With the rapid growth in Chinese media services and increased awareness of legal rights among the Chinese, defamation litigation in China is on the rise. Generally speaking, defamation is usually treated as a civil matter, but if it is deemed to be a serious threat to public order or national interest, defamation can be a criminal offence. This advisory will summarize the current state of this fast-developing area of in China and includes some general remarks.

Civil Defamation

The General Principles and SPC’s Interpretation

Articles 101 and 102 of the General Principles of the Civil Law of the People’s Republic of China (General Principle), enacted in 1987, and the interpretations of these two and related Articles of the General principles were the sole basis for Chinese civil defamation law.

Article 101 provides:

Citizens and legal persons enjoy the right of reputation. The human dignity of citizens is protected by law. It is prohibited to harm the reputation of a citizen or legal person by such means as insult or libel.

Article 102 provides:

Citizens and legal persons enjoy the right to honor. It is prohibited to illegally strip a citizen or legal person of his or its honor.

In Answers of the Supreme People’s Court on Certain Issues Concerning Trials of Cases Involving the Right to Reputation (the 1993 Answers), the Supreme People’s Court (SPC) stated that defamation can be found if (i) there is an illegal act on the part of the defendant, (ii) there has been harm to the reputation of the plaintiff, and (iii) there is a causal relation between the illegal act and the harm to reputation. The three circumstances under which defamation can be found are:
1. Where any written or oral insults or libel against another person that causes damage to the reputation of that person;

2. Where unauthorized disclosure of personal information of another person causes harm to reputation of that person; or

3. Where a news report contains “gross error” and the error results in harm to reputation.

The 1993 Answers specifically address the issue of defamation litigation that arises out of the authoring or publication of an article that is critical [of a person]. The SPC stated that:

1. Where the article contains basically true information and is not insulting to another person, the author and publisher are not liable.

2. Where the article contains basically true information and is insulting to another person and causes harm to the reputation of that person, the author and publisher are liable.

3. Where the basic contents of the article are erroneous and cause harm to the reputation of another person, the author and the publisher are liable.

From the 1993 Answers, it appears that truth is not necessarily a defense in civil defamation litigation in China, particularly where the “offending” report is an article that is critical of another person. This is a marked difference from the defamation law of the U.S. and certain other Western countries (including the U.K.), under which truth is a defense generally.

Although there is no clear definition of what is defamatory in China, it is believed that defamatory statements must have the effect of lowering society’s or the community’s esteem for the plaintiff.

Another point worth noting is that the 1993 Answers permit close relatives to bring defamation suits on behalf of deceased individuals.

Neither the General Principle nor the interpretations of SPC distinguish between a public and a private figure.

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