 437), available at <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970880553>.

³⁴⁶ Criminal fines in Poland (Criminal Code Art. 33) are set as “daily fines”, i.e. the court sets a “daily rate”, which is then multiplied by a certain number days (min. 10, max. 540). In setting the daily rate, the court must consider the offender’s income and family situation, etc., but the minimum rate is 10 zł and the maximum is 2,000 zł. 1 zł = approx. €0.23 (March 2017).

³⁴⁷ Restriction of liberty indicates an obligation to perform community service. As such, this sanction does not involve imprisonment and is much less severe than deprivation of liberty (imprisonment).

Publicly insulting the Nation or the Republic of Poland is a criminal offence under Art. 133 of the Polish Criminal Code. The penalty is imprisonment for up to three years.

Publicly insulting, destroying, or removing a symbol of the state, such as the Polish flag, is an offence under Criminal Code Art. 137(1). The penalty is a fine, restriction of liberty or imprisonment for up to one year.

Publicly insulting or humiliating a “constitutional authority of the Republic of Poland” is a criminal offence under Art. 226(3). The penalty is a fine, restriction of liberty, or imprisonment for up to two years.

5. Criminal defamation of foreign heads of state

Offending the head of a foreign state or the head of the diplomatic delegation of a foreign state is a criminal offence under Art. 136(3) of the Polish Criminal Code. The penalty is imprisonment for up to three years.

Publicly insulting “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” on the territory of Poland is a criminal offence under Art. 136(4) and punishable with restriction of liberty or imprisonment for up to one year.

6. Criminal defamation of foreign states and symbols

Insulting the symbols of foreign countries is a criminal offence under Art. 137(2) if the foreign country in question provides reciprocal protection for Polish symbols. The punishment is a fine, restriction of liberty or imprisonment for up to one year.

7. Criminal defamation of the deceased

No provisions.

8. Criminal blasphemy

Offending the religious feelings of other persons by publicly outraging an object of religious worship or a place dedicated to the public celebration of religious rites is a criminal offence under Art. 196 of the Polish Criminal Code. The penalty is a fine, restriction of liberty or deprivation of liberty for up to two years.

Additionally, under Art. 257, it is an offence *to insult a group or particular person on the basis of their religious affiliation*. The penalty is imprisonment for up to three years.

9. Recent legal changes

As part of changes to the Polish Criminal Code in 2010, the sanctions for criminal defamation were reduced. Deprivation of liberty is now only possible in case of defamation or insult through mass media (Arts. 212 and 216). Art. 212 is seen as a particular problem in Poland. In 2011, the Helsinki Foundation for Human Rights and the Polish Chamber of Press Publishers

launched³⁴⁸ a campaign to repeal the provision from the Criminal Code. The head of the Chamber stated that there had been a rise in convictions under Art. 212, against both journalists and others.

In 2006 the Polish Constitutional Court ruled that Art. 212 was compatible with the Polish Constitution³⁴⁹.

In November 2012 the Polish Ombudsman, Prof. Irena Lipowicz, submitted an application to the Polish Constitutional Court requesting an investigation “into the compatibility of Art. 212, Sec. 2 of the Polish Criminal Code – namely, the phrase ‘or imprisonment up to one year’ – with provisions in the Polish Constitution and Art. 10 of the European Convention on Human Rights”. In June 2013, the Constitutional Court dismissed the application by stating that its 2006 ruling had already settled the matter³⁵⁰.

II. Practice

1. General notes

n/a

2. Statistics

The following are official data on criminal convictions from the Polish Ministry of Justice for the year **2013**³⁵¹.

- For **Art. 212(1)** (defamation), there were 20 convictions, resulting in 0 sentences of imprisonment (deprivation of liberty), 3 sentences of restriction of liberty, and 17 criminal fines.
- For **Art. 212(2)** (defamation committed through the mass media), there were 11 convictions, resulting in 2 suspended prison sentences, 3 sentences of restriction of liberty, and 6 criminal fines.
- For **Art. 216(1)** (insult), there were 71 convictions, resulting in 3 suspended prison sentences, 23 sentences of restriction of liberty, and 45 criminal fines.
- For **Art. 216(2)** (insult committed through the mass media), there was 1 conviction resulting in 1 criminal fine.
- For **Art. 226(1)** (insult of a public official), there were 3,666 convictions, resulting in 220 unconditional prison sentences; 1,261 suspended prison sentences; 1,013 sentences of restriction of liberty; and 1,172 criminal fines.
- For **Art. 226(3)** (insult of a constitutional authority), there were 2 convictions, resulting in 1 unconditional prison sentence and 1 criminal fine.
- For **Art. 137(1)** (insulting, destroying, or removing a State flag), there were 28 convictions, resulting in 1 unconditional prison sentence, 2 suspended prison sentences, 5 sentences of restriction of liberty, and 20 criminal fines.

³⁴⁸ "[Launch of the campaign: ‘Let’s delete article 212 of the Criminal Code’](#)", Helsinki Foundation for Human Rights, 5 September 2011.

³⁴⁹ “Polish rights ombudsman criticises criminal defamation”, IPI, 16 July 2015, <https://ipi.media/polish-rights-ombudsman-criticises-criminal-defamation>.

³⁵⁰ “Polish rights ombudsman criticises criminal defamation”, IPI, 16 July 2015, <https://ipi.media/polish-rights-ombudsman-criticises-criminal-defamation>.

³⁵¹ Complete data for the years 2008 - 2013 can be downloaded from <http://legaldb.freemedia.at/legal-database/poland/>.

- For **Art. 196** (blasphemy), there were 9 convictions, resulting in 5 suspended prison sentences, 3 sentences of restriction of liberty, and 1 criminal fine.
- There were no convictions for **Arts. 135(2)** (insult of the President) and **133** (insult toward Poland).

3. Selected cases

- In 2016, the European Court of Human Rights found that the Polish courts had violated Art. 10 of the European Convention on Human Rights in relation to the conviction of Maciej Ziemiński, who at the relevant time had been editor of the newspaper *Komu i Czemu*. In August 2004, the paper published an article criticising a local proposal for quail farming and referring to unnamed public officials as, i.a., “dull”, “pretentious” and “dim-witted”. The local mayor and several officials filed charges under Art. 212 for defamation via mass media. A court convicted Ziemiński, but for insult via mass media under Art. 216. Ziemiński was fined the equivalent of €2,500, which was later upheld on appeal. The Court stated: “In the Court’s view, without taking a stand on each specific remark made by the applicant, there is no doubt that the remarks in question, used in the particular context of the article, remain within the limits of admissible exaggeration. The domestic courts failed to consider the applicant’s remarks in the context of the article as a whole³⁵².”
- In 2006, Polish journalist Andrzej Marek began serving a three-month prison sentence for libel. The conviction related to two articles published in February 2001 in which Marek alleged that an official in the town of Police had, among other things, used blackmail to obtain his position. The conviction had been upheld by Poland’s Supreme Court, but two days into Marek’s prison term the Constitutional Court suspended³⁵³ the ruling and Marek was freed.
- In 2009, Robert Rewiński, a former journalist for *Gazeta Wyborcza*, was convicted³⁵⁴ of criminal libel over an article alleging financial malpractice at Fundusz Ochrony Środowiska (the Environmental Conservation Fund) in the western Polish city of Zielona Góra. According to reports, the Zielona Góra District Court accepted that Rewiński’s article concerned a subject of public interest, but judged that he had not reported carefully enough and had illegitimately damaged the subject’s reputation. The court sentenced to him to a fine and payment to a social cause. Prior to his trial, Rewiński had been arrested and held in temporary detention for seven days.

Additionally, at least two persons have been charged in recent years with insulting the Polish president.

- In 2012, a 26-year-old man was sentenced to 15 months of community service and 15 months of “restricted liberty”, in which he was not allowed to change his address without the court’s permission, for having created a website with games such as *Komor Killer* in which users could fire vegetables at the president, Bronisław Komorowski. The images of the president on the website had, in the court’s view, clearly sexual, erotic dimension.” In 2013, an appeals court threw out³⁵⁵ the verdict.

³⁵² *Ziemiński v. Poland (No. 2)*, Application no. 1799/07, (2016).

³⁵³ [Journalist released after imprisonment for libel](#), IFEX, 27 January 2006.

³⁵⁴ Łukasz Lasek, [“article 212 in relation to freedom of expression in Poland”](#), Polish Helsinki Foundation for Human Rights, 30 June 2009.

³⁵⁵ [“Court throws out insulting president sentence”](#), *Thenews.pl*, 17 January 2013.

Komorowski reportedly did not agree with the original verdict, stating, “If you are in politics, you have to have a thick skin.”

- In the second case, a blogger was charged³⁵⁶ after referring to the president as a “cwel”, which according to reports is a “a word used to describe criminals (typically sexual), who are fair game for sexual abuse from other inmates.”

³⁵⁶ "[Blogger charged with insulting Polish president](#)", Thenews.pl, 16 January 2013.

PORTUGAL³⁵⁷

I. Law

1. Criminal defamation and insult laws

The Portuguese Criminal Code³⁵⁸ foresees the following offences:

Defamation (difamação, Art. 180): Alleging a fact or formulating a judgment (or reproducing such) about a third person that is offensive to that person's honour or reputation. It is punished with a prison term of maximum six months or a fine of maximum 240 days.

Per Art. 183, the penalty for defamation is increased by one-third if the act concerns the allegation of a particular fact that the offender knows to be untrue or committed with publicity. If the act was committed through the media, the penalty is increased to imprisonment for up to two years or a fine not less than 120 days.

Insult (injúria, Art. 181): Alleging a fact or expressing offensive words directly to a person that is/are offensive to that person's honour or reputation. Insult is punished with a prison term of maximum three months or a fine of up to 120 days.

Per Art. 183, the penalty for insult is increased by one-third if the act concerns the allegation of a particular fact that the offender knows to be untrue or committed with publicity. If the act was committed through the media, the penalty is increased to imprisonment for up to two years or a fine not less than 120 days.

False accusation (denúncia caluniosa, Art. 365): Publicly accusing or casting suspicion on a person of having committed a crime while knowing the accusation to be false. The penalty is imprisonment for up to three years or a fine. If the accusation is of a contravention (misdemeanour), the punishment is imprisonment of up to one year or a fine of up to 120 days. If the accusation results in the victim's incarceration, the penalty is up to eight years in prison.

2. Criminal defamation of public officials

Art. 184 of the Portuguese Criminal Code states that when *defamation or insult is committed against a wide range of government and public figures* in virtue of their function, the minimum and maximum punishments are raised by one-half. The list of figures covered includes members of Parliament, the Council of State, or the Ministry of the Republic; police and security service officers; public, civil, and military officials; judges, lawyers, witnesses, and jury members; ministers; and university professors.

Note also that, according to the Portuguese Criminal Code, prosecutions for insult or defamation (Arts. 180-183) can only occur at the behest of the offended party, except when the offended party is a public or government official or one of the institutions, corporations, or

³⁵⁷ Information on Portugal originally published as part of the International Press Institute's Media Law Database and has been revised/updated for this present study.

³⁵⁸ Criminal Code of Portugal (DL n.º 48/95, de 15 de Março), last amended by Lei n.º 39/2016, de 19/12, available at: http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=109&tabela=leis&so_miolo=.

services named in Art. 187 (see under “Protection for the state, its institutions, or its symbols”).

3. Criminal defamation of the head of state

Art. 328 of the Portuguese Criminal Code punishes *insult or defamation against the President of Portugal* with three months in prison or a fine. If committed publicly or through the media, the punishment increases to a prison term of between six months to three years and a minimum fine of 60 days.

4. Criminal defamation of the state, state symbols and state institutions

Art. 187 of the Portuguese Criminal Code provides criminal liability for asserting false information “capable of *offending the credibility, prestige or trust due to bodies or services that exercise public authority, collective persons, institutions or corporations*”. The penalty is imprisonment for up to six months or a fine of up to 240 days.

Additionally, Art. 332 punishes *insulting the State, the national flag or anthem, or the symbols of Portuguese sovereignty*, or failing to give the State or its symbols “the respect they deserve” with a prison term of maximum two years or a fine up to 240 days.

5. Criminal defamation of foreign heads of state

Offending the honour of “protected persons” while such persons are in Portugal in the course of performing their official functions is a crime under Art. 322. The penalty is imprisonment for up to two years or a fine. According to this article, the category “protected persons” includes foreign heads of state, heads of government and ministers of foreign affairs, and the families of these persons. The category also includes representatives or officials of foreign states or international organisations who enjoy special protection under international law, as well as the families of these persons.

6. Criminal defamation of foreign states and symbols

Under Art. 323, *insulting the flag or official symbol of a foreign state or international organisation of which Portugal is a member* is punished with a prison term of maximum one year or a fine of maximum 120 days.

7. Criminal defamation of the deceased

Seriously offending the dead is punishable under Art. 185 of the Portuguese Criminal Code with a prison term of maximum six months or a fine of maximum 240 days, subject to the defences of truth and legitimate interest and the aggravating circumstances of slander. The statute of limitations is 50 years.

8. Criminal blasphemy

Offending a person in virtue of his religious belief, or denigrating an object of religious worship in a way that could disturb public order, or vilifying a religious practice is punishable with a prison term of maximum one year or a fine of maximum 120 days (Portuguese Criminal Code Arts. 251-252).

9. Recent legal changes

II. Practice

1. General notes

In May 2015, the International Press Institute (IPI) published “Briefing: Criminal Defamation Laws in Portugal”, a 20-page report³⁵⁹ on freedom of expression problems resulting from the use of criminal defamation laws in Portugal. The report followed a conference organised by IPI of nearly 50 Portuguese journalists, editors, lawyers, civil society representatives, judges and Portuguese government representatives to evaluate the effect of Portugal’s defamation laws on the work of the Portuguese press. The report explained the focus on criminal defamation laws in Portugal for two reasons:

“The existence of outdated criminal defamation provisions in Portugal that fail to meet international standards by an alarmingly wide margin; and 2. An unusually high number of condemnations of Portugal at the European Court of Human Rights (ECHR) for violations of Art. 10 of the European Convention on Human Rights, many of which concerned the application of defamation laws.”

The report noted further:

“In the 10-year period between February 9, 2005 and February 9, 2015, according to statistics from the ECHR’s official database, Portugal was condemned 18 times for violating Art. 10. Only three EU states had more Art. 10 condemnations: France (22), Poland (21), and Romania (20). Moreover, among all 28 EU states, the average number of Art. 10 convictions was approximately six (6.46), with four states having no condemnations at all and 10 having just one or two violations. Portugal, with 18, had therefore three times as many Art. 10 condemnations as the average EU state during this period. Of Portugal’s 18 violations, 12, or two-thirds, concern convictions for criminal defamation – evidence enough to demonstrate that criminal defamation laws continue to be actively and problematically applied in Portugal. Among these 12, in six cases the party convicted was a journalist, editor or publisher; among the other six were a historian, two authors, and a politician. It bears noting that five of the criminal cases involved a conviction for violating Art. 184 (aggravated defamation against a public official), a highly problematic provision in light of international standards. Three of the 18 cases relate exclusively to civil liability for defamation; two to the violation of judicial secrecy (*segredo de justiça*); and one to an instance in which an NGO flotilla was denied entrance to Portuguese waters. Among the criminal defamation cases, the ECHR’s decisions frequently criticise a failure to balance freedom of expression with reputation as well as the awarding of disproportionate punishments. For example, in *Amorim Giestas and Jesus Costa Bordalo v. Portugal* (2014), the Court characterised one of the impugned articles as ‘not only based on facts but also a judicious contribution to a public interest debate’ and called the fines ordered of the two journalists ‘clearly disproportionate’. In *Azevedo v. Portugal* (2008), concerning a book author sentenced to a €1,000 fine or 66 days in prison, the Court wrote: ‘Contrary to the Government, the Court cannot consider the criminal punishment ... to be of minor character if the circumstances are taken into account.

³⁵⁹ “Briefing: Criminal Defamation in Portugal”, IPI, June 2015, https://ipi.media/wp-content/uploads/2016/08/PortugalCriminalDef_IPI_ENG.pdf.

Indeed, foreseeing the possibility of a prison punishment in a classic defamation case such as this one inevitably produces a disproportionate chilling effect.”

2. Statistics

The following data were provided upon request to the International Press Institute by the Portuguese Ministry of Justice.

The data below refer to criminal convictions by first-degree courts in the year **2013** (most recent year available)³⁶⁰:

- For the offence of defamation (**Art. 180**), there were 177 convictions, resulting in 162 criminal fines.
- For the offence of insult (**Art. 181**), there were 574 convictions, resulting in 3 unconditional prison sentences, 6 suspended prison sentences, and 526 criminal fines.
- For the offence of defamation or insult committed publicly or via the media (**Art. 183**), there were 0 - 3 convictions³⁶¹.
- For the offence of aggravated defamation (**Art. 184**), there were 71 convictions, resulting in 4 suspended prison sentences and 59 criminal fines.
- For the offence of aggravated insult (**Art. 184**), there were 353 convictions, resulting in 3 unconditional prison sentences, 18 suspended prison sentences, 6 prison sentences replaced by a fine, 8 prison sentences substituted by community service, 299 criminal fines, 6 criminal fine substituted by work, and 8 reprimands.
- For the offence of an offence toward an institution, corporation, organism or service run by public authorities (**Art. 187**), there were 9 convictions, resulting in 8 criminal fines.
- For the offence of seriously offending the dead (**Art. 185**), there were 3 convictions, for which no punishment is registered.
- There were 0 convictions and 0-3 persons charged under Arts. **251** (religious insult), **322** (defamation of protected persons), **323** (insult of flag of foreign state or organisation), or **332** (insult to the Portuguese State and its symbols).

3. Selected cases

- In March 2010, the Coimbra Court of Appeal confirmed the criminal defamation conviction of two journalists working for the regional newspaper³⁶² *Jornal do Centro* in Viseu. In 2002, the paper had published a news story and an opinion piece suggesting that a local court's donation of used furniture to charity was marked by favouritism and a lack of transparency, noting that one private charity in particular had received nearly half of the pieces. The Coimbra Court ruled that "malicious insinuation" was not protected by freedom of expression and upheld criminal fines of €1890 and €2030. The defendants were further ordered to pay each of the plaintiffs – the secretary of the court and the private charity in question – €3500 in damages plus legal costs, which amounted to €3,480.48. The journalists appealed to the European Court of Human Rights, which in April 2014 issued a judgment³⁶³ in their favour.

³⁶⁰ Full data for the years 2010 - 2013 can be downloaded via the International Press Institute at <http://legaldb.freemedia.at/legal-database/portugal/>.

³⁶¹ According to the Ministry of Justice, when the number of persons charged or convicted under a certain article is fewer than 3, the data is protected by statistical secrecy laws.

³⁶² “Expert: Portuguese libel laws reflect ‘authoritarian concept of power’”, IPI, 5 September 2014, <https://ipi.media/portuguese-defamation-laws-still-reflect-authoritarian-concept-of-power-expert-says/>.

³⁶³ *Amoris Giestas and Jesus Costa Bordalo v. Portugal*, No. 37840/1 (2014).

Ruling that the defendants had acted in good faith, the Court found that the news story in question was purely an "information article" that merely relayed true facts about the identities of those who had received the furniture pieces and transmitted the suspicions of other charities; and, furthermore, that the opinion piece was not only "based on facts, but also judicious as a civic contribution to a debate of general interest." The Court also noted that the paper had dutifully sought and included reactions from the local court and the charity. Finally, the Court ruled that the punishment awarded by the Portuguese courts had been "disproportionate", and awarded the defendants €11,752.90 (the combined fine, damages, and legal costs) plus an additional €5,000 in legal costs related to the ECtHR case.

- In October 2010, the Lisbon Court of Appeal convicted on criminal defamation charges the director and deputy director of a Madeira-based satirical magazine, *Garajau*, over an article that scrutinised a purchase of some land by the vice-president of the Madeira Regional Government. The Court ruled that the defendants had not proved the truth of their assertions, and sentenced the pair to criminal fines of €2640 and €980, respectively. The defendants appealed to the European Court of Human Rights, which in December 2013 ruled³⁶⁴ in their favour. The ECtHR found that the article concerned a matter of public interest and that the magazine had acted in good faith in publishing it.
- In December 2012, the Lisbon Court of Appeal acquitted³⁶⁵ Eduardo Welsh, then-director of *Garajau*, of criminal defamation after the magazine printed a cover drawing comparing the president of the Madeira Regional Government, Alberto João Jardim, with Adolf Hitler. According to news reports, the Court ruled that the majority of persons would understand the drawing as satire, and that although the image represented a "violent, exaggerated, and provocative attack", it was directed at Jardim as a politician, not as a human being. The Court reportedly added: "Freedom of expression constitutes one of the fundamental essence of modern democratic societies. In such societies, public debate and freedom of expression should enjoy increased protection when relating to political questions or politicians themselves".
- In February 2011, a lower court sentenced an anonymous blogger to 133 days in prison and a €40,000 fine for insulting a journalist working for the magazine *Sábado*, Fernando Esteves. According to reports, the blogger, later identified by police through his IP address as a doctor from Portugal's Avis municipality, had taken issue with a story written by Esteves alleging instances of patient abuse by doctors in the country. The blogger then reportedly authored several anonymous posts on the website 'Médico Explica Medicina a Intelectuais' ("A doctor explains medicine to intellectuals"), in which he expressed disbelief that this "disgust in human form whom Luther would have called a donkey-pope" could have had privileged access to health records held by the government and claimed that, among other things, Esteves evidenced "recidivist hatred" of the medical profession. The judge in the case reportedly ruled that the blogger "could have acted differently" and "had not correctly exercised his rights". Esteves said³⁶⁶ after the verdict, "The judge preferred a very harsh sentence and I think she had the perfect notion of how to apply justice. The

³⁶⁴ *Welsh and Silva Canha v. Portugal*, No. 16812/11 (2013).

³⁶⁵ Tolentino de Nóbrega, "[Jardim perde mais dois processos de difamação contra a imprensa](#)", *Público*, 17 December 2012.

³⁶⁶ Ana Machado, "[Jornalista da Sábado ganha processo por difamação contra autor de blogue](#)", *Público*, 25 February 2011.

blogosphere cannot be a place where one can say everything without consequences." In October 2011, the Lisbon Court of Appeal reportedly overturned³⁶⁷ the blogger's conviction. Esteves himself, in 2008, was ordered by the Portuguese Supreme Court to pay EUR 12,500 in damages to the director of an AIDS charity, Abraço, whom he accused of specific acts corruption. The Court said none of the accusations made by Esteves had been proven, and more than doubled the damages amount awarded by lower courts.

- In July 2010, the Lisbon Criminal Court convicted Carlos do Carmo de Portugal e Castro Câmara, a columnist for the newspaper O Independente of criminally defaming the president of the Portuguese Meteorological Institute in an opinion article published in March 2006. The article called "The Liar", was published in response to denigrating comments the Institute's president had made about the columnist, who also previously worked for the Institute. Do Carmo de Portugal e Castro Câmara was sentenced to pay a fine of €2,000. In February 2011, the Lisbon Court of Appeal upheld the decision. In 2016, however, the European Court of Human Rights found a violation of Art. 10 of the ECHR, ruling that the Portuguese courts had "failed to strike a fair balance between the relevant interests and to establish a "pressing social need" for putting the protection of [the Institute president's] reputation above the applicant's right to freedom of expression. The Court noted that, although the Art. was "strongly worded", it was a reaction to a public attack that rested upon a "certain factual background". The Court also referenced the right of individuals taking part in debates on matters of general concern to have "recourse to a degree of exaggeration or even provocation". Finally, with regard to the criminal penalty imposed, the Court found: "Having regard to the circumstances of the case, the Court considers that the applicant's conviction to a criminal fine, coupled with damages, was not proportionate"³⁶⁸.

It is worth noting the following cases, which, while not related to the media, serve as examples of the at times bizarre application of Portugal's criminal defamation laws:

- In 2016, a woman named Maria de Lurdes Lopes Rodrigues began a three-year prison sentence for aggravated defamation, aggravated insult, false accusation and offence to a collective person, body or service (Criminal Code Art. 187). Her conviction related to a series of criminal complaints that Lopes Rodrigues filed against a number of public officials, including a number of judges as well as the former Portuguese attorney general, in which she accused the officials of having participated in "robbing" her of a scholarship opportunity in the late 1990s. Lopes Rodrigues had come in second in a scholarship competition but was not given the scholarship after the original winner declined. She pursued the case, during which time allegations of misconduct in the running of the scholarship competition emerged. Several years later, a court ruled that there had indeed been irregularities, but that the passage of time rendered the impact null. Lopes Rodrigues then filed the criminal complaints. She was charged with the aforementioned crimes and given a three-year suspended prison sentence, conditional on her receiving psychiatric treatment. Lopes Rodrigues refused treatment and was ultimately handed an unconditional prison sentence³⁶⁹.

³⁶⁷ "[Reviravolta para Fernando Esteves, jornalista Tribunal da Relação absolve médico acusado](#)", Sindicato Independente dos Medicos, 12 October 2011.

³⁶⁸ *Do Carmo de Portugal e Castro Câmara v. Portugal*, Application no. [53139/11](#) (2016).

³⁶⁹ João Camargo, "#LiberdadeMariaLurdes: três anos de prisão para bolsreira injustiçada", Público, 10 October 2016, <http://p3.publico.pt/actualidade/educacao/21867/liberdademarialurdes-tres-anos-de-prisao-para-bolsreira-injustiçada>.

- From the IPI report: “In 2009, for example, a British lawyer, Serena Wylde, was charged with aggravated criminal defamation under Criminal Code Art. 184 after submitting a private complaint to Portugal’s legal regulator over the actions of an attorney serving in a civil property case involving Wylde. The regulator forwarded the complaint to the attorney – the son of a former Supreme Court president – who filed charges carrying up to nine months in prison and demanded €50,000 in damages. The case ended in 2011 due to the statute of limitations.”

ROMANIA³⁷⁰

I. Law

1. Criminal defamation and insult laws

Defamation and insult were repealed as criminal offences in Romania with the adoption of the new Romanian Criminal Code in January 2014.

2. Criminal defamation of public officials

No provisions.

3. Criminal defamation of the head of state/head of government

No provisions.

4. Criminal defamation of the state and its symbols

No provisions.

However, Art. 30(7) of the Romanian Constitution³⁷¹ states that defamation of the state and the nation shall be prohibited by law.

5. Criminal defamation of foreign heads of state

No provisions.

6. Criminal defamation of foreign states and symbols

No provisions.

7. Criminal defamation of the deceased

No provisions.

8. Criminal blasphemy

No provisions³⁷².

9. Recent legal changes

Defamation and insult were repealed as criminal offences in Romania with the adoption of the new Romanian Criminal Code in January 2014.

³⁷⁰ Information on Romania originally published as part of the International Press Institute's Media Law Database and has been revised/updated for this present study.

³⁷¹ <http://www.cdep.ro/pls/dic/site.page?id=37>.

³⁷² However, it is noted that Art. 382 of the Romanian Criminal Code prohibits the desecration of a place or object of worship belonging to a religious denomination recognised by law. The punishment is a fine or imprisonment from six months to two years.

The removal of defamation and insult from the Romanian Criminal Code was the subject of a complicated legal discussion in recent years. In 2006, the Romanian Parliament voted to abolish defamation and insult as criminal offences, but the act was ruled unconstitutional by the Constitutional Court in 2007. In 2010, the High Court of Justice weighed in and stated that criminal defamation and insult had been abolished. But in 2013 the Constitutional Court ruled that the High Court had contradicted the Constitutional Court's earlier decision and that defamation and insult remained criminal offences. This decision, however, applied only to the previous criminal code. The back-and-forth finally ended with the adoption of the new Code³⁷³.

In February 2016, the Romanian Chamber of Deputies voted not to approve a controversial law on "social defamation" that had been passed by the country's Senate in October 2015. The bill defined social defamation as an act or statement putting a person in a "position of inferiority" because of that person's belonging to a group of people "who can be socially distinguished through one or more features related to gender, age, race, religion, ethnic origin, native language, cultural traditions, sexual orientation, social origin, disability, non-contagious disease, or HIV/AIDS infection". The penalty for defaming an individual would have been a fine of 1,000 to 30,000 lei³⁷⁴, while the fine for defaming a group would have been max. 100,000 lei. According to reports, Romania's ruling Social Democratic Party defended the measure as necessary to "promote human dignity and tolerance of group differences". Opposition politicians and journalists, however, criticised the bill as an attempt "to shield politicians from criticism"³⁷⁵.

II. Practice

1. General notes

n/a

2. Statistics

n/a

3. Selected cases

n/a

³⁷³ See, "OSCE media freedom representative calls on Romania not to re-criminalize free speech", OSCE, 12 December 2013, <http://www.osce.org/fom/109459>

³⁷⁴ 1 leu = approx. €0.22 (March 2017).

³⁷⁵ See, e.g., Marian Chiriac, "Law Against Defamation Splits Romanian Media", Balkan Insight, 11 February 2016, <http://www.balkaninsight.com/en/article/romania-at-odds-over-controversial-law-02-10-2016>.

RUSSIAN FEDERATION³⁷⁶

I. Law

1. Criminal defamation and insult laws

The Criminal Code of the Russian Federation (hereinafter referred to as the Criminal Code) presently foresees criminal liability only for *slander* (Art. 128.1)³⁷⁷.

Slander is defined as dissemination of information known to be false which impugns the honour and injures the dignity of another person or damages his/her reputation.

Art. 128.1 of the Criminal Code consists of five qualifying paragraphs.

- The first paragraph of the article stipulates punishment by a fine of up to 500,000 roubles³⁷⁸ or in the amount of the wages or other income of the perpetrator for a period of up to six months or by compulsory community service for up to one hundred and sixty hours.
- The second paragraph defines the liability for slander that appears in public speech, publicly displayed piece of work, or in mass media. Such an offence is punished by a fine of up to 1 million roubles or in the amount of the wages or other income of the perpetrator for a period of up to one year or by compulsory community service for up to 240 hours.
- In accordance with the third paragraph, slander with abuse of an official position shall be punishable by a fine of up to 2 million roubles.
- As stated in the fourth paragraph, slander by suggesting that a person suffers from a disease which poses a hazard to society, likewise slander with accusing a person of sexual crimes shall be punishable by a fine of up to three million roubles or in the amount of the wages or other income of the perpetrator for a period of up to three years or by compulsory community service for up to four hundred hours.
- In accordance with the fifth paragraph, false accusation of the commission of a serious or particularly serious offence shall be punishable by a fine of up to 5 million roubles.

Cases under Art. 128.1(1) of the Criminal Code are mostly cases of private prosecution, i.e., prosecution is represented not by Prosecutor's Office, but by a victim who him/herself files a suit in the Justice of the Peace Court. Thus, the victim him/herself shall prove the fact of slander in court.

Other constituent elements of the offence provide for public prosecution and public prosecutor's participation in criminal proceedings for the prosecution.

2. Criminal defamation of public officials

³⁷⁶ Information on the Russian Federation is provided with the expert assistance of Tumas Misakyan, lawyer and criminal law expert, Mass Media Defence Centre.

³⁷⁷ "The Criminal Code of the Russian Federation" dated 13 June 1996 No. 63-Φ3 (as amended on 19 December 2016), available at

http://www.consultant.ru/document/cons_doc_LAW_10699/. See Art. 128.1,

http://www.consultant.ru/document/cons_doc_LAW_10699/8a73d26dba7976d6c43cc94aa1515368fef256f0/.

³⁷⁸ 1 rouble = approx. €0.016 (March 2017).

In the Criminal Code there are several articles that foresee criminal liability for defamation of public officials: 1) insult of a representative of the authority (Art. 319), 2) contempt of court (Art. 297), 3) slander against a judge, juror, public prosecutor, investigator, person conducting inquests, bailiff (Art. 298.1).

Insult of a representative of the authority (Art. 319)³⁷⁹ is defined as public insult of a representative of the authority during the discharge by him/her of his/her official duties, or in connection with discharge thereof. Insulting expressions (in oral or written form) and gestures shall be of an indecent manner, personalised, targeted at a particular person (persons) who represents the authority and shall suggest negative assessment of victim's personal, professional, or official performance. Only actions or expressions made in an indecent manner shall be regarded as insulting. Nevertheless, consideration should be given to the fact that in terms of practice expressions need not necessarily be indecent in order to be acknowledged by courts as insulting to a representative of the authority.

Insult of a representative of the authority shall be punishable by a fine of up to 140,000 roubles or in the amount of the wages or other income of the perpetrator for a period of up to three months or by compulsory community service for up to 360 hours or by correctional labour for a period of up to one year.

Contempt of court (Criminal Code Art. 297)³⁸⁰ is also a form of defamation of a representative of the authority that manifests itself in insult of persons participating in judicial proceedings (par. 1). as well as in insult of a judge, juror or any other person involved in the administration of justice (par. 2).

Insult is understood in this article as any act that is expressed in verbal or demonstrative form and is aimed at disparaging the aforementioned persons' honour or dignity and, thus, undermines the credibility of the judiciary. Only actions or expressions made in an indecent manner shall be regarded as insulting. Nevertheless, consideration should be given to the fact that in terms of judicial practice the notion of "insult" is interpreted broader and expressions need not necessarily be indecent in order to be acknowledged by courts as insulting to a judge or any party participating in criminal proceedings.

Contempt of court that has manifested itself in insult of a person participating in judicial proceeding (Art. 297(1)) shall be punishable by a fine of up to 80,000 roubles or in the amount of the wages or other income of the perpetrator for a period of up to six months or by compulsory community service for up to 480 hours or by arrest for a period of up to four months. If the insult is aimed at a judge, juror or any other person involved in the administration of justice (Art. 297(2)), possible punishment shall be a fine of up to 200,000 roubles or in the amount of the wages or other income of the perpetrator for a period of up to 18 months or compulsory community service for up to 480 hours or correctional labour for a period of up to two years or arrest for a period of up to six months.

³⁷⁹ See Criminal Code Art. 319, http://www.consultant.ru/document/cons_doc_LAW_10699/c6fafa4e06f5b3e8d2eec4cbd86cfc60812cf697/.

³⁸⁰ See Criminal Code Art. 297, http://www.consultant.ru/document/cons_doc_LAW_10699/c13afd1b18c7621c9249b32f7ec6b8279348e316/.

Slander against a judge, juror, public prosecutor, investigator, person conducting inquests, bailiff (Criminal Code, Art. 298.1)³⁸¹.

This offence involves slander against a judge, juror or arbitration court assessor, public prosecutor, investigator, person conducting inquests, bailiff, i.e., dissemination of information known to be false which impugns the honour and injures the dignity of aforementioned persons or damages their business reputation. The offence of slander can be committed during judicial proceedings, conducting of investigative actions or other procedural actions in relation to legal proceedings, criminal prosecution or enforcement of judicial acts, as well as in other circumstances. Mandatory element which characterises such an offence is the fact that false information is disseminated in the light of legal proceedings (Art. 298.1(1)) or conducting pre-trial investigation or enforcement of judgement, decision or other judicial act (Art. 298.1(2)). In case of lack of the indicia the deed shall be qualified in accordance with the Criminal Code, Art. 128.1, as ordinary slander.

The offence of slander against a judge, juror or any other person involved in the administration of justice committed in the light of legal proceedings shall be punishable by a fine of up to 2 million roubles or in the amount of the wages or other income of the perpetrator for a period of up to three years or compulsory community service for up to 360 hours (Art. 298.1(2)). The same offence committed against a public prosecutor, investigator, person conducting inquests, bailiff in the light of conducting pre-trial investigation or enforcement of judgement, decision or other judicial act shall be punishable by a fine of up to 1 million roubles or in the amount of the wages or other income of the perpetrator for a period of up to two years or by compulsory community service for up to 320 hours (Criminal Code Art. 298.1(2)). The same offences, stipulated by par. 1 or 2 of this article in conjunction with the accusation of the commission of another serious or particularly serious crime shall be punishable by a fine of up to 5 million roubles or in the amount of the wages or other income of the perpetrator for a period of up to three years or by compulsory community service for up to 480 hours.

3. Criminal defamation of the head of state

No provisions.

4. Criminal defamation of the state and its symbols

Desecration of the State Flag of the Russian Federation or of the State Coat of Arms of the Russian Federation (Criminal Code Art. 329)³⁸². This offence involves the commission of actions that represent desecration of the aforementioned objects, i.e., commission of insulting and mocking actions, profanation of aforementioned state symbols (e. g. tearing down, trampling or any other destruction of the national flag or coat of arms; flinging mud at national symbols, spitting on them; adding cynical text and pictures on them etc.).

The penalty is restriction of liberty for a period of up to one year or by forced labour for the same period or by arrest for a period of three to six months or by deprivation of liberty for a period of up to one year.

³⁸¹ See Criminal Code Art. 298.1,

http://www.consultant.ru/document/cons_doc_LAW_10699/2e70da24a013efb84b48de9fabcd8d3b7deb817b/.

³⁸² See Criminal Code Art. 329,

http://www.consultant.ru/document/cons_doc_LAW_10699/6a6e2f11f103bcfdc788182f48fb520488c85c23/.

There is presently no clear indication that this article could also be used against verbal or written insult of symbols.

5. Criminal defamation of foreign heads of state

No provisions.

6. Criminal defamation of foreign states and symbols

No provisions.

7. Criminal defamation of the deceased

No provisions.

8. Criminal blasphemy

Violation of the right to freedom of conscience and religious belief (Criminal Code, Art. 148)³⁸³. This offence is defined as public actions expressing marked disrespect for society that have been made with intention to insult religious feelings of believers. The law provides for the following elements of the offence: it shall be committed in public; it shall express explicit and unambiguous disrespect for society as a whole; and the actions of the accused shall be aimed exactly at an insult. This means that the actions are in and of themselves insulting to religious people and are committed exactly with the intention to insult them. For the application of the article dedicated to the offence of *insult to religious feelings of believers* it should be proven that the offence was committed with direct intent, i.e., the accused deliberately committed insult to achieve such a result.

Such an offence shall be punishable by a fine of up to 300,000 roubles or in the amount of the wages or other income of the perpetrator for a period of up to two years or by compulsory community service for up to 240 hours or by forced labour for a period of up to one year or by deprivation of liberty for the same period (Criminal Code Art. 148(1)). If the aforementioned offences have been committed at places specially dedicated to conducting worships, religious rites and ceremonies, they shall be punishable by a fine of up to 500,000 roubles or in the amount of the wages or other income of the perpetrator for a period of up to three years or by compulsory community service for up to 480 hours or by forced labour for a period of up to three years or by deprivation of liberty for the same period with or without restriction of liberty for a period of up to one year (Criminal Code Art. 148(2)).

8. Recent legal changes

1) Criminal liability for insult was repealed and removed from the Criminal Code in December 2011. Afterwards liability for insult is provided for by the Code of Administrative Offences of the Russian Federation (hereinafter referred to as the Code of Administrative Offences) (Art. 5.61) which stipulates punishment – depending on the type of insult – by a fine from 1,000 to 5,000 roubles for citizens and from 50,000 to 500,000 roubles for legal entities (move to Section 8).

³⁸³ See Criminal Code Art. 148,
http://www.consultant.ru/document/cons_doc_LAW_10699/3f061fb01a04145dc7e07fe39a97509bd2da705f/.

2) In 2011, the article dedicated to slander (formerly Art. 129 of the Criminal Code) was decriminalised, removed from the Criminal Code, after which slander was recognised as administratively punishable offence with a fine as maximum possible punishment. Art. 129 of the Criminal Code provided for that slander shall be punishable by a fine, compulsory community service, correctional labour and in case of qualifying elements of the offence by deprivation of liberty. However, in July 2012 slander was reincorporated in the Criminal Code – presently it is stipulated in Art. 128.1. In comparison to the removed Art. 129, Art. 128.1 Of the Criminal Code contains two new paragraphs: a) slander by suggesting that a person suffers from a disease which poses a hazard to society, likewise slandering a person with accusing him or her of sexual crimes, b) slander with abuse of an official position. In accordance with the present version of Art. 128.1 of the Criminal Code, slander shall not be punishable by deprivation of liberty compared to the excluded Art. 129, but fine amounts were substantially increased and now they range from 500,000 to 5 million roubles.

3) The article dedicated to insult of a representative of the authority (Art. 319) initially appeared in the Criminal Code dated 13 June 1996 No. 63-Φ3, and since its adoption has been amended three times. These amendments involve minor changes referring only to insignificant alteration of sanctions.

4) The article dedicated to contempt of court (Art. 297) also initially was included in the Criminal Code dated 13 June 1996 No. 63-Φ3, and since its adoption has been amended three times. These amendments involve minor changes referring only to insignificant alteration of sanctions.

5) Art. 297.1 which provides for criminal liability for slander against judge, juror, public prosecutor, investigator, person conducting inquests, bailiff appeared for the first time in July 2012 in the Criminal Code.

6) The article dedicated to desecration of the State Flag of the Russian Federation or of the State Coat of Arms of the Russian Federation (Art. 329) was amended in 27/12/2009. Initially, maximum possible punishment for such an offence was deprivation of liberty for a period of up to two years, after amendments – up to one year.

7) Criminal liability for insult to religious feelings of believers (blasphemy). Violation of the right to freedom of conscience and religious belief (Criminal Code Art. 148) Formerly this article foresaw criminal liability only for the actions obstructing performance of religious rites or activities of religious organizations. However, later the content of the article was radically revised; the new version has been in force since 2013. Former element constitutes only the third paragraph of the article; the first paragraph states that actions committed in public, aimed at insult to religious feelings of believers and expressing explicit disrespect for society are regarded as criminal.

II. Practice

1. General notes

n/a

2. Statistics

Art. 128.1 is almost the only article in the Criminal Code for which a number of acquitted persons is much higher than that of convicted ones. Generally, Russian justice reveals significant tendency towards conviction, the accused predominantly are found guilty (less than 1 percent per year)³⁸⁴. For instance, in 2015 for all elements of slander, there were 94 convicted and 511 acquitted persons. In 2014, there were 141 convictions and 663 acquittals; in 2013, 107 and 520, respectively. Thereby 98 to 99 per cent of acquittals concerning cases of slander result from the first paragraph of the article; for other elements of the offence there is virtually no acquitted and just a few convicted³⁸⁵.

For Art. 148 of the Criminal Code (insult to religious feelings of believers), only a few criminal proceedings are instituted. Since the last amendments made in Art. 148 of the Criminal Code in 2013, there were just several criminal proceedings. An Izhevsk resident who published an image insulting to Muslims has been punished most severely – by compulsory community service for 200 hours³⁸⁶. More frequently, if there are elements of fomenting of religious discord, the offences are qualified in accordance with Art. 282 of the Criminal Code (hatemongering and disparagement); judicial practice concerning this article is better developed and the provisions are formulated more clearly³⁸⁷.

3. Selected cases

- In 2015, the Leninsky District Court in Rostov-on-Don found journalist and blogger Sergei Reznik (Сергей Резник) guilty of insulting the authorities (under Art. 319 of the RF Criminal Code) - the deputy prosecutor of Rostov region, the criminal police investigator and deputy chief of the Centre for Extremism Prevention of the RF Ministry of Internal Affairs Main Directorate in Rostov region. The court found such statements of the journalist as “scoundrel”, “swindler”, “tractor driver”, “paedophile” etc. to be insulting. These offensive remarks were published by the journalist in his personal blog on the Internet. For the expressed insult the court inflicted the journalist with a penalty of deprivation of rights to engage in professional activities in media agencies for a period of one year and 10 months (in addition, Reznik was also found guilty and sentenced on other charges)³⁸⁸.
- In August 2016 in the Chechen Republic a Kenhi villager Ramazan Dzhaldinov (Рамазан Джалалдинов), who recorded a video message to the Russian President Putin, complaining about the corrupt practices of local officials, was sentenced. The judge found Dzhaldinov guilty under Part 2 of Art. 128.1 of the Criminal Code (slander in a public statement) and sentenced him to 160 hours of compulsory work. This case in particular referred to the recording, in which the man reported that teachers with no professional education are working in rural schools in Chechnya³⁸⁹.
- In spring 2013 the head of the Moscow NGO “Consumer Rights Protection Society” Mikhail Anshakov (Михаил Аншаков) was sentenced to a fine of 100 thousand

³⁸⁴ See, e.g., http://www.bbc.com/russian/russia/2015/01/150120_markin_acquittal_rate_court_russia.

³⁸⁵ See <https://zona.media/article/2016/09/12/codex-128.1>.

³⁸⁶ See <https://lenta.ru/news/2016/11/18/piket/>.

³⁸⁷ See Legal reference system “ConsultantPlus”,

http://www.consultant.ru/document/cons_doc_LAW_10699/d350878ee36f956a74c2c86830d066eafce20149/.

³⁸⁸ See, e.g., <http://www.osce.org/fom/135776>,

<http://www.ibanet.org/article/NewDetail.aspx?articleUid=9e40e124-20bb-4533-a919-c7b5345f34c4>,

<https://cpj.org/2015/01/imprisoned-russian-journalist-sentenced-to-new-thr.php>.

³⁸⁹ See, e.g., <https://zona.media/news/2016/14/11/obrashenie-kleveta>.

rubles for slandering the executive director of the Christ the Saviour Cathedral Fund Vasily Poddevalin (Василий Поддевалин) (under Part 2 of Art. 128.1 of the Criminal Code). The court recognised as slander the words of Anshakov in his interview with “Novaya Gazeta” («Новая газета») about the abuse of rights of those consumers, who purchase “cheap Arabic gold” in jewellery shops at the Christ the Saviour Cathedral, where he stated that essentially there is a Cathedral-based business centre, which he sees as “a large-scale and serious fraud”, and spoke about the results of the Fund’s activities’ audit carried out by the “Consumer Rights Protection Society”³⁹⁰.

- Currently, politician and blogger Alexei Navalny (Алексей Навальный) is a defendant in a slander case. In 2016, at the request of the investigator Pavel Karpov (Павел Карпов), included on the “Magnitsky list”, a case was filed against the opposition member under parts 2 and 5 of Art. 128.1 of the Criminal Code (public slander with the accusation of a grave or especially grave offence). The investigator was unhappy with the publication of data from the investigation documentary “The Untouchables” («Каста неприкасаемых»)³⁹¹, stating that Karpov was involved in the death of lawyer Sergei Magnitsky (Сергей Магнитский), on the website of Navalny. In early November 2016 – after Navalny familiarised himself with the materials of the case – the prosecutor returned it to the investigator to eliminate violations. This case has not yet been closed³⁹².

³⁹⁰ See, e.g., http://rusplt.ru/society/anshakov_shtraf.html.

³⁹¹ See investigative documentary “The Untouchables”, <https://www.youtube.com/watch?v=gaQP8IAITmk>.

³⁹² See, e.g., <http://tass.ru/proisshestiya/3751168>.

SAN MARINO

I. Law

1. Criminal defamation and insult laws

The Criminal Code of San Marino³⁹³ foresees the following offences:

Defamation (Art. 183): Publicly alleging a fact that offends a person's honour. Defamation is punishable with short-term detention or a daily fine of the second degree.

Insult (Art. 184): Publicly offending another person's honour. Insult is punished with short-term detention or a daily fine of the second degree.

Aggravated defamation (Art. 185): Committing an act of defamation through the media. Aggravated defamation is punishable with imprisonment of the first degree, a fine, short-term detention of the second degree or a daily fine of the third degree.

Content that forms part of writings or speeches presented by the Grand and General Council (Art. 187) or part of proceedings before a judge (Art. 188) is privileged. Exemptions from liability can also be granted if the act was committed in response to a provocation (Art. 186).

A persons accused of crimes against honour may seek to prove the truth of the impugned accusation only in the following cases (Art. 189): if the offended persons consents, if the accusation is the subject of a pending criminal investigation or if the establishing the facts is a matter of public interest. Should the accusation be proved as true, the accused person will be exempted from criminal liability.

2. Criminal defamation of public officials

Offence to high state officials (Art. 344): Offending the honour or prestige of members of the Grand and General Council, the Congress of State and the Council of Twelve, government ministries, judicial bodies or the office of the public prosecutor.

The act is punishable with imprisonment of the first degree or of the second degree if the act is committed in the presence of the high state officials name (Art. 345).

Offence to persons associated with court proceedings (Art. 349): Offending the honour or prestige of a clerk of the court, a court-appointed expert, an interpreter, a witness or another person associated with court proceedings. The act is punishable with imprisonment of the first degree.

Offence to public officials (Art. 382): Offending the honour or dignity of a public official in the official's presence or direct communication with him, in relation to official function. The act is punishable with imprisonment of the first degree or with a daily fine of the third degree.

³⁹³ Criminal Code of San Marino (*Legge 25 febbraio 1974 n. 17 Emanazione del nuovo codice penale*), last amended 23 August 2016. Official version available online (Italian) at: <https://goo.gl/3R4O7r> (last accessed 23 December 2016).

If committed with violence or a serious threat, the punishment increases to imprisonment of the second degree.

3. Criminal defamation of the head of state

Offence to the Captains Regent (Art. 342): Offending the honour or prestige of the Captains Regent. The act is punishable with imprisonment of the second degree or of the third degree if committed in the presence of the Captains Regent (Art. 345).

4. Criminal defamation of the state, state symbols and state institutions

Damage to the good name of the Republic by citizens abroad (Art. 333): Organising the dissemination of false news that harm the Sammarinese economy abroad, when conducted by citizens outside of state territory. The act is punishable with imprisonment of the second degree and a ban of the third degree on the holding of public office and the exercise of political rights.

Contempt for the Republic and its emblems (Art. 338): Publicly expressing contempt for the Republic of San Marino, its flag or other emblems. The act is punishable with imprisonment of the second degree. If committed by a Sammarinese citizen, a ban on the holding of public office and the exercise of political rights of the fourth degree is applied.

5. Criminal defamation of foreign heads of state

Offence to representative of a foreign state (Art. 335): Publicly offending on Sammarinese territory a representative of a foreign state present in San Marino. Prosecution is at the request of the Captains Regent. The act is punishable with imprisonment of the second degree.

6. Criminal defamation of foreign states and symbols

No provisions.

7. Criminal defamation of the deceased

No provisions.

8. Criminal blasphemy

Religious insult (Art. 260): Profaning the symbols of a religion that does not run contrary to public morality, profaning objects of worship or publicly mocking acts of worship. The act is punishable with imprisonment of the first degree. The same punishment applies to offences to the honour and dignity of a minister with respect to official function. Profaning the sacred relics of San Marino is punishable with imprisonment of the second degree.

9. Recent legal changes

II. Practice

1. General notes

The continued existence of criminal defamation laws in San Marino was noted by Nils Muižnieks, Council of Europe Commissioner for Human Rights, during an official visit in June 2015. In his report³⁹⁴, Muižnieks recommended:

“The Commissioner notes that the Sammarinese authorities have not yet decriminalised defamation. Despite the measured approach of the Sammarinese courts, the Commissioner considers that the existing criminal provisions send a negative signal to journalists and encourages the Sammarinese authorities to consider repealing them, dealing with defamation through strictly proportionate civil sanctions only.”

2. Statistics

n/a

3. Selected cases

n/a

³⁹⁴ “Report By Nils Muižnieks Commissioner for Human Rights of the Council of Europe Following His Visit to San Marino from 9 to 10 June 2015”, Council of Europe, 15 October 2015, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806db6e9>.

SERBIA³⁹⁵

I. Law

1. Criminal defamation and insult laws

Insult is an offence under Art. 170 of the Serbian Criminal Code³⁹⁶. The punishment is either 20 to 100 daily fines or a fixed fine ranging from 40,000 to 200,000 Serbian dinars³⁹⁷.

If committed via the press, television, or other media, or at a public gathering, the punishment is increased to 80 to 240 daily fines or a fixed fine ranging from 150,000 to 450,000 dinars.

It is also worth noting the following provision:

Dissemination of information on personal and family life: The Serbian Criminal Code prohibits “dissemination of information on personal and family life”, defined as the presentation or dissemination of information on anyone’s personal or family life that may harm his honour or reputation. The offence is punishable with a fine or imprisonment for up to six months (Art. 172 of the Serbian Criminal Code). If this offence is committed through the media or other similar means or at a public gathering, the punishment increases to a fine or imprisonment for up to six months.

2. Criminal defamation of public officials

No provisions.

3. Criminal defamation of the head of state

No provisions.

4. Criminal defamation of the state and its symbols

Publicly mocking the Republic of Serbia, its flag, coat of arms or national anthem is a criminal offence under Art. 173 of the Serbian Criminal Code. The punishment is a fine or imprisonment for up to three months.

5. Criminal defamation of foreign heads of state

No provisions.

6. Criminal defamation of foreign states and symbols

³⁹⁵ Information on Serbia originally published as part of the International Press Institute’s Media Law Database and has been revised/updated for this present study.

³⁹⁶ [Criminal Code of Serbia](#), Official Gazette RS no. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012 and 104/2013 (English). Latest amendments (Serbian): http://www.paragraf.rs/propisi/krivicni_zakonik.html.

³⁹⁷ 1 dinar = approx. €0.0081 (March 2017).

Publicly exposing to mockery a foreign state or its flag, coat of arms, or national anthem is a criminal offence under Art. 175 of the Serbian Criminal Code. The punishment is a fine or imprisonment for up to three months. The same penalty shall be imposed if a person publicly exposes to mockery the United Nations, the International Red Cross, or other organisation of which Serbia is a member.

7. Criminal defamation of the deceased

Note provisions.

Note that Art. 177(2) of the Serbian Criminal Code states that if a defamation-related criminal offence is committed against a deceased person, prosecution may be initiated (via private action) by the spouse of the deceased or person cohabiting with the deceased, lineal descendant, adoptive parent, adopted child, or the deceased person's sibling.

8. Criminal blasphemy

No provisions.

Note that publicly exposing a group of people to ridicule in connection with their affiliation with a certain religion (among other group characteristics) is criminal offence under Art. 174 of the Serbian Criminal Code. The punishment is a fine or imprisonment for up to one year.

9. Recent legal changes

Libel was repealed as a criminal offence in 2012 (entry into force 1 January 2013) following an amendment to the Criminal Code.

II. Practice

1. General notes

n/a

2. Statistics

n/a

3. Selected cases

In 2012, journalist Laszlo Szasz was sentenced³⁹⁸ to 150 days in prison after being unable to pay a criminal fine for insult. Szasz, who wrote occasionally for Hungarian-language media in northern Serbia, had been convicted under Criminal Code Art. 170 (insult) over a critical comment about Hungarian far-right politician Laszlo Toroczkai in the comment section of the Hungarian language daily Magyar Szo. After serving two weeks of his jail term, Szasz was pardoned by Serbian president Tomislav Nikolic.

³⁹⁸ [“SEEMO Welcomes Presidential Pardon in Serbia for Imprisoned Author of Reader’s Comment”](#), 7 August 2012.

In 2010, a court in Cacak ordered³⁹⁹ the newspaper Cacanske novine to pay 180,000 Serbian dinars in moral damages to former government minister and leader of the New Serbia party Velimir Ilic over two articles – one a satire and the other a critical commentary – that Ilic claimed caused damage to his reputation. That decision was upheld on appeal. In addition, the newspaper’s owner, Stojan Markovic, was charged with criminal libel in relation to the articles and found guilty by a Cacak court. However, the conviction was later overturned by the Kragujevac Court of Appeal.

³⁹⁹ [“Journalist found guilty of defaming former minister”](#), 1 April 2011; [“Weak defense for the defenders: A briefing paper for human rights defenders in Serbia”](#), 8-9, Civil Rights Defenders.

SLOVAKIA⁴⁰⁰

I. Law

1. Criminal defamation and insult laws

Defamation (Criminal Code⁴⁰¹ Art. 373): is defined as communicating false information about another person that can seriously damage the person's reputation among fellow citizens, the person's career, business, and/or family relations, or cause the person serious harm. The punishment is imprisonment for up to two years.

If the act of defamation causes substantial damage, the maximum prison term is increased to five years. If the act causes large-scale damage, loss of employment, or divorce, the offender faces three to eight years in prison.

It should also be noted that Art. 423 of the Slovak Criminal Code prohibits defamation of a "nation, its language or any race or ethnic group" in addition to "a group of persons or an individual due to their real or perceived affiliation to a race, nation, nationality, ethnic group, real or imagined origin, colour, political beliefs, religion or lack of religion". The penalty is imprisonment for one to three years. If the act is committed by a member of an extremist group, a public official or with special motives, the penalty is imprisonment for two to five years.

2. Criminal defamation of public officials

No provisions.

3. Criminal defamation of the head of state

No provisions.

4. Criminal defamation of the state, state symbols and state institutions

However, it should be noted that Art. 423 of the Slovak Criminal Code prohibits defamation of a "*nation*, its language or any race or ethnic group" in addition to "a group of persons or an individual due to their real or perceived affiliation to a race, nation, nationality, ethnic group, real or imagined origin, colour, political beliefs, religion or lack of religion". The penalty is imprisonment for one to three years. If the act is committed by a member of an extremist group, a public official or with special motives, the penalty is imprisonment for two to five years.

5. Criminal defamation of foreign heads of state

No provisions.

⁴⁰⁰ Information on Slovakia originally published as part of the International Press Institute's Media Law Database and has been revised/updated for this present study.

⁴⁰¹ Criminal Code of the Slovak Republic, Law 300/2005, last amended by Law 316/2016, available at: <http://www.zakonypreludi.sk/zz/2005-300>.

6. Criminal defamation of foreign states and symbols

No provisions.

7. Criminal defamation of the deceased

No provisions.

8. Criminal blasphemy

No provisions.

However, it should be noted that Art. 423 of the Slovak Criminal Code prohibits defamation of a “*nation*, its language or any race or ethnic group” in addition to “a group of persons or an individual due to their real or perceived affiliation to a race, nation, nationality, ethnic group, real or imagined origin, colour, political beliefs, religion or lack of religion”. The penalty is imprisonment for one to three years. If the act is committed by a member of an extremist group, a public official or with special motives, the penalty is imprisonment for two to five years.

9. Recent legal changes

II. Practice

1. General notes

A recent study by Peter Hanák examined the practical effect of Slovakia’s criminal libel laws on journalists. According to his study, there were no convictions of journalists for defamation between 2010 and 2014. While there were a number of investigations against journalists, in all of the instances either the police or the prosecutor’s office decided to drop the case⁴⁰².

The study notes that the majority of persons who filed criminal reports for defamation were public officials, including three government ministers, numerous judges, including the president of the Supreme Court, policemen and other government officials.

In general, journalists interviewed for the study stated that they did not experience a chilling effect due to the criminal cases, although one did admit to a fear of being jailed (in that case, the person who filed the criminal charges was the president of the Supreme Court). Repeated hearings and “stressful” communications were highlighted as negative experiences.

The study reported widespread agreement among journalists that civil defamation suits posed a greater threat than criminal cases given the high damage amounts requested.

2. Statistics

⁴⁰² Peter Hanák, Mediální studia 2/2016, “Kriminalizácia žurnalistiky: Trestne stíhaní novinári na Slovensku v európskej perspektíve”, 245-264, <https://medialnistudia.files.wordpress.com/2016/12/hanak-web.pdf>.

The following are official data from Slovakia's General Prosecution Service⁴⁰³ for the year **2015** (most recent year available):

- For **Art. 373** (defamation), there were 14 cases closed, leading to 9 convictions. These included 1 unconditional prison sentence and 4 suspended prison sentences.
- Under the previous Criminal Code (**Art. 206**), there were 2 convictions, with one unconditional and one suspended sentence.

The following are official data for the year **2014**:

- For **Art. 373** (defamation), there were 12 cases closed, leading to 4 convictions, in turn resulting in 1 unconditional prison sentence, 1 suspended prison sentence, 1 criminal fine, and 1 one ceased sentence.
- There were no convictions for defamation (**Art. 206**) under the previous criminal code. (The current Slovak Criminal Code took effect in 2006).

The following are official data for the year **2013**:

- For **Art. 373** (defamation), there were 17 cases closed, leading to 7 convictions, in turn resulting in three suspended prison sentences, 3 criminal fines, and 1 type of sentence listed as "other".
- There was one conviction for defamation (**Art. 206**) under the previous Slovak Criminal Code.

3. Selected cases

- In October 2014, prosecutors dropped criminal libel charges against journalist Dušan Karolyi following an outcry from press freedom groups. From a report by the International Press Institute⁴⁰⁴:

“The charges [against Karolyi] related to an August 2013 article published in Trend news magazine in which Karolyi critically examined a court’s decision one month earlier to drop charges against an agent of Slovakia’s organised-crime task force (ÚBOK) for alleged abuse of power while detaining a suspect 12 years ago. Karolyi wrote that the agent had carried out the arrest, made against the owner of a local real-estate company, as if he had captured a mafia boss. In the article, the case was used to highlight the Slovak business community’s frustration with perceived judicial corruption and law-enforcement failures in the country. Although Karolyi identified the agent only by his first name and last initial, the agent filed criminal libel charges. Had Karolyi been tried and convicted, he would have reportedly faced up to five years in prison.”
- In September 2016, prosecutors questioned two journalists with the weekly magazine Trend, Zuzana Petková and Xénia Makarová, based on a criminal defamation complaint filed by Interior Minister Robert Kaliňák and former transport minister Ján Počiatek. The complaint was in relation to Trend’s coverage of the alleged involvement of politicians in an international VAT fraud scheme. Petková was quoted

⁴⁰³ See <https://www.genpro.gov.sk/statistiky-12c1.html>. Data for the years 1999 – 2015 are currently available (February 2017).

⁴⁰⁴ “Prosecutors drop criminal libel charges against Slovak journalist”, IPI, 6 October 2014 <https://ipi.media/prosecutors-drop-criminal-libel-charges-against-slovak-journalist/>.

afterward as saying the prosecutor could not say which statement in the coverage was factually inaccurate⁴⁰⁵.

- In 2014, Ivan Ševčík, an agent with Slovakia's Office for Fight against Organised Crime (ÚBOK), filed criminal libel charges against freelance journalist Júlia Mikolášiková after Mikolášiková quoted statements made by a court witness. The witness, testifying in a trial related to a housing mafia, stated that Ševčík was aware of the witness' criminal activity⁴⁰⁶.

⁴⁰⁵ See, e.g., "Trend journalists interrogated on defamation of Interior Minister", Slovak Spectator, 6 September 2016,

<https://spectator.sme.sk/c/20264909/trend-journalists-interrogated-on-defamation-of-interior-minister.html>.

⁴⁰⁶ "Another journalist is prosecuted; she quoted a testimony", Slovak Spectator, 2 December 2014, <https://spectator.sme.sk/c/20052839/another-journalist-is-prosecuted-she-quoted-a-testimony.html>.

SLOVENIA⁴⁰⁷

I. Law

1. Criminal defamation and insult laws

The Slovenian Criminal Code⁴⁰⁸ establishes the following offences:

Insult (Art. 158) is punishable by a fine⁴⁰⁹ or imprisonment of up to three months. If committed via the media, it is punishable by a fine or imprisonment of up to six months.

Defamation (Art. 160) is defined as “asserting or circulating anything false about another person, capable of causing damage to the honour or reputation of that person”. It is punished with a fine or imprisonment for up to three months. If committed via media, it is punishable by a fine or imprisonment for up to six months. If the slander had “grave consequences” for the offended party, the maximum penalty increases to one year in prison.

Slander (Art. 159) is defamation in which the offender knows the statement to be false. It is punished with a fine or imprisonment for up to six months. If committed via media, slander is punished with a fine or imprisonment of up to one year. If the slander had “grave consequences” for the offended party, the maximum penalty increases to two years in prison.

Calumny (Art. 161) is defined as asserting or circulating any matter concerning personal or family affairs of another person that is capable of injuring that person’s honour and reputation. It is punished with a fine or imprisonment for up to three months. If committed via media, it is punished with a fine or imprisonment for up to six months. If, by its nature, the act of calumny may result in “grave consequences”, the maximum penalty increases to one year in prison.

Malicious false accusation of crime (Art. 162) is an act of calumny in which the assertion consists of falsely accusing someone of a crime “with the intention of exposing that person to scorn”. The penalty is a fine or imprisonment for up to three months. If committed via media, it is punished with a fine or imprisonment of up to six months.

2. Criminal defamation of public officials

No provisions.

3. Criminal defamation of the head of state

⁴⁰⁷ Information on Slovenia originally published as part of the International Press Institute’s Media Law Database and has been revised/updated for this present study.

⁴⁰⁸ Criminal Code of Slovenia (KZ-1-UPB2), available at: <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina?urlurid=20122065>.

⁴⁰⁹ According to Art. 47 of the Criminal Code, criminal fines are imposed as “daily rates”. A daily rate is determined by the court, taking into account a person’s daily income and family expenditures. This is then multiplied by a certain number of days, minimum 30 days and maximum 360 days, except in cases of criminal offences “committed for one’s own interest”, in which case the maximum is 1,500 days.

Under Art. 163 of the Slovenian Criminal Code, *insult, slander, defamation, calumny or malicious false accusation of crime committed against the President of Slovenia* is a criminal offence. The penalty in such cases is a fine or imprisonment for up to one year.

4. Criminal defamation of the state, state symbols and state institutions

Under Art. 163 of the Slovenian Criminal Code, *insult, slander, defamation, calumny or malicious false accusation of crime committed against the Republic of Slovenia* is a criminal offence. The penalty in such cases is a fine or imprisonment for up to one year. The same punishment applies to anyone who *publicly insults the flag, coat of arms or national anthem of the Republic of Slovenia*.

Art. 165 of the Criminal Code covers *defamation of the Slovenian nation or the Italian, Hungarian or Roma communities*. The penalty is a fine or up to one year in prison.

5. Criminal defamation of foreign heads of state

Under Art. 164(1) of the Slovenian Criminal Code, *insult, slander, defamation, calumny or malicious false accusation of crime committed against a foreign country, its head of state or its diplomatic ambassador* is a criminal offence. The penalty in such cases is a fine or imprisonment for up to one year.

6. Criminal defamation of foreign states and symbols

Under Art. 164(1) of the Slovenian Criminal Code, *insult, slander, defamation, calumny or malicious false accusation of crime committed against the flag, coat of arms or national anthem of a foreign country*.

In addition, this provision applies to such *acts committed against an international organisation* recognised by the Republic of Slovenia or that organisation's representative or insignia (Art. 164(2)).

7. Criminal defamation of the deceased

No provisions.

However, Art. 168(4) states that if *insult, slander, defamation, calumny or malicious false accusation of crime* is committed against a deceased person, that person's spouse, extra-marital partner, partner from a registered same-sex civil partnership, children or adopted children, parents or adoptive parents, or brothers or sisters can initiate prosecution.

8. Criminal blasphemy

No provisions.

9. Recent legal changes

In July 2015, the Slovenian Parliament amended Art. 168 of the Slovenian Criminal Code on criminal procedure related to the prosecution of defamation⁴¹⁰. The article was amended to specify that cases of criminal defamation or insult committed against public officials are to be brought by private action rather than by a public prosecutor, as had been the case until now.

II. Practice

1. General notes

n/a

2. Statistics

The following data were provided on request to the International Press Institute by the Statistical Office of the Republic of Slovenia.

The data shown here relate to the year **2014** and to the Slovenian Criminal Code KZ-1B, in effect from 2012.

- For **Art. 158** (insult), there were 32 convictions, resulting in 17 prison sentences, including 2 unconditional prison sentences, 7 criminal fines, and 8 reprimands.
- For **Art. 159** (slander), there were 4 convictions, resulting in 2 criminal fines and 2 reprimands.
- For **Art. 160** (defamation), there were 14 convictions, resulting in 5 prison sentences, including one unconditional prison sentence, 7 criminal fines, and 2 reprimands.
- For **Art. 161** (slander), there were 3 convictions, resulting in 1 suspended prison sentence, 1 criminal fine, and 1 reprimand.

Additionally, for the year **2014**, there are data related to Criminal Code KZ-1, which was used between 2008 and 2012.

- For **Art. 158** (insult), there was 1 conviction, resulting in 1 suspended prison sentence.
- For **Art. 160** (defamation), there was 1 conviction, resulting in a criminal fine.

In 2015, the Slovene Association of Journalists published a study on the use of criminal and civil defamation laws in Slovenia⁴¹¹. The study explains:

“The Slovene Association of Journalists requested big Slovene media outlets to provide data on all civil and criminal proceedings against journalists, editors and media companies in the period from 2009 to 2014. Ten media companies submitted the data: the publishers and broadcasters Delo, Dnevnik, Večer, Finance, Slovenske novice, Primorske novice, Reporter, Mladina, Pop TV, Kanal A, TV and Radio Slovenia, siol.net and Radio 1. In total, 127 civil and criminal proceedings were brought against these media outlets over the past few years.”

Of these proceedings, approximately 60 percent were civil proceedings. the study continued:

“As for alleged criminal offences, proceedings against journalists, editors and the media were in most cases initiated on the basis of provisions on the criminal offence of defamation. On top of the list are defamation charges (Art. 160 of the Penal Code)

⁴¹⁰ “Slovenia approves reforms to law on classified information”, IPI, 21 July 2015, <https://ipi.media/slovenia-overwhelmingly-approves-reforms-to-law-on-publication-of-classified-information/>.

⁴¹¹ “Analysis of Actions and Complaints against the Media: Majority of procedures initiated under the Code of Obligations”, Slovene Association of Journalists. English translation provided by the International Press Institute.

that were imputed on journalists in 44 per cent out of 48 criminal law matters on which the Association has the data. This is followed by cases of alleged insults (Art. 158 of the Penal Code) that were brought against journalists or the media in 15 per cent, i.e. seven cases.”

Regarding the outcome of these cases, the study does not distinguish between civil and criminal proceedings, but notes that out of “82 cases with the known outcome, only 6 ended in conviction or were found for the plaintiff”.

3. Selected cases

In 2013, a court found blogger and former Slovenian special forces member Mitja Kunstelj guilty of insult and defamation and sentenced⁴¹² him to six months in prison over offensive posts on his blog about the private lives of former journalist Spela Predan and journalist and editor Vinko Vasle. The court reportedly handed Kunstelj the prison sentence after he repeatedly stated that he would not pay compensation and would continue to post similar entries on his blog. In an earlier proceeding, Kunstelj had been ordered to pay Predan and Vasle €10,000 in compensation, remove the disputed content from his blog and publish an apology. The court also had barred Kunstelj from posting the statements about Predan and Vasle again or referring to them.

⁴¹² See Jure Predanic, “[Mitja Kunstelj has to go to prison because of blogging](#)”, Delo, 13 May 2013. Also see “[Blogger gets six months in prison for defamation](#)”, Reporters Without Borders, 16 May 2013.

SPAIN⁴¹³

I. Law

1. Criminal defamation and insult laws

The Spanish Criminal Code⁴¹⁴ includes two general types of offences against honour: slander (Art. 205) and defamation (Art. 208).

Slander (Criminal Code Art. 205; *calumnia*): Defined as “accusing another person of a felony while knowing it is false or recklessly disregarding the truth”. It is generally punished with a fine⁴¹⁵ of six to 12 months. However, when committed by means of the media (print and broadcasting) or other “similarly effective means”, it is punished with a fine of 12 to 24 months or imprisonment for up to two years.

Defamation (Criminal Code Art. 208; *injuria*): Defined as any accusation, expression, or action that “harms the dignity of another person, detracting from his reputation or attacking his self-esteem”. Defamation is only considered a crime if “by its nature, effect, or circumstances is considered serious by the public at large”. In the case of an assertion of fact, the offender must also know the statement to be false or have acted with reckless disregard for the truth. Defamation is generally punished with a fine of three to seven months. However, if the defamation is committed through the media, the potential punishment increases to a fine of six to 14 months.

In certain cases (e.g. if defamation was committed for payment), the offender may be barred from certain rights, such as holding public office or practicing a particular profession (Art. 213, in accordance with Arts. 42-45) for six months to two years.

Finally, Art. 620 of the Criminal Code provides that defamatory statements that do not otherwise constitute a felony are considered a misdemeanour (*falta*) and punishable by a fine of 10 to 20 days.

Art. 578 of the Spanish Criminal Code prohibits “acts that involve discredit, disdain or humiliation of the victims of terrorist offences or their relatives”. The penalty is imprisonment from one to two years and a fine of 12 to 18 months. Art. 578(2) stipulates that penalties shall be on the higher end of the spectrum if the act is committed through the media or the Internet.

2. Criminal defamation of public officials

No provisions.

3. Criminal defamation of the head of state

⁴¹³ Information on Spain originally published as part of the International Press Institute’s Media Law Database and has been revised/updated for this present study.

⁴¹⁴ Criminal Code of Spain (Organic Law 10/1995 of 23 november), most recent version as of 28 April 2015, available at: <http://www.boe.es/buscar/act.php?id=BOE-A-1995-25444>

⁴¹⁵ Spanish criminal fines are computed at a “daily rate” (sistema de días-multa). The minimum daily rate is €2 and the maximum is €400. Thus, for slander committed via the media, the minimum fine would be €2 multiplied by 365 days, or €730. The maximum fine would be €400 multiplied by 730 days, or €292,000. Courts are directed to determine the fine taking into account a person’s financial situation.

Offence toward the monarch and the royal family (*lèse-majesté*) remains a criminal offence in Spain under the Spanish Criminal Code.

Slander or defamation directed “against the King, the Queen, any of their ascendants or descendants, the consorts, the regent or a member of the regency, or the Prince or Princess of Asturias” is a criminal offence under Art. 490(3). In the offence is serious, the penalty is imprisonment from six months to two years. If not, the penalty is a fine of six to 12 months. Any other act of slander or defamation against a royal is punishable by a fine of four to 20 months (Art. 491(1)).

Additionally, the misuse of a royal's image in a way that “may damage the prestige of the Crown” is a criminal offence under Art. 491(2). The punishment is a fine of six months to two years.

4. Criminal defamation of the state and its symbols

Art. 543 of the Spanish Criminal Code prohibits “[v]erbal or written offences or outrages... against Spain, its Autonomous Communities or the symbols or emblems thereof”. The penalty is a fine of seven to 12 months.

Further, *defamation of Parliament* (or the legislature of an autonomous community) or its laws, is a criminal offence under Art. 496. The penalty is a fine of 12 to 18 months. Under Art. 504, the same penalty applies to serious slander of *defamation directed at the national government, the General Council of the Judiciary, the Constitutional and Supreme Courts (national and those of an autonomous community), the armed forces and security forces.*

Art. 594 prohibits sending false news that is “aimed at damaging the prestige of the State or the interests of the Nation” in a time of war. The penalty is imprisonment from six months to two years.

5. Criminal defamation of foreign heads of state

No provisions.

6. Criminal defamation of foreign states and symbols

No provisions.

7. Criminal defamation of the deceased

No provisions.

8. Criminal blasphemy

Offending the feelings of members of religious groups or publicly disparaging their dogmas, beliefs, rites, or ceremonies is a criminal offence under Art. 525 of the Spanish Criminal Code. The punishment is a fine of eight to 12 months. Insult against non-religious persons is also included under these article.

Additionally, Art. 524 prohibits “profane acts” offensive to religious feeling that are performed in a religious setting. The punishment is a fine of 12 to 24 months or six months to one year in prison.

9. Recent legal changes

II. Practice

1. General notes

n/a

2. Statistics

The following are official data on criminal justice from Spain's National Statistics Institute⁴¹⁶ for the year 2013:

- There were 25 criminal convictions for slander
- There were 73 criminal convictions for defamation

3. Selected cases

In two separate cases in 2013 and 2014, the editor of the Lanzarote-based satirical blog El Agitador, Carlos Meca, was sentenced⁴¹⁷ to pay approximately €38,000 over vignettes considered to have offended the honour of a former public prosecutor implicated in a municipal corruption affair. The images referred in particular to the prosecutor’s occupancy of a home determined by local authorities to be in violation of various rural housing regulations. In one case, a judge condemned Meca to pay a criminal fine of €8,000, plus €15,000 in damages and legal costs to the prosecutor. In the other, a civil court similarly ordered Meca to compensate the prosecutor €15,000 for non-pecuniary damage caused by one of the vignettes.

In 2010, the Provincial Court of Seville acquitted⁴¹⁸ two editors of the Andalucía version of the daily El Mundo, Francisco Rosell and Javier Caraballo, of defaming the former president of the Andalusian government, Manuel Chaves, and several other members of the Andalusian Socialist party. The accusation arose after the paper, in 2001, printed allegations that the officials had ordered a spying operation on the presidents of Sevillian banks. The judge in the case, confirming a lower court ruling in 2007, reportedly ruled that although the reported espionage had never conclusively been proven true, the paper had acted with “sufficient diligence so as to fulfil the constitutional requirement of truth”. The judge noted that if newspapers were only allowed to publish information “proven scientifically true”, this would lead to a “paralysis of the flow of information vital to a democratic society”. In 2011, Chaves announced⁴¹⁹ that he would not appeal to the Constitutional Court.

In 2008, journalist and commentator Federico Jiménez Losantos was convicted of having criminally insulted the then-mayor of Madrid, Alberto Ruiz-Gallardón, and ordered to pay a

⁴¹⁶ <http://www.ine.es/welcome.shtml>.

⁴¹⁷ “Spanish journalist: ‘You have to accept the risks and cross your fingers’”, IPI, 15 December 2014, <http://legaldatabase.freemedia.at/2014/12/15/spanish-journalist-you-have-to-accept-the-risks-and-cross-your-fingers/>.

⁴¹⁸ [Sentencia Nº 12/10 de 11 de enero de 2010](#). See also “La audiencia de Sevilla absuelve a dos periodistas acusados de injuriar a Chaves”, *ABC de Sevilla*, 13 January 2010.

⁴¹⁹ Sebastián Torres, “Chaves no recurrirá al Constitucional el fallo en su contra en el ‘caso espionaje’”, *El Mundo*, 11 February 2010.

fine of €36,000. A member of the Spanish People's Party, Ruiz-Gallardón had publicly suggested⁴²⁰ in 2006 that, among other things, the party should avoid becoming mired in debate over its actions following the 11 March 2004 Madrid train bombings and instead focus on evaluating subsequent mistakes it made. The party, which had been in power at the time of the bombings, was widely criticised for incorrectly blaming the Basque separatist group ETA for the attacks, allegedly in order to strengthen its position in a national parliamentary election held just days later. The party ultimately suffered large losses at the 2004 polls. In response, Losantos stated in a television programme that Ruiz-Gallardón “did not care that 200 people died as long as he came to power” and called the mayor a “traitor”, “deceitful”, and a “lackey for the opposition”, comments he repeated on several other occasions. Ruiz-Gallardón filed criminal charges and the judge in the case reportedly ruled that Losantos “had put words into Ruiz-Gallardón’s mouth that he did not say” and thus “did not transmit true facts” and was not protected by freedom of expression. According to reports⁴²¹, the judge also found that Losantos had sought to harm the “image and dignity of (Ruiz-Gallardón) in a gratuitous and unnecessary way and to discredit him publicly in his condition as mayor and member of the People’s Party”. In 2009, the Madrid Provincial Court upheld the sentence, agreeing with the lower-court judge that Losantos’ choice of words had been disproportionate to his aim. “The right to free expression... does not protect unjustified and unnecessary offence or insult,” it reportedly stated⁴²².

In 2007, El Mundo journalists Eduardo Inda and Miguel Ángel Ruiz were convicted of criminally defaming the former mayor of the city of Mahón on the island of Menorca. The journalists reportedly were each sentenced pay a fine of 18 months at a rate of €180 per month, in addition to damages in the amount of €9,000. The conviction reportedly⁴²³ rated to a series of articles suggesting corruption on the part of the mayor, Borja Carreras. In 2012, Inda, together with Esteban Urreiztieta, was the subject⁴²⁴ of another criminal defamation complaint, this time from Catalan politician Jordi Pujol, over an article⁴²⁵ based on a draft police report that alleged that the Pujol family had stashed €137 million in a secret Swiss bank account. A judge reportedly dismissed⁴²⁶ the case because the journalists had acted on information coming from trustworthy sources and without the intent to harm. It was later reported⁴²⁷ that Pujol planned to appeal. However, in July 2014, he admitted to having committed tax fraud by hiding money in foreign accounts.

In 2009, prosecutors in Catalonia charged two journalists with criminally defaming Xavier Vilaró, chief of the Barcelona police (*Guardia Urbana*). The charges related to a 2008 incident in which Vilaró was wounded during a public celebration of Spain’s victory in the European [football] Championships. Vilaró later claimed that he had been wounded by a rubber bullet shot by a member of the Catalan police (*Mossos d’Esquadra*). The newspaper El Mundo and the website Vilaweb both published articles questioning Vilaró’s version of events. Prosecutors requested a year in prison for Fernando García, author of the El

⁴²⁰ [“Ruiz-Gallardon invita a su partido a obviar el 11 m y a huir de la radicalizacion”](#), ABC, 8 June 2006.

⁴²¹ María Peral, [“Jiménez Losantos, condenado por injurias graves contra Alberto Ruiz-Gallardón”](#), El Mundo, 17 June 2006.

⁴²² [“Confirman la condena a Jiménez Losantos por un delito de “injurias graves” hacia Gallardón”](#), Europa Press.

⁴²³ Marisa Goni, [“El Mundo condenado por difamar a un exalcalde”](#), El Periodico Mediterraneo, 25 May 2007.

⁴²⁴ [“Imputados dos periodistas de ‘El Mundo’ tras la denuncia de Mas por calumnias”](#), EFE, 26 November 2012.

⁴²⁵ Esteban Urreiztieta and Eduardo Inda, [“Los Pujol tienen 137 millones en Ginebra, según la Policía”](#), El Mundo.

⁴²⁶ [“Archivan la querrela de Pujol contra dos periodistas de EL MUNDO”](#), El Mundo, 9 April 2013.

⁴²⁷ [“Pujol recurrirá el archivo de su querrela contra dos periodistas de EL MUNDO”](#), Europa Press, 11 April 2013.

Mundo article, and requested damages of €150,000 to be paid to Vilaró. Prosecutors sought⁴²⁸ a fine of €15,000 against Vicent Partal, editor of Vilaweb. In March 2011, a Barcelona court absolved⁴²⁹ both García and Partal.

In February 2014, the director of Spain's Civil Guard, Arsenio Fernández de Mesa, threatened⁴³⁰ criminal defamation and slander charges, apparently in relation to claims that the Civil Guard stationed in the Spanish enclave of Ceuta in northern Morocco had mistreated would-be asylum seekers. The threat came after reports that at least 11 Western Saharan migrants had died attempting to reach Ceuta. Fernández de Mesa vigorously defended the Civil Guard's actions and in response to the allegations stated: "It's not fair and there are certain lines that cannot be crossed... the Civil Guard cannot be accused of any type of crime."

Lèse-majesté

In 2007, a cartoonist and an editor working for the satirical magazine *El Jueves* were fined⁴³¹ €3,000 each for offending then-Crown Prince Felipe and his wife, Letizia, for an image depicting the royal pair having sex. The prince is depicted as saying: "Do you realise if you get pregnant this will be the closest thing I've done to work in my whole life." The judge in the case said Guillermo Torres and Manuel Fontdevila "had vilified the crown in the most gratuitous and unnecessary way".

In 2008, the mayor of the small town of Puerto Real was fined €6,480 for calling the King "weak" and a "libertine". During his court appearance, José Antonio Barroso complained⁴³² of a "democratic defect" in that, in his view, it was not possible to talk about the King, his "illicit businesses" or his "fortune of unknown origin". The court noted⁴³³ that the right to free expression did not include insulting the "ultimate nucleus of a person's dignity" and that the terms used by Barroso were not necessary for the expression of his view.

In 2013, a court sentenced a former military colonel, Amadeo Martínez Inglés, to a fine of €6,480 for insulting King Juan Carlos I in article titled "Why don't you shut up now?" in a commentary on the website *Canarias-Semanal*. The article referred to the king as "maximally corrupt" and guilty of genocide, and called him the latest in a line of "drunks, idiots and nymphomaniacs". In its ruling, the court said⁴³⁴ that it was "not necessary to vilify the King" in order to express rejection of the monarchy.

The European Court of Human Rights in 2011 found⁴³⁵ that the conviction of a Basque politician, Arnaldo Otegi Mondragon, on lèse-majesté charges was a violation of freedom of expression. Speaking to the press in 2003 following a royal visit to the Basque region, Mondragon referred to the king as "he who protects torture and imposes his monarchical

⁴²⁸ See Jesús García, "[El fiscal pide cárcel para un periodista por calumnias en el 'caso Vilaró'](#)", *El País*, 23 November 2009.

⁴²⁹ Decision ([Jutjat penal núm. 7, Sentència núm. 186/2011](#)). See also Jesús García, "[Un perdón para zanjar el 'caso Vilaró'](#)", *El País*, 29 March 2011.

⁴³⁰ "[La Guardia Civil amenaza con querellas por difamación](#)", EFE, 12 February 2014.

⁴³¹ "[Spain royal sex cartoonists fined](#)", BBC News, 13 November 2007.

⁴³² Manuel Altozano, "[Declara en la Audiencia Nacional el alcalde que llamó 'crápula' al Rey](#)", *El País*, 27 October 2008.

⁴³³ Audiencia Nacional de Madrid, Juzgado Central de lo Penal, [Sentencia No. 42/2009](#) de 9 de junio de 2009.

⁴³⁴ Javier García Pedraz, "[El coronel Martínez Inglés, multado a 6.480 euros por injurias al Rey](#)", *El País*, 21 March 2013.

⁴³⁵ [Otegi Mondragon v. Spain](#), no. 2034/07, ECHR 2011.

regime on our people through torture and violence”. Mondragon was later handed⁴³⁶ a suspended one-year prison sentence. Accepting that Mondragon’s language could be considered “provocative”, the Court noted that – especially in the case of a “public debate on general concern” – individuals may have recourse to “a degree of exaggeration, or even provocation”. Furthermore, although the Court acknowledged that a monarch may occupy a “unique institutional position”, it nevertheless held that “the fact that a King occupies a neutral position in public debate and acts as an arbitrator and a symbol of State unity should not shield him from all criticism in the exercise of his official duties or... in his capacity as representative of the State which he symbolises”.

⁴³⁶ [“El Tribunal Supremo condena a un año de cárcel a Arnaldo Otegi por injurias al Rey”](#), *El Mundo*, 4 November 2005.

SWEDEN⁴³⁷

I. Law

1. Criminal defamation and insult laws

The Swedish Criminal Code⁴³⁸ includes two related offences: defamation (Ch. 5, Sec. 1) and insult (Ch. 5, Sec. 3)

Defamation is defined as pointing someone out as being a criminal or as having a reprehensible way of living or furnishing information intended to cause exposure to the disrespect of others. The punishment is a fine⁴³⁹.

Aggravated defamation, which depends on the “content or scope of dissemination” of the statement and whether it “was calculated to bring about serious damage”, is punishable by a fine or imprisonment for up to two years.

Insult, defined as vilifying another by an insulting epithet or accusation or by other infamous conduct, is punishable by a fine, if the act is not already punishable as defamation. Gross insult can result in imprisonment for up to six months.

Insult usually involves directly insulting a person in that person's presence. By contrast, defamation is committed when speaking about a person who is not present.

Sweden has double legislation regarding defamation and insult committed via the media. The Freedom of the Press Act (Ch. 7) and the Fundamental Law on Freedom of Expression (Ch. 5) cover defamation and insult committed via print and audiovisual media, respectively. The offences are defined in the same way as in the Penal Code and the provisions of the Penal Code fully apply in criminal defamation cases involving the press. Furthermore, all crimes in the Freedom of the Press Act and the Fundamental Law on Freedom of Expression must also be a crime in the Criminal Code.

The law on criminal procedure related to defamation was amended in July 2014. It now states (Ch 5, Sec. 5) that while defamation is normally to be prosecuted privately by the offended party, the public prosecutor may bring charges if the offended party is under 18 years old or in other cases in which the offended party requests it and the bringing of charges is in the public interest and the offence relates to:

- Defamation or aggravated defamation (*förtal och grovt förtal*);
- Insult (*förolämpning*) committed against public authority;
- Insult with reference to race, colour, national origin or ethnic or religious belief; or
- Insult with reference to sexual orientation.

⁴³⁷ Information on Sweden originally published as part of the International Press Institute's Media Law Database and has been revised/updated for this present study.

⁴³⁸ Criminal Code of Sweden (1962:700), last amended by 2016:677, available at: https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/brottsbalk-1962700_sfs-1962-700.

⁴³⁹ The fines related to defamation are normally classified as "day fines", according to Ch. 25, Secs. 1-2. The amount of an individual day-fine unit ranges from 30 kronor to 1,000 kronor, based partly on the offender's economic situation, and anywhere between 30 and 150 units can be ordered as the fine. 1 krona = approx. €0.10 (March 2017).

Additionally, both the Freedom of the Press Act (Ch. 12, Sec. 2) and the Fundamental Law on Freedom of Expression (Ch. 9, Sec. 1) require that media cases “in which there is a question of liability under penal law” be conducted as a jury trial. A jury is to consist of nine members, six of whom must vote for a conviction. If the court disagrees with the jury’s verdict, it has only the option of acquitting the defendant or applying a lesser penalty.

The Swedish Criminal Code also contains a provision on “*ethnic agitation*”. A statement that “threatens or expresses contempt for a national, ethnic or other such group of persons with allusion to race, colour, national or ethnic origin, religious belief or sexual orientation” incurs a penalty of imprisonment for up to two years or a fine. In the case of a serious offence – if the statement was “particularly threatening or abusive” and disseminated in a way “likely to arouse considerable attention” – the penalty is six months to four years’ imprisonment (Ch. 16, Sec. 8).

2. Criminal defamation of public officials

No provisions.

3. Criminal defamation of the head of state

Offence toward the monarch and the royal family (*lèse-majesté*) remains a criminal offence in Sweden under the Swedish Criminal Code.

Defamation or insult committed against the King or other member of the Royal Family is a criminal offence under Ch. 18, Sec. 2 of the Criminal Code. The punishment is imprisonment for up to four years, or up to six years in the case of gross defamation.

4. Criminal defamation of the state, state symbols and state institutions

No provisions.

5. Criminal defamation of foreign heads of state

Chapter 5, Sec. 5 of the Criminal Code provides special rules for the prosecution of defamation or insult directed at foreign heads of state. As noted above in “Criminal defamation and insult laws”, defamation is normally to be prosecuted privately by the offended party, except in the exceptions stated.

The final paragraph of this article adds that if an offence of defamation or insult is committed against a foreign head of state in Sweden or a foreign diplomatic representative in Sweden, the case is to be handled by prosecutors upon approval of the government.

6. Criminal defamation of foreign states and symbols

No provisions.

7. Criminal defamation of the deceased

According to Ch. 5, Sec. 5 of the Swedish Criminal Code, family members or the public prosecutor may initiate prosecutions for defamation of the deceased if it is considered to be in the public interest.

8. Criminal blasphemy

No provisions.

9. Recent legal changes

The law on criminal procedure related to defamation was amended in July 2014. It now states that while defamation is normally to be prosecuted privately by the offended party, the public prosecutor may bring charges if the offended party is under 18 years old or in other cases in which the offended party requests it and the bringing of charges is in the public interest and the offence relates to:

- Libel or gross libel (*förtal och grovt förtal*);
- Insult (*förolämpning*) committed against public authority;
- Insult with reference to race, colour, national origin or ethnic or religious belief; or
- Insult with reference to sexual orientation.

II. Practice

1. General notes

Swedish experts indicate that it is relatively unusual for persons who feel that their reputation has been injured to go to court. Offended parties are more likely to bring a complaint to the Press Ombudsman or the Swedish Broadcasting Authority, which is governed by the statutory Radio and Television Act.

Criminal prosecutions for defamation involving the media are rare in Sweden. This may be due in part to the extensive requirements for conducting such cases under the Freedom of the Press Act and the Fundamental Law on Freedom of Expression

2. Statistics

The following are official data⁴⁴⁰ on criminal justice from the Swedish National Council for Crime Prevention (Brottsförebyggande rådet - Brå) for the year **2013**.

- For **defamation**, there were 9 conviction decisions, resulting in 9 criminal fines.
- For **gross (aggravated) defamation**, there were 12 conviction decisions, resulting in 1 suspended prison sentence, 2 criminal fines, one sentence of probation, 2 conditional community service sentences and 6 sentences for youth offenders.
- For **insult**, there were 16 conviction decisions, resulting in 16 criminal fines.
- There were no convictions for **lèse-majesté**.

The following are official data for the year **2015** (most recent year available)⁴⁴¹:

- For **defamation**, there were 14 conviction decisions, resulting in 2 youth service orders, 11 fines and 1 prosecutor fine.

⁴⁴⁰ Source: "[Kriminalstatistik 2013](#)", Swedish National Council for Crime Prevention, Rapport 2014:18.

⁴⁴¹ Source: <https://www.bra.se/>, Tabel 420. Total number of conviction decisions by principal offence and principal sanction, year 2015.

- For **gross (aggravated) defamation**, there were 10 conviction decisions, resulting in 1 fine, 1 youth service, 1 youth care and 7 suspended sentences.
- For **insult**, there were 19 conviction decisions, resulting in 3 waiver of prosecution, 2 prosecutor fines, 14 fines
- There were no convictions for **lèse-majesté**.

3. Selected cases

Sjöberg-Persbrandt case

In December 2006, a Stockholm jury convicted⁴⁴² Otto Sjöberg, then editor-in-chief of the Swedish tabloid newspaper *Expressen*, of committing criminal libel against Swedish actor Mikael Persbrandt. A year prior, *Expressen* had reported that Persbrandt had been admitted to a hospital in Uppsala for alcohol poisoning. Persbrandt challenged the report as factually inaccurate and *Expressen* later issued an apology, admitting that it had made a mistake and explaining that it had had been misinformed by a source. The actor sued the paper for libel anyway, requesting 500,000 kronor in damages. In addition, prosecutors elected to press criminal charges against Sjöberg and *Expressen*.

At trial, although Sjöberg reportedly admitted to a “serious failure” that had hurt the paper’s standing, lawyers for *Expressen* argued that Persbrandt’s alleged struggle with alcohol was public knowledge and that the actor’s reputation could not have been damaged by the article, even if the facts regarding the clinic turned out to be untrue. The nine-member jury acquitted Sjöberg of gross libel, but found him guilty of standard libel. The Stockholm District Court sentenced him to pay 80 day fines of 1,000 kronor each (for a total of 80,000 kronor) and to pay damages to Persbrandt in the amount of 75,000 kronor.

Schyman case

In 2003, the Swedish Supreme Court (*Högsta domstolen*) upheld⁴⁴³ an appeals court judgment ordering *Expressen* to pay a criminal fine of 60,000 kronor for defaming Gudrun Schyman, the leader of the Swedish Left Party. However, the Supreme Court lowered the amount of damages *Expressen* was required to pay to Schyman, from 100,000 kronor to 50,000 kronor. The case stemmed from a 2001 *Expressen* cover headline that read: “Gudrun Schyman to appear in erotic film with her ex-husband: ‘One should be horny’” (“*Gudrun Schyman spelar in erotisk film tillsammans med sin ex-man: 'Man ska bli kåt'*”). Schyman considered that the headline implied that she was involved in pornography, and sued for libel. The district court (Tingsrätt) threw out the case. The Svea Court of Appeal, however, agreed⁴⁴⁴ that readers of the headline would conclude that Schyman was to appear in a pornographic film.

⁴⁴² See Tobias Brandel, “[Sjöberg döms till böter för förtal](#)”, 15 December 2006, *Svenska Dagbladet*; and Claus Granath, “[Juryn fäller Sjöberg för förtal](#)”, 15 December 2006, *Sydsvenskan*.

⁴⁴³ Högsta domstolen, [Mål nr 2003 B 1658-03](#).

⁴⁴⁴ See “[HD: Expressenlöpsedel om Schyman var förtal](#)”, Tidningarnas Telegrambyrå (TT), 5 December 2003; and “[Schyman vann förtalsmål](#)”, 5 December 2003, TT and *Aftonbladet*.

SWITZERLAND

I. Law

1. Criminal defamation and insult laws

The Swiss Criminal Code⁴⁴⁵ foresees the following offences:

Defamation (Art. 173): Accusing a person of dishonourable behaviour or similar prone damaging that person's reputation. The act is punishable with a fine of up to 180 times the daily rate.

If the accused is able to prove the veracity of the accusation or that he or she had good grounds to believe the accusation true, the accused is exempt from criminal liability. Proof of truth is inadmissible in certain cases in which the expression does not serve public interest, in particular when the expression is related to personal or family life.

Slander (Art. 174): Accusing a person of dishonourable behaviour or similar to prone to damaging that person's reputation, while knowing the accusation to be false. The act is punished with up to three years in prison or a fine. If the accused deliberately sought to undermine a person's good name, the act is punishable with up to three years in prison and a fine of no less than 30 times the daily rate.

Insult (Art. 177): Attacking a person's honour through words, writing, pictures, gestures or actions. The act is punishable with a fine of up to 90 times the daily rate.

2. Criminal defamation of public officials

No provisions.

3. Criminal defamation of the head of state

No provisions.

4. Criminal defamation of the state, state symbols and state institutions

There are no provisions that bear relation to journalistic or media content.

Art. 270 of the Criminal Code provides liability for physical attacks on Swiss symbols. According to this provision, any person who maliciously removes, damages or acts in an insulting manner towards a Swiss national emblem which is displayed by a public authority, and in particular the coat of arms or the flag of the Confederation or a canton is liable to imprisonment for up to three years or a fine.

5. Criminal defamation of foreign heads of state

⁴⁴⁵ Criminal Code of Switzerland, version as of 1 January 2017, available at: <https://www.admin.ch/opc/de/classified-compilation/19370083/index.html>.

Offending a foreign state (Art. 296): Offending a foreign state by insulting its head of state, its government, a diplomatic representative, an official delegate to a diplomatic conference taking place in Switzerland or one of its official representatives at an international organisation located in Switzerland. The act is punishable with up to three years in prison or a fine.

Offending intergovernmental organisations (Art. 297): Offending an official representative of an intergovernmental organisation based in or holding a conference in Switzerland. The act is punishable with up to three years in prison or a fine.

6. Criminal defamation of foreign states and symbols

Art. 298 of the Criminal Code provides that any person who wilfully removes, damages or conducts himself in an insulting manner towards a national emblem of a foreign state, and in particular its coat of arms or flag which is publicly displayed by one of its official representatives is liable to a custodial sentence not exceeding three years or to a monetary penalty.

7. Criminal defamation of the deceased

Criminal Code Art. 175 (*defamation or slander against a deceased or missing person*) provides that a relative of deceased person may file a criminal claim on the deceased or missing person's behalf. The accused cannot be punished if the act took place more than 30 years prior⁴⁴⁶.

8. Criminal blasphemy

Disturbance of freedom of religion and belief (Art. 261): Publicly and maliciously insulting or mocking the religious convictions of others, especially the belief in God; dishonouring objects of religious veneration; maliciously hindering, disrupting or publicly mocking a constitutionally protected form of worship; maliciously dishonouring a place or object meant for such a form of worship. The act is punishable with a fine of up to 180 times the daily rate.

9. Recent legal changes

II. Practice

1. General notes

n/a

2. Statistics

Official statistics on the number of convictions for selected articles and years⁴⁴⁷:

⁴⁴⁶ Note also *Disturbing the peace of the dead* (Art. 262): Inter alia, publicly insulting or dishonouring a corpse. The act is punishable with up to three years in prison or a fine.

⁴⁴⁷ Source: "Erwachsene: Verurteilungen für ein Vergehen oder Verbrechen 1) nach Artikeln des Strafgesetzbuches (StGB), Schweiz", available at <https://www.bfs.admin.ch/bfs/de/home/statistiken/kriminalitaet-strafrecht/strafjustiz/jugend-erwachsenenurteile.html>.

Article	2011	2012	2013	2014	215
173 – defamation	198	232	329	312	303
174 – slander	60	74	94	105	111
177– insult	1,920	2,504	2,748	2,738	2,680
261 – blasphemy	2	4	3	2	1
296 ⁴⁴⁸ – offence to foreign head of state	0	0	0	0	0
297 ⁴⁴⁹ – offence to intl. organisation	0	0	0	0	0

3. Selected cases

In October 2012, the Zurich District Court convicted Tages-Anzeiger journalist Maurice Thiriet of defamation and sentenced him to 75 daily fines at a rate of 90 francs⁴⁵⁰. The case related to an article published in August 2010 entitled “The puffed-up astronaut” about a young astrophysicist named Barbara Burtscher, who had been featured often in the media for apparently heading towards a career as an astronaut with NASA. Thiriet’s article, however, questioned a number of Burtscher’s claims and ultimately described her as having enjoyed a “short career as an imposter (*Hochstaplerin*)”. An appeals court confirmed the conviction in November 2013, but reduced the fine to 60 daily fines at a rate of 90 francs. The Federal Supreme Court of Switzerland likewise upheld the verdict in April 2014. According to reports, the Federal Supreme Court noted that while early media appearances on the part of Burtscher “were at least strongly borderline deceitful”, she later made it clear that she was not in the process of becoming a NASA astronaut, a point of which Thiriet’s article was determined not have taken sufficient account⁴⁵¹.

In October 2016, a court in Zürich convicted an editor with the newspaper 20 Minutes of defamation. The editor was sentenced to 30 daily fines at a rate of 180 francs. The case related to an article that appeared in 20 Minutes on Dec. 15, 2015 about clothing worn by right-wing extremists with the title “When harmless clothing becomes a provocation”. The article included a photo slide show, one of which shows a band called “Frei.Wild” with the caption: “Right-wing extremist beliefs can also be more subtly transmitted, for example through T-shirts from bands such as Frei.Wild, Landser or Screwdriver”. The band Frei.Wild brought criminal charges for defamation against the editor. The court ruled that while the bands Landser and Screwdriver had demonstrably right-wing extremist attitudes, the editor had thrown FreiWild “into the same pot”. The court noted that the term “right-wing extremist” is to be seen as offensive to honour in Switzerland⁴⁵².

In January 2017, Bruno Hug, publisher of the newspaper Obersee Nachrichten, was convicted of defamation and sentenced to 30 daily fines at a rate of 440 francs. The case related to an article published in summer 2016 in which Hug claimed a trustee had pressured a retired man into providing his signature. At the relevant time the man was a patient in a psychiatric clinic.

⁴⁴⁸ No convictions recorded since at least 1984.

⁴⁴⁹ No convictions recorded since at least 1984.

⁴⁵⁰ 1 franc = approx. €0.93 (March 2017).

⁴⁵¹ See e.g., Thomas Hasler, “Ehemaliger TA-Redaktor wegen übler Nachrede verurteilt“, Tages-Anzeiger, 30 April 2014, <http://www.tagesanzeiger.ch/schweiz/standard/Ehemaliger-TA-Redaktor-wegen-uebler-Nachrede-verurteilt/story/12495512>; “«Tages-Anzeiger»-Journalist bleibt wegen übler Nachrede verurteilt“, News.ch, 4 November 2013,

<http://www.news.ch/Tages+Anzeiger+Journalist+bleibt+wegen+uebler+Nachrede+verurteilt/605036/detail.htm>.

⁴⁵² “Gericht spricht «20 Minuten»-Journalist wegen übler Nachrede schuldig“, Luzerner Zeitung, 31 October 2016, <http://www.luzernerzeitung.ch/nachrichten/panorama/Gericht-spricht-20-Minuten-Journalist-wegen-uebler-Nachrede-schuldig;art46441,879856>.

Hug suggested that the man only signed in order to be able to leave the clinic and wrote “If it was so, then it was extortion, I think”. The judge ruled that Hug’s comments suggested that the trustee had possibly committed a criminal act and noted that Hug failed to give the trustee an opportunity to comment, thereby violating the journalistic duty of care. The judge further noted that Hug could have written the article without using terms such as “extortion”⁴⁵³.

Insult of foreign head of state

In 2010, the Swiss federal government granted permission for the prosecution of political activist Éric Stauffer for offending a foreign head of state, namely, Libyan leader Muammar Gadhafi. The request was made by the Libyan government in response to posters set up by Stauffer, in relation to a referendum, that read, in reference to Gadhafi “He wants to destroy Switzerland”. Permission was granted by the Swiss government despite the fact that Gadhafi had actually filed a motion with the UN that aimed at the “abolition” of Switzerland⁴⁵⁴.

Years before, in the 1970s, the publisher of the satirical magazine *The Pill*, Narcisse René Praz, was convicted of insulting the Shah of Iran. Praz was sentenced to a fine of several hundred francs. As in the Libyan case, the Iranian government requested the prosecution, which was approved by the Swiss federal government⁴⁵⁵.

Reports have also suggested that in 2008 Colombia requested the prosecution of a Cuban exile living in Switzerland for insulting Colombia’s then-President Álvaro Uribe Vélez in a photo montage on the web⁴⁵⁶.

⁴⁵³ Erika Jäger, “Verleger wegen übler Nachrede verurteilt“, 20 January 2017,

<http://www.tagblatt.ch/ostschweiz/Verleger-wegen-uebler-Nachrede-verurteilt;art120094,4883089>.

⁴⁵⁴ Urs P. Gasche, “Bundesrat liess Klagen wegen Staatsbeleidigung zu“, *InfoSperber*, 14 April 2016, <http://www.infosperber.ch/Artikel/Politik/Merkel-Bohmermann-Strafklage-Bundesrat-erlaubte-Schah>.

⁴⁵⁵ *Ibid.*

⁴⁵⁶ See, e.g., “Schweizer Fall mit Parallelen zur Affäre Böhmermann“, *BlueWin.ch*, 14 April 2016, <https://www.bluewin.ch/de/news/inland/2016/4/14/ehemalige-schweizer-bundespraesidentin-uebel-beschimpft.html>.

TAJIKISTAN⁴⁵⁷

I. Law

1. Criminal defamation and insult laws

No provisions.

Note: Tajikistan repealed general criminal offences on defamation and insult – formerly Arts. 135 (defamation) and 136 (insult) of the Criminal Code⁴⁵⁸ – in 2012 and replaced them with provisions in the Civil Code of Tajikistan⁴⁵⁹. However, criminal provisions on "public insult or defamation of the President of Tajikistan" (Art. 137) and "insult of a public official" (Art. 330) were retained.

2. Criminal defamation of public officials

Art. 30 of the Constitution of Tajikistan guarantees freedom of speech and the freedom to criticise (in particular state officials)⁴⁶⁰. The Tajik Constitution prohibits state censorship and prosecution for criticism.

However, there is still criminal liability for *insulting a public official* (Criminal Code Art. 330) in a public speech, publicly demonstrated work, in the media or on the Internet. The penalty is a fine of up to 1,500 monthly calculated indexes (equivalent to approximately €9,200), detention of up to six months or incarceration in a penalty colony for up to two years.

3. Criminal defamation of the head of state

Publicly insulting or defaming the President (Criminal Code Art. 137): Publicly insulting or defaming the president through the use of print, electronic media and the Internet. The penalty is correctional labour for up to two years or imprisonment for a term of two to five years.

In November 2016 the Criminal Code was supplemented by Art. 137¹, which establishes the criminal offence of "*Public insult of the Founder of Peace and National Unity - Leader of the Nation or slander against him*". The penalty for this offence is two to five years in prison

4. Criminal defamation of the state, state symbols and state institutions

Abuse of the state symbols of the Republic of Tajikistan is a criminal offence under Art. 342 of the Criminal Code.

⁴⁵⁷ Information on Tajikistan is provided with the expert assistance of Farrukhsho Dzhunaydov, independent expert.

⁴⁵⁸ Criminal Code of Tajikistan, available in Russian at <http://mmk.tj/ru/legislation/legislation-base/codecs/>.

⁴⁵⁹ Art. 174 Civil Code of Tajikistan, Protection of honour and dignity in case of insult and defamation <http://mmk.tj/ru/legislation/legislation-base/codecs/>.

⁴⁶⁰ Constitution of the Republic of Tajikistan (English text) <http://www.president.tj/en/taxonomy/term/5/28>.

The penalty is a fine of up to 500 monthly calculated indexes (equivalent to approx. €3,000), restriction of freedom for up to two years, arrest for three to six months or imprisonment (deprivation of liberty) for up to one year.

Art. 1 of the Law "On state symbols of the Republic of Tajikistan"⁴⁶¹ states that the flag, state emblem and the national anthem are the state symbols of the Republic of Tajikistan.

The extent to which this provision could be used to sanction verbal or written insult of symbols is not clear. The Commentary to the Criminal Code of Tajikistan indicates that abuse of state symbols may consist of drawing characters on the flag and state emblem, tearing, etc. According to experts, it is possible that a court may interpret "etc." to include verbal or written insult.

5. Criminal defamation of foreign heads of state

No provisions.

6. Criminal defamation of foreign states and symbols

No provisions.

7. Criminal defamation of the deceased

No provisions.

According to the Civil Code of Tajikistan, the honour and dignity of a person can be protected after his/her death upon the request of interested parties⁴⁶².

8. Criminal blasphemy

Tajikistan guarantees freedom of conscience and freedom of religion, including the right to profess, individually or jointly with others, any religion or no religion, to freely choose, distribute and change any religious and other beliefs and to act in accordance with them.

Obstruction of the exercise of the rights to freedom of conscience and freedom of religion, including involving violence against the person, with the deliberate insult of citizens in connection with their attitude to religion, the propaganda of religious superiority, with the destruction of or damage to property or the threat of such acts, are prohibited and punishable under the laws of the Republic of Tajikistan⁴⁶³. Conducting public events, placement of text and images insulting the religious feelings of citizens, outside places of worship are prohibited.

There is no exact article on criminal blasphemy in the Criminal Code of Tajikistan but Art. 189 prohibits incitement of national, racial, regional or religious enmity. Actions aimed at the incitement of national, racial, regional or religious enmity or discord, humiliation of national dignity, and propaganda of exceptionality of citizens on the grounds of their religious, ethnic, racial or group interests, if these acts are committed publicly or with the use of mass media

⁴⁶¹Law on State Symbols of the Republic of Tajikistan: <http://mmk.tj/ru/legislation/legislation-base/>

⁴⁶² Civil Code of Tajikistan, available in Russian at <http://mmk.tj/ru/legislation/legislation-base/codecs/>.

⁴⁶³ See Tajik Law on Freedom of Conscience and Freedom of Religious Associations, available in Russian at <http://mmk.tj/ru/legislation/legislation-base/codecs/>.

are punishable by restriction of freedom for up to five years or imprisonment for the same term.

It is prohibited to do any incitement to hatred, enmity and conflict on religious grounds, violation of religious and atheistic feelings of citizens.

According to the Law on Freedom of Conscience and Freedom of Religious Associations, it is forbidden to charge a person because of religion or disbelief or apostasy.

9. Recent legal changes

2007: Amendments to the Criminal Code of Tajikistan, inclusion of criminal liability for public insult and defamation of President, inter alia on the Internet⁴⁶⁴.

2012: Amendments to the Criminal Code of Tajikistan, repeal of Arts. 135 (Defamation) and 136 (Insult) from the Criminal Code of Tajikistan⁴⁶⁵, following President Rahmon's speech dedicated to the 100th anniversary of the Tajik Press⁴⁶⁶.

2016: Law on Addendum to the Criminal Code of Tajikistan, introducing criminal liability (137¹) for the public insult of the Founder of Peace and National Unity – the Leader of the Nation or slander against him⁴⁶⁷.

II. Practice

1. General notes

n/a

2. Statistics

n/a

3. Selected cases

Insult to head of state

In 2005, Rustam Faiziev, deputy chairman of the unregistered political party "Taraqqiyot" ("Development") was sentenced to five years and 10 months in prison on a charge of public insult and defamation against the President of Tajikistan (Criminal Code Art. 137). His trial was held behind closed doors. The charges were based upon a letter that Faiziev intended to send to international organisations and to the International Court of Justice in The Hague a letter in which he criticised the policy of Tajikistan's president. However, Tajik law enforcement authorities intercepted the letter. In 2009, Rustam Faiziev died in prison⁴⁶⁸.

⁴⁶⁴ Law on Amendments and Additions to the Criminal Code of Tajikistan available at: http://www.adlia.tj/show_doc.fwx?Rgn=11474.

⁴⁶⁵ Law on Amendments and Additions to the Criminal Code of Tajikistan available at: http://www.adlia.tj/show_doc.fwx?Rgn=117168.

⁴⁶⁶ President Rahmon speech at the meeting devoted to the 100th anniversary of Tajik Press <http://www.president.tj/ru/node/828>.

⁴⁶⁷ Law on addendum to the Criminal Code of Tajikistan, http://www.adlia.tj/show_doc.fwx?Rgn=128054.

⁴⁶⁸ Tajik Opposition under Pressure, <https://iwpr.net/global-voices/tajik-opposition-under-pressure>

In September 2008 Tajikistan issued an arrest warrant for Dodojon Atovullo, an exiled opposition journalist and editor of the online newspaper Charogh-i-Ruz. The news agency Asia Plus said the prosecutor general's office had opened a criminal case against Atovullo on charges of "public calls to a violent change in the constitutional regime," along with defamation and "public insult of the president." The charges carry up to 15 years in prison. The Tajik government asked Russian authorities to extradite Atovullo, but the Russian government, amid an international outcry, refused to do so⁴⁶⁹.

⁴⁶⁹<https://news.tj/ru/news/tadzhikistan-prosit-rossiyu-zaderzhat-dododzhona-atovulloeva>

THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA⁴⁷⁰

I. Law

1. Criminal defamation and insult laws

Criminal defamation was repealed in the former Yugoslav Republic of Macedonia in 2012.

2. Criminal defamation of public officials

No provisions.

3. Criminal defamation of the head of state

No provisions.

4. Criminal defamation of the state and its symbols

Art. 178 of the Macedonian Criminal Code⁴⁷¹ prohibits *ridiculing or publicly mocking the Republic of Macedonia, its flag, coat of arms or national anthem*. The penalty is a fine.

5. Criminal defamation of foreign heads of state

Art. 181 of the Macedonian Criminal Code prohibits publicly mocking a foreign state, its flag, coat of arms or national anthem, *the head of a foreign state or the diplomatic representative of a foreign state in Macedonia*. The penalty is a fine.

6. Criminal defamation of foreign states and symbols

Art. 181 of the Macedonian Criminal Code prohibits *publicly mocking a foreign state, its flag, coat of arms or national anthem*, the head of a foreign state or the diplomatic representative of a foreign state in Macedonia. The penalty is a fine.

In addition, Art. 182 of the Criminal Code punishes *publicly mocking an international organization*. The penalty is a fine.

7. Criminal defamation of the deceased

No provisions.

8. Criminal blasphemy

Art. 319(1) of the Macedonian Criminal Code prohibits ridiculing religious symbols (as well as national and ethnic symbols) in a way causes or incites religious hatred, discord or intolerance. The penalty is imprisonment from one to five years. Should riots, violence of

⁴⁷⁰ Information on the former Yugoslav Republic of Macedonia originally published as part of the International Press Institute's Media Law Database and has been revised/updated for this present study.

⁴⁷¹ Criminal Code of the Former Yugoslav Republic of Macedonia, Official Gazette: 37/1996, with amendments: <http://www.pravda.gov.mk/documents/KRIVICEN%20ZAKONIK%20precisten%20%20tekst.pdf>.

significant property damage result from the act, the penalty is increased to imprisonment from one to ten years (Art. 319(2)).

9. Recent legal changes

In 2012, the former Yugoslav Republic of Macedonia repealed criminal defamation laws and adopted the Law on Civil Liability for Insult and Defamation in 2012.

II. Practice

1. General notes

n/a

2. Statistics

n/a

3. Selected cases

n/a

TURKEY⁴⁷²

I. Law

1. Criminal defamation and insult laws

Insult (Turkish Criminal Code Art. 125), subject to various qualifying conditions:

- *General insult*. The Turkish Criminal Code⁴⁷³ defines insult as “attribut[ing] an act, or fact, to a person in a manner that may impugn that person’s honour, dignity or prestige, or attack[ing] someone’s honour, dignity or prestige by swearing”. The penalty for insult is imprisonment for three months to two years or a judicial fine. If the act is committed in the absence of the victim, there must be at least three witnesses.
- The same penalty applies to insult committed *orally, in written form or through a visual medium*, addressing the victim (Art. 125(2)).
- “Where the insult is committed: a) *against a public officer* due to the performance of his public duty; b) *because of declaring, altering or disseminating, his religious, political, social or philosophical beliefs*, thoughts, or convictions, or practising in accordance with the requirements and prohibitions of a religion he belongs to; or c) *where the subject matter is deemed sacred* to the religion the person belongs to the penalty to be imposed shall not be less than one year” (Art. 125(3)).
- The penalty for insult is increased by one-sixth if the act is *committed publicly* (Art. 125(4)).
- “Where an insult is made which arises from the duties of *public officials who are working as a committee*, the offence shall be deemed to have been committed against the all members of that committee. In these circumstances the provisions of the Art. concerning successive offences shall be applied” (Art. 125(5)).

Calumny (Criminal Code Art. 267): Calumny is defined as “accus[ing] another person of committing an act contrary to law in order to secure the implementation of an administrative sanction or the commencement of an investigation and prosecution by submitting a complaint or notification to the relevant authorities or through the press or broadcasting, despite the fact the person knows the other person did not commit such act”. The penalty is imprisonment for a term of one to four years (this penalty may be increased according to conditions set forth in the law).

If committed through the press or broadcasting, “the conviction of the offender shall be announced through the same or equivalent press or broadcasting organs” (Art. 267(9)).

⁴⁷² Information on Turkey originally published as part of the International Press Institute’s Media Law Database and has been revised/updated for this present study.

⁴⁷³ Criminal Code of Turkey, Law No. 5237, based on translation prepared by the European Commission for Democracy through Law (Venice Commission), Opinion No. 831/2015, CDL-REF(2016)011.

2. Criminal defamation of public officials

Insult against a public officer due to the performance of his public duty (Criminal Code Art. 125(3)). The act is punished under the terms of Art. 125(1), whereby the minimum penalty is one year in prison.

Additionally, Criminal Code Art. 125(5) provides that “[w]here an insult is made which arises from the duties of *public officials who are working as a committee*, the offence shall be deemed to have been committed against the all members of that committee. In these circumstances the provisions of the article concerning successive offences shall be applied”.

3. Criminal defamation of the head of state/head of government

Insulting the Turkish President is a criminal offence under Art. 299 of the Turkish Criminal Code. The penalty is one to four years in prison, increased by one-sixth if the offence is committed publicly.

4. Criminal defamation of the state and its symbols

Insult of the state and its organs and institutions (Criminal Code Art. 301):

- *Insult of the state and state bodies.* Insult against the Turkish Nation, the State of the Republic of Turkey, the Grand National Assembly of Turkey, the Government of the Republic of Turkey and the judicial bodies of State is punished with imprisonment from six months to two years.
- *Insult of the military.* The same penalty applies to those who *publicly degrade the military or security organisations* (Art. 301(2)).
- *Protection for criticism.* Art. 301(3) provides as relates to the foregoing paragraphs that “[t]he expression of an opinion for the purpose of criticism does not constitute an offence”.

Degrading the symbols of state sovereignty (Criminal Code Art. 300):

- *Degrading the Turkish flag.* “Any person who publicly degrades the Turkish flag by tearing, burning it or similar action shall be sentenced to a penalty of imprisonment for a term of one to three years. This provision is applicable to any insignia which bears the white crescent and star on a red background, as defined in the Constitution, which is used as a symbol of the sovereignty of the State of the Republic of Turkey” (Art. 300(1)).
- *Degrading the Turkish anthem.* “Any person who publicly degrades the National Anthem shall be sentenced to a penalty of imprisonment for a term of six months to two years” (Art. 300(2)).
- *Acts committed by Turkish citizens abroad.* “Where the offence defined in this article is committed by a Turkish citizen in a foreign country, the penalty shall be increased by one-third” (Art. 300(3)).

5. Criminal defamation of foreign heads of state

Offences against foreign heads of state. According to Art. 340(1) of the Turkish Criminal Code, the penalty for a given offence is increased by one-eighth if committed against a foreign head of state. Investigation and prosecution is “subject to the making of a complaint by the foreign state”.

Offences against representatives of foreign states. According to Art. 342(1) of the Turkish Criminal Code, temporary or permanent representatives of foreign states or international institutions in Turkey “shall be considered as if they were public officers in relation to any offence committed against them as a result of their duty, and any person who commits such an offence shall be subject to a penalty according to the relevant provisions of this Code”. This provision specifies that in the case of insult, “the commencement of investigation and prosecution shall be subject to victim’s complaint”.

6. Criminal defamation of foreign states and symbols

Defamation of foreign flag. Public defamation of “an officially flying flag of a foreign state or other symbol of its sovereignty” is an offence under Art. 341(1) of the Criminal Code. The penalty is imprisonment for three months to one year. Prosecution is subject to complaint by the relevant state.

7. Criminal defamation of the deceased

Insulting the memory of a person (Criminal Code Art. (130(1)): “Any person who, in the presence of at least three persons, commits the offence of insult to the memory of a dead person shall be sentenced to a penalty of imprisonment for a term of three months to two years, or a judicial fine. If the offence of insult is committed publicly the penalty shall be increased by one sixth.”

Making insulting statements about the body or bones of a deceased person (Criminal Code Art(130(2)). The penalty is imprisonment for a term of three months to two years.

8. Criminal blasphemy

The Criminal Code provides increased penalties for acts of insult (cf. Art. 125) committed against a person because of the person’s “declaring, altering or disseminating his *religious, political, social or philosophical beliefs*, thoughts or convictions, or practising in accordance with the requirements and prohibitions of a religion he belongs to”, or whose “subject matter is *deemed sacred to the religion* the person belongs to”. In this case, the penalty applied for insult must be at least one year in prison (Art. 125(3)).

It should also be noted that Criminal Code Art. 216(1) provides criminal liability for “publicly provok[ing] hatred or hostility in one section of the public against another section which has a different characteristic based on social class, race, religion, sect or regional difference, [in a way that] creates a explicit and imminent danger to public security”. The penalty is imprisonment for a term of one to three years.

Art. 216(2) provides criminal liability for “*publicly degrad[ing] a section of the public on grounds* of social class, race, *religion*, sect, gender or regional differences. In this case, the penalty is imprisonment for a term of six months to one year.

Art. 216(3) provides criminal liability for “*publicly degrad[ing] the religious values of a section of the public ... where the act is capable of disturbing public peace*”. The penalty is imprisonment for six months to one year.

9. Recent legal changes

II. Practice

1. General notes

n/a

2. Statistics

The following are official statistics from the Turkish Ministry of Justice⁴⁷⁴ on criminal convictions for the years listed⁴⁷⁵:

Article	2015	2014
125(1) – insult, general	58201	47656
125(2) – insult oral, written, visual	4374	3051
125(3.a) – insult of public officer	66	79
125(4) – public insult	1	0
125(5) – insult of public officials as committee	317	344
130 (1, sentence 1) – offence to memory of dead	8	4
130 (2) – removal of insult of body or bones	5	7
216 (1) – provoking hatred based on group identity	12	35
216 (2) – public degradation on group identity	25	3
216 (3) – public degradation of religious values	8	5
267(1) – calumny, general	5857	6239
267 (4) – qualified addtl penalty for calumny	25	34
267 (5, sentence 1) – calumny with victim sentenced to life imprisonment	7	5
267 (5, sentence 2) – calumny with victim sentenced to imprisonment	31	12
267 (7)	15	23
299 (1) - insult of president	238	40
300 (1) - degradation of Turkish flag	57	34
300 (2) - degradation of Turkish anthem	4	6
301 (1) - insult of state and state bodies	14	7
301 (2) - insult of the military	14	8
340 (1) - offence to foreign heads of state	0	0
341 - public defamation of foreign flag	0	0
342 (1) - offence to foreign representatives	6	2

3. Selected cases

⁴⁷⁴ Source site: <http://www.adliscil.adalet.gov.tr/ac-cik.html>. Statistics last accessed 27 January 2017.

⁴⁷⁵ Any other articles not reflected showed no convictions.

Many of the legal provisions included in this analysis have played a central role in the crackdown on press freedom in Turkey. The cases below cannot do justice to the breadth of this crackdown and are included merely as examples.

In January 2017, Cumhuriyet reporter Canan Coşkun was fined 12,600 Turkish liras⁴⁷⁶ for "insulting public officials" over a 2015 report alleging that top judicial officials were able to buy discounted residences from a public real estate company. Coşkun reported claims that a lottery to select homebuyers for a housing project in Istanbul's Başakşehir neighbourhood was rigged to favour members a group of judges and prosecutors with ties to the ruling Justice and Development Party (AKP). She had faced more than 23 years in prison under the charges⁴⁷⁷.

In May 2016, a court convicted Cumhuriyet journalists Ceyda Karan and Hikmet Çetinkaya of "openly encouraging hate and enmity among people via the press" (Criminal Code Art. 216(1) for including images of the cover of Charlie Hebdo's first issue after the 7 January 2015 attacks on its Paris offices that left 12 people dead. The pair had included the image to illustrate columns they wrote expressing solidarity with their murdered colleagues. They were acquitted on a separate charge of "insulting people's religious values" (Criminal Code Art. 216(3)). Karan and Çetinkaya faced the charges after some 1,280 people – included Turkish President and his children – filed criminal complaints. The journalists' columns appeared in a special 14 January 2015 insert in Cumhuriyet that prompted a police raid on the newspaper's printing press and led to threats against Cumhuriyet and its staff by Islamists⁴⁷⁸.

Cumhuriyet columnist Bekir Coşkun was convicted of criminal insult charges and given a suspended, 14-month prison sentence after three then-deputies from the Justice and Development Party (AKP) complained about a 4 July 2013 column in which Coşkun questioned how support for the party could be so high given what he termed its many "scandals" and "disgraces". The column, which came amid the Gezi Park protests that rocked the country that summer, highlighted some protestors' practice of painting stairs in multiple colours and it urged readers to do the same in protest of government actions. Turkey's Constitutional Court overturned the ruling in 2015 and awarded Coşkun 5,000 liras (approx. €1,700). It reportedly stated in its ruling that "acceptable limits to criticism of politicians are wider than acceptable limits to criticism of other people"⁴⁷⁹.

In May 2016, Nazlı Ilıcak, a columnist for the newspaper *Bügün*, was sentenced to a fine of 10,260 Turkish lira for insulting a public official over an article in which she accused of calling Turkish Prime Minister Ahmet Davutoğlu a "cretin"⁴⁸⁰.

Insult of the president (Criminal Code Art. 299)

Since assuming his country's highest office, the current Turkish President has made prolific use of Criminal Code Art. 299, which provides criminal liability for insulting the president. In March 2016, it was reported that 1,845 cases had been filed under Art. 299 since August 2014. While journalists are among the targets of the abuse of this law, he has cast a wide net:

⁴⁷⁶ 1 Turkish lira = approx. €0.25 (March 2017).

⁴⁷⁷ Natalie Rowthorn, "Q&A with Turkish journalist Canan Coşkun", IPI, 26 June 2015, <http://ipi.media/qa-with-turkish-journalist-canan-coskun/>.

⁴⁷⁸ Katy Witkowski, "Prison term for Turkey journalists over Charlie Hebdo image condemned", IPI, 29 April 2016, <http://ipi.media/prison-term-for-turkey-journalists-over-charlie-hebdo-image-condemned/>.

⁴⁷⁹ Cora Henry, "Turkey high court tosses journalist's 'insult' prison sentence", IPI, 2 July 2015, <http://ipi.media/turkey-high-court-tosses-journalists-insult-prison-sentence/>.

⁴⁸⁰ Özgür Öğret, "Turkey Crackdown Chronicle: Week of May 8", CPJ, <https://cpj.org/blog/2016/05/turkey-crackdown-chronicle-week-of-may-8.php>.

those charged under Art. 299 have included writers, politicians, athletes, students, academics and schoolchildren. A report by The New York Times wrote of the wave of cases under Art. 299⁴⁸¹:

“They have also created bizarre legal scenarios. In one of the oddest cases, a doctor lost his job for creating a meme that compared Mr. Erdogan to Gollum, the creature from “The Lord of the Rings,” and a judge ordered expert testimony to determine whether Gollum was good or evil. Hakan Sukur, a beloved soccer star turned politician who was once a member of Mr. Erdogan’s party, has been targeted for posts on Twitter. A 13-year-old boy was charged after posting to Facebook, and a university student was pulled from class because of his social media posts. And a husband presented a recording of his wife, accused of insulting Mr. Erdogan while she watched him on television, to a prosecutor.”

Other scurrilous cases included the conviction of a former Miss Turkey, Merve Büyüksaraç, over a satirical poem she shared on Instagram. The poem reworded the Turkish national anthem to include the lines “*I am like a wild flood, I smash over the law and beyond / I follow state bids, take my bribe and live*”, a reference to the President. Büyüksaraç was given a 14-month suspended prison sentence.

In December 2015, Barış İnce, editor of the daily *Birgün*, was sentenced to 11 months in prison (suspended) for defamation and violation of secrecy related to his coverage of corruption allegations against then-Prime Minister. While on trial, İnce presented in court a written defence that included an acrostic spelling out “*Hırsız Tayyip*” (Tayyip the Thief). *Birgün* then published the acrostic on its front page. İnce was then charged under Art. 299 with insulting the president and sentenced in March 2016 to 21 months in prison⁴⁸².

In June 2015 the editor-in-chief of Today’s Zaman, Bülent Keneş, was sentenced to 21 months in prison (suspended) for insulting the President in a tweet⁴⁸³. In March 2016, Keneş was sentenced to two years and seven months for insulting the President again on Twitter, having been arrested on the charges in October 2015⁴⁸⁴.

In May 2016, Özgür Mumcu, a columnist for the newspaper *Cumhuriyet*, was acquitted of insulting the President through an April 2015 column called “Cruel and Cowardly”⁴⁸⁵.

Following the failed coup attempt in July 2016, the President announced that he was withdrawing all insult charges brought under Art. 299. He said the one-time gesture was intended to signal a “new beginning” in Turkey, but he implicitly threatened that new

⁴⁸¹ Safak Timur, “Turkey Cracks Down on Insults to President Erdogan”, The New York Times, 2 March 2016, <https://www.nytimes.com/2016/03/03/world/europe/crackdown-dissent-turkey-insults-recep-tayyip-erdogan.html>.

⁴⁸² “Turkish journalist sentenced to 21 months in prison for insulting Erdoğan, CPJ, 9 March 2016, <https://cpj.org/2016/03/turkish-journalist-sentenced-to-21-months-in-priso.php>.

⁴⁸³ “Turkish newspaper editor sentenced for insulting president Recep Erdoğan”, AFP, 17 June 2015, see <https://www.theguardian.com/world/2015/jun/17/turkish-newspaper-editor-sentenced-for-insulting-president-recep-erdogan>.

⁴⁸⁴ Özgür Öğret, “Turkey Crackdown Chronicle: Week of March 27”, CPJ, <https://cpj.org/blog/2016/04/turkey-crackdown-chronicle-week-of-march-27.php>.

⁴⁸⁵ Özgür Öğret, “Turkey Crackdown Chronicle: Week of May 8”, CPJ, <https://cpj.org/blog/2016/05/turkey-crackdown-chronicle-week-of-may-8.php>.

complaints could be forthcoming against those who do not “behave accordingly with this new reality”⁴⁸⁶.

In December 2016, police arrested Şenol Buran, the cafeteria manager of the newspaper Cumhuriyet, after Buran reportedly said he would refused to serve tea to the President ⁴⁸⁷.

Constitutional Court challenge. The Turkish Constitutional Court in 2016 heard a challenge to the constitutionality of Art. 299 based on Arts. 2 (basic characteristics of the Republic, including rule of law), 10 (equality before the law) and 39 (freedom of expression) of the Turkish Constitution. The applicants argued, i.a., that Art. 299 violated the principle of equality in treating one public official differently in defamation law; that there was uncertainty as to whether Art. 39 of the constitution would be applied or not in Art. 299 cases; and that Art. 299, in providing special protection to a head of state, violated the European Convention on Human Rights (ECHR).

In a ruling dated 14 December 2016⁴⁸⁸, the Constitutional Court rejected the challenge and upheld the constitutionality of Art. 299. The Court stated in its ruling (excerpts):

“14. This provision aims to prevent and punish any attack against the dignity of the State in the personality of the President who is the Head of the State and represents the State. Accordingly, the fact that the law maker, considering the legal interest targeted by the said provision, qualifications of the offence and the emerging result, evaluates the defamation against the President more differently than the other offences of defamation and envisages a special provision is not against the principle of state of law. On the other hand, it cannot be said that the provision is not clear since it explicitly envisages the act which amounts to an offence, lower and upper limit of the penalty to be imposed, circumstances which require the increase of the penalty and the ratio of this increase.

20. It is clear that the provision which is the subject matter of the application brings a restriction on FoE. The said restriction has been introduced in order to ensure the protection of others’ reputation or rights and public order and it is within the scope of the measures that should be taken in favour of the democratic order of the society. The said provision does not pose any obstacle to express ideas and thoughts as long as they do not harm others’ reputation or rights. Therefore it is clear that the said restriction does not make difficult or make impossible the exercise of FoE in line with the purpose indicated in Art. 26 of the Constitution and the essence of the right is not infringed on.”

Notably, the Court’s ruling makes no reference to the ECHR.

⁴⁸⁶ “Turkey jails journalists as president drops insult cases”, IPI, 1 August 2016, <http://ipi.media/turkey-jails-journalists-as-president-drops-insult-cases/>.

⁴⁸⁷ “Cafeteria manager jailed for insulting Turkish president, lawyer says “, Reuters, 26 December 2016, see <https://www.theguardian.com/world/2016/dec/26/cafeteria-manager-jailed-insulting-turkish-president-recep-tayyip-erdogan>.

⁴⁸⁸ Constitutional Court of the Republic of Turkey, Judgement No. 2016/186, 14 Decemb er2016.

TURKMENISTAN⁴⁸⁹

1. Law

1. Criminal defamation and insult laws

The laws of Turkmenistan have the concept of "defamation" in the Code of Administrative Offenses⁴⁹⁰ and in the Criminal Code⁴⁹¹. It should be noted that the Law of Turkmenistan "Of making amendments in the Criminal Code of Turkmenistan"⁴⁹² significantly narrows and reduces the scope of responsibility and the scope of application of the concept of "defamation".

Criminal Code:

Defamation (Art. 132)⁴⁹³: Defined as the dissemination of information known to be false that impugns the honour and injures the dignity of another person or damages his/her reputation, if it appears in public speech, publicly displayed piece of work, or in mass media. The penalty is a fine of 10 to 30 times the average monthly wage.

If the act results in severe consequences or consists in the accusation of a serious crime, the penalty is a fine of 30 to 50 average monthly wages or imprisonment for up to three years.

The criminal offence of insult was repealed in 2013⁴⁹⁴.

Code of Administrative Offences:

Defamation (Art. 337): Defined as the dissemination of information known to be false that impugns the honour and injures the dignity of another person or damages his/her reputation, if it does not result in severe consequences. The penalty is a fine of five to 10 times the minimum wage⁴⁹⁵ or administrative detention for up to 15 days.

Insult (Art. 338): Defined as the intentional disparagement of another person's honour or dignity in an obscene manner if it does not result in damage. The penalty is a fine of five to 10 times the base amount. If the act results in damage or is committed through public speech, a publicly displayed work or the mass media, the penalty is a fine of 10 to 20 times the minimum wage or administrative detention for up to 15 days.

Art. 266 of the Code of Administrative Offences (Misuse of the freedom of the mass media and the rights of journalists) should also be noted. This article defines misuse of the freedom of the mass media and the rights of journalists by an editorial board or a journalist as:

⁴⁸⁹ Information on Turkmenistan is provided with the expert assistance of Andrey Aranbaev, independent expert.

⁴⁹⁰ The Code of Administrative Offences of Turkmenistan, 29 August 2013

⁴⁹¹ The Criminal Code of Turkmenistan of 2010 with amendments and additions of 9 November 2013.

⁴⁹² The Law of Turkmenistan of 9 November 2013 "On making amendments and additions to the Criminal Code of Turkmenistan".

⁴⁹³ Partially decriminalised by the Law of Turkmenistan of 9 November 2013 "On making amendments and additions to the Criminal Code of Turkmenistan".

⁴⁹⁴ The Law of Turkmenistan of 9 November 2013 "Of making amendments and additions to the Criminal Code of Turkmenistan".

⁴⁹⁵ Decree of the President of Turkmenistan "On approving the base amount for establishing the administrative fines" dated 29 November 2013. In accordance with the Decree, the base amount is set to 100 manats.

- 1) Disclosure of information that is forbidden for disclosure by the laws of Turkmenistan;
- 2) Failure to check preparation of materials published in mass media in accordance with the procedure established by laws of Turkmenistan;
- 3) Dissemination of information without statement of its source except for cases established by laws of Turkmenistan;
- 4) Production and distribution of mass media products *without reference data or with intentionally provided false references*;
- 5) Misuse of the freedom of speech, dissemination of false information that *impugns the honour and injures the dignity of a citizen or an organisation and impact of journalists on justice activities*.

The penalty in such cases is a fine of five times the base amount physical persons and up to 10 times the base amount for officials.

2. Criminal defamation of public officials

*Insult of a public official*⁴⁹⁶ (Art. 212) during the discharge by him/her of his/her official duties, or in connection with their discharge. The penalty is a fine in the amount of 5 to 10 average monthly wages or corrective labour up to two years.

Note that the Code of Administrative Offences (Art. 69) contains a provision that establishes the offence of “disseminating information about a candidate known to be false” in election and pre-election processes. According to this article, dissemination of information about a candidate known to be false or other acts harming the honour and dignity of the candidate, his/her close relatives and trusted persons incur a fine of up to five times the base amount for physical persons and up to 10 times the base amount for officials.

Contempt of court (Art. 191): (1) Contempt of court in the form of insult of trial participants or failure to comply with the order of the chief judge, if it results in disruption of court hearing, carries a penalty of a fine in the amount of 10 to 20 average monthly wages or corrective labour for up to one year.

(2) The same act in the form of insult of a judge or a public juror related to their justice activities carries a penalty of a fine in the amount of 15 to 30 average monthly wages or corrective labour for up to two years.

Slander against a judge, juror, public prosecutor, investigator or person conducting inquests (Criminal Code Art. 192): (1) Slander against a judge or juror related to their justice activities carries a penalty of a fine in the amount of 20 to 40 average monthly wages or corrective labour for up to two years.

(2) The same act committed against a prosecutor, investigator or a person conducting inquests with regard to preliminary investigation or inquest carries a penalty of a fine in the amount of 15 to 30 average monthly wages or corrective labour for the term up to two years.

⁴⁹⁶ A public official is a person representing a government body who permanently or temporarily executes certain functions and has the competence to commit activities or issue orders mandatory for most or all citizens or officials.

(3) Acts specified by Parts 1 or 2 of the present Article in connection with accusation of committing a serious or particularly serious offense carry a penalty of imprisonment for up to five years.

Insult of military personnel (Art. 341): (1) Insult of a military serviceperson by another military serviceperson during or with regard to military duties committed after disciplinary punishment for the same act. The penalty for this act is limitation in military service for up to one year or detention in a military redemption facility for up to one year.

(2) Insult of a superior by a subordinate or insult of a subordinate by a superior during or with regard to military duties committed after disciplinary punishment for the same act is punished by limitation in military service for up to two years or by detention in a military redemption facility for up to two years.

3. Criminal defamation of the head of state

According to Art. 74 of the Constitution of Turkmenistan, the President of Turkmenistan has the right of inviolability. His honour and dignity are protected by law.

Infringement against the President of Turkmenistan (Criminal Code Art. 176): (2) Defamation and slander against the President of Turkmenistan carry a penalty of imprisonment for up to five years.

In addition, since 2003 Turkmenistan has had in effect a regulatory act⁴⁹⁷ (desuetude) on "attempts to seed doubts in internal and external policies of the first and permanent President of Turkmenistan Saparmurat Turkmenbashi the Great,... and for attempts to cause disagreement between the people and the government establishing punishment". The penalty provided is a life sentence. This act has still not been voided.

4. Criminal defamation of the state, state symbols and state institutions

Desecration of state symbols (Article 178): Desecration of the national flag of Turkmenistan, the national emblem of Turkmenistan or the national anthem of Turkmenistan carries a penalty of a fine in the amount of 10 to 30 average monthly wages or corrective labour for up to two years or imprisonment for up to two years.

5. Criminal defamation of foreign heads of state

No provisions.

6. Criminal defamation of foreign states and symbols

No provisions.

7. Criminal defamation of the deceased

No provisions.

⁴⁹⁷ Decree of Chalk Maslakhaty "On declaring several illegal acts as High Treason and on punishment for High Treason" - Neutral Turkmenistan newspaper, issue 32, dated 5 February 2003.

8. Criminal blasphemy

The following provisions should be noted.

Code of Administrative Offenses:

Violation of the right of freedom of religion and formation of religious associations (Art. 75):
(1) Violation of the right of citizens to practice any religion or no religion, to express and spread religious beliefs, participate in exercise of religious cults, rituals and ceremonies and to form religious associations, as well as *insulting religious beliefs*. The penalty is a warning or a fine of two to five times the base amount.

Criminal Code:

Article 177. Incitement of social, national or religious enmity

(1) Intentional acts with the objective to incite social, national, ethnic, racial or religious enmity or discord, humiliation of national dignity and propaganda of superiority or inferiority of citizens with regard to their relation to religion, social, ethnic or racial affiliation, are punishable by a fine in the amount of 20 to 40 average monthly wages or imprisonment for the term up to three years.

(2) The same acts committed with involvement of mass media, are punishable by a fine in the amount of 25 to 50 average monthly wages or imprisonment for the term of two to four years.

(3) Acts specified in Parts 1 or 2 of the present Article committed with physical violence or threat of physical violence and committed by an organized group, are punished by imprisonment for the term of three to eight years.

9. Recent legal changes

II. Practice

1. General notes

As the government has in practice a monopoly in the field of mass media in Turkmenistan⁴⁹⁸, there is no practice of defamation or insults in mass media.

2. Statistics

n/a

3. Selected cases

n/a

⁴⁹⁸ The only formally independent mass media in Turkmenistan is Rysgal newspaper that belongs to the Union of Industry and Commerce, a public association that is fully controlled by the government and is absolutely loyal to the government.

UNITED KINGDOM⁴⁹⁹

I. Law

1. Criminal defamation and insult laws

No provisions.

Criminal libel in England and Wales was fully abolished by the Coroners and Justice Act 2009⁵⁰⁰.

Criminal libel (defamatory and obscene) in Northern Ireland, as in England and Wales, was abolished by the Coroners and Justice Act 2009.

Defamation is not a criminal offence in Scotland.

2. Criminal defamation of public officials

No provisions.

3. Criminal defamation of the head of state

No provisions.

4. Criminal defamation of the state, state symbols and state institutions

No provisions.

5. Criminal defamation of foreign heads of state

No provisions.

6. Criminal defamation of foreign states and symbols

No provisions.

7. Criminal defamation of the deceased

No provisions.

8. Criminal blasphemy

In England and Wales, the common-law offence of blasphemous libel was repealed by the Criminal Justice and Immigration Act 2008⁵⁰¹.

⁴⁹⁹ Information on the United Kingdom originally published as part of the International Press Institute's Media Law Database and has been revised/updated for this present study.

⁵⁰⁰ Coroners and Justice Act 2009, available at http://www.legislation.gov.uk/ukpga/2009/25/pdfs/ukpga_20090025_en.pdf.

⁵⁰¹ Criminal Justice and Immigration Act 2008, available at <http://www.legislation.gov.uk/ukpga/2008/4/contents>.

Blasphemous libel remains an offence in Scotland. According to reports, it was last applied in 1843, when a bookseller was sentenced to 15 months in prison⁵⁰².

Despite attempts to include its repeal in the Coroners and Justice Act 2009, blasphemous libel also remains an offence in Northern Ireland.

9. Recent legal changes

Criminal libel in England and Wales was fully abolished by the Coroners and Justice Act 2009.

In England and Wales, the common-law offence of blasphemous libel was repealed by the Criminal Justice and Immigration Act 2008.

Criminal libel (defamatory and obscene) in Northern Ireland, as in England and Wales, was abolished by the Coroners and Justice Act 2009.

II. Practice

1. General notes

n/a

2. Statistics

n/a

3. Selected cases

n/a

⁵⁰² Brian Donnelly, "Humanists urge Holyrood to repeal Scotland's blasphemy", The Herald, 6 December 2016, law http://www.heraldscotland.com/news/14947934.Humanists_urge_Holyrood_to_repeal_Scotland_s_blasphemy_law/.

UKRAINE

I. Law

1. Criminal defamation and insult laws

No provisions⁵⁰³.

2. Criminal defamation of public officials

No provisions.

3. Criminal defamation of the head of state

No provisions.

4. Criminal defamation of the state and its symbols

Desecration of state symbols (Art. 338 Criminal Code): Publicly desecrating the flag, emblem or national anthem of Ukraine. The act is punishable with imprisonment from six months to three years or a fine of up to fifty times the minimum income.

There is presently no clear indication that this article could also be used against verbal or written insult of symbols.

5. Criminal defamation of foreign heads of state

No provisions.

6. Criminal defamation of foreign states and symbols

Desecration of symbols of foreign states (Art. 338 Criminal Code): Publicly desecrating the officially displayed flag or emblem of a foreign state. The act is punishable with imprisonment from six months to two years or a fine of up to fifty times the minimum income.

There is presently no clear indication that this article could also be used against verbal or written insult of symbols.

7. Criminal defamation of the deceased

No provisions.

8. Criminal blasphemy

⁵⁰³ Criminal Code of Ukraine (*Кримінальний кодекс України, Відомості Верховної Ради України (ВВР), 2001, № 25-26, ст.131*), last amended 6 October 2016. Official version (Ukrainian) available at: <https://goo.gl/mkIeJ1> (last accessed 23 December 2016).

No provisions.

9. Recent legal changes

II. Practice

1. General notes

n/a

2. Statistics

n/a

3. Selected cases

n/a

UNITED STATES

I. Law

1. Criminal defamation and insult laws

There are no criminal defamation laws at the federal level.

However, according to the report “Criminal Libel in the Land of the First Amendment”⁵⁰⁴ published by the International Press Institute in September 2015, 15 U.S. states retained some form of criminal defamation law: Florida, Idaho, Illinois, Louisiana, Michigan, Montana, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, Utah⁵⁰⁵, Virginia and Wisconsin. The U.S. territory of the Virgin Islands also retains criminal defamation⁵⁰⁶.

With regard to the content of these laws, the report notes:

“Many of the statutes duplicate civil defamation – in Louisiana, Montana, New Hampshire, Oklahoma, and Wisconsin – by mentioning exposure “to public hatred, contempt or ridicule” as grounds for the offense. Oklahoma shows particular concern for the reputation of the deceased, specifically using the antiquated phrase “blacken the memory of the dead.” Michigan, Oklahoma, and Virginia explicitly prohibit questioning a woman’s chastity (though the fine is only \$25 in Oklahoma). Florida, Illinois, and Michigan have provisions that forbid the libelling of banks and financial institutions (the only instance of criminal libel law in Illinois).”

2. Criminal defamation of public officials

No provisions.

3. Criminal defamation of the head of state

No provisions.

4. Criminal defamation of the state, state symbols and state institutions

No provisions.

5. Criminal defamation of foreign heads of state

No provisions.

⁵⁰⁴ A. Jay Wagner and Anthony L. Fargo, “Criminal Libel in the Land of the First Amendment, IPI, September 2015, <https://ipi.media/criminal-libel-in-the-land-of-the-first-amendment/>.

⁵⁰⁵ The IPI report notes: “Criminal libel statute declared unconstitutional in *I.M.L. v. State*, 61 P.3d 1038. Though there is debate as to whether criminal libel statute remains in Utah.”

⁵⁰⁶ Provisions by state: Florida (Fla. Stat. § 836.01, et seq.), Idaho (Idaho Code §18-4801, et. seq.), Illinois (720 Ill. Comp. Stat. 300/1) Louisiana (La. Rev. Stat.§ 14:47), Michigan (Mich. Comp. Laws § 750.370 and Comp. Laws § 750.97.), Montana (Mont. Stat. § 45-8-212), New Hampshire (N.H. Rev. Stat. § 644:11), New Mexico (N.M. Stat. Ann. § 30-11-1), North Carolina (N.C. Gen. Stat. § 14-47), North Dakota (N.D. Cent. Code § 12.1-15-01), Oklahoma (Okla. Stat. tit. 21, § 771, et. seq), Utah Code § 76-9-404, the Virgin Islands (14 V.I. Code § 1171, et seq., and 14 V.I. Code § 1180, et seq.), Virginia (Va. Code § 18.2-417), and Wisconsin (Wis. Stat. § 942.01).

6. Criminal defamation of foreign states and symbols

No provisions.

7. Criminal defamation of the deceased

No provisions.

8. Criminal blasphemy

No provisions.

9. Recent legal changes

The IPI report notes that since 1964:

“41 states and territories have either significantly diminished the strength or altogether repealed their criminal libel laws. Eight have done so since the turn of the century, with Washington, D.C., overturning its law in 2001, Arkansas in 2005, Utah, as a result of *I.M.L v. State of Utah*, in 2007, Washington state in 2009, Kansas in 2011, Colorado in 2012, Georgia in 2015, and Minnesota in 2015 as a result of an appeals court ruling⁵⁰⁷”.

II. Practice

1. General notes

The IPI report noted:

“A recent study showed that the number of criminal libel cases prosecuted or threatened with prosecution as a result of media statements has shrunk to less than three per year, which included a recent uptick as states began to grapple with the intersection of the Internet and libel law. Of those criminal libel cases nearly a third involved Internet publication, and a full two-thirds of these cases were the result of a personal insult, or conducive to civil litigation. The most frequent defendant of criminal libel cases were public officials and political candidates, who were targeted in 17 percent of the cases. Journalism professions were involved in only 13 percent of all criminal libel cases. However, another recent study shows that criminal libel is more frequently adjudicated than most media law scholars contend. In David Pritchard’s thorough investigation of criminal libel law in the state of Wisconsin, he found 61 prosecutions of the law initiated in a 16-year period. Because the vast majority of these cases never reached appellate courts or garnered media coverage, they rarely reached public attention. Of Pritchard’s 61 cases, newspapers covered only 13, while only five reached an appellate court. One reason for the paucity of scholars’ attention may be the frivolous nature of a great number of the cases. Thirty-seven of the 61, or 61 percent, of the cases in the Wisconsin study were “purely private quarrels,” with a significant number of these being instances of defamation by a former lover (four specifically involve the spread of HIV/AIDS rumours). Other cases included trivial

⁵⁰⁷ A full list of legal changes is available in the IPI report under endnote 83.

revenge scenarios, rumour mongering, libelling of competing businesses, and retaliation against a manager or former boss. Only thirteen of the cases involved public officials. A frequent result of the cases was the pleading down of the charge to either disorderly conduct or misappropriation (because of one party posting an online profile or personal information of another party soliciting non-traditional sex).”

2. Statistics

n/a

3. Selected cases

The report notes a number of examples of the usage of criminal libel law in recent years. These include:

- In Utah, “high school student Ian Lake was charged with criminal libel after publishing a Website that questioned the morals of high school classmates and accused a school staff member of being the “town drunk,” among other pejoratives. The 16-year-old’s computer was seized and he was incarcerated in a juvenile detention center for seven days. The ACLU of Utah filed a motion to dismiss the case, claiming criminal libel is unconstitutional on its face. The judge denied the motion, but recognized that the case “raises serious and substantial questions about the facial validity of Utah’s criminal libel statute, that there is some merit for the position that the statute is unconstitutional...”
- “A Louisiana man convicted of criminal libel for criticizing a local public official was allowed to continue with his ACLU-backed suit claiming his First Amendment rights were violated when he was arrested in 2008 for the criticisms. In an unpublished email to the local newspaper, he questioned the paper’s lack of reporting on allegations of improper conduct by the public official.”
- “In 2003, University of Northern Colorado student Thomas Mink began publishing a blog titled “The Howling Pig.” It was his intent to poke fun at the school, the campus, and those affiliated through the Website. But he was cautious as well, stating early in the blog’s existence, “While we are currently aiming for a combination of satire and commentary, we will try to avoid publishing anything blatantly lawsuit-worthy.” Shortly thereafter, he posted a computer-altered image of well-known professor Junius Peake in K.I.S.S.-style makeup and a mustache, christening the photo “Junius Puke” and naming him the site’s mascot. Ever careful, Mink posted below the picture that Peake was “an outstanding member of the community as well as asset to the Monfort School of Business where he teaches about microstructure” and that Peake and Puke should not be confused. Professor Peake failed to see the humor and alerted the Greeley, Colorado, police, who turned up at Mink’s residence with a search warrant and confiscated his computer and other accessories related to their investigation into a possible charge of felony criminal libel. U.S. District Court Judge Lewis Babcock quickly threw the case out, stating, “Even our colonialists of America engaged in this type of speech, with great lust and robustness.”

UZBEKISTAN⁵⁰⁸

I. Law

1. Criminal defamation and insult laws

The Criminal Code of the Republic of Uzbekistan contains Chapter VI: Offences Against Freedom, Honour and Dignity. Art. 138 defines constituent elements of the offence of *defamation* and consists of three qualifying paragraphs.

a. *Defamation*, defined as the dissemination of knowingly false fabrications exposing another person to shame, committed after the imposition of an administrative penalty for a similar act. The penalty is a fine of up to 200 times the minimum wage⁵⁰⁹ or correctional labour for up to two years⁵¹⁰.

b. *Defamation by printed or otherwise copied text or by statements in mass media*. The penalty is a fine of 200 to 400 times the minimum wage, correctional labour for two to three years or arrest for up to six months⁵¹¹.

c. *Acts of defamation*

- in connection with an accusation of committing a serious or particularly serious offence,
- resulting in grave consequences,
- committed by a dangerous recidivist, and/or
- committed out of mercenary or other base motives.

The penalty in this case is restriction of liberty for one to three years or deprivation of liberty for up to three years⁵¹².

Art. 140 of the Criminal Code provides the offence of *insult* and contains three qualifying paragraphs.

a. *Insult*, defined as the intentional disparagement of another person's honour or dignity in an obscene manner, *committed after the imposition of administrative penalty for a similar act*. The penalty is a fine of up to 200 times the minimum wage or correctional labour for up to one year⁵¹³.

b. *Insult by printed or otherwise copied text or by statements in mass media*. The penalty is a fine of 200 to 400 times the minimum wage or correctional labour for one to two years⁵¹⁴.

⁵⁰⁸ Information on Uzbekistan is provided with the expert assistance of Gulnora Ishankhanova, independent expert.

⁵⁰⁹ Per 1 October 2016, the minimum wage was UZS 149,775 (approx. €43).

⁵¹⁰ Penalty as amended by the Law of the Republic of Uzbekistan of 28 December 2005 No. ZRU-18.

⁵¹¹ Penalty as amended by the Law of the Republic of Uzbekistan of 28 December 2005 No. ZRU-18.

⁵¹² Penalty as amended by the Law of the Republic of Uzbekistan of 10 August, 2015 No. ZRU-389.

⁵¹³ Penalty as amended by the Law of the Republic of Uzbekistan of 10 August 2015 No. ZRU-389.

⁵¹⁴ Penalty as amended by the Law of the Republic of Uzbekistan of 10 August 2015 No. ZRU-389.

c. *Acts of insult*

- associated with the victim's discharge of his/her official or civil duties, and/or
- committed by a dangerous recidivist or a person previously convicted for defamation.

The penalty in this case is a fine of 400 to 600 times the minimum wage, correctional labour for two to three years, or arrest for a period of up to six months⁵¹⁵.

As noted above, a person can be subject to criminal liability for defamation and insult under the Criminal Code of the Republic of Uzbekistan, Art. 139–140(1) after the imposition of an administrative penalty for the same act.

Chapter 5 of the Administrative Liability Code of the Republic of Uzbekistan establishes administrative liability for violations infringing the rights and freedoms of citizens. This chapter includes the following:

Defamation (Admin. Liability Code Art. 40): Defamation, defined as the dissemination of knowingly false fabrications exposing another person to shame incurs a fine of 20 to 60 times the minimum wage⁵¹⁶.

Insult (Admin. Liability Code Art. 41): Insult, defined as the intentional disparagement of another person's honour or dignity, incurs a fine of 20 to 40 times the minimum wage⁵¹⁷.

2. Criminal defamation of public officials

Art. 12 of the Law “On the Status of the Deputy of the Legislative Chamber and Member of the Senate of the Oliy Majlis of the Republic of Uzbekistan”⁵¹⁸ states:

“Each deputy, senator is guaranteed conditions for unimpeded and effective performance of his/her duties, their rights, honour and dignity are protected. Persons *encroaching on deputy's or senator's honour and dignity* bear administrative, criminal or other liability in accordance with the law. Insult of a deputy, senator likewise defamation against him/her incurs liability provided for by the law[...]”⁵¹⁹.

A similar instrument for the protection of officials' reputation is also established for deputies of provincial councils (*kengashi*)⁵²⁰.

There are certain nuances for *retraction of information during electoral campaign*. They are covered in “Regulation on the Use of Mass Media by Candidates for Deputy, Political Parties, Initiative Groups of Electors during Canvassing within the Framework of Election Campaign for Elections to the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan”.

⁵¹⁵ Penalty as amended by the Law of the Republic of Uzbekistan of 10 August 2015 No. ZRU-389.

⁵¹⁶ Penalty in Art. 40 of the Administrative Liability Code as amended by the Law of the Republic of Uzbekistan of 28 December 2005 No. ZRU-18 — SZ RU, 2005, No. 52, Art. 384.

⁵¹⁷ Penalty in Art. 41 as amended by the Law of the Republic of Uzbekistan of 28 December 2005 No. ZRU-18 — SZ RU, 2005, No. 52, Art. 384.

⁵¹⁸ Art. 12. Protection of deputy and senator's rights, honour and dignity.

⁵¹⁹ In accordance with the aforementioned articles of the Administrative Liability Code and the Criminal Code of the Republic of Uzbekistan for defamation and insult. Emphasis added.

⁵²⁰ Local representative authorities.

In accordance with Clause 15 of the aforementioned Regulation, “information which is disseminated in the mass media shall be true and shall not violate the rights and legitimate interests of candidates for deputy, political parties and initiative groups of electors”.

Clause 20 of the Regulation further stipulates that:

“editorial offices of the mass media must refrain from dissemination of false information as well as of information denigrating candidates for deputy’s honour and dignity. Candidates for deputy have the right to demand from the editorial office a retraction of false and denigrating information published in the mass media.

Candidates for deputy whose rights and legitimate interests have been violated with publication have the right to publish a retraction in the mass media concerned. A retraction or reply shall be published under specific heading or on the same page as the material which provoked the reply has been placed. A retraction or reply received by the editorial office of television or radio broadcast shall be broadcast in the same programme or in the same series.

Revision of reasonable and adequate text of the reply is not permitted, unless its volume and time of its broadcasting cause damage to the business of the mass media concerned. Candidates for deputy have the right to take legal action if the mass media concerned avoids publishing a retraction or reply or disregards the defined deadline for publishing.”

Insult by a subordinate of his superior and insult by a superior of his subordinate (Criminal Code Art. 284): Insult by a subordinate of his superior, and also insult by a superior of his subordinate committed after imposition of disciplinary penalty for a similar action shall be punishable by service restrictions for up to two years or arrest for up to three months.

The Administrative Liability Code also stipulates a number of administrative violations related to the defamation of public servants.

Obstructing police officers in the discharge of their duties (Admin. Liability Code Art. 195): This article covers public calls expressed in any form for defying lawful demands of police officers as well as the dissemination of knowingly false fabrications in order to provoke mass disobedience to police officers. The penalty is a fine of three to five times the minimum wage or administrative detention for up to 15 days.

Defying lawful demands of border troops and obstructing them in their legal actions (Admin. Liability Code Art. 196)¹: 2. Obstructing border troops in their legal actions by means of public calls expressed in any form for defying their lawful demands, dissemination of knowingly false fabrications in order to provoke mass disobedience, as well as disobedience to lawful demands of border troops for an end to violations. The penalty of three to five times the minimum wage. Recommitment of violations within one year after the imposition of administrative penalty incurs a fine of five to ten times the minimum wage or administrative detention for up to 15 days⁵²¹.

Additionally, Art. 8 of the Law “On the State Customs Service” also guarantees protection of customs officials’ honour and dignity. It provides: “Defying lawful demands of customs officials, obstructing them in the discharge of their duties, insulting their honour and dignity [...] in relation to their discharge of duties incur liability provided for by law⁵²².”

⁵²¹ Art. 196¹ was introduced by the Law of the Republic of Uzbekistan of 20 September 2007 № ZRU-114 — SZ RU, 2007, No. 39, Art. 400.

⁵²² In accordance with Art. 140 of the Criminal Code of the Republic of Uzbekistan for insult.

3. Criminal defamation of the head of state

The Law of the Republic of Uzbekistan “On the Fundamental Guarantees for the Activities of the President of the Republic of Uzbekistan” provides for inviolability of honour and dignity of the President of the Republic of Uzbekistan.

Art. 4 of the aforementioned law (“Ensuring activities of the President of the Republic of Uzbekistan. Material and social welfare”) states that obstructing lawful activity of the President of the Republic of Uzbekistan as well as causing damage to the President’s honour and dignity are not permitted and are punishable by law. This provision applies also to ex-President of the Republic of Uzbekistan. Prosecution can be undertaken in accordance with Art. 158 of the Criminal Code.

Insult of the President (Criminal Code Art. 158(3)): Public insult or defamation against the President of the Republic of Uzbekistan as well as insult through the use of press or other mass media shall be punishable by correctional labour for up to two years, arrest for up to six months, restriction of liberty for two to five years, or deprivation of liberty for up to five years⁵²³.

The previous version of this article in the Criminal Code of 1 April 1995 stipulated punishment of correctional labour for up to three years, arrest for up to six months, or deprivation of liberty for up to five years.

4. Criminal defamation of the state, state symbols and state institutions

Desecration of state symbols (Criminal Code Art. 215): Desecration of the State Flag, the State Coat of Arms or the State Anthem of the Republic of Uzbekistan or the Republic of Karakalpakstan⁵²⁴. The penalty is a fine equal to 25 times the minimum wage, correctional labour for up to three years, or arrest for a period of up to three months.

The objective elements of the offence include only such active actions that are desecratory in nature, i.e., tearing, destroying or damaging the national flag or coat of arms, adding defiling symbols, pictures or texts on the flag or coat of arms; intentionally distorting lyrics or music while singing or playing the anthem, etc. Such actions can be performed explicitly or implicitly. In the latter case it is the consequences that are of public, demonstratively disrespectful nature, and not the actions themselves.

Criminal liability under Art. 215 of the Criminal Code of the Republic of Uzbekistan applies not only to citizens of Uzbekistan but also to foreign citizens and persons without citizenship. Uzbek law also provides administrative liability for violating legal provisions concerning state symbols.

Violation of state symbol legislation (Admin. Liability Code Art. 203¹): Violation of the legislation concerning the State Flag, the State Coat of Arms or the State Anthem of the Republic of Uzbekistan or the Republic of Karakalpakstan incurs a fine of up to three times the minimum wage for citizens and a fine equal to three to seven times the minimum wage for officials.

⁵²³ Penalty in Art. 158, para. 3 as amended by the Law of the Republic of Uzbekistan of 10 August 2015 No. ZRU-389 – SZ RU, 2015, No. 32, Art. 425.

⁵²⁴ Karakalpakstan is an autonomous republic in northwest Uzbekistan.

Recommitment of the same violation within one year after the imposition of administrative penalty incurs a fine of three to five times the minimum wage for citizens and a fine equal to seven to 10 times the minimum wage for officials⁵²⁵.

Relevant legislation on state symbols:

- Art. 16(2) of the Law of the Republic of Uzbekistan “On the Foundations of Independence for the Republic of Uzbekistan as a State”: State independence symbols of the Republic of Uzbekistan are sacred, and any desecration of them is punishable by law.
- Art. 13 of the Law of the Republic of Uzbekistan “On the State Flag of the Republic of Uzbekistan”: Citizens of the Republic of Uzbekistan as well as other persons staying in Uzbekistan are obliged to honour the State Flag of the Republic of Uzbekistan. The persons responsible for violations of the legislation concerning the State Flag of the Republic of Uzbekistan bear liability under procedure established by law.
- Art. 8 of the Republic of Uzbekistan “On the State Coat of Arms of the Republic of Uzbekistan”: Citizens of the Republic of Uzbekistan as well as other persons staying in Uzbekistan are obliged to honour the State Coat of Arms of the Republic of Uzbekistan. The persons responsible for violations of the legislation concerning the State Coat of Arms of the Republic of Uzbekistan bear liability under procedure established by law;
- Art. 13 of the Law of the Republic of Uzbekistan “On the State Anthem of the Republic of Uzbekistan”: Citizens of the Republic of Uzbekistan as well as other persons staying in Uzbekistan are obliged to honour the State Anthem of the Republic of Uzbekistan. The persons responsible for violations of the legislation concerning the State Anthem of the Republic of Uzbekistan bear liability under procedure established by law.

5. Criminal defamation of foreign heads of state

No provisions.

Uzbekistan has acceded to the Vienna Convention on Diplomatic Relations⁵²⁶ and the Vienna Convention on Consular Relations⁵²⁷, which provide for the protection of the dignity of diplomatic agents and consular officers, but the Uzbek Criminal Code does not establish liability for attacks on the honour and dignity of employees of diplomatic and consular services as a separate offence.

6. Criminal defamation of foreign states and symbols

No provisions.

7. Criminal defamation of the deceased

No provisions.

⁵²⁵ Art. 203¹ was introduced by the Law of the Republic of Uzbekistan of 24 December 2010 No. ZRU-273 – SZ RU, 2010, No. 51, Art. 484).

⁵²⁶ Resolution of the Supreme Council of the Republic of Uzbekistan “On acceding to the Vienna Convention on Diplomatic Relations”, of 6 May 1994, No. 1078-XII.

⁵²⁷ Vienna, 24 April 1963, (took legal effect for the Republic of Uzbekistan on 1 April 1992).

In accordance with Art. 100(2) of the Civil Code, the honour and dignity of a citizen can be protected by request of interested parties and after his/her death. However, the Criminal Code does not establish liability for defamation of the deceased as a separate offence; the right to protection of honour and dignity of the deceased is mentioned in the Decision of the Supreme Court Plenum of the Republic of Uzbekistan noted below.

8. Criminal blasphemy

There are no specific provisions on blasphemy.

However, the offence of *incitement to national, racial, ethnic or religious hatred* (Criminal Code Art. 156(2))⁵²⁸ should be noted. The provision in question states:

[...] 2. Deliberate acts injurious to national honour and dignity and denigrating citizen feelings in respect of their religious or atheistic convictions which are perpetrated with a view to arousing hatred, intolerance or grievances against any population group on grounds of national origin, race, ethnic or religious affiliation, as well as the imposition of direct or indirect restrictions of rights or the granting of direct or indirect privileges on grounds of national origin, race or ethnic affiliation, or attitude towards religion – shall be punishable by restriction of liberty for two to five years, or deprivation of liberty for up to five years⁵²⁹.

3. If the acts provided for by pars. 1 or 2 of this article.:

- a) endanger the lives of others,
- b) cause serious bodily injury,
- c) involve the eviction of citizens from their homes,
- d) are committed by an official⁵³⁰,
- e) are committed by a group of individuals acting by prior conspiracy, –
- f) the penalty shall be deprivation of liberty for a period of five to ten years.

9. Recent legal changes

See the footnotes to this analysis, which provide information on changes in versions of articles mentioned.

II. Practice

1. General notes

The following resolution of the Uzbekistan Supreme Court regarding the application of defamation laws (primarily with respect to civil law) should be taken into account.

Resolution of the Supreme Court Plenum of the Republic of Uzbekistan of 19 June 1992

No. 5 “Application by the courts of laws on protection of the honour, dignity and business reputation of citizens and organizations”

⁵²⁸ Art. as amended by the Law of the Republic of Uzbekistan of 22 June 2006 No. ZRU-37.

⁵²⁹ Penalty as amended by the Law of the Republic of Uzbekistan of 10 August 2015 No. ZRU-389.

⁵³⁰ Par. 3 (d) as amended by the Law of the Republic of Uzbekistan of 20 August 2015 No. ZRU-391; in the previous version of the Law of the Republic of Uzbekistan of 22 June 2006 № ZRU-37-SZ RU, 2006, No. 25-26, p. 226, (d) provided for a subject – responsible officer.

[excerpts]

“[...]The Law of the Republic of Uzbekistan “On mass media”⁵³¹ established prohibition of the use of mass media for interference in citizens’ private life, attacks upon their honour, dignity or business reputation.

Pursuant to Art. 100 of the Civil Code of the Republic of Uzbekistan citizens have the right to petition the courts for a retraction of information damaging to their honour, dignity or business reputation, unless the person who disseminated such information can prove that it is true.

[...]The Plenum decided:

<...>

8. Dissemination of information denigrating honour, dignity or business reputation of a legal entity or natural person should be understood as publishing such information in mass media, presenting it in evaluation reports, public speeches, statements to the officials or communicating a message in other, including spoken, forms to a number of people or at least one person.

Imparting such information only to the person considered cannot be recognised as its dissemination.

The citizen about whom insulting information has been imparted to has the right to take legal action in order to initiate a case against the perpetrator under Art. 139, 140 of the Criminal Code (criminal liability) or under Arts. 40 to 41 of the Administrative Liability Code (administrative liability) for insult or defamation, if there is reasonable foundation for it.

9. It shall be explained to the courts that denigrating information shall be interpreted as information detracting from honour, dignity or business reputation in public opinion or opinion of individual citizens from the perspective of compliance with the law and moral principles accepted by society.

2. Statistics

n/a

3. Selected cases

Insult to head of state

There is a lack of judicial practice in cases concerning dissemination of insult or defamation against the President due to the fact that this provision potentially deters journalists from critical statements and serves as another instrument of self-censorship instrument. The mere existence of such provisions leads to the fact that public criticism of high officials and authorities of the state de-facto is recognised as a “forbidden subject”.

However, the following practice of the prosecution of a photographer (documentary filmmaker) and journalists for ‘defamation against the people’ can be taken as representative:

⁵³¹ Art. 6 of the Law of the Republic of Uzbekistan “On mass media” of 26 December 1997 No. 541-I.

In 2009/2010, several journalists and a documentary filmmaker, Umida Akhmedova, were found guilty under Arts. 139 and 140 of the Criminal Code for insult and defamation against the people of Uzbekistan, but were granted amnesty by the court.

In September 2010, Abdumalik Bobayev, a correspondent of the Voice of America Uzbek-language service was accused of insult and defamation against the people of Uzbekistan, preparation of materials that endanger public security and illegal border crossing. According to the conclusion of the expert evaluation, materials prepared by the journalist and broadcast allegedly contained information that undermines the international image of Uzbekistan and “can distract the attention of the people of Uzbekistan, shatter good neighbourliness among citizens, arouse distrust in authorities and law enforcement agencies, [...] spread panic among people and lead to violations by citizens”.

On 15 October 2010, the court declared the journalist guilty and sentenced her to a substantial fine.

Another example of prosecution for “insult” and “defamation” in Uzbekistan is the case of Russian journalist Vladimir Berezovsky, Parlamentskaya Gazeta’s resident correspondent in countries of Central Asia and editor of Vesti.uz website. Between 1 August and 24 November 2009, the website republished a number of communications by Russian news agencies, e.g., Interfax, Russian News Agency TASS, RIA Novosti, Regnum News Agency, Rosbalt, Ferghana.Ru.

As in the case of Umida Akhmedova, the accusation against Berezovsky is based on a report by the Monitoring Centre for Mass Communications under the Communications and Information Agency of Uzbekistan. Among dozens of thousands publications on the website employees of this institution identified 16 seditious pieces of news which “can inflame national and interstate enmity, spread panic among people”.

As a result, Berezovsky is charged with defamation and insult under Arts. 139 and 140 of the Uzbek Criminal Code.

Representatives nuances from these cases that should be noted:

- In the case of Umida Akhmedova, the object of offence initially was defined as the “Uzbek people”, even though the Criminal Code of Uzbekistan does not contain such an offence.
- In the case of Berezovsky, the prosecution could not actually define who the victim was. The indictment against him states that the website “was disseminating slanderous (misleading etc.) information” and that the journalist “has committed a crime against freedom, honour and dignity”, but does not mention with respect to whom. In the report by the Monitoring Centre there is no a single word mentioned about insult to anybody, nevertheless Berezovsky was accused of it.

The criminal case does not contain any statements by victims. There is neither proof of the fact of defamation or insult, nor retractions of pieces of news published on the website. Berezovsky has been charged with defamation against the Uzbek people, incitement of national and interstate hatred for publication of news items by Russian News Agency TASS, Interfax, Regnum News Agency, Rosbalt, Russian online-media “Stoletiye”, news agency of

the Fund “Russky mir”. Information sources, hence the sources of “defamation and insult to the Uzbek people”, were officials of the Russian Federation.

The Ministry of Foreign Affairs of the Russian Federation, the Public Chamber of the Russian Federation and the Centre for Journalism in Extreme Situations expressed negative views towards the prosecution of the Berezovsky and pointed to the unlawfulness of criminal proceedings initiation due to lack of corpus delicti⁵³².

⁵³² Excerpts from the article “Ohota na zhurnalistov prodolzhayetsya” (“Journalist hunting is still under way”) by Aleksey Volosevich dated 26 August 2010 <https://unsorted.me/viewtopic.php?t=210459>.

* Permanent link to the article: <http://www.ferghana.ru/article.php?id=6693>.

VATICAN CITY⁵³³

I. Law

As confirmed by the Act on Sources of Law of the Vatican City⁵³⁴, both the Italian Criminal Code and the Italian Code of Criminal Procedure according to the Law of 17 June 1929, as amended by any Vatican legislation, are currently in force in Vatican City. Hence, the criminal law of Vatican City generally dates back to the Italian Criminal Code of 1889⁵³⁵ (“Zanardelli Code”), which took effect in 1890.

1. Criminal defamation and insult laws

Defamation (Art. 393): The allegation of a specific fact that is capable of exposing a person to contempt or public censure or of damaging a person’s reputation or honour. The penalty is imprisonment⁵³⁶ from three to 30 months or a fine or 100 to 3,000 lire⁵³⁷.

For defamation committed through a public act, through writings or drawings exposed to the public, or otherwise made public, the penalty is imprisonment from one to five years or a fine not less than 1,000 lire.

According to Art. 394, a defence of truth is inadmissible except in the following cases:

- the defamed person is a public official and the fact relates to the exercise of the official’s function⁵³⁸
- if there is currently a pending criminal case against the defamed person in relation to the alleged fact
- if the plaintiff requests that the truth of the matter be examined.

Insult (Art. 395): Offending the honour or reputation of a person. If committed in the presence of the offended person or in a piece of writing addressed to him/her, or if committed publicly, the punishment for insult is detention⁵³⁹ for up to two months, or a fine of up to 1,000 lire.

⁵³³ Vatican City State is a territory under the sovereignty of the Holy See, which is an OSCE participating state. Information on Vatican City State is provided with the expert assistance of Angelo Coccia, attorney qualified with the Roman Rota.

⁵³⁴ Act on Sources of Law of 1 October 2008, N. LXXI, available (in Italian) at:

<http://www.vaticanstate.va/content/dam/vaticanstate/documenti/leggi-e-decreti/Leggesullefontideldiritto.pdf>.

⁵³⁵ Criminal Code of Italy of 1889, available archived (in Italian) here:

https://archive.org/stream/codicepenaleedi00italgoog/codicepenaleedi00italgoog_djvu.txt. A French translation of this Code is available online (public domain) through the Bibliothèque nationale de France at <http://catalogue.bnf.fr/ark:/12148/cb30708518z>.

⁵³⁶ *Reclusione*. For descriptions of forms of restriction of liberty in the Zanardelli Code see Arts. 11-18. Note that Art. 7 (2) of the Act on Source of Law of 1 October 2008 N. LXXI states: “The law provides the cases in which penalties of deprivation of liberty may be substituted by alternative sanctions (...) having in mind the educational function of the penalty.”

⁵³⁷ Art. 7 (3) of the Act on Sources of Law of 1 October 2008, N. LXXI states: “Fines expressed in Italian lire, converted to euros in the sense of Law CCCLXXI of 28 December 2001, are determined by administrative order of the President of the Governorate of Vatican City State.”

⁵³⁸ An exception applies for cases provided by Criminal Code Arts. 194 and 198, see under “Criminal defamation of public officials”.

⁵³⁹ *Detenzione*. For descriptions of forms of restriction of liberty in the Zanardelli Code see Arts. 11-18.

Insult committed in one of the ways outlined in Art. 393 – i.e., through a public act, through writings or drawings made public, etc. – the penalty is detention from one to six months or a fine of 300 to 3,000 lire.

Related articles provide:

- Offence to a person carrying out a public service (Art. 396, see under “Criminal defamation of public officials”)
- Reduction of penalty if victim was at fault (Art. 397)
- No liability for writings or statements presented by parties in court (Art. 398)
- Seizure of defamatory writings or other forms of media; publication of sentence in the media (Art. 399)
- Criminal prosecution based on complaint of victim only (Art. 400)
- Statute of limitations: one year for defamation, three months for insult (Art. 401).

2. Criminal defamation of public officials

Attacking the honour of public officials (Art. 194): Damaging, through words or acts, the honour or dignity of a member of Parliament or a public official, in the presence of the victim and in relation to the victim’s function.

For acts directed against the police, the penalty is imprisonment for up to six months or a fine of 500 to 3,000 lire. For acts directed against a different public official or against a member of Parliament, the penalty is imprisonment for one month to two years or a fine of 300 to 5,000 lire.

For acts under Art. 194 committed with violence or threats, the penalty is imprisonment for a month to three years and a fine of 100 to 1,000 lire (Art. 195).

If an act as described under Art. 194 is committed against a public official, but not due to the official’s function, but still in the exercise of the official’s function, the penalty provided is reduced by one-third to one-half (Art. 196).

Attacking the honour of a judicial, political or administrative body (Art. 197): Damaging, through words or acts, the honour, the reputation or the dignity of a judicial, political or administrative body, in the presence of the body, or of a judge in his presence. The penalty is imprisonment for three months to three years. For acts committed with violence or threats, the potential prison term is six months to five years.

According to Art. 198, proof of truth or proof of notoriety is inadmissible for Arts. 194 – 197. Art. 199 provides exemption from liability if the public official provoked the act in exceeding, through arbitrary action, the limits of his authority.

Defamation or insult against a person legitimately charged with carrying out a public service in the victim’s presence and in relation to the victim’s service (Criminal Code Art. 396). The penalty is detention for up to three months or a fine of up to 500 lire. If committed with publicity, the penalty is detention for up to four months or a fine of 500 to 2,000 lire.

3. Criminal defamation of the head of state

Offence to the King (Art. 122): Offending the King through words or acts shall be punished with detention from one to five years and a fine of 500 to 5,000 lire.

If the offence is directed at the queen, the crown prince or the regent, the penalty is imprisonment or detention from eight months to three years and a fine of 100 to 500 lire.

For acts committed publicly, the penalty is increased by one-third.

According to Art. 127, acts committed against other members of the royal family not named in Art. 117 (i.e., the king, the queen, the crown prince and the regent) incur the penalty set forth in the law increased by one-sixth to one-third, whereby the penalty of restriction of liberty cannot be less than three months and the fine not less than 500 lire.

Insult of the legislature (Art. 123): Publicly insulting the Senate or the Chamber of Deputies. The penalty is detention from one year to 30 months and a fine of 50 to 500 lire.

If the act is committed in the presence of the Senate or the Chamber, the penalty is detention from six months to three years and a fine of 300 to 3,000 lire.

Attributing blame to the King for acts of the government is a criminal offence under Art. 125. The penalty is detention of up to one year and a fine of 500 to 1,000 lire.

Insult of the constitutional bodies of the State (Art. 126). The penalty is detention of up to six months or a fine of 100 to 2,000 lire.

4. Criminal defamation of the state, state symbols and state institutions

According to Criminal Code Art. 115, whoever, in a show of contempt, removes, destroys or damages the flag or other emblem of the state in a public place or in a place accessible to the public is liable to a penalty of detention from three to 20 months. The wording of this provision suggests that it is intended to cover physical attacks on the flag.

5. Criminal defamation of foreign heads of state

Criminal Code Art. 128 stipulates that any *crimes on the territory of the kingdom committed against a foreign head of state* incurs the penalty stipulated for that crime, increased by one-sixth to one-third. For crimes that involve an attack on the life, integrity or personal freedom of the foreign head of state, the penalty (as increased) must be at least five years of imprisonment. For all other crimes, the penalty of restriction of personal freedom must be at least three months and the fine at least 500 lire. For crimes that require a complaint by the victim, prosecution under this provision must be at the request of the foreign state.

According to Criminal Code Art. 130, *crimes committed against an accredited representative of a foreign state* are subject to the penalties that apply for crimes against public officials related to their function. In the case of insult, prosecution can only proceed at the request of the offended party.

6. Criminal defamation of foreign states and symbols

According to Criminal Code Art. 129, whoever, in a show of contempt, removes, destroys or damages the flag or other emblem of a foreign state in a public place or in a place accessible to the public is liable to a penalty of detention of up to one year. The wording of this

provision suggests that it is intended to cover physical attacks on the flag. Prosecution can only proceed at the request of the government of the foreign state.

7. Criminal defamation of the deceased⁵⁴⁰

Note that according to Art. 400, acts of defamation and insult (Criminal Code Arts. 393 to 399) are generally prosecuted on request of the victim only. If the victim dies before filing charges, or *if the act is committed against the memory of a deceased person*, the spouse, ascendants, descendants, brothers and sisters and their children, in-laws in direct line and direct heirs can file charges. This provision does not, however, provide an exemption to the statute of limitations provided in Art. 401 for defamation and insult (one year for defamation, three months for insult).

8. Criminal blasphemy

Impeding a religious ceremony (Art. 140): Impeding a ceremony of a state-approved religion incurs a penalty of detention for up to three months or a fine of 500 to 5,000 lire. If the act is accompanied by violence, threats or insults, the penalty is detention for three to 30 months and a fine of 100 to 1,500 lire.

Offence to religions (Art. 141): This provision foresees criminal liability for those who, with a view toward offending a state-approved religion, publicly insults that religion's followers. The act is prosecuted upon complaint. The penalty is detention for up to one year or a fine of 100 to 3,000 lire.

Offence to objects of worship and ministers (Art. 142): This provision foresees criminal liability for, out of contempt for a state-approved religion, destroying, degrading or otherwise publicly profaning, objects used for worship; or using violence against or insulting a minister. The penalty is detention from three to 30 months or a fine of 500 to 1,500 lire. For any other crime committed against a religious minister due to or in the exercise of his functions, the penalty for the crime is increased by one-sixth.

9. Recent changes to law

As noted above, with the proclamation of the Lateran Treaty in 1929, the Vatican City received Italian criminal law. The Italian Criminal Code of 1889 ("Zanardelli Code"), which took effect in 1890, remains valid in Vatican City State until provisions for a new definition of the penal system are made, as confirmed by the Act on Source of Law in 2008. Generally speaking, the provisions of the Zanardelli Code have not been extensively modified by Vatican legislation. In recent years, however, some amendments have been passed to modernise Vatican criminal law, including with respect to human rights, anti-terrorism legislation and other obligations based on international treaties signed by the Holy See and/or the Vatican City State. A large number of changes were introduced by the Law N. IX of 2013 and Law N. VIII of 2013⁵⁴¹.

⁵⁴⁰ Under Criminal Code Art. 144, committing insulting acts on a human cadaver or human ashes, or removing, for the purposes of insulting or other illicit end, parts of the cadaver or the ashes, or who violates for any reason a tomb or an urn, shall be punished with reclusion from six to 30 months and a fine of up to 1,000 lire. Further qualifications to the objective element of the crime are provided in Art. 144.

⁵⁴¹ For a short summary on this issue, see the presentation by H.E. Msgr. Dominique Mambert, Secretary for Relations with States, of the Holy See Press Office, 11 July 2013,

These changes, however, have not affected the norms included in this analysis.

II. Practice

1. General notes

n/a

2. Statistics

n/a

3. Selected cases

n/a