

Summary

The Dutch law of criminal defamation consists of a number of offences protecting a legal interest considered of great importance: a person's honour and reputation. The nucleus of the present book consists of a description and analysis of those offences. Particular attention is devoted to the relationship between these offences and freedom of speech.

The Dutch law of criminal defamation is based on age-old continental, partly Roman-law provisions. The current offences find their immediate origin in the *Code Pénal* which preceded the present Penal Code. Unlike most other European countries, in the Netherlands criminal defamation is distributed over various sections of the Penal Code. The 'classical' provisions are libel, slander and insult. Libel and slander are distinguished from insult in that the punishability of the former requires accusing another of a specific act. The offence of insult covers terms of abuse and vague accusations. These offences require a complaint, that is, the Public Prosecutor can not bring charges unless the defamed party has lodged a complaint with the police and has requested prosecution except in the case of defamation of a public body or an official in function.

The Dutch Penal Code specifically prohibits defaming the sovereign and his direct relatives, as well as foreign heads of state and members of foreign governments, insofar as the latter are present in the Netherlands in an official capacity. These offences are included in the Penal Code among the offences safeguarding the dignity of the sovereign and state security. Those having to do with foreign officials may also be considered intended to prevent unnecessary damage to international relations. All these offences are lapsing into desuetude: in actual practice, such charges are no longer brought.

Another form of defamation is the deliberate insulting of a group of people on the grounds of their race, their religious convictions or their homo- or heterosexual inclination. This offence is found in the Penal Code among the offences against the public peace. In this case, in particular, the tension between protecting the rights of others on the one hand, and freedom of speech on the other, is palpable. Dutch law, in conformity with the consistent view of the European Court of Human Rights (ECHR), generally proceeds on the assumption that a defamation prohibition is not applicable if a conviction would conflict with section 10 of the European Convention safeguarding freedom of speech. This is certainly the case when the utterances contribute to public debate, even if they '*offend, shock and disturb*'. European law has led Dutch judges to take a relatively lenient position on defamation uttered within the framework of public debate. Freedom of speech is seen as essential to the function of a democratic political system. The final chapter deals with the central element of all defamation: a person's honour and reputation. The question discussed is what legal interests are protected by the defamation prohibitions. To begin with, attention is paid to the meaning of the term 'honour.' A number of more or less anthropological considerations lead to the conclusion that in their interpretation of the concept of honour earlier (small-scale) societies laid particular stress on reputation. Seen in this perspective, it is damage to reputation that leads to loss of honour. The link between a person's honour and his physical appearance was also important: dishonour was associated with physical defects and certain physical taboos.

With the growing dominance of bourgeois values, the emphasis of the concept of honour shifted to the dignity of the citizen. This shift implied the recognition that every human being, whatever his status or origins, has 'honour'. The present-day legal meaning of the concept of honour is based on that idea. Legally-protected honour is that recognition of his moral dignity that every citizen has a right to expect. Defamation prohibitions protect moral dignity. Self-esteem and self-respect, on the other hand, do not fall within the legally-protected notion of honour.

The two basic defamation offences each have a particular emphasis. The notion of defamation in the case of libel and slander concerns a person's public moral reputation. The notion of defamation in the offence of insult concerns the respect every individual is entitled to in social intercourse. Disrespect, for example by using invective, is insulting.

Disregarding a person's feelings, by contrast, is not covered by the concept of defamation. However, recent court rulings regarding injury to a group of people on the grounds of their race raise doubts whether the distinction between disregarding those feelings and defamatory speech is always properly drawn.

The desirability of treating defamation as a criminal offence need not be doubted. The injury due to defamation is loss of status. A person's position in society is closely bound up with his reputation and with the recognition of his entitlement to be treated with equal dignity as an individual. Disregarding this dignity opens the way to further invasions of his person and position. What begins with defamation may end in battery and genocide.

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