

CRITICAL REVIEW OF THE INCRIMINATION OF CRIMINAL ACTS AGAINST HONOR AND REPUTATION IN THE CROATIAN CRIMINAL LAW

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Abstract

The Criminal Code of 2011 introduced the criminalization of offenses of severe humiliation and insults on the model of the Swiss Penal Code. After that, there were several attempts for its decriminalization. After the entry into force of the new Criminal Code, the courts were difficult to deal with, which in 2015 led to its amendments. The amendments consisted in simplifying the provision on the inadmissibility of evidence of truth and good faith for embarrassment and the reinstatement of the provision on the exclusion of unlawfulness, now limited to insult and embarrassment. The paper seeks to find answers to the key questions raised in connection with crimes against honor and reputation after their amendments. The paper also covers the analysis of court practice and investigations of committed criminal offenses of severe embezzlement, insults and defamation. Concluding considerations point to certain suggestions of *de lege ferenda*.

Key words: *violation of human dignity, honor and reputation, insult, (severe) embarrassment, defamation, exclusion of unlawfulness.*

1. INTRODUCTION

Honor, as a normative term, in the narrow sense implies respect for a person or another social subject based on the very existence or social function, while honor in a wider sense encompasses a demand for respect for human dignity.¹ Everyone has the right to demand from another person to respect and not undermine their personal dignity. A child also has honor, while, for example, the reputation is still missing. Here we can see the distinction between categories of honor and reputation. Honor is the category that a person acquires by birth, while the reputation is a category that a person acquires through their life, work, and behavior. Honor and reputation, as an object of criminal law protection, reflect, on the one hand, the right to the recognition of human dignity by others, and on the other, the right to personal sentiment of values.²

Criminal offenses against honor and reputation, which protect human dignity, are incriminated in Chapter XV. of the Criminal Code of Republic of Croatia. These are three

¹ Novoselec P, *Zaštita časti i ugleda u novom kaznenom zakonu*, Proceeding of the Faculty of Law in Zagreb, 66, 2016, p. 180.

² Pavšić B, Grozdanić V, Veić P: *Komentar Kaznenog zakona*, Zagreb, 2007, p. 515.

verbal offenses against honor and reputation: 1) **Insult** (art.147 CC RC), 2) **Grave embarrassment** (art.148 CC RC) and 3) **Defamation** (art.148 CC RC). We should point out that while protecting human dignity, in particular honor and reputation, freedom of thought and free expression of thought are somewhat limited. Nevertheless, criminal law must not restrict the freedom of expression, as this would endanger the foundations of society as a democratic one.³

It should be noted that all criminal offenses against honor and reputation are persecuted by a private lawsuit, and that the law permits that criminal proceedings for the offense may also be initiated against a deceased person, by a private lawsuit of a spouse or a non-marital partner, a life partner or an informal life partner, parents, children, adopters, adoptees, brothers or sisters of a deceased person.⁴ Penalties that the legislator has foreseen for this group of criminal offenses are specific in the fact that only fines of up to 180 (hundred eighty) daily amounts may be imposed for the offense of insult and embarrassment, while for the offense of defamation a fine of up to 360 (three hundred sixty) daily amounts may be imposed.⁵ According to the stipulated sentence, these offenses are lighter, however, we can say that these offenses, by imposing these penalties, have largely come close to the misdemeanors, but their retention in the Criminal Code indicates their increased social danger in relation to the misdemeanors.⁶ Criminal offenses against honor and reputation are of particular interest to the public because of cases in which the defendants are public figures such as politicians, artists and athletes.

By the Constitution of Croatia, every citizen is guaranteed the right to human dignity,⁷ respect and legal protection of their personal and family life, dignity, reputation and honor. Therefore, freedom of expression is limited and binding to respect of dignity of any natural person with the obligation to refrain from doing any of the acts which disrespect and which in any way diminish their reputation in the community.

The paper will, through the historical narrative of incrimination, try to answer crucial issues of honor and reputation after their reform. The paper also contains a study of court practice in relation to the perpetrated criminal offenses of grave embarrassment, insults and defamation with possible suggestions *de lege ferenda*.

2. HISTORICAL OVERVIEW OF CRIMINALIZATION OF ACTS AGAINST HONOR AND REPUTATION IN THE CROATIAN CRIMINAL LEGISLATION

Following the adoption of the 1997 Criminal Code criminal offenses against honor and reputation have been amended several times. Distinction in relation to today's Criminal Code is reflected in the fact that, in addition to today's existing criminal offenses, also

³Alaburić V, *Sloboda izražavanja i kaznenopravna zaštita časti i ugleda: teorijski i praktični problemi tranzicije u Hrvatskoj*, Croatian Yearbook of Criminal Law and Practice, Zagreb, Vol.3., No. 2/1996, p. 541 – 542.

⁴ Art. 150. st. 1. Criminal Code of Republic of Croatia (CC RC), Official Gazette No. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18.

⁵ Art. 148. par.1, art.149. par.1. *Ibid*.

See more: Cvitanović L. at all, *Kazneno pravo - posebni dio*, Faculty of Law in Zagreb, 2018, p.181.

⁶ Turković K. at all, *Komentar kaznenog zakona*, Faculty of Law in Zagreb, 2013, p.203.

⁷ Art.35. Constitution of the Republic of Croatia, Official Gazette No. 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14.

prescribed as criminal offenses were acts of revealing personal or family circumstances and reproaching someone for a criminal offense. The process of amending these criminal offenses has provoked sharp political controversy and public criticism in scientific and professional circles, as state officials then enjoyed special protection. Until 2006, it was possible for some of the incriminated criminal offenses against honor and reputation to pronounce a jail sentence, but after the aforementioned year, only a fine was prescribed for these criminal offenses.

Complete criminal justice reform in respect of offenses against honor and reputation was carried out in 2011 by abolishing the criminal offense of revealing personal or family circumstances⁸ and reproaching a criminal offense.⁹ Criminal offenses against honor and reputation were reduced to three specific offenses: *Insult* (Art. 147), *Embarrassment* (Art. 148) and *Defamation* (Art. 149). The Reform also repeals the provision that determines reasons for exclusion of unlawfulness of criminal offenses against honor and reputation.¹⁰ The amendments of the 2011 Criminal Code have incriminated a completely new criminal offense – embarrassment based on the Swiss Criminal Code. However, the courts have had a very hard time dealing with such criminal offenses, which necessarily led to new amendments to the 2015 Criminal Code, which were reflected in the simplification of the provision on the inadmissibility of evidence of truth and good faith in embarrassment and the reinstatement of the provision on the exclusion of unlawfulness, limited to insult and embarrassment, while the name of the criminal offense has been overturned into grave embarrassment.¹¹

3. CRIMINAL OFFENSE OF INSULT

At the beginning of the 19th century criminal laws determine the term of insult through a modern understanding of its meaning and thus attempt to incriminate the criminal offense of insult in the narrow sense thus differentiating it from the criminal offense of defamation and other similar criminal behavior. Insults has over time been profiled into a textbook example of a verbal offense, therefore insult is any manifestation that undermines a sense of personal value or expresses disrespect for the dignity of another person.¹² We can say that this is the consensus opinion of case law and legal theory, considering that there is no legal definition of insult. The existence of a criminal offense requires the existence of an insulting and improper statement, which does not really need to cover and factual claims, it is sufficient to constitute a negative value judgment about a person. It should be emphasized that the value judgment can not be proved because it is a personal and subjective claim that qualifies something as good/bad, true/false. Thus the judgment of the County Court in Bjelovar states that the defendant, who wrote about the plaintiff in the newspaper that he "is talking about him as a corrupt guy who is trying to accept everything that has personal gain", did not commit the offense of defamation, but insult, since it is a transfer of a value judgement that undermines the personality of the injured party.¹³

⁸ Art. 201. Criminal Code of Republic of Croatia 1997 (CC RC/97), Official Gazette No. 110/97, 27/98, 50/00, 129/00, 51/01, 111/03, 190/03, 105/04, 84/05, 71/06, 110/07, 152/08, 57/11.

⁹ Art. 202. *Ibid.*

¹⁰ Art. 203. *Ibid.*

¹¹ Op.cit. in note 1. p.449.

¹² Kokić M, *Novosti kod kaznenih djela protiv časti i ugleda, osobito kad su počinjena putem sredstva javnog priopćavanja*, Croatian Yearbook of Criminal Law and Practice, Zagreb, Vol. 5, No. 1/1998, p. 209 – 210.

¹³ The Judgment of the County Court in Bjelovar, No. Kž 393/93.

The insult is criminalized by the Art. 147 CC RC as a fundamental and qualifying offense. For a fundamental offense of insult (*who offends another*) the perpetrator shall be punished by a fine of up to ninety daily amounts.¹⁴ The qualifying form of offense consists of committing acts through press, radio, television, computer systems or network, at a public gathering or otherwise, making the insult more accessible to a larger number of people. For this more severe form of the criminal offense, the legislator prescribed a fine of up to one hundred and eighty daily amounts.¹⁵ The law also provides for the optional possibility of the offender to be released from punishment in two cases, the first being in the situation when the insulted person returns the insult, then the court can release both of the perpetrators from the punishment, if the perpetrator was provoked by the improper behavior of the injured party or the injured party accepted their excuse for the committed offense, then the court can release the perpetrator from the punishment.¹⁶ Optional release from the punishment Croatian lawmaker foresaw based on the Art.167 of the Slovenian Criminal Code.¹⁷ It should be noted that the unlawfulness of the offense is excluded if the manner of expression and other circumstances indicate that disrespect was committed to protect other justified interests, so in this case there is no criminal offense.¹⁸ In practice, this means that unlawfulness is excluded in the procedural sense - a criminal offense for which a perpetrator is charged does not constitute a criminal offense under the law, and accordingly it is necessary to make an acquittal.¹⁹

An insult can be committed with direct and indirect intent, so there must be an intent of insulting (*animus iniurandi*).²⁰ It can be directed towards one person, and the same act of insult can lead to several criminal offenses (homogenous ideal concurrence). There is no perpetration of offense and some other criminal offense against honor and reputation since insult is a subsidiary offense. The criminal offense of insult is completed when the person who has been subjected to insult or to whom the insult relates to learns about it. A person can be directly offended by a perpetrator, and can also find out about the content of the insult from another person. It should be emphasized that there is a need for awareness about the meaning and significance, which means that an insulting or derogatory statement or content must be recognized or perceived as such. In each case, the Court will assess whether a criminal offense of insult has been committed, taking into account all the circumstances of the particular case, and in relation to the content of the statement in the narrow sense, the public opinion, the customs of the place where the offense was committed and other circumstances which must be consistent with the notions of an average person on the offensive content in certain circumstances and the context of events in a given environment.²¹

¹⁴ Art.147. par.1. CC RC

¹⁵ *Ibid.* par.2.

¹⁶ *Ibid.* par.3/4.

¹⁷ Pavlović Š, *Kazneni zakon*, Faculty of Law in Rijeka, 2012, p. 304.

¹⁸ See § 193 Criminal Code of the Republic of German, available at: <https://www.legislationline.org/documents/section/criminal-codes/country/28/Germany/show>, viewed 01.06.2019.

¹⁹ Art.453. par.1. Criminal Procedure Act, Official Gazette No. 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17.

²⁰ The perpetrator must be aware that a particular statement or other abusive act has disparaging content, that the content will be reported to the injured party or a third party, and that he or she wants or agrees to do so.

²¹ *Op. cit.* in note 5. Cvitanović L. at all. p. 187-190.

Considering the act of committing the offense, it can be committed by words (verbal insults, *iniuria verbalis*), symbols (symbolic insult, *iniuria symbolis*), while it may also be a so called formal (real, *iniuria realis*).

Verbal insult contains a negative judgment of another person that may be related to that person in general as well as their intellectual, physical or character properties. The ultimate goal of an insult is to deny or diminish the value of that person.

Symbolic insult implies the use of certain signs (symbols) such as gestures, facial expressions, facial mimics, body movements, unarticulated sounds, drawings and caricature representations whose offensive meaning is generally known or can be determined in a specific case.

Formal or real insult is accomplished by physical action on the body (*corpus*) by another person such as a slap, hair pulling, removal of shoes or clothing, pouring with a liquid, and the like. Some 19th and 20th century legislations, considered cutting or pulling hair, and slapping a physical injury and not a real insult. It should be noted that even in court practice it is quite a common problem of delimitation of a criminal offense of insult and a criminal offense of bodily injury ... "*The teacher who three times slapped a schoolgirl and pulled her hair only committed an insult because the slap did not result in bodily injury.*"²²

The criminal offense of insult can also be committed towards a legal person, which will be assessed for a specific case. Likewise, members of a collective can be offended if their number and identity are determinable and clear. If a member of a collective can be recognized in the insult, then it can be said that a criminal offense has been committed against that member.²³

4. CRIMINAL OFFENSE OF GRAVE EMBARRASMENT

Grave embarrassment is a criminal offense incriminated by Article 148 Criminal code of RC, which was drawn up in accordance with Article 173 of the Swiss Criminal code. Only with the amendment to the Criminal Code of 2015 has this criminal offense been given its full name, thus narrowing down the act though the term "grave embarrassment."²⁴ It's about defamation and gossip that leads to embarrassment. Grave embarrassment is an offense of abstract threat, which means that there does not need to be any real disruption of honor and reputation, however, if such a circumstance occurs it will be treated as aggravated.

The basic form of the criminal offense of grave embarrassment is performed by the one who, in the face of someone else, presents or spreads a claim that may harm their honor or reputation, while the aggravated form is performed by someone who commits the aforementioned offense through press, radio, television, computer system or network at a public gathering or in another way, making it accessible to a larger number of people.²⁵ For the basic form of this criminal offense, a fine of up to one hundred eighty daily amounts is prescribed, while for an aggravated form a fine of up to three hundred and forty daily amounts is prescribed.²⁶ The perpetrator makes the factual statement in such a way as to show it as their conviction, as stated in the judgment of the Supreme Court: "*The victim does not have to be*

²² The Judgment of the County Court in Bjelovar, No. Kž-378/94.

²³ Op. cit. in note 17. p. 305.

²⁴ *uble Nachrede, diffamation, diffamazione*

²⁵ Art.148. CC RC

²⁶ *Ibid.*

named, but its determinability is sufficient."²⁷ The perpetrator makes a statement even when repeating someone else's claims such as, for example, "the word on the street is" as well as when they make allegations about something they themselves do not even believe that is true²⁸, and in that way they make it known that a person could have committed something dishonorable. Factual allegation must be defamatory, which means it can damage the honor or reputation of the victim. It must be serious, in other words such that the other side believes it. It can be true or untrue, while an untruthful defamatory statement is a grave embarrassment when the perpetrator does not know that it is untrue, which means that their ignorance excludes defamation, but not grave embarrassment if it is not based on good faith.

The law provides for the optional release of the sentence in such a way that the court can release the perpetrators if they admit the inaccuracy of their claims and on condition of revoking them.²⁹

There is no criminal offense of grave embarrassment if the perpetrator proves the truthfulness of the factual allegation they have made or the existence of a serious reason for believing in its truthfulness, with the exception that it is not permissible to prove factual allegations relating to personal or family circumstances.³⁰

Grave embarrassment means expressing unfavorable factual allegations about the other.³¹ Given the decision of the Croatian legislator to designate grave embarrassment as a criminal offense, the need for leaving criminal offenses in the law such as *disclosure of personal and family circumstances and reproaching someone for a criminal offense*³² (Article 202 CC/97) has ceased, so that they have been deleted by the amendments to the law.

We can say that the main distinction between grave embarrassment and defamation is that the act of a criminal offense of grave embarrassment involves giving unfavorable factual allegations to another, while defamation requires the perpetrator to state the factual statement they are consciously aware is untrue. The perpetrator of a criminal offense of grave embarrassment acts intentionally, and indirect intention (*dolus eventualis*) is sufficient, they know that by their actions they are declaring something that may harm someone's honor or reputation. They can be held responsible even if they have acted out of conscious or unconscious negligence, or if they have acted in an avoidable misconception about the deed of the offense, thus preventing the explicit statement of factual allegations that may offend the honor and reputation of the other.

We should also point out the distinction between grave embarrassment and insults. Specifically, a perpetrator mostly embarrasses a victim in front of another person, but may also embarrass them directly, but a third person must necessarily be present, as if there is no third party presence, the factual claim becomes an insult rather than embarrassment.

It is also important to differentiate what is the subject of severe embarrassment, and what is the subject of an insult. It is worth pointing out that the value judgements are the subject of insults, while the factual allegations are the subject of grave embarrassment, but the court practice has shown that it is not simple to make a distinction.

²⁷ The Judgment of the Supreme Court of the Republic of Croatia, No. I Kž-1484/69.

²⁸ The Judgment of the County Court in Zagreb, No. KI-271/07.

²⁹ Art.148. par.5. CC RC.

³⁰ *Ibid.* par 3/4.

³¹ Bojanić I, *Kaznena djela protiv časti i ugleda de lege lata i moguće promjene de lege ferenda*, Croatian Yearbook of Criminal Law and Practice, Zagreb, Vol.17, No. 2/2010, p. 633.

³² Art. 202. CC RC/97.

The question of distinction between the factual claim and the value judgement in practice can be quite difficult because every factual statement implies a value judgement, just as the value judgment implies a factual statement. Factual allegations are statements about external events, states and relationships that may be subject to sensory perception and, consequently, the subject of proof, while the value judgments represent the subjective assessment of another person. In the judgment of the Zagreb County Court it is stated: *"The statement that a private prosecutor is a conflicting person is a factual statement because it is based on a number of proceedings she is engaged in with her neighbors, so the court is wrongfully treating it as an insult."*³³

The 1997 Criminal Code has excluded unlawfulness from all criminal offenses against honor and reputation, while in the amendments of the 2011 Criminal Code this provision has been deleted. More specifically, the exclusion of unlawfulness was foreseen only for insult,³⁴ because the prevailing opinion was that the exclusion of illegality in defamation was inadmissible, and for embarrassment unnecessarily.

However, given that the Constitution guarantees the freedom of opinion and expression in Article 38,³⁵ Amendments to the Criminal Code of 2015 have added a provision regulating the exclusion of unlawfulness for insult and grave embarrassment in exhaustively listed situations: *"There is no criminal offense referred to in Articles 147 and 148 if the perpetrator has achieved its characteristics in a scientific, professional, literary, artistic work or public information, in the performance of duties prescribed by law, political or other public or social activity, journalistic work or defense of a rights, and it has done so in the public interest or for other justified reasons."*³⁶

5. CRIMINAL OFFENSE OF DEFAMATION

Defamation represents the most serious crime against honor and reputation and we can freely say, an aggravated form of the crime of grave embarrassment. Consequently, it should be noted that defamation according to the character of the criminal offense almost entirely corresponds to embarrassment, with two preconditions having to be fulfilled: the first, it must objectively be a case of untrue facts and the other, the perpetrator of the *tempore criminis* must know for the untruthfulness of the factual claim that they have made or disseminated. A criminal offense of defamation will be carried out if the plaintiff proves that it is an untruthful factual allegation and that the perpetrator was aware of its untruthfulness at the time of the submission or adoption of the factual allegation. But even when a private prosecutor fails to prove all the characteristics of a defamation, but proves grave embarrassment, the honor has been returned.³⁷

It is incriminated by Art. 149 of the Criminal Code and can only be committed with direct intent. There is no justification for the perpetrated criminal offense of defamation under the guise of free expression of thought, nor that it has it been done in the public interest,

³³ The Judgment of the County Court in Zagreb, No. Kž-906/05.

³⁴ Art. 147. par. 5. CC RC /11.

³⁵ Op. cit. in note 7.

³⁶ Art.148.a. CC RC /11.

³⁷ Op. cit. in note 1. p. 465.

because defamation can have very serious consequences for the victim. There is still a controversy in the scientific and expert public about what makes the contents of a defamatory statement as well as with what form of guilt can defamation can be committed.³⁸ Whoever presents or disseminates an untrue factual statement that may harm someone's honor or reputation, knowing that it is untrue, makes a criminal offense of defamation, for which a fine of up to three hundred and forty daily amounts is prescribed.

In the judgment of the Municipal Court in Bjelovar it was clarified that "*defamation is performed by a witness who in civil proceedings claims that the private prosecutor has not settled a debt even though they knows it has.*"³⁹ As with insults and embarrassment, in defamation there is also an aggravated form of the criminal offense that is committed if the offense is committed through press, radio, television, computer system or network, at a public gathering or otherwise making it accessible to a larger number of people.⁴⁰

6. OVERVIEW AND ANALYSIS OF CRIMINAL OFFENSES AGAINST HONOR AND REPUTATION

Table No. 1 shows the numbers for criminal offenses against honor and reputation in 2017. Among the reported crimes against honor and reputation, the most reported were the *aggravated form of the offense of insult* (21) and the *basic form of the offense of defamation* (10). Given that grave embarrassment is a relatively new crime, we can observe that there are a good number of reports for this crime (8). The same number of reports refers to the *basic form of insult* (8). At least one charge records the aggravated forms of felonies of grave embarrassment and defamation, only one (1) charge.

CRIMINAL OFFENSES AGAINST HONOR AND REPUTATION	REPORTED IN 2017
Insult art.147.par.1.	8
Insult art.147.par.2.	21
Grave embarrassment art.148.par.1.	8
Grave embarrassment art.148.par.2.	1
Defamation art.149.par.1.	10
Defamation art.149.par.2.	1
TOTAL	49

Table No. 1 Review of reported offenses against honor and reputation in 2017⁴¹

³⁸ Mrčela M, *Sadržaj klevetničke izjave i oblik krivnje kod klevete*, Croatian Yearbook of Criminal Law and Practice, Zagreb, Vol. 4, No. 2/1997, p. 690.

³⁹ The Judgment of the Municipal Court in Bjelovar, No. K-37/07.

⁴⁰ Art.149. CC RC

⁴¹ *Punoljetni počinitelji kaznenih djela, prijave, optužbe i osude u 2017. godini*, Central Bureau of Statistics, Zagreb, 2018.

Table No.2. shows charges for criminal offenses against honor and reputation in 2017. A total of 337 charges were filed, of which the first place belongs to the aggravated form of defamation (117), the second place to the basic form of defamation (81) and the third place to the basic form of insult (70). It should also be noted that a relatively large number of charges have been filed for the offense of grave embarrassment.

CRIMINAL OFFENSES AGAINST HONOR AND REPUTATION	CHARGED IN 2017.
Insult art.147.par.1.	70
Insult art.147.par.2.	37
Grave embarrassment art.148.par.1.	15
Grave embarrassment art.148.par.2.	17
Defamation art.149.par.1.	81
Defamation art.149.par.2.	117
TOTAL	337

Table No. 2 Review of charged offenses against honor and reputation in 2017.⁴²

Table No. 3. shows the numerical status of convicted perpetrators for crimes against honor and reputation in 2017. There is a total of 84 convicted perpetrators, and of which the first place belongs to convictions for the basic form of insult (27), the second for the aggravated form of defamation (23), while the third place is occupied by the basic form of defamation (11). The least number of convicted is for the offense of grave embarrassment, for the aggravated form (5), and for the basic one (8).

CRIMINAL OFFENSES AGAINST HONOR AND REPUTATION	CONVICTED IN 2017.
Insult art.147.par.1.	27
Insult art.147.par.2.	10
Grave embarrassment art.148.par.1.	8
Grave embarrassment art.148.par.2.	5
Defamation art.149.par.1.	11
Defamation art.149.par.2.	23
TOTAL	84

Table No. 3 Review of convicted offenses against honor and reputation in 2017.⁴³

Not all EU member states are at the level of international standards when it comes to freedom of expression. The statutory framework of the Republic of Croatia for criminal offenses against honor and reputation is modeled on Swiss, German, Austrian and Slovenian law. Although there were certain tendencies to abolish all crimes against honor and reputation,

⁴² *Ibid.*

⁴³ *Ibid.*

they did not go away, since the Convention for the Protection of Human Rights allows freedom of expression to be subjected to penalties.

Defamation has been criminalized in 23 of the 28 EU countries,⁴⁴ with prison sentences in 20 EU Member States for defamation and insult. Defamation is not a criminal offense only in five EU countries: Cyprus, Estonia, Ireland, Romania and the United Kingdom. The ECHR, on the other hand, is of the opinion that imprisonment cannot in any way be an appropriate punishment for defamation. The European Court of Human Rights, which has traditionally been very active in these fields, has successfully created the foundations that different states are required to take into account when applying the law.

Some European countries do not have any criminal offenses against honor and reputation at all, but only deal with such situations in civil proceedings. Civil procedure, unlike criminal proceedings, provides legal protection and enables satisfaction of injured parties in the form of publication of a correction or apology, publication of a final judgment finding a violation of a person's rights, removal of harmful content, and payment of a fair financial compensation. The criminal proceedings prove the perpetrator's guilt for the act against honor and reputation, while the civil proceedings prove the violation of the rights of the injured party's personality. There are many more misjudged cases in civil proceedings given the lower degree of sensitivity to these fundamental human rights.

Implementation of adequate training of judges, in both criminal and civil cases, regarding the law of the European Court of Human Rights in respect of criminal offenses against honor and reputation imposes itself as a good solution.

7. CONCLUSIONS

The very fact that criminal proceedings for criminal offenses against honor and reputation are initiated in a private lawsuit suggests that these are lighter forms of criminal offenses, for which there were also certain opinions that most of these offenses could fall into the domain of misdemeanors, and not criminal law. The question arises whether it is necessary to protect honor and reputation through the domain of criminal law, since the criminalization of these offenses restricts freedom of expression. Criminal offenses against honor and reputation had a complete reform of 2011 and 2015 in relation to the Criminal Code from 1997. Criminal Code of 2011 aligned its criminalization of offenses against honor and reputation with modern solutions of European law, even though there were pressures from journalist circles to decriminalize these acts. The most significant novelty concerns the introduction of the offense of grave embarrassment, with the Swiss Penal Code serving as the basis, with some exceptions. Amendments to the 2015 Penal Code amended the provision on the inadmissibility of proof of truth and good faith in embarrassment and reinstated the provision on exclusion of unlawfulness, which now applies only to insult and embarrassment. Defamation was amended and a new offense of grave embarrassment was introduced concerning the defamatory factual assertion. Given that the falsity of claims that the perpetrator makes (without knowing it to be untrue) is a characteristic of defamation, it has become an aggravated form of severe embarrassment. Grave embarrassment can be ruled out

⁴⁴ According to the data of the International Press Institute in Vienna, available at: <https://ipi.media/publications/>, viewed 01.06.2019.

based on evidence of the truthfulness of the claim or the perpetrator's good faith in the truth. However, this cannot rule out the criminal offense of defamation. It is worth noting that there is an exclusion of unlawfulness for value judgments and defamatory factual claims for which it is not known whether they are false or the offender does not know it. Thus, by applying this provision, journalists cannot be penalized if they acted in the public interest no matter what their personal objective was.

For offenses against honor and reputation, the law provided for the public announcement of the judgment. The judgement will be published in whole or in part at the request of the injured party, and at the expense of the perpetrator found guilty of the offense against the honor and reputation committed through the press, radio, television, computer system or network or other media. It is important to note that the court takes care that the public announcement of the judgement is in the same medium of communication in which the crime was committed.

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