Decriminalisation of defamation

Gregor Arvelogu, Lawyer, EHRAC-Memorial

On 4 October 2007, the Parliamentary Assembly of the Council of Europe (PACE) called for states to apply defamation laws "with the utmost restraint" and to abolish prison sentences for defamation and set reasonable limits to damages awards.1

Freedom of expression is regarded as a fundamental right in a democratic society. However it is often said that individuals whose reputations have been harmed as a result of false and damaging statements, should have the right to redress through civil courts. Criminal libel, by contrast, seems a legacy of autocratic or colonial states, which often serves the purpose of providing officials with the power to suppress and discourage the expression of critical views.2

While a 2005 resolution of the ECHR considered that libel convictions violate Art. 10. Other decisions have indicated that judges do not have to tolerate the same degree of criticism as the government or political figures.3 This may be explained by the nature of the ECHR, and in turn the ECtHR, which struggles to balance legitimate national interests with establishing uniform and universal human rights standards for all signatories. It should be noted that the ECHR on many occasions has reiterated the duty of the press to provide accurate and reliable information.4

Nevertheless, the rulings of the ECtHR have cemented the principle that journalists have wider scope to report on public officials and matters of public concern and the recent PACE resolution has given this even stronger political impetus.

5 Lingoes v Austria (No. 9415/82) 67766.
6 Casadei v Spain (No. 11798/05) 23439/02.
7 See e.g. Bernd v Denmark (No. 11500/05) 2224/15.
8 Lamberti v Malta (No. 78039/01) 2414/07, para. 55 and PACE Resolution 1001(1995).