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Chapter 39

Crimes of Defamation

This guideline applies to adult offenders (nineteen years of age or older) who committed any offense of Defamation by Publicizing Alleging False Facts (Criminal Act, Article 307, paragraph 2), Defamation of Dead Person (Criminal Act, Article 308), Defamation of Superior by Publicizing Alleging False Facts (Military Criminal Act, Article 64, paragraph 4), Defamation by Means of Publication, etc. of False Facts (Criminal Act, Article 309, paragraph 2), Defamation by Publicizing Alleging False Facts by Means of Information and Communications Network (Act on Promotion of Information and Communication Network Utilization and Information Protection, etc., Article 70, paragraph 2), Insult (Criminal Act, Article 311), and Insulting a Superior (Military Criminal Act, Article 64, paragraph 1, and paragraph 2).

PART A — TYPES OF OFFENSES AND SENTENCING PERIODS

01¹ DEFAMATION BY PUBLICIZING ALLEGING FALSE FACT

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	General Defamation	- 6 mos.	4 mos. - 1 yr.	6 mos. - 1 yr. 6 mos.
2	Defamation by Means of Publication or Information and Communication Networks	- 8 mos.	6 mos. - 1 yr. 4 mos.	8 mos. - 2 yrs. 6 mos.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Special considerations can be taken into account for engaging in offense • Considerations can be taken into account for motives • Cases where the extent of publicizing false fact is slight • Cases where offenses were committed with wilful negligence • Cases where the false fact is less likely to be spread (Type 2) • Defamation of a dead person 	<ul style="list-style-type: none"> • Condemnable motives • Cases where the offense resulted in serious harm to the victim • Particularly malicious commission of the offense • Defamation of a superior under the Military Criminal Act • Instigating the subordinate to commit the offense
	Actor/ Etc.	<ul style="list-style-type: none"> • Those with hearing and visual impairments • Those with mental incapacity (cases where the offender cannot be held liable) • Voluntary surrender to investigative agencies • The victim opposes punishment (including genuine efforts to reverse harm) 	<ul style="list-style-type: none"> • Repeated offenses of the same type under the Criminal Act



CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Passive participation • Cases where the false fact is less likely to be spread (Type 1) 	
	Actor/ Etc.	<ul style="list-style-type: none"> • Those with mental incapacity (cases where the offender can be held liable) • Expresses sincere remorse • No criminal history 	<ul style="list-style-type: none"> • Repeated offenses of the different type under the Criminal Act that do not constitute repeated offenses, criminal history of imprisonment by the same type of offenses exist (This applies when the criminal history is within ten years after completion of sentence)

- ▷ Apply the following classification in cases in which the crime of violence was committed while intoxicated by the use of alcohol or drugs (including cases of habitual crimes of extortion, repeated offense of extortion, or special offense of extortion):
- ① Cases where the offender voluntarily induced intoxication by taking alcohol or drugs and where the offender intended or foresaw the crime or attempted to use the condition as a ground for exemption, intoxication is considered as a general aggravating factor regardless of the fact that the offender was in a state of diminished mental capacity at the time of the crime.
 - ② Cases where the offender had no intention of committing the offense or could not foresee the commission of such offense, but past behavior reveals the possibility of harm caused to others while under the influence of high-levels of alcohol or drugs, intoxication shall not be considered as a mitigating factor regardless offender was in a state of diminished mental capacity at the time of the crime.
 - ③ Even if the cases do not fall within ①, ②, intoxication should not be taken into account as a mitigating factor unless the offender's mental state at the time of the crime constitutes 'those with mental incapacity.'

02¹ INSULT

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	General Insult	4 mos.	2 mos. - 8 mos.	4 mos. - 1 yr.
2	Insult of Superior	6 mos.	4 mos. - 10 mos.	6 mos. - 1 yr. 2 mos.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Considerations can be taken into account for motives • Cases where the extent of insult is slight • Insulting a superior in a face-to-face encounter (Military Criminal Act, Article 64, paragraph 1) 	<ul style="list-style-type: none"> • Condemnable motives • Cases where the offense resulted in serious harm to the victim • Particularly malicious commission of the offense • Instigating the subordinate to commit the offense
	Actor/ Etc.	<ul style="list-style-type: none"> • Those with hearing and visual impairments • Those with mental incapacity (cases where the offender cannot be held liable) • The victim opposes punishment (including genuine efforts to reverse the harm) 	<ul style="list-style-type: none"> • Repeated offenses of the same type under the Criminal Act
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • The victim is a superior with no commanding authority in a hierarchical relationship (Type 2) 	
	Actor/ Etc.	<ul style="list-style-type: none"> • Those with mental incapacity (cases where the offender can be held liable) • Expresses sincere remorse • No criminal history 	<ul style="list-style-type: none"> • Repeated offenses of the different type under the Criminal Act that do not constitute repeated offenses, the criminal history of imprisonment by the same type of offenses exist (This applies when the criminal history is within ten years after completion of sentence)



DEFINITION OF OFFENSES

01¹ DEFAMATION BY PUBLICIZING FALSE FACT

1. TYPE 1 — GENERAL DEFAMATION

ELEMENTS OF OFFENSE	APPLICABLE LAW
Defaming another by publicly alleging false facts	Criminal Act, Article 307, paragraph 2
Defaming a dead person by publicly alleging false facts	Criminal Act, Article 308
Defaming the superior by publicly alleging facts	Criminal Act, Article 64, paragraph 4

2. TYPE 2 — TYPE DEFAMATION BY PUBLICATION OR INFORMATION AND COMMUNICATIONS NETWORK

- This means offenses with the following elements of offenses as prescribed in the applicable law.

ELEMENTS OF OFFENSE	APPLICABLE LAW
Commit the offense of defamation by means of newspaper, magazine, radio, or other publication with intent to defame another	Criminal Act, Article 309, paragraph 2
Commit defamation of another person by disclosing a false fact to the public through an information and communications network purposely to disparage the reputation of such a person	Act on Promotion of Information and Communications Network Utilization and Information Protection, etc. Article 70, paragraph 2

02¹ INSULT

1. TYPE 1 — GENERAL INSULT

- This means offenses with the following elements of offenses as prescribed in the applicable law.

ELEMENTS OF OFFENSE	APPLICABLE LAW
Publicly insulting another	Criminal Act, Article 311

2. TYPE 2 — INSULTING A SUPERIOR

- This means offenses with the following elements of offenses as prescribed in the applicable law.

ELEMENTS OF OFFENSE	APPLICABLE LAW
Insulting the offender's superior during a face-to-face encounter	Military Criminal Act, Article 64, paragraph 1
Insulting the offender's superior by publishing a document, picture, or an image, giving a speech, or openly expressing otherwise	Military Criminal Act, Article 64, paragraph 2



DEFINITION OF SENTENCING FACTORS

01¹ DEFAMATION BY PUBLICIZING FALSE FACT

1. SPECIAL CONSIDERATIONS CAN BE TAKEN INTO ACCOUNT FOR ENGAGING IN OFFENSE

- This means cases with one or more of the following factors apply:
 - Participation in the crime was forced by another person or resulted from threats (This excludes cases where the Criminal Act, Article 12 is applicable)
 - When the offender merely agreed to participate in the crime but did not lead or actually participate in the commission of the crime
 - Other cases with comparable factors

2. CONSIDERATIONS CAN BE TAKEN INTO FOR THE CRIME'S MOTIVE

- This means cases with one or more of the following factors apply:
 - Cases where the offense resulted from causes attributable to the victim or the victim is also primarily responsible for the crime as the offense was committed in the course of response to the victim's or others' related to the victim preceding crime or unfair treatment to the offender
 - Cases where the offense was accidentally committed in the course of exercising their rights
 - Cases where the main purpose of the offense was for public interest
 - Other cases with comparable factors

3. EXTENT OF PUBLICIZING FALSE FACTS IS SLIGHT

- This means one or more of the following factors apply:
 - Cases where some of the facts which publicly alleged were false but most of facts stated with those false facts were true
 - Cases where the alleged false facts were additional or minor matters, or was not important in the overall context
 - Other cases with comparable factors

4. WILLFUL NEGLIGENCE

- This means one or more of the following factors apply:
 - Cases where the offender conducted a fact check to some extent, however, it was not enough. The offender committed the crime, or the offender was not well aware of false facts. For example, there were some grounds for the victim to mistake those false facts as true at the time of crime
 - Cases where the offender was not well aware of the nature of publicizing false facts to only certain number of persons
 - Others with comparable factors

5. FALSE FACTS ARE LESS LIKELY TO BE SPREAD (TYPE 2)

- This indicates cases in which the offender publicly discloses false facts via the internet and other means, but the number of hits is minimal. However, it excludes cases where they were spread to many and unspecified individuals by other internet users.
- Other cases with comparable factors

6. CONDEMNABLE MOTIVES

- This means one or more of the following factors apply:
 - The offense committed out of retaliation, grievance, or hatred toward the victim
 - The offense committed with no specific reason towards an indiscriminate (random) number of people, or motive derived from the pleasure of committing the crime itself
 - The offense committed to conceal other crimes or faults
 - Other cases with comparable factors

7. OFFENSES CAUSED SIGNIFICANT DAMAGE TO THE VICTIM

- This means one or more of the following factors apply:
 - When the offense caused extreme levels of sexual humiliation to the victim or extreme levels of emotional distress
 - When the offense resulted in irreparable damage to the victim, for example, unemployment, family breakdown, or suicide attempt, etc.
 - Cases when the social reputation of the victim was seriously damaged
 - Other cases with comparable factors



8. PARTICULARLY MALICIOUS COMMISSION OF THE OFFENSE

- This means one or more of the following factors apply:
 - Using malicious methods such as attaching falsified or forged documents, synthesized photos or manipulated chatting on SNS (Social Network Service)
 - Multiple persons were involved in an organized manner to commit the offense
 - Prolonged and repeated commission of the crime
 - Other cases with comparable factors

9. VICTIM OPPOSES PUNISHMENT (THIS INCLUDES GENUINE EFFORTS TO REVERSE HARM)

- This indicates cases in which the offender expresses sincere remorse and the member of the deceased victim or the victim acknowledges this and objects to punishing the offender.
- This includes cases in which deposits are made on a considerable amount of money comparable to reaching of an agreement with the family of the deceased victim or the victim as a result of the offender's genuine efforts to reverse the harm.
- This includes cases in which the offender voluntarily takes corrective measures such as withdrawing statements, deleting or correction posts, or posting an apology publicly, and, as a result, the honor of the victim is substantially restored.

10. PASSIVE PARTICIPATION

- This indicates cases in which the nature of participation in the commission of the offense was passive or the offender had a limited role.
- However, this is not applicable in cases in which the offender had an active role in the commission of the offense by causing another person to commit offense.

02¹ INSULT

1. CONSIDERATIONS CAN BE TAKEN INTO ACCOUNT FOR MOTIVES

- This means one or more of the following factors apply:
 - Cases where the offense resulted from causes attributable to the victim or the victim is also primarily responsible for the crime, for example, the offense committed in the course of response to the victim's or others' related to the victim who aroused or provoked the offender
 - Cases where the offense was accidentally committed in the course of exercising their rights
 - Other cases with comparable factors

2. EXTENT OF INSULT IS SLIGHT

- This means one or more of the following factors apply:
 - When the offender posted sware words or short comments only once
 - When only a few people were at the scene when the offense committed
 - When the offender publicly disclose false facts via the internet and other means, but the number of hits is exceptionally small. However, it excludes cases where they were spread to many and unspecified individuals by other internet users
 - Other cases with comparable factors

3. CONDEMNABLE MOTIVES

- This means one or more of the following factors apply:
 - The offense committed out of retaliation, grievance, or hatred toward the victim
 - The offense committed with no specific reason towards indiscriminate (random) number of people, or motive derived from the pleasure of committing the crime itself
 - Other cases with comparable factors

4. OFFENSES CAUSED SIGNIFICANT DAMAGE TO THE VICTIM

- This means one or more of the following factors apply:



- When the offense caused extreme levels of sexual humiliation to the victim or extreme levels of emotional distress
- When the offense resulted in irreparable damage to the victim, for example, unemployment, family breakdown, or suicide attempt, etc.
- Other cases with comparable factors

5. PARTICULARLY MALICIOUS COMMISSION OF THE OFFENSE

- This means one or more of the following factors apply:
 - Repeatedly insulting the victim through the internet or other media with rapid propagation or insulting the victim on multi number of internet portals
 - Multiple persons were involved in a organized manner for the purpose of committing the offense
 - Prolonged and repeated commission of the crime
 - Other cases with comparable factors

6. VICTIM OPPOSES PUNISHMENT (THIS INCLUDES GENUINE EFFORTS TO REVERSE HARM)

- This indicates cases in which the offender expresses sincere remorse, and the member of the deceased victim or the victim acknowledges this and objects to punishing the offender.
- This includes cases where deposits are made on a considerable amount of money comparable to reaching of an agreement with the family of the deceased victim or the victim as a result of the offender's genuine efforts to reverse the harm.
- This includes cases where the offender voluntarily takes corrective measures such as withdrawing statements, deleting or correction posts, or posting apology publicly, as a result, the honor of the victim is substantially restored.

7. CASES WHERE THE VICTIM IS AN OFFICER WITHOUT COMMANDING AUTHORITY

- This means the victim is a higher-ranking person or in a higher order of precedence but has no authority of command in a command-obedience relationship under the Military Criminal Act, Article 2, paragraph 1.

ASSESSING PRINCIPLES APPLICABLE TO SENTENCING FACTORS

01 | DETERMINING THE SENTENCING RANGE

- When determining the appropriate sentencing range, the court must consider only the special sentencing determinants.
- However, in cases involving more than two special sentencing determinants, the applicable sentencing range is adjusted after assessing the factors as set forth below:
 - ① The same number of conduct factors shall be considered with greater significance than the actor or other factors.
 - ② The same number of conduct factors reciprocally, or the actor, or other factors reciprocally shall be treated as the same.
 - ③ If the sentencing range applicable cannot be determined by the aforementioned principles in ① and ②, the court is to decide the sentencing range by a comprehensive comparison and assessment based on the principles set forth in ① and ②.
- After an assessment, if a greater number of aggravating factors than the mitigating factors exist, then the aggravating zone is recommended when determining the sentencing range. If a greater number of mitigating factors exist, then a mitigating sentencing range is recommended. For other cases, the standard sentencing range is recommended.

02 | DETERMINING THE SENTENCE APPLICABLE

- When determining the sentence, the court shall consider the special and general sentencing determinants that are within the sentencing range assessed according to 1 above comprehensively.



GENERAL APPLICATION PRINCIPLES

01 | SPECIAL ADJUSTMENTS TO THE SENTENCING RANGE

- ① When only two or more special aggravating factors apply, or the special sentencing determinant outnumber the special mitigating determinants by two or more, then increase the maximum level of the recommended sentencing range up to $\frac{1}{2}$.
- ② When only two or more special mitigating factors apply, or the special sentencing determinant outnumber the special aggravating determinants by two or more, then reduce the minimum level of the recommended sentencing range down to $\frac{1}{2}$.

02 | RELATION BETWEEN THE RECOMMENDED SENTENCING RANGE UNDER THE GUIDELINES AND THE APPLICABLE RANGE BY LAW

- When the sentencing range under this guideline conflicts with the range determined according to the aggravation and mitigation of the applicable law, the sentencing range prescribed by the applicable law shall govern.

03 | APPLICATION OF STATUTORY MITIGATING FACTORS AS DISCRETIONARY

- When the court declines to apply a permissive mitigating factor under applicable law as listed in this guideline's sentencing table, the factor shall be treated as a discretionary mitigating factor.

GUIDELINES ON SENTENCING MULTIPLE OFFENSES

01 | APPLICABLE SCOPE

- This section applies to concurrent crimes prescribed in the first part of Article 37 of the Criminal Act. However, when concurrent crimes under the first part of Article 37 of the Criminal Act involve an offense set forth in the sentencing guidelines, as well as an offense the sentencing guidelines do not cover, then the minimum level should be the minimum of the sentencing range of the offense that is set forth in this sentencing guideline.

02 | DETERMINING THE BASE OFFENSE

- The “base offense” indicates the most severe offense that results after selecting the penalty and determining the statutory aggravation and mitigation. However, in cases in which the maximum sentencing range is lower than that of the maximum sentencing range of the other offense as set forth in this guideline, the offense resulting in the concurrent crime becomes the base offense.

03 | CALCULATING THE SENTENCING RANGE OF A MULTIPLE OFFENDER

- To calculate the sentence of an offender convicted of multiple offenses that is not treated as a single offense under this guideline, the court shall apply the following principles:
 - ① In setting the sentencing range for an offender convicted of two offenses, the sentencing range should be the total sum of the maximum sentencing range of the base offense and the $\frac{1}{2}$ of the maximum sentencing range of the second offense.



- ② In setting the sentencing range for an offender convicted of three or more offenses, the sentencing range should be the total sum of the following: (1) of the maximum sentencing range of the base offense, sum of $\frac{1}{2}$ of the maximum sentencing range of the offense with the highest sentencing range, and (2) $\frac{1}{3}$ of the maximum sentencing range of the remaining offense with the second-highest sentencing range.
- ③ For cases in which the minimum sentencing range of the other offense is higher than that of the base offense, the minimum sentencing range resulting from the multiple offense should be the minimum sentencing range of the other offense.

PART B — GUIDELINE ON SUSPENDING A SENTENCE

01 | DEFAMATION BY PUBLICLY ALLEGING FALSE FACTS

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Consideration Factor	<ul style="list-style-type: none"> • Condemnable motives • Cases where the offense resulted in serious harm to the victim • Particularly malicious commission of the offense • Defamation of commissioned officer superior in rank (Military Criminal Act) • Repeated offenses of the same type under the Criminal Act (This applies when the criminal history is within five years after imposing a suspension of sentence or three or more criminal history on fine) 	<ul style="list-style-type: none"> • Special considerations can be taken into account for engaging in offense • Considerations can be taken into account for motives • Cases where the extent of publicizing false fact is slight • Cases where offenses were committed with wilful negligence • Cases where the false fact is less likely to be spread (Type 2) • Victim opposes punishment (including genuine efforts to reverse the harm) • No prior criminal history • Voluntary surrender
General Consideration Factor	<ul style="list-style-type: none"> • Active leading role in the commission of the offense as an accomplice • Premeditated crime • Two or more criminal history on the suspension of sentence or for a greater offense • Lack of social ties • Absence of sincere remorse • No genuine effort to reverse the harm • Destroying evidence or attempting to conceal evidence after the commission of the offense 	<ul style="list-style-type: none"> • Passive participation as an accomplice • Accidental crime • No criminal history of the suspension of sentence or imposing of other sentences more severe • Strongly-established social ties • Expresses sincere remorse • Significant amount of money deposited • Cases of elderly offenders • Cases of physically ill offenders • Cases where the arrest of the offender would cause severe hardship to the offender’s dependant family member



02¹ INSULT

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Consideration Factor	<ul style="list-style-type: none"> • Condemnable motives • Cases where the offense resulted in serious harm to the victim • Particularly malicious commission of the offense • Repeated offenses of the same type under the Criminal Act (This applies when the criminal history is within five years after imposing a suspension of sentence or three or more criminal history on fine) 	<ul style="list-style-type: none"> • Consideration can be taken into account for motives • Cases where extent of insult is slight • Cases where insult was not committed publicly (Military Criminal Act, Article 64, paragraph 1) • Victim opposes punishment (including genuine efforts to reverse the harm) • No prior criminal history
General Consideration Factor	<ul style="list-style-type: none"> • Premeditated crime • Two or more criminal history on the suspension of sentence or for a greater offense • Lack of social ties • Absence of sincere remorse • No genuine effort to reverse the harm • Destroying evidence or attempting to conceal evidence after the commission of the offense 	<ul style="list-style-type: none"> • Accidental crime • No criminal history of the suspension of sentence or imposing of other sentences more severe • Strongly-established social ties • Expresses sincere remorse • A significant amount of money was deposited • Cases of elderly offenders • Cases of physically ill offenders • Cases where the arrest of the offender would cause severe hardship to the offender's dependant family member

DEFINITIONS OF FACTORS TO CONSIDER IN SUSPENDING A SENTENCE

- In cases in which the factors to consider in suspending a sentence and the sentencing factors are identical, refer to the definitions set forth in the *Definition of Sentencing Factors*.
- In cases of ‘Defamation of a Commissioned Officer Superior in Rank (Military Criminal Act)’, the ‘Commissioned Officer Superior in Rank’ means the person who has the authority of command in a command-obedience relationship (Military Criminal Act, Article 2, paragraph 1).
- Determining Criminal History
 - Prior criminal history is calculated as follows: In cases that involve a suspension of the sentence, the prior criminal history is calculated from the date the defendant’s suspension of the sentence was affirmed until the date of the commission of the offense. In cases that impose imprisonment, the prior criminal history is calculated from the final date the sentence was completed until the date the offense was committed.



ASSESSING PRINCIPLES APPLICABLE TO THE FACTORS TO CONSIDER IN SUSPENDING A SENTENCE

- In deciding whether the suspension of a sentence is appropriate in cases in which imprisonment is imposed, the court should give the primary consideration factor greater importance than the general consideration factors. The following principles should be considered:
 - ① In cases in which only two or more primary affirmative factors exist or when the primary affirmative factors outnumber the major adverse factors by two or more, it is recommended to suspend the sentence.
 - ② In cases in which only two or more primary affirmative factors exist or when the primary affirmative factors outnumber the major adverse factor by two or more, suspension of the sentence is recommended.
 - ③ In cases in which ① or ② apply, but the difference between the number of general adverse (affirmative) factors and general affirmative (adverse) factors is greater than the difference between the number of primary affirmative (adverse) factors and primary adverse (affirmative) factors, or in cases other than ① or ②, the court shall decide whether to suspend the sentence after comparing and assessing the factors listed under the suspension of the sentence section comprehensively.