

The protection of the honor of political agents: Parallels between civil law and criminal law

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ABSTRACT

This is a work that proposes the study of the mechanisms that Civil Law employs to protect the right of personality to the objective honor of political agents, as well as aims to investigate the dynamics of the possible correlations and contradictions between the application of the protection of personality rights carried out by the civil area and the punishment of crimes against the honor of public officials existing in Criminal Law. Quantitative and inductive research that aims to identify existing patterns in the legal environment when it comes to the regulation of injuries and crimes committed against the honor of public officials. The problematization of the research consists of the analysis of the reality of political agents who claim to suffer moral damages in the civil sphere, in which the condition of public person is interpreted as a propensity to receive criticism and as part of the work of these agents. This situation contrasts with the point of view adopted by Criminal Law, in which the fact that the crime against honor is committed against a public agent consists of an aggravating factor provided for in items I and II of article 141 of the Brazilian Penal Code.

Keywords: Right to honor, Moral damage to the honor of political agents, Protection of personality rights, Crime against the honor of public officials.

INTRODUCTION

In the words of the author Maria Helena Diniz, personality rights can be defined as "common rights of existence, because they are simple permissions given by the legal norm, to each person, to defend a good that nature has given him in a primordial and direct way" (DINIZ, 2012). Within the scope of Brazilian Civil Law, the protection of these rights takes place through the so-called protections of personality rights. Therefore, by the provisions of article 12 of the Civil Code of 2002, it can be stated that the protection of personality rights has the functions of indemnifying, inhibiting or stopping damage to an aspect of the natural person, and its application is apparently independent of a possible condition of public person of the injured individual. However, when the very personal good of honor is particularly discussed, it must be recognized that this is an aspect of absolute importance for the full execution of the functions of political agents and public officials, as it represents both the way society sees these agents and the perception they have of themselves.

In view of this, it is valid to study the relationship between the protection of the right to

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honor offered by Civil Law and the punishment of crimes against the honor of public officials carried out within the scope of Criminal Law. In this area, in contrast to what occurs in the Civil branch, the condition of public official constitutes a punitive aggravating factor, expressed in items I and II of article 141 of the Penal Code, when the case is one of the crimes of slander, slander or defamation registered in articles 138, 139 and 140 of the same Code.

OBJECTIVES

The main objective of the present work is to analyze the way in which Civil Law protects the honor of political agents in cases of moral damage to honor, studying the statistical aspects of the protection of this right of personality. In addition, it proposes to investigate the dynamics of the disciplinarity of crimes against the honor of public officials carried out by Criminal Law, which builds a relationship sometimes of opposition, sometimes of complementarity with the protection of the right to honor existing in the Civil scenario. Undeniably, it is relevant to focus on the curious difference in perspective that each branch has in the face of the same situation: that of regulating impasses related to agents of public power who have had the safety of their honor violated.

METHODOLOGY

The methodology used in the present investigation consisted, firstly, in the study of the legal system and the doctrinal understanding related to the proposed theme, in order to understand what is the line of orientation pacified in the national legal scenario. Once the doctrinal basis was established, a quantitative research was carried out with 20 judgments in the field of Civil Law and 18 in the Criminal field, available in the online Revista dos Tribunais, in order to numerically outline their characteristics regarding the profiles of the injured public agents, the relevance that the condition of political agent has in the judgment of what happened, the means of effecting the damage and the way to correct the harmful situation or to punish the crime. Finally, analyses were carried out on the statistics obtained following the inductive research model.

RESULTS

A priori, it should be noted that, among the cases analyzed in the field of Civil Law, the most used relief to resolve cases of damage to the honor of political agents was indemnity relief, in only 25% of cases, followed by the application of indemnity and termination relief, simultaneously, in 10% of cases. It should be noted that the remaining 65% represent appeals

devoid of resources, in which the presence of moral damage was not recognized. In view of this, it could be inferred that, from the point of view of Civil Law, the condition of public person of the applicants is seen as a propensity to receive criticism linked to the nature of the political profession. The legal dilemma of defining the limit between informative criticism and injury to honor is clear, since the data show that cases against the press have the highest rate of appeals dismissed, precisely because of the principles of freedom of the press and the right to information, regulated by Law 5.250/67.

When it comes to the scenario that prevails in Criminal Law, the statistical results showed that the type of public official who most denounces crimes against honor are agents of the Executive and Judiciary branches, both with 33.3%, followed by agents of the Legislative and Police Forces, both with 16.7%. Sometimes the crimes are motivated by a context of political feud and, generally, the injuries were committed by individuals who were unhappy with the victim's work or who, in some way, were harmed by a measure carried out by the public servant in question.

With regard to crimes against honor, slander (art. 138, CP/1940) was the offense with the highest number of independent complaints (5 occurrences). The crime of defamation (art. 139, CP/1940) was alleged in isolation only once, while the crimes of libel (art. 140, CP/1940) did not present any independent complaint. When it comes to the denunciation of two types of crime, the most frequent combination was slander and slander (5 occurrences), followed by slander and defamation (3 occurrences). In addition, there were 4 occurrences of a triple cumulation, in which the presence of the three crimes was alleged. The fact that there is a higher occurrence of cumulative complaints than independent ones can be explained by the very nature of the crimes. For example, slandering someone, falsely attributing to him the commission of a crime, is also a way of insulting and offending the dignity of that individual, as well as defaming him, if the act damages his reputation. Thus, many cases have been observed in which a single injury could be subsumed into more than one criminal type.

According to article 141 of the Penal Code, items I and II, the penalties for the crimes of slander, defamation and injury are increased by one third if they are committed against the President of the Republic; against the head of a foreign government; against a public official, due to his functions; or against the Presidents of the Federal Senate, the Chamber of Deputies or the Federal Supreme Court. Among the judgments analyzed, 33.3% are excluded from cases with the application of the aggravating factors of article 141, I and II because they did not configure at least the presence of a crime. However, among the cases in which the presence of a crime was recognized (66.6% of the cases), the application of the aggravating factor occurred

in most situations (44.4% of the total cases).

FINAL CONSIDERATIONS

Conclusively, it can be stated that the results of the present work contributed to demonstrate that the Brazilian political scenario is marked by several situations that cause injuries to the honor of government agents. In the scope of Civil Law, the protection of the right to honor depends on factors such as the context in which the damage is inserted and the principles of Brazilian legislation that also govern such cases in addition to the Civil Code. Such aspects lead to the formation of a scenario characterized mainly by a high rate of deprived resources, which disfavors political agents, but on the other hand protects the right to freedom of expression in the Democratic State of Law. On the other hand, the Criminal Law courts have a more severe stance, both due to the greater number of appeals favorable to the offended agents and the application of the aggravating factors of items I and II, of article 141 of the Penal Code. This duality emphasizes the need for a balance between accountability for offenses to honor and the preservation of fundamental rights.

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