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COMPENSATION FOR DAMAGE TO THE HONOUR AND REPUTATION OF POLITICIANS AND PUBLIC OFFICIALS IN THEORY AND PRACTICE

Abstract:

In the era of digital telecommunications development, never before has it been easier to express one's thoughts to a broad audience. Such content can reach people directly, in various ways, whether through print or digital media. Numerous social platforms, blogs, and other forms of communication are widely accessible. In part, this may be beneficial for facilitating the dissemination of information and keeping the public informed about various events. However, it simultaneously carries the risk of misuse and the dissemination of false information that may harm the reputation and honour of individuals who are the subjects of such publications. This paper focuses on civil law protection against violations of the honour and reputation of politicians and public officials. It will examine how infringements of personal honour and reputation occur, with particular attention paid to the specific position of politicians and public officials, who are, to a certain extent, obliged to tolerate the disclosure of certain private information due to the nature of their official roles.

Keywords: *Public official, compensation for damage, honour and reputation, politician*

INTRODUCTION

Freedom of thought and expression is enshrined in Article 46 of the Constitution of the Republic of Serbia. It guarantees the freedom of thought and expression, as well as the freedom to seek, receive, and disseminate information and ideas by speech, writing, image, or in any other way. Freedom of expression may be restricted by law when necessary to protect the rights and reputation of others, to safeguard the authority and impartiality of the judiciary, and to preserve public health, morality in a democratic society, and national security of the Republic of Serbia.

A public official is any person elected, appointed, or nominated to a public authority, excluding individuals who represent private capital in the management body of a company

that qualifies as a public authority.¹ This provision should be interpreted as referring to and applying to individuals directly elected by the citizens, as well as those elected, appointed, or nominated by the National Assembly, the President of the Republic, the Supreme Court of Cassation, the High Judicial Council, the State Prosecutorial Council, the Government of the Republic of Serbia, the Assembly of the Autonomous Province, the Government of the Autonomous Province, and the bodies of local self-government units.²

Honour represents the totality of moral values an individual possesses in the broadest sense. It is a personal good consisting of the reputation or esteem a person enjoys within a particular social environment.³ Professor Vizner similarly defined it as follows: “The object of the infringement is considered to be civil honour, understood as a personal non-material right consisting of the totality of moral values a person holds and enjoys as a member of a particular social community, in relation to their integrity, past conduct, knowledge and abilities, and other moral attributes.”⁴ Professor Stojanović shares a similar view: “Reputation is a concept derived from the notion of honour; it is the honour an individual has acquired in their community through their behaviour and values, and for this reason, it is not justified to place it on the same level as honour. Internal honour refers to the individual’s subjective view of their own worth, while external honour is the recognition of these values by the social environment, i.e. the opinion of others about the individual’s virtues.”⁵ The right of public officials to honour and reputation is more limited in comparison to persons who do not engage in activities of public interest. These rights are not autonomously guaranteed by the European Convention on Human Rights; however, through an extensive interpretation of the right to private life under Article 8 of the Convention, the European Court of Human Rights acknowledges the protection of such rights.⁶

COMPENSATION FOR DAMAGE TO THE HONOUR AND REPUTATION OF POLITICIANS AND PUBLIC OFFICIALS IN THEORY

The right to private life encompasses an individual’s right to exclude third parties from accessing facts related to the bearer of that right. The right to private life is recognised in international legal instruments such as the *Universal Declaration of Human Rights* (1948), the *International Covenant on Civil and Political Rights* (1966), and the *European Convention on Human Rights* (1950). In modern legal systems, this right is primarily guaranteed by constitutions and has subsequently been strengthened through reforms introducing mechanisms of civil and criminal legal protection.⁷ In Serbian domestic law, the protection of violated personality rights is governed by several legal provisions that are applied cumulatively. Civil procedure is regulated by the *Civil Procedure Act*, while

1 *Law on the Prevention of Corruption* (“Official Gazette of the RS”, nos. 35/2019, 88/2019, 11/2021 – authentic interpretation, 94/2021, and 14/2022)

2 *Authentic Interpretation of Article 2(1)(3) of the Law on the Prevention of Corruption* (“Official Gazette of the RS”, nos. 35/2019 and 88/2019)

3 *Legal Lexicon* (1970). Savremena administracija, Belgrade, p. 139

4 Vizner, B. (1978). *Commentary on the Law on Obligations*, Riječka tiskara, Zagreb, p. 904

5 Stojanović, Z. (2020). *Commentary on the Criminal Code*, Službeni glasnik, Belgrade, p. 568

6 Đorđević, M. (2019). Limitation of Media Freedom by the Right to Honour and Reputation of Public Officials, *Eudaimonia – Journal for Legal, Political, and Social Theory and Philosophy*, No. 3, p. 125

7 Petrović, Z. (1996). *Compensation for Non-material Damages Due to Violation of Personal Rights*, Novinsko izdavačka ustanova Vojska, Beograd, p.61

obligations and responsibilities of individuals are governed by the *Law on Public Information and Media*, and general rules on damages are regulated by the *Law on Obligations*. Criminal protection is provided under the *Criminal Code of the Republic of Serbia*.⁸

A violation of honour and reputation may occur through the dissemination of information. If the information is communicated directly to the injured party, it constitutes an insult; if it is communicated to a wider audience, it constitutes defamation. The truthfulness of the information is not decisive—what matters is whether the information infringes on the honour or reputation of the person concerned. False information typically causes greater harm than truthful information, although the manner in which the information is conveyed also plays a significant role.

It is irrelevant whether the insult or defamation occurred publicly or privately, or in what form it was conveyed (oral, written, through the media, etc.). However, what is essential for establishing liability is the absence of any legitimate interest, either on the part of the person disseminating the falsehood or the person receiving it.⁹

Chapter XII of the *Law on Public Information and Media* regulates information concerning individuals. A person's dignity—including honour, reputation, and personal integrity—is legally protected. Publishing information that infringes on a person's honour, reputation, or dignity, or presenting them in a false light by attributing traits they do not possess or denying traits they do possess, is prohibited unless the interest in publishing such information outweighs the interest in preserving dignity and the right to authenticity—particularly where the publication does not contribute to public debate about a matter, event, or individual of public concern.¹⁰

The same law also requires consent for publishing information from a person's private life. This includes personal records (letters, diaries, notes, digital recordings, etc.), images (photographs, drawings, videos, etc.), and voice recordings (audio, digital, etc.). Such content may not be published without the individual's consent if it can be reasonably determined who the person is.¹¹

Consent is also required for direct broadcasting of a person's image or voice on television, radio, or similar platforms. Without consent, publication of such material is prohibited if it would infringe on the individual's right to privacy or any other personal right.¹²

Exceptionally, information or personal records may be published without consent if, in a specific case, the public interest in disclosure outweighs the interest in preventing publication. The law presumes that the public interest prevails, especially when: the person has themselves disclosed the information or provided it to the media for publication; the information relates to a public figure, event, or issue of public interest, especially where it concerns a holder of public or political office; the person, by their public statements or behaviour in private, family, or professional life, has attracted public attention and thereby

8 As already stated, the paper will address civil law protection, but we must note that Chapter XVII of the Criminal Code regulates criminal offenses against honor and reputation from Articles 170 to 177.

9 Blagojević, B., & Krlj, V. (1983). *Commentary on the Law on Obligations*. Savremena administracija, Belgrade, p. 735.

10 Law on Public Information and the Media, *Official Gazette of the Republic of Serbia*, nos. 92/2023 and 51/2025 (hereinafter: LPIM), Art. 90.

11 LPIM, Art. 91.

12 LPIM, Art. 91.

given cause for publication; the information was communicated or recorded during public parliamentary debate; the publication is in the interest of justice, national security, or public safety; the person did not object to the information being collected or recorded, knowing it was intended for publication; the publication is for educational or scientific purposes; the publication is necessary for alerting the public to danger (e.g. preventing the spread of disease, locating a missing person, or warning about fraud); the recording includes crowds (e.g. at concerts, demonstrations, or public streets); the image was taken at a public gathering or shows the individual as part of a landscape, cityscape, square, street, or similar setting.¹³

The aforementioned article of the Law on Information and Broadcasting in point 2 prescribes deviations from the permission to publish information. Article 93(4) of the same law reaffirms that publication without consent is allowed when the information or record originates from public parliamentary debate. Furthermore, the law explicitly states that public and political figures are a particularly sensitive category and, due to the nature of their work, must tolerate certain disclosures even in the absence of consent.

Article 35 of the *Law on Public Information and Media* defines what constitutes a “media outlet.” This includes daily and periodical newspapers, news agency services, radio and television programmes, and their electronic editions, as well as independent electronic publications with editorial content (e.g., websites).

The law excludes from this definition books, films, audio and audiovisual carriers, scientific and professional journals aimed at specific professional groups, printed advertising materials, state publications, and various digital publications unless they are registered in the Media Register. Notably, internet platforms such as forums, social networks, blogs, and similar websites are not considered media under the law unless officially registered.¹⁴

Compensation for damage is governed by the *Law on Obligations*, which sets out general provisions on types and methods of compensation. Article 198 specifically addresses material damages in cases involving defamation or the dissemination of false information. A person who damages another’s honour or spreads false statements about their past, knowledge, abilities, or other aspects, knowing or having reason to know that the statements are false, is liable for the resulting material damage. However, a person is not liable if they did not know the information was false and had a legitimate interest in sharing it, or if such interest existed for the recipient.

The right to request the cessation of a violation of personal rights is regulated by the Law on Obligations. Everyone has the right to request from the court or another competent authority to order the cessation of an act that violates the integrity of a person, private and family life, or other personality rights. The court or another competent authority may order the cessation of such an act under the threat of imposing a monetary penalty, determined either as a lump sum or per unit of time, in favour of the injured party.¹⁵

The right to file a claim belongs to any person whose honour and reputation have been harmed due to a published piece of information. In the case of a violation of the right to private life, the person whose right has been infringed may, by filing a claim against the responsible editor of a public medium, request not only the remedies provided by law but also compensation for material and non-material damage, as well as the publication of the judgment.¹⁶

13 LPIM, Art. 93.

14 LPIM, Art. 37.

15 Law on Obligations (hereinafter: LO), Art. 157.

16 Veljković, D. (2020). *Commentary on the Law on Obligations* (Vol. I). Nova Konsulting, Belgrade, pp.

Monetary compensation is prescribed in Article 200 of the Law on Obligations. For endured physical pain, for mental suffering caused by the reduction of life activities, disfigurement, violation of reputation, honour, freedom or personal rights, the death of a close person, as well as fear, the court shall, if it finds that the circumstances of the case—especially the intensity and duration of the pain or fear—justify it, award fair monetary compensation, regardless of whether material damage has also been awarded or even if such damage is absent. Non-pecuniary or moral damage refers to the violation of the injured party's non-material personal rights. It is often said that non-pecuniary damage consists in the violation of moral assets. Moral assets include all personal goods belonging to an individual, such as bodily integrity, health, freedom, honour, and similar. These goods are, in fact, the objects of non-pecuniary damage.¹⁷

Regarding information disseminated online, whether on websites or social networks, there is a need to shift the approach to identifying the persons responsible for posting such content. Professors Petrović point out that although legal protection from the violation of honour and reputation on the internet does exist, traditional mechanisms of tort and criminal law have proven ineffective in enabling individuals to protect their honour and reputation. As a result, their use will likely decline. Instead of traditional mechanisms, consumer protection will increasingly be applied. In line with the concept of risk management concerning false, unverified, and harmful online content, individuals, as consumers of judicial and digital services, will be able—possibly with the assistance of state authorities where deemed opportune—to request that intermediaries providing internet services block false or unverified information. Major providers will have a special obligation to monitor or retrospectively approve content uploaded by their users.¹⁸

COMPENSATION FOR DAMAGE DUE TO VIOLATION OF THE HONOUR AND REPUTATION OF POLITICIANS AND PUBLIC OFFICIALS IN JUDICIAL PRACTICE

In terms of judicial practice, the judgment of the Court of Appeal in Novi Sad, case no. Gž-2416/23 of 5 October 2023, which upheld the judgment of the Basic Court in Novi Sad, case no. P-53961/21 of 23 February 2023, states that the personal rights of politicians and public officials are more limited than those of other individuals—they must tolerate and endure more than others, including the publication of certain information about them that other persons would not be subject to. According to the opinion of the mentioned court, as well as the Constitutional Court and the European Court of Human Rights, the limits of acceptable criticism are always broader when the target is a politician as a public figure. These limits are broad in such cases but are not absolute, meaning that the right to criticism is not unlimited. The personal rights of politicians and public officials are narrower than those of other individuals: they are required to tolerate more, to endure the publication of certain information about them that others would not have to bear; however, freedom of expression is also limited when they are the subject of reporting and criticism, by their right to honour and reputation. The right to honour and reputation belongs to all citizens; accordingly, the protection of the right to honour and reputation extends to politicians as

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¹⁷ Veljković, D., *op. cit.*, p. 638.

¹⁸ Mrvić-Petrović, N., & Petrović, Z. (2024). Legal protection of honour and reputation from publications on social media and websites. In *Law and Public Services: Liber amicorum Jovica Trkulja* (pp. 475). University of Belgrade, Faculty of Law; Institute of Comparative Law; Dosije Studio.

well, even when they are not acting in a private capacity. Nevertheless, in such cases, the conditions for protection must be weighed against the public interest in open debate on political matters. Namely, the injured party is entitled to financial compensation for the violation of honour and reputation if there is a causal link between the event that caused the harm and the resulting non-material damage, as well as if the court is convinced that it is fair and just in the specific case to award monetary compensation to the injured party.¹⁹

In that regard, the aforementioned court particularly took into account that the claimant had been involved in politics for many years, that statements and publications of a similar nature are a common occurrence on the political scene in Serbia, and that the claimant, as a public figure and active participant in political life, was expected—given the prevailing political circumstances—to endure all negative criticism with a higher degree of tolerance. As an experienced politician, he could have anticipated such criticism, and as a current political figure, he was obliged to demonstrate greater tolerance toward statements made by the defendant as his political opponent. Consequently, those statements were not of a nature to cause the claimant mental anguish due to an infringement of his honour and reputation that would justify the awarding of monetary compensation for non-material damage. Moreover, the boundaries of acceptable criticism are broader with regard to public figures than private individuals. Unlike ordinary citizens who do not hold public status, public figures are inevitably and knowingly exposed to close scrutiny of their words and actions by the public at large and are therefore required to exhibit a higher level of tolerance. The nature and status of politicians are of particular importance when assessing proportionality in terms of tolerance, and public figures must demonstrate a heightened degree of tolerance—especially when the discourse concerns the realm of political and public debate, without infringing upon the private or professional life of the claimant. Furthermore, even if the expressions used in the disputed statements were overly strong, it must be borne in mind that the freedom of expression of a political opponent inherently involves a certain degree of provocation, particularly when the person in question is engaged in matters of public interest. Therefore, from the moment the claimant entered political life, he had to accept being subjected to greater scrutiny and criticism than those who do not participate in such activities.²⁰

In the Supreme Court of Cassation judgment, Rev. No. 933/2015, the stance was taken that, in addition to accepting the legal reasoning presented by the second-instance court, the Supreme Court of Cassation finds the challenged judgment correct because the disputed newspaper article falls within the scope of political debate between the litigating parties, as both are public officials and politicians. Such individuals, in the realm of media and public scrutiny, must exhibit a higher degree of tolerance than other persons—ordinary citizens. Therefore, the limits of acceptable criticism and the disclosure of information concerning the exercise of their public and political functions are broader, given that these individuals hold public and political offices.²¹

According to the assessment of the Supreme Court of Cassation, as well as the Constitutional Court and the European Court of Human Rights in Strasbourg, the limits of acceptable criticism are always wider when the target of the criticism is a politician (public official). These limits are broad, but even then they are not absolute, meaning that the right to criticize is not unlimited. It is generally established that freedom of the media may be

19 Rutović, M. (author of the holding). Judgment of the Appellate Court in Novi Sad, case no. Gž-2416/23 of 5 October 2023, affirming the judgment of the Basic Court in Novi Sad, case no. P-53961/21 of 23 February 2023.

20 Ibidem

21 <https://www.vrh.sud.rs/sr-lat/rev-9332015-naknada-štete>

restricted for the purpose of securing respect for the rights and reputation of others (Article 29, paragraph 3 of the Charter of Human and Minority Rights; Article 19, paragraph 3(a) of the International Covenant on Civil and Political Rights; Article 10, paragraph 2 of the European Convention on Human Rights). The freedom of expression guaranteed by Article 10 of the European Convention on Human Rights is one of the fundamental pillars of a democratic society; according to paragraph 2, it applies not only to “information” or “ideas” that are favorably received or considered harmless but also to those that offend, shock, or disturb (cases *Caspells v. Spain* and *Vogt v. Germany*). The personal rights of politicians and public officials are narrower than those of other individuals: they must tolerate and endure more than others, bearing the publication of even damaging information about themselves that others need not endure. However, freedom of expression is limited when they are the subject of reporting and criticism concerning their right to honour and reputation. The right to honour and reputation belongs to all citizens; accordingly, the protection of these rights extends to politicians, even when they are not acting in a private capacity. Nevertheless, in such cases, the conditions for protection must be balanced against society’s interest in open discussion of political matters (*Lingens v. Austria*).²²

CONCLUSION

Although the compensation for damage caused by the violation of the honor and reputation of politicians and public officials is normatively regulated in theory, in practice compensation is awarded on a case-by-case basis. As illustrated by the examples, courts hold the position that politicians and public officials are persons who, to a certain extent and with a higher degree of tolerance, must endure the publication of information from their private lives, unlike individuals who do not hold such positions. This tolerance is not unlimited, and accordingly, the awarding of compensation depends on the degree of violation of honor and reputation. Protective instruments exist and are normatively regulated, but their application is based on the assessment of whether and to what extent the published information has caused damage to honor and reputation. Attention is also given to protecting the rights of the media to publish information in accordance with the principles of media freedom. Whether the damage is remediable or irreparable, and whether the harmful information published is true or false, also influences the manner in which compensation is awarded.

22 <https://www.vrh.sud.rs/sr/rev-18552017-sloboda-izražavanja>



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NAKNADA ŠTETE ZBOG POVREDE ČASTI I UGLEDA POLITIČARA I JAVNIH FUNKCIONERA U TEORIJI I PRAKSI

Apstrakt:

U eri digitalnog razvoja telekomunikacija, nikada nije bilo dostupnije nego danas izražavati svoju misao širokom krugu lica. Ona mogu neposredno, na razne načine da dođu do tih informacija koja se objavljuju bilo štampano bilo digitalno. Dosta socijalnih platformi, blogova, i drugih vidova komunikacije je dostupno širokom krugu lica. U određenom delu, to može biti korisno radi lakšeg obaveštavanja i informisanja ljudi o raznim događajima, ali sa druge strane nosi opasnost od zloupotreba i iznošenja neistinitih informacija koje mogu štetiti ugledu i časti tih lica koja su predmet tih informacija. Osvrt će biti na građanskopravnoj zaštiti povrede časti i ugleda političara i javnih funkcionera. U radu će se prikazati na koji način dolazi do povrede časti i ugleda lica sa posebnim osvrtom na čast i ugled političara i javnih funkcionera koji su u obavezi da u određenoj meri trpe iznošenje određenih privatnih informacija u javnost iz razloga što se nalaze na postavljenim funkcijama.

Ključne reči: *Javni funkcioner, naknada štete, čast i ugled, političar*

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