

JOANNA PTAK-CHMIEL

## ARE WE A ‘SOCIETY OF HONOUR’? RECONSTRUCTION OF THE TERM ‘HONOUR’ IN SELECTED JUDICIAL DE- CISIONS OF POLISH COURTS\*

### I. INTRODUCTION

The concept of ‘honour’<sup>1</sup> was already keeping company with mankind back in Antiquity.<sup>2</sup> Terms such as ‘word of honour’, ‘honourable conduct’ or ‘man without honour’ can be found in the literature of bygone centuries,<sup>3</sup> as well as in colloquial speech or everyday publications in the press. In numerous texts tackling the issue of this particular concept in the context of law, honour is portrayed as a guideline for proper conduct, the violation of which entails a specific social sanction, or as a master value that requires protection, for example in the form of lynching.<sup>4</sup> To emphasise the significance of honour, certain writers even use the term ‘honour societies’,<sup>5</sup> meaning such societies where honour plays a special role as the main tool in regulating social relations.

As traditional societies, *honour societies* are frequently set against modernised societies,<sup>6</sup> in which—in the authors’ opinion—honour has lost its overriding significance, giving way to other tools for regulating social

---

\* Translation of the paper into English has been financed by the Minister of Science and Higher Education as part of agreement no. 848/P-DUN/2018. Translated by Jonathan Weber.

<sup>1</sup> The issue of the definition of honour is discussed later in the article.

<sup>2</sup> J. Cambell, The Greek hero, in: J.G. Peristiany, J. Pitt-Rivers (eds.), *Honor and Grace in Anthropology*, CUP, Cambridge 1992: 129–150.

<sup>3</sup> Honour and honourable behaviour constituted a motif in such great works as *The Iliad* by Homer, *The Song of Roland*, *Hamlet* by William Shakespeare, or *Konrad Wallenrod* by Adam Mickiewicz.

<sup>4</sup> For example: L. Welchman, S. Hossain (eds.), *‘Honour’: Crimes, Paradigms, and Violence Against Women*, Zed Books, London 2005; M. Cooney, *Warriors and Peacemakers: How Third Parties Shape Violence*, NYU Press, New York 1998; J. Janssen, *Your Honour of Your Life? An Exploration of Honour Cases for Police Officers and Other Professionals*, Stapel & De Koning, The Hague 2009.

<sup>5</sup> Other definitions may also be found in literature: *honour cultures* or *honour worlds*. For more, cf.: M. Cooney, op. cit.; A. Appiah, *The Honor Code: How Moral Revolutions Happen*, W.W. Norton & Company, New York–London 2010; A. Gill, Reconfiguring ‘Honour’-Based Violence as a Form of Gendered Violence, in: M.M. Idriss, T. Abbas (eds.), *Honour, Violence, Women and Islam*, Routledge, London 2011; R. Nisbett, D. Cohen, *Culture of Honor: The Psychology of Violence in the South*, Westview Press, Boulder, Colo., 1996.

<sup>6</sup> For example: V. Baxter, A.V. Margavio, Honor, self and social reproduction, *Journal for the Theory of Social Behaviour* 41(2), 2010: 126.

relations, for example the law or concept of dignity.<sup>7</sup> Such a position is often tied to the thesis that honour plays a special role in those societies where powerful central authorities are lacking.<sup>8</sup>

A question that emerges here, however, is whether basing the division between modernised and traditional societies on the juxtaposition of law and honour as the main tools of regulating social relations—constituting the foundations of the concepts under discussion—is legitimate. In societies in which law is the main regulator of social relations, has honour really lost its significance? Or perhaps this is a significantly more complicated issue? And ultimately: what role does honour play in Polish legal culture?

The problem is exceedingly complex and requires in-depth and multi-faceted analysis. Because this article is intended to provoke further discussion, the deliberations that follow shall be limited to a specific issue: reconstruction of the concept of honour in the judicial practice of Polish courts. Later in the article I shall answer the following questions: does the term 'honour' appear in the rulings of Polish courts? And if so, how is it defined? What legal provisions contain this concept?

Embracing the judicial practice of Polish courts within the scope of the research will enable not only the identification of legal provisions referring (in fact or potentially) to honour, but also the indication of how this particular concept is conceived by the parties to court proceedings and by judges.<sup>9</sup> The article discusses selected rulings by Polish courts, both ordinary and administrative courts, of all levels, not limited in terms of territory to a particular appellate court's jurisdiction or voivodeship.<sup>10</sup> In the preliminary research, 75 judgments, together with their justifications, were analysed. The key used for their selection was the occurrence of the word 'honour' [in Polish: 'honor'], or an inflection of this word. The judgments covered below do not exhaust the entirety of the material analysed, but due to the extensiveness of the subject-matter the article omits those rulings in which honour—in various configurations—played only an incidental role, bearing no significance for the factual state, for the case's proceedings, or for the adjudication issued, as well as rulings in which the court's reasoning coincided with that presented in some other judgment. However, before I move on to discuss the findings of the

---

<sup>7</sup> Ibidem: 123–124. Such a concept may also be considered in categories of the colonisation and juridisation of the lifeworld (J. Habermas, *Teoria działania komunikacyjnego [The Theory of Communicative Action]*, vol. 2: *Przyczynek do krytyki rozumu funkcjonalnego [Lifeworld and System: A Critique of Functionalist Reason]*, trans. A. Kaniowski, Warsaw 2002).

<sup>8</sup> J. Janssen, op. cit.: 27. Peter Berger in turn believes that an overriding role for honour is typical of traditional communities featuring hierarchisation and connecting the individual's identity with a strictly designated and institutional role in the hierarchy. In this view, honour loses significance in societies based on the freedom and equality of individuals. For more, cf.: P. Berger, On the obsolescence of the concept of honor, *European Journal of Sociology* 11(2), 1970: 339–347.

<sup>9</sup> Attention was drawn to the possibility of parties to court proceedings citing action in defence of violated honour in the context of the potential for such motive to be recognised by judges as a circumstance mitigating the punishment, despite there being no such circumstance in the law in force, by Peter Berger: idem, op. cit.: 339.

<sup>10</sup> Source: website: Portal Orzeczeń Sądów Powszechnych, System Informacji Prawnej Lex.

analysis, I would like to discuss the definitions of two key concepts here: honour, and society of honour.

## II. DEFINITIONS OF KEY TERMS

Academic literature contains many definitions and descriptions of the meaning of the concept of honour.<sup>11</sup> These definitions may, in principle, be split into two main categories: 1) showing honour in a universal manner, not relativized in regard to a particular gender, as the reflection of others' opinions regarding an individual, or as an expression of mental experiences, and also 2) showing honour in the context of social roles, as a manifestation of the gender inequality of the sexes.

An author fitting the first kind of definition is Mark Cooney, who described honour by indicating its ten main attributes, asserting among other things that honour is the kind of moral system in which reputation—understood as others' opinion regarding an individual—is a special value.<sup>12</sup> Julian Pitt-Rivers, drawing attention to both the internal and external aspects of honour, understands the term as a person's worth in their own eyes and in the eyes of society, and at the same time shows honour as a kind of relationship of obligation—granting the individual both the claim and the right to pride and dignity, recognised and respected by the external world.<sup>13</sup> A similar position was taken by Janine Janssen, like Yücel Yeşilgöz and Sadik Harchaoui distinguishing external honour (understood as status, reputation) and internal honour (integrity, pride, righteousness). In this understanding, external honour is simultaneously social recognition of the individual's internal honour, reflected in their honourable conduct.<sup>14</sup>

In the second of the categories in question, the meaning of honour—and frequently the very possibility of having it as a trait—are relativized to a specific gender. When writing about 'honour' violence in Kurdish communities, Joanne Payton distinguishes 'female' honour, *namus*, translated as obedience, and male honour, *sharaf*, meaning self-confidence, domination.<sup>15</sup> Other writers attach *namus* to cleanliness and innocence, and *sharaf* to prestige,

<sup>11</sup> Apart from the concepts discussed later, it is worth pointing out that deliberations on the subject of honour can also be found in the works of authors such as Max Weber (*soziale Ehre*) or Pierre Bourdieu (M. Weber, *Gospodarka i społeczeństwo [Economy and Society]*, trans. D. Lachowska, Warsaw 2002; P. Bourdieu, *Męska dominacja [Masculine Domination]*, trans. L. Kopiciewicz, Warsaw 2004).

<sup>12</sup> M. Cooney, op. cit.: 131.

<sup>13</sup> J. Pitt-Rivers, *Honour and social status*, in: J. Peristiany (ed.), *Honour and Shame: The Values of Mediterranean Society*, UChicago Press, Chicago 1966: 21.

<sup>14</sup> J. Janssen, op. cit.: s. 36, citing: Y. Yeşilgöz, S. Harchaoui, *Eer voor beginners*, in: F. Bo-venkerk, M. Komen, Y. Yeşilgöz (ed.), *Multiculturaliteit in de strafrechtspleging*, The Hague 2003: 62. A similar understanding of honour can also be found in works by other authors, including: F.H. Stewart, *Honor*, UChicago Press, Chicago 1994: 12.

<sup>15</sup> J. Payton, *Collective crimes, collective victims. A case study of the murder of Banaz Mahmod*, in: M.M. Idriss, T. Abbas (eds.), op. cit.: 69.

respect and status.<sup>16</sup> The division of honour into ‘female’ and ‘male’ results in differentiation in the models of good, or ‘honourable’, conduct, models deriving from so-called codes of honour, depending on the sex and the social role connected to it. Further examples of the categorisation of honour depending on gender can be found in deliberations regarding *machismo*<sup>17</sup> and *izzat*.<sup>18</sup>

The second of the concepts under discussion, ‘society of honour’, is understood in various ways. According to Aisha Gill, societies based on honour should be understood as those patriarchal societies in which action with the purpose of protecting honour constitutes a mechanism for control over girls and women, whose behaviour—and in particular modesty and cleanliness—becomes a component of the honour of a collective (family, clan, or entire community).<sup>19</sup> However, such understanding of societies of honour is very ethnocentric, and derives from a specific grasp of honour as a tool for controlling women’s conduct.<sup>20</sup>

Anthony Appiah describes ‘worlds of honour’ in much broader terms, indicating that in order to resolve whether a particular collective attaches special importance to honour, there are two things that should be paid attention to: one should first of all analyse whether in the said collective everybody has the right to be treated with respect, and secondly—what the right to be respected is based upon. If it is a set of shared norms and values, then we can speak of a code of honourable conduct being in force. Thus grasped, honour is equated to the right for respect on the basis of conduct in keeping with the shared set of norms and value.<sup>21</sup> Such an understanding of honour is very universal, and is not restricted to specific ethnic or national groups, but it does on each occasion require the operationalisation of such concepts as the ‘right to be respected’, relativized to the group under investigation.

Irrespective of the definition of culture of honour adopted, analysis of the positions presented above can lead to the conclusion that the manner in which societies of honour are grasped (either as a phenomenon limited to specific groups, or as a more universal concept) is closely tied to the understanding of honour itself. It is precisely for this reason that all studies into the legitimacy of juxtaposing ‘cultures of honour’ with ‘cultures of law’, based on the simple opposition between law and honour, taking Poland as an example, should be preceded by a discussion of the fundamental issue: resolving whether the concept of honour occurs at all in Polish law, and if so, with what

<sup>16</sup> C. van Eck, *Purified by Blood: Honour Killings amongst Turks in the Netherlands*, Amsterdam University Press, Amsterdam 2003.

<sup>17</sup> *Machismo*—a phenomenon seen mainly in the countries of South America and in the Mediterranean region; it is an attitude identified with masculinity and honour. For more, cf.: D. Gilmore (ed.), *Honor and Shame and the Unity of the Mediterranean*, American Anthropological Association 140, Washington, DC, 1987.

<sup>18</sup> A term translated as honour, used among others in Pakistan. For more, cf. Z. Latif, *The silencing of women from the Pakistani Muslim Mirpuri community in violent relationships*, in: M.M. Idriss, T. Abbas (eds.), op. cit.: 34–36.

<sup>19</sup> A. Gill, *Reconfiguring...: 220*.

<sup>20</sup> Idem, Introduction: ‘Honour’ and ‘Honour’-Based Violence: Challenging Common Assumptions, in: A.K. Gill, C. Strange, K. Roberts (eds.), *‘Honour’ Killing & Violence: Theory, Policy and Practice*, Palgrave Macmillan, Basingstoke 2014: 2.

<sup>21</sup> A. Appiah, op. cit.

meaning, and in what context. For the reasons indicated above, the analysis of this issue has been limited to selected rulings by Polish courts.

### III. ANALYSIS OF RULINGS BY POLISH COURTS

Based on the analysis conducted, the selected judicial decisions by Polish courts, concerning honour as variously understood, may be split into three main categories. The first embraces rulings concerning the honour of the service (occupation) performed by a public functionary; the second—cases of violence committed in defence of honour; and third—matters in which the violation of honour, classed into the catalogue of personal values protected by law on the strength of civil or penal law, constitutes the basis of a claim.

#### 1. The honour of service (occupation)

The first of these categories concerns matters in which the central issue constituting the object of the ruling was such conduct by a party to the proceedings that constituted violation of the 'honour of the service (occupation)', in effect leading to the administering of a specific disciplinary punishment. For example, in the case that ended with a ruling by the Supreme Administrative Court (NSA) in Warsaw on 10 March 2016 (I OSK 3222/14), a police officer was expelled from the service for driving a car under the influence of alcohol. The complainant demanded a revision of the disciplinary punishment, considering it incommensurate with the act committed. The NSA dismissed the cassation appeal, acceding to the reasoning of the body administering the punishment, according to which the complainant 'by his conduct had violated the dignity and honour of the service and the legal order in force, values that he had made a commitment to guard when taking his oath'.<sup>22</sup>

One can conclude from an analysis of another judgment<sup>23</sup> that honourable conduct, both when on duty and when not, constitutes an element of the police officer's vocational ethics. In the case in question, police officers were involved in socialising during which there was consumption of alcohol, at a police station. Photographs from this gathering were released by the media. The complainant—one of the participants of this gathering—received a disciplinary warning of not being fully fit for service in his position. The said complainant demanded that the administering of this penalty be waived, claiming that 'the only person who violated the honour, dignity and good name of the service is the person who sent the photographs to the media'.<sup>24</sup> The Voivodeship Administrative Court (WAS) did not accede to this reasoning, and dismissed his complaint, asserting that the penalty administered was adequate for the act committed, which constituted a violation of the honour, dignity and good name of the service, while the 'character' of the police officer's

<sup>22</sup> Ruling of the Supreme Administrative Court (NSA) of 10 March 2016, I OSK 3222/14.

<sup>23</sup> Ruling of the Voivodeship Administrative Court (WAS) in Łódź of 10 February 2015, III SA/Ld 1038/14.

<sup>24</sup> *Ibidem*.

employment, involving a special subordination, means that a disciplinary violation can also be committed outside of his hours of duty'.<sup>25</sup>

A disciplinary offence in which the honour, good name and dignity of the service is violated can be committed not only by police officers, but also by other public functionaries. For example, conduct that constitutes such an offence according to the courts' judicial practice includes a customs officer smuggling alcohol and avoiding the payment of excise,<sup>26</sup> a soldier's forging of a co-owner's signature on the contract of sale for a car,<sup>27</sup> or a prison officer's incorrect conduct during sick leave.<sup>28</sup>

Analysis of the court rulings referred to can lead to the conclusion that where public functionaries are concerned, honour is a determinant of specific models of conduct, the violation of which can make it impossible to perform the occupation concerned, as well as a component of the norms of their professional ethics. These specific requirements regarding proper conduct derive from the social role played by those performing public functions, and constitute the foundation of the authority held by the institutions they represent.<sup>29</sup> Moreover, the requirement for honourable conduct steps—in a way—beyond the framework of the profession in question, and is binding both when on duty and when not.

Indicating precise models of honourable conduct is difficult, because 'these requirements result after all not from specific legislative regulations and rules of professional ethics [...], but also from ethical norms of a general character, from relating the manner in which an office is performed to the requirements resulting from concepts of indefinable character, such as decency, honour and honesty'.<sup>30</sup> The Supreme Court judgment cited here concerns the dignity of the office of public prosecutor, although the deliberations contained within it could refer to other professions performed by persons fulfilling public functions. In this depiction, honour is a concept that is indefinable in a specific way, while the model of proper—and thereby also honourable—conduct should, on every occasion, be relativised to the specific circumstances of the case.

## 2. Violence in defence of honour

The second category of issues covers cases of violence committed 'in defence of honour'.<sup>31</sup> In principle, such motivation behind an action is not recognised as a circumstance justifying a reduced penalty. As an example, in a case underway before the District Court in Środa Śląska, Second Criminal

<sup>25</sup> Ibidem.

<sup>26</sup> Ruling of the Voivodeship Administrative Court (WSA) in Kraków of 16 September 2010, III SA/Kr 1159/09.

<sup>27</sup> Ruling of the Supreme Administrative Court (NSA) of 1 March 2007, I OSK 788/06.

<sup>28</sup> Ruling by the District Court (SR) in Czuluchów, Fourth Labour Division, of 11 August 2016, IV P 153/15.

<sup>29</sup> Decision by the Supreme Court (SN) of 27 July 2016, SDI 6/16.

<sup>30</sup> Ibidem.

<sup>31</sup> The wording is drawn from the rulings discussed, as used by the court, defendants, or perpetrators.

Division<sup>32</sup> (II K 485/15), the perpetrator of an assault and battery that resulted in impairment to health lasting for more than seven days said the motive for his behaviour was to act 'in defence of a girl's honour'.<sup>33</sup> The court found that it 'did not discern in the behaviour of T. D. [the perpetrator] any circumstances at all that would exclude the illegality of his behaviour or his fault. In particular, the motivation given by the accused in his appeal does not constitute such a fact [...]'.<sup>34</sup>

In another case, a culprit sentenced for attempted murder using a knife justified his behaviour as follows: 'He did not want to be humiliated further by him [his victim], and wanted to protect his honour, and desired only to clarify the misunderstandings existing between them'.<sup>35</sup> He explained that he had not acted with the intention of killing the injured party. As with the previous ruling, discussed above, in this case as well the court did not recognise the perpetrator's motivation, in wanting to defend or regain his honour, as a circumstance justifying more lenient punishment. On the contrary, the court recognised that the perpetrator's action was planned, and guided by his intention to take the life of the injured party, and that there were no circumstances in the case excluding the perpetrator's guilt.

However, there are also cases in judicial practice in which the court acknowledged the motivation of the perpetrator acting in order to defend their own honour as a mitigating circumstance. The example taken here is the justification of the ruling in the case under file number VI K 614/14,<sup>36</sup> in which the District Court in Świdnica acknowledged that the injured party, insulting and affronting the accused, had contributed to the escalation in their dispute, and provoked the accused to use violence against the injured party, resulting in a moderate impairment to their health. At the same time, the District Court asserted that 'in acting in such and not some other manner, the accused—defending his honour—wanted essentially only to show that he, because of his age, should play the dominant role in such a teenage environment'.<sup>37</sup> A fact deserving attention here is that the said court emphasised that the accused acted in defence of his honour, thereby also legitimising the motivation discussed above. The case closed with a conditional discharge.

Interestingly, based on the analysis one can point out cases in which reaction to the alleged violation of honour was only a line of defence taken after the incident had happened, and not the perpetrators' factual motivation. For example, in the case under file number III K 142/14,<sup>38</sup> conducted before the

---

<sup>32</sup> Ruling by the District Court (SR) in Środa Śląska, Second Penal Division, of 19 January 2016, II K 485/15.

<sup>33</sup> Motive given by the perpetrator himself.

<sup>34</sup> *Ibidem*.

<sup>35</sup> Ruling by the Regional Court (SO) in Lublin, Fourth Penal Division, of 4 July 2014, IV K 12/14.

<sup>36</sup> Ruling by the District Court (SR) in Świdnica, Sixth Penal Division, of 22 January 2015, VI K 614/14.

<sup>37</sup> *Ibidem*.

<sup>38</sup> Ruling by the Regional Court (SO) in Białystok, Third Penal Division, of 26 January 2015, III K 142/14.

Regional Court in Białystok, the accused strived to allege provocation by the injured parties, but the Court gave them no credence; the circumstances of the case led ‘to the conclusion that the claims of P.D. [the accused]—that the misunderstanding was caused by the belief that the Chechens were laughing at them—were no more than a ruse. [This was] initially intended to end a [situation that was] very awkward for the accused and his companion, who claimed to be stronger (and above all better) than the Asian peoples of the former USSR, [and was] meant to save their honour in some way, [suggesting] that they [the Chechens] provoked the disturbance during which they were beaten up. Later, however, [this was used] as the adopted line of defence’.<sup>39</sup> Despite the fact that adopting such a line of defence could suggest that the perpetrators using it anticipated a pro-honour approach by the courts, in none of the cases cited did the perpetrators’ motive of restoring lost honour bring the effect they desired—of a reduced penalty.

### 3. Honour as a personal value

The third category of cases invoking the concept of honour embraces those judgments in which honour, understood in various way, is perceived as a personal value, subject to civil and criminal law protection in the event of its violation.

For example, in the ruling of 17 March 2015, the Court of Appeal in Warsaw recognised that ‘esteem and honour fit within the concept of good name’.<sup>40</sup> The subject-matter of the case was the disclosure during a television programme of the surname of the complainant as a person against whom criminal proceedings were underway and had not been completed at the time of broadcast. According to the Court of Appeal, the said programme would have violated the person’s good name in a situation where the complainant was cleared of the deeds of which he was accused. However, the criminal proceedings related to a portion of the charges ended in conditional discontinuance, therefore determining the guilt and fact that the deed of which the complainant was accused had indeed been committed. This eliminated the illegality of the deed in relation to these matters. Ultimately, the lack of illegality in the violation of the complainant’s good name, and as such the dismissal of the lawsuit, was determined by the fact that the material used in the programme had been gathered with care and honesty, in the defence of a socially justified interest (which was the warning against the activities of the complainant, involving the derivative granting of loans not covered with appropriate security).

The illegality of violating honour as a personal value is also excluded by permissible criticism. However, the right to criticise is not unrestricted: ‘political criticism may be uncompromising and harsh in form, but it must be honest, it must refer to genuine facts, and critical opinions should be grounded in facts. An opponent should be properly prepared for conducting such criti

---

<sup>39</sup> *Ibidem*.

<sup>40</sup> Ruling by the Court of Appeal (SA) in Warsaw, of 17 March 2015, VI ACa 596/14.

cism—and if he or she does not have the appropriate knowledge of the facts, then he or she should choose their words carefully'.<sup>41</sup> According to the Court of Appeal in Kraków, these requirements were not fulfilled in this case,<sup>42</sup> the subject of which was violation of personal values, meaning the right to esteem, honour and good name of the complainant, fulfilling a public function, through slander, suggesting that he had misappropriated public money for private purposes, had broken building law and lacked honesty and propriety. The court acceded to the reasoning presented by the complainant, stating that in the matter in question one could not talk of permissible criticism, as the statements regarding the complainant were untrue, while their only goal was to show this person to the local community in a negative light.

In the next judgment<sup>43</sup> discussed here, honour is grasped as an expression of 'external esteem'. The subject of the proceedings was the demand that compensation be awarded for violation of the complainant company's good name, by which the said company had been accused of violating the rules of fair competition and unlawfully offering financial gains. In the ruling's justification, the court stated that esteem—embracing the two aspects of 'external' and 'internal'—is one of the most important personal values due to every person. Internal esteem is 'personal dignity, constituting the individual's perception of their own worth, which is connected to the expectation of respect from other people'.<sup>44</sup> External esteem should be understood as 'good name, good fame, honour, reputation, repute; in other words, it is how others perceive and view the individual'.<sup>45</sup> The good name of a particular person (including a legal person) means a positive image held of this person by their milieu, and when appraising its violation one should take into account above all the reaction of the community. Since this is the case, then honour as thus portrayed has an external dimension, based on others' opinion and impressions, while the individual's perception of their own value has been defined as personal dignity. The understanding of honour as described here can also be found in other judgments.<sup>46</sup>

Honour as an expression of esteem, though without division into its various aspects, became the subject of deliberations in the judgment of the Regional Court in Łódź of 22 June 2015.<sup>47</sup> In this case, the complainant demanded compensation for the violation of his esteem by accusing him, with vulgar words, of being a homosexual. In the court's opinion, the 'esteem of

---

<sup>41</sup> Ruling by the Court of Appeal (SA) in Kraków, First Civil Division, of 24 April 2013, I ACa 294/13.

<sup>42</sup> *Ibidem*.

<sup>43</sup> Ruling by the Regional Court (SO) in Warsaw, First Civil Division, of 10 May 2016, I C 690/15.

<sup>44</sup> *Ibidem*.

<sup>45</sup> *Ibidem*.

<sup>46</sup> Examples: the ruling by the Regional Court (SO) in Warsaw, First Civil Division, of 13 September 2016, I C 1130/15; the ruling by the Regional Court (SO) in Lublin, Second Appeals Division, of 19 May 2016, II Ca 113/16; the ruling by the Regional Court (SO) in Gdańsk, Fifteenth Civil Division, of 16 August 2013, XV C 238/13.

<sup>47</sup> Ruling by the Regional Court (SO) in Łódź, First Civil Division, of 22 June 2015, I C 1634/14.

a person referred to in Article 23 Civil Code,<sup>48</sup> should be understood as honour, good name, and personal dignity', while the 'terms used by the defendant, when speaking about the complainant, were of a character denigrating the complainant's good name and esteem. This is because the defendant presented the complainant—in vulgar words—as a person with qualities which sadly are not widely approved of in Polish society, and especially in small local communities, such as the one in which the complainant lives, and which expose the person concerned to exclusion from the community'.<sup>49</sup>

In a judgment on 9 October 2014<sup>50</sup> the Court of Appeal in Gdańsk expressed a more radical position, asserting that 'honour, good repute and respect do not constitute separate personal values, but an emanation of personal value in the form of a person's esteem, understood as their good name and dignity. This is also so because they relate to the environment in which a specific person functions, and are not objective and identical for all people'.

An individual's honour is subject to legal protection not only on the basis of civil law, but also penal law. The subject of a case (VII K 96/15)<sup>51</sup> proceeding before the District Court in Opole was the offence of slander in qualified form—using means of mass communication (Article 212 (2) of the Criminal Code).<sup>52</sup> In electoral materials—leaflets and information distributed via means of mass communication, including during a press conference—the accused libelled the aggrieved party by disseminating false information, according to which the aggrieved party contributed to financial irregularities in the commune, refused official actions aimed at putting right the irregularities detected, and also approached state officials for measures to be taken to the detriment of the mayor and the commune. According to the District Court, such activity exceeded the boundaries of permissible criticism. The eligibility of the act committed with the usage of means of mass communication results from the disparity between the parties to the dispute—of 'an individual fighting for her honour with mass media, which have at their disposal enormous persuasive potential for influencing recipients' opinions'.<sup>53</sup>

The offence of libel, regulated in Article 212 of the Criminal Code, involves the slanderous accusation of a person (a group of people, an institution, a legal person, an organisational unit) of qualities or conduct that could lower their standing in the eyes of the public or expose them to a loss of trust required for the performance of a specific occupation or activity. Insulting another person in their presence or in their absence, in public or with the intention that the insult reach this person (Article 216 of the Criminal Code), con

---

<sup>48</sup> Act of 23 April 1964, the Civil Code [Kodeks cywilny], Journal of Laws of the Republic of Poland [JL RP] 1964, No. 16, item 93.

<sup>49</sup> Ruling by the Regional Court (SO) in Łódź, First Civil Division, of 22 June 2015, I C 1634/14.

<sup>50</sup> Ruling by the Court of Appeal (SA) in Gdańsk, First Civil Division, of 9 October 2014, I ACa 310/14.

<sup>51</sup> Ruling by the District Court (SR) in Opole, Seventh Penal Division, of 25 April 2016, VII K 96/15.

<sup>52</sup> Act of 6 June 1997, the Penal Code [Kodeks karny], JL RP 1997, No. 88, item 553.

<sup>53</sup> Ruling by the District Court (SR) in Opole, Seventh Penal Division, of 25 April 2016, VII K 96/15.

stitutes a similar offence. Both provisions, in their basic and in their qualified forms, may constitute a legal mechanism for protecting violated honour (dignity, esteem, good name).

#### IV. HONOUR OF THE INDIVIDUAL AND HONOUR OF THE COMMUNITY

The categorisation of judgments presented in the previous section of the article is not the sole possible way of dividing the analysed rulings. In the rulings described so far, honour was mainly grasped in regard to the individual. Even if the court rulings portrayed honour in the 'external' aspect, as an expression of others' opinions and perceptions, they applied to the individual honour of a specified person (as a rule the complainant or party to penal proceedings). However, in the judicial practice of Polish courts honour can be found in a collective sense—as the honour of a defined collective.

The concept of 'national [the nation's] honour' appeared in a ruling by the Regional Court in Kraków on 25 April 2016.<sup>54</sup> The complainant, a former prisoner of the Auschwitz-Birkenau camp, demanded that the defendant (German television, also running an Internet-based news website) be forbidden to use notions of the type 'Polish concentration camps', and that it also be ordered to publish in Poland-wide daily newspapers and on the television's website a declaration with the indicated content, embracing, *inter alia*, the statement 'we apologise to Mr K. T. [the complainant], who was imprisoned in a German concentration camp, for violating his personal values, in particular his national identity (his sense of belonging to the Polish Nation) and his national dignity'.<sup>55</sup> The justification given by the complainant for his claim was that the term 'Polish concentration camps', included in the trailer to a movie published on the website of the accused television, violated his 'national honour'. The court acknowledged that 'the sense of national belonging, and pride in such belonging, are among the universally and socially accepted set of values that may constitute an important element of the state of a person's awareness and feelings, and that if they are professed and nurtured by a particular person, they should be acknowledged as this person's personal values subject to the protection anticipated in Articles 23 and 24 of the Civil Code'.<sup>56</sup> Although 'national honour' is not clarified or characterised in the justification to this ruling, one may conclude from the ruling's wording that this concept should be linked to national dignity and identity, understood as pride and a sense of one's own value, resulting from belonging to a specific nation. Because of this, 'national honour' is the quality of a certain set of individuals, distinguished by their belonging to this specific nation.

---

<sup>54</sup> Ruling by the Regional Court (SO) in Kraków, First Civil Division, of 25 April 2016, I C 151/14.

<sup>55</sup> *Ibidem*.

<sup>56</sup> *Ibidem*.

In another judgment<sup>57</sup> the term ‘culture of honour’ appeared. The subject of this case was the murder of the female partner, committed by a person originating from Turkey. In the line of defence adopted, the defence cited the perpetrator’s intense agitation (Article 148 para. 4 of the Criminal Code), brought about by the circumstances and the role of honour—*namus*—in Turkish culture. The defence accused the expert witnesses of omitting in their opinions the cultural differences, for which they used the term ‘culture of honour’. The court did not accede to the reasoning of the defence, asserting that the perpetrator himself omitted in his testimony the contribution of honour to the motivation behind his action. According to the court, a state of intense agitation as indicated in Article 148 para. 4 Criminal Code must be justified by objective circumstances, while ‘in this particular case there could be no talk of such circumstances providing justification—in Polish conditions and in the Polish legal system, even if one were to accept a state of intense agitation accompanying the accused’s actions, then the so-called culture of honour cited by the defence, but not by the accused himself, cannot constitute such a circumstance’.<sup>58</sup> The court of the second instance also did not accede to the arguments of the public prosecutor, demanding a more severe penalty due to general prevention, which in this case would involve ‘detering others originating from different cultural circles characterised by an attitude towards women distinct from the European attitude’.<sup>59</sup> As rightly pointed out by the court, the circumstances of this case did not justify accepting that cultural differences determined the accused’s conduct, while ‘issues of jealousy related to the injured party, as too the desire to keep control over the partner, are types of attitude that occur irrespective of nationality’.<sup>60</sup>

## V. CONCLUSION

One can find cases in the judicial practice of Poland’s courts in which honour is a subject-matter. In principle, the judgments analysed were given in cases that may be split into three main categories: regarding violation of the ‘honour of service’, cases of violence in defence of honour, and violations of honour as a personal value.

The division outlined above is not the only possible way of categorising the judgments investigated. Other criteria could be based on the individual or collective dimension of honour, on indicating the participant of court proceedings who cites honour, or quite the opposite—on the non-acceptance of such a position. The manner of categorisation selected here allows for the most comprehensive indication of legal provisions potentially or in fact referring to the concept in question.

---

<sup>57</sup> Ruling by the Court of Appeal (SA) in Warsaw, Second Penal Division, of 21 June 2013, II AKa 183/13.

<sup>58</sup> *Ibidem*.

<sup>59</sup> *Ibidem*.

<sup>60</sup> *Ibidem*.

In relating to this issue, the judgments that were analysed concerned the violation of provisions related to the professional ethics of persons performing specified public functions (for example: Article 2 of the Act on military service for professional soldiers,<sup>61</sup> Article 230 of the Act on the prison service,<sup>62</sup> or paragraph 23 of the Rules of professional ethics for the policeman),<sup>63</sup> provisions regarding personal values and their legal protection (23, 24, 448 of the Civil Code, and 212 and 216 of the Criminal Code), and provisions sanctioning specific deeds prohibited in penal law (for example murder, assault and battery, participation in a fight).

There is much discrepancy regarding the meaning of honour in the said judicial practice. This leads to the conclusion that judges most often use their own, intuitive understanding of this concept. In the rulings analysed, the definition of honour was either omitted, in certain cases the concept even being described as undefinable, or a certain form of ostensive definition was used, indicated selected positive (or negative) aspects of honourable conduct. Honour was portrayed in its internal aspect, as an expression of the feeling of one's own value, or external—as a reflection of others' opinion of the individual. As a rule, however, it was pointed out that the appraisal of whether or not honour had been violated in a given case could not be generalised, and on every occasion the circumstances of the case needed to be analysed. In none of the rulings analysed did the judges make a distinction between 'female' and 'male' honour.

The question that arises is to what degree making use of the concept of honour was purely a rhetorical measure, and to what extent it was accompanied by a specific axionormative intention. In the case of rulings citing the honour of service (occupation), honour was portrayed as a component of normative models of proper conduct ('honourable' behaviour). In cases belonging to the second category, embracing various forms of violence, acting in its defence constituted a motive behind the perpetrators' actions—either a genuine motive or one adopted later as a line of defence. In most court proceedings, though, acting in response to a violation of honour by a party to the trial was not recognised by the judges as a circumstance justifying a reduced sentence, and it no case was it the sole circumstance for mitigation. The court also took into account such circumstances as the perpetrator's young age or lack of a criminal record. In regard to cases involving the violation of honour as a personal value, honour was depicted as a separate personal value, or as an emanation of esteem, dignity or good name, and often as a synonym of these concepts.

Honour, as opposed to esteem, is not covered by the catalogue of personal values in Article 23 of the Civil Code. This catalogue, though, is not closed,

---

<sup>61</sup> Act of 11 September 2003 on military service for professional soldiers [Ustawa o służbie wojskowej żołnierzy zawodowych], JL RP 2003, No. 179, item 1750.

<sup>62</sup> Act of 9 April 2010 on the prison service [Ustaw o służbie więziennej], JL RP 2010, No. 79, item 523.

<sup>63</sup> Disposition no. 805 of the Police Commander in Chief of 31 December 2003, regarding the 'Rules of the policeman's occupational ethics' [Zasady etyki zawodowej policjanta], Dz. Urz. KGP 2004, no. 1, item 3.

and as such expanding it to embrace additional values is possible. The inclusion of honour within the category of personal values gives rise to a number of further implications. Above all, personal values are acknowledged universally in society and accepted by a given legal system.<sup>64</sup> In the traditional view personal values, as unqualified rights, are effective *erga omnes*.<sup>65</sup> Since this is so, acknowledging honour as a personal value means granting it special legal protection. However, this protection is not absolute in character, and in a specific legal situation may be limited due to being in conflict with other, more crucial rights and interests.<sup>66</sup> An example of such a situation is the exclusion of the unlawfulness of the violation of a personal value, for example via permitted criticism, admissible due to freedom of speech.

To conclude, it is worth observing that in the majority of the judgments analysed, honour was not an element of the content of the provisions cited by parties, while their application in a specific case resulted from the interpretation of legal regulations by the participants in the court proceedings and by the judges. This observation, indicating that honour is acknowledged and accepted as a value irrespective of its articulation within the wording of provisions, is an important starting point for further research into the role and significance of honour in Polish legal culture.

*Joanna Ptak-Chmiel*  
*Jagiellonian University, Krakow*  
*joanna.ptak@doctoral.uj.edu.pl*

ARE WE A 'SOCIETY OF HONOUR'? RECONSTRUCTION OF THE TERM 'HONOUR'  
 IN SELECTED JUDICIAL DECISIONS OF POLISH COURTS

S u m m a r y

The existence of honour as a particular value is not unique, restricted to the boundaries of certain states, nationalities or ethnicities only. Yet, a distinction can be found in the literature between so-called 'societies of honour' and 'modernised societies'. It is believed that in 'societies of honour' honour plays a central role in regulating social relations, and in 'modernised societies' based on the rule of law its importance is marginalised. This article is a contribution to the discussion on the adequacy of the discussed division based on the example of Polish society. Due to the fact that an important feature of this distinction is the juxtaposition of law and honour as tools for regulating social relations, the starting point of the analysis of this issue is to answer the question whether the concept of 'honour' exists in Polish law, and if so, how it is defined and in what contexts it appears. Due to the complexity of this issue, the subject of the article was limited to a specific problem – the analysis of selected judgments of Polish courts and the reasons underlying these judgments. The research allowed to identify the provisions of Polish law which refer (or could refer) to honour. Based on the analysis made, it may be stated that both, judges as well as parties to court proceedings, consider honour as a protected, legally accepted value.

<sup>64</sup> Z. Radwański, *Prawo cywilne—część ogólna*, C.H. Beck, Warsaw 2003: 156.

<sup>65</sup> J. Sadowski, Ochrona czci (dobrego imienia) w polskim prawie cywilnym i karnym—analiza porównawcza, in: A. Siemaszko (ed.), *Stosowanie prawa. Księga jubileuszowa z okazji XX-lecia Instytutu Wymiaru Sprawiedliwości*, Wolters Kluwer, Warsaw 2011: 116.

<sup>66</sup> *Ibidem*: 118.