

Analysis of the Amendments to the Criminal Code of Republika Srpska on Defamation

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Background

On 20 July 2023, the National Assembly in Republika Srpska (RS) adopted the “Law on Amendments and Supplements to the Criminal Code”.¹ The amendments to the Criminal code introduce a new chapter titled “Criminal acts against honour and reputation”, which includes the new crimes of defamation in general and specific cases of defamation, as well as disclosure of family and personal circumstances and public exposure to ridicule due to race, religion or nationality.

The new chapter also includes provisions on causes of exemption from liability for these crimes and establishes that prosecution can only be initiated by a prosecutor upon motion of the injured party (or of the close relatives of the latter if the party is deceased), with the only exception of the crime of ridicule or contempt due to certain characteristics, which can be prosecuted *ex officio*.

Aside from the imposition of pecuniary fines, the Criminal Code also establishes that the sentence against the perpetrator will be published if any of the above crimes is committed via means of public information/dissemination (Article 208d). Failure to pay the fine within a year will result in the court replacing it with a prison sentence up to two years (Article 50, Criminal Code of RS).

It is worth noting that the protection of honour and reputation in RS is also regulated in civil law by the Law on the Protection from Defamation, which had previously decriminalised defamation.² The new criminal provisions introduce significantly different legal standards of protection for freedom of expression compared to those granted in the civil law.

This paper reviews, complements and updates the existing legal opinions³ on these new Criminal Code provisions in light of the international legally binding standards on the rights to freedom of expression and freedom of peaceful assembly.

The provisions specifically analysed here are the following:

- Crime of Defamation (Article 208a);
- Causes of Exclusion from liability for defamation (Article 208g);
- Crime of Defamation of a deceased person (Article 208d (2));

¹ Law on Amendments to the Criminal Code of Republika Srpska, Official Gazette of Republika Srpska 15/21, available (in English) here: https://track.unodc.org/uploads/documents/BRI-legal-resources/BiH/25_1_-_Law_on_Amendments_to_the_Criminal_Code_of_the_Republika_Srpska.pdf

² Law on Protection Against Defamation of the Republika Srpska, 1 August 2001., 1 August 2001

³ ARTICLE 19, Republika Srpska, Criminal Defamation analysis, 4 May 2023; OSCE-ODIHR, Opinion-Nr.: CRIM/FOE-BIH/468/2023; Vesna Alaburić, Draft Law on Amendments to the Criminal Code of The Republika Srpska, Chapter XVIIa: Criminal Offences Against Honour and Reputation – Opinion, 20 March 2023



- Crime of Public Exposure to Ridicule due to a race, religion or nationality (Article 208v).

This paper also highlights the significant differences between the new criminal provisions on defamation and the provisions included in the civil law, which could lead to opposed results for the defendant if the case for the same potentially defamatory statement is brought before a civil or a criminal court. Annex I at the end of the paper provides a direct comparison of the relevant texts of both sets of norms.

Finally, this paper outlines some of the most problematic aspects of the new criminal provisions regarding their potential chilling effect not only on journalists and media but also on civil society organisations, activists, human rights defenders and individuals in general.

Relevant international and regional standards protecting freedom of opinion and expression and freedom of peaceful assembly

The federal state of Bosnia and Herzegovina ratified the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR), which include the protection of freedom of opinion and expression and of freedom of peaceful assembly.⁴ According to these legally binding instruments, while freedom of opinion is an absolute right, freedom of expression and freedom of peaceful assembly can be restricted as long as such restrictions fulfil **three conditions** cumulatively:

- 1) They must be **clearly established by law**;
- 2) They must **pursue one or more of the legitimate purposes** established by the relevant provisions of the ICCPR/ECHR (which include, among others, the protection of the rights and freedoms of others and the respect of the rights or reputations of others);
- 3) They must be **necessary and proportionate** to achieve their legitimate purpose in a democratic society.

Although provisions on defamation pursue the legitimate aim of protecting the rights or reputations of others, **the mere existence of criminal sanctions – rather than only civil liability – tends to be inherently unnecessary and disproportionate in a democratic society.** Even where criminal sanctions consist of relatively modest pecuniary fines and do not include the imprisonment, those fines are compounded by the publication of the sentence and they are registered in the person's criminal

⁴ ICCPR: Article 19 (Freedom of Opinion and Expression); Article 21 (Right of Peaceful Assembly). ECHR: Article 10 (Freedom of Expression) and Article 11 (Freedom of Assembly and Association).

record.⁵ Furthermore, during the often-lengthy time required by the law enforcement and prosecution authorities to investigate the crime, the defendant would be subject to potential repeated searches (e.g., at home or in working premises), seizing of property (e.g., mobile phones, laptops) and questioning, with a chilling effect on the defendant's engagement in other debates or manifestations.⁶ It is also worth noting that in the RS, when anyone applies for a job, they need to produce documentation certifying that no criminal investigation or prosecution is pending against them. As a result, from the moment of confirmation of the indictment by the court until the final conclusion of the criminal proceedings, a citizen cannot receive a certificate of non-conduct of criminal proceedings and therefore cannot properly apply for a job.

Civil defamation and damages provisions are better suited to the protection of rights and reputation of others because they aim to immediately restore the plaintiffs in their original position through compensation, publication of rectifications, apologies, etc. In the text of the Law that reintroduced defamation and other acts as crimes against honour and reputation, the legislators do not explain why the already existing civil provisions would not be sufficient to protect the honour and reputation of the people in the RS and what is the pressing social need to introduce harsher criminal provisions. This goes against not only the obligation to demonstrate the strict necessity and proportionality of the provisions as prescribed by the international standards, but it also contravenes Article 4 of the Criminal Code of RS, which establishes that (added bold), "*Criminal offences and criminal sanctions shall be prescribed only for acts violating or threatening human rights and liberties, as well as other individual and general social values guaranteed by the Constitution and international law in such a manner that their protection could not be achieved without criminal law enforcement.*"⁷

Although neither the UN Human Rights Committee (UNHRC) nor the European Court of Human Rights (ECtHR) have explicitly found criminal provisions on defamation incompatible in principle with the ICCPR and the ECHR, both have acknowledged that such provisions should only be considered in the most serious cases, that imprisonment is never an appropriate penalty anyway except in exceptional cases

⁵See, e.g., ECtHR, *Scharsach and News Verlagsgesellschaft mbH v. Austria*, 2003, para. 32: "Even though this fine was in the lower range of possible penalties and was suspended for a three-year probationary period, it was a sentence under criminal law, registered in the first applicant's criminal record."

⁶ See, e.g., ECtHR, *Reznik v. Russia*, 2013 para 50: "Although the penalty of 20 Russian roubles was negligible in pecuniary terms, the institution of defamation proceedings against the President of the Moscow City Bar in the context of the present case was capable of having a chilling effect on his freedom of expression."

⁷ Article of (Principle of Constraints Regarding Criminal Justice Compulsion), of the Criminal Code of RS, available at https://www.ohr.int/ohr-dept/legal/laws-of-bih/pdf/New2019/RSCC_64-17.pdf0

amounting to hate speech and that States should consider the decriminalisation of defamation.⁸

New provisions in the Criminal Code of the RS

Crime of Defamation

Article 208a:

(1) Whoever tells or conveys something untrue about another person, knowing that it is untrue, identifying that person to third parties in a clear way, and thus causing damage to the reputation and honor of that person, will be fined in the amount of 1,000 KM up to 3,000 KM.⁹

(2) If the act referred to in paragraph 1 of this article was committed through the press, radio, television, computer network or other forms of communication, at a public meeting or in another way, as a result of which it became available to a large number of persons, it shall be punished by a fine of 2,000 KM to 5,000 KM.¹⁰

(3) If what is presented or conveyed has led or could lead to serious consequences for the injured party, the perpetrator will be fined from 3,000 KM to 6,000 KM.¹¹

Does the provision meet the requirements of legality, legitimate grounds and necessity/proportionality?

“Defamation” here is defined as “something untrue about another person, knowing that it is untrue, identifying that person to third parties in a clear way, and thus causing damage to the reputation and honor of that person”. In order for something to be untrue, it has to be the statement of a fact, not just the expression of an opinion.

The international standards protecting freedom of expression unequivocally distinguish between “facts” and “opinions” (or “value judgments”):

- The UNHRC’s authoritative interpretation of Article 19 (Freedom of Opinion and Expression) the ICCPR) clarifies that, “All such laws, in particular penal

⁸ See, e.g., UNHCR, General Comment No 34 on Article 19, ICCPR, para 47; Council of Europe Parliamentary Assembly (PACE) Resolution 1577 (2007) *Towards decriminalisation of defamation*; CtHR, *Lingens v Austria*, 1986, para 44; *Bladet Tromsø and Stensaas v. Norway*, 1999, paras 62 and 73; ECtHR, *Cumpănă and Mazăre v. Romania* [Grand Court], 2004, para 115; ECtHR, *Ruokanen and Others v. Finland*, 2010, para 50; ECtHR, *Balaskas v. Greece*, 2021, para 51.

⁹ 509,17 up to 1527,50 EUR (1 KM = 0.51 EUR).

¹⁰ 1018,34 up to 2545,84 EUR (1 KM = 0.51 EUR).

¹¹ 1527,50 up to 3055,01 EUR (1 KM = 0.51 EUR).

defamation laws should not be applied with regard to those forms of expression that are not, of their nature, subject to verification.”¹²

- The jurisprudence of the European Court of Human Rights (ECtHR), regarding Article 10(2) or the European Convention of Human Rights (ECHR) establishes that whereas “facts” are susceptible of being proved or disproved, “opinions” are not, especially if they are expressed “in good faith”, based on reasonable understanding of some facts.¹³

Therefore, **this provision should be interpreted to exclude the expression or dissemination of opinions or value judgments from the definition of the crime of defamation.** It is worth noting that the exclusion of opinions and value judgments from liability for defamation is explicitly recognised in the civil defamation law of RS.

Furthermore, the wording “*whoever tells or conveys*” indicates that this provision does not only affect specific categories of individuals (e.g., media or journalists), but applies to any person that, for example, shares a third party’s defamatory post verbally or via any other means (e.g., on social media). It is worth noting that under the civil liability provisions for defamations, public authorities and officials cannot bring defamation claims that are not in their personal capacity. However, this crucial distinction does not appear in this provision.

The fact that the authors or disseminators of the untrue statement should also “*know that it is untrue*” to qualify the statement as potentially defamatory, should be interpreted to mean that if such authors/disseminator have acted in reasonably good faith, they should be exempted from liability. A growing body of comparative jurisprudence has followed this approach and applied the so-called “**reasonable publication**” test¹⁴. This means that when anyone – usually, but not necessarily, a journalist or media – publishes a fact that turns out to be untrue, they should still not be penalised as long as they demonstrate that:

- 1) They took all the reasonable steps possible at that time to verify the accuracy of the content of their publication;
- 2) The publication was on a matter of genuine public interest.

The rationale is that, at least in the media, the times for publication or broadcasting of a story are often so tight that journalists cannot always wait until they are absolutely sure that every single fact is correct. The same rationale is valid for other providers of information in the public interest, such as non-governmental organisations or other civil society organisations. Therefore, punishing every false allegation published in good faith would discourage them from providing timely

¹² UN Human Rights Committee General Comment No. 34, para 47.

¹³ See, e.g.: ECtHR, *Lingens v. Austria*, 1986; ECtHR, *Eon v. France*, 2003; ECtHR, *Cojocaru v. Romania*, 2015.

¹⁴ See, e.g., ECtHR, *Bladet Tromso and Stensaas v. Norway*, 1999, para 65.

information for a public debate. Indeed, the civil law provisions on defamation of RS also explicitly require that the author of the defamatory statement “*must have acted wilfully or negligently*” when making or disseminating the statement to be liable.

The crime of defamation is aggravated and punished with harsher fines if it is committed via means of public information and dissemination, including “*at a public meeting or in another way, as a result of which it became available to a large number of persons.*” This could be easily interpreted to apply, for example:

- to statements of facts expressed during rallies, marches, sit-ins or other types of protests, either in physical spaces or online (e.g., in a hashtag-led online campaign);
- to statements originally made in a private context or with reasonable expectation of privacy (e.g., in a private house at a family/friends’ reunion, in an online private group chat, etc.).

As a result, anyone sharing a potentially defamatory statement about a third party in a private environment (e.g., in a private meeting, in a private email, etc.), could not reasonably predict in what circumstances their statement could become available to a larger number of persons (e.g., if notes of the meeting or the email were shared with others) and what “*larger number of persons*” would mean in practice (how many? More than three, four...?), so they would not be able to reasonably foresee the severity of the aggravation to their offence.

Last but not least, higher fines are imposed if the statement “*could lead to serious consequences*”. This formulation is extremely problematic: firstly, it is not clear what is meant by “*serious consequences*” and whether the assessment of the seriousness is left entirely to the appreciation of the prosecutor or the judge. Secondly, the mere possibility of a more serious consequence is a violation of the principle of legal certainty and in particular, the principle of strict clarity of a criminal provision: if a crime is aggravated by a more severe consequence, this consequence must be described precisely by the criminal provision and must have taken place by the time of the defendant’s conviction.¹⁵

As a result, this norm does not meet the criteria of legal certainty and clarity required by the three-part test of the international and regional standards protecting the rights to freedom of expression and to freedom of peaceful assembly.

¹⁵ At international level, this principle can be found in Article 15 (1), ICCPR and Article 7, ECHR.

Causes of exclusion from liability for defamation

Article 208g

There is no criminal offense under Art. 208a [...] of this Code, if it is about stating something untrue in a scientific, professional, literary or artistic work, in the performance of a duty prescribed by law, a journalistic invitation, political or other public or social activity or the defense of a right, if it follows from the way of expression or from other circumstances that it was not done with the intention of disparagement, or if the person proves the truth of his statement, or that he had a reasonable reason to believe in the truth of what he stated or conveyed.

Does the provision meet the requirements of legality, legitimate grounds and necessity/proportionality?

This provision seems to indicate that, in order to be exempted from the conviction for the crime of defamation, the defendant must prove that their untrue statement:

- a) was made or conveyed in one of the professional or specific situations described (i.e., “*in a scientific, professional, literary or artistic work*” or “*in the performance of a duty prescribed by law*” or “*a journalistic invitation*”, or in a “*political or other public or social activity or the defense of a right*”, which appears to include all instances of activism, protests, etc.) AND:
- b) it did not have the intention to disparage the plaintiff, following “*from the way of expression or from other circumstances*”; (“proof of absence of malicious intent”)

The burden to prove the absence of malicious intent appears to be on the defendant, who will have to produce elements related to the expression, context and other circumstances to demonstrate that there was no such intention. However, this cause of exemption from culpability, taken on its own, is highly problematic: first, the absence of such intent may be difficult to establish and may again depend on subjective interpretation or assessment by public authorities. Second, imposing on the defendant to prove that there was no criminal intent rather than on the prosecution to prove the criminal intent of the defendant is in stark contrast with the principle of presumed innocence of criminal law.

Furthermore, the norm lists as another cause of exemption from liability the “proof of truth” of the person’s statement or alternatively, that the statement was made or conveyed with had a *reasonable reason to believe in the truth of what he stated or conveyed* (“proof of reasonable publication”). However, from the way the norm is formulated, it is not clear if the existence of one of these conditions is sufficient *per*



se to exclude liability or if the statement must still have been made/conveyed in one of the professional or other specific situations described above. In other words: is it enough for the defendant to prove that that statement made or conveyed was true/there was reason to believe it was true, regardless of the statement having been made/conveyed as part of a scientific, journalistic, artistic work, etc.? If the two conditions must exist cumulatively, this would be extremely concerning, since it would imply that the truth proclaimed, for example, by an ordinary individual not involved in any of those roles/activities would be less valuable than the truth in other contexts.

Finally, the norm does not explicitly and unequivocally list the “public interest” of the statement, whether true or untrue, among the possible causes of exemption from liability, even though it refers to scientific, artistic, political activities, defence of rights, etc., which hint at their special value in society. This can be extremely concerning, because anyone whose role or activity does not fall under any of those roles/activities could be prosecuted and convicted for defamation even if their statement had a clear public interest: e.g., an individual who reported on their social media page or in an online group chat defamatory statements heard during public gatherings, protests or even political meetings, press conferences with law enforcement authorities, judicial hearings, etc, whose public interest is amply justified by the context or the role of the persons involved.

As the UNHCR has unequivocally established regarding the regulation of defamation, *“In any event, a public interest in the subject matter of the criticism should be recognized as a defence”*.¹⁶ This is also acknowledged by the civil law on defamation of RS, which clarifies that where the statement relates to a “matter of political or public concern”, the author is liable of the harm caused for making or disseminating the statement if they knew it was false or if they *“acted in reckless disregard of its veracity.”*

The ECtHR has also stressed on numerous occasions that *“the function of creating various platforms for public debate is not limited to the press but may also be exercised by, among others, non-governmental organizations, whose activities are an essential element of informed public debate.”* In addition, the ECtHR further noted that *“given the important role played by the Internet in enhancing the public’s access to news and facilitating the dissemination of information, the function of bloggers and popular users of the social media may be also assimilated to that of ‘public watchdogs’ insofar as the protection afforded by Article 10 is concerned.”*¹⁷

As a result, even though this provision provides several causes for exemption from liability for defamation, it still does not meet the criteria of legal certainty and

¹⁶ UN Human Rights Committee General Comment No. 34, para 47.

¹⁷ See ECtHR, *Magyar Helsinki Bizottság v. Hungary*, 2016, paras. 166 and 168.

clarity required by the three-part test of the international and regional standards protecting the rights to freedom of expression and to freedom of peaceful assembly. Furthermore, it is also unnecessary and disproportionate in a democratic society where it does not specifically include the “public interest” as a clear cause for exemption of liability and of the truth/good faith of the statement, regardless of the role/activity pursued by those who have made/conveyed the statement.

Defamation of a Deceased Person

Article 208d (2):

If the acts referred to in Art. 208a [...] of this Code, committed against a deceased person, prosecution is undertaken at the proposal of a spouse or a person who lived with the deceased in a permanent extramarital union, relatives in the direct line, adoptive parents, adoptees, brothers or sisters of the deceased person.

Does the provision meet the requirements of legality, legitimate grounds and necessity/proportionality?

According to the jurisprudence of the ECtHR, the reputation of a person is strictly personal and cannot be transferred to other individuals after that person’s death. As a result, the reputation of a deceased person is protected by the right to respect of private and family life under Article 8 of the ECHR only under the following cumulative circumstances:

- 1) the publication harming the person’s right to private life happened while the person was still alive;
- 2) A very short span of time occurred between the harm to the deceased person and the lawsuit initiated by one or more family members;
- 3) the family members are also directly affected by the publication.¹⁸

However, this provision does not provide such limitations to the possibility for the partners or close relatives of the deceased person to request the prosecution of the individual. This is also inconsistent with the civil defamation law of RS, which only allows the first-degree heir of the deceased person to bring a claim “if the statement causes harm to his or new own reputation.”

As a result, this provision *does not* meet the criteria of proportionality and necessity in a democratic society to balance the protection of the right to private or family life with the right to freedom of expression.

¹⁸ See, e.g., ECtHR, *Dzhugashvili v. Russia*, 2014, paras. 22-24; *Putistin v. Ukraine*, 2013, para. 33; *Éditions Plon v. France*, 2004, paras. 34 and 47.

Public Exposure to Ridicule due to a Race, Religion or Nationality

Article 208v

Whoever publicly scorns or despises a person or group because of belonging to a certain race, religion, nationality or because of ethnic origin, skin colour or gender, will be fined from 2,000 KM to 6,000 KM.¹⁹

Does the provision meet the requirements of legality, legitimate grounds and necessity/proportionality?

Once again, the provision does not clearly define what kind of statements would constitute “scorn” or “despise” and risks being applied to situations well below the threshold of serious and extreme instances of incitement to violence, hatred or discrimination prohibited by the internationally binding human rights standards.

Article 20 (2) of the ICCPR establishes the obligation to prohibit by law “*Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.*” Therefore, even if the words “scorn” or “despise” were interpreted strictly in terms of advocacy of the described protected characteristics, the statements should be banned only if they also constituted incitement to discrimination, hostility or violence.²⁰ However, this is not adequately clarified in the provision. Furthermore, the obligation to prohibit incitement to discrimination, hostility or violence provided in Article 20(2) of the ICCPR is already covered by the existing Article 359 of the Criminal Code of RS, which criminalizes publicly inciting violence and hatred on a variety of grounds.²¹ Therefore, either Article 208v is an unnecessary duplication of Article 359, or it is consciously aimed at criminalising other acts than those already included in Article 359 and that do not reach the high

¹⁹ 1018,34 up to 3055,01 EUR (1 KM = 0,51 EUR).

²⁰ According to the Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence (2012) endorsed by the UN Office of the High Commissioner of Human Rights (OHCHR), six factors need to be assessed to decide if the expression result in incitement: context, speaker (including the individual’s or organization’s standing), intent, content or form, extent of the speech, and likelihood of harm occurring (including imminence).

²¹ Article 359 (Publicly Inciting and Inflaming Violence and Hatred) of the Criminal Code of the RS: “*Whoever by using the press, radio, television, a computer system or a social network, at a public gathering or at a public area or otherwise, publicly calls for, incites or inflames or makes available to the public the leaflets, images or any other materials that call for violence or hatred against a certain person or groups on account of their national, racial, religious or ethnic affiliation, skin colour, sex, sexual orientation, disability, gender identity, origin or other properties, shall be fined by a fine or imprisonment for a term not exceeding three years.* Available at https://www.ohr.int/ohr-dept/legal/laws-of-bih/pdf/New2019/RSCC_64-17.pdf



threshold of incitement to hatred and violence requested by the international standards.

As a result, this provision *does not* meet the criteria of legal certainty, necessity and proportionality required by the three-part test of the international and regional standards protecting the rights to freedom of expression and to freedom of peaceful assembly.

Concluding Remarks

Despite already having in place a civil law for the protection of the honour and reputation from defamation and a criminal law provision prohibiting incitement to hatred or violence on the basis of certain characteristics, RS has re-introduced defamation as a crime and has added the new crime of Public Exposure to Ridicule due to a Race, Religion or Nationality to its Criminal Code.

In the cases of the crime of defamation (including of a deceased person) and the causes of exemption from liability, the new criminal provisions introduce significantly different legal standards of protection for freedom of expression compared to those granted in the civil law. In the case of the new crime of Public Exposure to Ridicule due to a Race, Religion or Nationality to its Criminal Code, it even appears to duplicate the already existing provision in the Criminal Code.

To different extents, all these provisions fail to meet one or more requirements of certainty (legality), proportionality and strict necessity for a democratic society. They also present problematic aspects concerning their potential abuse of interpretation and their impact not only on the rights to freedom of expression of media and journalists, but also on freedom of expression and freedom of peaceful assembly of anyone, including activists and human rights defenders, both online and offline.

ANNEX

This table provides a direct comparison between the criminal provisions on defamation and civil liability for defamation in RS as per the respective provisions.

	Criminal Code of RS	Law on the Protection from Defamation of RS
Definition of Defamation	something untrue about another person [...] and thus causing damage to the reputation and honour of that person	Article 1: damage caused to the reputation of a natural or legal person by presenting or disseminating something untrue
Who can act against defamation	<p>Anyone about whom the untrue statement is made or conveyed, upon proposal.</p> <p>If the act is committed against a deceased person, the prosecution is undertaken at the proposal of a spouse or a person who lived with the deceased in a permanent extramarital union, relatives in the direct line, adoptive parents, adoptees, brothers or sisters of the deceased person.</p>	Article 4.2. Public authorities are not allowed to file defamation lawsuits. Public officials may bring defamation claims only in their personal capacity.
Who is liable for defamation and when	Whoever tells or conveys something untrue about another person, knowing that it is untrue, identifying that person to third parties in a clear way, and thus causing damage to the reputation and honour of that person.	Article 5: Any person with legal capacity who causes harm to the reputation of a natural or legal person by making or disseminating an expression of something false identifying that person to a third person, is liable for defamation if he or she is responsible for the harm as the author, editor, or



	Criminal Code of RS	Law on the Protection from Defamation of RS
		<p>publisher of the expression, as someone who otherwise exercised effective control over its contents, or as the legal person that published the expression.</p> <p>2. A person referred to in subsection 1. of this Article, is responsible for the harm caused if he or she acted wilfully or negligently in making or disseminating the expression.</p> <p>3. Where the expression relates to a matter of political or public concern, a person referred to in subsection 1. of this Article, is responsible for the harm caused in making or disseminating the expression if he or she knew that the expression was false or acted in reckless disregard of its veracity. The same standard of responsibility applies where the injured person is or was a public official or is a candidate for public office, and exercises or appears to the public to exercise substantial influence over a matter of political or public concern.</p>
Exemptions from liability	<p>There is no criminal offence under Art. 208a [...] of this Code, if it is about stating something untrue in a scientific, professional, literary or artistic work, in the performance of a duty prescribed by law, a</p>	<p>Article 6: There shall be no liability for defamation where:</p> <p>a) the expression is an opinion, or where the expression is substantially true;</p> <p>b) the person who allegedly caused the harm was under a statutory</p>



	Criminal Code of RS	Law on the Protection from Defamation of RS
	journalistic invitation, political or other public or social activity or the defense of a right, if it follows from the way of expression or from other circumstances that it was not done with the intention of disparagement, or if the person proves the truth of his statement, or that he had a reasonable reason to believe in the truth of what he stated or conveyed.	obligation to make or disseminate the expression, or made or disseminated the expression in the course of legislative, judicial or administrative proceedings; c) the making or dissemination of the expression was reasonable. In making such a determination, the court shall take into account all of the circumstances of the case including, but not limited to, the manner, form and time of the making or dissemination of the expression, the nature and degree of harm caused, good faith and adherence to generally-accepted professional standards by the person who allegedly caused the harm, the likelihood that the harm would have occurred had the expression not been made or disseminated, and whether the expression constitutes a fair and accurate report of the expressions of others, concerns a matter of the allegedly injured person's private life, or involves a matter of political or public concern.
Defamation of a deceased person	If the act is committed against a deceased person, the prosecution is undertaken at the proposal of a spouse or a person who lived with the deceased in a	4. Where the expression identifies a deceased person, the first-degree heir of that person may bring a claim under this Act if the expression



	Criminal Code of RS	Law on the Protection from Defamation of RS
	permanent extramarital union, relatives in the direct line, adoptive parents, adoptees, brothers or sisters of the deceased person.	causes harm to his or her own reputation.
Reference to standard of proof	/	Article 7 The necessity of any interference with the right to freedom of expression, through the finding of liability and the awarding of compensation under this Act, must be convincingly established in accordance with Article 10(2) of the European Convention on Human Rights and Fundamental Freedoms and the court practices of the European Court on Human Rights.
Obligation to mitigate	/	Article 8 The Prosecutor within the meaning of this Law shall take all necessary measures to mitigate all damage caused by the alleged defamatory expression, including in particular a request for correction addressed to the defendant.



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