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A critical analysis of the proposal to decriminalise the crime of defamation

Abstract

There is a noticeable belief in the social space concerning the need to decriminalise the offence of defamation. Such a position is unfounded and is not based on factual and scientific grounds and, in particular, does not take the constitutional principle of proportionality into account. Historical and comparative legal analysis also does not provide grounds to admit that the proponents of decriminalisation of defamation are right, as the criminal law protection of honour and reputation has a long tradition and solid foundations, which are also taken into account and continued by most European states in the present times. The removal of Articles 212 - 215 of the Criminal Code from the legal system would violate the positive obligation of the state to ensure adequate protection of honour and reputation. Advocates of the decriminalisation of defamation relate their demands primarily to the value of freedom of expression, while the right to maintain honour and reputation is often overlooked. Freedom of speech does not represent a higher value than honour and reputation. The current civil law system is incapable of adequately protecting the values listed in Article 47 of the Polish Constitution against groundless slander, in particular, because of the low effectiveness of the enforcement of monetary claims and the lack of adequate and enforceable non-monetary sanctions. In the longer term, essentially uncontrolled freedom of speech would become a source of great damage to legally protected goods and would initiate further discussion on the proper protection of honour and reputation. A certain category of defamation is so socially dangerous that the criminal law protection of the value of honour, good name and the right to privacy should continue. Persons in professions of public trust and entrepreneurs are particularly exposed to the negative consequences of defamation, and the social harm increases in the case of defamation carried out in the Internet space, where it is difficult to mount a substantive defence, and the content of the defamation is visible to a large audience.

Keywords: decriminalisation – dignity – freedom of expression – honour – reputation.