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CIVIL-LAW PROTECTION OF HONOR, DIGNITY AND BUSINESS REPUTATION IN THE CIVIL LEGISLATION OF UZBEKISTAN AND JAPAN

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Abstract: Comparative legal analysis of the civil-law protection of honor, dignity and business reputation is conducted on the base of the views of the scientists of Uzbekistan and Japan and civil legislation of two countries and as a result, this analysis provides proposals and inferences on improvement of the acting national legislation.

Key words: personal non-property rights, intangible values, honor, dignity, business reputation, personal information, defamatory information.

Аннотация: в данной научной статье проведен сравнительно-правовой анализ касательно защиты чести, достоинства и деловой репутации гражданскому законодательству Узбекистана и Японии, а также изучены мнения учёных-цивилистов по этим вопросам.

Ключевые слова: личные неимущественные права, нематериальные ценности, честь, достоинство, деловая репутация, личная информация, порочащая информация.

Introduction: According to the current legislation fixed norms in the sphere of protection of honour and dignity. From the point of view of principles common to all mankind Constitution of Republic of Uzbekistan includes norms which aimed to protect honour and dignity and adherence to human rights and principles.

In particular, the constitution of Uzbekistan refers norms, Democracy in the Republic of Uzbekistan shall be based on the principles common to all mankind according to which the ultimate value is a human being, his life, freedom, honor, dignity and other inalienable rights, Democratic rights and freedoms shall be protected by the Constitution and laws article 13, Everyone shall be entitled to protection against encroachments on his honor, dignity, interference in his private life, inviolability of his home. No one shall have the right to enter a home, carry out a search or an examination, violate the privacy of correspondence and telephone conversations except for case and procedure prescribed by law (article 27), Citizens shall be obliged to observe the Constitution and laws, and to respect the rights, freedoms, honor and dignity of others (article 48). Therefore, the protection of honor and dignity in accordance with the Constitution entrusted to the state. State considers its main purpose to ensure the protection of honour and dignity of human. State regulation of social relations based on the principles of democracy, rule of law.

At the same time, unless honour and dignity are not recognized and protected in the society, in this society there will not be fairness, honesty, legality, and stability and appears the problem of implementation of main functions of state.

Japanese law scholars HeadokiKurosava that the "personal rights (Civil Code - the author's emphasis) the life, dignity, personal secret as closely tied to a person on the basis of non International Journal of Law object favours the development of access to these goods, they are in the third person (s) by the sum of interest reflected the amount necessary [1].

According to Kavai Takashi, the law of Understanding that defines the content of a person's specific interests of human rights. The human person, freedom, dignity (JCC, Article 710), the life and health (Article JCC 711) as well as personal interests are protected by the Civil Code, in addition, be committed to the civil law, the name, image, keep rights and personal rights are recognized as [2].

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According to Mori Izumi Akira, the rights of the individual rights of every single person, the right to protect personal interests. Individual rights to life, health, dignity and the rights to the image, that is, the person is not possible to separate the interests of the public life the rights[3]. According to Japanese scientist Kato, a person's life, health, honor, dignity, name, inviolability of private life, personal secrets, the right image, and the person may alienate the rights of human rights are closely linked with the person[4].

The consolidation of norms on protection of honor and dignity of the person as well as the implementation and following them by governmental and non-governmental agencies without exclusions prevents the unpleasant events in the society [5].

2. Method:

According to the civil code of Uzbekistan article 100 a citizen has the right to demand in court the refutation of communications defaming his honor, dignity, or business reputation, unless the person who disseminated such communications proves that they correspond to reality. Upon demand of interested persons, the protection of honor and dignity of a citizen is allowed even after his death. If communications defaming his honor, dignity, or business reputation are disseminated in media of mass information, they must be refuted in the same media of mass information. If these communications are contained in a document coming from an organization, such documents must be subjected to retraction or recall. The procedure for refutation in other cases shall be established by the other court. A citizen, with respect to whom media of mass information have published communications defaming his honor, dignity, or business reputation, shall have the right to demand compensation for losses and moral harm caused by the dissemination. The rules of the present article on the protection of business reputation of a citizen shall be applicable correspondingly to the protection of the business reputation of a legal entity.

In this place, we should highlight the concept of “defaming the honor”. Cause if honor, dignity, or business reputation of a human is violated, it is important to differentiate the evaluation of information which is the “defaming the honor”.

The issue of honor is not only the category that expresses the inviolability but also his life and business reputation. For example, January 30, 2004 with the decision № 2 of Constitutional Court of the Republic of Uzbekistan approved the Code of Honor of The judge of Constitutional court of Republic of Uzbekistan. According to the article 3 of the code judge is prohibited to abuse his social status to satisfy the interests of others. The judge must be careful in making friends and acquaintances, to desist from communicating people who can defame their honor, also he should not allow the imaginations which any person may influence the judge. In all cases, the judge consider carefully its possible consequences of his every action.

According to the opinion of the Japanese scientist Shiomi Yoshio “protection of honor and dignity is one of the fundamental personal rights and they need to be protected as exclusive rights like proprietary law. As an exception it is necessary to mention that evaluation of work of public officers or representatives of people as well as criticism and expression of critical opinion about them, for example if they are accused of bribery or other abuse of authority without any proof or evidence, will not be regarded as discrimination of their dignity. They must perceive various critical opinions correctly because they were elected, trusted and entitled by people.” [6].

It is necessary to mention that the rules in article 100 of the Civil Code mainly refer to citizens but its rules on protection of business reputation are also applied to legal entities. The definition of the protection object in the article from this point of view is very narrow that becomes apparent in many cases.

J.Jurayev while analyzing this article expressed the following opinion: “institution under our consideration is not properly regulated because it makes an impression that every citizen and legal entity can have business reputation.” [7]. We cannot subscribe to this view because according to the mentioned
norm refutation is required only if the information is defamatory. If accuracy of the information is proved a court will reject protection of the victim.

There should be three conditions of protection of the honor and dignity of human. First of all, the information should be real defaming the honor and humiliating the dignity, second of all, it should be disseminated, third of all, these information should correspond to reality. The court must scrutiny these conditions in the process of trial.

In this regard, June 19, 1992, №5-PD-92, in the resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan "on application of laws on protection of honor, dignity and business reputation of citizens and organizations in judicial practice made a number of recommendations for the courts.

In accordance with paragraph 8 of the resolution, dissemination of information discrediting the honor, dignity and business reputation of a legal entity or legal person, it is understood their publication in mass media, inclusion in professional references, public speeches, statements to State officials, or communication in other forms, including oral multiple parties, or at least one person.

The message of such information only the person whom it concerns, cannot be recognized by their dissemination. It may not be recognized as valid claim for denial of information containing untrue criticism of shortcomings in work behavior in a public place, or in everyday life.

Practical realization of the norms on court protection of honor and dignity firstly, requires clarification of what we understand under defamation. According to practitioners and scientists [8], defamation includes a process of bringing false information about a person to one or several people by any means. In legal literatures [9], it mentioned that if this information disseminated in the presence of family it has negative impact on business reputation. There isnot any difference who is disseminated this information, the main issue is that the information is disseminated.

3. Analysis

In legal literatures, [21] it mentioned that if this information disseminated in the presence of family it has negative impact on business reputation. There isnot any difference who is disseminated this information, the main issue is that the information is disseminated.

A citizen hasn’t the right to demand in court the refutation of communications defaming his honor, dignity, or business reputation, unless the person himself gives this information to other people. By these acts he helps to the public to form of evaluation of his personality.

Information that applies to a person, if this person is informed, it can not be recognized as the dissemination of information. Therefore lawyers M.G.Pronina and A.N.Romanovich said “third parties, this information is not known, it seems this information can not influence the assessment [22] of citizens the public”.

It may concluded from the above-mentioned such information which defaming his honor, humiliating dignity, or business reputation isnot disseminated to third parties, for example, if someone says it aloud to himself or or other personal black letters, leaflets written information such as audio, video used other devices but it isnot disclosed to other people it is not distribution of information.

As A.B.Belyavenskiy said, For the right of claim, there isnot difference which ways the defendant gives the information to dishonor the plaintiff as the limitations of form of dissemination isnot consolidated [23].

I.Nasirov expressed the following opinion on this issue: “defamatory information can cause a serious problem for the victim even if only one person is aware about it.” Therefore the view on “providing a right to bring an action and to demand prohibiting defamation” in legal literature seems to be quite reasonable [24].

According to the views of the Japanese civilian Takashi Kavai, “the Civil Code provides liability for damage caused by infringement of personal rights and appropriate measures for restoring the reputation of the victim and prevention of the further law violation. This rule is provided at article 723 of the Civil Code. Lawsuits concerning protection of personal information need to recognize also the method of protection of the same law. This view is also supported by court practice (collection of the Supreme Court judgments, No. 1802, September 24, 2002, page 60) [10].

Dissemination of information and data in verbal is realized by the means of tongue based on the conscience and dictionary by the means of verbal and gramatic system. In theory of law, in accordance with opinions, which the characters of “defaming honor” information is depend on the victim’s personality and especially, his age [11]. Here, in our opinion, we agree with this. Expecting from young man who has got passport recently to become family man is illogical.
False information, which does not damage honor, dignity and business reputation, cannot be recognized as defamatory information [12]. Moreover, a demand to refute dissemination of true critical information at work, public places, and in everyday life cannot be recognized reasonable [13]. Definition of defamation can be used as a proof for this statement [14].

Even when the cause for resentment, one can not make disgrace. Particularly, the conditions of workers who have not received their salary for several months may be example for this.

Established by Article 100 in the procedures of Civil Code is not consolidated the theoretical basis of significant difference of the concepts of the protection of The honor and dignity of a citizen or business reputation of citizen or legal entity in judicial order.

Satiric pictures, feleton, parody genre expressed by artists in film and television satire and humor characterized by clarity and therefore this information may be sad and painful for the person. The conflicts between citizens and legal entities on the court for some reason, on the product of the author's creative writing, poetry and prose description of the image, as well as compare and strokes are beyond the logic, because the results of works of journalist, writer and poet without these artistic images as listed above will not be ideal.

In accordance with the article 100, part 2 of civil code of Republic of Uzbekistan Upon demand of interested persons, the protection of honor and dignity of a citizen is allowed even after his death.

4. Results

The honor and dignity of person after death is protected on the general basis of civil legislation in the form of succession. However it may not be restricted by the institute of succession. The article 100 of Civil code of Uzbekistan refers upon demand of interested persons, the protection of honor and dignity of a citizen is allowed even after his death.

Here it should be taken into consideration not only successors but also interested persons have the right to demand protection of honor and dignity of a dead. As an interested person understood the friends, makhallas, students, masters and others.

Successors of dead person with respect to whom communications are disseminated defaming his honor, dignity, or business reputation, shall have the right, along with the refutation of such communications to demand compensation for losses and moral harm caused by their dissemination.

The civil code of Republic of Uzbekistan refers the “refutation” as a measure of protection of communications defaming his honor, dignity, or business reputation are disseminated in mass media. They must be refuted in the same media of mass information. Refutation is a special measure of protection in the condition of defaming honor, dignity, or business reputation of a person.

Regardless of existence of guilt, defamator should be liable for the information which does not correspond to reality. Therefore, article 40 of law “on Mass media” fixed the liability for the violation of legislation in the sphere of mass media.

The procedure of refutation is consolidated in the law of mass media. Legal entity or person has the right to demand from the editorial rebuttal published in the media of false and discrediting his honor and dignity or business reputation. Legal entities and individuals whose rights and legitimate interests have been violated as a result of the publication, the right to publish in the mass media a refutation or response. Refutation or answer must be published under a special heading in the same lane, which housed the material that caused the emergence of a response.

Mandatory publication period in the newspapers - within one month from the date of receipt of the refutation or response in other periodicals - in the next room. Refutation or answer is obtained, edited television, radio, video, newsreel programs and other electronic kinds of periodical dissemination of mass information broadcasted in the same program or series of programs not later than one month from the date of receipt.

If the amount of the transfer and the refutation or response time can cause damage to the media activities, it may be reasonable edit the text as agreed with the information source or author.

Legal entity or person may apply to a claim in the court in case of evasion of the media to publish a refutation, answer or of violation of the publication date. In this regard it should be noted that in the protection of honor, dignity and business reputation for the case of dissemination of defaming information the form of apologizing is effective method. Based on these opinions we propose changes to the part 2 of article 100 of Civil code of Republic of Uzbekistan to amend the measure of apologizing and to put the issue of compromise of sides as an alternative way of demanding compensation for losses and moral harm caused by their dissemination.
If the plaintiff’s demand is satisfied or the plaintiff renounces a claim, a court needs to explain the consequences of such renunciation (termination of proceedings, absence of right to bring a lawsuit on the same subject, on the same grounds and against the same defendant again). If the renunciation of claim is not contrary to law and does not violate rights and freedoms of the plaintiff or other persons, according to the rules of the part 3 of article 180 of the Civil Procedural Code, the court shall issue an order on termination of proceeding.

5. Discussion

The Japanese scholar Takashi Kavai points out “there needs to be a proof to recognize damage to honor and dignity. For example, dissemination of negative information about the person accused of murder in mass media can be recognized as defamation if this person is justified. But, if the fault of the person accused is proved? In this case dissemination of negative information in mass media is regarded as defamation and court can take into account the fact of conviction while determining the amount of damage.” [15].

The disputed information must be defamatory to justify the plaintiff’s demands on protection of honor, dignity and business reputation. This approach elaborated in the legal science has been supported by the court practice. Legal literature and court practice contain examples of breaches of confidence. A person who committed a negative action tells about it to another person and asks that person not to disseminate this information. This person hopes that the information will not be disseminated. Nevertheless, information about his action gradually spreads among other people. In this case the court cannot satisfy the lawsuit of the victim because the legal norm does not provide for refutation of true information. Our opinion can be supported by the following view of I.Nasriyev: “in many cases disseminated true information does not affect the positive image of a person. But it causes deep personal suffering (for example, dissemination of information about AIDS decease, insolvency of relatives etc.).” [16].

The Japanese civilian Takashi Kavai mentioned that “dissemination of true personal information is contrary to the interests of a person because only he can dispose of the information about himself. Although the Civil Code of Japan provides protection from this issue, such disputes were considered at courts. One of the first disputes was connected with a work of literature “Mutsushima”. A candidate for mayor of Tokyo was described as one of the characters in the work of literature which even contained his photos. The candidate considered that his personal information was disseminated illegally and brought a lawsuit against the author and the publishing house. He demanded recovery of moral damage and apology. The court satisfied the claim and later the sides achieved a peaceful agreement (Court of Tokyo, 1959.09.28.).” [17].

Unfortunately, legal acts of our country does not provide liability for dissemination of information by such means. While special literature [18] contains various views and opinions on this issue. It is interesting that in Japan commitment of such actions is regarded as infringement of personal non-material rights. Disputes on dissemination of personal information without permission are very common in court practice of Japan. For example, “a company requested information about work experience of a recruited person from a local authority. And the local authority submitted information about conviction of this person. The recruited person brought an action for dissemination of his personal information. The court satisfied the claim on the grounds that information about conviction of this person is connected with his honor and dignity and made a conclusion that this was an interest protected by law from dissemination.

A student of the Japanese University submitted a questionnaire with his personal information to the University administration. The Ministry of Inner Affairs requested information about this student from the University and provided by the University information was personal. When the student knew about it he brought an action against the University for dissemination without his permission and infringement of his rights for personal information. The court satisfied the claim (Collection of the Supreme Court civil law judgments, 1976.07.17., volume 35, No. 3, and page 620)”[19].

Some specialists believe that our legal acts on defamation [20] lack for proportionality and therefore consider them as controversial and conflicting conceptions. The other ones on the contrary consider such views as incorrect. According to their opinion this information can be disseminated because it does not influence on the assessment of a person by society although dissemination of such information cause suffering and negative emotions in the soul of a person. In our opinion this issue requires a differentiated approach. Actually, there can be different reasons for appearance of information blackening the name of a person. Particularly, dissemination of information about negative actions and tricks of a subject can also be a social demand or need for discussion with educative effect.
Dissemination of information about negative actions and tricks can be justified only if they go beyond the personal scope and affect the interests of a group or society as a whole. But we should not forget that it would not be correct to discriminate, punish and shame a person for only one amoral action. Therefore, we believe that the above mentioned example from the Japanese court practice can be a model for us.

6. Conclusion:
As a result of the research article on comparative legal analysis and the study of personal non-property rights, the following conclusions were obtained in the legislation of Uzbekistan and Japan, having theoretical and scientific and practical significance.

On the basis of harmonization of national and international legal norms protecting personal non-property rights, and also taking into account modern requirements, the scale of these rights is expanding in full, the need for their protection is developing. When solving legislative acts, the tasks in this field to protect personal non-property rights in Uzbekistan and Japan, the role and importance of securing civil law increases. In the legislation of Uzbekistan and Japan, the following are recognized as priority areas of civil-law protection of personal non-property rights: first, the definition of the ratio of protection of personal non-property rights in the legislation of Uzbekistan and Japan; secondly, the improvement of national legislation based on the study of achievements and progressive experience of Japanese legislation in this field; thirdly, the creation of effective mechanisms of law enforcement practice for the protection of certain types of personal non-property rights; fourthly, strengthening the methods of protecting personal non-property rights in the legislation of Uzbekistan and Japan, while creating effective means of protection in the development of information and communication technologies; Fifth, improvement of measures of civil liability in the protection of personal non-property rights, establishment of the practice of introducing compensation payments to compensate for the damage caused; Sixthly, the formation of unified scientific approaches and assumptions regarding civil legal bases, measures, methods and mechanisms for the protection of personal non-property rights in the legislation of Uzbekistan and Japan, the development of scientific views and hypotheses.

Therefore we consider that it is necessary to elaborate a draft of the resolution of the Supreme Court’s Plenum aimed at strengthening protection of true personal information and simplification of the process of consideration of cases referring to this kind of information. Based on a comparative legal analysis of civil law and jurisprudence of Uzbekistan and Japan, we offering to adopt the Resolution of the Plenum of the Supreme Court “On Some Issues of Applying the Norms of Civil and Family Legislation Regarding Personal Non-property Rights”.

Besides, we make a conclusion that it is necessary to add article 1095 of the Civil Code “A right for protection of undisclosed information” with the following norms “a person has a right for protection from illegal disseminating without his permission personal information or undisclosed information i.e. information about person, family and profession privacy by any means” to provide protection of personal information, in other words personal and family privacy.

The court in its judgment describes the method for refutation of information which damages honor, dignity and business reputation. And the court can choose one of methods for refutation of defamatory information. It is natural that the date of refutation is also determined by the court. The long standing practice proves the position that the method of refutation of defamatory information needs to be relevant to the method of dissemination of such information. And most of the judges follow this approach.

As a conclusion it is necessary to mention that the importance of provision of the civil-law protection of honor, dignity and business reputation which has caused increase in the number of lawsuits brought in courts for its protection. It demonstrates that at present improvement of legal protection of honor, dignity and business reputation is one of the important modern tasks for scholars.

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14. “Defamation” is a ban on spreading false information. Defamation applies not only to false information but also to true information which damage honor, dignity and business reputation.
19. This conception means dissemination of information discriminating some person.