

Abstract

Model of Liability for Defamation in the Press and the Freedom of Speech in Public Matters

The dissertation attempts to develop a model of criminal liability for press defamation stipulated in the constitutional order and adequate to the standards established by international law, particularly in accordance with the regulations specified in the European Convention on Human Rights and Fundamental Freedoms.

The thesis claim states the position that the current legislative solutions regarding liability for press defamation do not sufficiently ensure the realization of the principle of freedom of the press and impose on journalists too stringent requirements necessary to apply exclusion of liability. In the Polish legal system, there is no clearly regulated distinct form of the offense of press defamation, and the structure of liability for defamation as adopted in the 1997 Penal Code is excessively repressive from the perspective of realities of journalistic activities. *De lege lata*, significant reform of liability for defamation occurs only on the grounds of wrongful acts/faults. However, according to the thesis presented in the dissertation, even this aspect does not provide sufficient possibilities for journalists to avoid criminal liability. It is also argued that the severity of the penalties under Article 212 § 2 of the Penal Code, which classifies press defamation, exceeds the level justified by criminal and political needs.

The results led to formulating a hypothesis regarding the necessity of introducing a legal defence that would guarantee, on the level of secondary legality, the possibility of free operation for press representatives. A further hypothesis was presented concerning the need to reduce criminal liability for defamation by eliminating the threat of imprisonment.

To develop an appropriate model of liability for defamation, an analysis of constitutional norms and international law provisions was conducted, particularly those contained in the European Convention on Human Rights and Fundamental Freedoms. Subsequently, the current model of liability was reconstructed on both the primary and secondary levels of legality, as well as in terms of wrongful acts/faults. Finally, this model was critically analyzed to seek solutions that could ensure compliance with the Constitution and international law.

In response to the insufficiency of the current model, the conclusions presented in the summary contain interpretative proposals and *de lege ferenda* postulates. It was considered that

it is relevant to adopt an interpretative direction based on systemic interpretation, which assumes the necessity of constructing a separate type of defamation, that is press defamation. The dissertation also puts forward a *de lege ferenda* postulate concerning the need to abolish the penalty for defamation contained in Article 212 § 2 of the Penal Code.

The summary concludes that it is advisable to introduce the legal defence into the Press Law Act, which would allow journalists to exclude liability for defamation in the case when they meet the requirements of special diligence and journalistic reliability, even if they are unable to prove the truth of the defamatory statements. The conclusions drawn from the analysis of the judgments of the European Court of Human Rights (ECHR) lead to the conclusion that there is a need to formulate a more significant postulate, related to the introduction of a general legal defence into the Penal Code, which would ensure the freedom to express opinions on public matters.