

JOINT POSITION IN FAVOUR OF FULL DECRIMINALISATION OF INSULT AND DEFAMATION – BY DELETING THESE CRIMES FROM THE CRIMINAL CODE

- The existence of criminal acts of defamation and insult has a negative impact on freedom of expression regarding matters of public importance, and public importance of freedom of speech goes beyond the need for criminal-civil protection of one's honour and reputation.
- It has been confirmed more than once that the prosecution of opponents for defamation and insult served to suppress free discussion of matters of public concern in Montenegro.
- Montenegro has overcome the need to protect the honour and reputation through criminal repression, which was necessary when the reputation and honour were protected by physical violence and even murder, threatening public order.
- It is still the case that persons convicted of insult and defamation go to prison, a sanction permitted by European standards of freedom of expression only in the case of hate speech and incitement to violence.
- Imprecise formulations of these criminal acts ("s/he who insults the other"; "stating or transmitting untrue information, which may harm the honour or reputation") allow for arbitrary interpretations, which were particularly restrictive for the freedom of expression in the practice of our courts, even in the case of speech on matters of public importance, contrary to European standards.
- Other elements of these crimes also do not ensure the implementation of European standards and therefore have a discouraging effect on freedom of expression (e.g. even if relieved of liability for defamation after proving the truth of his/her claims, the defendant may still be punished for insult; it is punishable to transmit information already published; the defendant always bears the burden of proving the correctness of information, even though it is contrary to the presumption of innocence, and even though the plaintiff is generally in a better position to prove that the defendant's statement is untrue; in determining the sentence it is not required to take into account the financial capacity of the defendant).
- Adequate protection of honour and reputation exists only in civil proceedings, where it is necessary to ensure the implementation of standards in the European Court of Human Rights, including reasonable limitation of damages that can be imposed.
- Adding the amount of fines in criminal proceedings to the amount of damages in civil proceedings usually leads to a disproportionate restriction of freedom of expression in relation to the European standard.
- Thus far, eight European countries have decriminalized defamation and insult, while most other countries ceased to apply these crimes.
- In a 2002 joint statement, the UN Special Rapporteur on freedom of expression, media freedom Representative for the OSCE and the OAS Special Rapporteur advocated for the abolition of criminal acts of insult and defamation. The European Commissioner for Human Rights supported them in 2007, requesting the member

states of the Council of Europe to immediately declare a moratorium on the application of criminal laws in this area.

- Deletion of all criminal acts under Chapter 17 of the Criminal Code should be given serious consideration (criminal acts against honor and reputation), which are variations of insult and defamation, especially the crime Damaging the reputation of Montenegro (its flag, coat of arms and anthem), which provides for a prison sentence and prosecution ex officio, and as such it is particularly contrary to international standards.
- Decriminalization of defamation and insult with regard to journalists only, is not an acceptable solution, because it is discriminatory in relation to others who also deserve increased protection for speaking on topics of public interest, such as politicians, writers, scientists, artists, NGO activists, etc.

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