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**THE CONCEPT OF DEFAMATION IN THE RUSSIAN AND
AMERICAN LAW: COMPARATIVE ANALYSIS**

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Abstract

The article analyzes the key characteristics of the concept *defamation* in Russian and American law. This concept is of current importance in modern information society and the legislation connected with it has been changed recently in both legal systems. The aim of the research is achieved with the help of such method as component analysis of the terminological meanings of lexical units representing the concept, which is supplemented by a logical analysis of the accompanying information, which is presented in various legal texts. Comparative analysis of the key characteristics of the concept in Russian and American cultures allows the author to show similarities and differences that exist in the perception of this concept in these two legal systems. The Russian legal concept of *defamation* is more precise as it defined in one of the articles of the Criminal Code of the Russian Federation. In American law, the term *defamation* is disclosed in a large number of laws of individual states that vary significantly in some aspects. At the federal level and in most states, defamation is a civil wrong, not a crime. Another significant difference between the two concepts of *defamation* is the greater protection for citizens from defamation claims filed by public figures in the American law.

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1. Introduction

In the process of thinking, structuring information about the world, a person operates with concepts that reflect the content of the results of his mental activity and cognition of the world (Short Dictionary of Cognitive Terms, 1996). Linguists note that the concept is characterized by a complex structure. Stepanov (2001) identifies three main layers of the concept: 1) the main, actual characteristic; 2) additional or several additional, "passive" characteristics; 3) the internal or underlying meaning, depicted in the external form of the word. The first layer (the main characteristic) of the concept is actually relevant for everyone who uses this language; additional "passive" characteristics of the concept are relevant only for certain social groups; the internal meaning is known only to researchers.

The peculiarities of legal terminology and legal concepts are analyzed in the works of such linguists as Khizhnyak (2020), Khizhnyak and Zarskiy (2020), Varshamova et al. (2019), Kuznetsova and Kalmazova (2020), Volgina (2017), Semenova (2019) and others.

The most important layer of the concept content for a practicing lawyer is the second one, since it presents the relevant information that is important for specialists in the field of jurisprudence. At the same time, legal concepts and general use concepts are often subject to mutual influence, which leads us to the necessity to pay attention to the first layer of the concept known by every native speaker of the language. The third layer of the concept, related to its etymology and history, is of interest to specialists dealing with theoretical and historical problems of law.

2. Problem Statement

In the modern information society, the importance and relevance of the concept of defamation is increasing. At the same time, its meaning is undergoing significant changes in the legal systems of different countries that are connected with the development and reform of legislation on the protection of honour and dignity of the individual. Consequently, there is a need to research the concept of defamation in the modern public and legal consciousness.

3. Research Questions

The following questions were raised in this study:

1. What are the main characteristics of the studied concept in the Russian and American legal cultures?
2. How close are these concepts in these two legal cultures?
3. What are the national distinctive features of the concept of *defamation* in Russia and the United States?

4. Purpose of the Study

The purpose of the research is to conduct a comparative analysis of the content of the legal concept of *defamation* in Russian and American legal culture and to identify their common and distinctive features.

5. Research Methods

Researchers should start the study of legal concepts embodied in legal terminology with a component analysis of the terminological meanings of lexical units representing the concept. However, since the meanings of lexical units are not identical to the concepts expressed by them, the component analysis should be supplemented by a logical analysis of the additional information, which includes various legal texts, such as codes, commentaries, scientific legal articles, law textbooks, etc. Logical interpretation of these sources can help to reveal complementary characteristics of the legal concept.

6. Findings

6.1. The legal concept of *defamation* in the Russian Federation

The concept of *defamation* is represented by the corresponding word *defamation* in the English language and the word *клевета* [*kleveta*], meaning defamation in the Russian language.

The main content of the Russian legal concept of *defamation* is revealed when we analyze definitions of the legal term in legal dictionaries. Thus, we find the following definition of *defamation* in the Large Legal Dictionary (n.d.): "... a crime that encroaches on the honor and dignity of the individual. It is expressed in the spreading of deliberately false information that discredits the honor and dignity of a person or undermines his business reputation". It is also stated that "the penalty is increased for defamation contained in a public speech, a publicly displayed work or the mass media, as well as for defamation connected with the accusation of a person of committing a grave or the gravest crime".

In the first place, the legal definition clearly determines the place of *defamation* in the Russian legal system and the hierarchy of legal terms, which occurs as a result of emphasizing of the following components of meaning: "crime" and "encroaches on the honor and dignity of the individual". In addition, the main components of this crime are specified: "deliberately false information", "communication of the information", "actor of the crime", "victim of the crime", "punishment". It also becomes evident from this definition that *defamation* in the Russian law can be aggravated by such factors as "publicity", "accusation of a person of committing a grave or the gravest crime".

Since defamation in the Russian law is regulated by the Criminal Code of the Russian Federation, it is the article of the criminal Code that can become the source of the most comprehensive information about the part of the concept that is known only to specialists in this field. The current article on defamation is Article 128.1 of the Criminal Code of the Russian Federation *Defamation*, the last changes to which were made on 30.12.2020 and came into force on 01.03. 2021.

The analysis of this document allows us to identify some additional components of meaning of the concept under study. Among the aggravating characteristics of this crime, we can also indicate "defamation that is committed using one's official position" and "defamation that a person suffers from a disease presenting danger to others".

In addition, the article of the Criminal Code provides for various types of punishment for this crime. The component "punishment" with its further differentiation is also of primary importance for specialists. The penalties range from "a fine of up to five million rubles", "community service for up to

four hundred and eighty hours”, “community service for up to five years”, to “arrest for a period from four to six months” and “imprisonment for up to five years” (Criminal Code of the Russian Federation, par. 1–5).

Further information about the concept of *defamation* can be found in the comments on the law enforcement practice. It becomes clear from them that judicial practice in most cases is not in favor of the victim: this is the only article of the Criminal Code of the Russian Federation, under which “the number of acquittals is several times bigger than the number of convictions”. This is due to the difficulty of proving intent to damage the person’s honor and dignity, and the difficulty of distinguishing between deliberately false information and bona fide ignorance (Defamation – what is it?). This characteristic of the concept is also an integral part of its content.

6.2. The legal concept of *defamation* in the United States

The scientific definition of the US legal term *defamation* is as follows: “the act of making untrue statements about another which damages his/her reputation. If the defamatory statement is printed or broadcast over the media it is libel and, if only oral, it is slander” (*The People’s Law Dictionary by Gerald and Kathleen Hill. Defamation*). The authors of the legal dictionary also point out that public figures possess a higher level of proof than ordinary people (as malice should be proved by public figures). They also indicate that law also distinguishes *libel per se* and *slander per se* which are more serious wrongs for which higher amount of damages is usually awarded.

Thus, the main components of meaning of the American concept of defamation, which coincide with the ones of the Russian concept, are as follows: “defamatory and untrue statements”, “communication”, “damage to reputation”, “actor of the crime”, “object of the crime”.

The analysis of this dictionary entry allows us to identify a number of new components of the content of the American concept of *defamation*, which are absent or are less significant for the Russian concept. First of all, there is a clear distinction between two types of defamation: “printed” or “broadcast” and “oral”. There are two different legal terms to denote these concepts in the American law: *libel* and *slander* that name different kinds of wrongdoings. The use of the two terms indicates greater importance of differentiation of these concepts in the American law, which is rooted in the British common law. These characteristics are also important components of the meaning of the analyzed American concept.

A more fundamental difference between the American concept and the Russian one is connected with the importance of differentiation whether the person, against whom the alleged false statement is made, is a public figure or a private person. It is more difficult for public figures (including politicians, actors and other famous people) to prove that defamation has been committed against them. They must prove the existence of malicious intent in court (that the defendant knew about the falsity of this information was reckless as to whether it was true or not and deliberately made it public with the aim of damaging the plaintiff’s reputation). In many cases, this is quite problematic, if not impossible. In this way the first Amendment of the American Constitution, that guarantees rights of freedom of speech and right of freedom of press, protects citizens from defamation lawsuits initiated by people entrusted with political power. So, politicians and other influential people cannot abuse their power.

Private persons acting as plaintiffs in defamation cases are given less constitutional protection. The law also draws a further distinction between private persons in a public matter and private persons in a private matter. In the first case, he or she is required to prove that the defendant was negligent as to the truth or falsity of the statements made. In the latter case it is not required to prove malicious intent.

Thus, we can distinguish such important meaningful components of the American concept of *defamation*, which correlate with each other, as “public person” / “private person”, “private person in a public matter” / “private person in a private matter”, “malicious intent” / “lack of malicious intent”, “recklessness” / “negligence”.

The main aggravating factors of defamation in the United States partially coincide with the Russian ones and are presented in the concepts of the terms “libel per se” and “slander per se”: these are accusations “of committing a crime”, “of having a feared disease”, or “of being unable to perform one’s occupation”. The first and second factors are also present as aggravating factors in the Russian legislation.

In the United States defamation is mainly regulated by state law, so if the main key components of the concept coincide, many particular features may differ significantly in different states.

Even the question of whether defamation is a criminal offense or a civil wrong does not have a clear answer. There are no criminal defamation laws in the United States at the federal level now. But twenty-four American states and the U.S. Virgin Islands qualify some types of defamation as a criminal offence (Criminal Defamation Laws in North America, 2016). The most common grounds for the criminal offence in state criminal laws are “exposure to public hatred, contempt or ridicule”. At the same time, the characteristics of a criminal offense may differ in different states, and often they are obviously outdated elements that have been preserved in the legislation due to tradition, and not because they are in demand in the modern American society. In the state of Oklahoma, lawmakers require “blackening of the memory of the dead” as a factor constituting the criminal defamation. In other states, it is a criminal offense “to defame women’s chastity”; in some states, it is a criminal offense “to defame banks and financial institutions” (Criminal Libel in the United States. Special Report, 2015).

The existing criminal defamation laws are applied very rarely in the United States: between 1992 and 2004 American courts tried only 41 criminal defamation cases, only six of which resulted in conviction (United States defamation law, 2021).

Therefore, we can conclude that the content of the American concept of defamation contains such meaningful components as “criminal offense” and “civil wrong”, as well as components indicating a large number of qualifying features specified in the laws of various states.

Since in most states defamation is a civil wrong, the important characteristics in the content of this concept are “a civil claim” and “damages”. The texts of criminal laws also allow us to distinguish the characteristic “punishment” with its further differentiation, since they provide for “writing a letter of apology”, “fine”, “probation”, “community service” and even “imprisonment”. The fines for criminal defamation vary from \$ 500 to \$ 5,000 and the average prison terms vary from six months to one year (but can be up to 10 years) (United States defamation law, 2021; Criminal Defamation Laws in North America, 2016).

7. Conclusion

Thus, a comparative analysis of the content of the Russian and corresponding American legal concept of *defamation* allows us to identify both similarities and differences between them. The Russian legal concept is more clearly defined, since the main components of its content are presented in the article of the Criminal Code of the Russian Federation. It establishes the subject, the object of the crime, the necessary elements of the crime, qualifying characteristics, as well as sanctions for its commission. Reports on law enforcement practice related to this crime allow us to get information about additional secondary characteristics in the content of the concept.

In American law, the content of the term *defamation* is disclosed in a large number of laws of individual states, in which even such essential components of the content as categorizing it as a criminal offence or as a civil wrong, and, consequently, the remedies and penalties imposed for it may vary. At the federal level and in most states, *defamation* is a civil wrong, not a criminal offense, and the law gives the plaintiff the right to file a civil claim for damages. In the legislation of some states certain factors accompanying the *defamation* may qualify it as a criminal offence. An important difference in the content of the concept in Russia and in the United States is the provision in the United States of greater protection for citizens from *defamation* claims by public figures, while it is easier for individuals to prove a *defamation* claim.

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