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THE CRIME OF DEFAMATION IN 19TH CENTURY EUROPE

This article delves into the complex and evolving landscape of defamation as a criminal offence in 19th century Europe. The crime of defamation, encapsulating the act of damaging a reputation through spoken or written words, became a contentious issue, closely interwoven with the burgeoning principles of freedom of expression and the evolving legal systems of the time. This study employs a comparative legal historical approach to investigate how defamation was defined, prosecuted, and perceived across different European countries. As societies transitioned from aristocratic hierarchies to more egalitarian systems, defamation cases often served as a platform for public discourse on power dynamics, individual rights, and the role of the media in shaping public opinion. The study of defamation in 19th century Europe provides a unique perspective on the delicate balance between the protection of personal reputation and the promotion of democratic values in a rapidly changing world.

Keywords: Defamation, History of Defamation, Comparative Law, Slander, Libel.

1. INTRODUCTION

The 19th century was a period of profound socio-political transformations that reshaped the legal environment of Europe. As the Industrial Revolution swept across the continent and nationalism gained momentum, legal systems confronted new challenges and opportunities. One of the most intriguing aspects of this era was the evolving jurisprudence surrounding defamation, a

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crime that encapsulated the intricate interplay of tradition and change in European legal history.

This article delves into the crime of defamation in 19th century Europe, offering a comprehensive analysis of its development, enforcement, and impact in the context of the profound societal shifts that marked the era. By examining defamation through a comparative lens, we aim to shed light on the ways in which legal systems in various European nations grappled with this offence and how they adapted to the changing dynamics of the time.

Defamation, as a crime, has a long and complex history that predates the 19th century. Yet, this period is especially noteworthy for its nuanced legal responses to the challenges presented by defamation, reflecting the era's shifting power structures and evolving notions of individual rights and responsibilities. The 19th century saw the emergence of democratic ideals, the rise of mass media, and the growing recognition of freedom of expression as a fundamental human right. How these societal changes interacted with defamation laws varied from one European nation to another, depending on cultural, political, and historical factors.

This article will explore the pivotal legal cases, legislative reforms, and jurisprudential discussions that characterized defamation prosecutions in key European countries during the 19th century. The comparative approach adopted here will not only highlight the unique features of each national legal system but also allow for a nuanced understanding of the broader trends and influences that shaped European defamation jurisprudence during this transformative period.

As we delve into the intricacies of defamation in the 19th century, we will also consider the implications of these historical developments on modern defamation laws and the broader jurisprudential concepts underpinning the delicate balance between freedom of expression and the protection of reputation. By examining the historical roots of defamation law in Europe, we hope to provide valuable insights for legal scholars, historians, and policymakers concerned with the contemporary legal framework governing this crime.

Intricately intertwined with the societal and legal dynamics of 19th century Europe, the crime of defamation presents a compelling case study in the evolution of legal thought and practice during a period marked by remarkable transformation. Through this article, we endeavour to illuminate the historical complexities of defamation laws, offering a foundation upon which to better understand and critique the defamation jurisprudence of the present day.

2. ESSENTIAL CHARACTERISTICS OF CRIMINAL OFFENCES AGAINST HONOUR AND REPUTATION

In criminal law theory, offences against honour and reputation are directed against these two values, which represent the unique protective object of this group of criminal offences. For this reason, every criminal offence found within this group constitutes an attack on honour and reputation.[1] Honour is defined as a set of immaterial values inherent to a person, whether it pertains to a person as a biological individual or a social being. Therefore, the concept of honour manifests in two fundamental forms – internal and external. Internal or subjective honour is the personal feeling and possession of the mentioned value. External or objective honour represents the recognition or acknowledgment of these values in a specific individual by society, so this form of honour is nothing other than the reputation that an individual enjoys in society.[2] The object of criminal legal protection is both internal and external honour because they are inherently connected. Despite having a common foundation, the difference between internal and external honour lies in the perspective from which these values are viewed. If they are viewed from the perspective of the subject who is their bearer, then it is internal honour, and if viewed from the perspective of the social community to which the subject – the individual – belongs, then it is external honour.[3]

Honour is a collection of various intangible values that a person possesses simply by living in a human society.[4] However, not all individuals share the same values that make up honour. In this regard, honour can be differentiated as general honour (a characteristic of all human beings) and specific honour (acquired by individuals engaging in certain activities of significance to the social community to which they belong).[5]

In criminal law literature, there is an opinion that internal honour cannot be violated. From this standpoint, it is impossible for the subjective sense of possessing these values to cease through the negation of certain values. There-

[1] Kokolj, M., *Krivično pravo, Posebni dio*, Pravni fakultet Univerziteta u Sarajevu, Sarajevo, 1980, p. 130.

[2] Živanović, T., *Osnovi krivičnog prava, Posebni deo, I knjiga (Krivična dela protiv privatnih dobara), Drugo popravljeno i dopunjeno izdanje*, Izdavačka knjižarnica Gece Kona, Beograd, 1923, p. 120; Nešić, Lj. Đ., *Krivi*čno pravo, Opšti i posebni deo, *Drugo prošireno i dopunjeno izdanje*, Mladost, Beograd, 1995, pp. 350-351.

[3] Atanacković, D. R., *Krivično pravo, Posebni deo, Četvrto izmenjeno i dopunjeno izdanje*, NIU Službeni list SFRJ, Beograd, 1985, p. 230.

[4] Merkel, A., *Lehrbuch des deutschen Strafrechts*, Verlag von F. Enke, Stuttgart, 1889, p. 287.

[5] Tahović, J. Đ., *Krivično pravo, Posebni deo*, Savremena administracija, Beograd, 1961, p. 146.

fore, it is possible for the recognition of these values by society or by other individuals to cease. Of course, this conclusion is considered unfounded because internal and external honour are fundamentally and organically interconnected. It is difficult to imagine a situation in which an insult to external honour cannot also have a certain impact on internal honour. The essence of offences against honour and reputation is the infliction of emotional and psychological pain on the passive subject. Causing psychological pain is impossible without the prior negation or violation of external honour, which is organically linked to the subjective sense of internal value.

Reputation, as the protective object of this group of criminal offences, is a special form of honour that a person acquires through their behaviour and actions during their life. Therefore, reputation can be defined as a set of specific intangible values that a person accumulates through their behaviour and actions in society. In the context of criminal law, reputation refers to the overall status of a particular person and the assessment of that person in the eyes of society or a specific community. It is an evaluation of a person's character, integrity, and behaviour based on their actions, conduct, and interactions with others. Reputation is often built over time through a person's public and private activities, achievements, relationships, and the perception that others have of their moral, ethical, and social behaviour. In legal terms, reputation is considered a valuable interest and a protected right.

Given the diversity and variety of human activities in the public and private spheres, reputation can be gained in various fields and through various activities, such as the reputation of a university professor, the reputation of a respected craftsman, the reputation of an objective literary, film, or theatre critic, the reputation of a dedicated athlete, and so on. This, of course, does not mean that people are unequal in terms of gaining reputation. Every individual under the same conditions has (or should at least have) the opportunity to acquire a certain reputation through their social activities and behaviour.

In line with the fact that the concepts of "reputation" and "honour" do not fundamentally differ, it can be concluded that reputation manifests as a special form of honour. The difference lies only in the content of the values that form the basis of honour and reputation. Unlike honour, whose content consists of the general values of a person, reputation comprises values that a person earns through their behaviour in the society to which they belong.[6] Any natural person can be the holder of the legal goods of honour and reputation. Therefore, as passive subjects of crimes against honour and reputation, individuals who possess these values can also be involved.

[6] Srzentić, N.; Stajić, A., *Krivično pravo, Opšti i posebni deo,* Šesto *izdanje*, Zavod za izdavanje udžbenika, Sarajevo, 1970, p. 231.

Passive subjects or victims can be (and most often are) adults. However, according to some authors, children can also be passive subjects. In legal theory, opinions are divided on cases in which underage persons appear as passive subjects of these criminal offences. According to one group of authors, they acquire values inherent to every human being from the moment of birth (which has some truth, and we can agree with this view), while according to another, children can become passive subjects of these crimes only when they enter the sphere of responsibilities.[7]

In a similar context, the status of mentally ill individuals has been considered. Mentally ill individuals, as passive subjects of these criminal offences, do not lose the values of honour and reputation they had before the onset of mental illness. In addition, individuals sentenced to punishment can also be passive subjects of crimes against honour and reputation. Convicted individuals do not lose the values that constitute honour after being sentenced to the prescribed punishment. This especially applies to human dignity. If crimes against honour and reputation are committed against a deceased person, then the family members of the deceased can appear as passive subjects, in the interest of protecting the memory of the deceased.[8]

Legal entities can also appear as passive subjects. Most commonly, these are states, state entities, or international organizations. In the case of these entities, criminal prosecution for these offences is usually initiated *ex officio*, with the approval of the foreign state or international organization when applicable. When it comes to attacks on the honour and reputation of individuals, criminal prosecution is typically initiated upon the request of the passive subject.

A variety of criminal offences against honour and reputation exist, but two stand out as the most common – defamation and slander. Many other criminal offences often stem from or are related to these two. What distinguishes all of these criminal acts is that they target an individual's honour, such as their inner sense of worth in the case of defamation, and their reputation, which pertains to the respect they hold within their community in the case of slander. Reputation is inherently intertwined with a social and societal dimension, whereas the criminal offence of slander cannot be committed in private (*in camera caritatis*), unlike defamation.[9]

[7] Živanović, T., *O uvredi i kleveti*, Izdavačko knjižarsko preduzeće Geca Kon, Beograd, 1927, p. 13.

[8] Radovanović, M.; Đorđević, M., *Krivično pravo, Posebni deo*, Savremena administracija, Beograd, 1967, pp. 136-137.

[9] Bačić, F.; Pavlović, Š., *Kazneno pravo, Posebni dio, I. izdanje*, Informator, Zagreb, 2001, p. 169

3. THE CRIME OF DEFAMATION: A SHORT NOTE ON THE ESSENTIAL ELEMENTS

Defamation, upon initial scrutiny, can be characterized as any mode of communication capable of undermining the standing of a third party. Defamation, in this context, encompasses the entirety of comprehensible human communication, whether it manifests in a nonverbal or verbal format. This broad scope includes gestures, visual depictions, symbolic representations, and spoken language. It is essential to recognize that defamation is not confined solely to the propagation of statements that are susceptible to factual verification. Instead, its purview extends beyond the confines of factual assertions and may encompass more abstract concepts, such as an individual's dignity and honour.

For a communication to be deemed defamatory, a pivotal condition necessitates its dissemination to an audience other than the maligned party. Depending on the temporal durability or ephemerality of the communication medium employed, defamation may be dichotomously classified into public defamation, which materializes in cases where defamation is recorded in a written, printed, or internet-published form, disseminated through mass media or analogous platforms, and unofficial spoken defamation, commonly known as slander.

In the contemporary milieu, defamation predominantly finds resolution within the purview of civil law, yet noteworthy divergence prevails, with certain legal jurisdictions categorizing defamation as a criminal offence, and some combining both civil and criminal remedies.

The precise formulation of defamation and allied offences infringing upon honour and reputation, as well as the modalities of their adjudication, exhibit substantial variability across divergent national legal systems and sub-jurisdictions. Factors contributing to this heterogeneity encompass, inter alia, the designation of defamation as a criminal transgression, the extent to which expressions of insult and opinion are included within the ambit of defamatory utterances, and the degree to which the establishment of alleged factual claims serves as a valid defence against accusations of defamation. Hence, it is incumbent upon legal scholars and practitioners to acknowledge and navigate this intricate tapestry of international and domestic defamation law in order to gain a comprehensive understanding of its multifaceted nature.

4. THE CRIME OF DEFAMATION IN 19TH CENTURY EUROPEAN PENAL/CRIMINAL CODES

Studying comparative legal history and comparative criminal law is crucial for several reasons. For example, it provides invaluable insights into the development and functioning of legal systems, and on how societies have approached the administration of justice over time. Firstly, comparative legal history allows us to trace the evolution of legal systems, providing a deep understanding of the societal, cultural, and political factors that have shaped laws and their enforcement. By examining the legal structures and practices of different civilizations across centuries, we gain insights into the underlying principles that guide legal development. This knowledge is particularly important for contemporary legal systems as it allows us to learn from the successes and failures of the past and make informed decisions about reforms and improvements. Secondly, the study of criminal law in a comparative context helps us appreciate the diversity and commonalities in approaches to criminal justice. Understanding how different societies define and respond to criminal behaviour sheds light on the values and priorities of those societies. It highlights the role of cultural, political, and economic factors in shaping criminal laws and procedures, which is essential for crafting effective and fair criminal justice systems today.

The subject of this comparative study will be several penal/criminal codes of sovereign European states, but also of some non-sovereign entities that have criminal jurisdiction. Therefore, a significant part of the following text will be dedicated to the French *Code pénal* of 1810, as one of the most significant legal monuments of the European continent (and probably the oldest one).[10] Then, the German *Strafgesetzbuch* of 1871 and the Italian *Codice penale* of 1859 (1860), penal codes after the unification of both countries. Then, we will analyse the relevant provisions of the Penal Code on Crimes and Misdemeanours for Bosnia and Herzegovina of 1879 (*Kazneni zakon o zločinstvima i prestupcima za Bosnu i Hercegovinu iz 1879. godine*), the relevant provision of the Digest of Law of the Russian Empire (Свод законов Российской империи), the Austrian *Strafgesetz über Verbrechen, Vergehen und Übertretungen* of 1852, and the English *Libel Act* of 1843. These substantive criminal law sources will be systematically arranged in chronological order, with the exception of the Penal Code for Bosnia and Herzegovina of 1879, which will be juxtaposed with the Austrian *Strafgesetz* of 1852.

[10] Ancel, M., The Collection of European Penal Codes and the Study of Comparative Law, *University of Pennsylvania Law Review*, Vol. 106, No. 3, 1958, p. 340.

The *Digest of Laws of the Russian Empire* (Свод законов Российской империи) holds a significant place in the legal history of the Russian Empire. Issued in multiple editions, including the *Sudebnik* of 1649, the *Ulozhenie* of 1649, and the *Ulozhenie* of 1832, this legal compilation encompasses a wide array of legal provisions and regulations.[11]

The historical context within which the *Digest of Laws* was developed is vital to understanding the defamation provisions it contains. The Russian Empire was marked by a hierarchical and patriarchal societal structure, where honour and reputation held paramount importance. Consequently, defamation laws in the *Digest* aimed at protecting the reputation and honour of individuals in a manner consistent with the values and norms of the time. The *Digest* of 1832 defined defamation as a wrongful act that entailed making false and damaging statements about another person. The distinguishing features of written defamation, known as libel, and spoken defamation, known as slander, were recognized. Defamation laws aimed to safeguard the honour and dignity of individuals, reflecting the societal significance attributed to reputation.

The *Digest* delineated several key elements that were necessary to prove the commission of defamation. These elements included:

(a) False Statement: the *Digest* stipulated that the statement in question must be false. Truth was established as a legitimate defence against defamation accusations. This aspect mirrors the core elements of defamation under common law systems, which also require that the statement be false to constitute defamation;
(b) Publication: the *Digest* mandated that the defamatory statement must be made to a third party, thus constituting publication. This aligns with the notion that defamation is an injury to one's reputation inflicted through communication to others;
(c) Intent or Negligence: depending on the specific provisions, the *Digest* often required that the defendant acted with a degree of intent or negligence. This element was crucial to establish culpability and to differentiate between accidental and deliberate defamation; and
(d) Harm to Reputation: the *Digest* recognized that defamation had to result in harm to the reputation of the aggrieved party. This element is in harmony with the fundamental purpose of defamation laws, which is to provide recourse for individuals whose reputation has been unjustly damaged.

The *Digest* of 1832 provided for various penalties and remedies in cases of defamation. These could include fines, imprisonment, or compensation to the aggrieved party. The severity of penalties often depended on the gravity of the

[11] Borisova, T., The Digest of Laws of the Russian Empire: The Phenomenon of Autocratic Legality, *Law and History Review*, Vol. 30, No. 3, 2012, pp. 901-925.

defamation and the social status of the parties involved. The varying penalties and remedies reflected the notion that the harm caused by defamation could vary in degree, requiring proportional responses. It is essential to acknowledge the substantial role played by the Russian Orthodox Church in the legal and social framework of the Russian Empire. The Church was often called on in matters related to defamation and was considered an authority in determining the truthfulness or falseness of certain statements. This ecclesiastical influence highlights the unique interplay between religious and legal institutions in the Russian Empire.[12]

The provisions related to defamation in the *Digest of Laws* provide invaluable insights into the historical development of defamation laws in this jurisdiction. They reflect the legal and societal values of their time, particularly emphasizing the importance of reputation and the role of the Church in legal matters. Through a comparative legal history perspective, we gain a deeper appreciation of the evolution of defamation laws and their impact on the broader legal landscape.

According to the French *Code pénal* of 1810, defamation is criminalized in Article 367. This Article delineates the elements of the offence of defamation (*calomnie*). Defamation, under the provision of Article 367, encompasses the act of making false accusations against an individual in various forms, such as in public places, authentic and public documents, or printed materials that have been displayed, sold, or distributed. These accusations must concern acts that, if true, would subject the accused to criminal or correctional prosecution or merely to the contempt or hatred of citizens. This provision explicitly exempts disclosures required by law or those mandated by the author's duties.[13] In contemporary legal terms, Article 367 reflects the principles underlying defamation and false accusation laws. It highlights the importance of differentiating between legitimate expressions of opinion or criticism and harmful falsehoods that harm an individual's reputation. It recognizes that certain statements are privileged or protected due to their legal or professional nature.[14]

In principle, in this case, it concerns public defamation. The act consists of attributing (imputing) a certain fact to the victim of a criminal offence in a public space (such as in public places, public documents, or printed materials that have been displayed). Significantly, the fact attributed to the passive sub-

[12] Helie, R., Ulozhenie Commentary — Preamble, *Russian History*, Vol. 15, No. 2-4, 1988, pp. 202-208.

[13] Lavalley, G., *Insuffisance de nos lois contre la Calomnie, Dangereuses équivoques de la loi sur la Diffamation*, L. Larose et Forces, Paris, 1889, p. 19.

[14] Franck, A., *Philosophie du Droit pénal, Deuxième édition*, Librairie Germer Balliére et C., Paris, 1880, pp. 113-115; Carnot, J. F. C., *Commentaire sur le Code pénal, Tome Deuxième*, V. P.-J. de Mat, Bruxelles, 1835, p. 120.

ject has such a quality that if it actually existed it could expose the individual to criminal prosecution (e.g., falsely accusing a certain person of a criminal offence) or subject them to public contempt or hatred (e.g., attributing certain acts contrary to public morality to a specific person). This is a *delicta communis omnium*, meaning a criminal offence that can be committed by anyone (no specific characteristics of the perpetrator are required). The subjective aspect of the act must involve (direct) intent, including knowledge that the facts attributed to a specific person are untrue and can expose them to serious consequences. The passive subject can be any natural person, regardless of age (thus, the provision also covers minors) and gender.

The French legislator introduced a definition of false imputation in the *Code pénal*, which constitutes the crime of defamation. Article 368 stipulates that an imputation is considered false when it lacks legal proof. Under this provision, the accused (defendant) is not entitled to request proof as part of their defence. Furthermore, the accused cannot use as an excuse that the information is well known or that the allegations are copied from foreign papers or other printed works. This provision underscores the importance of evidence in legal proceedings involving defamation. It also prevents the accused from evading responsibility by claiming common knowledge or reliance on external sources.

Article 369 of the *Code pénal* addresses instances where calumny is disseminated through foreign publications. It allows for the prosecution of those who contributed to the introduction or distribution of foreign papers in France, provided that the false accusations are brought to light. This Article reflects the jurisdictional complexities of dealing with defamation spread through foreign 19th-century media. It emphasizes the responsibility of individuals who facilitate the dissemination of defamatory material within French territory.

Exceptio veritatis is provided by Article 370 of the *Code pénal*. The provision of this Article outlines exoneration from punishment for the author of a false accusation if the accusation is legally proven to be true. The only valid legal proof is that which results from a judgment or another authentic document. This provision emphasizes the importance of truth as a defence against allegations of defamation. It establishes that a legal finding of truth absolves the defendant from the legal consequences of defamation.[15]

The severity of the punishment for defamation depends on the gravity of the false accusation. If the imputed act is punishable by death, life imprisonment, or deportation, the perpetrator faces imprisonment ranging from two to five years and a fine ranging from two hundred to five thousand francs. In all other cases, imprisonment ranges from one to six months, and the fine ranges from fifty to two thousand francs (Article 371 of the *Code pénal*).

[15] Destriveaux, P. J., *Essais sur le Code pénal*, P.-J. Caladine, Imprimeur de l'Université, Liège, 1818, p. 145.

Article 372 introduces a provision for cases where the author of a false accusation reports the offence themselves. In such cases, the prosecution and judgment of the offence of calumny are suspended during the investigation of the underlying facts. This provision incentivizes individuals to come forward and report their own false accusations, emphasizing the importance of correcting wrongs and promoting honesty. Article 373 of the *Code pénal* addresses written false denunciations made to judicial or administrative authorities. It imposes penalties, including imprisonment ranging from one month to one year and a fine ranging from one hundred to three thousand francs. This Article underscores the seriousness of making false accusations to legal or administrative bodies and provides for significant penalties as a deterrent. Article 374 of the *Code pénal* sets forth additional penalties for calumny. It imposes a ban on certain rights for a period of five to ten years after the individual has served their sentence. These rights are referred to in Article 42 of the *Code pénal*.

In conclusion, the provisions in the French *Code pénal* of 1810 related to calumny reflect a comprehensive legal framework aimed at preserving the integrity of individuals' reputations and ensuring that false accusations are appropriately penalized. These provisions reflect a legal system that values truth and seeks to maintain public order and trust in the administration of justice.

The *Libel Act* of 1843 emerged at a juncture when English law was undergoing significant transformation in response to the evolving socio-political landscape of the early 19th century. It was enacted in the wake of mounting concerns over press freedom, libel laws, and the exercise of government power. This context is pivotal to understanding the motivation and objectives behind this legislative provision.

For the better protection of personal privacy, the more effective safeguarding of press freedom, and the prevention of abuse of this freedom, the *Libel Act* of 1843 (officially *An Act to Amend the Law Respecting Defamatory Words and Libel*) was enacted for the territory of the United Kingdom. According to Section 3 of this Act, criminal defamation will be attributed to anyone who publishes or threatens to publish defamatory content about a person, or directly or indirectly threatens to print or publish, or directly or indirectly suggests refraining from publishing, or directly or indirectly offers to prevent the publication of defamatory content, with the intention of extorting money or other valuables.

The act of committing a criminal offence is very extensive and includes a number of different behaviours of the active subject, that is, the perpetrator of the offence. First of all, the basic act of execution is publishing or threatening to publish defamatory content. Publishing certain content means allowing a wider circle of people to access it (modern criminal law theory emphasizes that it must be at least one person, excluding the defamed person). It can be done in different ways, but for the 19th century the two most common are:

verbally and through the press or a picture. The content must be defamatory in nature. To be considered defamatory, the content in question must be false, damaging to the subject's reputation, and capable of harming their standing in the eyes of the community. It is important to note that expressing an opinion, no matter how negative, is generally not considered defamatory, as long as it is presented as an opinion and not a statement of fact.

Secondly, as an act of committing, the threat of printing or publishing defamatory content is specified. In the criminal law context, a threat is considered a form of psychological coercion (*vis compulsiva*). In principle, psychological coercion is when one party or a third party, by holding out the prospect of harm, induces justifiable fear in another party, thereby leading them to do or not do something to their own or another's detriment, or in the specific case, to the detriment of one's own or another's property. This threat can be made directly (immediately) or indirectly (through actions which, when considering all the circumstances of the specific case and the behaviour of a particular person, have the character of a threat).

The third form of the act of omission pertains to a direct or indirect "proposal" to refrain from publishing specific content that may harm the honour or reputation of the person to whom the proposal is addressed. Lastly, the perpetrator of the act can either directly or indirectly "offer" to prevent the publication of defamatory content.

The subjective aspect of the offence consists of direct intent, which encompasses the act of committing the offence (one of the four specified in the law) and the fact that defamatory content can harm the honour and reputation of the passive subject. Furthermore, this intent must be directed towards gaining financial benefit (in money or other values). The penalty provided for libel, under section 3 of the *Libel Act* of 1843, is imprisonment, with or without hard labour, for a term not exceeding three years.

Section 4 of the *Libel Act* of 1843 contained a general provision according to which if any person maliciously publishes any defamatory libel, knowing the same to be false, every such person, being convicted thereof, will be liable to be imprisoned in the common gaol or house of correction for any term not exceeding two years, and to pay such fine as the court shall award. The provision of section 4 of the *Libel Act* begins with the stipulation that the offender must "maliciously publish" a defamatory libel. This requirement underscores the necessity of an intention to cause harm, thereby distinguishing mere inadvertent publication from the criminal act. The term "maliciously" indicates that the accused must have acted with an ill-willed motive.

A critical element of the provision of Section 4 is the requirement that the accused must have "knowingly" published a libel that they knew to be false. This element implies that the defendant should be consciously aware of the untruthfulness of the statement at the time of publication. In other words, the

provision seeks to penalize individuals who intentionally spread false information with the intent to defame.

Section 4 outlines the potential penalties for a person convicted under this provision. The convicted individual "shall be liable to be imprisoned in the common gaol or house of correction for any term not exceeding two years, and to pay such fine as the court shall award". This bifurcated punishment of imprisonment and fine reflects a dual approach in addressing libel offences. It combines punitive measures (imprisonment) with a compensatory aspect (fine), thus aiming to strike a balance between the interests of justice and reparation.

Section 5, similar to Section 4, also commences with the requirement that the accused must "maliciously publish" a defamatory libel. The term "maliciously" suggests that the accused's intent is a crucial factor in determining culpability, emphasizing the necessity of wrongful motive. The provision of Section 5 delineates the potential penalties for a person convicted of the offence. Specifically, it states that the convicted person "shall be liable to fine or imprisonment or both, as the court may award, such imprisonment not to exceed the term of one year". This element reflects a flexible approach to punishment, where the court is vested with the discretion to impose a fine, imprisonment, or a combination of both, depending on the circumstances of the case. The maximum term of imprisonment is explicitly set at one year. This section did not create or define an offence. It provided the penalty for the existing common law offence of defamatory libel.[16]

One of the notable features of the Section 5 provision is the discretion accorded to the court in determining the appropriate penalty. The court may choose to impose a fine, imprisonment, or a combination of both, tailoring the punishment to the specifics of each case. This discretionary aspect of the provision allows for a more individualized and proportionate response to libel offences. The provision sets a maximum term of one year for imprisonment. This limitation on the duration of imprisonment underscores an attempt to balance punitive measures with a sense of proportionality. It suggests recognition of the need to safeguard individual liberties and avoid excessively harsh punishments for libel offences.

Section 6 of the Libel Act allows the defendant to prove the truth of a libel as a valid defence in criminal proceedings, but only if it is also demonstrated that publication of the libel was to the "Public Benefit".[17] The provision of Section 7 of the *Libel Act* establishes that during the trial of an indictment or information for the publication of a libel, if evidence is presented that establishes

[16] R. v. Munslow [1895] 1 QB 758, 18 Cox 112, 72 LT 301, CCR. Harris, S. F., *Principles of the Criminal Law*, Sweer and Maxwel, London, 1919, p. 92.

[17] Folkard, H. C., *The Law of Slander and Libel*, Butterworth, London, 1908, p. 480.

a presumptive case of publication against the defendant by the act of another person with the defendant's authority, the defendant is granted the opportunity to present a defence. Similarly to the earlier provision, this provision allows the defendant to challenge the presumption of publication created by the evidence. The defendant may do so by demonstrating that the publication occurred without their authority, consent, or knowledge and by proving that the publication did not result from a lack of due care or caution on their part. This provision serves to ensure the fairness of the legal process by providing defendants with an opportunity to contest the presumption of their involvement in the publication of a libel. It acknowledges that the establishment of a presumptive case may not automatically imply guilt. The provision also indirectly safeguards freedom of expression by placing a burden on the prosecution to demonstrate the defendant's knowledge or involvement in the libel's publication. This acts as a safeguard against potentially overreaching libel prosecutions that could infringe upon free speech rights. It reflects the historical legal principle that one should not be held criminally liable for the actions of another unless there is evidence of their complicity. This principle contributes to a just and balanced legal system.

The *Libel Act* of 1843 is notable for its attempt to strike a balance between protecting the reputation of individuals and promoting freedom of expression. By requiring both malicious intent and knowledge of falsity, the provision seeks to curtail the abuse of free speech while safeguarding genuine criticism. This provision contributed significantly to the evolution of libel laws in the United Kingdom. Its influence can be discerned in subsequent libel legislations, marking a shift towards a more nuanced and refined understanding of libel offences.

In 1852, Austrian Emperor Franz Joseph proclaimed the Austrian Criminal Code (*Strafgesetz über Verbrechen, Vergehen und Uebertretungen*), which applied to the entire territory of the Austrian Empire. The *Strafgesetz 1852* established a tripartite classification of punishable acts, dividing them into three categories: crimes, offences, and misdemeanours. This code is not considered a modern codification in the literature. According to Werner Ogris, the primary source of criminal law in the Austro-Hungarian Monarchy until its dissolution was essentially the amended and somewhat extended General Penal Code of 3 September 1803 (*Gesetz über Verbrechen und schwere Polizeiübertretung*).[18] A reason for this can be found in the fact that the penalties

[18] Ogris, W., Die Rechtsentwicklung in Cisleithanien, in: A. Wandruszka; P. Urbanitsch (eds.), *Die Habsburgermonarchie 1848- 1918, Band II: Verwaltung und Rechtswesen* (Wien 2003) pp. 562-569. The first revision of the *Strafgesetz 1852* was made in 1863, and the second in 1867, when corporal punishment and the punishment of hard prison under shackles were introduced.

for certain criminal offences were disproportionate, and there were nonsensical definitions of certain political crimes. Although relatively modern for the early 19th century, due to its incorporation of the principle of legality (*nullum crimen sine lege*) and the adoption of the theory of general prevention, the General Penal Code of 1803 quickly became outdated. The political demands and ideas of the Spring of Nations and the post-revolutionary era called for its revision. All amendments and additions to the General Penal Code of 1803 were incorporated into a comprehensive text published as the aforementioned Criminal Code of 1852, which was revised several times.[19]

§ 209 of the *Strafgesetz 1852* defines the offence of *Verleumdung*, which is essentially the act of falsely accusing someone of a crime to the authorities or making an accusation in such a way that it prompts official investigation of or inquiry against the accused. The use of the term *Verleumdung* to describe defamation underscores the serious nature of the offence in the legal context of the time. It implies that making a false criminal accusation was seen as a particularly harmful act that could lead to severe consequences for the accused. The provision emphasizes the connection between defamation and official investigations, demonstrating the state's interest in maintaining the integrity of its justice system. In a historical context, this reflects the authority's need to prevent the misuse of legal processes and ensure that accusations were based on truthful information. The key elements of this offence are as follows:

(1) The offender must falsely accuse someone of committing a crime to the authorities; and
(2) The accusation must be made in a manner that prompts an official investigation or leads to inquiries against the accused individual.

Strafgesetz 1852 § 210 outlines the penalties for the crime of *Verleumdung*. It specifies that the typical punishment for a *Verleumder* (defamer) is *schwerer Kerker* (severe imprisonment) for a period ranging from one to five years. However, it also allows for an extension of the sentence to a maximum of ten years under certain circumstances. The factors that can lead to an increased penalty (up to ten years) include:

(a) The use of *besonderer Arglist* (special cunning) to make the false accusation appear credible;
(b) Exposing the accused to greater danger; and
(c) The perpetrator's relationship to the accused (e.g., being a servant, household member, subordinate, or a public official abusing their office for defamation).

This provision reflects a significant punitive approach to deter false criminal accusations, underlining the severe consequences that could befall those

[19] Beliznay, K., *Development of the Hungarian Criminal Law in the 19th Century*, Department for Hungarian State and Legal History, Budapest, 1994, p. 2.

who engage in such misconduct. The escalation of penalties under specific conditions signifies the gravity with which society and the legal system viewed these aggravating factors. From a comparative legal history perspective, these provisions in the *Strafgesetz 1852* reveal the legal and societal norms of the time. They show a strong commitment to safeguarding the integrity of the legal process and protecting individuals from false accusations. Understanding the historical context is crucial when assessing the evolution of defamation laws and their significance in contemporary legal systems.

The first law regulating the field of substantive criminal law in Bosnia and Herzegovina (then a part of the Austro-Hungarian Monarchy) was enacted on 26 June 1879. The Penal Code on Crimes and Misdemeanours for Bosnia and Herzegovina of 1879 (*Kazneni zakon o zločinstvima i prestupcima za Bosnu i Hercegovinu iz 1879. godine*) distinguished several types of defamation based on the degree of social danger, the person harmed by the criminal act, and the consequences that have occurred or will likely occur. Criminal defamation offences, as per this Penal Code, were classified into the category of crimes (crime of defamation) and misdemeanours (baseless accusation of a crime or misdemeanour and baseless accusation of other dishonest or immoral acts), taking into consideration the mentioned factors.

According to § 202(1), the crime of defamation (*potvora*) is committed by anyone who "attributes" a crime to another person or reports them to the public authorities or publicly accuses them of a criminal offence prescribed by the Penal Code of 1879. To constitute the crime of defamation, it is necessary for a judicial investigation to be initiated against the defamed person, or at least for the criminal complaint against them to be previously examined. The penalty for defamation is severe imprisonment for a period of one to five years; however, according to § 203 of the Penal Code, the punishment should be extended to up to ten years:

(a) if the perpetrator used particularly cunning means to make their statement believable;
(b) if the perpetrator exposed the harmed person to greater danger through their actions (e.g., if they accused them of a crime punishable by the death penalty or if, during the investigation following the perpetrator's complaint, the harmed person (victim) was deprived of their freedom);
(c) if the perpetrator is a member of the defamed person's household or part of their staff or a subordinate of the harmed person (victim); and
(d) if the perpetrator is a public official or holds a public position and defames a person in their official capacity (another official) or within their duties.

For the crime of defamation, the perpetrator is prosecuted only upon the complaint of the harmed person (§ 202(2) of the Penal Code).

The misdemeanours of baseless accusation of a crime or misdemeanour, according to § 441 of the Penal Code, is committed by someone who falsely accuses another person of a crime, where the accusation did not go so far as to constitute defamation, or falsely accuses another person of a misdemeanour. For this misdemeanour, the perpetrator is punished with imprisonment for up to six months, and if the offence was committed through the press, then the penalty is imprisonment for six months to one year. In the following paragraph (§ 442), it is prescribed that a person who, with the dissemination of fictional or distorted facts, falsely accuses someone by name or with signs pointing to a specific person, of a certain dishonest or immoral act that could make the harmed person publicly contemptible or that could humiliate them, will be punished with the same penalty.

The *exceptio veritatis*, as stipulated in § 444, shifts the burden of proving the truth of factual claims to the one who made those claims. Therefore, to absolve themselves of criminal liability or to avoid punishment, the perpetrator must prove that their claims are true or demonstrate the existence of circumstances under which they reasonably believed that what they were asserting was true. When determining the penalties for misdemeanours specified in § 441 and § 442, as particularly aggravating circumstances, according to § 448, the criminal court will consider:

(a) if the criminal act was committed against a head of state (emperor and king) or against the head of state of a foreign country or a diplomatic representative of a foreign country or against a diplomatic representative of the Austro-Hungarian Monarchy in a foreign country;
(b) if the criminal act was committed against someone whom the perpetrator is obliged to respect due to their position (e.g., a teacher, mayor, judge, priest); and
(c) if the harmed person suffered (significant) harm or danger to their freedom, civil advancement, or advancement in the service, or if they were prevented from exercising other rights granted to them by law.

For these offences, criminal prosecution, according to § 449, is initiated only at the request of the harmed person (victim). If the offence is committed against a deceased person, then their blood relatives, spouse, foster parents, adopted children, wards, affines in ascending and descending line, brothers and sisters of the spouse, and spouses of their siblings are authorized to submit this proposal. However, the Penal Code of 1879 also specifies cases when these offences will be prosecuted *ex officio*, such as when their prosecution is in the public interest. Therefore, the prosecutor will undertake criminal prosecution *ex officio* if the misdemeanours in § 441 or § 442 are committed against a public official or officer, or against a military officer or clergyman, considering their official duties. Similarly, criminal prosecution is pursued *ex officio* if the

offence is committed against public authority or a body of public authority (e.g., the Parliament or the Government).

The provision of § 186 of the German *Strafgesetzbuch* of 1871 pertains to the criminal offence of Üble Nachrede, which can translate either into "defamation" or "slander" in English. We will use the term defamation (slander) in the context of this paper. The criminal offence of defamation, according to § 186, is committed by someone who asserts or disseminates a fact in relation to another (*in Beziehung auf einen Anderen*) that could make that person worthy of contempt or denigration in public opinion.[20] To analyse this provision, we can break it down into several key elements. Firstly, the provision deals with making false statements about another person that are intended to disparage or degrade them in public opinion. Secondly, the provision criminalizes the act of making false statements about another person, provided that these statements have the potential to make that person contemptible or diminish their standing in the public eye. The claim that "refers to another" (... *in Beziehung* ...) must first objectively pertain to another individual or a third party. Subjectively, it is necessary for the statement to explicitly incorporate the relation to this third party within the claim itself. Since the fact must be asserted "in relation to the other" rather than merely "against the other", this implies that for punishment to be applicable according to § 186, it requires more than the passive reception of the assertion by the victim. Specifically, at least one third party must directly hear the assertion of the fact, even if the statement was primarily directed at the victim. The mere possibility that third parties might become aware of the assertion is insufficient.[21]

The provision of § 186 imposes criminal sanctions, which include a fine of up to two hundred Thalers or imprisonment for up to one year, if the imputation is not only false but also proven to be false. If the imputation is committed publicly or through the dissemination of writings, images, or representations, the penalty is increased to a fine of up to five hundred Thalers or imprisonment for up to two years.[22]

The provision of *Strafgesetzbuch* § 186 is structured as a single, lengthy sentence. It contains a conditional clause (*wer ... geeignet ist*) that sets the conditions for an act to be considered an offence and a subsequent "wenn" clause that lays out the penalties. The provision specifies the punishment for the offence, taking into account both the falseness of the statement and the

[20] Lueder, C., *Grundriß zu Vorlesungen über Deutsches Strafrecht*, Verlag von Andreas Diechert, Erlangen, 1887, p. 69.

[21] Olhausen, J., *Kommentar zum Strafgesetzbuch für das Deutsche Reich*, Verlag von Franz Vahlen, Berlin, 1892, p. 701.

[22] Von Wächter, C. G., *Deutsches Strafrecht Vorlesungen*, Druck und Verlag von Breitkopf und Härtel, Leipzig, 1881, p. 395.

manner in which the insult was committed (publicly or through written or visual media). The action of committing this criminal offence involves conveying (*via verbis* or *via scriptum*) false imputations about a particular person to a wider audience. This is a *delicta communis omnium*, or a criminal act that can be committed by anyone. Additionally, the passive subject can be any person. Intent is required for the subjective element of the offence. A fact that renders others contemptible or humiliated in public opinion must be asserted or disseminated with full awareness of its potential impact. "Making a person contemptible" (*welche denselben verächtlich zu machen oder in der öffentlichen Meinung herabzuwürdigen geeignet ist*) involves depicting an individual as contrary to general moral values, whereas "humiliation" pertains to the degradation of an individual concerning these values. This distinction clarifies that the elements of § 186, and consequently § 187 of the *Strafgesetzbuch*, are satisfied when a fact is established that, by its objective nature, may render others contemptible, even if only for certain individuals. Additionally, it is required that the stated fact be capable of representing another person negatively in public opinion, i.e., the opinion of the majority, rather than merely degrading specific individuals or particular professional or commercial groups.[23]

A specific form of defamation (*verleumderischer Beleidigung*) was regulated by provision § 187 of the *Strafgesetzbuch*. Unlike the provisions of the previous paragraph, where imputing certain qualities is specifically criminalized, § 187 criminalizes making and spreading false facts about a person contrary to one's own judgment or contrary to one's better knowledge. The phrase "contrary to one's better knowledge" (... *wider besseres Wissen in Beziehung* ...) better emphasizes the subjective element, implying that the perpetrator possesses knowledge of the falsehood they are conveying or spreading. Defamation, in this context, emerges concurrently with insult. The claims involved are aimed at protecting one's "honour", suggesting that they are predicated upon defamatory statements. Both external and internal facts are pertinent in this context. Specifically, an accusation regarding "bad character traits" must be articulated as a factual assertion. Additionally, the "motives and purposes" of the individual accused can be classified as facts within the framework of § 187 of the *Strafgesetzbuch*.[24] Consequently, it is evident that these facts can

[23] In German jurisprudence of the time, it was unanimously agreed that making a false statement about a merchant's insolvency was inappropriate in public. This was due to the statement's potential to initiate bankruptcy proceedings, which would temporarily damage the merchant's honour, and because failing to meet obligations under a commercial loan could constitute a moral offence. Similarly, the assertion that a woman's child was not human but a dog does not, in all circumstances, constitute a statement of fact as contemplated under §§ 186 and 187 of the *Strafgesetzbuch*. Olhausen, J., *op. cit.* in fn. 21, p. 701.

[24] In this context, the offence constitutes a transmission offence rather than merely an endangerment offence. Olhausen, J., *op. cit.*in fn. 21, p. 699.

only exist in scenarios directly attributed to the aggrieved party where the issue involves the assertion of objectively verifiable facts. There is a misinterpretation of the concept of defamation if it is presumed that the assertion of so-called internal facts is adequate. While internal facts can include personal characteristics, they do not encompass processes that pertain solely to the consciousness of the individual in question.[25] This interpretation aligns with the legal standards that require defamation to be based on statements that can be objectively proven, rather than subjective opinions or unsubstantiated claims. By distinguishing between internal and external facts, and recognizing the necessity for allegations to be rooted in verifiable evidence, the legal framework ensures that claims of defamation are grounded in factual reality rather than personal perceptions or internal mental states.[26]

Defamation by falsehood (*verleumderischer Beleidigung*) differs from general defamation in several key aspects. Firstly, it involves the dissemination of "untrue" facts rather than "unprovably true" facts. The untruthfulness of these facts is a fundamental element of the criminal offence, necessitating that the perpetrator's intent include an awareness of the falsity of the alleged or disseminated information (negligent conduct would not fall under the purview of § 187). In this context, even a vague intention suffices for culpability. The heightened criminal responsibility compared to insult arises because the defamer harms the victim's reputation surreptitiously, without openly expressing their own judgment, effectively attacking from a concealed position. Thus, defamation poses a danger by damaging reputation covertly, rather than through an overt act of dishonour.[27]

The perpetrator of the offence can be anyone, and the subjective aspect of the offence is comprised of intent, which must encompass the knowledge that the fact being asserted or spread is false, and that the dissemination of this fact could bring contempt upon the passive subject, tarnish their reputation in public opinion, or endanger their reputation.[28] For this form of defamation, a prison sentence of up to two years was prescribed, and if the defamation was committed publicly or through the dissemination of documents, images, or representations, the minimum prison sentence was one month. If there were

[25] Von Liszt, F., *Lehrbuch des deutschen Strafrechts, 4. Auflage*, Walter De Gruyter, Berlin, 1981, p. 359; Meyer, H., *Lehrbuch des Deutschen Strafrechts*, A. Deichert, Erlangen, 1888, p. 608; Geyer, A., *Grundriss zu Vorlesungen über gemeines deutsches Strafrecht, Band 2*, München, 1885, 37.

[26] A claim may be excluded under certain circumstances; however, the dissemination of the claim cannot be excluded, particularly in situations where the individual spreading the claim makes false statements. Merkel, A., *op. cit.* in fn. 4, 292.

[27] Von Liszt, F., *Lehrbuch des deutschen Strafrechts, 3. Auflage*, Verlag von J. Guttentag, Berlin und Leipzig, 1888, pp. 333-334.

[28] *Ibid.*

(particularly) mitigating circumstances, the sentence could be reduced to one day in prison, or the perpetrator could be fined up to three hundred Thalers (later nine hundred Marks).

At the request of the injured party, if the defamation had harmful consequences for financial opportunities, income, or advancement in the service, the court could, in addition to the sentence (prison or fine), also impose damages of up to two thousand Thalers (thus, adopt the financial claim of the injured party which excluded a further claim for damages in civil proceedings) (§ 188 of *Strafgesetzbuch*).

If defamation is committed against a deceased person, a prison sentence of up to six months is provided. According to the provisions of § 190, it is necessary that by stating or conveying untrue facts, against one's own better knowledge, the memory of the deceased person is insulted in such a way that the untrue information presented or conveyed, if the deceased person were alive, would make them worthy of contempt or denigration in public opinion. If there are extenuating circumstances, a fine of up to three hundred Thalers can be imposed. Criminal prosecution in this case occurs only at the request of the parents, children or spouse of the deceased.

The German *Strafgesetzbuch*, in its § 192, provides an *exception veritatis*. Therefore, if the truth of the facts presented or disseminated can be proven, the accused would be acquitted. Additionally, if it is *prima facie* evident from the circumstances of the case that the facts are true, the accused is released without the need for specific proof of the truth of the allegations. If a separate judicial proceeding is conducted regarding the truth of the imputed facts, the criminal proceedings against the accused for defamation would be suspended until the conclusion of the judicial proceedings on which the decision of the criminal court depends (§ 191). By a special provision in the German *Strafgesetzbuch*, it was stipulated that criminal liability for statements concerning scientific, artistic, or economic achievements, as well as statements made for the purpose of asserting or defending rights or protecting legitimate interests, accusations and reprimands by superiors against their subordinates, official complaints, or judgments by official persons, and similar cases, is only applicable to the extent that the existence of defamation is evident from the form of the statement or the circumstances under which it was made (§ 193). For these criminal offences, prosecution is only initiated upon the complaint of the aggrieved party (§ 194). However, the prosecution will act *ex officio* if the defamation is directed towards an authority, an official, a religious officer, or a member of the armed forces in the performance of their duties or in connection with their profession; then, in addition to those who were directly involved, the superiors also have the right to file a criminal complaint (§ 196). According to § 200, if the accused is punished for defamation committed publicly or through the distribution of writings, displays, or images, the aggrieved person must also

be granted the authority to publicly announce the punishment at the expense of the offender. The judgment must specify the type of announcement and the deadline for it. If the defamation is committed in newspapers or magazines, the statement of the judgment must, upon the request of the offended person, be published in public media, preferably in the same newspapers or magazines. A copy of the judgment must be provided to the injured party at the expense of the offender.

The first Italian criminal law that was valid for the entire territory of Italy after unification was the *Codice penale* of 20 November 1859, which was later replaced in 1889 with the *Codice Zanardelli*. The *Codice penale* stipulated that any individual who, with the intention of causing harm, initiates legal proceedings or reports a crime against an innocent person is culpable of the criminal offence of defamation (Article 375). This applies equally to anyone who, with the objective of falsely implicating another in a crime, maliciously places prohibited items or incriminating evidence in that person's residence, on their person, or in another location where such items could be discovered. Should a final judgment be rendered against the falsely accused individual as a consequence of this defamation, the perpetrator will be subject to the same penalty, both in nature and duration, as was imposed upon the wrongfully convicted person. However, if the sentence against the defamed individual has not been executed, the defamer's punishment will be mitigated by one or two degrees (Article 376).

In instances where the penalty imposed on the defamed individual includes disqualification or suspension from public office, and such penalties are not practically applicable to the defamer, the disqualification will be substituted with a prison sentence of no less than six months. In cases where the defamed individual has been sentenced solely to a fine, the defamer will likewise be subject to the corresponding penalty, which in this context is imprisonment (Article 377). This stipulation ensures that the punishment for defamation remains equitable and enforceable, even when the original penalty is not directly transferable to the defamer. By converting disqualification or suspension into imprisonment, the Italian legal system of the time maintains the punitive and deterrent effects of the sentence, thereby upholding the integrity of judicial outcomes. Similarly, equating fines with imprisonment for the defamer underscores the seriousness of defamation and ensures that the consequences are substantive, thus reinforcing the overarching objective of safeguarding individuals against malicious accusations and wrongful convictions.

When defamation is discovered before any legal proceedings commence against the defamed individual, or before the conviction becomes final, or after the defamed individual has been acquitted, the defamer will be punished solely for the act of defamation (Article 378) as follows:

(a) If the defamation involves an allegation of a crime, the defamer will be punished by imprisonment; and
(b) If the defamation is aimed at the accusation of a crime or misdemeanour, the defamer will be subject to a prison sentence of at least one month or a fine that may be increased to five hundred lira when the alleged crime is punishable only by a fine.

The provision of Article 378 of the *Codice penale* of 1859 ensures that defamers are held accountable even if their false accusations do not result in formal legal consequences for the defamed individual. By imposing imprisonment for false allegations of crimes and a combination of imprisonment and fines for accusations of crimes or misdemeanours, the legislator aims to deter malicious defamation and uphold justice in general.[29]

Additionally, pursuant to Article 380, any individual who submits a report or complaint to state authorities regarding a criminal offence they know to be non-existent will be punished with either imprisonment or a fine, depending on the circumstances of the case. These penalties may also be imposed independently of each other. This article reinforces the legal framework of the young Italian state against the misuse of judicial processes by ensuring that those who knowingly make false reports are subject to significant penalties.

The Italian *Codice penale* of 1889 (also known as the *Codice Zanardelli*, *Zanardelli Code*) represents a very modern criminal codification for the 19th century. The creator of this codification, Giuseppe Zanardelli, incorporated the most advanced ideas of criminal law doctrine at the time. The Italian *Codice penale*, like many other criminal laws in Europe, recognized the criminal offence of defamation (*calunnia*). This substantive criminal law largely retained the provisions on defamation as in the *Codice penale* of 1859. According to Article 212 of the Italian *Codice penale*, the crime of defamation includes making a false accusation or complaint to a judicial authority or a public official who is duty-bound to report it to the competent authority. Defamation in the Italian *Codice penale* has two forms: (1) false accusation (where the act of commission involves intentionally accusing someone whom the accuser knows to be innocent of committing a criminal offence); (2) the simulation of evidence (where the act of commission involves inventing or simulating material evidence or traces of criminal acts against an innocent person).

The basic penalty for defamation under Article 212 of the Italian *Codice penale* is imprisonment for a period ranging from one to five years and temporary disqualification from public office. The penalties are more severe if the

[29] The penalties imposed on the defamer will be reduced by one to three degrees if they withdraw before criminal defamation proceedings are instituted, or, in the absence of criminal proceedings, before the judgment relating to the case in which they were guilty of defamation (Article 379).

crime attributed carries a penalty of imprisonment for more than five years or if a person is falsely convicted due to the false accusation. In such cases, the offender may face permanent disqualification from public office and imprisonment for a duration between three to twelve years. If a sentence greater than imprisonment is imposed on the falsely accused, the minimum imprisonment is set at fifteen years.[30]

Article 213 of the *Codice penale* addresses the reduction of penalties for the offence of calumny under specific circumstances. It offers a possibility for the offender to mitigate the penalties through certain actions:

(a) If the person who committed calumny voluntarily recants or reveals the falseness of the accusation before any legal proceedings are initiated against the falsely accused, the penalties are reduced by two-thirds; and

(b) If the recantation or revelation occurs after legal proceedings have begun but before a verdict is reached in a jury trial (in the case of an assize court) or before a judgment is delivered in other types of trials, the penalties are reduced by one-third to a half.

5. CONCLUSION

The 19th century in Europe was a period of significant legal development and reform, particularly in the realm of criminal law. One area of law that underwent substantial changes and garnered considerable attention during this era was the crime of defamation. Defamation, as defined by the criminal laws of various European countries in the 19th century, showed certain diversity in both its legal interpretation and enforcement. In this concluding analysis, we will explore the essential characteristics of defamation, highlighting both the commonalities and variations found among different European countries of that time.

Defamation in the 19th century was primarily understood as the act of making false statements about an individual, damaging their reputation or standing in society. It was regarded as an offence against honour and dignity, rather than harm to personal or economic interests. This distinction is crucial to understand the legal framework within which defamation operated during this period.

Across European countries in the 19th century, the foundation of a defamation charge lay in the utterance of false statements. These statements had to be published or communicated to a third party, making them potentially injurious

[30] Masucci, L., *Della Calunnia*, Leonardo Vallardi, Milano, 1890, pp. 69-70; De Notaristefani, R., *Intorno All'Articolo 212 Del Codice Penale*, Società Editrice Laziale, Roma, 1885, pp. 23-35.

to the reputation of the subject. The intention behind these false statements, however, was not always a key element. The core premise of defamation was the harm caused to an individual's reputation. In the 19th century, reputation was highly valued, and a damaged reputation could result in tangible social and economic consequences. Therefore, proving that the false statements had an adverse effect on the subject's reputation was essential in these cases. Defamation was treated as a criminal offence in most European countries in the 19th century. Penalties ranged from fines and imprisonment to public humiliation by means, for example, of public flogging or placement in the stocks. The criminalization of defamation served as a means to preserve social order and maintain the established hierarchy.

While these common characteristics underpinned defamation laws throughout 19th century Europe, significant differences existed between various countries: some countries, such as France and Germany, required the showing of intent (*mens rea*), or a guilty mind, to establish criminal defamation. This meant that the defendant had to be aware of the falsehood but still chose to make the false statement with the intent to harm the subject's reputation. Other countries, like England, did not emphasize *mens rea* to the same extent and placed greater weight on the harm caused. The severity of penalties for defamation varied significantly.

The disparity in penalties reflected the broader societal values and attitudes towards reputation and honour. Some legal systems also distinguished between defamation against public figures and private individuals. For example, in France, defamatory statements against public officials were considered more serious and could result in stricter penalties.

Some countries, like the United Kingdom, relied on *common law* principles to address defamation, while others, like France and Germany, codified defamation statutes. This divergence had implications for the development and interpretation of defamation in these legal systems.

The crime of defamation in 19th century Europe, while rooted in common principles, demonstrated considerable variation in its interpretation and application across different countries. The understanding of *mens rea*, the severity of penalties, the treatment of public versus private figures, and the source of defamation laws all contributed to these differences. The 19th century was a transitional period in the development of criminal law, with some countries starting to place greater emphasis on individual rights and freedoms. This shift was reflected in the evolving treatment of defamation, where a more nuanced understanding of intent and harm began to emerge. The study of defamation in 19th century Europe serves as a valuable case study for comparative legal history, highlighting the dynamic nature of legal systems and their responsiveness to societal changes. It offers insights into the evolving values and priorities of different European societies during a time of great transformation, shedding

light on the delicate balance between protecting individual honour and fostering free expression.

In the 21st century, defamation laws have continued to evolve, with growing emphasis on protecting free speech and accommodating the digital age. However, the historical context provided by the 19th century experience remains a vital resource for understanding the enduring tension between reputation and the public's right to know.

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Sažetak

Filip Novaković *

KAZNENO DJELO KLEVETE U EUROPI U 19. STOLJEĆU

Članak zadire u složen i evoluirajući krajolik klevete kao kaznenog djela u Europi u 19. stoljeću. Kazneno djelo klevete, koje obuhvaća čin narušavanja nečijeg ugleda izgovorenim ili napisanim riječima, postalo je sporno pitanje, usko isprepleteno s rastućim načelima slobode izražavanja i s razvojem pravnih sustava tog vremena. Studija koristi komparativni pravnopovijesni pristup kako bi istražila kako je kleveta definirana, procesuirana i percipirana u različitim europskim zemljama. Kako su društva prelazila s aristokratskih hijerarhija na ravnopravnije sustave, slučajevi klevete često su služili kao platforma za javni diskurs o dinamici moći,

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pravima pojedinca i ulozi medija u oblikovanju javnog mišljenja. Studija o kleveti u Europi u 19. stoljeću pruža jedinstvenu perspektivu delikatne ravnoteže između zaštite osobnog ugleda i promicanja demokratskih vrijednosti u svijetu koji se brzo mijenja. Primarna je svrha rada pružiti analizu razvoja inkriminacije o kleveti u kontekstu dubokih društvenih promjena u Europi u 19. stoljeću. Proučavajući klevetu kroz komparativnu leću, članak ima za cilj rasvijetliti kako su pravni sustavi u različitim europskim zemljama odgovorili na izazove koje je kleveta postavila i prilagodili se promjenjivoj dinamici vremena. Osim toga, studija nastoji ponuditi uvid u implikacije tih povijesnih razvoja na suvremene kaznenopravne propise o kleveti i šire pravne koncepte, posebice ravnotežu između slobode izražavanja i zaštite ugleda. Studija koristi komparativni pravnopovijesni pristup analizirajući ključne zakonodavne reforme i pravne propise iz europskih zemalja tijekom 19. stoljeća. Članak sustavno ispituje kaznene zakone europskih država, uključujući, među ostalim, i francuski *Code pénal* iz 1810. godine, njemački *Strafgesetzbuch* iz 1871. godine i talijanski *Codice penale* iz 1859. godine. Usporedbom tih pravnih dokumenata studija ističe jedinstvene značajke svakog nacionalnog pravnog sustava i identificira šire trendove i utjecaje koji su oblikovali europsku praksu o kleveti tijekom tog transformativnog razdoblja. Studija zaključuje da je 19. stoljeće bilo ključno doba za razvoj kaznenopravnih propisa o kleveti u Europi jer su pravni sustavi održavali delikatnu ravnotežu između zaštite osobnog ugleda i promicanja demokratskih vrijednosti. Komparativni pristup naglašava raznolikost i sličnosti u pravnim odgovorima na klevetu pod utjecajem kulturnih, političkih i povijesnih čimbenika. Ti povijesni uvidi pružaju vrijedne perspektive suvremenim pravnicima i povjesničarima u razumijevanju i kritiziranju trenutačne pravne prakse o kleveti. Članak naglašava trajnu važnost tih povijesnih razvoja u oblikovanju suvremenih pravnih okvira koji reguliraju klevetu, uz uzimanje u obzir važnosti povijesnog konteksta u pravnoj analizi.

Ključne riječi: kleveta, povijest klevete, komparativno pravo, javna kleveta, pisana kleveta