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Protection of a good name in the penal codes in 1918–1997

Up to the moment when the uniform Polish penal code of 1932 came into force there were 3 different penal codes for the territories of the former Austrian, Russian & Prussian partitions.

In the former Austrian partition, the source of the penal law was the *Universal penal act from 27. May 1852*.¹ It came into force on 1. Sept. 1852. This act regulated the offence of slander (calumny – *Verleumdung*), according to which a libel was an untruthful accusation of another person of an offence which could cause instituting legal proceedings against the slandered. The slanderer had to be aware that an offence he accused another person of did not take place. He also had to act with the intention of committing the deed. A fabricated offence also had to constitute a crime in the sense of a penal statutory act. Defamation in the Austrian legal system was a crime liable to the penalty of close confinement from 1 to 5 years. Had the slanderer used a particular stratagem to make their deed verisimilar, when they exposed the person to danger or was a servant, inmate or subordinate, or as a functionary committed a slander while doing official duties, they was liable to close confinement up to 10 years. The statutory penal act foresaw also an offence consisting in an insult to good name (*Ehrenbeleidigung*). This offence comprised a groundless blame of a crime, misdemeanor or contravention, as well as a charge of other dishonest deeds or infringing the rules of good morals. An insult to a good name could also consist in promulgation information on another person from a private or family life, even when the statements were true. Blaming another person of having character defects resultant in public contempt was also penalized².

¹ E. Krzymuski, *Comments to the penal law*, Volume I, Cracow 1901, p. 113, vide also E. Krzymuski, *On the newest project of the Austrian penal law*, Cracow 1890.

² E. Krzymuski, *Commentaries to the penal law*, Volume II, Cracow 1902, pp. 303–306, vide also E. Krzymuski, *Comments to the penal law from the viewpoint of science & Austrian law*, Volume II, Cracow 1911, pp. 157–162.

The penal law in force in the former Austrian partition penalized a slander in § 209, & required that everybody who accused another person of a crime in front of an authority, & mere blame could result in instituting legal proceedings against the blamed, was perpetrator of a slander. A severer responsibility for defamation depended on three prerequisites. The first one occurred when the slanderer tried to make their imputation verisimilar. The second one when they exposed the accused to a greater peril, & the third one when the slanderer was a servant, inmate or subordinate of the slandered or in the case when a functionary committed a slander while doing their official duties (§ 210). According to § 487 the guilty of defamation to a good name was a person, who

- untruthfully accused of a crime, & a charge does not go as far as it took place in § 209;
- untruthfully accused of a dishonourable & immoral act, which may cause a public contempt against the accused (§ 488);
- in prints, disseminated writings or drawings, or make slanderous charges public against another person (even if they are true facts of a private or family life) – § 489.

According to § 490 if the charge mentioned in § 487 & 488 was made public in the way foreseen in § 489 the accused is liable to a penalty, when they were not able to prove the truthfulness of the assertions. Providing the charge pertaining to § 487 & 488 was made public in a different way than foreseen in § 489 the accuser is not penalized when they proved the truthfulness of their assertions. Another infringement on a good name was an insult made publicly or in the presence of other people, also in prints, lampoons or drawings endangering the victim to public ridicule (§ 490). Infringements on a good name as regulated in § from 487 to 492 were liable to arrest penalty from 6 months to 1 year. Persecution in all the cases of infringement on a good name was undertaken on the demand of the insulted person (§ 495). Also in the case of affronts or insults made in public, the perpetrator was punished on the demand of the insulted person (§ 496)³.

The penal code, which was in force on the territory of the former Prussian partition, was introduced on 15. May 1871.⁴ The offences against a good name were comprised in the Chapter XIV “Insult”. According to § 185, an insult was punished with a pecuniary penalty up to 600 marks, an arrest

³ *A penal statutory act on crimes, misdemeanors & contraventions, in force in the provinces of Cracow, Lwow, Stanislawow & Tarnopol. Abridged edition with commentaries for the usage in police schools & for supplementary training conducted in state police stations*, Warsaw 1930, pp. 47, 78–80, vide also *A manual of police penal law, statutory acts on penal legal proceedings, investigating services, parliamentary acts & administrative decrees for the use of police of the Silesian province*.

⁴ *Das Strafgesetzbuch für das Deutsche Reich vom 15 Mai 1871. The penal code of the German Reich from 15 May 1871*, Berlin 1886, p. 3.

penalty or imprisonment up to 1 year. In the case insults made by the means of an act, the pecuniary penalty amounted up to 1,500 marks & imprisonment up to 2 years. Everybody, who claims or makes public an untruthful accusation, which may humiliate another person in the eyes of public opinion, was liable to a fine of 600 marks or arrest penalty, or imprisonment up to 1 year. In the case of an insult made publicly or made through dissemination of writings, pictures & images, the perpetrator is liable to a fine of 1,500 marks or imprisonment up to 2 years (§ 186). In the case of a deliberate insult made on the grounds of false charges, which may humiliate the victim before public opinion, the perpetrator was liable to a penalty for a slanderous insult & was punished with imprisonment of up to 2 years. In the case of making the charges public, the perpetrator was liable to a penalty of no lesser than 1 month of imprisonment (§ 187). Presentation of an evidence of the truth pertaining to the charge did not exempt from responsibility in the case when the form or the circumstances of the deed was evident that the insult took place (§ 192). Persecution of an insult was performed exclusively on demand (§ 194)⁵.

The penal code of 1903, known as the Tagantsev code (after the name of the author) possessed an unusual significance. The code is so important because till the moment of the coming into force of the uniform Polish penal code of 1932, it acted as a penal code for the territory of the former Russian partition⁶. Offences against good name are placed in the Part XXVIII “On affront”. According to art. 530, a person guilty of a personal insult made by disgraceful expression towards the insulted or a member of their family, also the deceased, was liable to a fine of 200 thousand Polish marks. The guilty of defamation performed by making a dishonourable circumstance public, also in absence of the slandered, is liable to imprisonment for up to 6 months (art. 531). The perpetrator of insulting their mother, father or another ascending relative, a Christian clergyman (priest, vicar, Father Superior of Old Believers or a sect community) while ministrations, a functionary or commune administrator (in connexion with fulfilled duties) or a military guards or a sentinel was penalized with imprisonment. To the same penalty was im-

⁵ Ibidem, pp. 95–99; vide also *The penal code of the German Reich from 15 May 1871 with later amendments & revisions till 1918 along with the introductory statutory act for the North German Union (The German Reich) from 31. May 1870*, Poznań 1920, pp. 82–87.

⁶ On the territory of the former Prussian partition well after the restitution of Polish state, the German penal code of 1871 was in force, in the former Austrian partition the uniform Austrian penal statutory act of 1852. The two codes along with the Tagantsev code of 1903 were in force with amendments till the moment of introduction of the Polish penal code of 1932, vide W. Makowski, *Penal law. Particularly on offences. A comparative study of Austrian, Prussian & Russian in force in Poland*, Warsaw 1924, pp. 366–382, vide J. Makarewicz, *Penal law. A comparative study with regard to the valid law in the Republic of Poland*, Lwow – Warsaw 1924.

pendent a perpetrator of insult on a ship captain or a prisoner insulting a gaoler while or because of fulfilling their duties (art. 523). The perpetrator of an insult made by the means of disseminated or publicly presented writings, prints, images was punished with imprisonment. An editor of a periodical who was found guilty of inserting in the content of a periodical insulting compositions, writings or images was liable to a fine, which amount depended on the number of copies – up to 400 Polish marks for one copy (art. 533). The perpetrator of an act foreseen in art. 530 & 532 might not be a subject to penalty in the case when the insult resulted from an equal or more serious violence on a person, or an equal or heavier insult on the part of the victim. The perpetrator was not also liable to a penalty when the victim repaid them with an equal or heavier violence on a person or with such an insult. This exclusion did not apply to the situation when a policeman or another guard was offended while or in the connexion with doing their duties. The exclusion pertained also to priests (art. 536). The truthfulness of the accusation disseminated in the interest of the country or society, or in the defense of personal good name or that of the family, or a sufficient ground for acknowledging the charge as truthful constituted circumstances excluding penalization of a slanderer (art. 537). However the evidence of the truthfulness of the charge could not be presented in the case when the slander pertained to the head of another country, an ambassador or some other diplomat. The evidence of the truthfulness of the charge could also not be reported in that situation, when the indicated circumstance referred to a private or family life of the slandered, & publication was made by the means of publicly presented prints, writings or images or while a public pronouncement (art. 538). The court could also adjudge a publication of the sentence (“the court is potent to publish”) in the case of finding the perpetrator guilty of the committed insult (art. 539)⁷.

⁷ A. Mogilnicki, E. Rappaport, *Penal code with supplementary statutory acts issued till 1. Sept. 1922, with an index & judgements' argumentation of the Superior Court of the Republic of Poland. Parliamentary penal acts temporarily in force on the territory of the former Russian partition*. Volume I, Warsaw 1923, pp. 389–426; vide also W. Makowski, *Penal code temporarily in force in the Republic of Poland on the territory of the former Russian partition*, Volume III, Warsaw 1922, pp. 209–241; vide A. Mogilnicki, E. Rappaport, *Penal code with supplementary statutory acts issued till 1. Sept. 1927, with an index. Statutory penal acts temporarily in force for the judicial regions of the appeal court in Warsaw, Lublin & Vilna*, Volume I, Warsaw 1928, pp. 420–452; vide *Penal code*, without the place of publication 1922, pp. 389–426; vide N. Tagantsev, *Penal code (22 March 1903)*, Warsaw 1921, pp. 685–721; vide *A repetitory of penal law on the basis of university lectures & manuals of professor J. Markewicz with a supplement of abridged versions in the form of examination questions*, compiled by Wiktor Br., Warsaw without the year of publication, pp. 99–101; vide *Penal code temporarily in force in the Kingdom of Poland*, Warsaw 1917, pp. 143–145; vide A. Mogilnicki, E. Rappaport, *Penal code temporarily in force in the judicial region of the appeal courts of Warsaw & Lublin as well as of the East lands including penal regulations as foreseen in special parliamentary acts issued till 2 August 1919 with explanations & an index*, Warsaw 1919, pp. 143–146.

Penalty legislation of the partition powers was in force on the territory of the Second Republic till 1 Sept. 1932, when a Polish penal code came into force. Obviously before the introduction of the code, workings were done which resulted in various project of the penal code⁸. The penal code was published in the form of the decree of the president of the Republic from 11. June 1932, & on 1 Sept. 1932 it came into force. The offences against a good name are comprised in Chapter XXXVIII “Insults”. Art. 255 § 1 penalized a slander which consisted in imputing to another person to institution & association, even if those were without the status of legal person, such a conduct or proprieties, which could humiliate the above mentioned subjects in public opinion or expose them to a loss of trust, needed for a given position, profession or sort of activity. A perpetrator of an imputation was liable to an arrest penalty of up to 2 years & a fine⁹. To the offence of a slander did not come if the accusation was truthful. If though the charge was made in public, the evidence of the truth could be conducted only then, when the perpetrator acted in the defense of justifiable public or private interest, both their own or somebody’s else, & the evidence did not pertain to the circumstances of private or family life (art. 255 § 2)¹⁰. The sentence was to be delivered & published in periodicals at the expense of the convict. The conviction was conducted on a private accusation, & only in the case of a defamation of a functionary the persecution could be instituted on demand of the authority¹¹. The code foresaw also the offence of insult, which occurred, according to art. 256 § 1, in the situation of offending the good name of

⁸ In agreement with the project prepared by W. Makowski, the offence of defamation as regulated in art. 117 consisted in offending a good name of “a person directly in their presence or publicly is liable to arrest penalty up to 6 months or to a fine”. In the case when the insult was provoked by unlawful conduct of the insulted, the court might acquit the perpetrator from a punishment. Defamation was foreseen in art. 118 of the Project. Defamation should consist in charging a person with a conduct or proprieties which might humiliate them in public opinion or such a conduct or proprieties. Defamation was also to consist in dissemination of circumstances which might humiliate a person in public opinion or devoid them of trust needed to hold a certain post or to do a profession. The perpetrator of defamation was liable of imprisonment up to 1 year. In the case when the perpetrator knew that the imputation was not true, the imprisonment was prolonged to 3 years. Public defamation caused the duty of the perpetrator to publish the sentence at their own expense. The perpetrator was not liable to penalty for imputation when they proved the truthfulness of the charge & acted in the defense of a justifiable public or private interest, according to *An introductory project of the detailed part of Penal code prepared on the order of the Section of Penal Law of the Codification Committee, the Codification Committee of the Republic of Poland, the Section of Penal Law, Volume IV, installment I* without the place of publication, pp. 36-38. Following codification remarks were presented in *The project of the detailed part of Penal Code in the form accepted in the first reading by the Section of Penal Law of the Codification Committee of the Republic of Poland, the Codification Committee of the Republic of Poland, the Section of Penal Law, Volume IV, installment III, Lwow 1929*, pp. 98–101.

⁹ J. Makarewicz, *Penal code with comments*, Lwow 1932, p. 300.

¹⁰ J. Nisenson, M. Siewierski, *Penal code & the law on contravention*, Warsaw 1935, p. 177.

¹¹ Z. Wusatowski, *Penal code. The law on delinquencies & the regulations introducing Penal code & the law on delinquencies*, Cracow, lack of the year of publication, p. 240.

another person, both in their presence or absence. The perpetrator had to act publicly or with the intention to make the offence arrive at the offended. An insult was liable to an arrest penalty up to 1 year or to a fine. If the offence resulted from a provocative conduct of the offended, or if the offended reciprocated with an offence or with a battery, the court might acquit the perpetrator (art. 256 § 2). Similarly as it was in the case of the offence of defamation the persecution was carried out on a private accusation, except when a functionary was offended because of their duties. In this situation the persecution could be initiated on the demand of the superior authority¹².

It is worth noting that the regulations on defamation & insult, as well as the entire Penal code remained till the time of coming into force the next Penal code of 1969.¹³ Certainly also in this case there were the projects of a new Penal code¹⁴. The Penal code of 1969 regulated offences against a good name in Chapter XXIV "Offences against good name & bodily inviolability". The offence of a slander was regulated in art. 178. According to § 1 of this article, an offence consisted in an imputation of another person, a group of people or an institution about such a conduct or properties, which could humiliate them in public opinion or endanger with a loss of trust needed for a given social environment, profession or sort of activity. The perpetrator of the imputation was liable to imprisonment of up o 2 years, to the penalty of restricted liberty or to a fine. If a person brought forth or made public an untruthful charge aiming at humiliation of the above mentioned subjects in public opinion or at endangering them with a loss of confidence, they were liable to imprisonment of up o 3 years (art. 178 § 2). Persecution of the offence of defamation was initiated by a private demand. A court could adjudge for the benefit of the victim, the Polish Red Cross or for some other social purpose a supplementary fine form 500¹⁵ to 5,000 zlotys¹⁶. According to art. 179 § 1 of the Penal code of 1969 the truthfulness (or its awareness) of non-publicly made charge excluded the unlawfulness of the deed. In the case of truthfulness of the charge made publicly the deed of the perpetrator was not illegal, if they acted in the defense of the socially justifiable interest (or had this conviction) or acted in the conviction that the accusation was true

¹² Z. Hofmoki-Ostrowski, *Penal code & jurisdiction of the Supreme Court*, Warsaw 1935, p. 256 of the Penal code – 1.

¹³ M. Andrełowicz (compiled), *Penal code*, Kościan 1945, pp. 59–60; vide J. Nisenson, M. Siewierski, *Penal code and the law on delinquencies*, Częstochowa 1945, pp. 247–259; vide *Penal code. The law on delinquencies. More important state parliamentary acts*, Warsaw 1949, pp. 43–44; vide J. Fajnberg, M. Leonieni, *Penal code with jurisdiction of the pre-war period*, Warsaw 1956, pp. 253–267; vide *Penal code and the law on delinquencies*, Warsaw 1961, pp. 67–68; vide M. Siewierski, *Penal code and the law on delinquencies. Comments*, Warsaw 1965, pp. 328–343.

¹⁴ Vide *A project of Penal code & the law introducing Penal code*, Warsaw 1968, pp. 51–52.

¹⁵ The amount in § 3 were changed by the parliamentary act of 10 May 1985 (Journal of Laws No 23, pt. 100) for the amount from 5,000 to 50,000 zlotys.

¹⁶ In. Bafia, K. Miodunki, M. Siewierski, *Penal code. A comment*, Warsaw 1971, p. 405.

& they defended a socially justifiable cause¹⁷. The court could order on the demand of the victim the publication of the sentence made on the basis of art. 179 § 2 in the work institution of the accused & the victim, as well as in a periodical or in other appropriate way (art. 180)¹⁸. The code of 1969 penalized also the offence of insult. It was described in art. 181 § 1. An insult was an attempt on a good name of a person. It consisted in insulting of another person in their presence or absence, but publicly or with the intention to make it arrive at this person. A perpetrator of an insult was liable to imprisonment of up to 1 year, to the penalty of restricted liberty or to a fine. If the insult resulted from a provocative conduct of the insulted or when the insulted repaid with a battery or an insult, the court could resigned from inflicting a penalty. Similarly as in the case of defamation also in an insult the persecution was initiated on the private demand¹⁹.

The penal code of 1969 was in force till 31 August 1998²⁰. On 1 Sept. 1998 the presently valid Penal code of 6 June 1997 came into force²¹.

Streszczenie

Ochrona dobrego imienia w kodeksach karnych w 1918–1997

Słowa kluczowe: zniesławienie, przestępstwo, dobre imię, Kodeks karny.

Artykuł prezentuje zmieniające się normy ochrony dobrego imienia w prawie karnym na terytorium Polski na przestrzeni 80 lat. Autorzy prezentują przepisy stosowane po odrodzeniu państwa polskiego, obowiązujące na terenach byłych zaborów: austriackiego, rosyjskiego i pruskiego. W dalszej części artykułu ukazano przepisy prawa karnego regulujące ochronę dobrego imienia w kodeksie karnym z 1932 r. Regulacje te obowiązywały aż do 1969 r., kiedy to wprowadzono zupełnie nowy kodeks karny, a tym samym zmianie uległy regulacje dotyczące ochrony dobrego imienia. Przepisy kodeksu karnego z 1969 r. obowiązywały do roku 1998, kiedy to wszedł w życie obecnie obowiązujący kodeks karny z 1997 r.

¹⁷ I. Andrejew, W. Swida, W. Wolter, *Penal code with a comment*, Warsaw 1973, p. 520.

¹⁸ R. Góral, *Penal code. Jurisdiction & literature*, Warsaw 1974, p. 178.

¹⁹ I. Andrejew, *The Polish penal law in sketch*, Warsaw 1976, pp. 381–383; vide also *Penal code & the introductory regulations*, Warsaw 1969, pp. 59–60; vide also J. Śliwowski, *Penal law*, Warsaw 1979, pp. 405–406.

²⁰ I. Andrejew, *Penal code. A short comment*, Warsaw 1988, pp. 157–162.

²¹ The workings on a new Penal code were conducted considerably earlier. A good example of it may be a *Project of the Penal code* created in the Committee for the Reform of Penal Law (Team of Material & Military Penal Law) in the edition from October 1990, in which the offence against good name & bodily inviolability were regulated in Chapter XXVII of the project (art. 211 – slander, art. 216 – insult). The construction of offences' regulations against good name in the project was very similar to these regulations which came into force in the new Penal code of 1997.