

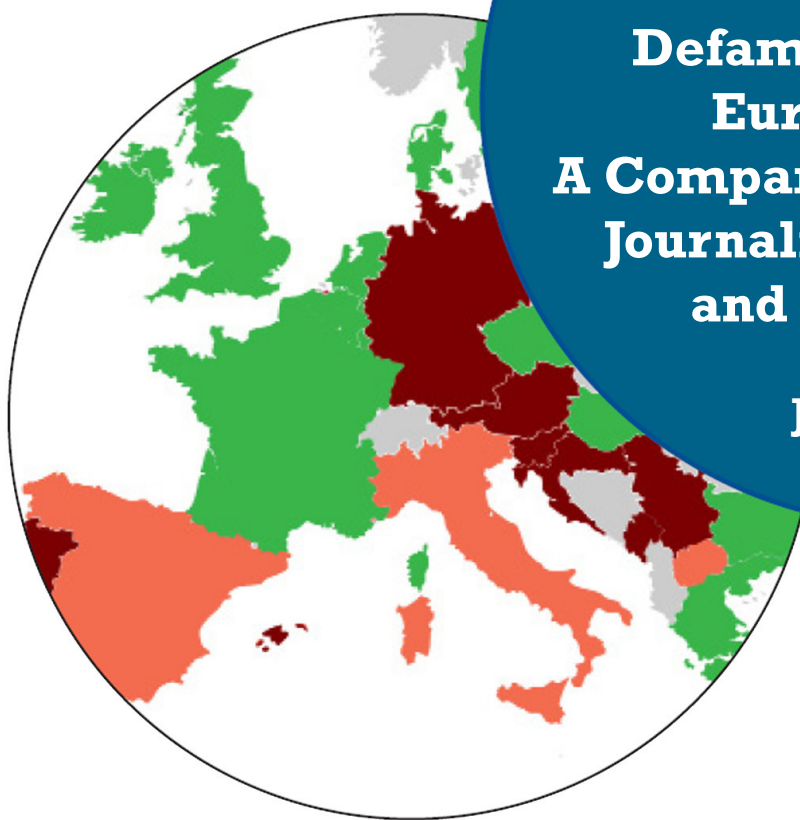


**International
Press
Institute**

OUT OF BALANCE

**Defamation Law in the
European Union:
A Comparative Overview for
Journalists, Civil Society
and Policymakers**

January 2015



IPI: Protecting Press Freedom for More than 60 Years

The International Press Institute (IPI), the world's oldest global press freedom organisation, is a worldwide network of editors, media executives and leading journalists dedicated to furthering and safeguarding press freedom, promoting the free flow of news and information, and improving the practices of journalism. Based in Vienna, IPI is a politically neutral organisation with members in more than 120 countries and it holds consultative status with the United Nations and the Council of Europe.

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Out of Balance: Defamation Law in the European Union

A comparative overview for journalists, civil society and policymakers

January 2015

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About this report

In this report, the International Press Institute (IPI) presents the findings from its in-depth research into defamation law and practice in the European Union (EU).

The findings are presented in the form of a comparative analysis of defamation law in the 28 EU member states and 5 of 6 official EU candidate countries. The report broadly evaluates the extent to which EU defamation laws meet international standards on freedom of expression and highlights key issues for future advocacy work.

The findings are based on IPI's analysis of data on defamation laws in each of these countries, in turn based on data collected by IPI and by researchers at the School of Public Policy's Center for Media and Communications Studies (CMCS) at the Central European University in Budapest and their partners at the SHARE Foundation in Belgrade, and in consultation with a team of national legal experts.

This report is part of IPI's broader advocacy, training and capacity-building work on defamation in the EU, supported with co-funding from the European Commission under its European Centre for Press and Media Freedom pilot programme and the Open Society Foundation (OSF). The goal of IPI's work is to raise awareness among EU policymakers and the general public on defamation laws and their effect on press freedom, as well as to inform journalists about their rights under international principles and thereby empower them to continue delivering news in the public interest. In 2014, IPI held a series of workshops for journalists and lawyers on defamation and international standards in selected EU and candidate countries.

This report is accompanied by two related IPI documents. The first of these presents the results of an IPI perceptions study that collected the personal views and experiences of EU journalists on defamation laws and their application. The results bear witness to the dangerous chilling effect that defamation laws can have on the free flow of information and offer a mandate for continued training of journalists on such laws.

The second document summarises relevant international standards on freedom of expression and defamation, as originally developed in 2000 by the London-based civil society organisation ARTICLE 19. It also provides a briefing on the viewpoint on those standards expressed by leading international legal and intergovernmental bodies, with particular focus placed on the European Court of Human Rights (ECtHR).

Both documents are available online at IPI's project website: www.freemedia.at/ecpm.



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INTRODUCTION

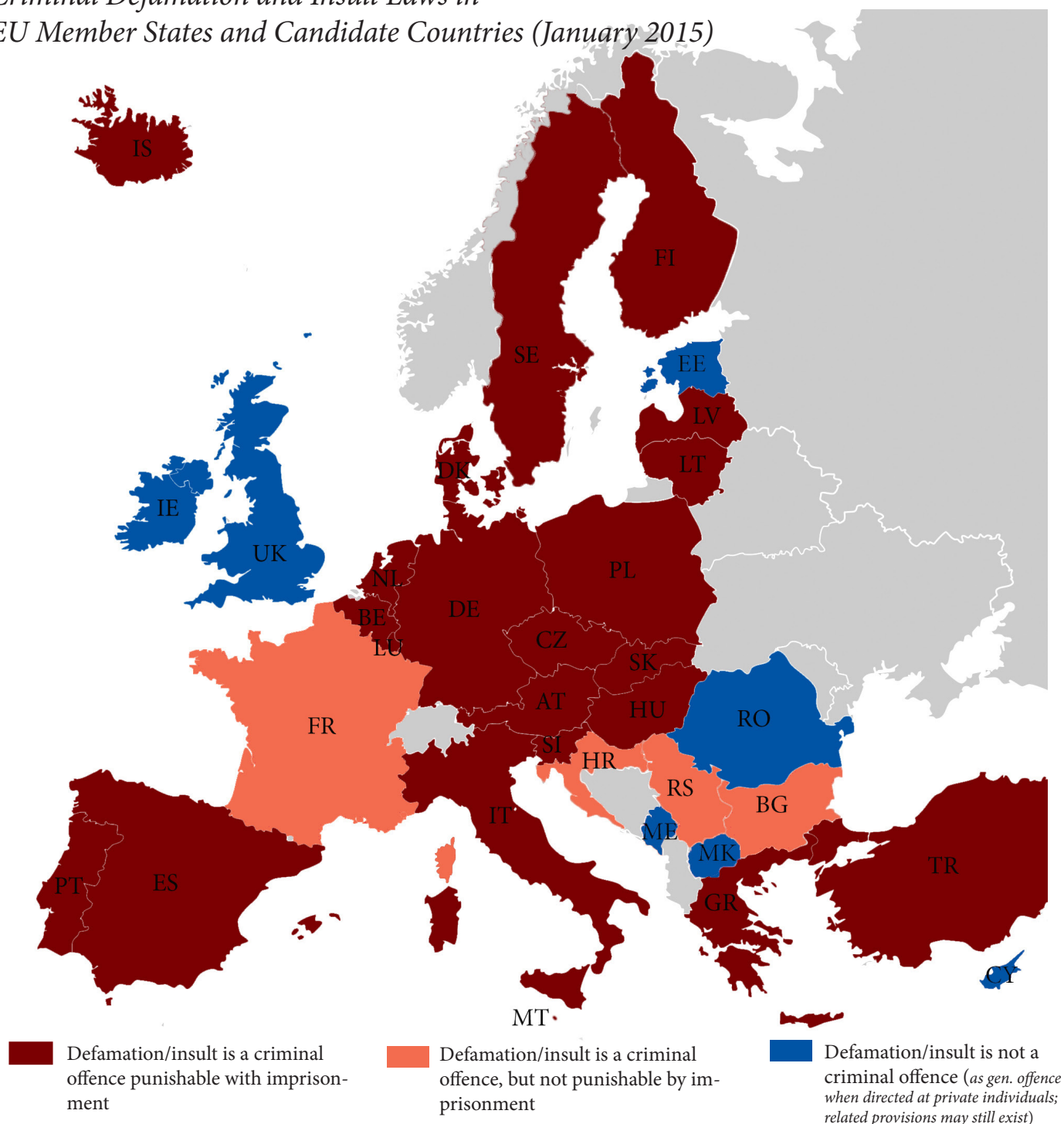
Background

For nearly 65 years and in all corners of the world, the International Press Institute (IPI) has fought for the right of the media to provide citizens with accurate and timely information about the world around them. In IPI's view, it is the receipt of such information that allows individuals to both be truly self-determinate — to make considered choices in all aspects of their lives — and to assist in holding those in power accountable, thereby strengthening and preserving democratic norms and ideals.

Combating laws that restrict journalists' ability to do their jobs thus falls squarely within IPI's mandate, and IPI has long been concerned in particular with provisions designed to protect the honour and reputation of others ("defamation laws", in shorthand). Through ongoing initiatives such as its flagship Campaign to Repeal Criminal Defamation in the Caribbean, IPI has played a leading role in lobbying governments to modernise defamation legislation according to international standards as well as in raising awareness among both the media and the general public about the dangers such laws harbour for the free flow of information.

In IPI's view, defamation laws can have only one legitimate purpose: to protect the deserved reputation of individuals, i.e., the esteem in which one is justifiably held among one's peers or the public. Generally speaking, we probably all have an interest in the existence of some kind of mechanism that allows people to defend themselves against unwarranted attacks of this kind. From a subjective point of view, victims of false, malicious allegations can suffer serious emotional, personal and professional consequences; without the chance to adequately respond, they might be wrongly mistrusted or shunned by their community, or denied opportunities that their talent or hard work otherwise merit. Objectively, such allegations distort our ability to judge our surroundings; for example, when we are given inaccurate information, we may make wrong decisions about which product to buy, which employee to hire or which politicians are best fit to govern in our name.

Criminal Defamation and Insult Laws in EU Member States and Candidate Countries (January 2015)



Unfortunately, across the world defamation laws are consistently employed for far less noble reasons. For prominent figures from Ecuador to Angola to the Philippines, they have served as convenient tools to squelch critical media coverage, hide embarrassing or uncomfortable information, or silence investigations into financial, ethical and professional wrongdoings. The endgame is nearly always the same: the protection of economic and political interests, the preservation of power and in some cases the avoidance of criminal liability. At other times, defamation laws — often in the form of “insult” provisions — are invoked simply to compensate for hurt feelings or indignation, without appreciation for the fact that in an open society, a person’s sensibilities must be weighed against the right of others to freely express themselves.

Good defamation legislation strikes the proper balance between, on the one hand, the need to defend and promote free expression and the media’s ability to freely report on matters of public interest and, on the other, the right to protect one’s justified reputation. Crafting this balance involves ensuring that defamation laws — in both their framing and application — do not produce a “chilling effect” that could foster self-censorship among journalists looking to avoid potential legal consequences. This concern

is present even in cases in which illegitimate harm to reputation has unquestionably occurred: here, overly harsh sanctions may cause perfectly well-meaning and honest speakers to hesitate, negatively impacting the public's right to know.

The overwhelming consensus among international legal experts and rights groups is that criminal defamation laws do not strike this balance, particularly when there are other, equally effective ways of redressing the damage done. The personal and professional consequences and stigma resulting from criminal prosecution are a recipe for self-censorship. Further, because criminal proceedings necessarily involve the power of the state and often involve no financial risk to the offended party, there is a real danger that such provisions will be misused by prominent figures or invoked for inappropriate purposes.

By contrast, there is an equally strong consensus that, in principle, filing civil claims for damages can be a proportionate response for illegitimate harm done to reputation (in general, the malicious dissemination of false information about another person that seriously lowers his or her standing within a community). This is only the case, however, under certain conditions: for example, defendants must have the opportunity to present a proper defence, including pleas of truth, reasonable publication,¹ honest opinion, or privileged reporting on parliamentary debates or court proceedings. Further, any sanctions awarded must be proportionate to the harm done and procedural elements, such as the burden of proof and legal costs, should not present unreasonable barriers to justice.

Finally, in both its public statements and high-level advocacy, IPI has consistently promoted the implementation of a positive legal environment that respects the role of the media in society and that, instead of punishing speakers or “sending a message” that may result in the chilling effect mentioned above, focuses primarily on ensuring that the victims of false or misleading media coverage can adequately redress damage done to their reputations. For this reason, IPI encourages alternative forms of redress, such as a properly framed right of reply or recourse to press councils or other self-regulatory media accountability systems that may order corrections or clarifications in order to set the record straight and restore the offended party's rightful reputation. In our view, legal action should be undertaken only when these measures are ineffective or insufficient. in comparison to the harm suffered.

In EU, time is right for change

Slow moving as it may be, the international trend points toward the repeal of criminal defamation laws. In a landmark Dec. 2014 case, the African Court on Human and People's Rights expressed deep scepticism over the existence and application of criminal defamation laws.² The decision spurred hope that new names will be added to the short but growing list of countries that have recently discarded criminal defamation laws, including Jamaica, Mexico (federal level) and Montenegro and Mexico (federal level).³

Our research has found that in the past five years alone, five EU member or candidate states — Ireland, Macedonia, Montenegro, Romania and the United Kingdom — have done away with criminal defamation and insult, and several others, such as Finland, France, Latvia, Poland and Serbia, have taken important steps in the right direction (see visual on page 25 of this report). Bills that would improve the legal situation are now pending in Italy⁴ and Lithuania.⁵ The time is clearly right for change. Yet at the same time we have seen a troubling countermovement. Legislative and judicial attempts to repeal criminal libel in Romania were overruled twice by the country's Constitutional Court before being concretised by a 2014 penal-code reform. The wrangling revealed a troubling lack of consensus by both lawmakers and courts over decriminalising defamation. It also put journalists into legal limbo for years. Croatia abolished imprisonment for defamation in 2006, but considered reintroducing it as part of a penal code reform several years later (ultimately deciding against it). The newest EU member did, however, add a new offence, “shaming”, to its criminal repertoire as part of the reform and promptly applied it to journalists.

Europe's defamation laws in global context

Our research findings strongly indicate that international standards on freedom of expression are not being fully met in the defamation law and practice of EU countries.⁶ The room for improvement is great.

Unbalanced defamation law and practice — too much protection for reputation, too little regard for free expression and the need for a free press — does not just affect those directly involved: defamation proceedings have a cascading impact on the overall media culture and the public's right to know. Negative experiences in such proceedings may lead to a chilling effect among media colleagues at the institutional, local and national level, causing journalists or critical commentators to be overly cautious in publishing news in the public interest, if they continue to work at all. Reporters may be wary of covering certain topics, some of which — especially investigations into the actions of public officials — will be seen as off-limits altogether, perceived as not being worth the legal costs, long and distracting proceedings, the infamy of being sued or charged with a crime, expensive damages, criminal fines, the threat of imprisonment, and the possibility of losing one's job and having one's reputation tarnished.

But the ultimate losers in this situation are EU citizens who depend upon the free flow of information to make informed decisions about issues that matter in their daily lives, including the identities of the officials who make important policy decisions that impact society. Moreover, without this information, power risks becoming concentrated in the hands of political and business elites and serious abuses go unnoticed or unpunished. Good defamation policy is not just about making life easier for journalists: it is essential to the foundation of the democratic process.

There is one last reason why defamation law in the EU matters. Despite the challenges noted in this report, EU member states are among the globe's biggest proponents of media freedom and therefore are often referred to as benchmarks for measuring the progress of more restrictive governments. Put simply, the EU sets an example. And when things are not in order at home, it is more difficult to justify pressing for changes abroad. The existence of archaic laws in the EU makes it easy for other countries to claim that they are following European standards and to reject the criticism of foreign governments, international civil society and domestic journalists and activists fighting for change.

RESEARCH OVERVIEW

We researched the legal provisions related to both criminal and civil defamation⁷ in the 28 EU member states and five out of the six current EU candidate countries.⁸ Research was conducted using a common methodology to assess these provisions across all 33 countries surveyed (see Methodology, Chapter III). We took into account both statutory and case law, and worked in consultation with national legal experts.

This report presents the findings in the form of a comparative overview of defamation laws in the EU, allowing for a discussion of the extent to which these laws as a whole correspond to international standards⁹ and highlighting critical advocacy points.

Summary of Key Findings

Our initial findings indicate that, broadly speaking, EU member states fall short of meeting international standards in numerous ways:¹⁰

- The vast majority of EU member states maintain *criminal defamation provisions* that provide imprisonment as a possible punishment;
- In the majority of EU member states where these provisions still exist, *prosecutions* continue to be carried out and journalists continue to be sentenced to criminal punishments;
- *Public officials* and, in some cases, public figures, continue to enjoy stronger protection in defamation law than private individuals in the majority of member states;
- The majority of EU states have criminal laws punishing *insult toward “objects”* such as the state, state symbols and state institutions;
- The vast majority of criminal defamation laws currently on the books in the EU are *defined in overly broad terms* that risk sweeping up opinions and value judgments made in the context of democratic discourse;
- *Standard defences*, such as truth and good faith, are broadly lacking in both criminal and civil formal law; where they do exist, illegitimate restrictions water down their effectiveness;
- Just two EU states cap *civil damages* in law, opening the door to extravagant libel claims and awards that seek to silence the press;
- In some countries, external issues, such as *litigation costs*, threaten the right of both plaintiffs and defendants to have their day in court; and
- The *adoption* into formal law and the *application* into legal practice of international standards on defamation as well as the case law of the ECtHR remains haphazard.

In-depth charts included in the annex to this report allow for a quick comparison of critical provisions in defamation law among EU member and candidate states, and provide an explanation on the categorisation scheme. Legal references for the charts are also included in the annex.¹¹


The big picture



KEY FINDINGS

Criminal defamation laws are alive and well

Criminal defamation laws



Despite an overall trend toward the abolition of criminal defamation laws, to say such laws are alive and well in the European Union would be putting it mildly. *Of the 28 EU member states, only five have repealed criminal defamation as an offence against private individuals:* Cyprus, Estonia, Ireland, Romania and the United Kingdom (UK). Yet, even among these countries, considerable work is still needed. For instance, in Cyprus, insulting the armed forces, insulting foreign heads of state and libelling the memory of the deceased remain criminal offences, as does public vilification; in Estonia, the same goes for insulting public authorities and symbols of the Estonian and foreign states. Romania's 2014 Criminal Code eliminated all defamation-related provisions, although the country's constitution prohibits defamation of the state and nation. Blasphemous libel remains on the books in Ireland and in Northern Ireland (UK). In addition, defamatory libel remains a criminal offence in Gibraltar, which is a British Overseas Territory but part of the EU.

Advantage: Candidate countries



Our research noted particular progress toward the repeal of criminal defamation laws among EU candidate countries. Indeed, both the Republic of Macedonia/Former Yugoslav Republic of Macedonia (FYROM) [hereafter, "Macedonia"] and Montenegro recently decriminalised defamation and insult (2012 and 2011, respectively). Serbia decriminalised defamation in 2012; insult remains a criminal offence there, although it is no longer punishable with imprisonment. Criminal defamation remains on the books in both Iceland and Turkey.

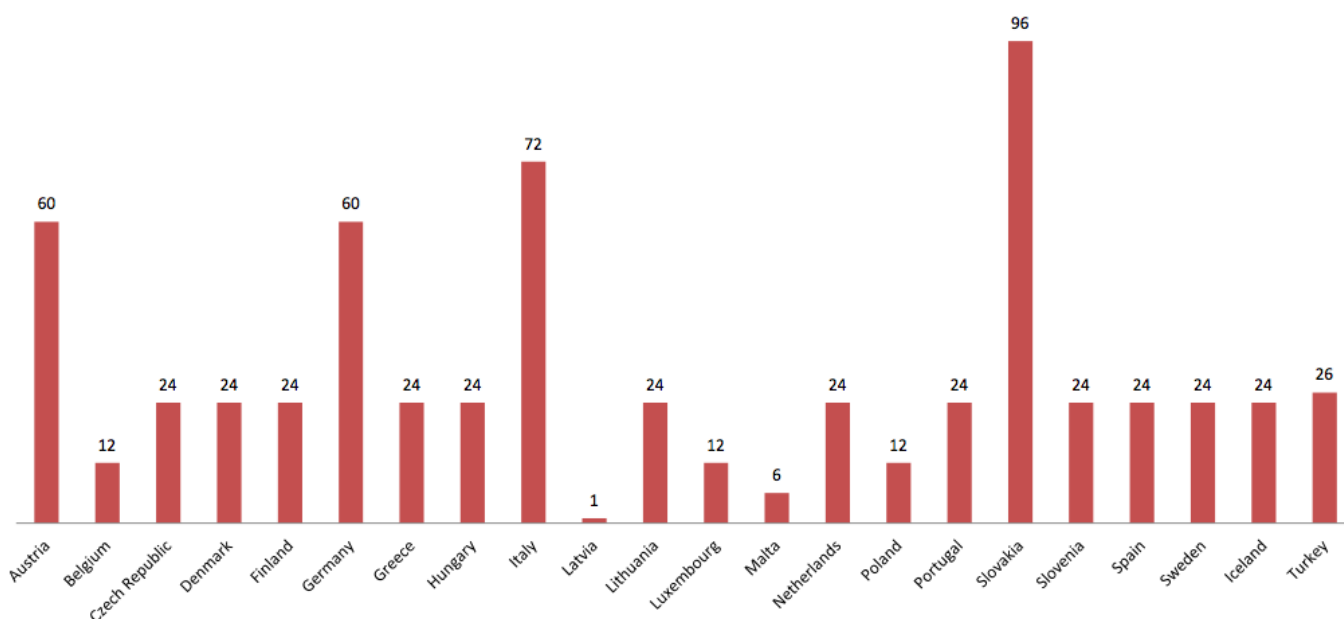
Harsh punishments are the rule, not the exception

Of the 23 EU states in which defamation remains a criminal act, 20 retain imprisonment as a possible punishment. Bulgaria, Croatia and France are the exceptions¹² (the punishment in these countries is a criminal fine). This statistic comes despite clear international consensus that imprisonment is never an appropriate penalty for defamation. On average, the highest possible prison sentence for a form of defamation in EU states is two years. In Slovakia, however, those convicted of defamation under certain circumstances risk up to eight years in prison, the highest in the EU (although in Portugal, the related offence of false accusation also calls for up to eight years in certain circumstances). Under Italy's 1948 Press Law, the subject of current reform efforts, journalists can face up to six years in prison for libel (under the country's Mussolini-era penal code, the highest sentence is three years). In Austria and Germany, the most serious forms of defamation may lead to five years in prison.

Imprisonment is not the only archaic punishment that remains on the books. In some EU countries, those convicted of defamation may, under certain circumstances, face the loss of political rights such as the right to vote or hold public office (the Netherlands, Spain, e.g.) or the loss of the right to practice a particular profession (Bulgaria, the Netherlands, e.g.).

Criminal punishments

GRAPH: PRISON SENTENCES FOR DEFAMATION AND INSULT
longest possible prison sentence, in months, for a general defamation offence



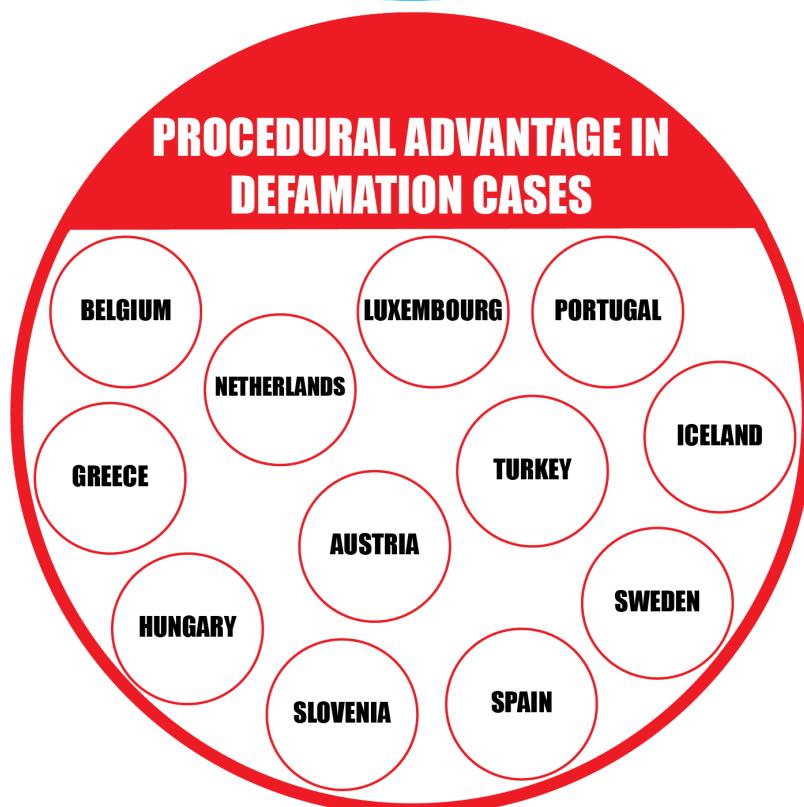
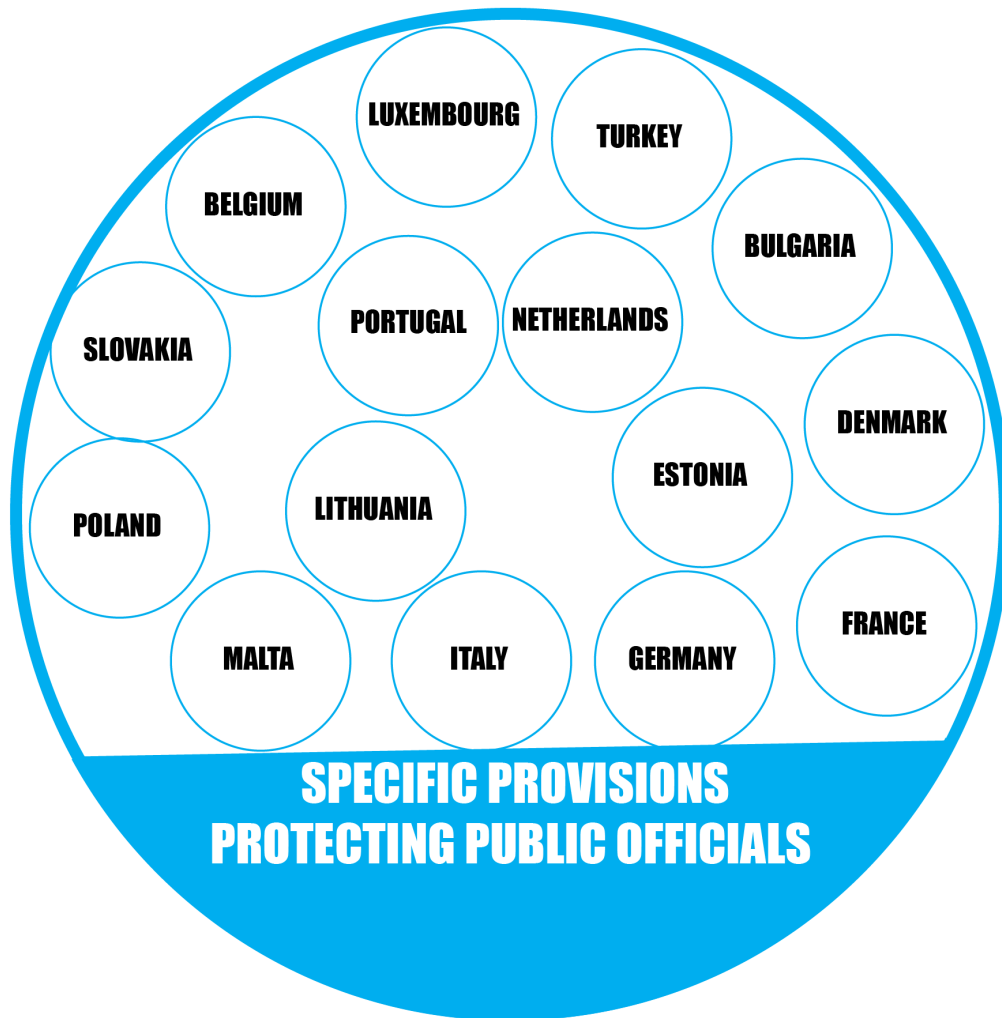
Convicting journalists for defamation: not a thing of the past

While the formal legal situation is reason enough for alarm, even more sobering is our finding that criminal defamation laws continue to be applied across the EU. Our research so far has documented that in the last five years alone, journalists in 15 EU countries — Bulgaria, Croatia, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Lithuania, Malta, Poland, Portugal and Spain¹³ — have been convicted of criminal defamation (i.e., a criminal punishment such as a fine or prison term was imposed) at some court level. This list should not be considered exhaustive, as continued research may reveal convictions in countries not listed here.

Criminal convictions

Our initial research confirms that Italy remains the only EU member state to routinely send journalists to prison for libel¹⁴ — a scandalous situation that a pending reform would help rectify. But our research has found that over the past decade courts in other EU states, such as Greece,¹⁵ Poland,¹⁶ Portugal¹⁷ and Slovenia,¹⁸ have ordered prison sentences or suspended prison sentences for journalists or bloggers convicted of defamation.¹⁹ Prison sentences have also been imposed for defamation in candidate

Criminal provisions protecting the honour and reputation of public officials and public figures (January 2015)



countries Montenegro²⁰, Serbia²¹ and Turkey,²² in some instances because the criminal fine imposed was unaffordable.

Our research also indicates that *in some countries at least, criminal defamation proceedings are actually on the increase*. Of particular concern here is Croatia. In 2013, the offence of “shaming” — the dissemination of facts about a person before a third party that may harm that person’s honour or reputation — was introduced into the country’s new criminal code; already, one journalist has been convicted of shaming after reporting on financial problems at a health clinic partially sustained with public funds. The Croatian Journalists Association reported in April 2014 that at least 40 criminal cases related to defamation were pending against journalists there.²³

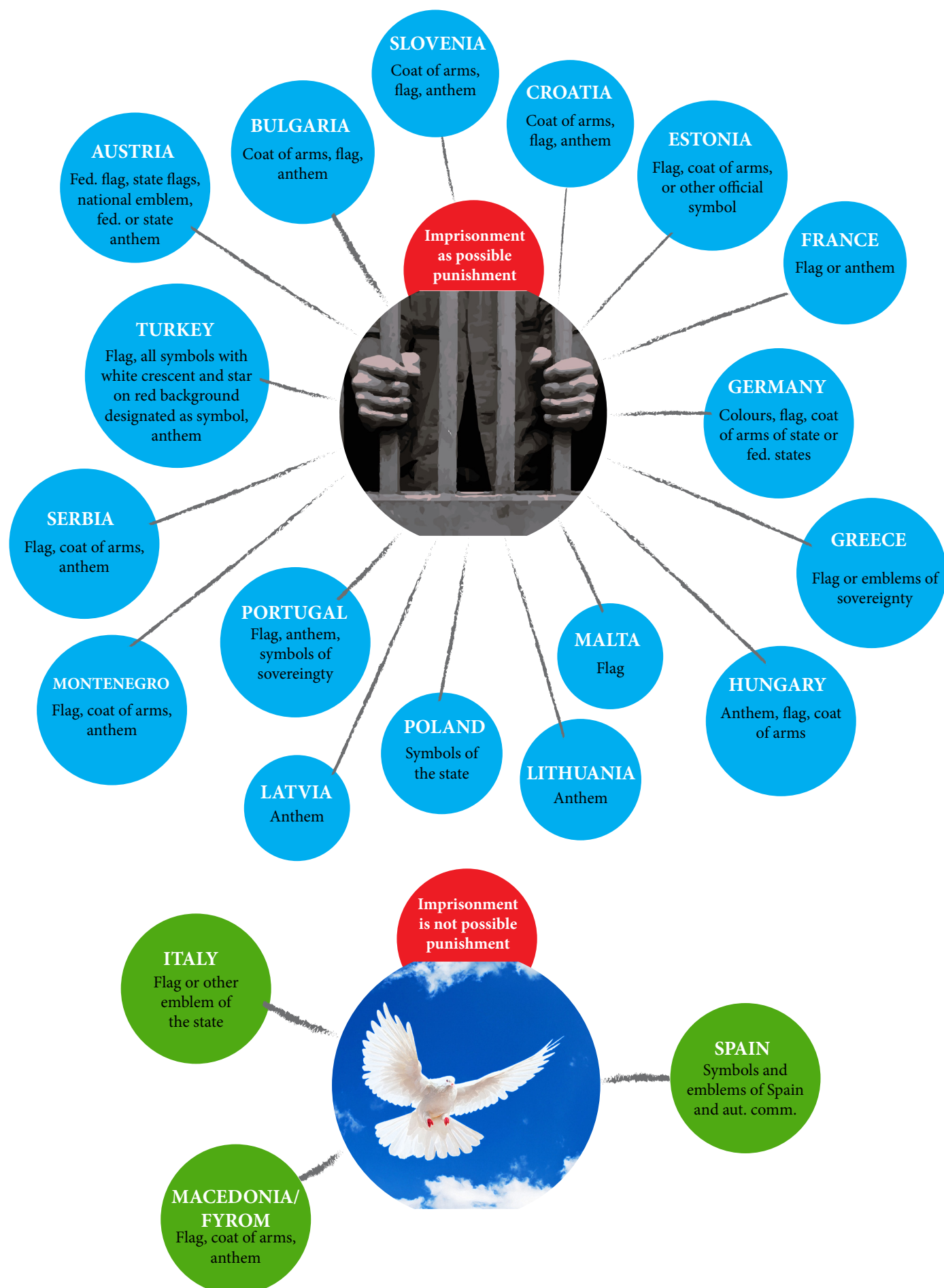
Scales of justice firmly tipped toward power

A central principle of European Court of Human Rights (ECtHR) case law on defamation is that the limits of acceptable criticism are wider as regards public or political figures than as regards private individuals. This principle is based on the idea that, in a democracy, the actions of public officials must be open to public scrutiny. Our research suggests that *this principle is not fully reflected in the laws of the majority of EU member states*.

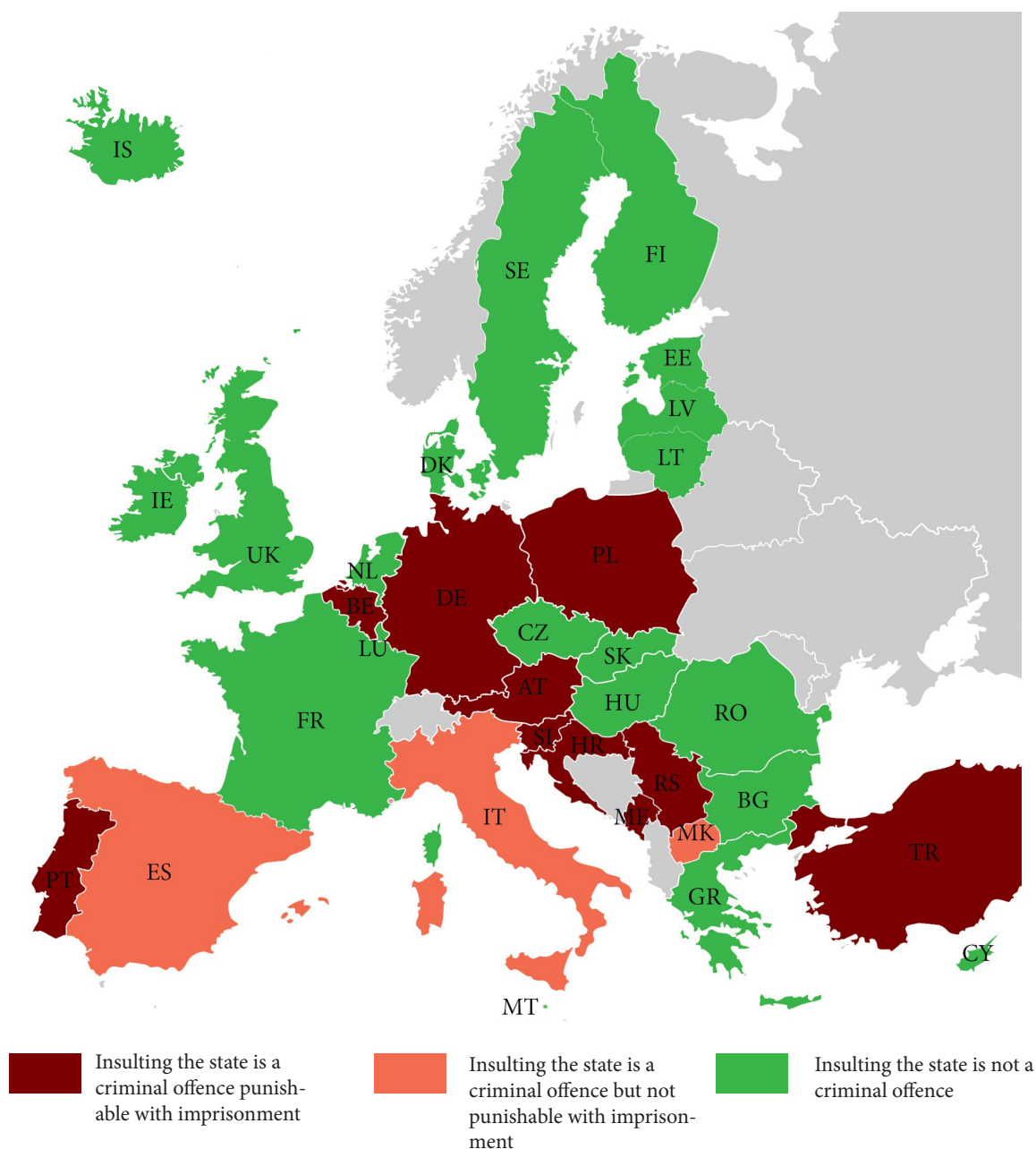
- The laws of 14 member states contain special provisions protecting the honour or reputation of public officials or public figures.
 - Of these 14, six — Bulgaria, France, Germany, Italy, Portugal and the Netherlands — punish basic defamation and insult more harshly when directed at public officials.²⁴
 - The remaining eight — Belgium, Denmark, Estonia, Lithuania, Luxembourg, Malta, Poland and Slovakia — have separate criminal offences protecting the honour or reputation of certain public officials.²⁵ In general, these offences are unrelated to the offence of libel and, therefore, it should not be understood that public officials enjoy advantages in *libel* law in these cases. Nevertheless, because these provisions may have implications for free speech and may be used to protect the “honour” of public officials, we have noted them in this report. Please see footnote 25 (above) and Chart B for additional information on these offences.
- The laws of at least 10 member states offer procedural advantages to public officials in defamation cases. Typically, this means that whereas private individuals must bring criminal cases to court on their own or must file a complaint in order to initiate a police investigation, public prosecutors can take action on their own initiative when the offended party is a public official. Thus while these procedural arrangements are problematic because of the potential for treating public officials preferentially, they also tend to violate the standard that public prosecutors should not be involved in the prosecution of alleged acts of criminal defamation.
- Altogether, 20 EU states provide one of the two types of protection for public officials noted above (Croatia, Cyprus, the Czech Republic, Finland, Ireland, Latvia, Romania and the United Kingdom are those that do not).
- Our research so far has found troubling examples of *high-ranking public officials or other prominent public officials targeting journalists in criminal or civil defamation proceedings* in Belgium, Greece, Hungary, Italy, Latvia, Lithuania, Macedonia, Malta, Montenegro, Poland, Portugal, Slovenia and Spain.^{26 27}
- In 12 EU member states,²⁸ insulting the head of state is specifically established as a separate criminal offence (in Lithuania it is an administrative offence). This category includes *lèse-majesté* laws:²⁹ among the EU’s seven monarchies, only two (Luxembourg and the UK) have abolished insult to the monarch as a separate criminal offence. In Sweden, offending the monarch may lead to six years in prison, in the Netherlands five; in Denmark, punishments for insult and defamation are doubled when the monarch is the offended party.
- Our research has highlighted a few cases in which laws protecting the head of state have been applied in recent years, including *multiple convictions in Poland and Spain*.³⁰ In the Netherlands, an investigation by the newspaper *NRC Handelsblad* found that between 2000 and 2012 there were 19 criminal proceedings for *lèse-majesté* in the Netherlands.³¹ The paper reported that nearly half of these led to a criminal conviction, including five fines and one suspended prison sentence.

Defamation of public officials

Criminal provisions punishing insult to state symbols (January 2015)



EU members and candidate countries with provisions protecting the honour of the state (January 2015)



“Symbolic” acts with real consequences

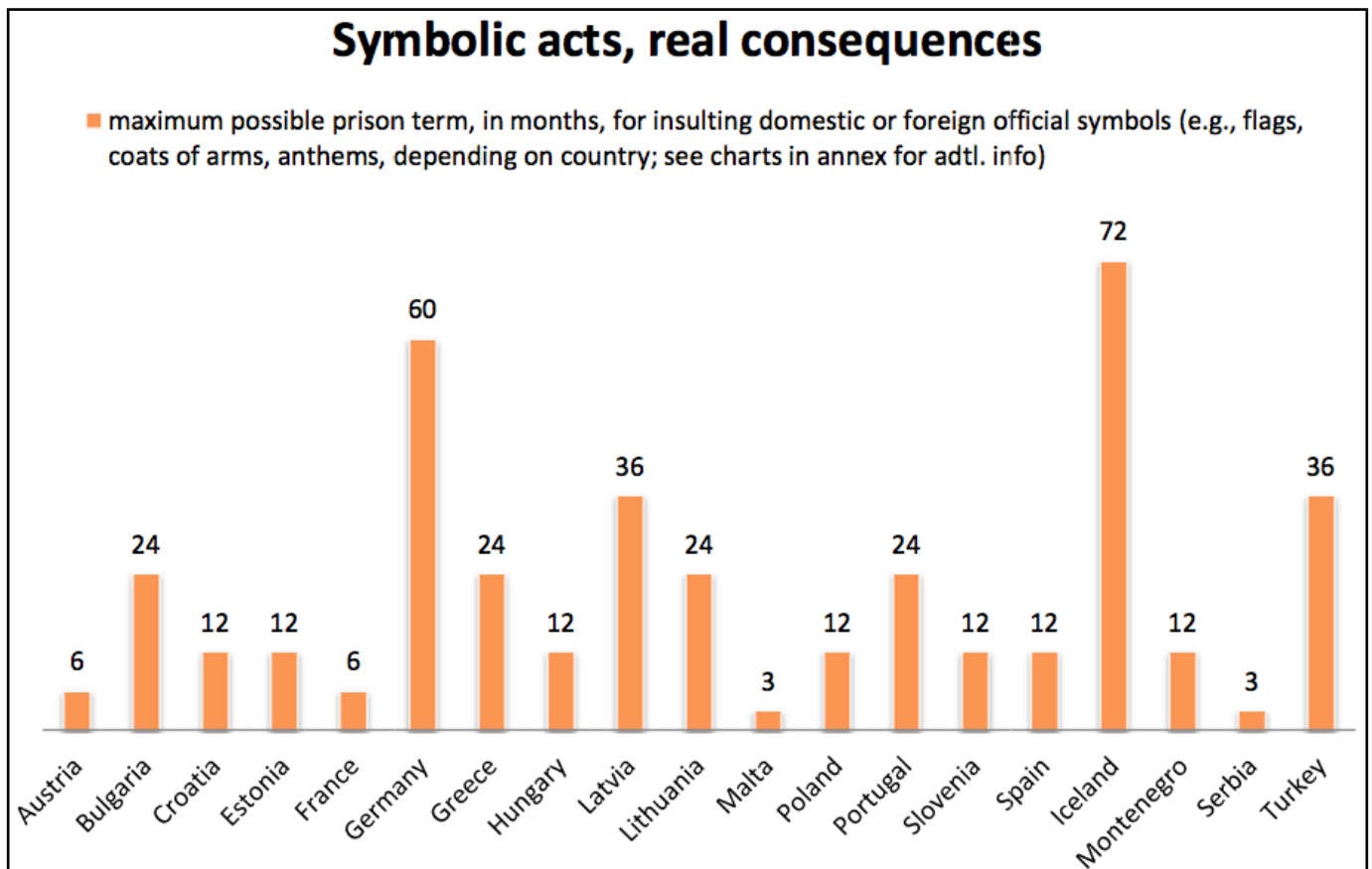
Despite not having a reputation, objects and institutions such as flags, anthems, coats of arms, legislatures, courts and the state are protected from defamation and insult in the criminal codes of a large number of EU member states.

- *Nine EU countries have criminal offences protecting the honour of the state* (four of five candidate countries also have such laws, Iceland being the exception); in all but two (Italy and Spain) imprisonment is a possible punishment. This offence is punished most harshly in Germany (up to five years), Poland (up to three years), and Belgium, Portugal and Turkey (up to two years).
- *Ten EU states³² single out foreign officials, such as foreign heads of state and diplomats, for special protection under defamation law.* EU candidates Iceland and Macedonia do as well. Imprisonment is a possible punishment in all of these 12 countries except for France and Macedonia.
- *Sixteen EU countries³³ and all five candidate countries criminally punish the act of insulting state symbols, such as flags, anthems and coats of arms; in all but*

Insults to the state and state symbols

three of these 21 cases (Macedonia, Italy and Spain), imprisonment is a possible punishment.

- *Eleven EU countries*³⁴ criminally punish insulting the symbols of foreign states, and five of those eleven include the symbols of international organisations, such as the UN and the International Red Cross; all five candidate countries punish offence to foreign symbols, and all but Turkey include those of international organisations.
- As noted above, potential punishments for these “symbolic” offences can be harsh — the leader in this category is Iceland, which punishes insult toward the flag of the UN or Council of Europe with *up to six years in prison* in the case of a “gross offence”.



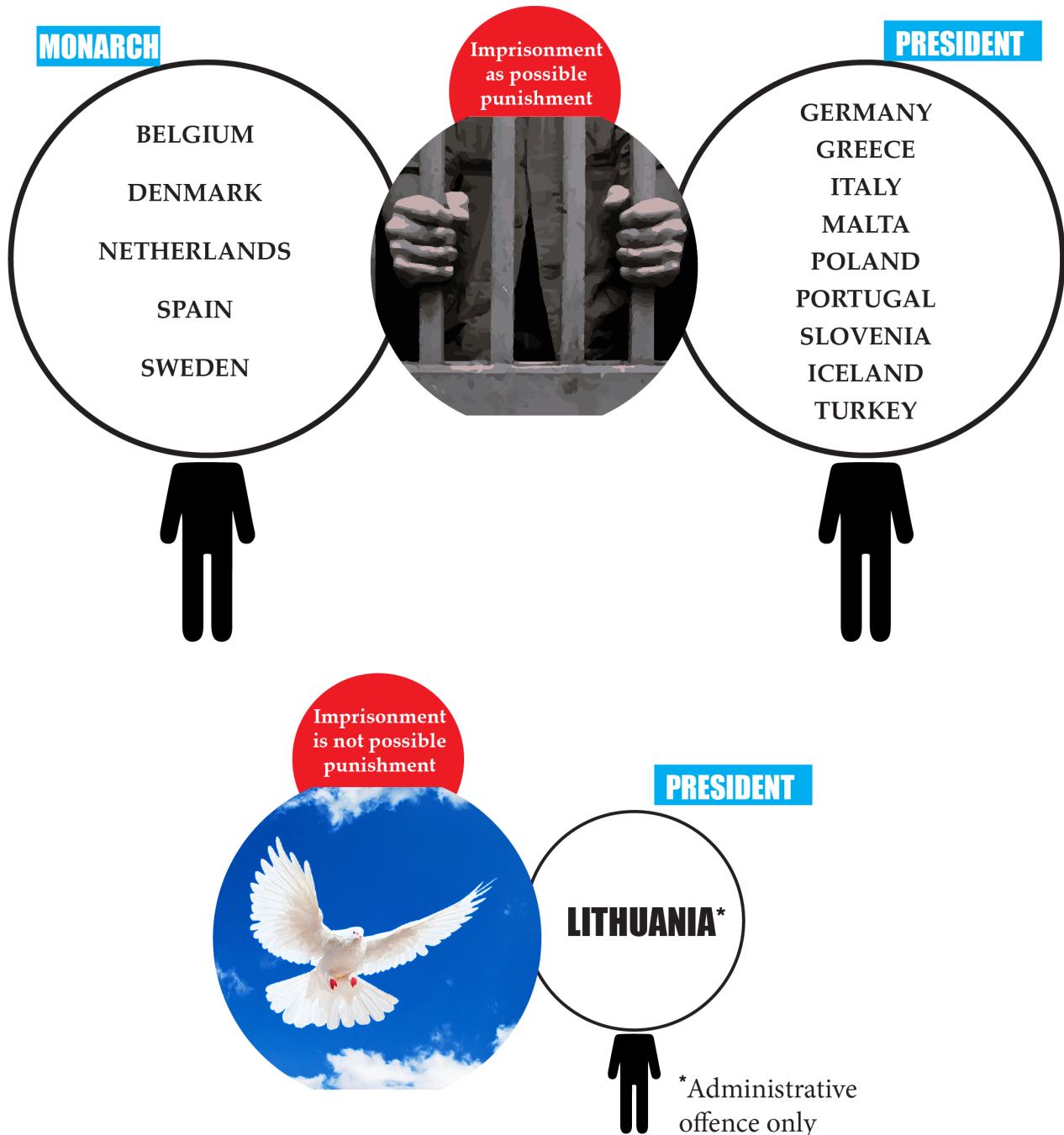
What's in a definition? In the case of criminal defamation, a lot

Definition of criminal defamation

In IPI's view, all criminal defamation laws should be abolished and replaced with adequate civil legislation on defamation. However, IPI notes that the ECtHR has not ruled out the use of criminal defamation laws, although it has expressed concern over their application. In the case that criminal defamation laws must continue to exist, IPI considers that their scope should be restricted to false allegations of specific, serious criminal activity that put the victim in danger of prosecution.

On this measure, EU countries fare particularly badly. To be sure, a few countries, such as the Czech Republic and Slovakia, have tightly defined the offence of defamation, restricting it to false information that may damage a person's reputation.³⁵ However, our research clearly shows that *far too many criminal defamation laws contain expansive, overbroad provisions that punish vague or imprecise allegations, value judgments or statements that harm a person's "honour" or "dignity", which are often too broadly defined. Many do not specify that defamatory allegations must be false.*³⁶ Such provisions are particularly open to abuse.

Special criminal provisions protecting the honour and reputation of national heads of state (January 2015)



Opinions: In the EU, they may still haunt you

In general, our research has indicated that legal support for the freedom to express opinions is stronger in case law than in statutory law. We have found that a number of national courts have adopted the ECtHR standard that defamatory opinions, even those that shock, offend or disturb, are allowed unless lacking any connection to fact. These courts have shown a willingness to be more tolerant of opinions than statements of fact. For example:

- In 2014, the Hungarian Constitutional Court ruled that, in contrast to factual allegations, value judgments are protected by freedom of expression “almost without limitation”.³⁷
- In 2013, the Lithuanian Supreme Court emphasised that there may be no criminal responsibility for voicing one’s opinion on real (correct/accurate) information.³⁸
- The Czech Supreme Court has held that value judgments, unlike factual allegations, enjoy a presumption of constitutionality — i.e. as a rule they are to be accepted.³⁹

Insult laws and the criminalisation of opinions

- In 2008, the Dutch Supreme Court confirmed that a blogger was free to express her opinion, even in a “cynical and provocative way”, about the honesty of a well-known public figure who had denied accusations of murder. By contrast, the Court held that an investigative journalist who reported that the same public figure had committed the act of murder in question could be held liable for defamation insofar as he had not provided sufficient proof for his claims.⁴⁰

Certainly, these strong statements may mask significant problems in application. However, we are greatly concerned by *laws that continue to criminalise value judgments and opinions*. Our research has found that such criminalisation takes several, sometimes overlapping, forms:

- “Insult” provisions.⁴¹ We have found that 20 of the 33 countries surveyed maintain some form of separate “insult” law in addition to libel laws: Austria, Belgium, Bulgaria, Croatia, Denmark, France, Germany, Greece, Italy, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovenia, Spain, Sweden, Iceland and Serbia. In 15 of these countries, imprisonment is a possible punishment (not in Bulgaria, Croatia, France, and Serbia; Malta provides for temporary detention).
- Broadly worded defamation laws that do not restrict themselves to allegations of fact. Finland, for example, defines defamation as spreading false information *or* false insinuations – *or* subjecting a person to contempt or disparaging a person in any other manner. In Turkey, the primary defamatory offence (*hakaret*) serves as a catch-all for any statement undermining the honour and dignity of a person, regardless of whether it is an insult or a factual allegation.
- A failure in both statute and practice to properly distinguish between fact and value; this is critical because defendants cannot be expected to prove the truth of vague or imprecise statements that, under the circumstances, must be understood as value judgments.⁴²

In the EU, truth is not a get-out-of-jail-free card

Individuals cannot legitimately protect a reputation that they do not have or do not deserve. *But in the EU an absolute exceptio veritatis⁴³ is itself an exception.* In most states surveyed, truth is generally a defence for defamatory assertions of fact — either because a specific provision states this or because it can be implied from the definition of the offence⁴⁴ (one notable exception is Italy, where the Criminal Code states that truth is not a defence, subject to some exceptions). However, our research so far indicates that the problem lies in the details:

Defence of truth

- First, many EU states set *exceptions for when truth may be admitted as a defence*, the most common of which being when a factual assertion relates to a person’s private life (this is the case in, for example, France). Particularly in the context of covering public officials, such provisions run the risk that journalists will not be able to report on actions that, although falling partly into the private sphere, are important for judging an elected official’s character with regard to his or her ability to carry out public functions. Similar restrictions abound. In Croatia, truth is not a defence if the defendant acted with intent to harm the offended party’s reputation. In Poland, defendants must prove, apart from truth, that they were acting in the public interest.
- Second, criminal laws in some countries, including Denmark, Germany, and Poland, *explicitly allow for true statements that cannot be punished as defamation to be punished as insult* depending on the form and circumstances in which the statements were made (often known as “formal insult”).
- Finally, our research so far notes that, in an effort to balance rights to free expression and reputation, *courts in some countries have given too much weight to the circumstances in which true statements are made* at the expense of the importance of truth as a criterion. In Finland, for example, successive courts convicted two editors of criminal defamation on the basis of true facts that, under the circumstances in which they were published, were found to have amounted to a false insinuation about a prominent businessman. Later, the ECtHR found that the Finnish courts had violated the editors’ right to free expression.⁴⁵

Additionally, *our research so far suggests that requiring the defendant to prove the truth of factual assertions is a universal principle* in EU defamation law. This, however, runs counter to international standards, although it does reflect rulings of the ECtHR.⁴⁶

Furthermore, although the ECtHR has emphasised that states must not impose unreasonable restrictions on presenting such proof⁴⁷ many continue to do so (for example, by stipulating that the only admissible proof of a criminal act is a court judgment to that effect, as in Slovenia). Belgium's criminal code foresees the possibility that in certain cases presenting proof of an allegation will not be allowed (the types of allegations to which this applies are not expressly defined, but they are understood to include, for example, the accusation of a crime for which the statute of limitations has passed or the accusation of an extramarital filiation after a certain period of time has passed).⁴⁸

Legal guarantees for journalists acting according to professional standards remain work in progress

Defendants in defamation cases should be able to rely upon a defence of reasonable publication – that is, if they have acted in good faith in publishing information in the public interest, even if that information later turns out to be false. We looked for this type of defence in our research and can so far make the following general comments:

Specific clauses in law protecting *journalists* from liability as long as they have observed basic journalistic duty (such as duly checking facts) are not common; some exceptions include Austria, Ireland, Luxembourg, Macedonia and Serbia. Another group of states, including the Netherlands and Portugal, provide defences of “good faith” in criminal law. Finally, some states provide in law a general clause exempting defendants from liability if the decision to publish could be seen to advance a “legitimate interest”.

In addition to these legal guarantees, we also found that the highest courts of several countries, such as those of Bulgaria, the Czech Republic, France, Germany and Italy, have clearly recognised a right of reasonable publication for journalists and in some cases set specific standards on which courts should consider such cases. German constitutional jurisprudence, for example, has established clear rules for journalistic reporting on “suspected facts”.⁴⁹

We also noted that this defence continues to evolve. In England and Wales, where courts previously recognised the so-called Reynolds defence,⁵⁰ the Defamation Act 2013 now provides a “public interest” defence, which goes farther than a reasonable publication defence in that the law does not require proof of due diligence or the absence of malice. In France, courts have traditionally stipulated that they will not accept good faith defences if the publication was driven by animosity, although recent decisions by the Court of Cassation have held that public interest outweighs malice.⁵¹

Defence of reasonable publication

Defamation of the deceased: A lingering threat

Our research found that *17 EU states*⁵² *specifically allow for criminal charges to be brought on behalf of the deceased* (although this count does not necessarily exclude the possibility that charges may be brought in others). Notably, this includes Cyprus, which has otherwise repealed criminal defamation. All candidate countries except Macedonia provide a similar criminal offence.

These provisions are rarely circumscribed to prevent abuse, such as preventing free debate about historical events or figures. Among EU states, only Finland and France specify that charges cannot be brought unless the alleged defamation affects the honour or causes suffering to the deceased person's living relatives. In many of the remaining 15 states, there are separate offences allowing wide room for interpretation: “libelling the memory of a deceased person” (Cyprus); “insulting the honour of the dead” (Denmark); “defaming the memory of a deceased person” (Germany); “contempt for the memory of the deceased” (Lithuania). In others, such as Croatia and

Criminal laws protecting the reputation of the deceased

Slovenia, criminal actions on behalf of the dead are possible under the general terms of criminal defamation law.

Among the countries in which specific punishments for this type of offence were given, the highest, according to our research, were in Germany and Turkey (up to two years in prison), followed by Cyprus, Hungary and Iceland (both up to one year prison).

We have found that most EU states do not provide a specific statute of limitation for this offence.⁵³ When such statutes of limitations are provided, they tend to be overly long, which increases the chances that such provisions will be misused to stifle debate about historical events. In Portugal, the statute of limitations allows an action for damage to the reputation of a deceased person to be brought until *50 years* have passed following that person's death. In Denmark, the period is *20 years* — but if the act was done in bad faith, the statute of limitations does not apply.

In civil law, vagueness is the name of the game

Civil defamation laws

Although international standards clearly favour the use of civil proceedings to resolve defamation claims, *very few countries surveyed have passed specific civil legislation covering defamation and providing adequate defences* (including truth, reasonable publication, honest opinion and privilege) for journalists and others sued for damages. Only Ireland, Macedonia and the United Kingdom have passed legislation *specific* to defamation that reasonably conforms to international standards. A few other states, such as Austria, Croatia and Luxembourg, have passed *general* media legislation⁵⁴ that specifically addresses defamation and provides most relevant defences.

In the majority of EU member states, defamation is treated by courts as a wrongful act (normally, a violation of a person's constitutional right to dignity or reputation) under the general terms of tort or contract law. In these cases, while defamation is sometimes mentioned, detailed stipulations or defences are often not provided.⁵⁵ While flexibility in the law to address the considerations of each particular case is not necessarily a bad thing, we consider, concurring with the widely held belief among policy makers and legal experts, that journalists would generally benefit from clearer statutory guarantees regarding their rights in civil cases.

Unmeasurable harm, very measurable consequences

Damages for pain and suffering

The amount of non-pecuniary damages (compensation for pain and suffering) that can be awarded in defamation cases should be capped at reasonable limits. Being not measurable and subject to a court's discretion, such damage awards may be abused to punish speakers instead of compensating for true emotional harm suffered and disproportionate awards — or simply outrageous claims by plaintiffs — may cause a chilling effect. *But just two EU countries, Austria and Malta, currently provide statutory caps on non-pecuniary damages in defamation cases involving the media.* In Austria, damages are capped at €20,000 in most circumstances, and at €50,000 for particularly harmful instances of defamation. In Malta, non-pecuniary damages are capped at €11,646.87. *One candidate country, Macedonia, also caps non-pecuniary damages.* (In Macedonia, the caps are €2,000 for the journalist, €10,000 for the editor and €15,000 for the media outlet.)

Our study has not looked systematically at damage amounts awarded in practice at the national level, although some general comments are noted in the country files. However, our findings do suggest that in some cases damage claims and awards continue to be disproportionate both to the harm done and to journalists' salaries.⁵⁶ For example, while Macedonia's new civil defamation law is relatively strong in terms of the clear defences provided, the caps on damages introduced have been criticised as excessively high, particularly in proportion to journalists' salaries, thereby potentially outweighing the positive aspects of this law.⁵⁷ High court fees associated with the Macedonian law have also drawn criticism (see below)⁵⁸

It's not just the law that matters

Practical issues, such as high legal costs, can mitigate the positive impact of legislation that strongly protects the rights of journalists and others targeted in defamation proceedings. Our study did not attempt to research such legal costs in all countries reviewed, although we did look closely at the situation in England and Wales. There, the Defamation Act 2013, which has been praised by rights organisations including IPI, has taken effect *in the shadow of legal costs that have been perceived as excessive by both government and civil society*. These costs have been fuelled in part by contracts that allow attorney to double their fees if successful, which affect rights of both plaintiffs and defendants to have their day in court.⁵⁹

Similarly, while Macedonia's civil defamation law has also been praised by rights organisations — key problems such as high caps on moral damages notwithstanding — recent reports suggest that its application has been hampered by civil court costs that are “dramatically higher” than those in criminal court.⁶⁰

Our particular focus on the cost issue in England and Wales should not imply that high costs are not an issue elsewhere. However, we do note a recent study⁶¹ by Oxford University researchers that found that average costs in English libel proceedings were 140 times higher than in continental Europe. This is a compelling finding, but its methodology has been criticised by some,⁶² and we consider that further research in the area of comparative costs may be needed.

Not everyone is marching to the same tune

Our research so far reveals several gaps in the adoption of international standards on freedom of expression as these relate to the protection of reputation.

- *A gap between national court practice and national statutory law.* Although many national courts have recognised the need to balance free expression and reputation according to modern democratic principles,⁶³ this is often not reflected in criminal or civil statute, much of which is vague, acutely outdated, and reads as though it were written by past authoritarian governments — hardly surprising considering that, in some cases, as in Portugal and Italy,⁶⁴ it was.
- *A gap between lower national courts and higher national courts.* Our research so far has noted a number of cases in which journalists have been convicted or found civilly liable for defamation by lower-court judges, only to have these verdicts overturned at a higher level.⁶⁵ Despite the ultimate positive outcome, the experience may still cause a chilling effect on other journalists who wish to avoid lengthy procedures and unnecessary legal costs. At the most practical level, when journalists are wrapped up in defamation proceedings and unable to fully do their job, the public's right to know is threatened.
- *A gap between Strasbourg and EU member states.* Although, as suggested above, our research does indicate that national courts have sought to implement ECtHR case law, this is by no means universal, and problems with application remain.⁶⁶ Moreover, national laws are not being adapted to ECtHR principles with any particular alacrity.⁶⁷ This is seen in particular in the preponderance of national laws that still prescribe imprisonment as a punishment for defamation, despite ECtHR rulings to the contrary, and in provisions that punish defamation committed against public officials more harshly.
- *A gap between international civil society and Strasbourg.* The ECtHR has proven to be a strong defender of the media press, frequently underscoring the media's invaluable “watchdog” role in a democracy. Yet several key differences remain between ECtHR case law and international standards; the Court has, for example, declined to conclusively rule out criminal sanctions for defamation. Many groups are also concerned about recent Court practice of applying privacy standards — in which truth and public interest are not decisive elements — to defamation cases and are troubled by a 2013 ruling, currently under appeal before the Grand Chamber, that an Estonian website may be held liable for defamatory comments left by readers even though the site promptly pulled the comments upon request.⁶⁸

Legal costs

Application of standards on defamation

Blasphemy laws remain in force

Our research revealed that at least 14 EU member states maintain criminal or administrative laws that punish blasphemy and/or religious insult laws: Austria, Cyprus, Denmark, Finland, France (Alsace-Moselle only), Germany, Greece, Italy, Malta, Poland, Portugal, Spain and the United Kingdom (Northern Ireland only). EU candidate states Iceland and Turkey also maintain similar prohibitions.

Imprisonment is a possible offence in all but Italy and Ireland, with the situation in Northern Irish common law unclear.

It should be noted that the above tally includes laws that prohibit defamation of religions as such or their beliefs, practices and divinities, but not laws related to group defamation of persons or laws on incitement to hatred, violence or discrimination. Further information can be found in Chart H in the Annex to this report.

Both the U.N. Human Rights Committee, in its General Comment 34, and the inter-governmental special rapporteurs on freedom of expression, in their 2008 Joint Declaration on Defamation of Religions, have stated that blasphemy and similar laws are not compatible with international standards on freedom of expression. More information to this point can be found in our accompanying briefing on defamation standards.

We did not systematically look at the application of blasphemy laws in Europe, but anecdotal evidence suggests that prosecutions and convictions continue to occur. In France, for example, a Muslim legal-defence group used the archaic Alsace-Moselle provision to file charges against the satirical magazine *Charlie Hebdo* in 2014.⁶⁹ In Poland, two well-known singers, Dorota Rabczewska and Adam Darski, were charged with offending Catholic sensibilities after comments made in 2009 and 2007, respectively. Rabczewska was sentenced to a fine of approx. €1,160.⁷⁰ In Greece, the creator of a Facebook page satirising a Greek Orthodox monk who died in 1994 was sentenced in Jan. 2014 to 10 months in prison.⁷¹

SELECTED RECENT REFORMS (2009-2014) TO DEFAMATION LAW IN EU MEMBER STATES AND CANDIDATE COUNTRIES

Finland

-Abolished the possibility of imprisonment for defamation, except in cases of “aggravated” defamation (2014)

Ireland

-Adopted the Defamation Act 2009, which strengthened defences for defendants in defamation cases and abolished criminal libel (2009)

Latvia

-Abolished the offence of intentional defamation under Article 156 of the Criminal Code (2009)
-Abolished Article 158 of the Criminal Code on defamation committed through the mass media (2009)

France

-Abolished Article 26 of the Law of 1881 on the Freedom of the Press, which punished insult to the French president (2013)
-The Constitutional Council ruled two exceptions to the proof of truth in defamation cases unconstitutional. The exceptions stated that when the facts refer to a matter more than 10 years old or to a person's pardoned or expunged conviction proof could not be presented (2011, 2013)

Montenegro

-Decriminalised insult and libel (2012)

FYROM/Macedonia

-Decriminalised defamation and insult (2012)
-Adopted the Law on Civil Liability for Insult and Defamation (2012), providing stronger defences for journalists. Concern remains with this law, in particular over excessively high caps on moral damages

Netherlands

-Abolished the criminal offence of blasphemy (Articles 147, 147a, and 429bis of the Criminal Code) (2013)

Serbia

-Decriminalised libel (2012)

Poland

-Amended the Criminal Code to reduce punishments for defamation. Imprisonment is now only possible in the case of defamation committed through the mass media (2010)

United Kingdom

-Fully abolished criminal libel in England and Wales (Coroners and Justice Act, 2009)
-Adopted the Defamation Act 2013, strengthening defences for defendants in defamation cases, introducing a “serious harm” principle and combating libel tourism, among other points (2013)

Romania

-Decriminalised insult and libel (2014)

CRIMINAL DEFAMATION BY THE NUMBERS...

8

possible years in prison for defamation in **Slovakia**, the highest in the EU

6

possible years in prison for grossly insulting the flags of the UN or Council of Europe in **Iceland**

number of years after a person's death that criminal defamation charges can be brought on that person's behalf in **Portugal**

50

number of EU states, out of 28, that have abolished defamation and libel as a criminal offence as of July 2014

5

1,500,000

amount, in euros, in compensation demanded by former **Slovenian** prime minister Janez Jansa in a 2011 suit against a **Finnish** television journalist

79

age of an **Italian** magazine editor sentenced to two years in prison for defamation in 2013



1/3

in the **Netherlands**,
amount by which
criminal punish-
ments for defama-
tion are increased if
directed against pub-
lic officials

14

number of EU mem-
ber states whose
laws contain spe-
cial provisions
on defaming or
insulting public
officials

11,646.87

maximum amount of moral damages,
in euros, that can be awarded in defa-
mation cases involving the press in
Malta, one of only two EU states to
cap such damages in law

amount, in pounds, in compensation
for the complainant's legal costs or-
dered to be paid by a defendant in a
2008 **English** libel trial


1,076,000

9

EU coun-
tries where
insulting the state re-
mains a criminal offence

1

amount in moral damages
awarded to the wife of a
Belgian prosecutor who sued
an editor for libel on his be-
half, in 2013. The case is under
appeal



RESEARCH METHODOLOGY

We have reproduced here the basic template that we have used for evaluating defamation law in the 28 EU member states and five candidate countries that are the subject of our research.

In studying the law of each country, we performed a category-based analysis based on key international standards as expressed by the London-based freedom-of-expression organisation ARTICLE 19. Our findings take into account both statutory and case law, and have been prepared in cooperation with national legal experts.

Much of the output is summarised in the various charts in the annex to this report. Individual country files with more fleshed-out information will be available on our project website, www.freemedia.at/ecpm. An example of the country file (on France) is included in the annex to this report.

Overview of Criminal Law

Criminal defamation

We looked for all criminal offences that fall under the umbrella of defamation, including libel, slander, and insult. Because these terms are defined in often vastly different ways from country to country and because English translations are often inadequate, we sought to provide the full definition of the offence. In combination with observations we gathered from national experts, this allows readers to understand better what conduct may lead to liability (notwithstanding the vagueness of many laws).

We then looked at the way in which these offences may be punished, such as minimum and maximum prison sentences and fines. Where exact fines are not specified, we sought information on how criminal fines are generally calculated.

Defences

We researched the types of statutory defences that are available for defendants charged with criminal defamation. We examined four major categories of defences as provided in international standards (see below). In addition to looking at the text of the law, we sought to understand how courts have interpreted these defences and to also understand what other defences courts have accepted in practice. In some of our country files, this information can be found under the “Case law” heading.

Truth

Here, we examined whether truth was a defence and what restrictions on proving truth exist. We also sought to specify whether the defendant or the plaintiff is responsible for proving the truth or falsity of allegedly defamatory materials.

Reasonable publication (good faith + public interest)

We generally looked for any type of defence that protects the defendant if he or she acted in good faith, in accordance with journalistic standards, or in defence of a legitimate interest or right, which may include the right to free expression.

Opinion (fair comment)

We researched whether statutory law provides a defence of opinion (sometimes also called fair comment, particularly in common-law jurisdictions).

Privilege

For our purposes, this defence refers to statements made by members of official bodies, such as courts and legislatures.

Other defences

Any other statutory defences for defamation are noted here.

Provisions protecting honour of public officials

We looked for ways in which public officials enjoy advantages in defamation legislation. Generally this is either because defamation committed against public officials (and sometimes figures) is punished more harshly than otherwise, or because cases against public officials can be prosecuted without the official’s needing to file a complaint. We also looked at provisions specifically protecting the head of state, including monarchs (in which case the term “lèse-majesté” may be used).

Provisions protecting the state, its institutions or its symbols

Here, we researched provisions that criminalise insult toward the “state” as such; state institutions such as legislatures, courts and armed forces; and state symbols, such as flags, anthems or coats of arms. In the case of symbols, we focused on provisions that specifically punish insult rather than acts of physical damage, although latter provisions might also be noted.

Provisions protecting foreign officials, states and symbols

We looked for provisions that might specifically punish defamation directed at foreign officials, as well as against the symbols of foreign states, foreign organisations and related symbols.

Provisions related to blasphemy and religious insult

We looked for blasphemy laws and similar provisions, such as insult to “religious feeling”. In some cases, we took note of group defamation laws that prohibit defamation of persons on account of their religion.

Provisions protecting the deceased

In many countries, specific provisions protect the honour and reputation of the deceased and we recorded these. However, even courts in countries that do not have these provisions may still recognise a right to sue on behalf of the dead.

Overview of Civil Law

Civil defamation

We looked at whether those who feel that their reputation has been harmed can bring a civil, or private, claim. We tried to briefly describe the legislation and constitutional principles that enable individuals to sue for damages for harm done to their reputation.

Damages and other punishments

We looked at what types of compensation a person may claim in civil court. Generally, this will compensation for non-pecuniary harm, which compensates for pain and suffering caused, or material (economic) harm. In some countries, there may additionally be the possibility of “punitive” damages or “aggravated” damages. In this section we emphasised whether compensation for non-pecuniary harm, which cannot be objectively “measured”, is capped in defamation cases.

Defences

We noted any statutory defences that are available for persons sued for defamation in civil court.

Case Law and Application

Recent changes to criminal or civil law

We noted any recent changes to civil or criminal law related to defamation, usually within the last five years.

Case law

We tried to gain a general idea of how courts in the particular country rule in defamation cases, often noting specific examples of cases involving journalists. We tried to focus on “standard-setting” cases that enshrined or emphasised certain principles.

In our country files, this section may explain what defences are recognised by the courts above and beyond those recognised in statutory law. It may also indicate the extent to which national courts follow the jurisprudence of the ECtHR.

Examples of recent application against the media

We sought to find examples of recent defamation cases, both criminal and civil, directed at the media. We tried in particular to highlight examples of cases in which journalists have been sentenced to criminal punishments (such as a criminal fine or imprisonment). We also tried to find examples in which we fear civil defamation laws were employed beyond their legitimate purpose.

In the corresponding section in our country files, our descriptions of cases may seem particularly detailed. This is because we wanted to give as accurate an understanding as possible of how national courts rule in defamation cases and to do so it might be necessary to provide a fair amount of background information.



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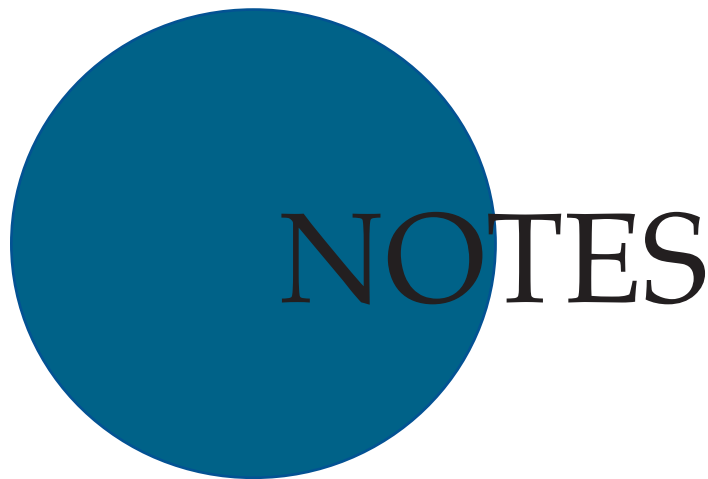
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NOTES

¹ In general, statements on a matter of public interest made in good faith or in accordance with accepted journalistic practice.

² Scott Griffen, “African rights court rejects imprisonment in defamation cases”, 11 Dec. 2014, www.freemedia.at/newssview/article/african-rights-court-rejects-imprisonment-in-defamation-cases.html.

³ Since the beginning of IPI’s Campaign to Repeal Criminal Defamation in the Caribbean in April 2012, two countries (Grenada and Jamaica) have repealed criminal defamation, although seditious libel remains on the books in Grenada. A third, Trinidad and Tobago, has partially repealed criminal defamation. The parliament of Antigua and Barbuda, where IPI conducted a press freedom mission in 2013, is currently considering a repeal bill, and similar legislative efforts are currently underway in the Dominican Republic.

⁴ The Italian reform bill would, among other things, remove the possibility of imprisonment for insult and libel and cap criminal fines. However, it does not fully decriminalise defamation and retains provisions on insulting the Italian state, president, and constitutional bodies. For more detailed information on the reforms being considered in Italy, see the recent review done by the Council of Europe’s Venice Commission: “Opinion on the Legislation on Defamation of Italy”, European Commission for Democracy through Law (Venice Commission), Opinion n° 715/2013, Strasbourg, 9 Dec. 2013, [www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2013\)038-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)038-e). See also the analysis done by ARTICLE 19, “Legal Analysis of Law No. 925 of 17 October 2013 Concerning the Defamation Legislation in Italy,” available at www.osce.org/fom/108108.

⁵ The relevant bill in Lithuania would, among other things, abolish the offence of insult and remove the possibility of imprisonment for libel. For more information see the analysis (January 2014) done by ARTICLE 19, “Legal Analysis of the Draft Law of the Republic of Lithuania Amending the Title of Chapter XXII and Article 154 and Repealing Articles 155, 232 and 290 of the Criminal Code and the Draft Law of the Republic of Lithuania Amending Article 187 of the Code of Administrative Offences”, available at www.osce.org/fom/111060?download=true.

⁶ See IPI’s briefing on international standards on freedom of expression and defamation, published as accompaniment to this report.

⁷ The scope of our research includes all forms of defamation against private persons and public figures (defamation, libel, slander, insult), as well as seditious libel, obscene libel, insult to state institutions and symbols and religious blasphemy.

⁸ At the time this research began, the candidate countries were Iceland, the Republic of Macedonia/Formal Yugoslav Republic of

Macedonia (FYROM), Montenegro, Serbia and Turkey. In late June 2014, Albania was officially recognised as a candidate country.

⁹ See IPI's briefing on international standards on freedom of expression and defamation, published as accompaniment to this report.

¹⁰ See IPI's briefing on international standards on freedom of expression and defamation, published as accompaniment to this report.

¹¹ Full tables containing much of the data referenced below can be found in the annex to this report. In addition, IPI's perceptions index and IPI's briefing on international standards on defamation, published separately from this report and described in the "About this Report" section, offer a useful complement to these findings.

¹² In Malta, imprisonment is not generally a punishment for libel committed through the press, but if the defendant pleads truth and is unable to prove such, imprisonment can then be imposed as a penalty.

¹³ For Croatia, Finland, Germany, Greece, Italy, Lithuania, and Portugal see footnotes 23, 45, 65, 15, 14, 19 and 65, respectively, for examples of such cases. Examples of cases (not exhaustive) in the other countries mentioned include: [Bulgaria] journalist Asya Pencheva was convicted in 2012 of libelling a social worker while investigating abuse at a Bulgarian orphanage and ordered to pay a criminal fine (see e.g., "Defamation lawsuit against Bulgarian journalist terminated", novinite.com, 15 Oct. 2012, www.novinite.com/articles/144164/Defamation+Lawsuit+against+Bulgarian+Journalist+Terminated); [Czech Republic] in 2012, the Czech Constitutional Court confirmed the criminal libel conviction of a journalist working for the tabloid *Blesk* in connection to an article about a murder-suicide in a small town near to the German border (see e.g., "Soud potvrdil novináři trest za zprávu o tragédii se třemi mrtvými", Novinky.cz, 5 Nov. 2012, www.novinky.cz/krimi/283727-soud-potvrdil-novinari-trest-za-zpravu-o-tragedii-se-tremi-mrtvymi.html); [Denmark] In May 2014, journalists Kåre Quist, Dorthe Vest Andersen, Sara Munck Andersen and Lisbeth Kølsteor were sentenced to a €30,000 over a radio broadcast in which they reportedly criticised a housing organisation (see "OSCE representative concerned about defamation sentences in Denmark, urges decriminalization", OSCE, 13 May 2014, <http://www.osce.org/fom/118508>); [France] in April 2014, the magazine *Paris Match* was convicted of libelling Teodorin Obiang, son of the current president of Equatorial Guinea, and ordered to pay a criminal fine (see e.g., "Paris Match condamné pour diffamation", *Le Figaro* avec AFP, 3 Mar. 2014, www.lefigaro.fr/flash-actu/2014/03/19/97001-20140319FILWWW00212--paris-match-condamne-pour-diffamation.php); [Poland] in 2009, an appeals court upheld the criminal defamation conviction of *Gazeta Wyborcza* journalist Robert Rewiński over a report on alleged misuse of public funds (see e.g., Lukasz Lasek, "Article 212 in relation to freedom of expression in Poland", Polish Helsinki Foundation for Human Rights, 6 July 2009, available at <http://humanrightshouse.org/Articles/11244.html>); [Spain] in 2013, the Lanazarote-based satirical magazine *El Agitador* was ordered to pay an €8,000 criminal fine over a vignette considered to have offended the honour of a former public prosecutor implicated in a municipal corruption affair. An appeal in the case is currently pending before the Spanish Constitutional Court (see Saúl García, "35.000 euros de multa por dos viñetas", *El País*, 15 Aug. 2014, http://sociedad.elpais.com/sociedad/2014/08/08/actualidad/1407520739_147425.html).

¹⁴ Our research has highlighted the cases of 11 Italian journalists or editors sentenced to imprisonment for libel in the last five years alone: Orfeo Donatini and Tiziano Marson of *Alto Adige*; Alessandro Sallusti of *Libero*; Giorgio Mule, Andrew Marcanaro, and Riccardo Arena of *Panorama*; 79-year-old editor Francesco Gangemi; Gianluigi Guarino of *Corriere de Caserta*; Walter Nerone, Claudio Lattanzio, and Luigi Vicinanza of *Il Centro*. See e.g., Sasu Siegelbaum, "Court gives Italian journalists prison time", 29 May 2013, www.freemedia.at/home/singleview/article/court-gives-italian-journalists-prison-time.html.

¹⁵ In Greece, a journalist convicted of libelling a local official was handed an eight-month suspended prison sentence (later reduced to seven months); the ECtHR later found (*Mika v. Greece* [2013]) that her free expression rights had been violated due to the severity of the punishment. In Lithuania, journalist Gintaras Visockas was convicted of defaming a former presidential candidate and ordered to pay a fine in the equivalent amount of €7,200; as he was unable to pay the fine, a court converted his sentence to 40 days in prison instead.

¹⁶ In 2006, Polish journalist Andrzej Marek began serving a three-month prison sentence for libel. The conviction related to two articles published in February 2001 in which Marek alleged that an official in the town of Police had, among other things, used blackmail to obtain his position. The conviction had been upheld by Poland's Supreme Court, but two days into Marek's prison term the Constitutional Court suspended the ruling and Marek was freed (see, e.g., www.ifex.org/poland/2006/01/03/ipi_urges_repeal_of_prison_sentence and www.ifex.org/poland/2006/01/26/journalist_released_after_imprisonment).

¹⁷ In February 2011, for example, a Portuguese lower court reportedly sentenced a blogger to 133 days in prison (suspended sentence) and a €40,000 fine for insulting a journalist working for the magazine *Sábado*, Fernando Esteves. In October 2011, an appeals court reportedly overturned the blogger's conviction (see e.g., Ana Machado, "Jornalista da Sábado ganha processo por difamação contra autor de blogue", *Público*, 25 Feb. 2012, www.publico.pt/media/noticia/jornalista-da-sabado-ganha-processo-por-difamacao-contra-autor-de-blogue-1482125 and "Reviravolta para Fernando Esteves, jornalista", Sindicato Independente dos Médicos, 12 Oct. 2011, available at www.simedicos.pt/Noticias/Reviravolta-para-Fernando-Esteves-jornalista_6227.aspx).

¹⁸ E.g., the 2013 case of blogger Mitja Kunstelj. See Jure Predanic, “Mitja Kunstelj has to go to prison because of blogging”, *Delo*, 13 May 2013, www.delo.si/novice/kronika/mitja-kunstelj-bo-moral-zaradi-bloganja-v-zapor.html. Also see “Blogger gets six months in prison for defamation”, Reporters Without Borders, 16 May 2013, <http://en.rsf.org/slovenia-blogger-gets-six-months-in-jail-16-05-2013,44621.html>.

¹⁹ Courts may also now be aware that sending a journalist to prison will bring immediate scrutiny from rights groups. Indeed, in Lithuania, when journalist Gintaras Visockas was convicted of criminally libelling a former presidential candidate, he requested that this criminal fine be converted into a prison term instead, in order to lighten the financial burden. In an interview with IPI in July 2014, Visockas said the court refused to do so in part because it did not want to attract unwanted attention from foreign organisations.

²⁰ In 2011, Petar Komnienic, a Montenegrin journalist, was sentenced to pay a fine of €3,000 or serve four months in prison after being found guilty of libel over a 2007 story in the newspaper *Monitor* in which Komnienic reported that the Montenegrin authorities had placed several senior judges under unlawful surveillance. The charges were brought by the President of the High Court, Ivica Stankovic. Komnienic refused to pay the fine and appealed the prison term, with a second court stating that his sentence should be replaced by community service. However, in 2012 – a year after defamation had been decriminalised in Montenegro – the court confirmed the original sentence (see e.g., See “Montenegrin journalist given prison term for libel”, Reuters, 18 Apr. 2012, available at: www.reuters.com/article/2012/04/18/us-montenegrin-journalists-idUSBRE83H19E20120418).

²¹ For example, in 2012, journalist Laszlo Szasz was sentenced to 150 days in prison after being unable to pay a criminal fine for insult. Szasz, who wrote occasionally for Hungarian-language media in northern Serbia, had been convicted under Criminal Code Article 170 (insult) over a critical comment about Hungarian far-right politician Laszlo Toroczka in the comment section of the Hungarian language daily *Magyar Szó*. After serving two weeks of his jail term, Szasz was pardoned by Serbian president Tomislav Nikolic (see e.g., “SEEMO Welcomes Presidential Pardon in Serbia for Imprisoned Author of Reader’s Comment”, 7 Aug. 2012, www.seemo.org/activities/pressfreedom/12/press1267.html).

²² For example, in 2013, journalist Ahmet Altan was sentenced by a court to 11 months and 20 days in prison for insulting Prime Minister Recep Tayyip Erdogan in an article about the deaths of 35 people in the December 2011 bombing known as the Uludere Massacre. The prison sentence was later commuted to a fine of approximately €2,800. See Cat Lucas, “Turkey Focus 2013: Ahmet Altan”, *English Pen*, 13 Aug. 2013, available at: www.englishpen.org/turkey-focus-2013-ahmet-altan/.

²³ “Pressure of Journalists Increasing Instead of Decreasing, Trade Union of Croatian Journalists, 3 May, 2014, Opens external link in new window www.snh.hr/index.php?jezik=eng&idMenu=4; “Criminal insult used for silencing journalists in Croatia”, OSCE, 8 Apr. 2014, Opens external link in new window www.osce.org/fom/117267.

In April 2014, the Municipal Court in Zagreb found journalist Slavica Lukic of Jutarnji list guilty of criminal “shaming”, after Ivanka Trstenjak Rajkovic, co-owner of a private clinic, Medikol, filed a lawsuit against her. Lukic reported that Medikol although a private clinic, received 500 million HRK in public funds (more than 65 million EUR) from 2007 to 2013, and still operated with losses. Later, the owners of Medikol initiated insolvency proceedings. The judge in the case reportedly ruled that Lukic could only be regularly investigating the activities of Medikol for some unknown, unjustified reason. According to the court’s decision, an individual can be held liable for “shaming” even if he/she reports the truth if it is the court’s opinion that the truth was not in the public interest. (See e.g. “We demand the removal of “shaming” from the Criminal Code”, Croatian Journalists Association, 7 Apr. 2014, Opens external link in new window www.hnd.hr/hr/homepage/priopcenje/67478#; Also see (English): “Vuksic: Defamation conviction of journalist Slavica Lukic is a disgrace”, *dalje.com*, 9 Apr. 2014, Opens external link in new window <http://dalje.com/en-croatia/vuksic--defamation-conviction-of-journalist-slavica-lukic-is-a-disgrace/505324>.)

²⁴ In the Netherlands, for example, punishments for defamation are increased by 1/3 when the offended party is a public official; in France, the criminal fine for defamation is almost four times greater when the offended party is a public official. See the charts in the Annex of this report for more information.

²⁵ Examples of such provisions include: outrage laws, punishing insult to authority (Belgium and Luxembourg) and the separate offence of insulting a public official in the course of his duty (Denmark, Poland). See the Opens internal link in current window Annex of this report for further information on these offences.

As noted in the text, these laws are of a different legal nature from libel laws. In Malta, libel committed through the press is regulated by the Press Act. The relevant sections of the Press Act (§12) may, in fact, be seen as granting public officials relatively less protection in libel cases in that a plea of justification (truth) is only admissible in the case in which the subject of the impugned information is a public official, a candidate for public office, an individual active in the public political life or who occupies a position of public trust or who habitually exercises a profession of trade when the information is related to that profession or trade. (Here, it should also be observed that imprisonment for press libel in Malta is only possible in the case of a failed plea of justification, i.e. a case in which by definition a public figure is involved.) Quite apart from these libel provisions, Malta’s criminal code maintains a series of “outrage” provisions (§§91-99). Two of these provisions (§§93 and 95) punish the reviling (insulting) or threatening a judge, the Attorney General, a magistrate, juror (§93), or “any person lawfully charged with a

public duty” (§95). In at least the case of §93, the punishment is elevated if the act was committed “to diminish the reputation of the person against whom it is directed”.

²⁶ As examples, in Spain, the editors of a local Catalan magazine were ordered to pay €10,000 in damages to a healthcare executive and advisor to the Catalan government for criticising an alleged lack of transparency in the publicly funded healthcare system; an appeals court later overturned the ruling, finding that the article in question constituted a legitimate contribution to democratic debate (see e.g., “Ya puede volver a ver el vídeo del ‘mayor robo de la historia de Cataluña’”, *El Plural*, 25 Feb. 2014, www.elplural.com/2014/02/25/la-justicia-repara-la-censura-impuesta-a-dos-periodistas-que-denunciaban-el-mayor-robo-de-la-historia-de-cataluna/). Regarding Portugal, two ECtHR rulings in 2013 (*Welsh and Silva Canha v. Portugal*) and 2014 (*Amoris Giestas and Jesus Costa Bordalo v. Portugal*) found that the Portuguese courts had violated the rights of journalists to free expression after convicting them of criminal defamation over articles that investigated wrongdoing on the part of local officials.

²⁷ See footnotes 15 and 19 on the Greek and Lithuanian cases.

²⁸ Belgium, Denmark, Germany, Greece, Italy, Malta, the Netherlands, Poland, Portugal, Slovenia, Spain and Sweden. In Austria and France, heads of state are included among other public officials that receive increased protection in defamation cases, either in form or procedure (Austria) or punishment (France).

²⁹ I.e., laws punishing insult to the monarch.

³⁰ One of the cases in Spain involved a cartoonist and editor working for a satirical news magazine, *El Jueves*. They were sentenced to criminal fines in 2007 (see: <http://news.bbc.co.uk/1/hi/world/europe/7092866.stm>).

³¹ See: Brian van der Bol and Danielle Pindeo, “Meer veroordelingen voor majesteitsschennis dan werd aangenomen”, 3 Aug. 2012, www.nrc.nl/nieuws/2012/08/03/meer-veroordelingen-voor-majesteitsschennis-dan-werd-aangenomen/.

³² Belgium, Cyprus, Estonia, France, Germany, Greece, the Netherlands, Poland, Portugal and Slovenia.

³³ Note that this figure only includes countries whose laws punish immaterial “insult” to national symbols, not the misuse of national symbols. E.g., the Czech Republic and Finland also have laws punishing the physical misuse of state symbols including the national flag, but these cases are not included in this count. See Chart D in the annex of this report for more information.

³⁴ See previous footnote on the types of provisions included in this count.

³⁵ The offence is defined almost identically in both countries: “communicating false information about another person, which can seriously damage the person’s reputation among fellow citizens, the person’s career, business, and/or family relations, or cause the person serious harm”.

³⁶ In Portugal, for example, defamation is defined as “alleging a fact or formulating a judgment (or reproducing such) about a third person that is offensive to that person’s honour or reputation”. In Poland, defamation is imputing “to another person, a group of persons, an institution or organisational unit, conduct or characteristics that may discredit them in the face of public opinion”. In Turkey, it is “undermining the honour, dignity or respectability of another person or [attacking] a person’s honour by attributing to them a concrete act or a fact, or by means of an insult”. The legal definitions for all defamation and insult offences can be found in the annex to this report; more detailed information on how these offences have been defined in practice can be found in the country files.

³⁷ 13/2014. (IV. 18.) Hungarian Constitutional Court decision, available (only in Hungarian) at: <http://public.mkab.hu/dev/dontesek.nsf/0/64E8BB597FE98F9CC1257C770021B949?OpenDocument>.

³⁸ See Lithuanian Supreme Court rulings of 2nd April, 2013 No. 2K-171/2013, 30th December, 2008 No. 2K-7-437/2008) (in Lithuanian).

³⁹ See Czech Supreme Court decision of 2005/11/11 - I. ÚS 453/03, www.usoud.cz/en/decisions/?tx_ttnews%5Btt_news%5D=519&-cHash=4f1014d6a2cb9d6a634ee4c6b9df8b31.

⁴⁰ The blogger, Pamela Hemelrijk, had questioned the motive behind the killing of a Jewish man, Walter Oettinger, by the film director Louis van Gasteren during World War II. Van Gasteren maintained he had acted to aid the Dutch resistance, while Hemelrijk alluded to allegations that van Gasteren’s motive had been robbery. The Supreme Court’s decision, which confirmed a ruling by the Amsterdam Court of Appeal, was handed down in 2008 and is available at (in Dutch): Hoge Raad der Nederlanden, Zaaknummer C06/161HR, <http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2008:BB3210>. The journalist referenced is Bart Middelburg of *Het Parool*, who was ordered to pay damages to van Gasteren in 1991 for suggesting in an investigative article that

van Gasteren's motive had, indeed, been robbery.

⁴¹ It should be noted here that what are generally considered “insult” laws differ widely in terms of how they are actually defined. For example, what is often translated as “insult” in Italy and Portugal (*ingiuria* and *injúria*, respectively) refers to offending a person in his or her presence, and in this is not necessarily restricted to value judgments (indeed, according to Portuguese law, insult can explicitly also be constituted by factual allegations). In Belgium, France, and Luxembourg, on the other hand, “insult” (*injure/ belediging*) refers to vague expressions that do not constitute a factual accusation.

⁴² Contrasting examples from Luxembourg and Hungary help to illustrate this point. In 2013, a Luxembourg journalist was charged with criminal slander for writing that certain media outlets served as “liaison agencies” for xenophobia. The Luxembourg Court of Appeal, however, ruled that her statement was “a very general and vague point of view” that could not be proven true or false and therefore could not be slander (*Cour d’appel du Grand-Duché de Luxembourg, Arrêt N. 483/13 V. du 15 octobre 2013*). By contrast, in 2013 a Hungarian court convicted a magazine owner and local politician, Otto Szalai, of defamation over an article in which Szalai wrote that certain members of the local government, including the mayor, were being rewarded while the city budget was in the red. Szalai stated his view that the officials in question were treating taxpayers’ money as if it were their own. The court determined the comments to be statements of fact and ruled that since Szalai had not proven them true he was guilty of defamation. In 2014, the Hungarian Constitutional Court overturned the verdict, finding that the lower court had improperly applied the fact-value distinction and had thereby violated Szalai’s right to express an opinion about the conduct of public officials. The Constitutional Court emphasised that such opinions enjoyed extra protection in a democracy and directed lower courts to more carefully evaluate statements in their context. See: 13/2014. (IV. 18.) Hungarian Constitutional Court decision, available (only in Hungarian) at: <http://public.mkab.hu/dev/dontesek.nsf/0/64E8BB597FE98F9CC1257C770021B949?OpenDocument>.

⁴³ I.e., an exception for truth.

⁴⁴ For example, in Sweden, if a defendant accused of defamation “can show that the information was true”, no punishment shall be imposed; in Latvia, by contrast, the law does not provide a defence of truth, but defamation can only be committed by the distribution of “fictions”.

⁴⁵ *Ristamäki and Korvola v. Finland* (2013).

⁴⁶ See *Kasabova v. Bulgaria* (2011).

⁴⁷ See, among others, *Mamère v. France* (2006) and *Kasabova v. Bulgaria* (2011).

⁴⁸ In such cases in which proof is legally not allowed, the offence of calumny (*calomnie/laster*) is known as defamation (*diffamation/erroof*).

⁴⁹ Generally, four rules: the report must be supported by at least a minimum degree of conclusive facts; it must be fair and balanced, without giving the impression that the subject’s guilt is a settled matter; it must concern a question of public interest; and it must seek to include the subject’s own account or point of view. The Federal Court of Justice has summarised these rules in e.g., the following decision (in German): BGH, Urteil vom 17. Dezember 2013 - VI ZR 211/12, <http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=66571&pos=0&anz=1>.

⁵⁰ The Reynolds defence is based upon a 10-point test that looks at elements such as the seriousness of the allegation, the source of the information, the urgency of the matter, the tone of the article and the circumstances of publication. See, e.g., www.telegraph.co.uk/news/uknews/1476714/Ten-point-test-of-responsible-journalism.html.

⁵¹ See, for example, Cour de cassation (Chambre criminelle) Arrêt No 06-84.712, 11 mars 2008, www.courdecassation.fr/IMG/pdf/bull_crim_03_08.pdf.

⁵² Belgium, Croatia, Cyprus, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Slovenia and Sweden.

⁵³ Bulgaria is one exception: there, family members can only lodge a complaint with a six-month window, although this is a general principle for crimes under the Penal Code.

⁵⁴ The Media Law (*Mediengesetz*), Media Act and the Law on Freedom of Expression in the Media, respectively.

⁵⁵ For example, in Belgium and the Netherlands – to name just two – civil statute provides little to no specific guidance on defamation cases.

⁵⁶ In Slovenia, for example, a former prime minister sued a Finnish journalist for libel, claiming €1.5 million in damages (€15,000 was eventually awarded, in a decision reportedly later overturned (see e.g., “Former Slovenia PM Wins Libel Claim in Patria Case”, AFP, 13 Dec. 2011, available at: www.defensenews.com/article/20111213/DEFSECT02/112130313/Former-Slovenia-PM-Wins-Libel-Claim-Patria-Case). In Lithuania, a newspaper editor sued a blogger and president of the country’s journalist association for the equivalent of €290,000 (€2,896 ultimately awarded, see e.g., “Head of journalists’ union acquitted of libel against media group owner”, Newz.lt, 26 Oct. 2012, www.newz.lt/link.php?articleid=890&source=0). In Bulgaria, journalist Katya Kasabova was ordered to pay damages and a fine that amounted to 35 times her monthly salary; in 2011, the ECtHR found (*Kasabova v. Bulgaria*) that due to the excessive financial award Kasabova’s free expression rights had been violated.

⁵⁷ Vladimir Medarski, “Monitoring of Defamation Actions Litigations”, USAID and Media Development Center, Skopje, <http://mdc.org.mk/wp-content/uploads/2014/04/Monitoring-of-Defamation-Action-Litigations.pdf>. For example, in Sept. 2014 a Skopje appellate court upheld a ruling ordering the magazine to pay over 9,000 in damages and legal costs; the magazine’s editor-in-chief told IPI that the sum threatened its survival (see Scott Griffen, “Despite decriminalisation, libel cases cast shadow over Macedonian journalism”, IPI, 21 Oct. 2014, <http://www.freemedia.at/newssview/article/despise-decriminalisation-libel-cases-cast-shadow-over-macedonian-journalism.html>).

⁵⁸ Medarski.

⁵⁹ As part of our research, we looked closely at the issue of costs in England and Wales, taking account of a UK Ministry of Justice Impact Assessment that included information on litigation costs provided by the Media Lawyers Association (MLA). For 139 defamation cases resolved in 2008, the claimant was awarded £20,886 in damages and £65,604, or approximately three times as much, legal costs. This difference was particularly pronounced in very expensive cases: in the 10 costliest cases by aggregate sums paid to the claimant, the average damages award was £137,750, while the average cost award was £567,443, over four times as much (in these cases, defendants also incurred an average of £367,199 in their own legal costs). In one instance, the defendant was ordered to pay £30,000 in damages but £1,076,000 in legal costs to the complainant, or 35 times as much. See: www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Guidance/app17.pdf. Separately, a study conducted by the UK Publishers Association in 2010 found that the threat of a libel claim cost its members an average of £21,000, or £1.33 million in the case of a trial. Detailed information on this issue can be found in our research file on the UK.

⁶⁰ Medarski.

⁶¹ T. Larson and D. Leonardi, “A Comparative Study Study of Costs in Defamation Proceedings across Europe” (Programme in Comparative Media Law and Policy, Centre for Socio-Legal Studies, University of Oxford December 2008).

⁶² See, e.g., David Howarth, “The Costs of Libel Actions: A Sceptical Note” [2011] *Cambridge Law Journal* 397-419. Our file on the UK provides more detailed information on this topic.

⁶³ Our research collected information on defamation standards set by cassation, constitutional and supreme courts in a number of EU countries, including Austria, the Czech Republic, Germany, Lithuania and Spain. In many cases – the German Constitutional Court is a clear example – these courts have developed detailed principles on balancing freedom of expression and reputation that take into account the case law of the ECtHR. Information on these principles can be found in the respective country file.

⁶⁴ Portugal’s Civil Code was promulgated in 1966, in the waning years of the authoritarian Estado Novo. Leading freedom of expression litigator Francisco Teixeira da Mota has noted that, as relates to defamation, the Code “does not consider the possibility that there may be legitimate interest in divulging offensive facts or that the truth of the offensive accusations justifies their being divulged” (Francisco Teixeira da Mota, *A Liberdade de Expressão em Tribunal*, Fundação Francisco Manuel dos Santos, 2013). Italy’s current penal code (1930) dates back to the fascist dictatorship of Benito Mussolini.

⁶⁵ For example, in 2012 a court of first instance in the German state of Saxony convicted two journalists – Thomas Datt and Arndt Ginzel – of criminal defamation over stories investigating links between high-ranking public officials and a brothel closed for employing underage girls. The Dresden Regional Court overruled the verdict, affirming that the story concerned a matter of public interest and the journalists had sufficiently fulfilled the conditions for reporting of suspected facts under German constitutional jurisprudence (see: LG Dresden, Urteil vom 10. Dezember 2012 · Az. 12 Ns 900 Js 28869/08, <http://openjur.de/u/599629.html>). In Portugal, the Lisbon Court of Appeal in 2012 overturned a lower court decision convicting a magazine editor of criminal insult over a satirical cover comparing a local politician to Adolf Hitler. The Court of Appeal ruled that although the image represented a “violent, exaggerated, and provocative attack”, it was directed at Jardim as a politician, not as a human being. The Court reportedly added: “Freedom of expression constitutes one of the fundamental essences of modern democratic societies. In such societies, public debate and freedom of expression should enjoy increased protection when relating to political questions or politicians themselves” (see: Tolentino de Nóbrega, “Jardim perde mais dois processos de difamação contra a imprensa”, *Público*, 17 Dec. 2012, www.publico.pt/portugal/jornal/jardim-perde-mais-dois-processos-de-difamacao-contra-a-imprensa-25766996#0).

⁶⁶ Our research files contain examples from Austria to Lithuania to the Netherlands in which courts have specifically referred to the case law of the ECtHR. However, we also noted some exceptions, such as a Belgian case in which the Antwerp Court of Appeals was observed to have bypassed ECtHR case law in finding two authors liable of defaming a former police commissioner. The ruling was duly overturned by the Belgian Court of Cassation (Cour de cassation de Belgique, Arrêt N° C.06.0123.N, 27 avril 2007, http://jure.juridat.just.fgov.be/pdfapp/download_blob?idpdf=F-20070427-2). Legal experts in Iceland noted that although Icelandic courts try to observe ECtHR principles, the actual case law and Article 10 itself are not often actually mentioned.

⁶⁷ There are some exceptions to this. French criminal defamation law has undergone continuous revision over the past 15 years, much of which was prompted by ECtHR rulings. Examples include the abolition of a provision insulting the French president and the Constitutional Council's recent finding that a provision outlawing the use of truth as a defence for matters more than ten years old was unconstitutional. But of these matters were the subject of ECtHR rulings that had found a violation of Article 10.

⁶⁸ *Delfi AS v Estonia* (2013). A Grand Chamber hearing on the case was held in July 2014.

⁶⁹ "Muslims sue satirical paper for blasphemy, MP for hate speech", Radio France International, 17 Feb. 2014, www.english.rfi.fr/france/20140217-muslims-sue-satirical-paper-blasphemy-mp-hate-speech.

⁷⁰ Sara Dover, "Polish Superstar Dorota Rabczewska Fined for Bible Blasphemy", *International Business Times*, 17 Jan. 2012, <http://www.ibtimes.com/polish-superstar-dorota-rabczewska-fined-bible-blasphemy-396574>

⁷¹ "Man sentenced to jail in Greece for mocking monk", 17 Jan. 2014, <http://www.reuters.com/article/2014/01/17/us-greece-blasphemy-idUSBREA0G0O620140117>



ANNEX

(SELECTED RESEARCH DATA)

Chart A: Principal criminal defamation offences

Chart B: Criminal provisions protecting the honour and reputation of public officials

Chart C: Criminal provisions protecting the honour and reputation of heads of state and state institutions

Chart D: Criminal provisions protecting the honour of the state and its symbols

Chart E: Criminal provisions protecting the honour and reputation of foreign officials; foreign states and their symbols; and international organisations and their symbols

Chart F: Criminal provisions protecting the honour and reputation of the deceased

Chart G: Caps on compensation for non-pecuniary damage to reputation

Chart H: Criminal provisions on blasphemy and insult to religious feeling

Citations for charts

Example of detailed country file (France)

Selection from series “Notes from the Field”: Germany

Selection from series “Notes from the Field”: Portugal

Chart A: Criminal offences related to the protection of honour, EU member states and candidate countries (Jan. 2015)

Country:	criminal defamation provisions ¹	legal definition	imprisonment as a possible punishment	prison term	other punishment	notes
Austria	insult (<i>Beleidigung</i>)	insulting, ridiculing, physically mistreating, or threatening a person with physical mistreatment before at least three other individuals (CC§115)	YES	up to 3 months	fine up to 360x daily rate	The daily rate (<i>Tagessatz</i>) is a variable rate conditional on a number of factors including the financial situation of the offender. However, the minimum and maximum rates are set at €4 and €5,000, respectively.
AT	defamation (<i>üble Nachrede</i>)	accusation of disreputable characteristic or disposition, dishonourable behaviour, or of a behaviour offensive to good morals that may denigrate a person or bring the person into disrepute in the eyes of the public (CC§111)	YES	up to 6 months (simple); up to 1 year (public/media)	fine up to 360x daily rate	
AT	false accusation of criminal offence (<i>Verleumdung</i>)	putting another person in danger of criminal prosecution by falsely accusing him/her of a criminal offence or of a failure to fulfil an official or professional duty (CC§297)	YES	up to 5 years		
Belgium	public insult (<i>injure/belediging</i>)	not defined in law; in practice, usually an imprecise allegation that may damage a person's honour (CC§448)	YES	8 days to 2 months	fine between €26 and €500	
BE	calumny (<i>calomnie/laster</i>)	publicly and maliciously making a precise accusation regarding another person that may damage that person's honour or expose him or her to public contempt without proving the accusation true (CC§444)	YES	8 days to 1 year	fine between €26 and €200	
BE	defamation (<i>diffamation/eeerroof</i>)	slander, when proof is impossible or legally inadmissible (CC§444)	YES	8 days to 1 year	fine between €26 and €200	
BE	malicious disclosure (<i>divulgation</i>)	slander proven true but committed without any public or	YES	8 days to 2 months	fine between €26 and €400	

Chart A: Criminal offences related to the protection of honour, EU member states and candidate countries (Jan. 2015)

	<i>méchante/kwaadwill. ruchtbaarmaking)</i>	private motive but with the sole intention of causing harm (CC§449)				
Bulgaria	insult	saying or doing something degrading to the honour and dignity of another in that person's presence (CC§146)	NO	N/A	Fine from BGN 1,000 to 3,000; when publicly or via media BGN 3,000 to 10,000	
BG	defamation	making public a disgraceful fact about someone or ascribing to someone a crime (CC§147)	NO	N/A	fine from BGN 3,000 to 7,000; when publicly or via media BGN 5,000 to 15,000	
Croatia	insult	insulting another person (CC§147)	NO	N/A	fine up to 90x daily rate; fine up to 180x daily rate if committed through media or other public means	The Criminal Code does not specify any exact maximum or minimum limits on the daily rate. Rather, this is fixed by the court, which must consider any aggravating or mitigating circumstances as well as the offender's financial situation.
HR	shaming	presentation or dissemination of facts about a person before a third party that may harm that person's honour or reputation (CC§148)	NO	N/A	fine up to 180x daily rate; fine up to 360x daily rate if committed through media or other public means	See above
HR	defamation	knowingly presenting or disseminating untrue facts about a person before a third party that may harm that person's honour or reputation (CC§149)	NO	N/A	fine up to 360x daily rate; fine up to 500x daily rate if committed through media or other public means	See above
Cyprus	public vilification	publicly insulting another in such a way that may cause a person to be attacked (CC§99)	YES	up to 1 month	Fine up to CYP 75 (€128)	
Czech Republic	defamation (<i>pomluva</i>)	communicating false information that can seriously endanger another person's respect among his fellow citizens, in particular damaging his position in employment, and relations with his family, or causing him some other serious harm (CC§184)	YES	up to 1 year (general); up to 2 years (media or other public manner)	daily-rate fine, prohibition on practicing profession ²	General terms: a daily rate is set at between CZK 100 and 50,000, paid between 20 and 730 times

Chart A: Criminal offences related to the protection of honour, EU member states and candidate countries (Jan. 2015)

Denmark	insult	injuring another's honour with insulting words or actions (CC§§267-8)	YES	up to 4 months (general); up to 2 years (if committed in bad faith)	fine	[formal insult] statements that are made in such a way so as to make them unreasonably defamatory, even if they can be proved to be true, or if there is no reasonable justification for making them, may be punished as insult (CC§270)
DK	defamation	spreading allegations of events or relations capable of harming a person's esteem or reputation in society (CC§§267-8)	YES	up to 4 months (general); up to 2 years (if committed in bad faith)	fine	
Estonia	none	N/A	N/A	N/A	N/A	N/A
Finland	defamation	spreading false information or a false insinuation of another person so that the act is conducive to causing damage or suffering to that person, or subjecting that person to contempt or disparaging a person in any other manner (CC§24.9)	YES	generally no; but up to 2 years if "aggravated", i.e. causing considerable suffering or damage	fine	Criminal fines in Finland are calculated as "day fines", i.e. a set amount multiplied by a number of days between 1 and 120. The amount itself is not subject to any minimum or maximum limits but is rather calculated based on a person's particular financial situation. The Criminal Code states that one-sixtieth of a person's average monthly income is "deemed to be a reasonable amount" for a day fine.
France	insult	any offensive expression, scornful word, or invective that does not contain the accusation of a fact (L.1881.33)	NO	N/A	fine up to €12,000	
FR	defamation	any allegation or accusation of a fact that causes an attack on the honour or consideration of a person (L.1881.32)	NO	N/A	fine up to €12,000	
FR	(1) non-public defamation (2) non-public insult	(1) non-public defamation toward a person (CC§R621-1) (2) unprovoked non-public insult toward a person (CC§R621-2)	NO	N/A	(1,2) fine of max. €28 (first degree)	
Germany	insult (<i>Beleidigung</i>) (CC§185)	not further defined	YES	up to 1 year (up to 2 years if by means of	fine	German criminal fines are determined on a "daily rate" basis.

Chart A: Criminal offences related to the protection of honour, EU member states and candidate countries (Jan. 2015)

				assault)		<p>The maximum and minimum daily rates are €1 and €30,000. These may be ordered for a minimum of 5 and a maximum of 360 days.</p> <p>Also punishable as insult are true statements if these result in an insult depending on the form and circumstances in which they are made (formal insult, <i>Formalbeleidigung</i>)</p>
DE	defamation (<i>üble Nachrede</i>) (CC§186)	assert or disseminating a fact related to another person which may defame him or negatively affect public opinion about him	YES	up to 1 year; up to 2 years if committed publicly or through distribution of written materials	fine	See above
DE	intentional malicious defamation (<i>Verleumdung</i>) (CC§187)	consists of a defamatory statement that the speaker knows to be false and that is aimed at damaging a person's reputation or endanger his creditworthiness	YES	up to 2 years; up to 5 years if committed publicly or through distribution of written materials	fine	See above
Greece	defamation	claiming or disseminating before a third party facts about another, which may harm his or her honour or reputation (CC§362)	YES	up to 2 years	fine	
GR	defamatory libel	defamation where the information is false and the perpetrator knows it to be false (CC§363)	YES	min. 3 months	fine, loss of certain civil and political rights	
GR	insult	insulting another with word or deed or otherwise except if already liable as defamation or defamatory libel (CC§361)	YES	up to 1 year	fine	
GR	unprovoked insult through action	unprovoked insult through action (gen. physical action, such as gesture) (CC§361a)	YES	up to 3 months (up to 6 months if committed jointly with another person)	fine	
GR	defamation of a corporation	claiming before a third party in any way or disseminating about	YES	up to 1 year; normally punished with	fine	

Chart A: Criminal offences related to the protection of honour, EU member states and candidate countries (Jan. 2015)

		a corporation facts relevant to its business, its financial situation, its general activities or the persons who run manage it, and in a way that might damage the public's confidence in the company and generally to businesses (CC§364)		imprisonment or fine, the offence is punishable with imprisonment only if the offender knew the facts to be false		
Hungary	defamation (<i>rágalmazás</i>)	engaging in the written or oral publication of anything that is injurious to the good name or reputation of another person, or using an expression directly referring to such a fact (CC§226)	YES	up to 1 year; up to 2 years if committed maliciously, with publicity, or if causes significant injury	fine	Criminal fines (\$50) are awarded in daily amounts from 1000 (EUR 5) to 500,000 HUF (EUR 1500) for a minimum of 30 days and a maximum of 540 days ((i.e. the maximum criminal fine would be HUF 270 million, or approx. €880,000)
HU	libel (<i>becsületsértés</i>)	disseminating a false publication orally or in any other way tending to harm a person's reputation either in connection with his professional, public office, or public activity, or in broad publicity (CC§227)	YES	up to 1 year	fine	See above
Ireland	none	N/A	N/A	N/A	N/A	N/A
Italy	insult (<i>ingiuria</i>)	offending the honour or dignity of a person in his or her presence (CC§594)	YES	up to 6 months; up to 1 year if allegation of specific fact	fine of up to €516; up to €1,032 if allegation of specific fact	
IT	defamation (<i>diffamazione</i>), under Criminal Code	injuring the reputation of an absent person via communication with others (CC§595)	YES	Penal Code: up to 1 year; up to 2 years if allegation of specific fact; btwn. 6 mo. and 3 yrs if "aggravated"	Penal Code: fine of up to €1,032; up to €2,065 if allegation of specific fact; not less than €516 if "aggravated" Press Law: fine	
IT	defamation (<i>diffamazione</i>), under "Press Law"	defamation committed through the press that involves the attribution of a specific fact (PL§13)	YES	1 to 6 years in prison	fine	Note: In Italy, most defamation cases appear to be handled under the Criminal Code, rather than the Press Law
Latvia	defamation	knowingly committing intentional distribution of fictions, knowing them to be untrue and defamatory of another person, in	YES ³	normally no; if committed through mass media, up to 3 months	fine or community service	Defamation is considered a "criminal violation"; fine for a criminal violation shall be fixed at between three and 100 times the

Chart A: Criminal offences related to the protection of honour, EU member states and candidate countries (Jan. 2015)

		printed or otherwise reproduced material, as well as orally, if such has been committed publicly (CC§157)				minimum monthly wage prescribed in Latvia. The financial status of the offender shall be taken into account
Lithuania	libel	spreading of false information about another person that could arouse contempt for this person or humiliate him or undermine trust in him (CC§154)	YES	up to 1 year; up to 2 years if allegation of serious crime and committed through media	fine or arrest (temporary detention, up to 90 days)	Fines are calculated in terms of “minimum standard of living” as determined by the court. As both libel and insult are considered to be misdemeanours or minor crimes, the maximum fine in either case will be 100 MSLS
LT	insult	publicly humiliating a person in an abusive manner by an action, word of mouth or in writing (CC§155)	YES	arrest only when committed privately; up to 1 year when committed publicly	fine or arrest (temporary detention, up to 90 days)	See above
Luxembourg	public insult (<i>injure</i>)	not defined (case law: vague acts or expressions harming reputation) (CC§448)	YES	8 days to 2 months	fine of €251 to €5,000	
LU	slander (<i>calomnie</i>)	publicly and maliciously making a precise accusation (<i>l'imputation d'un fait précis</i>) against another person in order to attack the person's honour or expose him or her to public contempt without proving the accusation (CC§444)	YES	8 days to 1 year	fine of €251 to €2,000	
LU	defamation (<i>diffamation</i>)	slander, when proof is impossible or legally inadmissible (CC§444)	YES	8 days to 1 year	fine of €251 to €2,000	
LU	malicious disclosure (<i>divulgation méchante</i>)	slander proven true but committed without any public or private motive but with the sole intention of causing harm (CC§449)	YES	8 days to 2 months	fine of €251 to €4,000	
Malta	defamation	offending a person with the object of destroying or damaging his reputation (CC§252)	YES	up to 3 months	fine up to €1,164.69	
MT	defamation consisting of vague expressions or indeterminate reproaches, or	(CC§252)	YES ⁴	classified as a contravention, punishable with detention up to 2 months	fine or reprimand	

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	indecent words					
MT	libel committed via the press	not defined (<i>PA§11</i>)	YES	generally no; however, if the perpetrator seeks to prove the truth of the allegation and does not, a prison sentence of up to 6 months can be ordered	fine up to €1,164.69	
Netherlands	slander (<i>smaad</i>)	assault on a person's good name or honour through the imputation of a particular fact with the aim to make the fact public (<i>CC§261(1)</i>)	YES	up to 6 months	fine up to €8,100 (third degree)	
NL	libel (<i>smaadschrift</i>)	defamation that occurs by means of publicly accessible writing or images (<i>CC§595(2)</i>)	YES	up to 1 year	fine up to €8,100 (third degree)	
NL	intentional libel or slander (<i>laster</i>)	defamation or libel committed while knowing the information in question is false (<i>CC§262(3)</i>)	YES	up to 2 years	fine up to €20,250 (fourth degree), loss of certain civil and political rights	
NL	simple insult (<i>eenvoudige belediging</i>)	any intentional not classifiable as slander or libel (<i>CC§266</i>)	YES	up to 3 months	fine up to €4,050 (second degree)	
Poland	insult	insulting another person in their presence, or in their absence but with the intention of having the insult reach them (<i>CC§216</i>)	YES	generally none; if committed by mass media, up to 1 year	fine, restriction of liberty (community service), or supplementary payment to social cause	See below; [formal insult] even if a defamatory statement is shown to be true, it may still be liable for insult depending on manner presented
PL	defamation	imputing to another person, a group of persons, an institution or organisational unit, conduct or characteristics that may discredit them in the face of public opinion (<i>CC§212</i>)	YES	generally none; if committed by mass media, up to 1 year	fine, restriction of liberty (community service), or supplementary payment to social cause	Criminal fines in Poland are set as "daily fines", i.e. the court sets a "daily rate", which is then multiplied by a certain number days (min. 10, max. 540). In setting the daily rate, the court must consider the offender's income and family situation, etc., but the minimum rate is 10 zł (€2.43) and the maximum is 2,000 zł (€485)
Portugal	insult (<i>injúria</i>)	alleging a fact or expressing offensive words directly to a person that is/are offensive to	YES	up to 3 months; up to 2 years if committed via the media	fine up to 120 days	For fines, "each day corresponds to an amount between €5 and €500, which the court assigns in virtue of

Chart A: Criminal offences related to the protection of honour, EU member states and candidate countries (Jan. 2015)

		that person's honour or reputation (CC§180-181)				the economic and financial situation of the convicted party and his personal duties".
PT	defamation (<i>difamação</i>)	alleging a fact or formulating a judgment (or reproducing such) about a third person that is offensive to that person's honour or reputation (CC§180-181)	YES	up to 6 months; up to 2 years if committed via the media	fine up to 240 days (when committed by the media, fine not less than 120 days)	Note: when defamation or insult are committed "with publicity" or, in cases involving the allegation of a particular fact, the offender knows the allegation to be untrue, the min. or max. base punishments are raised by 1/3 ⁵ (CC§183)
PT	false accusation of a criminal offence (<i>denúncia caluniosa</i>)	false accusing a person, or putting a person under the suspicion of, committing a crime, through any means, either publicly or through an authority, with the intent of exposing that person to prosecution	YES	up to 3 years (if consisting of an accusation of an administrative infraction, up to one year); if the accusation results in the incarceration of the victim, offenders may face up to 8 years in prison	fine	in the case of accusation of criminal offence, maximum punishment is increased to 5 years if accusation involves submitting, altering or distorting evidence.
Romania	none	N/A	N/A	N/A	N/A	
Slovakia	defamation	communicating false information about another person, which can seriously damage the person's reputation among fellow citizens, the person's career, business, and/or family relations, or cause the person serious harm (CC§373)	YES	up to 2 years generally; 1 to 5 years if committed publicly or causing substantial damage; 3 to 8 years if causing large-scale damage or causing another bankruptcy, divorce, or unemployment.		
Slovenia	insult	CC§158)	YES	up to 3 months; up to 6 months if committed via the media	fine	Criminal fines are imposed as "daily rates". A daily rate is determined by the court, taking into account a person's daily income and family expenditures. This is then multiplied by a certain number of days, minimum 30 days and maximum

Chart A: Criminal offences related to the protection of honour, EU member states and candidate countries (Jan. 2015)

						360 days, except in cases of criminal offences “committed for one’s own interest” in which case the maximum is 1,500 days.
SI	defamation	asserting or circulating anything false about another person, capable of causing damage to the honour or reputation of that person (CC§160)		up to 3 months; up to 6 months if committed via the media; if act had grave consequences, up to 1 year	fine	See above
SI	slander (intentional malicious defamation)	asserting or circulating anything false about another person, capable of causing damage to the honour or reputation of that person (CC§159)	YES	up to 6 months; up to 1 year if committed via the media; if act had grave consequences, up to 2 years	fine	
SI	dissemination of information on personal or family life (calumny)	asserting or circulating any matter concerning personal or family affairs of another person, which is capable of injuring that person's honour and reputation (CC§161)	YES	up to 3 months; up to 6 months if committed via the media; if act had grave consequences, up to 1 year	fine	See above
SI	malicious false accusation of a crime	an act of calumny in which the assertion consists of falsely accusing someone of a crime with the intention of exposing that person to scorn (CC§162)	YES	up to 3 months; up to 6 months if committed via the media	fine	See above
Spain	defamation (<i>injuria</i> , in some cases may be translated as “insult”)	any accusation, expression, or action that harms the dignity of another person, detracting from his reputation or attacking his self-esteem (CC§208)	NO	N/A	fine of 6 to 14 months if committed via media; otherwise, fine of 3 to 7 months	Spanish criminal fines are computed at a “daily rate” (sistema de días-multa), of which the minimum daily fine is €2 and the maximum is €400. Thus for slander committed via the media, the minimum fine would be €2 x 365 days = €730. The maximum fine would be €400 x 730 days = €292,000. Court shall determine the fine taking into account a person’s financial situation.
ES	slander (<i>calumnia</i>)	accusing another person of a felony while knowing it is false or recklessly disregarding the truth	YES	normally fine only; if committed via the media or similarly	fine of 12 to 24 months if committed via the media; otherwise fine of 6 to 12	

Chart A: Criminal offences related to the protection of honour, EU member states and candidate countries (Jan. 2015)

		(CC§§205-206)		effective means, 6 months to 2 years	months; in certain cases, loss of political rights and right to practice	
Sweden	insult	vilifying another by an insulting epithet or accusation or by other infamous conduct towards him (CC§5.1.3)	YES	normally none; if aggravated ("gross"), up to 6 months	fine	The fines related to defamation are normally classified as "day fines", according to C.25§§1-2. The amount of an individual day-fine unit ranges from kr30 to kr1,000, based partly on the offender's economic situation, and anywhere between 30 and 150 units can be ordered as the fine. The maximum fine would therefore be kr150,000 (€16,850).
SE	defamation (<i>förtal</i>)	pointing someone out as being a criminal or as having a reprehensible way of living or furnishing information intended to cause exposure to the disrespect of others (CC§5.1.2)	YES	normally none; if aggravated ("gross"), up to 2 years	fine	See above
United Kingdom	none	N/A	N/A	N/A	N/A	N/A
Gibraltar	defamatory libel known to be false	see to left (DA§15)	YES	up to 2 years	fine	British Overseas Territory, part of the EU
GIB	defamatory libel	see to left (CC§16)	YES	up to 1 year	fine	see above
Iceland*	defamatory insult	injuring the personal honour of another by means of insult in word or in deed or spreading such rumour (CC§234)	YES	up to 1 year; up to 2 years if directed against close relation	fine; courts may also declare libellous statements null and void	The Criminal Code does not establish any maximum fine, but the fine imposed should take into account the offender's financial circumstances.
IS	defamatory insinuation	insinuating something about a person which would be to the detriment of his/her respect or circulating such an insinuation (CC§§235-236)	YES	up to 1 year; up to 2 years if done with knowledge of falsity of insinuation or without having likely reasons for believing it correct	fine; courts may also declare libellous statements null and void	See above
IS	upbraiding	upbraiding another person without cause, even if by telling the truth(CC§237)	NO	N/A	fine	See above
Macedonia/	none	N/A	N/A	N/A	N/A	N/A

Chart A: Criminal offences related to the protection of honour, EU member states and candidate countries (Jan. 2015)

FYROM						
Montenegro	dissemination of information on personal or family life	presentation or dissemination of information on anyone's personal or family life that may harm his honour or reputation (CC§197)	NO	N/A	fine of €3,000 to €10,000; if committed through media or other public means, €5,000 to €14,000; if resulted in grave consequences, min. fine of €8,000	
Serbia	insult	not defined in law (CC§170)	NO	N/A	20 to 100 daily fines, or fixed fine of RSD 40,000 to 100,000; if committed via media or other public means, 80 to 240 daily fines or fixed fine of RSD 150,000 to 450,000	
RS	dissemination of information on personal or family life	relaying or disseminating information on a person's personal or family life that may harm his honour or reputation (CC§172)	YES	normally up to 6 months; if committed via media or other public means, up to 1 year	fine (unspecified)	
Turkey*	insult (<i>hakaret</i>)	undermining the honour, dignity or respectability of another person or attacking a person's honour by attributing to them a concrete act or a fact, or by means of an insult (CC§125)	YES	3 months to 2 years; if directed at public official, min. 1 year; if committed in response to a person's religious, political, social, or philosophical beliefs, min. 1 year	judicial fine	Punishments are increased by 1/6 when act is committed publicly

¹ Included in this category are all offences under the umbrella of defamation – including libel, slander, insult, and defamation – and that concern private individuals or in some cases private businesses. Provisions specifically related to public officials are categorised in Chart B; heads of state and state institutions in Chart C; the State and its symbols in Chart D; and foreign states and international orgs. and their symbols in Chart E. Note also that a few very specific forms of defamation are excluded from this chart: for example, offending victims of terrorist offences (Spain) or making a sound or video recording that harms a person's reputation (Hungary). Information about such offences can be found in the respective country files.

² Usually in connection with state-licensed activities (only electronic media are state licensed in the Czech Republic).

³ Technically, "temporary deprivation of liberty".

⁴ Classified as "detention".

⁵ Note that the stipulation on increased max. and min. terms does not appear to apply to the max. prison term of 2 years for defamation or insult committed via the media. Thus the maximum prison term for all offences appears to be 24 months, not 28 months.

CHART B: Criminal provisions protecting the honour and reputation of public officials and public figures, EU member states and candidate countries (Jan. 2015)

Country:	specific provisions protecting public officials ¹	nature of protection ²	officials covered	possible punishments ³	procedural advantage in defamation cases ⁴
Austria	NO	N/A	N/A	N/A	YES (CC§117)
Belgium	YES	criminal offence of <i>outrage</i> (insult or defamation that diminishes the moral authority of the offended party)	(a) a member of the legislative chambers, a government minister, a member of the Constitutional Court or other judicial office, an active-duty police officer, all with respect to official function (CC§275) (b) public official or agent of public authority or any person having a public character (CC§276)	(a) 15 days to 6 months in prison, fine of €50 to €300; 2 months to 2 years in prison, fine of €200 to €1,000 if act occurs during a sitting of the Chamber or during court (b) 8 days to 1 year in prison, fine of €26 to €200	YES (CC§450)
Bulgaria	YES	higher punishments for insult and defamation when directed at public official during or in connection with fulfilment of his or her duties or function (CC§148)	see to left	increased fine ⁵ of BGN 3,000 to BGN 10,000 (insult), BGN 5,000 to BGN 15,000 (defamation); public censure	NO
Croatia	NO	N/A	N/A	N/A	NO
Cyprus	NO	N/A	N/A	N/A	N/A ⁶
Czech Republic	NO	N/A	N/A	N/A	NO
Denmark	YES	criminal offence of insulting a public official in course of latter's official duty (CC§121)	see to left	up to 6 months in prison	NO
Estonia	YES	(1) defaming or insulting a representative of state authority or other person protecting public order (CC§275) (2) defaming or insulting a court or judge in connection to latter's official function (CC§375)	(1) not defined further, but generally interpreted narrowly to mean e.g. police officers, and not, e.g. MPs (2) see to left	(1) up to 2 years in prison, fine (2) up to 2 years in prison, fine	N/A
Finland	NO	N/A	N/A	N/A	NO
France	YES	(1) higher punishments for defamation (L.1881.30-31) (2) non-public invective, including in writing, against authorities (CC§433-5)	(1) president, gov. ministers, legislators, public official, representative or agent of public authority, ministers of religions subsidised by the state, citizen charged with or carrying out an official service or mandate, jury member, court witness,	(1) increased fine of up to €45,000 (2) up to 6 months in prison, fine of €7,500	NO

CHART B: Criminal provisions protecting the honour and reputation of public officials and public figures, EU member states and candidate countries (Jan. 2015)

			all in relation to official function, public officials, govt. ministers, legislators, ministers of religions subsidised by the state, courts, armed forces		
Germany	YES	criminal offence of defaming a person involved in the popular political life, publically or via the media, if the act of defamation may make the person's public activities substantially more difficult (CC§188)	see left; term "person involved in the popular political life" is not further defined	if defamation (<i>üble Nachrede</i>), 3 months to 5 years in prison; if intentional malicious defamation (<i>Verleumdung</i>), 6 months to 5 years in prison	NO
Greece	NO	N/A	N/A	N/A	YES (CC§368)
Hungary	NO	N/A	N/A	N/A	YES (CCP§52)
Ireland	NO	N/A	N/A	N/A	N/A
Italy	YES	higher punishments for defamation when directed at a political, administrative, or judicial body or at a representative thereof or authority constituted in college (CC§595(4))	representative of a political, administrative, or judicial body	6 months to 3 years in prison, fine of not less than €516 (up to €1,032)	NO
Latvia	NO	N/A	N/A	N/A	NO
Lithuania	YES	(1) criminal offence of insulting a civil servant or another person performing the functions of public administration in virtue of his official duties (CC§290) (2) administrative offence of insulting bailiffs and police officers (AC) (3) criminal offence of humiliating in an abusive manner a judge executing justice (CC§232)	(1,2,3) see to left	(1) up to 2 years in prison, arrest (temporary detention), fine; (2) administrative fine; (3) up to 2 years in prison, arrest, fine	NO
Luxembourg	YES	criminal offence of <i>outrage</i> (insult or defamation that diminishes the moral authority of the offended party)	(a) a member of the Chamber of Deputies, a government official, a magistrate, in virtue of function (CC§275) (b) minister or an agent of public authority or any person having a public character (CC§276)	(a) 15 days to 6 months in prison, fine of €500 to €3,000; if committed during sitting of Chamber or during court, 2 months to years in prison or fine of €500 to €10,000 (b) 8 days to 1 month in prison, fine of €251 to €2,000	YES (CC§450)

CHART B: Criminal provisions protecting the honour and reputation of public officials and public figures, EU member states and candidate countries (Jan. 2015)

Malta	YES ⁷	(1) criminal offence of reviling or threatening a judge, the Attorney General, a magistrate or juror (CC§93) (2) criminal offence of reviling any (other) person lawfully charged with exercising a public duty (CC§95)	(1,2) see to the left	(1) in general, imprisonment up to 3 months and fine (<i>multa</i>); when the insulting act is aimed at diminishing the person's reputation, 3 months to 1 year in prison (2) subject to general punishments for vilification, increased by one degree, but no more than 3 months in prison; a fine may also be ordered	NO
Netherlands	YES	(1) higher punishments for defamation, libel, intentional libel, and simple insult when committed against a public official in relation to the lawful exercise of his office (CC§267) (2) criminal offence of bringing false charges or making a false written declaration against a public official, to the extent that this offence does not apply to private individuals (CC§268)	(1,2) see to the left	(1) punishments increased by 1/3 (2) up to 2 years in prison, fine up to €20,250	YES (CC§269)
Poland	YES	criminal offence of insulting a public official or a person called upon to assist him, in the course of, and in connection with, the performance of official duties (CC§226)	see to the left	up to 1 year in prison, restriction of liberty, fine	NO
Portugal	YES	higher punishments for insult, defamation, and calumny (CC§184)	members of Parliament, the Council of State, or the Ministry of the Republic; police and security service officers; public, civil, and military officials; judges, lawyers, witnesses, and jury members; ministers; and university professors, all in virtue of their official function	minimum and maximum punishments are increased by one-half	YES (CC§188)
Romania	NO	N/A	N/A	N/A	N/A
Slovakia	YES	criminal offence of insulting an MP or member of his or her team (CC§429)	see to the left	up to 2 years in prison	
Slovenia	NO	N/A	N/A	N/A	YES (CC§168)
Spain	NO	N/A	N/A	N/A	YES (CC§215)
Sweden	NO	N/A	N/A	N/A	YES (CC§5.5) ⁸
United	NO	N/A	N/A	N/A	N/A

CHART B: Criminal provisions protecting the honour and reputation of public officials and public figures, EU member states and candidate countries (Jan. 2015)

Kingdom					
Iceland*	NO	N/A	N/A	N/A	YES (CC§242)
Macedonia/ FYROM	NO	N/A	N/A	N/A	N/A
Montenegro	NO	N/A	N/A	N/A	NO
Serbia	NO	N/A	N/A	N/A	NO
Turkey*	YES	higher punishment for insult when committed against a public official in connection with latter's official duty (additionally, in case of insults directed against public officials working as a committee, the offence shall be deemed to have been committed against all committee members" (CC§125)	see to the left	minimum punishment for insult raised to 1 year in prison	YES (CC§131)

¹ This chart looks at specific criminal provisions that single out public officials as the offended party and on this basis provide different punishments or procedural elements, not simply where public officials are mentioned generally. NOT included here are provisions protecting the head of state; for information on these provisions, see Chart C.

² This chart looks broadly at criminal provisions that may be used to protect the honour and reputation of public officials, but does NOT necessarily circumscribe "advantages" for public officials in libel law. Some of these provisions listed here are related to criminal libel law and do provide that libel is punished more harshly when the offended party is a public official). However, other provisions are of a distinct legal nature from libel, such as *outrage*, insult, or vilification, and appear in separate sections of the criminal code. In these latter cases, it should not be understood that public officials enjoy advantages in libel law. Nevertheless, because these latter provisions may have implications for free speech in that they may be used to protect the "honour" of public officials, we have included them here.

³ More information on fines may be found in Chart A.

⁴ This category refers to procedural advantages in cases filed under the basic criminal defamation provisions; a typical example of such an advantage is a provision allowing prosecutors to bring a public action for defamation when the offended party is a public official, whereas offended private individuals must bring their case to criminal court themselves; for exact information on these advantages, see individual country files (NB: this category *does not show* whether or not in general public prosecutors all involved in defamation cases, i.e. as contrary to international standards).

⁵ For countries in which there is a higher punishment for defamation directed at public officials, only that higher punishment is listed here; please refer to Chart A to see basic punishment

⁶ The countries listed "N/A" here are those in which defamation is not a criminal offence; in those listed "NO", defamation is a criminal offence but public officials do not enjoy procedural advantages, according to our research.

⁷ In addition, CC§74 punishes conspiracy to excite hatred or contempt towards the Government of Malta with between six and 18 months in prison; however, as this offence does not specify individuals, it is not included in this chart, but rather in Chart C on offences to state institutions.

⁸ Applies only to the offence of insult.

CHART C: Criminal provisions protecting the honour and reputation of state institutions and national heads of state, EU member states and candidate countries (Jan. 2015)

Specific provisions protecting:	state institutions ¹	institutions covered	imprisonment as possible punishment	possible punishments	head of state ²	imprisonment as possible punishment	possible punishments
Austria	YES	gov. bodies, such as the national or state parl., the armed forces, or a public authority (CC§116)	YES	same as for individuals	NO ³	NO	N/A
Belgium	YES	constitutional bodies (e.g. Fed. Parliament) (CC§446)	YES	same as for individuals	YES (monarch)	YES	imprisonment between 6 months and 3 years, fine, loss of political rights (L.Apr 6)
Bulgaria	NO	N/A	N/A	N/A	NO	N/A	N/A
Croatia	NO	N/A	N/A	N/A	NO	N/A	N/A
Cyprus	YES	Army of the Republic, National Guard or any other military force established by law (CC§50D)	YES	up to 2 years in prison and/or fine	NO	N/A	N/A
Czech Republic	NO	N/A	N/A	N/A	NO	N/A	N/A
Denmark	NO	N/A	N/A	N/A	YES (monarch)	YES	punishments for def. and insult doubled (up to 4 years in prison) (CC§115)
Estonia	NO ⁴	N/A	N/A	N/A	NO	N/A	N/A
Finland	NO	N/A	N/A	N/A	NO	N/A	N/A
France	YES	courts and armed forces (L.1881.30-31)	NO	fine up to €45,000 (defamation), €12,000 (insult)	NO ⁵	NO	N/A
Germany	YES ⁶	constitutional organs of the German state (the Bundesrat (federal council), Bundestag (Federal Parl., the fed. gov., and the fed. const. court) or similar fed. organs (CC§90b)	YES	3 months to 5 years in prison, loss of civil rights, loss of profession	YES (president)	YES	imprisonment from 3 months to 5 years, plus poss. stripping of civil rights and right to practice profession (minimum punishment increased to 6 mo. in some cases ⁷) (CC§90)
Greece	YES	Parliament, municipal councils (CC§157)	YES	up to 2 years in prison	YES (president)	YES	up to 3 months in prison (CC§168), seizure of publication (Con§14/3/b)
Hungary	NO	N/A	N/A	N/A	NO	N/A	N/A
Ireland	NO	N/A	N/A	N/A	NO	N/A	N/A

CHART C: Criminal provisions protecting the honour and reputation of state institutions and national heads of state, EU member states and candidate countries (Jan. 2015)

Italy	YES	constitutional institutions, and the armed forces (CC§§290-291)	NO	fine of €1,000 to €5,000	YES (president and head of govt)	YES	imprisonment from 1 to 5 years (CC§§278 and 282)
Latvia	NO	N/A	N/A	N/A	NO	N/A	N/A
Lithuania	NO ⁸	N/A	N/A	N/A	YES ⁹ (president)	NO	admin. fine of LTL 500 – 1,000 (AC§214(6))
Luxembourg	YES	constitutional bodies (e.g. the Chamber of Deputies, Council of State) (CC§§446,448)	YES	same as for individuals	NO	N/A	N/A
Malta	YES	(1) exciting hatred or contempt for the govt. of Malta (CC§74) (2) making a public speech that falsely imputes misconduct to the government (CC§75)	YES	(1) 6 to 18 months in prison (2) up to 1 year in prison	YES (president)	YES	Press Act: up to 3 months or fine of €465.87 for defaming, insulting, imputing ulterior motives to, or exciting hatred or contempt for the president (PA§5) Criminal Code: up to 3 mo. imprisonment or fine for defaming, insulting, or disrespectfully mentioning the president (CC§72); 6 to 18 mo. imprisonment for exciting hatred or contempt to president (CC§74)
Netherlands	YES	public bodies or institutions (CC§267)	YES	same as for individuals, increased by 1/3	YES (monarch)	YES	up to 5 years in prison or fine up to €20,250 (4 th degree), loss of certain political rights (CC§§111-113)
Poland	YES	a constitutional authority of the Republic (CC§226)	YES	fine, restricted liberty, or imprisonment up to 2 years	YES (president)	YES	imprisonment up to 3 years (CC§135)
Portugal	YES	institution, corporation, organism or service run by public authorities (CC§187)	YES	imprisonment up to 6 months, fine up to 240 days	YES (president)	YES	3 months in prison or fine (general); 6 mo. to 3 yr. in prison and min. fine of 60 days (media) (CC§328)
Romania	NO	N/A	N/A	N/A	NO	N/A	N/A
Slovakia	NO	N/A	N/A	N/A	NO	N/A	N/A
Slovenia	NO	N/A	N/A	N/A	YES (president)	YES	up to 1 year in prison (CC§163)
Spain	YES	Parliament or its laws (including Autonomous Communities), the gov., the Con. and Supreme Courts, the armed forces, and the police forces et al	NO	fine of 12 to 18 months	YES (monarch)	YES	6 mo. to 2 yr. imprisonment if related to royal duties; fine otherwise + misuse of royal image, fine of 6 to 24 months (CC§§490-491)

CHART C: Criminal provisions protecting the honour and reputation of state institutions and national heads of state, EU member states and candidate countries (Jan. 2015)

		(CC§§496,504)					
Sweden	NO	N/A	N/A	N/A	YES (monarch)	YES	up to 6 years in prison (gross offence); up to 4 years generally (CC§18.2)
United Kingdom	NO	N/A	N/A	N/A	NO	N/A	N/A
Iceland*	NO	N/A	N/A	N/A	YES (president)	YES	base punishments for defamation increased, but no more than doubled (highest up to 4 years in prison) (CC§101)
Macedonia/ FYROM*	NO	N/A	N/A	N/A	NO	N/A	N/A
Montenegro *	NO	N/A	N/A	N/A	NO	N/A	N/A
Serbia*	NO	N/A	N/A	N/A	NO	N/A	N/A
Turkey*	YES	Grand National Assembly of Turkey, the Gov. of the Rep., the judicial bodies of State, the military, or sec. structures (CC§301)	YES	6 months to 2 years in prison	YES (president)	YES	1 to 4 years in prison, +1/6th if public, +1/3rd if via media (CC§299)

¹ This category examines legal provisions related to defamation in which state institutions are specifically mentioned in criminal law; it does not necessarily rule out that in other states courts could allow cases of this type to go forward.

² This category looks at *specific legal provisions* protecting the head of state from insult; it certainly does not rule out that other heads of state could bring criminal charges under the general terms of criminal defamation.

³ Austrian law does mention the Federal President specifically with relation to defamation, but only in the sense that the Federal President is included among the officials who enjoy procedural advantages in defamation cases (see Chart B)

⁴ Note that there is a criminal provision protecting “courts” from insult; see Chart B.

⁵ French law does mention the President of the Republic specifically with relation to defamation, but only in the sense that the President is included in the list of public officials who enjoy increased protection in the sense that when defamation is committed against them it is punished more harshly (note that France’s separate provision on insulting the President was repealed in 2013).

⁶ Which thereby supports efforts against the continued existence of Germany or its constitutional principles.

⁷ If an intentional act intended to diminish respect for the head of state and thereby supporting efforts against the existence of Germany or its constitutional principles.

⁸ No, although humiliating a judge or “court” is a criminal offence punishable with up to two years in prison.

⁹ Administrative offence only.

CHART D: Criminal provisions protecting the honour of the state and its symbols, EU member states and candidate countries (Jan. 2015)

Specific provisions protecting:	honour of the state	imprisonment as possible punishment	information on punishment	Nat. flag, anthem, or other symbol ¹	imprisonment as possible punishment	information on punishment
Austria	YES	YES	6 months imprisonment or fine 360x daily rate (CC§248)	YES (fed. flag, state flags, national emblem, fed. or state anthem)	YES	up to 6 months in prison or fine (max. 360x daily rate) (CC§248)
Belgium	YES ²	YES	3 months to 2 years in prison, fine of €500 to €1,000 (RD)	NO	N/A	N/A
Bulgaria	NO	N/A	N/A	YES (coat of arms, flag, anthem)	YES	up to 2 years in prison and fine of up to BGN 3,000 (CC§108)
Croatia	YES	YES	up to 1 year imprisonment (CC§349)	YES (flag, coat of arms, anthem)	YES	up to 1 year in prison (CC§349)
Cyprus	NO	N/A	N/A	NO	N/A	N/A
Czech Republic	NO	N/A	N/A	NO ³	N/A	N/A
Denmark	NO	N/A	N/A	NO	N/A	N/A
Estonia	NO	N/A	N/A	YES (flag, coat of arms, or other official symbol)	YES	up to 1 year in prison or fine (CC§245)
Finland	NO	N/A	N/A	NO ⁴	N/A	N/A
France	NO	N/A	N/A	YES (flag, anthem)	YES	up to 6 mo. in prison or fine of €7,500 (CC§433-5-1)
Germany	YES	YES	up to 3 years in prison or fine; 5 years in prison if supporting efforts against existence of state or con. principles (CC§90a)	YES (colours, flag, coat of arms of state or fed. states)	YES	up to 3 years in prison or fine; up to 5 years in prison if supporting efforts against existence of state or con. principles (CC§90a)
Greece	NO	N/A	N/A	YES (flag or emblems of sovereignty)	YES	up to 2 years in prison (CC§181)
Hungary	NO	N/A	N/A	YES (anthem, flag, coat of arms, Holy Crown of Hungary)	YES	up to 1 year in prison (CC§334)
Ireland	NO	N/A	N/A	NO	N/A	N/A
Italy	YES	NO	fine of €1,000 to €5,000 (CC§§290-291)	YES (flag or other emblem of the state)	NO	fine €1,000 to €10,000 (CC§292)
Latvia	NO	N/A	N/A	YES (flag, coat or arms, anthem) ⁵	YES	up to 3 years in prison, temporary detention, community service, fine (CC§93)
Lithuania	NO	N/A	N/A	YES (flag, emblem, anthem) ⁶	YES	up to 2 years in prison, fine, restriction of liberty, arrest (temporary detention) (CC§127)
Luxembourg	NO	N/A	N/A	NO	N/A	N/A
Malta	NO	N/A	N/A	YES (flag)	YES	up to 3 months in prison and fine of €465.87 (PA§5)
Netherlands	NO	N/A	N/A	NO	N/A	N/A
Poland	YES	YES	up to 3 years in prison (CC§137)	YES (symbols of the state)	YES	fine, restricted liberty, imprisonment up to 1 year (CC§137)
Portugal	YES	YES	up to 2 years in prison or fine of 240 days	YES (flag, anthem,	YES	up to 2 years in prison or fine of 240 days (CC§332)

CHART D: Criminal provisions protecting the honour of the state and its symbols, EU member states and candidate countries (Jan. 2015)

			(CC§332)	symbols of sovereignty)		
Romania	NO ⁷	N/A	N/A	NO	N/A	N/A
Slovakia	NO	N/A	N/A	NO	N/A	N/A
Slovenia	YES	YES	up to 1 year in prison or fine (CC§163)	YES (flag, coat of arms, anthem)	YES	up to 1 year in prison or fine (CC§163)
Spain	YES	NO	fine of max. 7 to 12 months (CC§543)	YES (symbols and emblems of Spain and aut. comm.)	NO	fine max. 7 to 12 months (CC§543)
Sweden	NO	N/A	N/A	NO	N/A	N/A
United Kingdom	NO	N/A	N/A	NO	N/A	N/A
Iceland*	NO	N/A	N/A	YES (flag)	YES	up to 1 year (FA§12)
FYROM*	YES	NO	fine	YES (flag, coat of arms, anthem)	NO	fine
Montenegro*	YES	YES	up to 1 year in prison or fine (CC§198)	YES (flag, coat of arms, anthem)	YES	fine or imprisonment up to 1 year (CC§198)
Serbia*	YES	YES	up to 3 months in prison or fine (CC§173)	YES (flag, coat of arms, anthem)	YES	fine or imprisonment up to 3 months (CC§173)
Turkey*	YES	YES	6 months to 2 years in prison (CC§301)	YES (flag, all symbols w/ white crescent and star on red background designated as symbol, anthem)	YES	Imprisonment 1-3 years (flag); 6 mo.-2 yrs (anthem) (CC§300)

¹ Please note that we have not included here laws that govern the use and misuse of state symbols (i.e. the way in which a flag or other symbol should be displayed), but rather only criminal laws that punish insult or defamation toward the “honour” of these symbols.

² Punishes knowingly publishing a report that may negatively affect the creditworthiness of the state.

³ The Czech Republic, for example, does have a law regulating the flag (see here: www.epravo.cz/top/zakony/sbirka-zakonu/zakon-ze-dne-18-zari-2001-o-uzivani-statnich-symbolu-ceske-republiky-a-o-zmene-nekterych-zakonu-2792.html), which punishes the physical misuse of the flag and other state symbols, but not to insult to the reputation of the flag per se. This law was recently used to fine an artist who had modified the Czech flag by adding Roma symbolism to create a “Czech-Roma flag”: see e.g., www.romea.cz/en/features-and-commentary/reportage/czech-republic-art-is-fined-but-flags-defaced-by-sports-fans-don-t-bother-bureacrats.

⁴ Finland also has a law punishing the destruction of disrespectful use of the flag, but not to the immaterial honour of the flag as such (see: www.finlex.fi/fi/laki/ajantasa/1978/19780380)

⁵ Latvia’s law on desecration/blasphemy (*zaimošana*) against national symbols generally refers to physical forms of desecration, but includes “any other form” of desecration and courts have accepted that this can refer to verbal as well as physical insults.

⁶ Lithuania’s law primarily punishes physically damaging or misusing state symbols. However, the provision also contains a “catch-all” clause that could theoretically be applied to verbal forms of insult, although Lithuanian legal experts were not able to find an example of such application.

⁷ No specific criminal provision, however the Romanian Constitution prohibits defamation of the state (Article 30).

CHART E: *Criminal offences protecting the honour and reputation of foreign officials; foreign states and their symbols; and intl. orgs. and their symbols (Jan. 2015)*

Specific provisions protecting:	foreign officials ¹	nature of protection	possible punishments	foreign states and symbols	nature of protection	possible punishment
Austria	NO	N/A	N/A	YES	criminal offence of insulting a flag, national symbol, or anthem of foreign state or intergov. organisation (CC§317)	6 months in prison, fine of 360x daily rate
Belgium	YES	criminal offence of <i>outrage</i> toward foreign diplomatic officials accredited in Belgium; may be committed through words (L.Mar 12)	2 to 18 months in prison, fine	NO	N/A	N/A
Bulgaria	NO	N/A	N/A	NO	N/A	N/A
Croatia	NO	N/A	N/A	YES	criminal offence of publicly mocking, roughly disparaging, or exposing to hatred a foreign state, flag, coat of arms, or national anthems; also applies to the UN, EU, Council of Europe, International Red Cross (CC§356)	up to 1 year in prison
Cyprus	YES	criminal offence of publishing anything that aims to humiliate, insult, or expose to hatred or contempt a foreign head of state, ambassador, or other foreign dignitary, with intent to compromise peace between Republic and foreign state (CC§68)	misdemeanour (fine or short-term imprisonment)	NO	N/A	N/A
Czech Republic	NO	N/A	N/A	NO	N/A	N/A
Denmark	NO	N/A	N/A	YES	publicly insulting a foreign nation or its flag or recognised symbol of the United Nations or the European Council (<i>Det Europæiske Råd</i>) (CC§110e)	up to two years in prison or fine
Estonia	YES	criminal offence of defaming a person enjoying international immunity (CC§247)	up to 2 years in prison or fine	YES	criminal offence of defaming the flag, anthem, or other official symbol of a foreign state (CC§249)	up to 1 year in prison or fine
Finland	NO	N/A	N/A	NO	N/A	N/A
France	YES	higher punishments for insult when committed against ambassadors or other official representatives of foreign countries in France (L.1881§37)	fine of up to €45,000	NO	N/A	N/A

CHART E: Criminal offences protecting the honour and reputation of foreign officials; foreign states and their symbols; and intl. orgs. and their symbols (Jan. 2015)

Germany	YES	criminal offence of insulting a foreign head of state or member of government in Germany in official capacity (CC§103)	up to 3 years in prison or fine (defamation); 3 months to 5 years in prison (intentional malicious defamation)	YES	criminal offence of insulting by mischief toward a foreign flag or foreign symbol legally displayed in Germany (CC§104)	up to 2 years in prison
Greece	YES	(1) criminal offence of publicly insulting the honour of the head of state of a foreign state (CC§153) (2) criminal offence of insulting an ambassador or other diplomatic agent of a foreign country (CC§154)	(1) imprisonment (2) up to 2 years in prison	YES	criminal offence of offending the flag or emblem of sovereignty of foreign state at peace with Greece or interrupting or interfering with the national anthem of such a state (CC§155)	up to 6 months in prison or fine ²
Hungary	NO	N/A	N/A	NO	N/A	N/A
Ireland	NO	N/A	N/A	NO	N/A	N/A
Italy	NO	N/A	N/A	YES	criminal offence of publicly insulting the flag or emblem of a foreign state, used in accordance with Italian domestic law (CC§299)	fine of €100 to €1,000 ³
Latvia	NO	N/A	N/A	NO	N/A	N/A
Lithuania	NO	N/A	N/A	YES ⁴	criminal offence of desecrating an officially displayed emblem or flag of foreign state, flag of EU or of intl. public organisation	up to 2 years in prison, fine, temporary detention, restriction of liberty
Luxembourg	NO	N/A	N/A	NO	N/A	N/A
Malta	NO	N/A	N/A	NO	N/A	N/A
Netherlands	YES	criminal offence of intentionally insulting the head of state or a member of gov. of a friendly state with respect to their official activities while in the Netherlands (CC§118)	up to 2 years in prison, fine of €20,250, loss of certain political rights	NO	N/A	N/A
Poland	YES	(1) criminal offence of offending the head of state or the head of the diplomatic delegation of a foreign state (CC§136(3)) (2) criminal offence of publicly insulting a person belonging to the	(1) up to 3 years in prison ⁵ (2) up to 1 year in prison, restriction of liberty ⁶	YES	publicly insulting, destroying, or removing a symbol of a foreign state (CC§137)	up to 1 year in prison, fine, restriction of liberty

CHART E: Criminal offences protecting the honour and reputation of foreign officials; foreign states and their symbols; and intl. orgs. and their symbols (Jan. 2015)

		diplomatic personnel of a mission of a foreign country in Poland, or a consular official of a foreign country in connection with the performance of their official duties while in Poland (CC§136(4))				
Portugal	YES	criminal offence of offending the honour of protected persons, includes the head of state, head of government, or foreign minister and accompanying family members of a foreign state with which Portugal has diplomatic relations, in addition to foreign or international officials considered protected persons under international law (CC§322)	up to 2 years in prison, fine	YES	criminal offence of insulting the flag or official symbol of a foreign state or international organisation of which Portugal is a member (CC§323)	up to 1 year in prison or a fine of max. 120 days
Romania	NO	N/A	N/A	NO	N/A	N/A
Slovakia	NO	N/A	N/A	NO	N/A	N/A
Slovenia	YES	higher punishments for defamatory offences when committed against a foreign country, its head of state or its diplomatic ambassador, or representatives of international organisations recognised by the Republic of Slovenia (CC§164)	up to 1 year in prison, fine	YES	criminal offence of disparaging the flag, coat of arms, or national anthem of a foreign country or the insignia of an international organisation recognised by the Republic of Slovenia (CC§163)	up to 1 year in prison, fine
Spain	NO	N/A	N/A	NO	N/A	N/A
Sweden	NO	N/A	N/A	NO	N/A	N/A
United Kingdom	NO	N/A	N/A	NO	N/A	N/A
Iceland*	YES	(1) higher punishments for defamation offences when directed at the head of a foreign state or foreign diplomats stationed in Iceland (CC§94) (2) criminal offence of disgracing, insulting, or uttering defamatory insinuations about other employees of a foreign State present in Iceland (CC§95)	(1) base punishments increased by one-half (2) up to 2 year in prison, fine; up to 6 in year in prison in case of "gross offence"	YES	criminal offence of disgracing a foreign nation or a foreign State, its superior official, Head of State, flag or other recognized symbol of nationality, the flag of the United Nations or the flag of the Council of Europe (CC§95)	up to 2 year in prison, fine; up to 6 in year in prison in case of "gross offence"

CHART E: *Criminal offences protecting the honour and reputation of foreign officials; foreign states and their symbols; and intl. orgs. and their symbols (Jan. 2015)*

FYROM*	YES	criminal offence of intentionally making a mockery of the head of a foreign state or the diplomatic representative of a foreign state in Macedonia	fine	YES	(1) criminal offence of intentionally making a public mockery of a foreign state, its flag, coat of arms or national anthem (2) criminal offence of intentionally making a mockery of an international organisation	(1) fine (2) fine
Montenegro*	NO	N/A	N/A	YES	criminal offence of publicly exposing to mockery a state with which Montenegro has diplomatic relations, as well as its flag, coat of arms of national anthem; this also applies to mocking the UN, International Red Cross, or any other organisation of which Montenegro is a member (CC§200)	fine of €3,000 to €10,000
Serbia*	NO	N/A	N/A	YES	criminal offence of exposing to mockery a foreign state, its coat of arms, flag or national anthem; this also applies to publicly exposing to mockery the UN, International Red Cross, or any other organisation of which Serbia is a member (CC§175)	up to 3 months in prison, fine
Turkey*	NO	N/A	N/A	YES	criminal offence of insulting the flag or other symbol of sovereignty of a foreign state with three months to one year in prison. Investigations and prosecutions for this offence must be prompted by a complaint from the foreign state in question (CC§341)	3 months to 1 year in prison

¹ Refers to *specific provisions* protecting foreign officials

² Requires reciprocity

³ Requires reciprocity

⁴ Lithuania's law refers primarily to physical forms of damage, but also refers to "other forms" of desecration, which could be interpreted to mean verbal insults

⁵ Requires reciprocity

⁶ Requires reciprocity

CHART F: Criminal provisions related to the protection of honour of the deceased, EU member states and candidate countries (Jan. 2015)

	specific provisions protecting honour of the deceased ⁱ	nature of protection	possible punishment
Austria	none found	N/A	N/A
Belgium	YES	provision that spouses or descendants (up to and including the third degree) may file criminal charges for defamation offences on behalf of a deceased person (CC§450)	see Chart A
Bulgaria	none found ⁱⁱ	N/A	N/A
Croatia	YES	provision that in the case that insult, shaming, or defamation is committed against a deceased person, a close relation of the person may bring a private criminal action (CC§150)	see Chart A
Cyprus	YES	criminal offence of libelling the memory of a deceased person ⁱⁱⁱ (CC§202A)	up to 1 year in prison
Czech Republic	none found	N/A	N/A
Denmark	YES	criminal offence of insulting the honour of the dead is punishable by fines; statute of limitations is 20 years, but does not apply if committed in bad faith or with reason to believe that the information was false (CC§274)	fine; if committed in bad faith or with reason to believe information false, up to 4 years
Estonia	none found	N/A	N/A
Finland	YES	provision that defamation charges can also be brought for spreading false information or a false insinuation about a deceased person, but only insofar as the statement is conducive to causing suffering to a person to whom the deceased was particularly close (CC§24.9(3))	fine
France	YES	provision that no charges can be brought for defamation or insult against the dead unless the offender intended to attack the honour or the consideration of their descendants, spouses, or legal heirs (L.1881§34)	see Chart A
Germany	YES	criminal offence of defaming the memory of a deceased person (CC§189)	up to 2 years in prison, fine
Greece	YES	criminal offence of insulting the memory of the dead with cruel or malicious defamation or libel (CC§365)	up to 6 months
Hungary	YES	provision on harming the memory of a person by committing defamation or libel (CC§228)	up to 1 year in prison
Ireland	none found	N/A	N/A
Italy	YES	provision that where there has been insult to the memory of a deceased, or the defamed dies before bringing a suit the case can be brought by their next of kin as long as is it falls within the statute of limitation (CC§597(2))	see Chart A
Latvia	none found	N/A	N/A
Lithuania	YES	criminal offence of contempt for the memory of the deceased by publicly making false statements about the deceased, which could arouse contempt for or undermine respect to the memory of the deceased (CC§313)	misdeemeanour (community service, fine, restriction of liberty, arrest [temporary detention])
Luxembourg	YES	provision that spouses or descendants (up to and including the third degree) may file criminal charges for defamation offences on behalf of a deceased person (CC§450)	see Chart A
Malta	YES	provision that it is possible for family members to file a claim for defamation when the offence is committed against the memory of a deceased person (CC§255)	see Chart A
Netherlands	YES	criminal offence of committing any action against a deceased person that if said person had been alive would have counted as defamation or libel (CC§270)	up to 3 months in prison, fine
Poland	none found	N/A	N/A
Portugal	YES	criminal offence of seriously offending the dead is punishable under §185 with a prison term of maximum six	up to 6 months in prison, fine of

CHART F: Criminal provisions related to the protection of honour of the deceased, EU member states and candidate countries (Jan. 2015)

		months or a fine of maximum 240 days; statute of limitations is 50 years (CC§185)	max. 240 days
Romania	none found	N/A	N/A
Slovakia	none found	N/A	N/A
Slovenia	YES	provision that when defamatory offences are committed against a deceased person, the prosecution can be initiated by the spouse, extramarital partner, partner from registered same-sex civil partnership, children or adopted children, parents or adoptive parents, or brothers or sisters (CC§168)	see Chart A
Spain	none found	N/A	N/A
Sweden	YES	provision that if defamation is directed against a deceased person, prosecution may be instituted by the surviving spouse, direct heir or heirs, father, mother or siblings and by a prosecutor if prosecution for special reasons is considered to be called for in the public interest (CC§5.5)	see Chart A
United Kingdom	none found	N/A	N/A
Iceland*	YES	criminal offence of defaming a deceased person (CC§240)	up to 1 year in prison
FYROM*	none found	N/A	N/A
Montenegro*	YES	provision that if an offence is committed against a deceased person (offence of dissemination of information on personal and family life), prosecution may be initiated (via private action) by the spouse of the deceased or person cohabiting with the deceased, lineal descendant, adoptive parent, adopted child, or the deceased person's sibling (CC§202)	see Chart A
Serbia*	YES	provision that if an offence against reputation is committed against a deceased person, prosecution may be initiated (via private action) by the spouse of the deceased or person cohabiting with the deceased, lineal descendant, adoptive parent, adopted child, or the deceased person's sibling (CC§177(2))	see Chart A
Turkey*	YES	criminal offence of insulting the memory of a deceased person ^{iv} (CC§130)	3 months to 2 years in prison; increased by 1/6 if committed in public

ⁱ This chart categorises specific statutory criminal offences related to the protection of the reputation and/or honour of deceased persons. It does not necessarily exclude the possibility that criminal prosecutions could occur where such offences do not exist, and it does not account for remedies available under civil law for such protection.

ⁱⁱ in connection to criminal procedure, Criminal Code provides that, if the offended party has died, family members can lodge a complaint within a six-month window starting from when the offended party became aware of the alleged crime (CC§84.)

ⁱⁱⁱ Criminal prosecution is only possible when the relatives of the deceased file a complaint.

^{iv} in case of insulting the memory a dead person there has to be at least three witnesses.

CHART G: *Caps on compensation for non-pecuniary damage for defamation, EU member states and candidate countries (Jan. 2015)*

	caps on compensation for non-pecuniary harm ¹	capped amount
Austria	YES	€20,000 generally, €50,000 when part. harmful (MG§6)
Belgium	NO	
Bulgaria	NO	
Croatia	NO	
Cyprus	NO	
Czech Republic	NO	
Denmark	NO	
Estonia	NO	
Finland	NO	
France	NO	
Germany	NO	
Greece	NO	
Hungary	NO	
Ireland	NO	
Italy	NO	
Latvia	NO	
Lithuania	NO	
Luxembourg	NO	
Malta	YES	€11,646.87 (PA§§28-29).
Netherlands	NO	
Poland	NO	
Portugal	NO	
Romania	NO	
Slovakia	NO	
Slovenia	NO	
Spain	NO	
Sweden	NO	
United Kingdom	NO	
Iceland*	NO	
FYROM*	YES	€2,000 (journalist); €10,000 (editor); €15,000 (legal entity) (DA§18)
Montenegro*	NO	
Serbia*	NO	
Turkey*	NO	

¹ This chart looks solely at statutory caps on compensation for non-pecuniary harm and does include information on court conventions or legal cultures in the awarding of such compensation.

Chart H: Criminal offences related to blasphemy and insult to religious feeling, EU member states and candidate countries (Jan. 2015)

Specific provisions protecting:	blasphemy or insult to religious feeling ⁱ	legal definition	imprisonment as possible punishment	possible punishments
Austria	YES	ridiculing or denigrating a person or object constituting an object of worship or a nationally recognised church or religious community, or a religious doctrine or custom, in a way that may cause “justified indignation” (<i>berechtigtes Ärgernis</i>) (CC§188)	YES	up to 6 months in prison, fine of 360x the daily rate
Belgium		expressing contempt toward the “objects” of a religion, when committed in a place of worship or during a public ceremony of a religious group (CC§144)	YES	up to 6 months in prison, fine of €26 to €500
Bulgaria	none found	N/A	N/A	N/A
Croatia	none found	N/A	N/A	N/A
Cyprus	YES	(1) publishing books, pamphlets, letters or articles in magazines and newspapers in order to humiliate a religion or insult those who profess it (CC§142) (2) deliberately offending religious sentiments of a person (CC§141)	YES	(1) misdemeanour (fine or short term imprisonment) (2) up to 1 year in prison
Czech Republic		criminal offence of publicly defaming a group of people for their religion (CC§355)	YES	up to 2 years in prison
Denmark	YES	mocking a person’s religion or the doctrine of faith (CC§140)	YES	up to 4 months in prison
Estonia	none found	N/A	N/A	N/A
Finland	YES	publicly blaspheming against God or, for the purpose of offending, publicly defames or desecrates what is otherwise held to be sacred by a church or religious community (CC§17.10.1)	YES	up to 6 months in prison
France	YES (<i>Alsace-Moselle only</i>)	publicly blaspheming against God or publicly offending one of the Christian religions or other established religious community (<i>Code pénal local</i> §166)	YES	up to 3 years in prison
Germany	YES	defaming the religion or ideology of others or a church or other religious or ideological association within Germany, or their institutions or customs in a manner that is capable of disturbing the public peace (CC§166)	YES	up to 3 years in prison, fine
Greece	YES	(1) malicious blasphemy (disrespect toward the divine) (CC§198.1) (2) public reviling of the Eastern Orthodox Church or any other religion tolerated in Greece (CC§199) In addition, the Constitution (Art. 14§2) allows for the seizure of publications, either before or after circulation, that contain insults against the Christian or any known religion	YES	(1) detention up to 3 months, fine of max. €3,000 (2) up to 2 years in prison
Hungary	none found	N/A	N/A	N/A
Ireland	YES	publishing matter that is grossly abusive or insulting in relation to matters held sacred by any religion, thereby causing outrage among a substantial number of the adherents of that religion (blasphemous libel) (DA§36)	NO	fine up to €25,000
Italy	YES	(1) administrative offence of blasphemy committed with invective or abusive words	NO	(1) administrative fine of €51 to €309

Chart H: Criminal offences related to blasphemy and insult to religious feeling, EU member states and candidate countries (Jan. 2015)

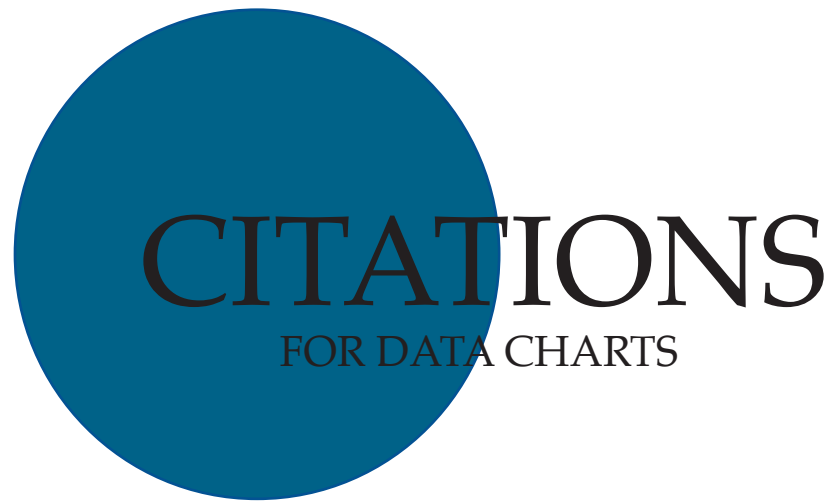
		(CC§724) (2) criminal offence of publicly insulting a religion by expressing contempt for those who profess it (CC§403) (3) criminal offence vilifying a religion via publicly insulting objects of worship (CC§404)		(2) fine of €1,000 to €5,000; if committed via contempt of minister, then €2,000 to €6,000 (3) fine of €1,000 to €5,000
Latvia		criminal offence <i>violating the religious feelings</i> of persons or inciting hatred in connection with the attitudes of persons toward religion or atheism (CC§150)	YES	temporary deprivation of liberty, community service, fine
Lithuania		1. publicly ridiculing or expressing contempt for a group of persons on grounds of religion (CC§170.2) 2. disturbing religious ceremonies or religious celebrations “through the use of taboo words, carrying out of defiant actions, making threats, taunting or other indecent actions” (CC§171)	YES	1. fine, restriction of liberty, arrest, imprisonment of up to 2 years 2. community service, fine, restriction of liberty, arrest
Luxembourg		expressing contempt toward the objects of a religion in a place of worship or during a public ceremony of a religious group (CC§144) note also that punishments for slander (see Chart A) can be elevated when directed at a group of individuals on account of religion (CC§444.2)	YES	15 days and 6 months in prison or a fine of between €251 and €5,000
Malta	YES	(1) uttering an insult that consists of “blasphemous words of expressions” (CC§342) (2) vilifying or offending the Roman Catholic religion by vilifying those who profess it or anything that forms the object of Roman Catholic worship (CC§163) (3) vilifying or offending any other religion “tolerated by law” by vilifying those who profess it or anything that forms the object of worship (CC§164)	YES	(1) fine (<i>ammenda</i>) of minimum €11.65 or up to 3 months in prison (2) between 1 and 6 months in prison (3) between 1 and 3 months in prison
Netherlands	none found ⁱⁱ	N/A	N/A	N/A
Poland	YES	offending the religious feelings of other persons by publicly outraging an object of religious worship, or a place dedicated to the public celebration of religious rites (CC§196)	YES	fine, restriction of liberty or deprivation of liberty for up to 2 years.
Portugal	YES	offending a person in virtue of his religious belief, denigrating an object of religious worship in a way that could disturb public order, or slandering a religious practice (CC§§251-252)	YES	up to 1 year in prison or a fine of maximum 120 days
Romania	none found	N/A	N/A	N/A
Slovakia		criminal offence of publicly defaming a group of people for their religion (CC§423)	YES	imprisonment from 1 to 3 years
Slovenia	none found	N/A	N/A	N/A
Spain	YES	(1) offending the feelings of members of religious groups or publicly disparaging their dogmas, beliefs, rites or ceremonies (CC§525) (2) committing “profane acts” offensive to religious feeling in a religious setting (CC§524)	YES	(1) fine of 8 to 12 months (2) 6 months to 1 year in prison and a fine of 12 to 24 months.
Sweden	none found	N/A	N/A	N/A
United Kingdom	YES (<i>N. Ireland only</i>)	blasphemous libel (Northern Ireland)		

Chart H: Criminal offences related to blasphemy and insult to religious feeling, EU member states and candidate countries (Jan. 2015)

Iceland*	YES	ridiculing or insulting the dogmas or worship of a lawfully existing religious community in Iceland (CC§125)	YES	fine or imprisonment for up to 3 months
FYROM*		causing or inciting religious hatred, discord or intolerance by exposing to mockery religious symbols (CC§319)	YES	imprisonment from 1 to 5 years; up to 10 years under certain conditions
Montenegro*		causing or inciting religious hatred by exposing to mockery religious symbols (CC§370.3)	YES	imprisonment from 1 to 8 years; up to 10 years under certain conditions
Serbia*		causing or inciting religious hatred or intolerance through the ridicule of religious symbols (CC§317.2)	YES	imprisonment from 1 to 8 years; up to 10 years under certain
Turkey*	YES	insult in response to expression or religious belief or to a person's religious behaviour in terms of his/her compliance with the requirements and prohibitions of the religious or in reference to the holy values of a person's religion (CC§125)		imprisonment for up to 1 year

ⁱ In this chart, IPI has sought to categorise criminal offences that relate to either blasphemy or insult to religious feeling. This chart does not include offences related to inciting hatred or discrimination on account of religion but in certain cases includes information on group defamation (nevertheless, "group defamation" was not a primary research focus and thus information thereon may be missing. Countries labelled with "YES" and coloured in yellow are those that, in the Institute's view, clearly maintain problematic laws on blasphemy and religious insult. Countries labelled "none found" and coloured in grey are those for which the Institute was not able to find any examples of relevant legal provisions. Countries coloured in grey but lacking a label are those that maintain provisions that, based on one's point of view and/or legal interpretation, may be considered to fall into the category of problematic blasphemy and religious insult laws. This category also includes problematic "sacrilege" laws, i.e. those prohibiting offence toward religious objects. It can be difficult to draw a clear line among these categories and the Institute has thus opted to provide as much information as possible rather than excluding data based on its own interpretation.

ⁱⁱ Blasphemy was previously punished under §§147 and 147a as well as §429bis. All three articles were officially removed on 1 March 2014.



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CC: Criminal Code (KZ-1) of the Republic of Slovenia, entry into force November 1, 2008, Official Gazette RS, no. 50/2012, available at (Slovenian): www.uradni-list.si/1/objava.jsp?urlurid=20122065. Most recent English version available at: www.policija.si/eng/images/stories/Legislation/pdf/CriminalCode2009.pdf (last accessed July 1, 2014).

SPAIN

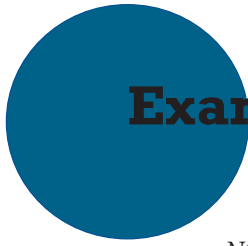
CC: Spanish Criminal Code (Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal), last updated 2012, available at (Spanish): www.boe.es/buscar/act.php?id=BOE-A-1995-25444 (last accessed July 1, 2014).. English version (2011) updated at: www.legislationline.org/documents/section/criminal-codes (last accessed July 1, 2014).

SWEDEN

CC: Swedish Criminal Code (Brottsbalk 1962:700), available at (Swedish): www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Brottsbalk-1962700_sfs-1962-700/ (last accessed July 1, 2014). English version (1999) available at: www.government.se/sb/d/3926/a/27777 (last accessed July 1, 2014).

TURKEY

CC: Turkish Criminal Code (Türk Ceza Kanunu), Official Gazette No. 25611 dated 12.10.2004, available at (Turkish): www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=1.5.5237&sourceXmlSearch=&MevzuatIliski=0 (last accessed July 7, 2014). English version (2004, without recent amendments) available here: www.legislationline.org/documents/action/popup/id/6872/preview.



Example Country File: France

NOTE: This section serves as an example of an individual country file that IPI has put together as part of its research into defamation law in the EU. Additional files will be available on IPI's project website, www.freemedia.at/ecpm.

I. Overview of Criminal Law

a. Criminal defamation

Defamation (*diffamation*) is a “delict”¹ under France’s Law of July 29, 1881 on the Freedom of the Press.² The Law defines defamation in Art. 29 as “any allegation or accusation of a fact [*fait*] that causes an attack on the honour or consideration of a person”, adding: “The direct publication or reproduction of this allegation or accusation is punishable even if it is done in a manner allowing for doubt or is directed toward a person not explicitly named but identifiable” through the terms used.

When directed at private persons, defamation is punishable with a fine of €12,000 (Art. 32). When directed at the president, public officials, ministers, legislators, ministers of religions subsidised by the state, the courts, the armed forces et al. with respect to their official functions, it is punished with a fine of €45,000 (Arts. 30-31).

The Law likewise defines the delict of insult (*injure*) as “any offensive expression, scornful word, or invective that does not contain the accusation of a fact” (Art. 29). Insult through the media against either private persons or the public official listed above is punishable by a fine of €12,000 (Art. 33). Insult committed against ambassadors or other official representatives of foreign countries in France is punishable by a fine of €45,000 (Art. 37).³

The Law on Freedom of the Press deals only with defamation and insult committed publicly. The French Penal Code⁴ contains two “contraventions”, or petty offences, related to the private sphere. Art. R621-1 punishes “non-public defamation toward a person” with a fine of the first degree. Art. R621-2 also punishes “unprovoked” non-public insult toward a person” with a fine of the first degree.⁵

b. Statutory defences

Truth

According to Art. 35 of the Law on the Freedom of the Press, truth is always a defence except if the defamatory assertion concerns a person’s private life. This stipulation also applies to the penal code contraventions. The burden of proof in establishing truth falls to the accused. For insult, it is a defence if the offender was provoked.

Privilege

The press cannot be held liable for accurate reporting on public hearings or inquiries of the National Assembly or the Senate, or on court proceedings (Art. 41).

c. Provisions protecting honour of public officials

See the second paragraph under “Criminal defamation” above. Additionally, non-public invective against public authorities, including that which is made in writing, is a criminal offence (Penal Code Art. 433-5) carrying a maximum penalty of six months’ imprisonment and a fine of €7,500.

d. Provisions protecting the state, its institutions or its symbols

Penal Code Art. 433-5-1 punishes “publicly insulting the national anthem or tricolour flag at a demonstrated organised or regulated by the public authorities” with a fine of €7,500 and six months in prison if “committed as a group action”.

e. Provisions protecting for foreign officials, states, and symbols

f. Provisions on blasphemy or “religious feeling”

Blasphemy has been abolished as a criminal offence except in the region of Alsace-Moselle (départments Haut-Rhin, Bas-Rhin, and Moselle), owing to the preservation of laws enacted when the region was under German control. Art. 166 of the “local law”⁶ (*droit local*) provides that whoever commits “public blasphemy against God” or “publicly offended one of the Christian religions” or other established religious community shall be punished with up to three years in prison.

g. Provisions protecting the deceased

Art. 34 of the Law on the Freedom of the Press states that no charges can be brought for defamation or insult against the dead unless the offender “intended to attack the honour or the consideration of their descendants, spouses, or legal heirs”.

II. Overview of Civil Law

a. Civil defamation

In general, civil actions for defamation are brought under the Law of 1881.

Art. 1382 of the French Civil Code provides that any person who causes damage to another person is obligated to repair that damage.⁷ Although plaintiffs in defamation cases have invoked the article in the past, the Court of Cassation has held that “the abuses of freedom of expression foreseen and punished under the Law of July 29, 1881 cannot be addressed on the basis of Article 1382 of the Civil Code”.⁸ French jurists examining Art. 1382 in the context of defamation actions traditionally have considered the provision to be too vague and to not offer the necessary procedural safeguards for freedom of expression that would ensure compliance with Article 10 of the European Convention on Human Rights and related rulings by the European Court of Human Rights (ECtHR).

b. Damages

There are no caps on the amount of compensation for non-pecuniary damage.

c. Defences available

Defences for civil damages are subject to those established for offences under the Law of 1881 (see above under “Overview of Criminal Provisions” and below under “Case Law and Recent Developments”).

II. Amendments, Case Law and Application

a. Recent amendments to criminal or civil law

French defamation law has undergone some notable changes over the past 15 years, much of which was prompted by rulings of the ECtHR.

Nearly all prison sentences for defamation and insult were removed in 2000; only defamation and insult on account of race or other group characteristic remain punishable with imprisonment (one year and six months, respectively) (Arts. 32-33 of the Law on Freedom of the Press).

In 2013, the ECtHR ruled that France had violated Art. 10 of the European Convention on Human Rights after a French citizen was fined €30 for violating Art. 26 of the Law on Freedom of the Press, which prohibits offence toward the French president. The defendant, Hervé Eon, was convicted for holding up a sign reading “Get lost, you prat” during a visit by then-President Nicolas Sarkozy – an allusion to Sarkozy’s use of a similar phrase when confronted by a man who refused to shake Sarkozy’s hand. The Court found that prosecutions under Art. 26 were “likely to have a chilling effect on satirical forms of

expression relating to topical issues”.⁹ The article was abolished in 2013 in a move widely reported to have decriminalised insult toward the French president. However, the Law on Freedom of the Press was in fact modified to include the French president in the list of public officials receiving increased protection from defamation under Arts. 30-31.

In 2011, France’s Constitutional Council (Conseil constitutionnel) ruled that an exception to the defence of truth contained in the Law on Freedom of the Press for matters more than 10 years old was unconstitutional.¹⁰ In 2013, the Constitutional Council threw out another exception to the defence of truth, for matters relating to a person’s pardoned or expunged criminal record.¹¹ The Council’s decision followed a 2007 Council of Europe Parliamentary Resolution in which France was specifically urged to modify its truth defence.

b. Relevant case law

General principles

In order to be considered defamatory by French courts, an expression must generally fulfil the following criteria:

- i. It must be made publicly;
- ii. It must contain the allegation or imputation of a fact (fait);
- iii. It must affect a person’s honour or esteem;
- iv. It must be directed at an identifiable moral or legal person; and
- v. It must have been made in bad faith.

With respect to criterion (v), it is important to note that French jurisprudence assumes that all defamatory statements are made in bad faith (i.e., with malice) unless proven otherwise by the author of the statement.¹²

Separation of fact and value

Over time, the jurisprudence of the Court of Cassation has narrowed this definition, particularly with respect to the “allegation of a fact”. In particular, the Court has consistently held that in order for a statement to be defamatory it must contain the accusation of a “precise” or “defined” fact,¹³ further defined as a one that can be subject to proof of truth or to debate. Any expressions not subject to such proof (i.e. feelings or value judgments) are only actionable as insult.

In 2010, for example, the Court acquitted a rapper of defaming a public authority over critical comments directed at France’s Interior Ministry in a 2002 flyer accompanying the rapper’s then-latest album. The comments concerned generalised accusations of police abuse; one read: “The reports of the Interior Ministry will never take stock of the hundreds of our brothers struck down by the police force without any of the assassins ever being bothered”. The charges were signed off by then-Interior Minister and presidential candidate Nicholas Sarkozy. The Court found that the rapper’s comments did not contain the imputation of a “precise fact” and thus “although they have an insulting character do not constitute the crime of defamation”.¹⁴

In another notable ruling, the Court held in 2013 that the same statement could not be held liable for both defamation and insult. Due to the distinction between the two offences, the Court stated that applying them to the same content created a “detrimental uncertainty” for defendants when preparing a defence.¹⁵

Defence of reasonable publication (good faith)

The only defence for defamation allowed by the Law on Freedom of the Press is truth, which is always applicable except when concerning a person’s private life. However, French jurisprudence has generally also recognised a defence of good faith, as long as the assertion in question:

- (i) pursues a legitimate aim;
- (ii) is not driven by animosity or malice;
- (iii) is prudent and measured in presentation; and
- (iv) is backed by a serious investigation that dutifully sought to ascertain the truth of the statement.

In French case law, the defence of good faith has been modified as the courts have come under the influence of the ECtHR. In 2006, the Paris court of appeals convicted an editor and a journalist at the magazine *Paris Match* of criminal defamation after printing an interview with a former insurance executive, François Marland, who implicated another businessman, Jean-François Henin, in a Franco-Californian

insurance fraud scandal known as the Executive Life affair. Marland was convicted along with the two journalists. The appeals court ruled that the three defendants could not plead justification because Marland's revelations appeared objectively motivated by a desire for revenge, thus failing the malice stage of the test.

The parties appealed the verdict to the Criminal Chamber of the French Court of Cassation, arguing, among other things, that the public's right to know (the "legitimate aim" in this case) supported the publication of the article in question, even if "the witness [Marland] implicated a third person in a fraudulent financial transaction for personal reasons". In 2008, the Court of Cassation reversed the verdict, ruling that the appeals court had failed to take into account the totality of circumstances surrounding the publication. According to the Court, "Considering that the incriminating article concerns a subject of general interest relating to a fraudulent transaction by a banking arm of a foreign insurance company in which the French state had a financial interest", the publication "did not overstep the limits of free expression in the sense of Article 10 of the European Convention on Human Rights".¹⁶

In 2011, the Court of Cassation further strengthened the defence of good faith by holding that a serious investigative article could not be denied the benefit of that defence regardless of whether its presentation was "prudent and measured".¹⁷

The case concerned a book, *Révélation*, written by French journalist Denis Robert and Ernest Backes, that alleged serious criminal activity, including money laundering, on the part of Clearstream, a Luxembourg-based bank. Luxembourg investigators cleared the bank of wrongdoing and Clearstream filed a civil suit for defamation against Robert and Backes, as well as against the book's editor and its publisher (Edition des Arènes). In 2008, the Paris Court of Appeal ruled in favour of Clearstream, finding that although the authors had pursued a legitimate aim, they could not receive the benefit of good faith because they "did not observe necessary prudence and measure in the expression".

The Court of Cassation overturned the verdict, ruling: "In deciding thusly, [even] when the general interest of the subject and the serious nature of the enquiry, led by an investigative journalist, authorised the sentiments and the legal allegations [in the book], the court of appeal violated [Article 10 of the European Convention on Human Rights] and [Article 29 of the Law of 1881]."

c. Recent examples of cases involving the media

According to reports, a Paris criminal court in March 2014 fined an editor €1,500 and two journalists €1,000 each for defaming Teodorin Obiang, son of the current president of Equatorial Guinea. In an article published in the magazine *Paris Match* in April 2012, the journalists reported that Obiang had been indicted on drug trafficking charges in the United States but that the scandal "had been quickly snuffed out". Obiang's lawyers argued that the allegation was based on a rumour, and the judge in the case reportedly agreed.¹⁸

However, the *Paris Match* case was the Obiang family's only victory in a string of a defamation lawsuits launched against media and civil-society groups in recent years who had reported allegations that the Obiangs and their associated were involved in a massive misappropriation of Ecuatoguinean public funds. The family filed claims against, among others, the Catholic Committee against Hunger and for Development, Transparency International France, *Le Parisien* and *L'Express*. In all of those cases, French courts ruled upheld the right of media and civil society to report accusations in the public interest in good faith.

Notably, while the cases mentioned in the previous paragraph were all handled by the 17th Chamber of the Paris Court of First Instance, which specialises in matters related to the media, the claim against *Paris Match* was heard by the 13th Chamber. Legal observers in France suggested that the 13th Chamber was not experienced in defamation cases, offering a partial explanation for the outlier decision.¹⁹

In a further example, in 2014, a French Muslim legal-defence group filed criminal blasphemy charges against the satirical magazine *Charlie Hebdo* over a 2013 front page that read "The Koran is shit". The charges were filed in Strasbourg under the Alsace-Moselle blasphemy provisions.²⁰

NOTES

- ¹ French criminal law recognises three categories of offence, based on level of seriousness: crime, délit and contravention, sometimes translated as felony, misdemeanour and petty offence, respectively.
- ² Law of July 29, 1881 on Freedom of the Press (Loi du 29 juillet 1881 sur la liberté de la presse) version effective July 8, 2014, available at: www.legifrance.gouv.fr/affichTexte.do?sessionId=2D9E6AEE9BE04576DF46A63A4C088694.tpdjo05v_2?cidTexte=LEGITEXT000006070722&dateTexte=20140708.
- ³ Additionally, under Art. 32, defamation directed against a class of people based on race, ethnicity, religion, sex, sexual orientation or handicap is punishable by one year in prison and/or a fine of €45,000; in the case of insult, the punishment is six months in prison and a fine of €22,500.
- ⁴ French Criminal Code (Code pénal), version effective June 1, 2014, available at (French): www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070719. An older version (2005) is available in Eng. at: www.legifrance.gouv.fr/Traductions/en-English/Legifrance-translations.
- ⁵ The fine structure for contraventions is as follows (Penal Code Art. 131-13): first degree, max. €38; second degree, max. €150; third degree, max. €450, fourth degree, max. €750; fifth degree, max. €1,500 or €3,000 in case of recidivism.
- ⁶ Code pénal local (Alsace-Moselle), available at www.legirel.cnrs.fr/spip.php?article528&lang=fr.
- ⁷ Conseil constitutionnel, Décision n° 2013-350 QPC du 25 octobre 2013, available at www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028115355.
- ⁸ Mathilde Hallé, “Le délit de diffamation par voie de presse”, sous la direction de MM. CORMIER et LE BORGNE, 2006-2007, available at https://iepreweb.sciencespo-rennes.fr/bibli_doc/download/287/.
- ⁹ Ibid.
- ¹⁰ Code Civil, Version consolidée au 12 juillet 2014, available at: www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070721.
- ¹¹ Cass.ass.plen., 12 juillet 2000, n° 98-10160 and n° 98-11155, available at <http://legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000007042385&fastReqId=1885418381&fastPos=2> and <http://legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000007042386&fastReqId=1483386698&fastPos=1>. See also Cass. civ. 16 octobre 2013, n°12-21309, available at www.juricaf.org/arret/FRANCE-COURDE-CASSATION-20131016-1221309.
- ¹² Eon v. France, no. 26118/10, ECHR 2013, available at [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-117742#{"itemid":\["001-117742"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-117742#{).
- ¹³ Conseil constitutionnel, Décision n° 2011-131 QPC du 20 mai 2011, available at www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2011/2011-131-qpc/decision-n-2011-131-qpc-du-20-mai-2011.97111.html.
- ¹⁴ Conseil constitutionnel, Décision n° 2013-319 QPC du 07 juin 2013, available at www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2013/2013-319-qpc/decision-n-2013-319-qpc-du-07-juin-2013.137245.html.
- ¹⁵ Hallé.
- ¹⁶ “Presse”, Jurisprudence de la Cour de Cassation, www.courdecassation.fr/publications_26/rapport_annuel_36/rapport_2010_3866/quatrieme_partie_jurisprudence_cour_3879/nal_proc_3898/droit_penal_economique_financier_3902/presse_19479.html.
- ¹⁷ Arrêt n° 585 du 25 juin 2010 (08-86.891), Cour de cassation (Assemblée plénière), available at www.courdecassation.fr/jurisprudence_2/assemblée_pleniére_22/585_25_16731.html.
- ¹⁸ Arrêt n° 606 du 15 février 2013 (11-14.637) - Cour de cassation - Assemblée plénière, available at www.courdecassation.fr/jurisprudence_2/assemblée_pleniére_22/606_15_25436.html.
- ¹⁹ Arrêt n° 59 du 11 mars 2008 (06-84.712), Cour de cassation (Chambre criminelle), available at www.courdecassation.fr/IMG/pdf/bull_crim_03_08.pdf, 265. See also: “Infractions de presse et droit de savoir du public”, Publications de la Cour de cassation, www.courdecassation.fr/publications_26/rapport_annuel_36/rapport_2010_3866/etude_droit_3872/e_droit_3876/droit_savoir_public_3878/droit_savoir_19408.html.
- ²⁰ Cour de cassation, civile, Chambre civile 1, 3 février 2011, 09-10.302, available at www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000023550401&fastReqId=1003177403&fastPos=2.
- ²¹ “Paris Match condamné pour diffamation”, Le Figaro avec AFP, 3 Mar. 2014, www.lefigaro.fr/flash-actu/2014/03/19/97001-20140319FILWW00212--paris-match-condamne-pour-diffamation.php.
- ²² See Scott Griffen, “In France, judicial evolution in defamation cases protects work of civil society”, International Press Institute, 25 Sept. 2014, available at: www.freemedia.at/newssview/article/in-france-judicial-evolution-in-defamation-cases-protects-work-of-civil-society.html.
- ²³ “Muslims sue satirical paper for blasphemy, MP for hate speech”, Radio France International, 17 Feb. 2014, www.english.rfi.fr/france/20140217-muslims-sue-satirical-paper-blasphemy-mp-hate-speech.



Notes from the Field: Germany

In its “Notes from the Field” series, IPI takes a closer look at the application of defamation law in EU countries, seeking to illustrate the practical consequences of these laws upon both individual journalists and the free flow of information necessary for democratic governance. Two example features are provided in this report; the full series is available on IPI’s defamation project website, www.freemedia.at/ecpm.

On trial for criminal defamation, German freelance journalists faced “existential threat”

Pair convicted in 2010 over investigative report on Saxony child prostitution

German freelance journalists Thomas Datt and Arndt Ginzel could have been forgiven for assuming that their 2010 criminal trial for defamation would end in an acquittal. The application of Germany’s criminal libel provisions to journalists, as commentators observed, was itself already so unusual that the possibility of an actual conviction must have seemed utterly inconceivable.

Nevertheless, their assumption proved shockingly wrong. In August of that year, the pair was sentenced by a court in Dresden to pay criminal fines of €2,500 each for defaming two public prosecutors whose investigation into alleged links between Saxony judicial officials and child prostitution Datt and Ginzel criticised as flawed in a 2008 *Die Zeit* article.

Two years later, in Dec. 2012, an appeals court overturned the conviction, ruling that the criticism amounted to constitutionally protected freedom of expression. The court also confirmed the journalists’ acquittal on charges of defaming, in a separate article published by *Der Spiegel*, one of the judicial officials accused in the prostitution scandal, known in Germany as the *Sachsensumpf* (“Saxony Swamp”). With respect to the latter proceedings, the appeals court determined that Datt and Ginzel had demonstrated sufficient journalistic due diligence while reporting on a question of public interest.

Although the pair ultimately emerged from their five-year ordeal victorious, the episode serves as a stark reminder that European journalists are not immune from the threat posed by the existence of criminal defamation provisions—regardless of how rarely those provisions may be applied.

IPI’s Scott Griffen recently spoke via e-mail to Datt and Ginzel about their disconcerting experience at criminal trial and the consequences on their professional and personal lives. Unsurprisingly, one message in particular came through loud and clear: even in EU member state Germany, never again would they make the “mistake” of taking for granted the protection of press freedom in a court of law.

IPI: Tell us a little bit about the background to your articles. Why did you decide to report on the issues you did?

Thomas Datt and Arndt Ginzel: In spring 2007 the newsmagazine *Der Spiegel* and the [newspaper] *Leipziger Volkszeitung* published excerpts from secret files of the Saxony Intelligence Service [*Sächsischen Landesamtes für Verfassungsschutz*] on suspected criminal structures in Saxony. The content of the files concerned, among other things,

connections among prostitution-industry bosses [*Rotlichtgrößen*], members of the judiciary, and local government officials. We were not involved in these initial revelations. Rather, we set out to look for aspects of the story that had not yet been brought to light.

At the centre of the Leipzig case was an underage brothel that had been closed down in 1993. According to the intelligence report, among the visitors to the brothel were to have been found judges and prosecutors. From old police and prosecution files we got to know the fate of the women who at that time had been forced to work as prostitutes. We sought the women out. Many were still afraid to tell their story. They now lived in various places in Germany, had children, had built up a life for themselves. But the time in the underage brothel had never let them go. We were shaken by what they told us.

The revelations contained in the intelligence files threatened to plunge the state government into a deep crisis. Because the report repeatedly came back to a possible nexus among prosecutors, judges, and prostitution bigwigs, the judiciary in Saxony was forced to contend with a serious loss of standing. What truth there was to the findings, and which of such truth would have legal consequences, was to be decided by prosecutors in Dresden. Shortly thereafter [the prosecutors] announced that there was nothing to the accusations. The intelligence service was said to have acted improperly, to have exaggerated information. The actual witnesses had not been questioned up to that point.

While all of this was happening we conducted our investigation, and in the meantime *Der Spiegel* had indicated interest in the story. We presented the women who had been forced into prostitution with a row of photographs of judges and prosecutors. Out of the multitude of images several women identified, independently from one another, the very same persons who had been mentioned in the intelligence report as former customers of the underage brothel. Details on behaviour, payment, and frequency of visits were given.

By coincidence the two Dresden prosecutors who had been assigned the case found out about our investigation and also invited the women to come forward as witnesses. The women gave a statement [to the prosecutors] as to what they remembered. A few days later *Der Spiegel* published the results of our investigation.

IPI: What was your reaction to being targeted for defamation and above all for criminal defamation?

Datt and Ginzel: In the summer of 2008 we wrote for the web version of the weekly newspaper *Die Zeit* about the [prosecutorial] investigation into the accused judges and officials, which by that time had been frozen. The Dresden Prosecutors Office had distorted the intelligence findings and characterised the testimony of the former prostitutes as not credible and contradictory. In the article we criticised the work of the prosecutor's office.

Shortly thereafter we found out that the two investigators had now opened a case against us. Our first decision was to stop reporting. Although we were confident in our investigative work, we felt we could no longer be impartial because the investigation was now directed at us. In the period that followed the prosecutor's office offered us various possibilities of having the proceedings dismissed if we made amends to the officials who been originally accused. We turned these [offers] down. In the meantime, the publishers had supplied us with lawyers.

On April 1, 2010 the trial against us began. The accusation: defamation/intentional libel. As freelance journalists, we were faced with an existential threat. We decided to open up the files [of our investigation] to the [journalist] associations and journalist unions. The solidarity from journalists associations, unions, and Reporters Without Borders gave us courage and contributed to our staying strong.

IPI: Did you feel that your trial was conducted fairly?

Datt and Ginzel: The case was initiated and led by the same two prosecutors whose investigative work we had previously criticised. The charges were contradictory and arbitrarily constructed. We assumed that we would be acquitted. The trial took place at the Dresden Local Court [*Amtsgericht Dresden*]. One of the key subjects of our reporting on the affair served as president of the court at the time the charges were brought. Over the course of the trial our judge, who would convict us a few hearings later, received a promotion for the first time in his career. In this light we had reason enough to doubt the fairness of our trial.

Doubts also arose with respect to the appellate court, the Dresden Regional Court [*Landgericht Dresden*]. The [appellate] judge had already previously spoken out about the *Sachsensumpf* saga, in comments to a magazine in which he rejected the suspicions against his judicial colleagues who had allegedly been mixed up with the underage brothel. Our lawyer lodged a request for recusal based on conflict of interest. Media that reported on our trial criticised the court for its bias. Shortly thereafter came the transformation: the judge indicated that he would acquit us.

IPI: How did the trial personally affect you?

Datt and Ginzel: The personal consequences were most strongly felt in our family lives. We are both fathers. Our children were at the time too young for us to explain to them why we sat in the dock. We were redeemed through the public support and the acquittal by the regional court.

IPI: During the course of the trial, was your journalistic work affected? Were you able or allowed to continue covering other stories?

Datt and Ginzel: More than anything the trial robbed us of the time and energy that as freelance journalists we would have needed for our work. In the beginning we feared for our jobs. Fortunately, we did not lose any clients. When we found out about the investigation, we immediately ceased reporting on the case. We imposed this restraint upon ourselves because we felt that, as a party to the case, we could no longer report in an unbiased manner. We passed along the results of our investigation to colleagues instead.

IPI: Did you have to personally finance your trial?

Datt and Ginzel: Our lawyers were paid for by the publishers, and also in part by the German Federation of Journalists. The travel costs – we live in Leipzig, but both trials took place in Dresden – we had to cover ourselves. The preparation itself for the court sessions and hearings meant for us an extensive loss of income because we were not able to work during this time.

IPI: Did the trial cause financial hardship?

Datt and Ginzel: We don't know how large the financial contribution of the publishers was. Due to the acquittal the state treasury [*Staatskasse*] had to cover the cost of the trial.

IPI: What advice do you have for other journalists that might find themselves in a similar situation?

Datt and Ginzel: At the start of the trial we strongly refrained from making public comments. We believed that the trial would end quickly and in an acquittal. Only when we noticed that the case was of considerable interest did we begin to defend ourselves publicly. We should have opened up [our investigative] files sooner, since we clearly would have been supported earlier by the professional associations. Our advice:

Whoever should find him- or herself in a similar situation should involve the journalist associations as soon as possible. Additionally, today we would fight back more vigorously against the false accusations and also take legal action against the persons who filed the charges/the investigating officials. We didn't do so then because we assumed, in light of the flimsy nature of the charges, that the trial could end in an acquittal. That was a mistake.

IPI: Do you feel that current defamation laws in Germany are fair?

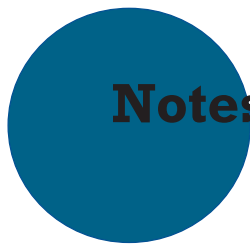
Datt and Ginzel: We think above all that the criminal defamation provisions are unnecessary and antiquated. There exists a press law by means of which persons who feel offended or angered by media reports can defend themselves effectively and quickly. When criminal law is applied against journalists, fundamental rights are threatened. In our case, for example, the local-court judge kept wanting to know the names of our sources. We refused [to divulge them].

IPI: What effects has the experience had on you as a journalist? Did it change the way you approach reporting on controversial topics?

Datt and Ginzel: The trial had no effect on topics, or the form in which we report. We could have happily done without this experience, but we have not become weaker.

Interview translated from the German by Scott Griffen.

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Notes from the Field: Portugal

Portuguese defamation laws still reflect “authoritarian concept of power”, expert says

Despite positive influence of ECtHR, clearer defences and caps on damages seen as necessary to combat chilling effect

It was the kind of small-town political scandal that would scarcely raise an eyebrow in cities with bigger fish to fry. But when *Jornal do Centro*, a weekly newspaper in the central Portuguese town of Viseu, suggested in 2002 that a local courthouse’s donation of used furniture to charity was marred by favouritism, it apparently bit off more than it could chew. The court and the ‘lucky’ beneficiary that reportedly received nearly half of the pieces brought criminal defamation charges; the paper’s editor, together with the journalist who broke the story, were convicted and ordered to pay fines of €2,000 each.

Twelve years later, the European Court of Human Rights (ECtHR) finally gave *Jornal do Centro* the last word. In strikingly straightforward terms, a seven-judge panel unanimously ruled in April 2014 that the Portuguese courts had violated the paper’s right to investigate and comment on matters of public interest.

It probably did not hurt that *Jornal do Centro* was represented by Francisco Teixeira da Mota, a Lisbon-based human-rights attorney and one of Portugal’s foremost experts on free expression and the law. The author of the books *Freedom of Expression in Court* (2013) and *The European Court of Human Rights and Freedom of Expression – Portuguese Cases* (2009), Teixeira da Mota has successfully defended the rights of Portuguese journalists targeted in defamation proceedings on numerous occasions before the ECtHR (among others, *Welsh and Silva Canha v. Portugal* [2013], *Público and others v. Portugal* [2010] and *Lopes Gomes da Silva v Portugal* [2000]).

IPI’s Scott Griffen recently spoke to Teixeira da Mota about the value of the ECtHR in influencing national courts, the evolution of the right to free expression in Portugal, and the legal reforms needed to bring Portugal’s defamation laws in line with international standards.

IPI: Mr. Teixeira da Mota, how important has the ECtHR been for protecting the rights of the Portuguese media?

Teixeira da Mota: Very important. Over the years, the jurisprudence of the ECtHR has significantly changed the way Portuguese courts understand freedom of expression. Nowadays Portuguese courts rarely decide freedom of expression cases without referring to the ECtHR, even if they sometimes incorrectly apply ECtHR jurisprudence.

IPI: What are the main problems, if any, with the application of ECtHR and international principles on defamation and free expression in the Portuguese courts?

Teixeira da Mota: Portuguese courts traditionally placed a high value on the rights to honour and reputation and considered freedom of expression a second-class free-

dom compared to those rights. Even today there remains in many cases a tendency to place too much value on the words, image, and reputation of powerful figures when weighed against critical opinions about those figures. Courts continue, at times, to not distinguish between assertions of fact and value judgments, which obviously ends up harming freedom of expression.

IPI: Has the Portuguese courts' approach to defamation cases evolved during your career? Do you see a positive trend?

There has definitely been an evolution among Portuguese courts in the sense of a better appreciation for freedom of expression and an acceptance of the jurisprudence of the ECtHR beginning with the condemnation of Portugal in the case *Lopes Gomes da Silva v. Portugal* (2000) and successive condemnations thereafter. The office of the Prosecutor General has produced a recommendation to this effect.

(Ed. *Lopes Gomes da Silva* concerned the application of a Portuguese journalist, Vicente Jorge Lopes Gomes da Silva, who had been convicted on appeal of criminally libelling a candidate for the Lisbon City Council in an opinion column, and ordered to pay a criminal fine as well as damages.)

IPI: How is the protection of reputation viewed in Portuguese society? Has this view changed over time?

Teixeira da Mota: Portuguese society has evolved in the sense indicated above, even though there are still powerful figures who are uncomfortable with freedom of expression when such expression is blunt or aggressive and relating to themselves. The Latin-Mediterranean concept of honour is quite broad...

IPI: According to IPI's research, Portugal is among 20 EU countries in which defamation remains a criminal offence punishable by imprisonment. Does this special "criminal" nature pose a particular threat to freedom of expression?

Teixeira da Mota: It is a fact that the criminalisation of speech constitutes a threat and has a chilling effect, but the large damage amounts in civil cases can cause even greater fear among journalists and media companies, given that in the democratic era there has never been a conviction for defamation that resulted in actual incarceration.

IPI: In Portugal's Criminal Code, defamation is more harshly punished when the offended party is a public official (Art. 184). Why was this provision included in the Code? Is it problematic in your view?

Teixeira da Mota: It is a clear and unfortunate indication of the authoritarian concept of power in Portugal and reinforces a restrictive vision of free expression that has always prevailed in Portuguese society.

IPI: What would you say are the most important reforms that need to be made to Portuguese defamation law, both criminal and civil, in order to meet modern standards?

Teixeira da Mota: It would be desirable for defamation to be decriminalised or, at least and for now, considering existing reality, to not provide for the possibility of imprisonment.

In civil cases, there should be clear rules in terms of possible defences. In Portugal, for example, there is a strand of opinion among the courts holding that in the case of a defamatory allegation [non-pecuniary] damages are owed – even if the allegation is true.

Limits should be established relative to the levels of [non-pecuniary] damages, as well as of material damages.

IPI: Is there enough awareness among journalists in Portugal about defamation laws? Is it important that journalists have at least a basic understanding about such laws?

Teixeira da Mota: Journalists normally learn about defamation laws when they have been accused [of defamation] or are defendants in a case. It is of certainly important that they have knowledge of existing laws but they also need to know about the rights and liberties [protected by] the ECtHR and the Constitution.

IPI: In July [2014], the ECtHR Grand Chamber held a hearing in the case *Delfi AS v. Estonia* following a chamber decision last year that said online media outlets had an active responsibility to remove defamatory user comments. You have expressed concern about that decision. If the ruling is upheld, what consequences could it have for freedom of expression online?

Teixeira da Mota: It seems to me that the decision of the ECtHR in that case did not strike the correct balance among the rights, duties, and behaviours in play given that Delfi removed the comments after being alerted to them. It seems to me that if the decision is confirmed by the Grand Chamber it will reduce the space of freedom of expression by causing a chilling and censoring effect among news outlets at the level of user comments, which in any event is already starting to occur.

Interview translated from the Portuguese by Scott Griffen.

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