
J.Y. Interpretation No. 509 (July 7, 2000)*

The Defamation Case**Issue**

Are the defamation clauses in the Criminal Code of the Republic of China constitutional?

Holding

Freedom of speech is one of the people's core fundamental rights, which is expressly enshrined in Article 11 of the Constitution of the Republic of China. The State should protect it as much as possible to realize its functions, such as self-fulfillment, communication, pursuing truth, and monitoring all kinds of governmental and societal activities. Depending on the means of communication, however, freedom of speech is subject to reasonable statutory restraints in order to protect personal reputation, privacy, and to safeguard the public interest. Article 310, Paragraphs 1 and 2 of the Criminal Code, which criminalize defamation to protect individual legal interests, are necessary to prevent infringement of others' freedoms and rights and therefore are consistent with Article 23 of the Constitution. The purpose of the first sentence of Paragraph 3 of the same Article, which provides that "A person who can prove the truth of the defamatory fact shall not be punished for the offense of defamation", is to protect truthful speech and limit the reach of the government's penal power. It does not suggest that the perpetrator must prove the truthfulness of the statement to be free from criminal liability. To the extent that the perpetrator fails to demonstrate that

* Translation by Joe Y. C. WU

the defamatory statement is true, as long as the perpetrator has reasonable grounds to believe that the statement was true based on the evidence he submits, the perpetrator cannot be held liable for defamation. This provision does not exempt a public or private prosecutor from carrying the burden of proof under criminal procedure to show that the perpetrator has the requisite mens rea to damage another person's reputation; nor does it exempt the court from its obligation of discovering the truth. Accordingly, Article 310, Paragraph 3 of the Criminal Code does not violate freedom of speech as protected in the Constitution.

Reasoning

[1] Article 11 of the Constitution stipulates that people's freedom of speech should be protected. Due to the fact that freedom of speech is a necessary mechanism for the development of a democratic diverse society because it contributes to self-fulfillment, communication, pursuing truth, satisfying people's right to know, forging consensus, and participating in political and social activities, the State should protect it as much as possible. Depending on the means of communication, however, freedom of speech is subject to suitable restraints in order to protect other fundamental rights, such as personal reputation and privacy, and to safeguard the public interest. As to whether the approach should adopt civil remedies or criminal punishments, or both, any restraints should comprehensively take the following elements into account: citizens' law-abiding habits, respect for others' rights, the function of civil remedies, and media workers' professionalism and discipline. In our State, it cannot be said that criminalization of defamation is unconstitutional based on the abovementioned factors. Furthermore, if the law allows anyone to avoid a penalty for defamation by offering monetary compensation, it would be tantamount to issuing them a license to defame, which is obviously

not in line with the constitutional protection of the people's fundamental rights. Article 310, Paragraph 1 provides "A person who points out or disseminates a fact which will injure the reputation of another for purpose that it be communicated to the public commits the offense of slander and shall be sentenced to imprisonment for not more than one year, short-term imprisonment, or a fine of not more than five hundred yuan." Paragraph 2 of the same Article stipulates that "A person who by circulating a writing or drawing commits an offense specified in the preceding paragraph shall be sentenced to imprisonment for not more than two years, short-term imprisonment, or a fine of not more than one thousand yuan." By distinguishing libel from slander and imposing different penalties, these two provisions are necessary to prevent violation of others' freedoms and rights and therefore are consistent with the proportionality principle in Article 23 of the Constitution.

[2] The first sentence of Article 310, Paragraph 3 of the Criminal Code provides "A person who can prove the truth of the defamatory fact shall not be punished for the offense of defamation unless the fact concerns private life and is of no public concern." It means that the perpetrator who originates or circulates a defamatory statement may not be found guilty so long as the statement is true. It does not suggest that the perpetrator has to prove the statement is true. To the extent that the perpetrator fails to demonstrate that the defamatory statement is true, as long as the perpetrator has reasonable grounds to believe that the statement was true based on the evidence he submits, the perpetrator cannot be held liable for defamation. This provision does not exempt a public or private prosecutor from carrying the burden of proof under criminal procedure to show that the perpetrator has the requisite mens rea to damage another person's reputation; nor does it exempt the court from its obligation of discovering the truth. Accordingly, Article 310,

Paragraph 3 of the Criminal Code does not violate freedom of speech as protected in the Constitution.

[3] Article 311 of the Criminal Code provides “A person who makes a statement with bona-fide intent under one of the following circumstances shall not be punished: 1. Self-defense, self-justification, or the protection of legal interest 2. A report made by a public official in his or her official capacity 3. Fair comment on a fact subject to public criticism 4. Fair reporting on the proceedings of a national or local assembly, court, or a public meeting.” This article specifies affirmative legal defenses against defamation to protect freedom of speech with goodwill. It does not raise any issue of constitutionality. Whether these affirmative defenses can be proved is the duty of presiding courts and is beyond the scope of this Interpretation.

Background Note by Chien-Chih LIN

The Petitioners, Mr. HUANG and Mr. LIN, were the chief editor and a reporter of a magazine respectively. In a news report, they claimed that a minister spent government funds needlessly and attacked his character. The minister accused them of defamation, and eventually both petitioners were convicted of defamation by the Taiwan High Court. After exhausting all available legal remedies, the two petitioned this Court, contending that Articles 310 and 311 of the Criminal Code violated the freedom of the press and their right to work.

In 1998, the Judicial Reform Foundation in Taiwan conducted a survey on the performance of judges, and the result was available to the public. Six judges scored less than 60 in this survey and believed their reputations were damaged. Therefore, they accused the President and the Chief Executive Officer of the Judicial Reform Foundation of defamation. The Petitioner,

Judge Chen of Taiwan Taipei District Court, argued that Articles 310 and 311 of the Criminal Code were repugnant to Articles 8, 11, 22, and 23 of the Constitution and petitioned this Court.

This Interpretation is important because it involves the balance between freedom of speech and personal reputation. In this case, the Court ostensibly upheld the provisions in the Criminal Code, but essentially narrowed the scope of defamation. This is evident from its interpretation of the first sentence of Article 310, Paragraph 3 of the Criminal Code, which provided “A person who can prove the truth of the defamatory fact shall not be punished for the offense of defamation...” The Court maintained that the perpetrator need not prove that the defamatory statement is true so long as he can reasonably believe it is, based on the evidence he collects. In other words, the Court adopted a broad interpretation to make a perpetrator less likely to be convicted of defamation.

