only to the seizure of the first kind of materials and not to the second type of materials.

E. Private Sanctions

124 In the Italian legal system, as well as in all civil law systems, the judge does not have a power to order the wrongdoer to compensate damage for an amount higher than the actual damage caused (contrary to the common law judge who can award so-called punitive damages).

125 In our field of interest, however, this power is granted to the judge by art. 12 of the press law, according to which in case of defamation committed through press, the damaged party may claim, in addition to compensation of damage pursuant to art. 185 of the criminal code, a monetary sum for reparation. This sum is based on the seriousness of the offence and on the extent of the dissemination. It should be pointed out that this sanction, although only applicable when a defamation felony can be assessed, may also be awarded by the civil judge, who can independently envisage the existence of a criminal wrong.

VIII. Unjustified Enrichment

126 The case law has never adopted the unjustified enrichment rule to protect personality rights. Among the legal authors, instead, some have stated that whoever used the image of a non-famous person in an advertisement without his consent has a duty to give the profits to the depicted person. Accordingly, this duty arises from the general and implicit principle according to which whoever makes a profit out of someone else's assets without his consent must return to the owner the sums thus obtained. See, above all, C. Tenella Sillani, [1985] Dir. inf., 918. V. Voccioletti, [1995] Riv. trim. d. proc. civ., 1171 et seq.

Italy

DAMAGES AWARDS IN DEFAMATION CASES IN A COMPARATIVE PERSPECTIVE

Vincenzo Zeno-Zencovich

The remarks that follow are based on the data collected in the Rome civil court of first instance in three research studies.

Although the Rome court is only one of over one hundred Italian Courts of first instance, it is the largest and the one before which the greatest number of defamation cases and tortious invasion of personality cases are brought.

The Rome Court has also generally laid down principles that have been considered landmark cases and therefore followed by other Courts, since 27 March 1984 decision in which a non-symbolic sum (over €40,000) was awarded to the plaintiff in a libel case.

Thirteen years and over 650 decisions scrutinized also appear to be significant from a statistical point of view and indicate existing trends in Italian judge-made law.

It should be added, that, although no equivalent research has been conducted on the Rome Court of Appeals and on the Italian Court of Cassation, the decisions of the Rome Court of first instance, if appealed, appear, generally, to muster judicial review, at least as to damages awards.

The main results of the research studies and of their comparison are the following:

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Although many courts must be made on generating the results of only one case, the three surveys of significant data on the existing trend in Italian law systems. In order to verify if such a trend is in line with other European legal systems, a very summary attempt to plot the distribution of data from the US, the UK and France of the same period was made. The results were not very encouraging. First, the findings of 3,000 to 6,000 cases in the UK, with the awards of 100 to 300,000, are very different from the Italian context, where the damages are mainly made up of costs of legal representation.
In a wider perspective, one should take into account the fact that the “information society” is much, much wider than the traditional media world, and involves not only new media (especially the Internet), but also new actors: every institution and company, a great number of individuals are involved in the gathering and dissemination of information. This activity is generally ancillary to broader goals, and is mostly conducted on a free basis or for indirect economic advantages.

One should therefore also take into account the growing legislation in this field: not only the already cited Directive 46/1995 on personal data treatment, but also Directive 31/2000 on e-commerce (with its provisions on the liability of providers) and the various EU plans for a safe use of the Internet.

Japan

THE PROTECTION OF PERSONAL RIGHTS FROM DEFAMATION AND INVASION OF PRIVACY BY MASS MEDIA IN JAPAN

Masamichi Okuda and Elisabeth Raill-Marcur

I. Preliminary Remarks

This country report on Japan owes a great deal to Professor Kiyoshi Igarashi’s recently published book jinkakuenko gaietsu containing almost all decisions of the Japanese courts at all levels published so far on protection of personal rights

However, the following report focuses on judgments rendered by the saiko saibancho (Japanese Supreme Court); judgments of lower courts are dealt with only occasionally.

II. Infringement of Personal Rights by the Mass Media

A. The Protection of Personal Rights and Freedom of Expression

Within the context of Japanese law the notion of personal rights (jinkakuen) may be summed up as legally protected interests such as life, bodily integrity, individual liberty, one’s honour (including, in the case of women, chastity), and the privilege attached to one’s name, likeness and economic reputation.

In Japan as in other countries, most violations of personal rights by mass media occur in the form of injury to a person’s honour or invasion of privacy. Infringement of personal rights by newspaper articles will be the main focus of the following. Tortious reporting in pictorial magazines will be covered incidentally.

1 K. Igarashi (Professor Emeritus of Hokkaido University), jinkakuenko gaietsu (Law Concerning Personal Rights – An Outline) (2003).