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## WAGING WARS WITH WORDS – LIBEL AND SLANDER IN THE POLISH STATUTORY LAW AND ENGLISH COMMON LAW

**Abstract.** This paper aims to investigate the differences between the concepts of libel and slander as understood by the Polish statutory and English common law. As it turns out, the above terms are not only divergent with regard to language (varying linguistic contexts) but also with regard to corresponding acts in the real world.

Western cultures cherish such values as dignity, honour and self-fulfillment as the underlying rights of a citizen in democratic countries. The above terms are being constantly referred to in international treaties and conventions but the question which should be asked is whether they receive due attention in legal practice.

As regards interpretation, not only in theory (which is rather scarce, especially in common law), but also in practice (the court verdicts in cases dealing with libel and slander) the important issue is not how the defamatory statement makes the person referred to feel, but the impression it is likely to make on those reading it (McBride, Bagshaw, 2008 in: Quinn, 2007:209).

The subsequent analysis of particular cases in the practical part supports the above claim.

Although it is reiterated by the Polish legal academics that civil regulations are not sufficient to guarantee legal protection of dignity, there is an equal or even greater amount of supporters of the broadly conceived “freedom of speech”. The discussion might be summarized as involving the proponents of liberal and democratic policies on the one hand, and those who wish to avoid complete decriminalization of libel and slander and deem them necessary components of balance in a democratic state.

*Keywords:* zniesławienie, zniewaga, libel, slander, cześć, defamation.

### Introductory remarks – human integrity as embraced in the constitution (on the example of the Constitution of the Republic of Poland) as well as in the Polish Civil and Penal Codes

Human integrity understood as the underlying right of a citizen in democratic countries receives due attention not only in international treaties but

is also guaranteed by the national laws. The Constitution of the Republic of Poland stipulates the following: “The inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities” (Journal of Laws as of 1997; No. 78, item 483).

As we can further read in article 47: “Everyone shall have the right to legal protection of his private and family life, of his honour and good reputation and to make decisions about his personal life” (idem).

In the Polish legal language, embracing the issue of integrity (understood as both “the inherent” part of a human being as well as the face and good reputation in the eyes of others) involves the use of such words as: “cześć”, “godność”, “dobre mienie”. As far as “cześć” is concerned, it is applied to refer to both “the inherent” and the social aspect of integrity. The other two terms are used to refer to respectively: the inner and the social dimension of our worth as human beings.

As emphasized by Igor Zgoliński in “Zniesławienie w polskim prawie karnym: zagadnienia teorii i praktyki” (“Zniesławienie in the Polish Penal Law: theory and practice”), paradoxically, complex legal protection against violations of honour are not so commonly accepted since public opinion endorses its decriminalization (Zgoliński, 2013:12). The provision that is quoted most often to support the above claim is art. 54, sections 1 and 2 of the Constitution, which sanctions the freedom of speech:

1. “The freedom to express opinions, to acquire and to disseminate information shall be ensured to everyone”.
2. “Preventive censorship of the means of social communication and the licensing of the press shall be prohibited. Statutes may require the receipt of a permit for the operation of a radio or television station” (idem).

However, since the legal principle “*lex specialis derogat legi generali*” applies to all legal disciplines, we need to resort to the laws of the lower level which provide a more detailed lexical “landscape”. The infringement of personal rights is regulated in articles 23–24 of the Polish Civil Code.

Both “zniesławienie” and “zniewaga” are regulated in Chapter XXVII entitled: “Offences against Honour and Personal Inviolability”.

### **Infringement of personal rights in the Polish Civil Code**

In pursuance of article 23 of the Polish Civil Code, “a man’s personal rights, notably his health, liberty, dignity, freedom of conscience, family – name or pseudonym, image, privacy of correspondence, inviolability of home and scientific, artistic, inventive or rationalizing achievement, shall be pro-

tected by civil law independently of the legal protection contemplated by other provisions (Journal of Laws as of 1964, No. 16 item 93)". What interests us here is first and foremost the notions such as: "liberty", "dignity", "family-name" and "image" which are conceptually related to Polish "cześć".

As we can further read in article 24, section 1, a person who claims that his/her personal rights have been violated

may seek to redress the action complained of, unless it is not unlawful. In the case of the infringements already committed, he may also require the wrongdoer to remove the results of the infringements and especially to make an appropriate declaration in an appropriate form (*idem*).

A declaration specified in the above article would most often refer to a press announcement. The unlawful character of the act may be questioned if the defendant proves that he/she has been authorized to it, if the purpose is to ensure law and order or if the interest of the injured party does not merit legal protection (Gniewek, 2006:25, translation mine).

As stressed by Zgoliński, dignity in the Polish Civil Code is understood as constituting the catalogue of personal rights and thus as a value of private nature (Zgolinski, 2013:13). Furthermore, the author emphasizes that the provisions of the civil law are not sufficient to guarantee legal protection since dignity is also of public character. This "public" nature of dignity is in turn regulated in art. 212 of the Polish Penal Code.

### **"Zniesławienie" in the Polish Penal Code**

Let us now invoke the article 212, section 1 of the Polish Penal Code:

Whoever imputes to another person, a group of persons, an institution or organisational unit not having the status of a legal person, such conduct, or characteristics that may discredit them in the face of public opinion or result in a loss of confidence necessary for a given position, occupation or type of activity shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to one year.

The above article regulates the unlawful act referred to by one term in Polish: "zniesławienie" or "pomówienie".

According to a dictionary definition "pomawiać" is tantamount to "reproach somebody with something, wrongly ascribe something to somebody, accuse, and impute something to somebody (Uniwersalny słownik języka polskiego, red. S. Dubisz, t. 3, s. 338, translation mine).

"Pomówienie" takes both the oral as well as the written form. It might be encountered not only in the form of a writing but also as a printout,

a drawing, an offending comment made with the aid of mass media such as the radio, the television or the Internet (Marek, 2006:402).

“Pomówienie” might evoke such aspects of human life as: compulsions (alcoholism, sexual deviations), unlawful conduct (e.g.: corruption, criminal activities), which are considered derogatory in the public opinion or which undermine confidence towards a person (idem: 402).

What should be emphasized here is that under the Polish law, the assessment of the harmful effect of “zniesławienie” is always done in the context of requirements or expectations connected with the occupied office (e.g.: a teacher, a clerk, a doctor, a journalist, an actor, a politician etc.) (idem: 402).

As stressed above in the first section, criminalization of “libel” is sometimes being questioned as violating the freedom of speech. However, as observed by Zgoliński, we are nowadays witnessing the deteriorating state of public debate in mass media, in particular with regard to politics. The language becomes more and more aggressive which results in a poor state of Polish democracy and public culture (Zwolinski, 2013:15).

Thus, words are uttered without paying regard to their meaning. There is a constant flow of information on the one hand, but on the other, we are running out of means to control the weight and the effect these words might have on the potential readers/listeners. Such a status quo might imperceptibly lead to a state of unlawfulness or even anarchy where slanderers and defamers do not bear any responsibility for the acts committed and will carry on with impunity.

### **“Zniewaga” and its regulation in the Polish statutory law**

Let us now consider the legal implications of article 216, section 1 of the Polish Penal Code which discusses the issue of insult (in Polish “zniewaga”). In pursuance of it:

Whoever insults another person in his presence, or though in his absence but in public, or with the intention that the insult shall reach such a person, shall be subject to a fine or the penalty of restriction of liberty.

Similarly to libel and/or slander, the understanding of the term “zniewaga” in the colloquial speech slightly differs from its understanding by the law. The stress is, however, always on the insulting and disrespectful nature of the act which in practice will mostly take the form of a verbal abuse (vulgar epithets), a piece of writing (a letter evoking some derogatory traits of the injured party), a drawing (e.g. a caricature, a travesty,

a parody) or an offending gesture demonstrating lack of respect towards a given person (Marek, 2006:407).

Whether a given word, gesture or other form of behavior is classified as “zniewaga”, shall depend on the criteria which are commonly accepted by a given community or culture, irrespective of the feelings and impressions of the injured party.

As opposed to “zniesławienie”, in the case of “zniewaga”, it is only an individual who can become an object thereof, not a group of persons, an institution or a legal entity (idem: 407). For “zniewaga” to become punishable under the Polish law, it has to be perpetrated in the presence of the injured party. Otherwise (i.e. in the absence of the injured party), the act becomes punishable if it is perpetrated with the intent to personally reach the person concerned (idem: 407, translation mine).

### **“Cześć” – twofold understanding of the term in the Polish legal context**

As already signaled above, “zniesławienie” and “zniewaga” may be both summarized as “cześć” which in the Polish legal context appears in the two types of contexts as suggested by Marek in “Kodeks karny: komentarz”:

- In its extrinsic or objective form, the term “cześć” reflects the value which a given person has in the minds of other people; thus, this type of human worth resembles face in cultures which cherish social norms and hierarchies (cf. the term “face” as understood by the Eastern cultures will be elaborated later on). The English equivalent of “cześć” in this sense would be: esteem, estimation, respect.
- In its intrinsic or subjective form “cześć” amounts to dignity and to one’s own feeling of worth. The emphasis is on how we perceive ourselves rather than on how we are perceived by others; as we shall see later, it is the Western culture that has played a key role in bringing the honour of an individual to the fore.

Although, the Western civilization is considered a cradle of individualism and the pursuit of one’s self-fulfillment, in the light of the body of rulings which will be later analysed, the interpretation of libellous or slanderous words by the injured party is no longer considered a decisive argument in determining the sentence and is being slowly taken over by the interpretation of the broadly conceived public opinion. Thus, the defendant is not asked whether he/she has been harmed or how he/she has reacted to the offending comment but rather whether the words uttered have negatively influenced the way he/she is perceived by the community (Marek, 2006:406, translation mine).

The above distinction into the extrinsic and intrinsic aspect of “cześć” is reflected in the Polish Penal Code but not in the English common law. We shall later return to the English term “defamation”. As for now, suffice it to say that it does not constitute a criminal act under the common law of England, Wales and Northern Ireland. The criminal character of the defamation laws has been abolished in Section 73 of the Coroners and Justice Act 2009 which included the following, previously punishable, acts: (a) the offences of sedition and seditious libel; (b) the offence of defamatory libel; (c) the offence of obscene libel.

Let us however also note in this place the significance of the term “cześć” which is brought to the fore by Zgoliński who distinguishes between three possible understandings of the term. The first one is related to psychology and defined as a perception of others, a view that we hold about other members of society necessarily involving subjectivity.

The second one evokes an attitude of others towards a given person (if it is positive we might refer to it as “good fame” or “a positive image of someone”).

The third one defines “cześć” as a human property which is a natural result of being part of society as such (Zgoliński, 2013:28–29).

Thus, in definitions provided by Zgoliński we will not find any distinction into the “internal” and “external” aspect of the term. However, the reason of this terminological confusion may lie in the fact that Zgoliński concentrates on the social repercussions of insulting an individual. For him, affecting personal integrity does not constitute an unlawful act of gravity comparable with affecting someone’s name in the eyes of the public opinion. Similarly, in the Polish court rulings and judicial decisions we might find sufficient evidence that deteriorated reputation is considered a more convincing argument which would merit greater protection in the light of law.

### **Defamation under the English common law and the archaic term ‘dyfamacja’ in Polish**

Let us now shed some light on the term “defamation” which is widely used in the English common law context. In contrast, its Polish calque is evoked very rarely in the Polish legal language.

The English law on defamation has developed through the common law over a number of years, periodically being supplemented by statute, most recently the Defamation Act 1952 (“the 1952 Act”) and the Defamation Act 1996 (“the 1996 Act”).

The most recent law as of 2013, defines terms such as ‘serious harm’

or ‘defamatory statement’. As defined by s. 2 of the Defamation Act 2013: “A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant”. “Statement”, in turn, is defined as “words, pictures, visual images, gestures or any other method of signifying meaning” (“Defamation Act 2013”).

Interestingly enough, the reforms applied over the course of recent years only confirm that freedom of press is now recognized as the cornerstone of democracy. In the United States, the publication regarding the conduct of public officials has been declared as being “in the public interest”. Thus, the public has “the right to know”. The Interpretation of the First Amendment to the Constitution by the U.S. courts might even go as far as to protect a false statement about the injured party unless the statement is “a calculated falsehood” (Oladele, 2011).

As observed by Kayode Oladele in “Internet Libel And The Law Of Defamation: Justice Without Borders?": “the UK, Canada and Australia have taken radical approaches to loosen the noose on libel laws under the old English Common law in order to protect the freedom of the press, enhance democracy and in response to the revolution in information technology, to ensure greater robustness in news reporting without the fear of having a judge decide on whether or not he agrees with the journalist’s editorial judgment” (Oladele, 2011).

As has already been stated earlier, under the common law of England, criminal defamation offences (i.e. the offences of sedition and seditious libel, the offence of defamatory libel, and the offence of obscene libel) have been abolished under section 73 of the Coroners and Justice Act 2009.

The decriminalization of libel offences might reflect a general trend already observed earlier: that “the centuries old English defamation law is being relaxed by adopting a more generous and dynamic approach to the protection of free speech which would unbound journalists to investigate scoops more robustly without fear of libel lawsuits” (Oladele, 2011).

Insofar as the Polish calque is concerned, in an entry of the Polish dictionary of foreign words (“Słownik Wyrazów obcych i zwrotów obcojęzycznych”), the word “dyfamacja” is marked with “arch” which refers to an archaism.

Etymologically stemming from the latin “diffamatio” and “diffamare” (spread, make known, make public), the Polish term “dyfamacja” would roughly cover the referent of both “zniesławienie” and “zniewaga” and thus its object would be “cześć” in both its external and internal aspect.



**Some linguistic remarks: the use of the terms such as  
dignity, reputation, integrity in the colloquial speech  
and in the normative acts**

In the colloquial speech, Polish terms “pomówienie” and “zniewaga” are used almost interchangeably. The subtle differences will not emerge until these terms are contextualized. Otherwise, we might refer to an act of insult, accusation, offence as both “pomówienie” and “zniewaga”.

Hence, we will often find terms such as dignity, reputation, good fame, respect, and honour used as synonyms despite there being ample literature distinguishing between the internal and social aspect of them (cf. “Kodeks karny. Komentarz by Andrzej Marek”).

As regards dictionary definitions, Kosciuszko Foundation Dictionary also makes a distinction between “uwłaczać czyjejs godności” (be beneath sb) and “uwłaczać czyjejs reputacji” (blacken sb’s name). The former draws our attention towards abstract concepts rather than offending words and comments. We might easily imagine someone ironically stating: “It is beneath/below his dignity to help with the washing-up”.

The same applies to the usage of the terms “dignity” and “reputation” in the legal language. As it turns out, “dignity” is mostly used in the abstract contexts, especially in the constitutions, statutes, codes, treaties and international conventions. Let us for instance invoke art. 1 of the “Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine”: “Parties to this Convention shall protect the dignity and identity of all human beings and guarantee everyone, without discrimination, respect for their integrity and other rights and fundamental freedoms with regard to the application of biology and medicine. Each Party shall take in its internal law the necessary measures to give effect to the provisions of this Convention.”

In “The Charter of Fundamental Rights of the European Union” the word “dignity” appears six times. It is mentioned in the neighborhood of the rights of the elderly or the rights of the workers: “The Union recognizes and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life” (art. 23). Furthermore, its article 31 stipulates: “Every worker has the right to working conditions which respect his or her health, safety and dignity”.

As opposed to the above mentioned purely “theoretical” contexts of the words “dignity” and “integrity”, terms related to “libel” and “slander” such as reputation, face, esteem, respect, are evoked in a number of “practical”

contexts by which the author understands cases based on the slanderous allegations which have been found to be defamatory by the courts. We shall later analyse several such cases and approach them from the linguistic point of view.

**Libel, slander, insult – cultural connotations:**

Not only libel and slander but also insult, evoke certain connotations related to dignity and face which appear in cultural contexts. In “Beyond individualism/collectivism: New cultural dimensions of values: Theory, method, and applications”, Schwartz distinguishes between face cultures and dignity cultures. This distinction would roughly correspond to a division between Eastern and Western mentalities. While as the former is based on the belief in a society ordered and structured according to the time-honoured values and norms, the latter’s underlying principle would be the pursuit after individualism and self-fulfillment:

“In dignity cultures, a person’s self-worth is primarily intrinsically derived; it is not conferred by others; cannot be taken away by others – and so is stable; and is, at least theoretically, equal to that of every other member of the culture (Ayers, 1984 in: Soroush, 2011:5). In face cultures, self-worth is primarily externally derived; it is based on one’s relationships, on one’s relative position in a stable social hierarchy, and on fulfillment of one’s role obligations in that hierarchy (Heine, 2001 in: Soroush, 2011:5). Face is manifested in a reputation for social responsibility, respect for tradition, and honoring parents and elders” (Schwartz, 1994 in: Soroush, 2011:5).

As we can further read in the introduction to the “The jury and abjuration of my peers: The self in face and dignity cultures” by Wing-Tung Au: “There are two ways to know the self: from the inside and from the outside. In all cultures, people know themselves from both directions. People make judgments about themselves from what they “know” about themselves, and they absorb the judgments of other people so that the judgments become their own.

The process is one of constant flow, but there is variation, from both person to person and culture to culture, which direction takes precedence.

(...) *Face cultures* tend to give priority to knowing oneself from the outside, whereas *dignity cultures* tend to give priority to knowing the self from the inside and may resist allowing the self to be defined by others” (Wing-Tung Au, 2010:904–916).

The above distinction is however unknown to the Polish legal doctrine but has been quite recently developed on the ground of sociology. As remarked by Zgoliński, dignity as an equivalent of Latin *dignitas* is under-

stood either as a private, or as a public notion (Zgoliński, 2013:13). The former one is associated with the regulations provided by the civil law while as the former would be typical for the provisions of the Polish Penal Code (cf. section 1.1.). We have already remarked on the insufficiency of the civil regulations in this respect.

### **Libel and slander versus insult in the Polish statutory and English common law – a comparative approach**

Under the English common law the legal qualification of “blackening someone’s name” might take the form of either slander (if it is done orally) or libel (if it is done in writing). A defendant in a civil litigation is commonly referred to as: a “*defamer*”, “*a famacide*”, “*a libeler*” or “*a slanderer*”.

According to Quinn, “libel is committed by publishing a defamatory statement in permanent form, while slander covers defamatory statements in transient forms, such as unrecorded speech. Defamation actions against the media almost always concern libel, which covers defamatory statements which are made in any of the following ways:

- printed;
- broadcast on TV or radio (Broadcasting Act 1990);
- in films and videos;
- on the internet;
- made during public performances of a play (Theatres Act 1968) (Quinn, 2007:208).

As we have already stated, an insult conceived as a personal offending remark affecting one’s honour and dignity is not punishable as such in the English common law. We will not find any statutory regulations, which only goes to confirm that in the English legal system the subjective and internal form of human integrity receives ever less attention and legal protection. It is rather the social aspect which is being protected. Even this aspect is slowly becoming obsolete which has already been mentioned in section 3 on defamation under the English common law. The radical step to decriminalize libel offences is considered to represent a huge shift from the English common law (Oladele, 2011).

However, in the Polish legal system, article 216 of the Penal Code regulating the unlawful act of an insult, is also being invoked on rare occasions.

Let us here quote the words of the Polish legal academic Robert Tomkowicz who states: “In the Polish body of rulings, the term “personal integrity” is conceived very broadly, covering both the external as well as the internal aspect thereof. The former is understood as the reputation or a good opinion about a given person among others while as the latter would

refer to an image a given person has about himself/herself irrespective of the opinion of others. In other words, personal integrity might be violated by both slander or libel and by an insult.

Such an interpretation of the tort of defamation is an archaic one and does not reflect the state of affairs in the real world. It has its roots in the dim and distant past when the affairs of honour settled with the aid of a sabre and a gun were to be replaced by a court litigation; in the times when the constitutional right to the freedom of speech was unheard of” (Tomkowicz in: “W polityce”, translation mine).

Under the common law, “defamation” is a word which encompasses both *libel* and *slander*. It is understood as a tort as opposed to the Polish statutory law under which the corresponding offences are regulated in the provisions of the Polish penal code. Under the common law, an utterance deemed defamation should contradict the truth and should be uttered in the absence of the injured party.

As remarked by Fleming: “Defamation can be conveyed in any number of styles. What matters is the tendency of the utterance, not its form. Ridicule, for example, is a familiar weapon for attacking reputation, as by juxtaposing the plaintiff’s portrait with that of a gorilla in a magazine article or by publishing a photo of him in what is or appears to be an obscene posture. On the other hand, if the expression is so extravagant that it cannot be regarded as going to character or is made as a harmless joke and is so understood, its defamatory barb may thereby disappear, as when one smilingly greets another with the words, “How are you, you old horse thief?” (Fleming, 1977:169).

Let us also invoke a more comprehensive definition offered by the legal academics McBride and Bagshaw. In their view: “a statement is defamatory if reading or hearing it would make an ordinary, reasonable person tend to:

- think less well as a person of the individual referred to;
- think that the person referred to lacked the ability to do their job effectively;
- shun or avoid the person referred to; or
- treat the person referred to as a figure of fun or an object of ridicule” (McBride, Bagshaw, 2008 in: Quinn, 2007:209).

Their definition makes it clear that the important issue is not how the defamatory statement makes the person referred to feel, but the impression it is likely to make on those reading it. The person defamed does not have to prove that the words actually had any of these effects on any particular people or the public in general, only that the statement could tend to have that effect on an ordinary, reasonable listener or reader.

The below case should shed some light on the importance of the “defamatory effect”, especially if the object is a public figure commonly recognized by the media:

In *Berkoff v Burchill* (1996), the journalist Julie Burchill described actor Steven Berkoff as ‘hideous-looking’ and compared him with Frankenstein’s monster. The court argued that although the kind of remarks made would not usually be defamatory, they become so because the claimant earned his living as an actor, and therefore the words made him an object of ridicule (Quinn, 2007:209).

The situation above is reminiscent of the art. 212 of the Polish Penal Code, especially its part concerning the repercussions a given comment might have in relation to a profession or office occupied by the defendant. Acting requires being constantly in the centre of public attention.

Consequently, certain remarks might prove pernicious to one’s image as a public figure.

### **Practical part – analysis of a selected corpus of cases concerning libel and slander**

#### **Introductory remarks concerning the corpus**

The analysed material has been taken from the textbook “Law for journalists” where various libel/slander cases are described. As has already been stated, the factors that play a key role in determining the verdict are not the feeling of the damaged honour or dignity but rather the damaged reputation: all the more so since it is most often the celebrities and persons known to the public. We shall see whether what is raised by theoreticians holds true in the practical resolution of the legal cases, namely that “the criterion commanding the widest verbal support seems to be the reaction aroused in citizens of “fair average intelligence or “ordinary decent folk in the community, taken in general” (Fleming, 1977:172).

The method employed here is qualitative. Several particular media cases have been selected to account for the theories cited in the paper. Nevertheless, further analysis is warranted, especially with regard to Polish body of rulings. Exact statistical data would make it possible to determine whether article 216 becomes indeed obsolete, as is the case with the object it is to protect: dignity and integrity of a human being.

What should be emphasized in the first place is that the underlying principle of every interpretation, whether in the Polish statutory or the English common law is the principle of “an interpretation by an average in-

dividual”. Thus, the jury in the case below found that the ordinary citizen (in this case, “the ordinary” catholic) would find the statement concerning abortion derogatory and defamatory to the reputation of the plaintiff, especially in the light of the office which he occupies:

In *Ivereigh v Associated Newspapers* (2009) a former spokesman for the Roman Catholic Church won £30,000 in damages over a story claiming he had encouraged two women who he had been romantically involved with, at different times in his life, to have abortions when they became pregnant. Abortion is seen as a sin by the Catholic Church, and Mr Ivereigh had publicly spoken out against it, so the story made him look like a hypocrite and a bad Catholic. Although it was true that one of the women had had an abortion and the other had booked one but then miscarried before it could take place, Mr Ivereigh said that he had not encouraged either woman to have a termination, and the jury found in his favour (Quinn, 2007:209).

**Interpreting verbal offences – the need to resort to context:**

As already stated, the interpretation is of paramount importance in determining the verdict in libel or slander cases. Let us emphasize here that contrary to the doctrines brought forward by the supporters of classical semantics, no interpretation should be considered final and binding.

The conviction that potentially libellous words should be interpreted in a way as favourable as possible with regard to the defendant had persisted for a long time but has been refuted as the one which imposes artificial interpretational criteria. The criterion which now achieves triumphs in the common law courtroom is the common-sense interpretation (Fleming, 1977:172).

Thus, upon deciding whether a statement could truly have insulted the injured party in the eyes of the public opinion, the jury is being asked a question: “how a decent person of fair average intelligence could interpret the given words”. This person is being referred to as “the reasonable person”. One of the reasons why the verdicts in the libel/slander cases are so unpredictable is that the views of such a person tend to evolve continually (Quinn, 2007:213).

Quinn gives an example: while as it would once have been defamatory to state that an unmarried woman spent the night with her boyfriend, it would not pose any problem nowadays unless this woman would publicly declare herself as being against extra-marital sex. In such a case she could be judged a hypocrite and a liar in the eyes of the public opinion (*idem*: 213).

As shown by the case below, calling a person “a gay” is not likely to be considered a libel unless this person ostentatiously declares himself/herself heterosexual:

In *Jason Donovan v The Face* (1992), the singer Jason Donovan successfully sued *The Face* magazine for saying he was gay. He based his argument on the fact that he had always presented himself as being heterosexual, and that *The Face* was therefore defaming him by suggesting he had deceived the public about his sexuality (idem: 209).

As observed by Quinn, the case did not test whether it is defamatory merely to say someone is gay but if someone is suing over such allegations, they are likely to have presented themselves as heterosexual, and therefore will be able to sue on the basis that saying they are gay implies they are lying and hypocritical (idem: 209).

If we are to adhere to this argumentation, a reversed scenario could also prove true: if someone is described as “heterosexual” by the press while in reality, they declare themselves as homosexual. As it turns out, a seemingly innocent statement might turn out to be defamatory.

A comic statement is often interpreted as disparaging without recourse to the context surrounding it, the headlines, or, in the case of a slander, the tone of voice, gestures and facial expression. One should also embrace the whole text. One single sentence in isolation should not constitute a cause of action. It is often necessary to resort to footnotes and explications provided by the authors (idem: 209).

The case below demonstrates how important the context becomes where one deals with genres such as parody or travesty:

In *Elton John v The Guardian* (2008), Elton John sued over a spoof piece in the *Guardian's* *Weekend* magazine, which mocked him. It was written in the style of a diary by Elton John, and began: ‘What a few days it’s been. First I sang Happy Birthday to my dear, dear friend Nelson Mandela . . . at a party specially organised to provide white celebrities with a chance to be photographed cuddling him, wearing that patronisingly awestruck smile they all have.’ (...) It was headed ‘A peek at the diary of Elton John’, but at the end included the words ‘As seen by Marina Hyde (Quinn, 2007:225).

Upon interpreting the case, the judge held that “no reasonable reader could believe that the words were really written by Elton John. It was clear that the diary was not written by him, and was an attempt at humour” (idem: 225).

As can be deduced from the verdict, common law supports the views of ordinary citizens able to interpret hints and allusions. Defamatory character of an utterance is not so evident until it is analysed in its proper context rather than in isolation.

The last concept that should be invoked here is the concept of innuendo: as defined by Fleming, an innuendo can be understood as a secondary meaning which may be derived either from the words themselves by “reading between the lines”, as it were, or with the aid only of additional, extrinsic information (Fleming, 1977:174).

Kościuszko Foundation Dictionary defines innuendo as “proving the harmful effect of a statement in a case concerning libel/slander”. The term is thus contextually dependent from “libel” and “slander” (as used strictly in the legal sense).

Monolingual dictionaries such as “Oxford Advanced Learner’s Dictionary” refer to the term as “an indirect remark about something, usually suggesting something bad or rude”. Both in the legal and in the colloquial discourse, innuendo refers to all types of meanings which are somehow hidden “between the lines”. In cases where libel or slander could not be proved “beyond the shadow of doubt”, for reasons of security (to protect themselves against possible losses in the litigation), the plaintiffs used to identify the offence as an innuendo rather than the libel or slander.

## Conclusions

According to the Polish doctrine, the conceptual object of legal protection against libel and slander, “cześć”, can be understood as either one’s dignity and personality (the internal worth of a human being and the way he/she perceives himself/herself), or as a reputation and image marking our existence in the society. While as the former is stable and uniform, the latter might vary depending on the way the individual is seen by the community, the entirety of their achievements, habits and behavior patterns yielding interpretation.

Although it is emphasized by the Polish legal academics that civil regulations are not sufficient to guarantee legal protection of dignity, there is an equal or even greater amount of supporters of the broadly conceived “freedom of speech”. The discussion might be summarized as involving the proponents of liberal and democratic policies on the one hand, and those who wish to avoid complete decriminalization of libel and slander and deem them necessary components of balance in a democratic state. “Cześć”, both in its internal as well as external form is accounted for in the Polish Penal Code (articles 212 and 216). According to the critics of “unhampered media reporting” it is not enough to provide for the protection of human dignity and reputation in the statutes but it would require the true co-



operation of the law – makers as well as legal practitioners – judges and politicians.

What is stressed in both Polish and common law “definitions”, the important issue is not how the defamatory statement makes the person referred to feel, but the impression it is likely to make on those reading it (McBride, Bagshaw, 2008 in: Quinn, 2007:209).

The process of the decreasing number of cases involving the violation of dignity can be also reflected in the usage of the terms “dignity” and “reputation” in the legal language. As it turns out, “dignity” is mostly used in the abstract contexts, especially in the constitutions, statutes, codes, treaties and international conventions. On the other hand, terms related to “libel” and “slander” such as reputation, face, esteem, respect, are evoked in a number of “practical” contexts by which the author understands cases based on the slanderous allegations which have been found to be defamatory by the courts.

However, as already remarked above, further analysis is warranted, especially with regard to Polish body of rulings. Exact statistical data would make it possible to determine whether article 216 becomes indeed obsolete, as is the case with the object it is to protect: dignity and integrity of a human being.

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