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Defamation as an Illegitimate Source of Income

Defamation as an illegitimate source of income has proven to be a highly problematic issue, highlighting its ongoing relevance. There is a notable lack of Georgian-language literature and academic articles addressing defamation. Drawing upon foreign legislation and analytical materials, it is evident that there is a substantial difference between defamation and slander. Notably, this distinction has largely been lost in Georgia following the decriminalization of slander, which has effectively equated the terms defamation and slander in common usage.

It is important to comprehend the significance of slander as a criminal offense. Although its decriminalization in Georgia has strengthened the right to freedom of speech and expression, the resulting disregard for restricting the dissemination of information that violates an individual's honor and dignity is unacceptable.

This academic article aims to explore the nature of defamation as a basis for considering income illegitimate and to offer the author's perspective on potential solutions. The subject of the research includes the legal nature of defamation as an illegitimate source of income, along with relevant doctrines and judicial practices.

The methodology of the paper is primarily doctrinal, employing the following criminological research methods: documentary analysis; comparative legal analysis; descriptive method; historical-legal approach; and a systematic method.

Keywords: *defamation, slander, illegitimate income, honor, dignity, professional reputation.*

1. Introduction

Defamation as an illegitimate source of income presents significant theoretical and practical challenges. The topic selected for this academic paper addresses an increasingly pressing issue. As is well known, the advancement of technology and the expansion of the internet in the 21st century have heightened the risks of violating individual honor and dignity. Appeals to the right to freedom of speech and expression are sometimes used to justify significant harm to a person's reputation, which may culminate in the classification of income as illegitimate.

In Georgia, where scholarly work in this area is limited but legal disputes are numerous, there is a clear need for thorough research on defamation as a basis for illegitimate income. Terminologically, since the decriminalization of slander, the distinction between defamation and slander has largely disappeared – unlike in countries such as France and Germany. This blurred distinction gives rise to continuous debate, underlining the issue's relevance.

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When violations of an individual's honor and dignity occur, several key questions arise:

- What constitutes defamation?
- What is the difference between defamation and slander?
- What factors contribute to harm to honor and dignity?
- Can any legal interest outweigh a person's right to honor and dignity?
- To what extent can defamation be considered a basis for classifying income as illegitimate?
- Is there equal legal treatment of public and private persons in defamation cases?
- What are the criteria for qualifying an act as defamation?
- How is defamation treated in foreign jurisdictions?
- What is the stance of Georgian courts on defamation?

This article attempts to address these questions through a review of both foreign and limited Georgian academic literature, as well as a systematic analysis of substantial domestic and international case law.

The research seeks to analyze the nature of defamation as a legal basis for determining income as illegitimate and to propose original solutions to existing problems.

The study is doctrinal in nature and applies the following criminological research methods:

1. **Documentary Method** – for processing specialized legislation, literature, and analytical materials;
2. **Comparative Legal Method** – for examining the interplay between different legal systems and institutions;
3. **Descriptive Method** – for characterizing the legal mechanisms of defamation as a source of illegitimate income;
4. **Historical-Legal Method** – for tracing the development of legal norms and rules over time;
5. **Systematic Method** – for analyzing judicial practice and the theoretical principles of legal norms.

Additionally, the study utilizes field research methods, such as interviews.

Structurally, the paper is divided into five main sections and subsections. The first section introduces the topic. The second discusses the place of defamation within the legal system. The third presents foreign case law regarding the publication of information that harms an individual's honor and dignity. The fourth outlines the types of damage resulting from defamatory statements and the available legal remedies. The fifth examines the role of defamation in social media. The article concludes with a summary and a list of references.

2. The Role of Defamation in the Legal System

2.1. The Terminological Significance of Defamation from Antiquity to the Present Day

The term *defamation* originates from the Latin word *diffamare*, meaning “to spread rumors” or “to tarnish someone's name.”¹ In modern usage, the term *defamation* is commonly employed to

¹ Amerasinghe, A. Ranjit B., *Defamation in the Law of South Africa and Ceylon* (H.W. Cave, Colombo 1969) 43-44.

describe acts of slander. Such acts may be carried out through verbal abuse or various forms of insinuation. Methods of slander can be both physical and psychological in nature and are almost always aimed at silencing or even socially and politically destroying the targeted individual. The widely recognized phenomenon of “bullying” is often characterized by public defamation.²

Defamation played a notable role in Greek and Roman literature and frequently caused significant damage to individuals’ reputations. In Greek literature, defamation was summarized by Liberman, who, in his lexicographic entry “On Greek Invective,” examined defamatory content in texts such as iambic poetry, satire, Old Comedy, and courtroom speeches of Attic orators.³ Similarly, Koster explored other genres associated with defamation, including satire, epigrams, and epodes.⁴

In the history of Georgian law, defamation and its definition are reflected in the legal code of Bagrat Kurapalates, specifically Article 120 of the Beka-Aghbugha Code:

“Defamation and slander are as follows: if one falsely accuses an innocent man, and rumors spread as a result, and the accusation is made out of enmity, he must swear an oath – if he refuses, he must pay blood money.”

According to this norm, the legislator considered false accusation (slander) as part of the broader concept of defamation. The offender, in such cases, was punished by paying compensation equivalent to blood money. Hence, defamation essentially refers to falsely attributing wrongdoing to another person without substantiation.⁵

Using the historical-legal method, the paper examines the evolution of the concept of defamation from antiquity to modern times, analyzing both its origins and development stages. This includes consideration of early Georgian legal monuments that provide insight into how defamation was regulated and punished in historical legal systems.

2.2. The Nature and Importance of Defamation as the Dissemination of Statements Harmful to Honor and Dignity

Legislative regulation of defamation is found in subparagraph (e) of Article 1 of the Law of Georgia on Freedom of Speech and Expression, which defines defamation as a statement that contains a substantially false fact, is damaging to a person, and harms their reputation.⁶ The law clearly distinguishes between defamation against a private individual and that against a public figure.⁷

In the realm of social media, defamation may take various forms – either written or oral – and is commonly disseminated through posts or video content.⁸ In such cases, the first step is to determine

² *Siegfried J.*, Sprachliche Gewalt gegenüber Minderheiten: Formen der sprachlichen Diffamierung in den Medien und im politischen Diskurs. In: *Der Deutschunterricht.*, Bd. 59, H. 5, 2007, 11–21.

³ *Liebermann* 1998, 1050. *Nisbet*, 1961, 192.

⁴ *Koster* 1980.38. *Opelt* (1965) 13.

⁵ *Surguladze I.*, “History of Georgian Law” 2014, 112.

⁶ Paragraph “e” of Article 1 of the Law of Georgia “On Freedom of Speech and Expression”. (In Georgian)

⁷ *Brosius H., Dirk E.*, The Causes of Third-Person Effects: Unrealistic Optimism, Impersonal Impact, or Generalized Negative Attitudes Towards Media Influence?, 8(2) *International Journal of Public Opinion Research*, 1996, 142.

⁸ *Arend P.S.*, Defamation in an Age of Political Correctness: Should a False Public Statement that a Person is Gay be Defamatory? 18 *North Illinois University Law Review*, 1997, 99.

the legal status of the person targeted by the defamatory statement – namely, whether the information concerns a private or a public person.⁹

According to subparagraph (k) of Article 1 of the same law, a *private person* is defined as a natural or legal person who is not a public official or an administrative body. In contrast, subparagraph (i) defines a *public person* as someone who:¹⁰

- Holds a position defined by Article 2 of the Law of Georgia on the Fight Against Corruption;¹¹
- Whose decisions or opinions have a significant influence on public life; or
- Who, by virtue of certain actions, has drawn public attention to specific issues.¹²

In cases involving defamation of a private person, the defendant bears civil liability only if the plaintiff proves in court that the defendant's statement contained a substantially false fact about the plaintiff and that this statement caused them harm – such harm may include unjust or illegitimate income resulting from the dissemination.¹³

In cases involving defamation of a public figure, civil liability arises if the plaintiff proves that the defendant's statement involved a substantially false fact about them, caused them harm, and – crucially – that the defendant either knew the statement was false or exhibited gross negligence in verifying the information, thereby enabling the dissemination of a false and damaging statement.¹⁴

2.3. Similarities and Differences Between Defamation and Slander

The Latin term *diffamatio* is generally understood to mean the dissemination of a voice or the disclosure of a secret – more specifically,¹⁵ the public spread of fabricated or discriminatory information through the mass media targeting a specific individual or group of individuals.¹⁶ While defamation is closely related to slander, the two differ in two principal aspects:

1. Medium of Dissemination:

Defamation involves the disclosure of shameful or humiliating facts, specifically through the media. In contrast, slander may be committed not only via the media but also through verbal expressions, written communication, or other non-media-related forms.

⁹ Zimmermann R., Whittaker S., Good Faith in European Contract Law. Cambridge: Cambridge University, 2000, 87.

¹⁰ Paragraph “k” of Article 1 of the Law of Georgia “On Freedom of Speech and Expression”. (In Georgian)

¹¹ Paragraph “i” of Article 1 of the Law of Georgia “On Freedom of Speech and Expression”. (In Georgian)
¹² <<https://matsne.gov.ge/ka/document/view/33208?publication=7>> [15.06.2025].

¹³ Balkin R., Davis J., Law of Torts, 4th edn, LexisNexis 2008, Bezanson, Randall P. and Kathryn L. Ingle, Plato's Cave Revisited: The Epistemology of Perception in Contemporary Defamation Law, 90(3) Dickinson Law Review, 1986, 585.

¹⁴ Arend P.S., Defamation in an Age of Political Correctness: Should a False Public Statement that a Person is Gay be Defamatory?, 18 North Illinois University Law Review, 1997, 99.

¹⁵ Rivard A., De l Calvert, Clay, Awareness of Meaning in Libel Law: An Interdisciplinary Communication & Law Critique, 1995, 16 The Northern Illinois University Law Review 111. a liberté de la presse. Montréal: Garneau, 1923, 125, 67.

¹⁶ Calvert C., Awareness of Meaning in Libel Law: An Interdisciplinary Communication & Law Critique, 16 The Northern Illinois University Law Review, 1995, 111.

2. Truthfulness of the Statement:

In defamation, the offense lies in the act of revealing humiliating facts – regardless of whether the disclosed information is true.¹⁷ Slander, by contrast, is generally characterized as the intentional dissemination of falsehoods and fabricated stories.¹⁸

In the context of defamation, the act may involve the spread of seemingly trivial gossip, which – unlike slander – may contain elements of truth. However, the decisive factor is that defamation damages a person's reputation through words, writings, or gestures in the media that provoke scorn, ridicule, hatred, or contempt.¹⁹

According to Professor J. Pinault²⁰, defamation can be classified into three categories:²¹

1. When one speaks or writes unpleasant or unfavorable things about another person with the awareness that the statement is false;
2. When one speaks or writes such things, although they *should* know they are false;
3. When one publicizes such statements about another without a legitimate or honorable reason.²²

In order for a communicated statement not to be classified as defamation, the information must be **truthful** and disclosed **for a legitimate reason**.²³

From a doctrinal legal research perspective, it can be argued that while defamation and slander are similar in that they both involve the dissemination of reputation-damaging information, they diverge in terms of their nature and legal elements. The distinction lies primarily in the *form of expression* and the *truth-value* of the statement involved.

An important and thought-provoking question remains: **Has this conceptual distinction between defamation and slander been properly internalized in Georgian judicial practice?**

2.4. Definition of Honor, Dignity, and Business Reputation

When addressing the issue of defamation – i.e., the public dissemination of reputation-damaging information²⁴ – it is essential to define the concepts of *honor*, *dignity*, and *business reputation*, in order to accurately determine whether a given statement constitutes defamatory content.²⁵

Article 9 of the Constitution of Georgia proclaims the *inviolability of human dignity*.

¹⁷ Pineau J., *Monique*, Théorie de la responsabilité civile. 2e éd. Montréal: Éd. Thémis, 1980. 237, 62.

¹⁸ Fricke G. L., The Criterion of Defamation, 32 Australian Law Journal, 1958, 7.

¹⁹ Vallières N., La presse et la diffamation: rapport soumis au ministère des Communications du Québec. Montréal: Wilson & Lafleur, 1985, 138, 6-8, 10, 49, 52, 58, 90.

²⁰ Nadeau A., Nadeau R., Traité pratique de la responsabilité civile délictuelle. Montréal: Wilson & Lafleur, 1971. 732, 248.

²¹ Jean Pinault (1934-2013) was a French-born professor of law at the University of Montreal. He is recognized as one of the main authors of the Civil Code of Quebec.

²² Pineau J., *Ouellette Monique*, Théorie de la responsabilité civile. 2e éd. Montréal: Éd. Thémis, 1980, 237, 63-64.

²³ <<https://www.laloi.ca/quest-ce-que-de-la-diffamation/>> [15.06.2025].

²⁴ Calvert C., Harm to Reputation: an Interdisciplinary Approach to the Impact of Denial of Defamatory Allegations, 26 Pacific Law Journal, 1995, 933.

²⁵ Cohen Jeremy., Experimental Test of Some Notions of the Fact/ Opinion Distinction in Libel, 66 Journalism Quarterly, 1989, 11.

The **Preamble** and **Article 1** of the *Universal Declaration of Human Rights* affirm that:

“Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,” and “All human beings are born free and equal in dignity and rights.”²⁶

The **Constitutional Court of Georgia** has elaborated that human dignity must not be reduced to a purely civil law concept. Instead, its interpretation within constitutional law is fundamentally distinct:

The protection of human dignity is an unconditional entitlement granted to every individual by the state. Dignity entails a **social demand** for respect from the state toward the individual.²⁷ It is an inherent attribute of being human, independent of public opinion or personal self-assessment. Respect for human dignity presumes universal recognition of the individual’s personhood – something that may neither be restricted nor revoked.²⁸ The individual must be treated not as a means to an end, but as the very *end* – as the supreme value of the constitutional order.²⁹

For example, words such as “traitor,” “pathological,” or “godless” may qualify as violations of a person’s rights.³⁰

Dignity is not merely a subjective right; rather, it is a **fundamental constitutional principle** upon which all other basic rights are grounded. Any violation of dignity is inherently linked to the infringement of other fundamental rights. In this regard, along with Article 17 of the Constitution, the *Law of Georgia on Freedom of Speech and Expression* also provides a legal framework for protecting dignity and reputation.

One of the leading decisions on this matter is the **Supreme Court of Georgia’s Judgment No. 3k-337-02 of June 25, 2002**, concerning a claim for the **retraction of defamatory statements** that allegedly harmed a person's honor and dignity. The Court clarified the distinction between *dignity*, *honor*, and *business reputation*:

- **Business reputation** applies to individuals engaged in economic (commercial) activity. Political officials or public servants, by virtue of their positions, cannot claim a business reputation within the meaning of Article 18 of the Civil Code of Georgia.
- In this specific case, the claimant, being a public official, was not engaged in commercial activity – even if they held shares in a private company – since holding public office legally precludes such engagement.
- As such, while defamation (i.e., harm to dignity or honor) may occur in the context of a public servant’s official capacity, *damage to business reputation* does not arise in such cases.³¹

²⁶ Preamble to the Universal Declaration of Human Rights (In Georgian).

²⁷ Calvert C., Awareness of Meaning in Libel Law: An Interdisciplinary Communication & Law Critique, 16 The Northern Illinois University Law Review, 1995, 111.

²⁸ Combined Media Defamation Reform Group, ‘Submission in Response to “Outline of Possible National Defamation Law”’, Attorney-General’s Discussion Paper – March 2004’ (May 2004).

²⁹ Calvert, Clay, ‘The First Amendment and the Third Person: Perceptual Biases of Media Harms & Cries for Government Censorship’ (1998) 6 CommLaw Conspectus 165.

³⁰ Culbertson, H.M. and G.H. Stempel ‘Media Malaise: Explaining Personal Optimism and Societal Pessimism about Health Care’ (1985) 35(2) Journal of Communication 180.

The Court further clarified that under **Article 18(2)** of the Civil Code, the dissemination of information (a fact or claim) may qualify as an infringement of personal non-property rights – including dignity, honor, and privacy – if the statement contains defamatory content and the disseminator cannot prove the statement’s veracity.

In line with the **European Court of Human Rights’ case law** (e.g., *Castells v. Spain*), politicians and public officials are expected to tolerate a higher threshold of criticism in public debates and media coverage.³²

Freedom of expression and the right to information are guaranteed under **Article 24 of the Georgian Constitution** and **Article 10 of the European Convention on Human Rights (ECHR)**:

- Article 24(1) of the Georgian Constitution grants everyone the right to receive and disseminate information, and to express and share opinions orally, in writing, or by other means.
- However, Article 24(4) permits these rights to be restricted by law if such restrictions are necessary in a democratic society for reasons such as national security, territorial integrity, public safety, prevention of crime, protection of others' rights and dignity, confidentiality, or the independence and impartiality of the judiciary.

Similarly, Article 10(2) of the ECHR states that freedom of expression carries duties and responsibilities and may be subject to legal restrictions deemed necessary in a democratic society – particularly to safeguard national security, public order, health, morals, or the reputation or rights of others.³³

Hence, while individuals have the right to freely express their opinions, they simultaneously assume legal responsibilities and potential liability. Georgian legislation and international treaties alike recognize the dual guarantee of **freedom of expression** and **protection of honor and dignity**.³⁴

It is widely acknowledged that political discourse enjoys broader protection than private speech; however, such protection is not absolute. The state is authorized to impose proportionate restrictions, including sanctions, to safeguard the reputation of all persons, including public officials and political figures.³⁵

Article 17(1) of the Georgian Constitution guarantees the protection of human honor and dignity. Meanwhile, **Article 18 of the Civil Code** outlines the specific means of protection, allowing any person to seek judicial remedies to rebut or retract defamatory statements that infringe upon their dignity, honor, private life, personal inviolability, or business reputation – provided that the disseminator fails to prove the truth of the statement.³⁶

³¹ Decision of the Civil Cases Chamber of the Supreme Court of Georgia of June 25, 2002 in case 3K-337-02 (In Georgian).

³² *David P., Johnson M.*, The Role of Self in Third-Person Effects about Body Image, 48(4) Journal of Communication, 1998, 37.

³³ *Dent Ch.*, Defamation Law’s Chilling Effect: a Comparative Content Analysis of Australian and US Newspapers, 9(2) Media & Arts Law Review, 2004, 89.

³⁴ *Davison W.*, The Third-Person Effect in Communication, 47 Public Opinion Quarterly, 1983, 1.

³⁵ Decision of the Civil Cases Chamber of the Supreme Court of Georgia of June 25, 2002 in case 3K-337-02 (In Georgian).

³⁶ Decision of the Civil Cases Chamber of the Supreme Court of Georgia of June 25, 2002 in case 3K-337-02 (In Georgian).

For proper application of Article 18, the **legal definitions of honor and dignity** must be clearly understood:

- *Honor* refers to the **objective public evaluation** of an individual's moral or personal qualities, reflecting society's overall attitude toward that person.³⁷
- *Dignity*, in contrast, relates to an individual's **subjective self-assessment** of their own moral worth and social significance.³⁸

The **violation of honor and dignity** may occur when false or harmful statements are made suggesting the individual has engaged in unlawful or immoral conduct. Publicly expressed opinions that assert such claims – e.g., calling someone “a thief,” “corrupt,” or “a member of the mafia” – cannot be considered protected expressions under the freedom of speech provisions if they serve to discredit or humiliate the person.³⁹

Personal non-property rights may also be infringed when criticism exceeds professional boundaries and instead targets an individual's dignity with malicious intent. Referring to someone in a derogatory or degrading manner before a third party – so as to incite contempt or hatred – may be grounds for legal protection.⁴⁰

Although public officials must tolerate broader criticism, that criticism must still remain within legally defined boundaries that protect others' rights and reputations.⁴¹

Importantly, **in civil defamation cases**, the *claimant* is not required to prove the falsehood of the disseminated statement.⁴² Rather, the *burden of proof* lies with the *defendant*, who must demonstrate that the information disseminated was true.⁴³

From a **systematic legal research perspective**, a structural analysis of this judgment provides a solid understanding of the legal meaning and practical significance of **honor, dignity, and business reputation** in Georgian law.

2.5. Georgian Judicial Practice on the Publication of Statements Infringing Honor and Dignity

Within the framework of this systematic research, it is necessary to examine Georgian judicial practice in order to provide the reader with an overall view of how courts perceive defamation cases, which will significantly aid in a deeper understanding of defamation.

³⁷ *De Visser, Richard et al.*, ‘Heterosexual experience and Recent Hetero- sexual Encounters Among a Representative Sample of Adults’ (2003) 27(2) Australian and New Zealand Journal of Public Health 146.

³⁸ *Patrick G.*, Damages Survey for Defamation, paper presented at Media Law and Defamation’ seminar, Centre for Continuing Legal Education course, Faculty of Law, University of New South Wales, 14 March 2003.

³⁹ *Sprankling J.* (2014). The International Law of Property. Oxford: Oxford University Press, 111.

⁴⁰ *Davison, W. Phillips*, ‘The Third-Person Effect Revisited’ (Summer 1996) 8(2) International Journal of Public Opinion Research 2.

⁴¹ *Donoghue D.*, England, their England: Commentaries on English Language and Literature, University of California Press, 1989, 56.

⁴² *Eisenberg J.*, Abbott, Kennett and Costello, 1999, 153 Communications Update 19 Eldridge, Laurence H., Law of Defamation Bobs-Merrill Co., Indianapolis 1978, 45.

⁴³ *Eveland Jr., William P., Douglas M.* The Effect of Social Desirability on Perceived Media Impact: Implications for Third-Person Perceptions, 11 International Journal of Public Opinion Research, 1999, 315.

In its ruling No. As-22-22-2014 of April 6, 2015, the Supreme Court of Georgia addressed a case concerning the denial of defamatory information. The claimant sought a court order requiring the respondent to retract information damaging to the claimant's honor, dignity, and professional reputation.⁴⁴

According to the court, Article 2 of the Law of Georgia on Freedom of Speech and Expression mandates that the law be interpreted in light of the Constitution of Georgia, Georgia's international legal obligations – including the European Convention on Human Rights – and the case law of the European Court of Human Rights.⁴⁵

Under Article 14 of the same law, a person bears civil liability for defamation of a public figure if the claimant proves in court that the respondent's statement contains a materially false fact about the claimant, that the statement caused harm, and that the respondent either knew the statement was false or acted with gross negligence, resulting in the dissemination of the false information.⁴⁶

Of particular interest is the court's stance when defamatory information is published about a well-known public figure. The Supreme Court's ruling No. As-1332-1258-2012 of April 23, 2014, involved moral damages and the publication of a court notice in a form prescribed by the court.⁴⁷

When determining the amount of moral damages, the court considers whether the claimant is a public figure, whether the statement is defamatory, and the newspaper's circulation – specifically, whether it is distributed nationwide and accessible to a wide Georgian readership.⁴⁸

The Supreme Court noted that, following amendments to Article 18 of the Civil Code of Georgia on June 24, 2004, a distinct legal framework was established for the protection of an individual's honor, dignity, privacy, inviolability, and business reputation. On the same date, the Law on Freedom of Speech and Expression was enacted, introducing concepts such as “opinion” and “defamation.”⁴⁹

When the claimant is a public figure, the legal standard for defamation of public figures applies.⁵⁰ According to Article 14 of the Law on Freedom of Speech and Expression, civil liability arises if the claimant proves that a materially false statement was made about them, that it caused harm, and that the respondent either knew it was false or acted with gross negligence. The burden of proof lies entirely with the claimant.⁵¹

⁴⁴ Ruling of the Civil Cases Chamber of the Supreme Court of Georgia of April 6, 2015 in case: No. AS-22-22-2014 (In Georgian).

⁴⁵ Article 14 of the Law of Georgia “On Freedom of Speech and Expression” (In Georgian).

⁴⁶ *Glynn C.J., Haynes A.F., Shanahan J.*, Perceived Support for One's Opinions and Willingness to Speak Out: A Meta-Analysis of Survey Studies on the “Spiral of Silence”, 61 *Public Opinion Quarterly*, 1997, 452.

⁴⁷ Ruling of the Civil Cases Chamber of the Supreme Court of Georgia of April 23, 2014 in case: No. AS-1332-1258-2012.

⁴⁸ *Gunther A.C.*, What We Think Others Think: Cause and Consequence in the Third-Person Effect, 18(3) *Communication Research*, 1991, 355.

⁴⁹ Article 14 of the Law of Georgia “On Freedom of Speech and Expression” (In Georgian).

⁵⁰ *Fleming J.G.*, *The Law of Torts*, 9th edn, Thomson Reuters, 1998.

⁵¹ *Glynn, C.J. and R.E. Ostman*, ‘Public Opinion about Public Opinion’ (1988) 65 *Journalism Quarterly* 299.

A crucial aspect in determining liability is distinguishing between an “opinion” and “defamation.” The law grants opinions absolute privilege, meaning full and unconditional immunity from liability.⁵²

According to subparagraph (b) of Article 1 of the same law, an “opinion” is defined as an evaluative judgment, viewpoint, or commentary – any expression that reflects an attitude toward a person, event, or object and does not contain a verifiable or falsifiable fact. Subparagraph (e) defines “defamation” as a materially false factual assertion that damages a person's reputation.⁵³

In one case, the Supreme Court clarified that the term “opinion” broadly includes subjective judgments and evaluations, the truth or falsity of which depends entirely on the individual's perspective. Facts, by contrast, stem from objective reality and can be verified. Because opinions often rely on or reference facts, and vice versa, distinguishing between the two can be challenging. Expressions typically combine both evaluative and factual elements. Isolating specific parts of a statement for qualification purposes is justified only when it does not distort the meaning or true intent of the expression. If isolation would distort the statement, then the whole statement should be considered an opinion, thus fully protected by fundamental rights.⁵⁴

In the case of *Lingens v. Austria* (June 8, 1986), the European Court of Human Rights ruled that requiring proof of the truthfulness of value judgments violates freedom of opinion, as opinions are inherently unverifiable.⁵⁵

In defamation-related disputes, it is essential to assess whether the disseminator made an effort to verify the truth of the information. While it is unreasonable to expect media representatives to verify every fact with absolute certainty, a standard of reasonable verification must be upheld to preserve democratic values. This standard aligns with the principle of exercising civil rights in good faith.⁵⁶

According to the case law of the European Court of Human Rights, freedom of the press entails journalists’ “duties and responsibilities,” including distancing themselves from potentially harmful views expressed by others and avoiding the unintentional spread of hate or violence-inciting speech.⁵⁷

The Supreme Court clarified that “dignity” refers to a person’s self-assessment of their moral and other qualities, while “honor” reflects how these qualities are perceived by society – how a person is seen in the public eye. The court further asserted that the presumption must be that any average person would experience harm to their honor and dignity from the dissemination of defamatory information.⁵⁸

⁵² Decision of the Supreme Court of Georgia of February 20, 2012 in case No. AS-1278-1298-2011 (In Georgian).

⁵³ *Gunther A.C., Mundy P.*, Biased Optimism and the Third-Person Effect, 1993, 70(1) Journalism Quarterly, 58.

⁵⁴ *Harkess J.*, A Linguistic Inspection of the Law of Defamation, Auckland University Law Review, 1998, 653.

⁵⁵ *Eveland Jr., William P., McLeod D.M.*, The Effect of Social Desirability on Perceived Media Impact: Implications for Third-Person Perceptions, 11 International Journal of Public Opinion Research, 1999, 315.

⁵⁶ *Hart J.D.*, Why Expert Testimony on the Meaning of Language has no Place in Libel Suits’ in David A. Schulz, Libel & Newsgathering Litigation – Getting & Reporting the News, Practising Law Institute, 1998, 517.

⁵⁷ *Kenyon A.T.*, Defamation: Comparative Law and Practice, OUP, 2006, 121.

⁵⁸ Decision of the Civil Chamber of the Supreme Court of Georgia of February 20, 2012 in case No. AS-1278-1298-2011 (In Georgian).

The Supreme Court also emphasized that the harm in such cases is non-pecuniary in nature – manifested through the violation of a person’s honor, dignity, and professional reputation. Since non-pecuniary rights lack economic value, proving the violation of a legally protected right is sufficient for establishing damage.⁵⁹

Under Article 24(4) of the Constitution of Georgia, freedom of expression may be restricted by law only when necessary in a democratic society to protect national security, territorial integrity, public safety, prevent crime, protect the rights and dignity of others, prevent disclosure of confidential information, or ensure judicial independence and impartiality.⁶⁰ These same principles are enshrined in Article 10 of the European Convention on Human Rights, which allows restrictions on expression that serve a legitimate aim.⁶¹

According to European standards, even offensive, shocking, or disturbing information is often protected by press freedom.⁶² In a democratic society based on pluralism and tolerance, individuals are sometimes expected to endure information they find disagreeable.⁶³ Public figures are subject to a broader range of permissible criticism than private individuals. Nonetheless, freedom of expression must not be so expansive as to infringe excessively on the rights of others.⁶⁴

When balancing freedom of expression with others’ rights and reputations, several factors must be considered: who was the target of the statement, how the information was disseminated, what harm was done to legitimate interests, whether the information pertained to the public interest, and whether journalistic “duties and responsibilities” were breached.⁶⁵

In *Karhuvaara and Iltalehti v. Finland*, the European Court of Human Rights ruled that excessive fines and compensation – imposed on the editor-in-chief for publishing private information about a member of parliament – were disproportionate given the minor infringement on the deputy’s right to privacy.⁶⁶

Assessing the extent of interference with freedom of expression is a matter of fact. Courts cannot evaluate proportionality in the abstract; they require factual evidence to make a meaningful value-based judgment.⁶⁷

⁵⁹ Decision of the Civil Chamber of the Supreme Court of Georgia of April 3, 2012 in case No. AS-1265-1291-2013 (In Georgian).

⁶⁰ 24, paragraph 4 of the Constitution of Georgia (In Georgian).

⁶¹ Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (In Georgian).

⁶² *Heine S.J., Lehman D.R.*, Cultural Variation in Unrealistic Optimism: Does the West Feel More Invulnerable than the East?, 68 *Journal of Personality and Social Psychology*, 1995, 595.

⁶³ Human Rights and Equal Opportunity Commission, *Same-Sex: Same Entitlements* (Commonwealth of Australia, Canberra 2007) 77.

⁶⁴ *Jones E.E., Nisbett R.E.*, The Actor and the Observer: Divergent Perceptions of the Causes of Behavior’ in *EE Jones et al (eds) Attribution: Perceiving the Causes of Behavior*, Lawrence Erlbaum 1987, 79.

⁶⁵ *Gashi H.*, Acquisition and Loss of Ownership Under the Law on Property and Other Real Rights (LPORR): The Influence of the BGB in Kosovo Law, 2013, 88-89.

⁶⁶ <<https://www.cilvektiesibugids.lv/en/case-law/karhuvaara-and-iltalehti-v-finland>> [15.06.2025].

⁶⁷ *Kim Y., Ahn J., Song J.*, Perceived Media Influence on Self and Others on a Controversial Issue’, paper presented at the meeting of the International Communication Association, Chicago, May 1991, unseen, cited in Dominic L. Lasorsa, ‘Policymakers and the Third-Person Effect’ in J. David Kenamer (ed.), *Public Opinion, The Press and Public Policy*, 1992, 163, 170.

The reviewed decisions offer an overview of how Georgian courts approach the dissemination of defamatory information. They also reveal that, in practice, courts do not clearly distinguish between defamation and libel.

2.6. Preconditions for Dissemination of Defamatory Information and Judicial Approaches Toward Public and Private Figures in Cases of Defamation

In order to establish the preconditions for the dissemination of defamatory information, attention must be directed to Chapter IV of the Law of Georgia on Freedom of Speech and Expression, which addresses defamation. Specifically, Article 13 regulates defamation against a private person:

“A person shall bear civil liability for defamation against a private individual if the plaintiff proves in court that the respondent's statement contains a substantially false fact directly concerning the plaintiff, and that this statement caused harm to the plaintiff.”⁶⁸

As for defamation concerning a public figure, this is governed by Article 14, which provides that:

“A person shall bear civil liability for defamation against a public figure if the plaintiff proves in court that the respondent's statement contains a substantially false fact directly concerning the plaintiff, the statement caused harm to the plaintiff, and that the respondent either knew in advance of the falsehood of the stated fact or acted with gross and reckless disregard that led to the dissemination of a statement containing a substantially false fact.”⁶⁹

As becomes evident from the disposition of the norms, the legislature applies a significantly stricter and more demanding standard for establishing the prerequisites of defamation in relation to public figures. In such cases, the following must be shown:

1. That the respondent knew in advance the stated fact was false; and/or
2. That the respondent acted with gross and reckless negligence when disseminating the false information.

In this regard, it is important to note that the burden of proof rests entirely on the plaintiff. This means that when filing a claim in court, the plaintiff must demonstrate:

- a) That the respondent disseminated the disputed statement about the plaintiff;
- b) That the statement is factually incorrect and contains false facts;
- c) That the respondent either knew in advance of the falsehood of the fact or acted with gross and reckless negligence;
- d) That the disputed statement caused harm to the plaintiff's honor, dignity, or business reputation.⁷⁰

⁶⁸ Article 13 of the Law of Georgia “On Speech and Expression” (In Georgian).

⁶⁹ Article 14 of the Law of Georgia “On Speech and Expression” (In Georgian).

⁷⁰ Decision of the Civil Cases Chamber of the Supreme Court of Georgia of February 20, 2012 in case No. AS-1278-1298-2011 (In Georgian).

To illustrate the distinct judicial approaches toward public and private persons, the Ruling No. AS-1739-1720-2011 of the Supreme Court of Georgia dated August 3, 2012, concerning moral damages, is particularly relevant.

The court emphasized that Article 17 of the Constitution of Georgia protects human honor and dignity. In civil law, honor and dignity, as legally protected moral categories, reflect both society's attitude toward the individual and the individual's self-assessment, which must align with facts corresponding to reality.⁷¹ According to Article 24 of the Constitution, every person has the right to freely receive and disseminate opinions orally, in writing, or by other means. Paragraph 4 of the same article allows for the restriction of this right by law only under conditions necessary in a democratic society to ensure national security, territorial integrity, or public safety, to prevent crime, to protect the rights and dignity of others, to prevent the disclosure of information recognized as confidential, or to guarantee the independence and impartiality of the judiciary.⁷²

Article 10 of the European Convention on Human Rights affirms the right to freedom of expression. Everyone has the right to freedom of expression, which includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This provision encompasses three elements:

1. The freedom to hold opinions;
2. The freedom to disseminate information and ideas;
3. The freedom to receive information and ideas.⁷³

According to Article 2 of the Law of Georgia on Freedom of Speech and Expression, the law must be interpreted in accordance with the Constitution of Georgia, the country's international legal obligations – including the European Convention on Human Rights – and the case law of the European Court of Human Rights. Subparagraph “e” of Article 1 of the same law defines defamation as a statement that contains a substantially false fact and causes harm to a person, damaging their reputation.⁷⁴

Under subparagraph “a” of Article 1, a “statement” is defined as information made public by the speaker or disclosed to a third party. Subparagraph “b” defines an “opinion” as an evaluative judgment, viewpoint, commentary, or any form of subjective expression reflecting the speaker's attitude toward a person, event, or object, and which does not contain verifiable or falsifiable facts.⁷⁵

The law specifically prescribes the standard and burden of proof. Article 7, paragraph 5 of the law mandates that any reasonable doubt regarding the classification of a statement as fact or opinion – which cannot be confirmed by the procedure prescribed by law – shall be resolved in favor of granting the status of opinion to the information in question.⁷⁶

⁷¹ Judgment of the Civil Chamber of the Supreme Court of Georgia of August 3, 2012 in case No. AS-1739-1720-2011 (In Georgian).

⁷² Judgment of the Civil Chamber of the Supreme Court of Georgia of February 20, 2012 in case No. AS-1278-1298-2011 (In Georgian).

⁷³ Article 10 of the European Convention on Human Rights. (In Georgian)

⁷⁴ Article 2, paragraph “e” of the Law of Georgia “On Freedom of Speech and Expression” (In Georgian).

⁷⁵ Paragraphs “a” and “b” of Article 1 of the Law of Georgia “On Freedom of Speech and Expression” (In Georgian).

⁷⁶ Paragraph 5 of Article 7 of the Law of Georgia “On Freedom of Speech and Expression” (In Georgian).

According to Article 413(1) of the Civil Code of Georgia, monetary compensation for non-pecuniary damage may be demanded only in cases specifically provided for by law. Under Article 18 of the same code, such compensation is possible in cases involving the dissemination of information that violates a person's honor, dignity, business reputation, personal privacy, or physical inviolability.

The obligation to compensate moral damage arises from the violation of non-pecuniary rights.⁷⁷ Moral damage refers to the infringement of legally protected non-material interests that lack a financial equivalent.⁷⁸ It is sufficient for the violation of such a right to have occurred; no further material manifestation is required.⁷⁹

Accordingly, liability for infringing honor, dignity, personal privacy, physical inviolability, or business reputation arises only if the respondent disseminated such information. The mere non-dissemination of information cannot serve as the basis for civil liability.⁸⁰

Under Article 10 of the European Convention on Human Rights, individuals exercising freedom of expression also bear certain duties and responsibilities.⁸¹ Georgian legislation provides guarantees for both the freedom of opinion and expression as well as the protection of personal dignity and honor.

The Court of Cassation clarified that, under the previous version of Article 18 of the Civil Code of Georgia, individuals had the right to demand, through the courts, the retraction of information that infringed their honor, dignity, personal privacy, physical inviolability, or business reputation, unless the disseminator of the information proved that it was accurate. A 2004 amendment to this article introduced the requirement that such rights be protected "in accordance with procedures prescribed by law."⁸²

On June 24, 2004, the Law of Georgia on Freedom of Speech and Expression was adopted. Subparagraphs "e" and "v" of Article 1 introduced the legal definitions of "defamation" and "obscenity." Under these provisions, defamation is defined as a substantially false and reputation-damaging statement, while obscenity refers to a statement that lacks political, cultural, educational, or scientific value and grossly violates generally accepted ethical norms.⁸³

When the plaintiff is a private individual, the standard for defamation against a private person must apply.⁸⁴ A central element in the legal construct of defamation is that the respondent disseminated a statement directly concerning the plaintiff. In the absence of such a statement,

⁷⁷ *Krasnostein S.*, Defamation Law and the Fairness of the Objective Test, 23(4) Communications Law Bulletin, 2004, 6.

⁷⁸ *Kundu A.*, Defamation, Reputation and the Community: an Analysis of the Doctrine of Presumed Harm in Defamation Law, 10(1) Media & Arts Law Review, 2005, 53.

⁷⁹ *Lasorsa D.L.*, Real and Perceived Effects of "Amerika", 66 Journalism Quarterly, 1989, 373.

⁸⁰ *Magnusson R.*, Freedom of Speech in Australian Defamation Law: Ridicule, Satire and Other Challenges, 9 Torts Law Journal, 2001, 269.

⁸¹ Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (In Georgian).

⁸² Judgment of the Civil Cases Chamber of the Supreme Court of Georgia of August 3, 2012 in case No. AS-1739-1720-2011 (In Georgian).

⁸³ Subparagraphs "e" and "f" of Article 1 of the Law of Georgia "On Freedom of Speech and Expression" (In Georgian).

⁸⁴ *Mason L.*, Newspaper as Repeater: An Experiment on Defamation and Third-Person Effect, Autumn 72(3) Journalism and Mass Communication Quarterly, 1995, 610.

defamation does not exist.⁸⁵ Thus, the plaintiff must first and foremost prove that the respondent made a disputed statement about them.⁸⁶

According to Article 7, paragraph 6 of the Law of Georgia on Freedom of Speech and Expression, the burden of proof in restricting freedom of speech rests with the party initiating the restriction.⁸⁷ Any doubts not proven in accordance with legal procedure must be resolved against restricting freedom of speech.⁸⁸

The above-discussed ruling provides a comprehensive response to questions regarding the preconditions for the dissemination of defamatory information and the judicial approach toward public and private figures in such cases.

2.7. Circumstances Excluding Defamatory Characterization of Name-Damaging Information

For information that damages a person's name to be considered defamatory, it is necessary that the latter has not been made:

1. under qualified privilege;
2. under absolute privilege.⁸⁹

Qualified privilege may appear in the following forms:

1. A statement aimed at protecting legitimate public interests, where the protected good outweighs the harm caused;⁹⁰
2. A statement for which reasonable steps were taken to verify the truth of the fact, but despite these, the mistake could not be avoided, and it is also necessary that the person took effective measures to restore the reputation of the person harmed by defamation;
3. A statement made with the consent of the person to whom it is addressed;⁹¹
4. When the statement constitutes a proportional response to a statement made against the complainant;
5. When the statement is a fair and accurate report related to an event of public interest.⁹²

The above cases involve situations where the law provides partial or conditional exemption from liability under qualified privilege.

⁸⁵ *Lexis N.*, Australian Defamation Law & Practice. Barnett L.L., Defamation, Reputation, and the Myth of Community, 71(1) Washington Law Review, 1996, 1.

⁸⁶ *Heider F.*, The Psychology of Interpersonal Relations, Routledge, 1958, 23.

⁸⁷ Article 7, paragraph 6 of the Law of Georgia "On Freedom of Speech and Expression" (In Georgian).

⁸⁸ Ruling of the Civil Cases Chamber of the Supreme Court of Georgia of August 3, 2012 in case No. AS-1739-1720-2011.

⁸⁹ *Mason L.*, Newspaper as Repeater: An Experiment on Defamation and Third-Person Effect, Autumn, 72(3) Journalism and Mass Communication Quarterly, 1995, 610.

⁹⁰ *McCraw D.*, How do Readers Read? Social Science and the Law of Libel, 41 Catholic University Law Review, 1991, 81.

⁹¹ *LexisNexis A.*, Australian Defamation Law & Practice, Barnett L.L., Defamation, Reputation, and the Myth of Community, 71(1) Washington Law Review, 1996, 1.

⁹² *Magnusson R.*, Freedom of Speech in Australian Defamation Law: Ridicule, Satire and Other Challenges, 9 Torts Law Journal, 2001, 269.

Regarding absolute privilege, it includes the expression of opinion, where it is necessary to protect the right to confidentiality of professional sources, for example by lawyers, clergy, doctors, or other persons. It should also be noted that expression of opinion means publicly expressing a type of view or attitude, where the rights of others must not be violated.⁹³

The theoretical discussion of these issues should be reinforced by practical examples. For this purpose, the Supreme Court of Georgia's ruling dated September 24, 2012, in case No. AS-677-638-2011, is considered. The dispute concerned denial of disseminated information and compensation for moral damage.

According to Article 7, Paragraph 5 of the Law of Georgia "On Freedom of Speech and Expression," any reasonable doubt that cannot be proven in accordance with the law should be resolved in favor of granting the statement the status of opinion.⁹⁴

The European Court directs that in contentious cases, the relevant idea or information should be regarded as a matter of public interest, and the related expressions should be considered "evaluative judgments" rather than "statements of fact."

The court referred to the European Court's practice, which identifies the greatest difficulty in defamation cases as distinguishing between "statements of fact" and "evaluative judgments." While "evaluative judgments" generally do not require proof, if they imply a specific accusation, sufficient grounds must exist to justify such "evaluative judgment" (*Jerusalem v. Austria*).⁹⁵

The European Court of Human Rights in the case *Alves Costa v. Portugal* also noted that when making specific accusations, the accuser must present at least a minimal factual basis for their claim. Even when statements constitute "evaluative judgments," the proportionality of interference may depend on whether there was sufficient factual basis for the statements in question. Evaluative judgments can be considered excessive if not supported by adequate factual grounds (*De Haes and Gijssels v. Belgium*).⁹⁶

The court emphasized that it is practically impossible to require a person to express opinions solely based on facts or to require proof of the accuracy of opinions expressed.⁹⁷ "The existence of facts can be demonstrated, whereas opinions do not require evidence," and "it is impossible to require proof of the truth of views, as this itself violates freedom of expression, which is a fundamental part of the right guaranteed by Article 10 of the Convention" (*Lingens v. Austria*).⁹⁸

Information disseminated by the respondent may be based on weak factual grounds; however, this still does not violate the freedom of expression under Article 10 of the Convention (*Dichand and Others v. Austria*).⁹⁹

⁹³ *Driscoll P.D., Salwen M.B.*, Self-Perceived Knowledge of the OJ Simpson Trial: Third-Person Perception and Perceptions of Guilt, 74 *Journalism & Mass Communication Quarterly*, 1997, 541.

⁹⁴ Article 7, paragraph 5 of the Law of Georgia "On Freedom of Speech and Expression" (In Georgian).

⁹⁵ Ruling of the Civil Cases Chamber of the Supreme Court of Georgia of September 24, 2012 in case No. AS-677-638-2011.

⁹⁶ <<https://temida.ge/fullcase/2691/--.pbn>> [15.06.2025].

⁹⁷ Ruling of the Civil Cases Chamber of the Supreme Court of Georgia of September 24, 2012 in case No. AS-677-638-2011.

⁹⁸ <<https://www.supremecourt.ge/files/upload-file/pdf/ganmarteba7.pdf>> [15.06.2025].

⁹⁹ <<https://www.supremecourt.ge/files/upload-file/pdf/dichand-and-others-v.-austria.pdf>> [15.06.2025].

It is noteworthy that the interest in protecting reputation cannot outweigh the corresponding public interest that existed towards the claimant.¹⁰⁰ The respondent's statement may have contributed positively to public debate on a specific matter. Moreover, the respondent had previously made statements related to the claimant, as evidenced by the evidence in the case. The respondent had full right to express their opinion and initiate public discussion on the relevant issue.¹⁰¹

As European Court practice shows, in public discussions aimed at revealing truth, the requirements to protect honor and dignity are considerably lower than the interest in open discussion of political matters.

It is important to note that before amendments to the Civil Code of June 24, 2004, Article 18, Paragraph 2, the law provided a mechanism through courts for protection of non-property personal rights by denying information violating honor and dignity. However, the Law of Georgia "On Amendments to the Civil Code of Georgia" dated June 24, 2004 (effective from July 16, 2004), defined personal non-property rights protection also through a special law, which, among other issues, established protection mechanisms and grounds for civil liability. In this regard, Article 17, Paragraph 1, Note of the Law of Georgia "On Freedom of Speech and Expression" is significant, which provides that in defamation cases, the respondent may be ordered by court to publish a notice of the court decision in a form determined by the court.¹⁰²

The Law of Georgia "On Freedom of Speech and Expression" explicitly defines the substance of claims in defamation cases; the court does not have the right by its decision to grant the parties more than what was requested. The cassation chamber holds that the lower court correctly applied Article 248 of the Civil Procedure Code of Georgia, which is consistent with the unified judicial practice established by the Supreme Court of Georgia.¹⁰³

The cassation chamber holds that before deciding issues of civil liability provided by the Law of Georgia "On Freedom of Speech and Expression," it is important to clarify whether the respondent's statements belong to facts or evaluative judgments. Their distinction is often difficult, but according to precedent decisions of the European Court of Human Rights and the Supreme Court of Georgia's unified judicial practice, it is possible to clarify these two concepts.¹⁰⁴

In *Lingens v. Austria*, the European Court clarified that it is impossible to prove opinions (evaluative judgments), and no one can be required to prove the truth of these opinions.¹⁰⁵

¹⁰⁰ *Yatar E.K.M.*, Defamation, Privacy, and the Changing Social Status of Homosexuality: Re-Thinking Supreme Court Gay Rights Jurisprudence, 12 *Law & Sexuality*, 2003, 119.

¹⁰¹ *Willnat L.*, Perceptions of Foreign Media Influence in Asia and Europe: The Third-Person Effect and Media Imperialism, 2002, 14(2).

¹⁰² Ruling of the Civil Cases Chamber of the Supreme Court of Georgia of September 24, 2012 in case No. AS-677-638-2011 (In Georgian).

¹⁰³ Ruling of the Civil Cases Chamber of the Supreme Court of Georgia of May 16, 2008 in case No. AS-810-1129-07/Ruling of the Civil Cases Chamber of the Supreme Court of Georgia of October 8, 2009 in case No. AS-334-654-09 (In Georgian).

¹⁰⁴ Ruling of the Civil Cases Chamber of the Supreme Court of Georgia of September 24, 2012 in case No. AS-677-638-2011 (In Georgian).

¹⁰⁵ <<https://www.supremecourt.ge/files/upload-file/pdf/ganmarteba7.pdf>> [20.05.2025].

In *Perna v. Italy*, the Court explained that facts can be proven, but evaluative judgments cannot. In *Jerusalem v. Austria*, the Court stated that proving the truth of evaluative judgments is impossible and that such a requirement limits freedom of expression.¹⁰⁶

In *Dichand and Others v. Austria*, the Court explained that while the existence of facts can be demonstrated, proving the truth of subjective evaluations is impossible. The requirement to prove subjective evaluations is unfeasible and violates freedom of expression. When a statement is equivalent to a subjective evaluation, proportionality of restriction may depend on whether there is sufficient factual basis for the statement, as even subjective evaluations without factual support may be excessive.¹⁰⁷

According to the Supreme Court of Georgia, opinion broadly means judgment, attitude, or evaluation, the truth or falsity of which depends entirely on the individual's subjective stance. Facts, on the other hand, are usually free from subjective attitudes and are derived from objective circumstances, i.e., they can be verified and checked whether they actually existed.¹⁰⁸

The Supreme Court of Georgia also stated that because of the close connection between opinion and fact, their distinction is rather complicated. Therefore, for correct qualification of a disputed statement, its content, form of expression, and context, as well as factual elements constituting the statement, must be examined.¹⁰⁹

Thus, by reconciling referenced decisions and legal norms, it is concluded that one of the main qualifying features of defamation is the claimant's indication of facts that are not far from reality, more concrete rather than general, more objective than subjective, and most importantly, possible to prove.¹¹⁰

The cassation chamber refers to Article 7, Paragraph 5 of the Law of Georgia "On Freedom of Speech and Expression," which provides that in cases where the status of opinion or fact is determined, any reasonable doubt that cannot be proven according to law must be resolved in favor of granting the statement the status of opinion.¹¹¹

In *Dichand and Others v. Austria*, the European Court of Human Rights explained that restrictions on political speech or debate on matters of public interest are allowed only to a limited extent. Moreover, the limits of acceptable criticism are broader for politicians than for private individuals.¹¹²

The cassation chamber refers to Article 7, Paragraph 6 of the Law of Georgia "On Freedom of Speech and Expression," which defines the standard of burden of proof, specifically that the burden of

¹⁰⁶ <<https://temida.ge/fullcase/2944/--.pbn>> [20.05.2025].

¹⁰⁷ <<https://temida.ge/fullcase/3826/--.pbn>> [20.05.2025].

¹⁰⁸ The ruling of the Civil Cases Chamber of the Supreme Court of Georgia of September 24, 2012 in case No. AS-677-638-2011 (In Georgian).

¹⁰⁹ The ruling of the Civil Cases Chamber of the Supreme Court of Georgia of the 20th session of 2012 in case # AS-1278-1298-2011 (In Georgian).

¹¹⁰ The ruling of the Civil Cases Chamber of the Supreme Court of Georgia of April 3, 2012 in case # AS-1477-1489-2011 (In Georgian).

¹¹¹ Ruling of the Civil Cases Chamber of the Supreme Court of Georgia of September 24, 2012 in case No. AS-677-638-2011 (In Georgian).

¹¹² <<https://temida.ge/fullcase/3826/--.pbn>> [20.05.2025].

proof lies on the initiator of the restriction on freedom of speech. Any doubt that cannot be proven according to law must be resolved against restricting freedom of speech. This norm establishes general standards for allocation of the burden of proof and is fully consistent with Article 14 of the same law, which defines circumstances under which a public person must prove defamation.¹¹³

The discussed ruling further illustrates that courts often do not differentiate between the terms defamation and libel in terminology and equate them. Therefore, by reconciling referenced rulings and legal norms, it is concluded that one of the main qualifying features of defamation is the claimant's specification of facts that are close to reality, more concrete rather than general, more objective than subjective, and most importantly, capable of being proven.

2.8. Features of Freedom of Speech and Expression as a Non-Absolute Right

Freedom of speech and expression is not an absolute right and may be restricted.¹¹⁴ According to Article 17, Paragraph 5, permissible restrictions include: "in accordance with the law, necessary in a democratic society for ensuring national or public security or territorial integrity, protecting the rights of others, preventing disclosure of information recognized as confidential, or ensuring the independence and impartiality of the judiciary."¹¹⁵

Restrictions on freedom of speech and expression are also envisaged by the Law of Georgia "On Freedom of Speech and Expression," specifically Article 9, Paragraph 1 of the said law, which provides:

"The content regulation of speech and expression may be established by law if it concerns":

- a) Defamation;
- b) Obscenity;
- c) Personal insult;
- d) Incitement to commit a crime;
- e) Threats;
- f) Personal data, state, commercial or professional secrets;
- g) Advertising, teleshopping or sponsorship;
- h) Freedom of speech and expression of military personnel, administrative bodies, as well as their officials, members or employees;
- i) Freedom of speech and expression of persons deprived of liberty or whose liberty is restricted.¹¹⁶

To illustrate the non-absolute nature of freedom of speech and expression, the Supreme Court of Georgia's decision of July 21, 2004, in case No. AS-322-605-04 has been developed.

¹¹³ Ruling of the Civil Cases Chamber of the Supreme Court of Georgia of September 24, 2012 in case No. AS-677-638-2011. (In Georgian)

¹¹⁴ Willnat L., *Perceptions of Foreign Media Influence in Asia and Europe: The Third-Person Effect and Media Imperialism*, 2002, 14(2).

¹¹⁵ Article 17, paragraph 5, of the Law of Georgia "On Freedom of Speech and Expression" (In Georgian).

¹¹⁶ Article 9, paragraph 1, of the Law of Georgia "On Freedom of Speech and Expression" (In Georgian).

According to Article 24, Paragraph 1 of the Constitution of Georgia, everyone has the right to freely receive and disseminate information, and to express and disseminate their opinion orally, in writing, or by other means.¹¹⁷ These rights constitute one of the fundamental pillars of a democratic society and are essential for its progress.¹¹⁸ These principles acquire particular importance for the press. In Georgia, the press and mass media are free. This freedom is guaranteed by the Constitution of Georgia (Article 24, Paragraph 2 of the Constitution).¹¹⁹

When providing information and criticism about private individuals, importance is attached to who these persons are and how necessary it is for society to receive information about and criticize them. The freedom of the press is one of the most important means for society to evaluate the ideas and activities of political leaders.¹²⁰

The press is entitled to publish information and data about politicians and public figures equated to them, which are important for the public evaluation of their personality, and free criticism of them is also permissible.¹²¹

The European Court of Human Rights, in the case “Lingens v. Austria,” explained that “the limits of permissible criticism directed at a politician are wider than those for a private individual.”¹²²

“A politician, unlike an ordinary individual, knowingly and necessarily subjects their actions and gestures to the scrutiny of the media and public control.”¹²³

This section convinced us of the non-absolute nature of freedom of speech and expression, which means that the mentioned right may be restricted in cases defined by law.

3. Foreign Practice Regarding the Publication of Information that Infringes on Honor and Dignity

3.1. Specifics of Defamation Law in France

Due to the relatively legal-research nature of this study, a comparison is drawn between the familiar French and Georgian legal systems. For this purpose, an interview was conducted with the Paris-based associate lawyer Maître Nejma LABIDI. She provided comprehensive answers to nearly all questions, which we will examine in detail in this work.

¹¹⁷ Article 24, paragraph 1, of the Constitution of Georgia (In Georgian).

¹¹⁸ *Zimmerman D.L.*, Curbing the High Price of Loose Talk, 18(2) UC Davis Law Review, 1985, 359.

¹¹⁹ Decision of the Civil Cases Chamber of the Supreme Court of Georgia of July 21, 2004 in case AS-322-605-04 (In Georgian).

¹²⁰ *Ven-hwei Lo W.*, Third-Person Effect, Gender, and Pornography on the Internet, 46(1) Journal of Broadcasting & Electronic Media, 2002, 13.

¹²¹ *Standley T.C.*, Linking Third-Person Effect and Attribution Theory, unpublished Master’s thesis, Southern Methodist University, Dallas, Texas, cited in Bryant Paul, Michael S., Michel D., The Third-Person Effect: A Meta-Analysis of the Perceptual Hypothesis, 3(1) Mass Communication & Society, 2000, 57.

¹²² <<https://www.supremecourt.ge/files/upload-file/pdf/ganmarteba7.pdf>> [20.05.2025].

¹²³ *Rissel Ch.*, Attitudes Towards Sex in a Representative Sample of Adults, 27(2) Australian and New Zealand Journal of Public Health, 2003, 118.

According to Ms. Labidi, it is essential to distinguish between two forms of defamation:

1. **Public defamation (diffamation)**, when the comment made is heard or read by the victim as well as by the surrounding public. An example of this would be an accusation made by any individual on a blog or on any social network accessible to the public;
2. **Non-public or private defamation**, which is characterized as a defamatory statement or injurious remark not read or heard by the public. For example, if someone accuses another of committing a crime through a text message, this constitutes non-public defamation.¹²⁴

This distinction is quite similar to Articles 13 and 14 of the Georgian Law “On Freedom of Speech and Expression,” although in terms of disposition, the Georgian norms are stricter.

In France, it is necessary that all accusations and information infringing on honor and dignity produce a significant impact on the victim’s personal and professional life. Sometimes, this can cause immeasurably large material damages to the victim, often manifesting as loss of income.¹²⁵

Defamation differs from disparagement.¹²⁶ Defamation can be directed both against a company and an individual and must be distinguished from insult.¹²⁷ For instance, if defamatory remarks concern a company or one of its employees, defamation is present. Conversely, if the remarks concern the quality of the company’s service or product, it is considered disparagement.¹²⁸

It is widely known that if defamation occurs online and you are the victim, you may request the website host to remove the disputed content.¹²⁹

According to Ms. Labidi, Swiss research has shown that the number of honor attacks significantly increased following the expansion of social networks. Specifically:

- From 2009 to 2011, the rate of spreading defamatory information online increased by 89%, from 721 cases to 1359 cases;
- From 2011 to 2013, this rate increased by 83%, from 4105 cases to 7519 cases;
- From 2013 to 2014, the numbers rose by 123%, from 521 cases to 1164 cases.

Ms. Labidi pointed out that obviously these figures and the overall research do not reflect the exact number of defamation cases in the real world, as opposed to the virtual world.

According to the respondent, even if accusations against the victim are merely insinuations, suspicious comments that harm a person’s honor and dignity always constitute defamation.

¹²⁴ *Baudouin J.L.*, La responsabilité civile délictuelle. 3e éd. Cowansville: Y. Blais, 1990. 838, 162, 163, 163, 164.

¹²⁵ *Shah D.V.*, Susceptibility and Severity: Perceptual Dimensions Underlying the Third-Person Effect, 26(2) Communication Research, 1999, 240.

¹²⁶ *Treiger-Bar-Am, Leslie Kim*, ‘Defamation Law in a Changing Society: the Case of Youssouppoff v Metro-Goldwyn Mayer’ (2000) 20 Legal Studies 291.

¹²⁷ *Salwen M.B., Dupagne M.*, The Third-Person Effect: Perceptions of the Media’s Influence and Immoral Consequences, 26(5) Communication Research, 1999, 523.

¹²⁸ *Tewkesbury D.*, The Role of Comparison Group Size in the Third-Person Effect, 14(3) International Journal of Public Opinion Research, 2002, 247.

¹²⁹ <<https://www.justifit.fr/b/guides/droit-penal/diffamation/>> [15.06.2025].

When information harming honor and dignity is disseminated, it is possible to file a lawsuit against the person who made defamatory comments about you.¹³⁰

We asked Ms. Labidi about the procedure in such cases in France. She explained that there are two types of procedures for filing a complaint depending on whether the identity of the perpetrator is known to the victim:

1. If the author is known, a complaint can be filed directly against them;
2. If defamation was spread by media outlets, the publication's manager or producer is considered the primary author.

According to French legislation, it is not possible to sue a legal entity that has spread defamatory information, even if the publication was made under its name; if the perpetrator is unknown, the complaint must be filed against "X." If you are a victim of defamation in a daily or periodic newspaper, you have the right to a response under Article 13 of the Law of July 29, 1881. To exercise this right, you must contact the director of the respective print media in writing. This person is required to send a reply within 3 days of receiving the defamation complaint. Failure to comply results in a fine of 3750 euros. Once the identity of the defamation author is established, it becomes possible to summon them to court by direct subpoena within 20 days of this fact being established.

Presenting evidence in court is mandatory, specifically testimonies, screenshots, audio recordings, etc. It is noteworthy that such evidence is admissible if the material evidence clearly indicates the exact passages of defamatory remarks.

An interesting question is where in France one files a defamation complaint? According to the respondent, there are two options: going to the police station or applying to the gendarmerie brigade. It is essential to bear in mind that the statute of limitations – or the deadline for filing a defamation complaint – starts from the date the facts became known and lasts no more than 3 months (Article 65 of the 1881 law). If defamation is assimilated to racist, sexist, homophobic, or ableist statements, the statute of limitations extends up to 1 year.

It is noteworthy that Article 19 of the Georgian Law "On Freedom of Speech and Expression" establishes a statute of limitations, namely "a defamation lawsuit must be submitted to court within 100 days from the date the person became or could have become aware of the statement." As we can see, unlike in France, Georgia provides a longer period for court filing.¹³¹

What sanctions threaten a defamation author in France?

In cases of public defamation: the offender faces a fine of up to 12,000 euros. The fine increases up to 45,000 euros under aggravating circumstances such as defamation against a gendarme, policeman, judge, or elected official due to their duties. This fine is accompanied by imprisonment for up to 1 year if the defamation is sexist, homophobic, or racist in nature. Non-public defamation is punishable by a fine of up to 38 euros. The fine increases to 1500 euros if defamatory comments are racist, homophobic, or sexist.¹³² Unlike France, Georgia does not have imperative provisions concerning sanctions.¹³³

¹³⁰ *Rolph D., Vitins M., Bannister J.*, Media Law: Cases, Materials and Commentary, OUP, 2010, 56.

¹³¹ <<https://www.justifit.fr/b/guides/droit-penal/diffamation/>> [15.06.2025].

¹³² Article 19 of the Law of Georgia "On Freedom of Speech and Expression" (In Georgian).

¹³³ *McNamara L.*, Bigotry, Community and the (In)visibility of Moral Exclusion: Homosexuality and the Capacity to Defame, 6(4) Media & Arts Law Review, 2001, 271.

According to the respondent, the following defenses exist against defamation:

1. Demonstration of the truthfulness of the facts;
2. Declaration of acting in good faith.

Two conditions from the following list must also be met:

1. The material considered defamatory was revealed with a legitimate purpose, i.e., the information is beneficial to the public;
2. There must be no conflict with the victim.¹³⁴

A person accused of defamation can defend themselves by proving the truth of the facts; the accused must also demonstrate their good faith.¹³⁵

Overall, both public and non-public defamation constitute an offense punishable by a fine that varies depending on the nature of the offense. In all cases, the statute of limitations is 3 months.¹³⁶

This interview successfully facilitated a comparative legal study between France and Georgia, demonstrating that it would be advisable to have similarly imperative provisions regarding sanctions in Georgia as in France. It should also be mentioned that this position prevailed in the Georgian reality until defamation was decriminalized, specifically when the Law on Freedom of Speech and Expression abolished Article 148 of the Criminal Code, which provided criminal liability for defamation. Defamation was punishable by a fine or community service for 100 to 200 hours or corrective labor for up to one year. Unfortunately, this rule no longer applies in the Georgian context today.

3.2. Rules Established by the Legislation of Germany Regarding the Dissemination of Defamatory Information

It is interesting to consider the differences between insult, defamation, and slander, and when slander is punishable.¹³⁷ Slander means “demeaning speech.”¹³⁸ There are three types of slander: insult, defamation, and slander.¹³⁹ Based on the facts, slander in Germany can be punishable by imprisonment for up to 5 years or by a fine. The umbrella term covering these three types is actually “slander.” Slander can be freely translated as “demeaning speech” or “dissemination of damaging information.”¹⁴⁰

Statements expressing disrespect or disregard for another person's honor and dignity are considered insults (§185 StGB). It is necessary that such insult is perceivable by other persons,

¹³⁴ Perloff R.M., Perceptions of “Amerika”, 19 Mass Communication Review, 1992, 42.

¹³⁵ McNamara L., Reputation and Defamation, OUP, 2007, 67.

¹³⁶ Interview respondent – Associate lawyer in Paris Maître Nejma LABIDI. (In Georgian)

¹³⁷ Von Vechten V., The History and Theory of the Law of Defamation II, 4 C OLU, 1904, 33, 33.

¹³⁸ Judith D., Signals in Social Supernets, 13 J. C COMPUTER-MEDIATED COMM, 2007, 12, 14.

¹³⁹ Müller 1913, 492-502 and Miniconi 1959, 159-175.

¹⁴⁰ Lik M., Notions of Reputation in Multi-Agents Systems: A Review, in PROCEEDINGS OF THE FIRST INTERNATIONAL JOINT CONFERENCE ON AUTONOMOUS AGENTS AND MULTIAGENT SYSTEMS: PART 1, Bologna, Italy, July 15-19, 2002, 78.

meaning it must have a public character. Insult can be expressed not only verbally but also by gestures (e.g., showing the middle finger) or by assault (e.g., hitting in the face). What exactly constitutes insult must always be clarified by the court.¹⁴¹

In German case law, since September 2021, a new criminally punishable act called “incitement to insult” (Section 192) has been recorded. Specifically, anyone who insults, mistreats, or slanders individuals or certain groups based on their national, religious, or ethnic origin, worldview, disability, or sexual orientation is punishable by imprisonment of up to 2 years or a fine.

Slander (§186 StGB) occurs when you state an untrue fact that could harm another person’s reputation. It does not matter whether you knowingly tell the truth or not. Even if you mistakenly believe the fact to be true, it may still be considered slander. Slander (§187 StGB) also covers the dissemination of false, defamatory accusations. Like with slander, the statement must be made to a third party. However, it is important that the slanderer knows the accusation is untrue.¹⁴²

- What does the word “slander” mean?
Slander is defined as the disparagement of another person in a way that harms their reputation.¹⁴³
- Is slander punishable by law?
A defamatory statement is punishable only if it constitutes the crime of insult, defamation, or slander.¹⁴⁴
- How can one protect oneself from defamatory statements?
According to German practice, you may notify the police about the slander or file a criminal complaint in the case of insult. In Georgia, criminal prosecution for slander is no longer possible, as it has been decriminalized.¹⁴⁵

Slandering someone means speaking badly about them and thus damaging their reputation.¹⁴⁶ In a certain sense, slander may also be a criminal offense under the criminal code, specifically as insult, defamation, or slander.¹⁴⁷

According to German law:

1. If an insult (§185) is committed against a person engaged in public political life and the act is likely to impede their public work, the penalty may be imprisonment up to three years or a fine.¹⁴⁸

¹⁴¹ *Kropholer I.*, (2014). German Civil Code, Educational Commentary. Tbilisi: German Society for International Cooperation (GIZ), p.112 (In Georgian).

¹⁴² <<https://www.dahag.de/c/ratgeber/strafrecht/diffamierung>> [15.06.2025].

¹⁴³ *Hrysanthos D.*, The Digitization of Word of Mouth: Promise and Challenges of Online Feedback Mechanisms, 49 M GMT. SCI, 1407, 1407, 2003, 36.

¹⁴⁴ *Robin D.U.*, Grooming, Gossip and the Evolution of Language, 1996, 37.

¹⁴⁵ *Kropholer I.*, (2014). German Civil Code, Educational Commentary. Tbilisi: German Society for International Cooperation (GIZ), p.113 (In Georgian).

¹⁴⁶ *Frederick G.B.*, Gifts and Poison, in Gifts and Poison: The Politics of Reputation, 1, 4, F.G. Bailey ed., 1971.

¹⁴⁷ *Siegfried J.*, Sprachliche Gewalt gegenüber Minderheiten: Formen der sprachlichen Diffamierung in den Medien und im politischen Diskurs. In: Der Deutschunterricht, 59, 5, 2007, 11, 21.

2. Slander against a private person (§186) is punishable by imprisonment from three months to five years or a fine.¹⁴⁹

The examination of the rules in force in Germany adds further richness to the comparative legal study, providing the reader with a deeper understanding of the subject.

4. Types of Damage Caused by the Dissemination of Defamatory Information and Mechanisms of Protection

4.1. Types of Damage Caused by Defamation

When defamatory information is disseminated, the damage caused can be both moral and material (actual damage or lost income).¹⁵⁰ It is necessary to discuss each type separately:

- **Material damage** is a provable category.¹⁵¹ In each specific case, the plaintiff must substantiate through evidence the real existence of material damage or lost income, as well as prove the causal link between the disseminated information and the damage suffered, specifying the exact amount of damage caused by the dissemination of defamatory information.¹⁵²
- **Moral damage** requires determining whether the information containing essentially false facts infringes on a person's honor, dignity, or professional reputation, and whether this infringement causes psychological and emotional suffering.¹⁵³ The judicial interpretation of "moral damage" is notable, defining it as harm caused in the realm of spiritual feelings and interpersonal relations.¹⁵⁴

4.2. Lost Income as a Form of Damage Caused by Defamation

The Supreme Court of Georgia, in Civil Case No. N 3b-459-438-2015, provided an important clarification regarding compensation for damage in the form of lost income.

¹⁴⁸ *Christian H.*, Social Reputation: A Mechanism for Flexible Self-Regulation of Multiagent Systems, 10 *Journal of Artificial Societies and Social Simulation*, 3.1, 2007.

¹⁴⁹ <<https://www.anwalt.org/diffamierung/>> [15.06.2025].

¹⁵⁰ *Price D., Nicole Cain and Korieh Duodu*, Defamation Law, Procedure and Practice, 4 th edn, Sweet & Maxwell 2009, 67.

¹⁵¹ *Mutz D.C.*, The Influence of Perceptions of Media Influence: Third Person Effects and the Public Expression of Opinions, 1989, 1.

¹⁵² *Milmo P., Rogers W.V.H.*, Gately on Libel and Slander, 11th edn, Sweet and Maxwell, *More, Daniel*, 'Informers Defamation and Public Policy' (1989) 19 *Georgia Journal of International and Comparative Law*, 2008, 502.

¹⁵³ *Perloff R.M.*, Perceptions and Conceptions of Political Media Impact: The Third-Person Effect and Beyond in Ann N. Crigler (ed.), *The Psychology of Political Communication*, The University of Michigan Press, 1996, 197.

¹⁵⁴ Decision of the Civil Cases Chamber of the Supreme Court of Georgia of April 22, 2013 in case No. AS-1586-1489-2012 (In Georgian).

- Lost income essentially means a “pure economic loss” that a party has suffered and which would not have occurred if the contractual or legal relationship had been properly fulfilled.¹⁵⁵
- For income to be considered lost, there must be a direct and immediate connection between the other party’s bad faith conduct and the lost income. “Direct connection” means the logical link between the event, action, and resulting damage that leaves no reasonable doubt about the impossibility of receiving that income.¹⁵⁶
- According to Article 411 of the Civil Code, damages must be compensated not only for actual material loss but also for lost income. Lost income is income that the injured party did not receive but would have received had the obligation been properly performed.¹⁵⁷
- In case of breach of obligation, compensation covers both actual damage and lost income.¹⁵⁸
- Analysis of Articles 403 and 411 of the Civil Code shows that it is logical to consider as lost income the benefit that a business entity could reasonably expect to receive under normal market functioning.¹⁵⁹ Therefore, for business entities, lost income should include the damage they would have certainly obtained had defamatory information not been disseminated.¹⁶⁰
- Lost income, in other words, is anticipated profit. However, it is prospective income, and court practice requires assessing how likely its receipt was, considering all relevant circumstances. A mere possibility suffices; it need not be a maximum probability.¹⁶¹
- According to the Supreme Court of Georgia, compensation for lost income must be determined solely on objective criteria so as to avoid unjust enrichment of the injured party. The burden of proof lies with the creditor, who must provide irrefutable evidence of lost income.¹⁶²
- Articles 408 and 411 of the Civil Code also regulate the scope and amount of compensation for lost income. Lost income includes all material benefits the injured party could have received if the damaging event had not occurred.¹⁶³ This broad category covers income from labor and profits from the realization of property.¹⁶⁴

¹⁵⁵ Decision of the Civil Cases Chamber of the Supreme Court of Georgia of October 7, 2015 in case No. AS-459-438-2015 (In Georgian).

¹⁵⁶ *Price D., Cain N., Duodu K.*, Defamation Law, Procedure and Practice, 4 th edn, Sweet & Maxwell, 2009, 54.

¹⁵⁷ *Zoidze B.*, Commentary on the Civil Code of Georgia, Book Three, Tbilisi, Publishing House “Law”, 2001. 463-464 (In Georgian).

¹⁵⁸ Decision of the Civil Cases Chamber of the Tbilisi Court of Appeal of February 28, 2012 in case No. 2b/1938-11 (In Georgian).

¹⁵⁹ *Driscoll P.D., Salwen M.B.*, Self-Perceived Knowledge of the OJ Simpson Trial: Third-Person Perception and Perceptions of Guilt, 74 Journalism & Mass Communication Quarterly, 1997, 541.

¹⁶⁰ *Dlierishvili Z.*, et al., Contract Law, Tbilisi, Publisher: “Meridiani”, 2014. 653 (In Georgian).

¹⁶¹ Pound R., Interests of Personality, 28(4) Harvard Law Review, 1915, 343.

¹⁶² *Zoidze B.*, Commentary on the Civil Code of Georgia, Book Three, Tbilisi, Publishing House “Law”, 2001. 463-464 (In Georgian).

¹⁶³ *Dlierishvili Z.*, et al., Contract Law, Tbilisi, Publisher “Meridiani”, 2014. 654 (In Georgian).

¹⁶⁴ *Sukhitashvili D., Sukhitashvili T.*, Civil Liability, Tbilisi, Publisher “Meridiani”, 2016. 176-177 (In Georgian).

- The decisive moment for determining the amount of lost income is not when the damage occurred but when the source of damage is eliminated with its consequences.¹⁶⁵
- In German case law, it is generally noted that when determining damages, the court must consider the development of events from the damaging act until the last oral hearing.¹⁶⁶ However, from a material-legal perspective, only the moment of fulfilling the positive obligation to restore the damage matters, which may coincide with the last oral hearing.¹⁶⁷
- Only at the moment the source of damage is removed can it be determined whether the injured party lost income and for what period compensation should be paid.¹⁶⁸

4.3. Liability for Damage Resulting from the Publication of Information that Violates Honor and Dignity

According to the Law of Georgia “On Freedom of Speech and Expression,” if the denial or correction of defamatory facts is insufficient, the respondent may be required to compensate the injured party for material or non-material damage.

In this regard, it is necessary to examine the decision of the Supreme Court of Georgia dated July 26, 2017, in case № 1011-972-2016, where the dispute concerned the denial of information violating honor, dignity, and business reputation, and compensation for moral damages. According to the Supreme Court of Georgia, the correct qualification of the contested statement requires examining its content, the form of expression, and the context, as well as the factual elements that constitute the statement.¹⁶⁹

The European Court of Human Rights (ECtHR) explains that when a statement amounts to a subjective assessment, the proportionality of the restriction may depend on whether there is sufficient factual basis for the statement in question, since even a subjective opinion without any factual basis may be excessive (*Dichand and Others v. Austria*). The Court states that the essential element of defamation is the dissemination of false, essentially incorrect facts.¹⁷⁰

In the case № 1011-677-2011 dated September 24, 2012, the Supreme Court clarified that a key qualifier of defamation is the claimant’s reference to facts that are not far from reality, are more

¹⁶⁵ *Magnusson R.*, Freedom of Speech in Australian Defamation Law:Ridicule, Satire and Other Challenges, 9 Torts Law Journal, 2001, 269.

¹⁶⁶ *LexisNexis A.*, Australian Defamation Law & Practice. Lidsky L.B., Defamation, Reputation, and the Myth of Community, 71(1) Washington Law Review, 1996, 1.

¹⁶⁷ *Hart J.D.*, Why Expert Testimony on the Meaning of Language has no Place in Libel Suits’ in David A. Schulz, Libel & Newsgathering Litigation – Getting & Reporting the News, Practising Law Institute, 1998, 510.

¹⁶⁸ *Rusiashvili G.*, Online Commentary on the Civil Code, 411 m. <<http://www.gccc.ge/>> [15.06.2025] (In Georgian).

¹⁶⁹ Decision of the Civil Chamber of the Supreme Court of Georgia of April 3, 2012 in case #AS-1477-1489-2011 (In Georgian).

¹⁷⁰ Decision of the Civil Chamber of the Supreme Court of Georgia of July 26, 2017 in case No.AS-1011-972-2016 (In Georgian).

specific rather than general, have a more objective than subjective nature, and, importantly, are capable of being proven.¹⁷¹

The Court refers to the ECtHR's explanation that the more serious the accusation, the more serious the factual basis must be (*Abeberry v. France*). It is impossible, even in a civil case, to require a person to prove that they did not commit a crime and, therefore, the statement containing this information is defamatory. Such an interpretation contradicts the presumption of innocence.¹⁷²

Article 14 of the Law "On Freedom of Speech and Expression" provides that a person is liable in civil law for defamation of a public figure if the plaintiff proves in court that the defendant's statement contains a materially false fact directly concerning the plaintiff, that the plaintiff suffered damage from this statement, and that the falsity of the fact was known to the defendant beforehand or the defendant acted with gross negligence causing the dissemination of a materially false statement.¹⁷³

This provision places the burden of proof entirely on the plaintiff, meaning that upon filing the lawsuit, the plaintiff must prove the following:

- a) the defendant made the contested statement about them;
- b) the contested statement is false, i.e., contains incorrect facts;
- c) the defendant knew of the falsity of the fact beforehand or acted with gross negligence;
- d) the contested statement caused damage to the plaintiff's honor, dignity, and/or business reputation.¹⁷⁴

Regarding the burden of proof, the Court referred to the "McVicar" case, where the ECtHR considered it not fundamentally incompatible with Article 10 to impose on the defendant the burden of proving the truthfulness of defamatory statements in defamation cases.¹⁷⁵ The Court cited the decision in "Bladet Tromsø and Stensaas," which explained that verifying facts before publishing in a newspaper is a completely ordinary obligation.¹⁷⁶

The ECtHR's approach to the burden of proof does not always require the defendant to prove the truth of facts (for example, in complaints brought by public officials, the Court considers that imposing such a burden on the opinion holder violates Article 10), but the Court requires that the journalist demonstrate fulfillment of their "duties and responsibilities."¹⁷⁷

Media representatives should not be required to disseminate fully verified information, but it is necessary to maintain a standard of reasonable verification of information to avoid devaluing

¹⁷¹ Decision of the Civil Chamber of the Supreme Court of Georgia of September 24, 2012 in case No.AS-677-638-2011 (In Georgian).

¹⁷² *Gunther A.C.*, What We Think Others Think: Cause and Consequence in the Third-Person Effect, 18(3) Communication Research, 1991, 355.

¹⁷³ Article 14 of the Law of Georgia on "Freedom of Speech and Expression". (In Georgian)

¹⁷⁴ Decision of the Civil Cases Chamber of the Supreme Court of Georgia of September 24, 2012 in case No. AS-677-638-2011 (In Georgian).

¹⁷⁵ <<https://temida.ge/fullcase/2893/--.pbn>> [15.06.2025].

¹⁷⁶ <<https://globalfreedomofexpression.columbia.edu/cases/bladet-tromso-and-stensaas-v-norway/>> [15.06.2025].

¹⁷⁷ *Dent Ch.*, Defamation Law's Chilling Effect: a Comparative Content Analysis of Australian and US Newspapers, 9(2) Media & Arts Law Review, 2004, 89.

democratic values.¹⁷⁸ Imposing such a standard of conduct fully corresponds to the principle of good faith exercise of civil rights.¹⁷⁹ According to the ECtHR's case law, freedom of the press is inseparable from the journalist's "duties and responsibilities," including distancing themselves from respondents' expressed views when necessary and ensuring they do not knowingly or unknowingly become a source of hate speech.¹⁸⁰

When an article concerns facts, it is important to prove that the journalist fulfilled their obligations: verified facts and gave the subject of criticism the opportunity to respond via the press to the accusations against them. Failure to do so raises reasonable doubt about the journalist's intent – whether driven by a desire to inform society or by an aim to harm the physical or legal person through insult and reputation damage.¹⁸¹

The Cassation Chamber shares the ECtHR's position that when a journalist acts "in bad faith," their level of protection is significantly lower than in other cases. Article 10 of the Convention encompasses both rights and obligations that must be respected by a person exercising freedom of expression. These obligations also apply to the press and become particularly important when a person's reputation is at stake.¹⁸²

According to Article 10, journalists must act in good faith and provide accurate and reliable information based on journalistic ethics (*Bladet Tromsø and Stensaas v. Norway*).¹⁸³ When, on the one hand, there is a statement about a fact that does not correspond to reality, and on the other, the journalist covers an issue of genuine public interest, the assessment of the journalist's professional conduct and good faith becomes decisive (*Kasabova v. Bulgaria*, *Flux v. Moldova*).¹⁸⁴

Protection granted to journalists under Article 10 in covering matters of public interest presupposes that they act in good faith to ensure the transmission of accurate and reliable information.¹⁸⁵ While exaggeration and overstatement by journalists fall within the freedom of expression, the press must not cross certain boundaries, especially regarding the rights and reputation of others.¹⁸⁶

¹⁷⁸ *George P.*, Damages Survey for Defamation, paper presented at Media Law and Defamation, seminar, Centre for Continuing Legal Education course, Faculty of Law, University of New South Wales, 14 March, 2003.

¹⁷⁹ *David P., Johnson M.*, The Role of Self in Third-Person Effects about Body Image, 48(4) *Journal of Communication* 1998, 37.

¹⁸⁰ *Brosius H.B., Engel D.*, The Causes of Third-Person Effects: Unrealistic Optimism, Impersonal Impact, or Generalized Negative Attitudes Towards Media Influence?, 8(2) *International Journal of Public Opinion Research* 1996, 142.

¹⁸¹ *Arend P.S.*, Defamation in an Age of Political Correctness: Should a False Public Statement that a Person is Gay be Defamatory?, 18 *North Illinois University Law Review*, 1997, 99.

¹⁸² Decision of the Civil Cases Chamber of the Supreme Court of Georgia of September 24, 2012 in case No. AS-677-638-2011 (In Georgian).

¹⁸³ <<https://globalfreedomofexpression.columbia.edu/cases/bladet-tromso-and-stensaas-v-norway/>> [15.06.2025].

¹⁸⁴ <<https://globalfreedomofexpression.columbia.edu/cases/case-of-kasabova-v-bulgaria/>> [15.06.2025].

¹⁸⁵ *George P.*, 'Damages Survey for Defamation', paper presented at 'Media Law and Defamation' seminar, Centre for Continuing Legal Education course, Faculty of Law, University of New South Wales (14 March 2003) 56.

¹⁸⁶ Decision of the Civil Cases Chamber of the Supreme Court of Georgia of September 24, 2012 in case No. AS-677-638-2011 (In Georgian).

Freedom of expression combines several rights with different scopes of protection, notably differing in the approach to freedom of information dissemination by media, where courts must balance private and public interests fairly.¹⁸⁷ The protection standard also differs in relation to information dissemination about public officials, who, by virtue of their public or official status, have heightened obligations of tolerance. However, in the present case, the media's right to freely receive and disseminate information conflicts with the claimants' right to reputation, which is recognized and protected by Article 24(4)¹⁸⁸ of the Constitution of Georgia and Article 10 of the Convention.¹⁸⁹

The fundamental right of expression loses its essence if deprived of constitutional grounds for restriction. Therefore, the protection of others' rights and dignity constitutes a constitutional counterbalance to freedom of expression.¹⁹⁰

The issue of dignity and reputation is addressed by both the Constitution of Georgia and the European Convention as a legitimate aim for restricting the right to freedom of expression. Protecting a person's honor, dignity, and business reputation primarily means safeguarding their rights to ensure that information about their conduct or activities that influence public perception corresponds to reality. According to the ECtHR, an important element when assessing a statement is whether it contains insulting terms, as well as their content and impact on society (*Chauvy v. France*).¹⁹¹

Regarding public figures, the limits of "permissible criticism" are broader than for private individuals, but freedom of expression should not be expanded to the extent that it loses its essence by excessively infringing on the rights of others.¹⁹²

When a statement containing false facts is disseminated, harm to a natural person is manifested as non-material damage – violation of the person's honor and dignity.¹⁹³ According to the Supreme

¹⁸⁷ *George P.*, 'Damages Survey for Defamation', paper presented at 'Media Law and Defamation' seminar, Centre for Continuing Legal Education course, Faculty of Law, University of New South Wales (14 March 2003) 56.

¹⁸⁸ "Freedom of expression may be limited by law in such conditions as are necessary in a democratic society in the interests of national security, territorial integrity or public safety, for the prevention of crime, for the protection of the rights and dignity of others, for preventing the disclosure of information held in confidence, or for maintaining the independence and impartiality of the judiciary"; (In Georgian).

¹⁸⁹ "Everyone has the right to freedom of expression. This right includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from regulating the broadcasting, television or cinematographic enterprises. The exercise of these freedoms, in so far as it is inseparable from the corresponding obligations and responsibilities, may be subject to such rules, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary." (In Georgian).

¹⁹⁰ *McNamara L.*, Bigotry, Community and the (In)visibility of Moral Exclusion: Homosexuality and the Capacity to Defame, 2001, 6(4) *Media & Arts Law Review*, 2001, 271.

¹⁹¹ <[https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-61861%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-61861%22]})> [20.05.2025].

¹⁹² *Treiger-Bar-Am L.K.*, Defamation Law in a Changing Society: the Case of *Youssouf v Metro-Goldwyn Mayer*, 20 *Legal Studies*, 2000, 291.

¹⁹³ Decision of the Civil Cases Chamber of the Supreme Court of Georgia of April 3, 2012 in case No. AS-1477-1489-2011 (In Georgian).

Court's explanation, non-material relations, lacking economic content, do not have value in themselves; for proving such damage, a violation of a special legal right is sufficient.¹⁹⁴

According to Article 413.1 of the Civil Code of Georgia, compensation for non-material damage may be claimed only in cases precisely defined by law. Although Article 18.6 of the Civil Code provides the right to claim moral damages upon certain conditions (guilty violation of honor, dignity, and business reputation), judicial practice establishes additional limitations regarding claims by legal entities.¹⁹⁵ A legal entity is equated with a natural person in all rights that are not qualitatively equivalent to human rights. Some personal rights may be held by legal entities only in a modified form. Legal entities do not have certain civil rights protected by Article 18 of the Civil Code, such as personal inviolability, privacy, and the right to claim moral damages for moral feelings.¹⁹⁶ According to the Cassation Court, moral damages cannot be inflicted on a legal entity because moral damage concerns the violation of a non-material interest that has no pecuniary equivalent (such as spiritual or physical pain, feelings, etc.).¹⁹⁷

Violation or infringement of personal non-material rights may be considered an act (dissemination of a statement or fact about disgraceful conduct or other information) that violates one or several of the rights listed in Article 18.¹⁹⁸

Article 18(1) of the Civil Code protects both the right to a name and the legal grounds to stop or refuse unauthorized use of one's name by others.¹⁹⁹

The discussed decision answers important questions such as how the court addresses claims for both moral and material damages, which standards should be observed when making such claims, and the court's general approach to resolving such disputes. The cited court decision is enriched not only by local but also international jurisprudence, making the issue even more interesting.

4.4. Legal Mechanisms for Protecting One's Rights in Georgia Against Dissemination of Defamatory Information

It is interesting to consider what legal mechanisms and preconditions exist in Georgia for defending oneself against the dissemination of defamatory (name-damaging) information. It should be noted that, in this context, the denial of statements containing clearly false facts is one of the most important elements in defamation litigation. Such a demand must be specific and must arise directly from the content of the defamatory disputed statement.

To illustrate this, reference is made to the Supreme Court of Georgia's ruling dated July 3, 2019, in case No. AS-1544-1464-2017, where the dispute concerned the denial of defamatory statements and the compensation for moral damages.

¹⁹⁴ <<https://www.zmogausteisiugidas.lt/en/case-law/tolstoy-miloslavsky-v-the-united-kingdom>> [20.05.2025].

¹⁹⁵ Decision of the Civil Cases Chamber of the Supreme Court of Georgia of September 24, 2012 in case No. AS-677-638-2011 (In Georgian).

¹⁹⁶ *Pound R.*, *Interests of Personality*, 28(4) *Harvard Law Review*, 1915, 343.

¹⁹⁷ Decision of the Civil Cases Chamber of the Supreme Court of Georgia of September 30, 2015 in case No. AS-1052-1007-2014 (In Georgian).

¹⁹⁸ *Rolph D., Vitins M., Bannister J.*, *Media Law: Cases, Materials and Commentary*, OUP, 2010, 87.

¹⁹⁹ Article 18, Part 1 of the Civil Code of Georgia (In Georgian).

The court referred to Article 15(b) of the Law of Georgia on Freedom of Speech and Expression and clarified that if the disseminated information is important to satisfy the legitimate interests of a democratic society, mere moral discomfort caused by the dissemination of such information is not sufficient to restrict the media's freedom of expression.²⁰⁰

According to Article 14 of the Law of Georgia on Freedom of Speech and Expression, to impose liability for defamation against a public figure, it is necessary that the disseminated information be false; that the person suffered harm as a result; and that the falsity of the information was either known to the defendant beforehand or, if unknown, it was due to obvious and gross negligence.²⁰¹

For the satisfaction of the claim, the following conditions must be met:

1. The violating information must have been published through a mass media outlet;
2. The disseminated information must not correspond to reality and must be aimed solely at discrediting the person;
3. The defendant must not have taken reasonable measures to verify the accuracy of the fact and must not have carried out effective actions to restore the reputation of the person harmed by defamation;
4. The defendant must not have intended to protect the legitimate interests of society; the sole purpose must be the discreditation of the person. It is also important to note that accusing a person of abuse or misuse of official powers without a court decision and stating this unconditionally constitutes a clear violation of the presumption of innocence and cannot serve the legitimate interests of society;
5. The defendant's statements must not represent a fair and accurate report of the event to which public attention is directed.²⁰²

Article 19 of the Law on Freedom of Speech and Expression sets a special limitation period. According to this article, a defamation claim must be filed in court within 100 days from the time the person became aware or could have become aware of the statement.²⁰³

The court also emphasized the limitation period, referring to Article 138 of the Civil Code of Georgia, which provides for the interruption of the limitation period if a party expresses the intention to protect its claim and undertakes certain actions to restore the violated right.²⁰⁴ The chosen means must be appropriate to achieve the intended result. The limitation period is interrupted only by a claim (application) submitted to the court. If addressed to another state body, that body must be competent,

²⁰⁰ Ruling of the Civil Cases Chamber of the Supreme Court of Georgia of July 3, 2019 in case No. AS-1544-1464-2017 (In Georgian).

²⁰¹ Article 14 of the Law of Georgia "On Freedom of Speech and Expression" (In Georgian).

²⁰² Ruling of the Civil Cases Chamber of the Supreme Court of Georgia of July 3, 2019 in case No. AS-1544-1464-2017 (In Georgian).

²⁰³ Article 19 of the Law of Georgia "On Freedom of Speech and Expression" (In Georgian).

²⁰⁴ Ruling of the Civil Cases Chamber of the Supreme Court of Georgia of July 3, 2019 in case No. AS-1544-1464-2017 (In Georgian).

i.e., authorized to regulate the disputed legal relationship.²⁰⁵ Each party must choose the correct and effective means to satisfy their claim; failure to do so is at the party's own risk. Moreover, the interruption of the limitation period applies only if the limitation period has not expired; otherwise, talking about interruption after the limitation period has passed is groundless.²⁰⁶

This court decision shows that when defending one's rights, the claim must be formulated specifically, clearly, and supported by irrefutable evidence. The imperative requirements of the special law, including the 100-day limitation period, must also be observed.

It should be especially noted that merely formally denying disseminated defamatory information is not effective, particularly in resolving defamation on social media.²⁰⁷ The driving force behind the demand to deny defamatory information is that its aim is fulfilled by making the denial publicly perceivable by all.²⁰⁸ For example, a two-minute denial statement posted on one's social media wall clearly cannot achieve this goal.²⁰⁹

Therefore, the claim must specify three important things:

1. For how long the person must publish the denial statement;
2. In what form the denial statement must be made public;
3. How soon after the issuance of the decision the denial statement must be published.²¹⁰

5. The Place of Defamation in Social Media

5.1. Manifestations of Dissemination of Defamatory Information in Social Media

The development of social media, primarily explained by the proliferation of social networks, has given society greater opportunities for the dissemination of defamatory information. Practically, this may be expressed by posting on one's social network "wall" or "story."²¹¹ It is noteworthy that the category of disseminating defamatory information may also include comments made on someone else's post, which essentially contain false and reputation-damaging information.²¹²

It is interesting to consider what is meant by the "public dissemination" of defamatory facts. In this regard, the Supreme Court of Georgia's explanation should be taken into account, according to which "public dissemination" does not only mean information made public in the press or on

²⁰⁵ Decision of the Civil Cases Chamber of the Supreme Court of Georgia of April 22, 2013 in case No. AS-1586-1489-2012 (In Georgian).

²⁰⁶ Decision of the Civil Chamber of the Supreme Court of Georgia of December 4, 2015 in case No. AS-960-909-2015 (In Georgian).

²⁰⁷ Decision of the Civil Chamber of the Supreme Court of Georgia of July 3, 2019 in case No. AS-1544-1464-2017 (In Georgian).

²⁰⁸ Decision of the Civil Chamber of the Supreme Court of Georgia of April 22, 2013 in case No. AS-1586-1489-2012 (In Georgian).

²⁰⁹ *Rolph D., Vitins M., Bannister J.*, Media Law: Cases, Materials and Commentary, OUP, 2010, 43.

²¹⁰ *Simon G., Herrmann B.*, Human Cooperation From an Economic Perspective, in COOPERATION IN PRIMATES AND HUMANS 279, P. Kappeler & C.P. van Schaik eds., 2006, 31.

²¹¹ *Jorbenadze S.*, "Defamation in Social Media and Legal Ways to Protect Rights", Journal: "My Lawyer", 2022 (In Georgian).

²¹² *Rolph, David, Matt Vitins and Judith Bannister*, Media Law: Cases, Materials and Commentary (OUP 2010) 42.

television; it must be directed at an indefinite circle of persons and must not be limited to a private conversation between only two persons, except in the case where such information is itself disclosed (via screenshots or other means) by the person spreading the defamatory facts.²¹³

It is important to note that media activities are primarily regulated by the Constitution and are also reflected in special laws regarding other legal institutions. A clear example of this is the interesting development in contemporary media law, presenting the German approach towards social media, which resulted in a new law adopted in 2017.

1. This new law aims to eliminate the dissemination of punishable information and
2. regulate the reduction of hate speech.

All of this relates to information spread on social networks, which represents a significant problem not only in Georgia but worldwide. Unlike France and Germany, regulating this field remains a major challenge for Georgia.²¹⁴

It is noteworthy that in its decision of March 5, 2021, case №3b-810-2019, the Supreme Court of Georgia considers the fact of publication essential for defamation.²¹⁵ Here arise many questions. Specifically, if I post something on my social media page that is not public and intended only for a limited circle, is that considered publication? It is also interesting whether private correspondence between two people is considered defamation? How will the qualification of defamation be decided if private correspondence screenshots are published?

To answer these questions, it is necessary, within the framework of systematic research, to study the Supreme Court's decision of March 5, 2021, case №3b-810-2019.

According to Article 9 of the Constitution of Georgia, human dignity is inviolable and protected by the state; according to Article 13 of the Law of Georgia on Freedom of Speech and Expression, a person is civilly liable for defamation of a private individual if the plaintiff proves in court that the defendant's statement contains essentially false facts directly about the plaintiff and that the statement harmed the plaintiff.²¹⁶ The first article, paragraph "a" of the same law defines a statement as information publicly disseminated by the declarant or communicated to a third party.²¹⁷ This norm imposes the burden of proof entirely on the plaintiff, meaning that when submitting a lawsuit to court, the plaintiff must prove the following:

- a) The defendant made the disputed statement about the plaintiff;
- b) The disputed statement is false, i.e., contains false facts;
- c) The disputed statement harms the plaintiff's honor, dignity, and professional reputation.²¹⁸

²¹³ Decision of the Civil Cases Chamber of the Supreme Court of Georgia of February 20, 2012 in case #AS-1278-1298-2011 (In Georgian).

²¹⁴ *Jorbenadze S.*, "Defamation in Social Media and Legal Ways to Protect Rights", Journal: "My Lawyer", 2022 (In Georgian).

²¹⁵ Ruling of the Civil Cases Chamber of the Supreme Court of Georgia of March 5, 2021 in case No. AS-810-2019. (In Georgian)

²¹⁶ Article 13 of the Law of Georgia "On Freedom of Speech and Expression". (In Georgian)

²¹⁷ Subparagraph "a" of Article 1 of the Law of Georgia "On Freedom of Speech and Expression" (In Georgian).

²¹⁸ Ruling of the Civil Cases Chamber of the Supreme Court of Georgia of March 5, 2021 in case No. AS-810-2019 (In Georgian).

According to Article 18 of the Civil Code of Georgia, a private individual has the right to protect their honor, dignity, privacy, personal inviolability, or business reputation through the court by law. The infringement of personal non-property rights includes the dissemination of a statement or fact that violates one or more of the non-property rights listed in Article 18 and contains evidence of violation of law or morals, or disgraceful behavior. According to Article 413 of the Civil Procedure Code, monetary compensation for non-property damage may be claimed only in cases precisely defined by law as reasonable and fair compensation.²¹⁹

The special law distinguishes between defamation of public and private individuals and regulates these by different articles, which is significant because civil relations may involve moral suffering and emotional distress, but civil liability is permissible only in cases specified by law. The law directly defines the cases where the injured party can claim compensation for non-property damage (Article 413 of the Civil Procedure Code). The purpose of this legal provision is to reduce and limit unjustified expansion of this norm's effects to ensure the stability and order of civil circulation.²²⁰

Furthermore, Article 13 of the special law, which provides civil liability for defamation of private individuals, unlike defamation of public figures, does not consider the fact of spreading insulting statements as mandatory to establish. Therefore, a private individual has the right to address the court for the protection of honor and dignity even if defamation has not been disseminated, but in such cases, they must present stronger arguments to prove the assumption of damage to honor and dignity.²²¹ This is because widespread dissemination of insulting facts damages a person's reputation more than the same insult in a private sphere.²²²

For the activation of Article 13 of the special law, it is necessary to establish that the defendant's statement contains essentially false facts about the plaintiff and that the plaintiff suffered harm from this statement.

The Supreme Court of Georgia broadly defines the word "opinion" as a judgment, attitude, or evaluation whose correctness or falsehood depends entirely on the individual's subjective attitude. Facts, however, are generally devoid of subjective attitude.²²³

According to Article 1 of the Law on Freedom of Speech and Expression, one of the main qualifying signs of defamation is the mention by the declarant of facts that are not far from reality, more specific and objective rather than general or subjective in nature, and, importantly, are provable.²²⁴

The court noted that an opinion means any evaluative statement consisting of judgment, attitude, and evaluation elements, whose correctness depends on personal assessment. Opinions cannot

²¹⁹ Articles 18 and 413 of the Civil Code of Georgia (In Georgian).

²²⁰ Jorbenadze S., "Defamation in Social Media and Legal Ways to Protect Rights", Journal: "My Lawyer", 2022 (In Georgian).

²²¹ Article 13 of the Law of Georgia "On Freedom of Speech and Expression" (In Georgian).

²²² Jorbenadze S., "Defamation in Social Media and Legal Ways to Protect Rights", Journal: "My Lawyer", 2022 (In Georgian).

²²³ Decision of the Civil Cases Chamber of the Supreme Court of Georgia of February 20, 2012 in the case No. 1278-1298-2011 (In Georgian).

²²⁴ Decision of the Civil Cases Chamber of the Supreme Court of Georgia of October 1, 2014 in the case No. 179-172-2012 (In Georgian).

be proven true or false. According to the special law, opinions are protected by absolute privilege if their publication does not violate the rights of others.²²⁵

Expressing evaluative judgments, views, or other opinions, which represent the expression of a position or attitude towards a person, object, or event, is regarded as an expression of fundamental rights protected by law and is not considered defamation.²²⁶ Often an opinion is based on facts, and a fact forms the basis of an opinion to confirm or deny it.²²⁷

The purpose of the second part of Article 18 of the Civil Code is primarily to protect violated personal non-property rights within the framework of freedom of expression. The right to file a lawsuit lies with the person about whom the information was disseminated.²²⁸ The violation of personal non-property rights includes the dissemination of information (facts) that contain a violation of a legally protected good.²²⁹ Therefore, the legal qualification of violation of non-property rights requires only the violation of one or more goods protected by Article 18 of the Civil Code, which contains proof of violation of law or morals or disgraceful behavior.²³⁰

The forms of protection of non-property rights include recognition of non-property rights, cessation of infringing actions or renunciation of them, and compensation for non-property damage. The existence of at least one of these rights must be established.²³¹

It is noteworthy that moral damage includes legally protected non-material interests, which have no material equivalent (spiritual or physical pain, suffering, etc.).²³² A person is liable if there are grounds for liability for harm caused. The issue of compensation for moral damage arises when the harm is legally significant and must be considered.²³³ The basis for moral damage compensation is the spiritual and physical suffering caused by an act (or omission) that violates a citizen's legally protected non-material good. Moral damage is compensated independently from property damage, i.e., both separately and together with property damage compensation.²³⁴

²²⁵ Decision of the Civil Cases Chamber of the Supreme Court of Georgia of February 20, 2012 in the case No. 1278-1298-2011 (In Georgian).

²²⁶ *Yatar E.K.M.*, Defamation, Privacy, and the Changing Social Status of Homosexuality: Re-Thinking Supreme Court Gay Rights Jurisprudence, 12 *Law & Sexuality*, 2003, 119.

²²⁷ *Cameron M.*, Rivkin Settles Defamation Case, *The Australian*, 8 July, 2004, 18.

²²⁸ Article 18 of the Civil Code of Georgia (In Georgian).

²²⁹ *Tewkesbury D.*, The Role of Comparison Group Size in the Third-Person Effect, 14(3) *International Journal of Public Opinion Research*, 2002, 247.

²³⁰ Decision of the Civil Cases Chamber of the Supreme Court of Georgia of February 20, 2012 in case No. 1278-1298-2011 (In Georgian).

²³¹ *Shah D.V.*, Susceptibility and Severity: Perceptual Dimensions Underlying the Third-Person Effect, 26(2) *Communication Research*, 1999, 240.

²³² *Jones E.E., Nisbett R.E.*, The Actor and the Observer: Divergent Perceptions of the Causes of Behavior, in *EE Jones et al (eds) Attribution: Perceiving the Causes of Behavior*, Lawrence Erlbaum, 1987, 79.

²³³ *Hart J.D.*, Why Expert Testimony on the Meaning of Language has no Place in Libel Suits, in *David A. Schulz, Libel & Newsgathering Litigation – Getting & Reporting the News*, Practising Law Institute, 1998, 519.

²³⁴ *George P.*, Damages Survey for Defamation, paper presented at Media Law and Defamation seminar, Centre for Continuing Legal Education course, Faculty of Law, University of New South Wales, 14 March, 2003, 48.

The court notes that Article 6(1) of the European Convention on Human Rights obliges courts to substantiate their decisions, which is understood as giving detailed answers to every argument.²³⁵

According to the court, private correspondence containing obscene, insulting, unacceptable expressions may be unpleasant or even painfully perceived by the recipient but does not legally constitute a case that would justify satisfaction of a claim under Articles 18 and 413 of the Civil Procedure Code or impose monetary compensation for moral damage on the defendant.²³⁶

In the context of freedom of expression, “public dissemination” does not only mean publication in the press or on television, especially as social media, blogging, and microblogging play an increasingly important role in modern society.²³⁷ Any means suitable for providing information to an indefinite circle of persons should be regarded as a source of public dissemination.²³⁸

The cassation court emphasizes the essence and purpose of social networks. A social network is an online platform designed to create social connections among people with common interests, professions, hobbies, or real-life relationships (family, kinship, work, etc.). Each social network consists of user representations (“profiles”), their connections, and additional services. One of the largest and most popular social networks is Facebook, which unites millions of users worldwide. Information posted by a specific Facebook user is accessible to their friends or all users, depending on the author’s choice. Any user with access to the information can share it with their contacts or an indefinite circle of persons, and quote it in private conversations, press, or online publications. Considering these characteristics of social networks, a so-called status or comment published by a specific user should be considered public dissemination of information.²³⁹

The protection of non-property rights in private law relationships is of absolute nature.²⁴⁰ Protection of non-property rights is possible in cases of violation of legal as well as moral norms.²⁴¹ The purpose of Article 18 of the Civil Code is to protect personal non-property rights violated within freedom of expression, where only the person about whom the information was disseminated may initiate a claim, not someone who assumes that information was disseminated about them or that they were implied in disseminated information.²⁴²

The discussed court decision answers the questions posed at the beginning of the chapter, namely, when a post is published on social media, regardless of its limited audience, it is considered

²³⁵ Jgharkava v. Georgia, #7932/03; Van de Hurk v. Netherlands, par.61, Garcia Ruiz v. Spain [GC] par.26; Jahnke and Lenoble v France (dec.); Perez v France [GC], par. 81) (In Georgian).

²³⁶ Judgment of the Civil Chamber of the Supreme Court of Georgia of 20 February 2012 in case No. 1278-1298-2011 (In Georgian).

²³⁷ Glasser Ch.J., Jr (ed.), *International Libel & Privacy Handbook*, 2nd edn, Bloomberg Press, 2009, 76.

²³⁸ Magnusson R., *Freedom of Speech in Australian Defamation Law: Ridicule, Satire and Other Challenges*, 9 Torts Law Journal, 2001, 269.

²³⁹ Decision of the Civil Cases Chamber of the Supreme Court of Georgia of January 9, 2014 in case No. AS-1559-1462-2012 (In Georgian).

²⁴⁰ McLeod D.M., Benjamin H Detenber, William P Eveland Jr, *Behind the Third-Person Effect: Differentiating Perceptual Processes for Self and Other*, 51(4) Journal of Communication, 2001, 679.

²⁴¹ Paul B., Salwen M., Dupagne M., *The Third-Person Effect: A Meta-Analysis of the Perceptual Hypothesis*, 3(1) Mass Communication & Society, 2000, 57.

²⁴² Commentary on the Civil Code of Georgia, Book I, Chanturia (ed.), 2017, Article 18, Fields 1, 7, 35 (In Georgian).

public dissemination. If such information is shared only in a private conversation, it is not considered dissemination of defamatory information between the defamer and the person concerned until the defamer publishes this conversation. It is also noteworthy that if the person about whom defamatory information was spread publishes the private conversation, this does not constitute dissemination by the defamer.

Thus, a key element of defamation is its public character. The above court decision was interesting in showing the court's approach to private individuals, ultimately concluding that the burden of proof lies entirely with the plaintiff, meaning that when filing a lawsuit, the plaintiff must prove the following:

- a) The defendant made the disputed statement about the plaintiff;
- b) The statement is false, i.e., contains false facts;
- c) The statement harms the plaintiff's honor, dignity, and professional reputation.²⁴³

5.2. Peculiarities of the Interim Measures for Securing a Claim Related to the Dissemination of Defamatory Facts on Social Networks as a Defense Mechanism

According to the first paragraph of Article 191 of the Civil Procedure Code (CPC), an interim measure for securing a claim is applied when failure to use it would complicate or make impossible the satisfaction of the plaintiff's legal claim. It is also applied when failure to use the interim measure would complicate or make impossible the enforcement of a decision and would cause irreparable and direct damage or such damage that cannot be compensated by imposing liability on the defendant for damages.²⁴⁴

The use of interim measures in defamation disputes may manifest with particular peculiarities, specifically regarding defamatory facts spread on social networks, which may be published either on a personal page or as a comment on someone else's page. In relation to a post published on a personal page, the interim measure might require restricting the public availability of the post.²⁴⁵ Interestingly, when such a request is granted by the court, the enforcement of this measure is entrusted to the defendant themselves. Unlike other interim measures, for example, attachment of property, which can be imposed on the defendant by the public registry without their consent, in this situation the defendant is the intermediate link. In other words, whether or not the defendant complies with the court order depends entirely on their will. Neither the court nor the plaintiff can compel the defendant to implement the interim measure and edit the post published on their own page.

In my opinion, in such cases it would be advisable for the court's decision regarding the interim measure to be sent not to the defendant but directly to the administration of the specific social network, who would then be responsible for addressing the issue of editing the defamatory post.

²⁴³ Decision of the Civil Cases Chamber of the Supreme Court of Georgia of January 9, 2014 in case No. AS-1559-1462-2012 (In Georgian).

²⁴⁴ Article 191 of the Civil Procedure Code of Georgia (In Georgian).

²⁴⁵ Jorbenadze S., "Defamation in Social Media and Legal Ways to Protect Rights", Journal: "My Lawyer", 2022 (In Georgian).

As for the enforcement of the final court decision, it may be carried out in two ways:

1. With the involvement of the National Enforcement Bureau;
2. With the involvement of the administration of the social media or social network.

Cooperation with the National Enforcement Bureau naturally involves handing over the enforcement writ, while enforcement with the involvement of the social media or social network administration requires fulfilling formal prerequisites, including sending the scanned version of the enforcement writ and, if translated into another language, a notarized certified translation along with the original document.²⁴⁶ A very interesting case in this regard is the Supreme Court of Georgia's ruling of December 24, 2021, case № 36-1192-2021, where the subject of the dispute was ensuring enforcement of a decision.

According to Article 271 of the Civil Procedure Code, the court may ensure the enforcement of a decision that has not been immediately enforceable under the rules established in Chapter XXIII. The institute of securing a claim envisaged in this chapter is a procedural and legal guarantee for the speedy and effective realisation of rights and legitimate interests protected by substantive law. The court's use of securing measures, in this case enforcement of the decision, is based on the presumption that the court's final decision may not be enforced or that enforcement may be significantly hindered.²⁴⁷

Procedural law places the parties in an equal position – the plaintiff and the defendant. Therefore, following the important principle of equality of the parties, the assessment of the enforcement of the decision must be made from the perspectives of both plaintiff and defendant.²⁴⁸ In such assessment, the principle of proportionality must be respected, specifically, that the measure used to secure one party's claim should be proportional (adequate) to that claim and should not show obvious inconsistency.²⁴⁹

Otherwise, the use of interim measures would not fulfill the purpose of securing enforcement of the decision. When deciding on the use of enforcement securing measures, the court must always evaluate whether the measure chosen corresponds to the claim it is intended to secure.²⁵⁰

When deciding on the issue of securing a decision and when restricting the rights of one party even within the legal framework, the court should be based on a well-grounded assumption that without the procedural measure in question, it would objectively be impossible or significantly complicated to enforce the legal outcome of the case – the court decision.²⁵¹

²⁴⁶ Jorbenadze S., "Defamation in Social Media and Legal Ways to Protect Rights", Journal: "My Lawyer", 2022 (In Georgian).

²⁴⁷ Ruling of the Civil Cases Chamber of the Supreme Court of Georgia of December 24, 2021 in case No. AS-1192-2021 (In Georgian).

²⁴⁸ Milmo P., Rogers W.V.H., (eds), *Gatley on Libel and Slander*, 11th edn, Sweet and Maxwell, 2008, 45.

²⁴⁹ Rolph D., *Reputation, Celebrity and Defamation Law*, Ashgate, 2008.

²⁵⁰ Salwen M.B., Dupagne M., *The Third-Person Effect: Perceptions of the Media's Influence and Immoral Consequences*, 26(5) *Communication Research*, 1999, 526.

²⁵¹ Case No. AS-939-2019 of the Civil Cases Chamber of the Supreme Court of Georgia of July 15, 2019 (In Georgian).

The European Court of Human Rights (ECHR), in many decisions, emphasizes the importance of enforcement of final decisions, stating that the right to a fair trial includes the right to enforcement of a final decision. According to the court, this right would be illusory if the national legal system of a member state allowed a final binding decision to remain ineffective to the detriment of one party. The court notes that enforcement of any judicial decision must be considered an integral part of the “court proceedings,” in light of the purposes of Article 6 of the Convention.²⁵²

Securing a claim/decision is an important institute of civil procedure and serves to ensure enforcement of court decisions.²⁵³ Considering that civil proceedings often involve lengthy procedures, there is a risk that before the final decision is reached, the subject of the dispute may be destroyed, alienated, legally burdened, or otherwise hindered in a way that complicates enforcement of the final decision.²⁵⁴ The interim measure serves precisely to prevent such risks.²⁵⁵

The effective administration of justice in civil cases represents an important public interest. At the same time, the effectiveness of justice depends significantly on enforcement of court decisions. Therefore, legal mechanisms intended to secure enforcement of civil court decisions serve a fundamental legitimate purpose – ensuring effective administration of justice.²⁵⁶

The use of interim measures is allowed against and/or in relation to the defendant to protect the plaintiff’s legitimate interests from the defendant’s bad-faith actions.²⁵⁷

According to the first paragraph of Article 198 of the Civil Procedure Code of Georgia, the court decides which interim measure to use upon the plaintiff’s application. According to subparagraph (b) of paragraph 2 of the same article, an interim measure may include forbidding the defendant from performing a certain action.²⁵⁸

The aforementioned court decisions and developed scholarly literature provide clear examples of how enforcement of court decisions concerning defamation claims is practically carried out and outline the formal preconditions set by courts for successful conduct of this procedure.

6. Conclusion

Defamation as an unlawful gain has proven to be a rather problematic issue, which once again confirmed its relevance. Any activity carried out in violation of the law must constitute grounds for liability. In this study, among the wide range of violations that can occur at any moment, attention was

²⁵² Decision of the European Court of Human Rights in the case of LLC “Iza” and Makrakhidze v. Georgia (In Georgian).

²⁵³ *Tiedge J.T.*, Discrepancy Between Perceived First-Person and Perceived Third-Person Mass Media Effects, 1991, 61.

²⁵⁴ *Shah D.V.*, Susceptibility and Severity: Perceptual Dimensions Underlying the Third-Person Effect, 26(2) Communication Research, 1999, 240.

²⁵⁵ Prosser and Keeton on the Law of Torts, 5th edn, West Publishing, 1984, 98.

²⁵⁶ Decision of the First Panel of the Constitutional Court of Georgia No. 1/5/675,681 of September 30, 2016 in the case “Broadcasting Company Rustavi 2 LLC” and “TV Company Georgia LLC” against the Parliament of Georgia, II-52 (In Georgian).

²⁵⁷ *McNamara L.*, Reputation and Defamation, OUP 2007, 87.

²⁵⁸ Article 198 of the Civil Procedure Code of Georgia (In Georgian).

focused on the issue of defamation as unlawful gain, specifically: the similarities and distinguishing criteria between defamation and slander; the definitions of honor, dignity, and business reputation and the existing Georgian judicial practice regarding them; the circumstances excluding the qualification of disparaging information as slander; the characteristics of freedom of speech and expression as a non-absolute right; issues related to defamation in France and Germany; the types of damages caused by defamation, particularly unlawful gain, and manifestations of disparaging information dissemination on social media, as well as measures for claim enforcement.

The research methods used in the preparation of this study allowed for the following conclusions:

- **Historical-legal method:** The use of this method revealed that the issue of defamation was regulated in ancient Greece and Rome. It is encouraging that this issue was also not unfamiliar to the Georgian legal space, as evidenced by the legal book of Beka-Aghbuga. It would be desirable for current legislation to also clarify defamation and distinguish it at the legislative level from slander, although the reason for the failure to implement this is discussed in the following paragraph.
- **Documentary method:** The study of specific legislation, literature, and analytical materials showed that it would be desirable to have more Georgian-language literature or at least articles on defamation. In this regard, court decisions are relatively abundant, and fundamental research on them could contribute to creating a good book. Regarding the conclusion from the documentary research, based on foreign legislation and analytical materials, it can be said that there is a significant difference between defamation and slander. It is also worth noting that this difference was probably eliminated due to the decriminalization of slander in Georgia, which ultimately equated slander and defamation terminologically. However, in this study, defamation and slander are argued separately based on documentary research, which unfortunately will not have practical effect until slander is criminalized.
- **Comparative legal method:** Based on this method, the reader was introduced to the legal systems and practices of Germany and France regarding defamation and slander, from which it follows that it would be good to reconsider the significance of slander as a criminal offense. Although the decriminalization of slander in Georgia has enhanced the right to freedom of speech and expression, ignoring the prohibition on disseminating information damaging to human honor and dignity is unacceptable. It is my view that, similar to France, there should be imperatively imposed sanctions against both public and natural persons, as well as legal entities possessing business reputations in the commercial market.
- **Systemic method:** The use of this method greatly assisted in understanding the significance and problems of defamation as unlawful gain. Within the systemic research framework, it was concluded that regarding defamation and slander, the Georgian Supreme Court issued a total of 16 decisions between 2014 and 2018 (as of October 18), six of which restricted freedom of expression. Although these statistics only reflect the Supreme Court's practice and cannot fully represent the overall picture, general tendencies can be observed: between 2014 and 2018, 37.5% of decisions on slander cases resulted in restrictions on freedom of expression, while

62.5% upheld freedom of opinion expression. Regarding the court's stance on compensation for both factual and material damages, including unlawful gain, it is very strict, requiring the plaintiff to precisely substantiate the causal link between the harm or unlawful gain and the act committed.

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