

Between:

1. Christos Clerides
2. Xeni Xenofontos

Plaintiffs

And

1. Doros Michael
2. Doros Polycarpou
3. Movement for the Support of Foreigners

Defendants

And as has been amended on the basis of a Court order dated 12.06.2012

Between:

1. Christos Clerides
2. Xeni Xenofontos

Plaintiffs

And

1. Doros Michail
2. Doros Polycarpou
3. «KISA – Movement for Equality, Support, Antiracism» via its Board of Directors

Defendants

Date: 05.06.2020

Appearances:

For the Plaintiffs: Mr. L. Loucaidis together with Ms. L. Patsalidou and Mr. A. Clerides

For the Defendants: Mrs. R. Pekri for Nicoletta Charalambidou

DECISION

Plaintiff 1 is claiming against the defendants the payment of general and specific damages for libel and for injurious falsehood, for a text that was published in an electronic mailbox on or around 21.5.2010, and for a text, that was accompanying it with the title CYPRUS DESERVES BETTER REPRESENTATION AT THE FUNDAMENTAL RIGHTS AGENCY OF THE EUROPEAN UNION.

He also claims a Court Order that will prohibit defendants 1, 2 and 3 and/or their servants and/or their representatives to print and/or repeat and/or transmit and/or circulate and/or deliver and/or in any way publicize copies of the above publication.

The lawsuit filed by plaintiff 2 against the defendants was interrupted well before the commencement of the hearing procedure and the only plaintiff remaining is plaintiff 1, who will be later referred to as “the plaintiff”.

The defendant submitted a Defense, in common. They allege that the content of the publication is an opinion and or a comment made in a good faith and or honorable comment, about persons and or facts that were of relevance to the public opinion of Cyprus at the relevant time. They further claim that the relevant publication was privileged.

On behalf of the plaintiff he testified himself, whereas on behalf of the Defense, defendants 1 and 2 testified. The lawsuit of plaintiff 2, against the defendants, as I mention above, has been interrupted however some mention to the actions of this specific person will be made since it is directly linked to the facts of the case.

On the basis of the pleadings and the testimonies presented before the court, the following indisputable facts are established.

The plaintiff is a lawyer and at the material time was a Deputy Professor of Law at the European University of Cyprus. He has an active participation in the filed of Human Rights and particularly in the International Association for the Promotion of Human Rights in Cyprus, since the end of the 80s. He has served in the past as President of the above Association while today he is its honorable President. From 2007 until 2010 he was the representative of Cyprus at Fundamental Rights Association, which will be hereafter mentioned as 'FRA', while ex plaintiff 2 was his deputy in the above organisation. FRA is an institution working on the protection of human rights in the European Union.

Under his capacity as a lawyer he handled a number of cases before the then European Committee on Human Rights and later on before the European Court of Human Rights of the Council of Europe. He represented Greek-Cypriots as well as Turkish-Cypriots in individual appeals and published articles and surveys in the field of human rights.

Defendant 3 is a registered Organisation on the basis of the Organisations and Foundations Law and is a non-profit, non-governmental organisation (NGO). Defendant 1 was, at the material time, the president of Defendant 3 and Defendant 2, its executive director.

It is also an undisputed fact that the defendants composed and circulated the following text which constitutes the subjecto of the present dispute and which will be mentioned from now on as the 'text in question':

«Dear Friends,

We have taken the initiative to prepare a statement on the issue of the latest threats against Makarios Drousiotis' life from 'Christofias Watch' Blog as we believe that such practices seriously undermine the democratic and human rights values our society is based. What is more serious is that the same people who administer or support such Blogs as the one posting the threats against Drousiotis, are the members representing US at the Management Board of the Fundamental Rights Agency of the European Union. We consider that this is a disgrace and that as civil society we should react.

We therefore attach a statement that can be signed by all interested organizations and NGOs if they agree which will be also translated in Greek to be sent to the Government of the Republic of Cyprus and also to FRA, the European Parliament and other actors in the EU so as to inform them of the matter and put pressure on the government to replace these people from FRA.

In this effort we will have the support of ENAR (European Network Against Racism) which will happily transmit our message to all relevant stakeholders in the EU.

Please let us know if you agree to co sign the statement as soon as possible, at the latest by coming Wednesday, 26/5/2010, 11:00 am.

Thanks & Regards,

KISA-Action for Equality, Support, Antiracism

P.O.Box 22113, 1517 Nicosia, Cyprus

Tel: 00357-22 878181 – Fax 00357 22 773039

Email: kisa@cytanet.com.cy – web” www.kisa.org.cy”

“CYPRUS DESERVES BETTER REPRESENTATION AT THE FUNDAMENTAL RIGHTS AGENCY OF THE EUROPEAN UNION

We, the undersigned civil society organizations, strongly condemn the vilification of the name and the threats against the life of the distinguished journalist/researcher Makarios Drousiotis, posted anonymously and hiding behind the name “Rigas”, that have appeared in the blog “Christofias Watch”. (http://christofias-watch.blogspot.com/2010/03/blog-post_04.html).

That the remarks constitute a threat and incitement to violence against Makarios Drousiotis can be readily deduced from quotes such as the one below:

“Only in Cyprus is it possible for someone like Makarios [Drousiotis] to live. Only in Cyprus is it possible for collaborators, whores and brownnosers of the conqueror to peddle their garbage. The traitors deserve fire and axe. Throw the collaborators into a pit and cover them with lime.”

There is no doubt that these comments aim at intimidating and silencing the voice of a highly respected journalist whose only crime is to research and write extensively about the Cyprus problem, right wing extremism/nationalism & paramilitary groups in the recent history of the island in a scientific-investigative manner, that has created the hatred against him by nationalist bigots, like “Rigas”, who oppose and consider as traitors anybody who stands for the resolution of the Cyprus problem in a peaceful way that reunifies our divided island and its communities. The pretext for the threats against Drousiotis was that he recently “dared” take an interview in Turkey, from Prime Minister Erdogan!

We support and defend the right of everybody to express themselves freely and exercise opposition to the government or to individuals in blogs and other media. At the same time we condemn and have zero tolerance to people and acts of incitement to violence and violations of other people’s human rights and life like the concerted actions of the blog “Christofias Watch”.

What is also of grave concern is the fact that the administrator of the blog, lawyer Xenis Xenofontos, and his lawyer, Christos Clerides, are the alternate member and member, respectively, of the Republic of Cyprus on the Management Board of the European Union Agency for Fundamental Rights (FRA). Christos Clerides, who is defending Xenofontos and openly supports the latter’s nationalist ideas and practices, also happily gave an interview to Christofias-Watch Blog (<http://christofias-watch.blogspot.com/2010/01/christofias-watch.html>).

We consider this representation of Cyprus as a disgrace for the Cypriot Society and for human rights! It is an affront and a provocation to have on the Management Board of FRA, an agency mandated with the monitoring and protection of human rights in the EU, people who in the past represented the Republic of Cyprus at the European Court of Human Rights against victims of human rights, who are well known nationalists and who, among other activities, administer blogs on the internet which basically directly or indirectly incite to hatred and encourage to violence against persons with a difference opinion than their own!

We call on the government of the Republic of Cyprus to terminate the appointment of Christos Clerides and Xenis Xenofontos to the FRA Management Board and to appoint people who have a record of defending free speech and human rights of all, irrespective of nationality, race ethnicity, religion or belief, gender, sexual orientation or any other difference.

WE also call on all organizations, political parties, journalists' and other unions, NGOs, and all individuals who support free speech, human rights and reconciliation in Cyprus to condemn the use of media like "Christofias Watch" to spread nationalist hatred and threaten people's lives».

And the Greek translation:

[...]

It is also an undisputed testimony that the defendants sent the text in question' to a number of non governmental organisations, among which was the organisation, RUBSI. The plaintiff was informed about the text in question from a journalist, who was informed about it from RUBSI.

The plaintiff with his letter, dated 22.05.2010, (exhibit 8), asked the defendants to withdraw the text in question and to apologise, otherwise he would proceed with the commencement of legal measures against them. The defendants refused to do so.

From the testimony presented before the court it is also evident that it is a common position of both parties that the plaintiff had nothing to do with the administration of the webpage Christofias – Watch. The only information linking the plaintiff with that specific webpage is the fact that he, on 13.01.2010, gave an interview there, which was about the resolving of the Cyprus problem.

I proceed with the presentation of the positions of the two sides as they appear in their pleadings.

The defendants, according to the pleadings of the plaintiffs, after they received the letter of the plaintiff dated 22.05.2010, exhibit 8, instead of apologizing sent the text titled "CYPRUS DESERVES BETTER REPRESENTATION AT FUNDAMENTAL RIGHTS AGENCY OF THE EUROPEAN UNION" and which is part of the text in question, to the Organisation of Fundamental Rights of the European Union, known as FRA and to the permanent staff working there. There was further libel on behalf of the defendants in the newspaper POLITIS on or around 6/6/2020. The newspaper published a text based on some libelous publication in the form of an article and or text of someone Nicos Trimikliniotis.

It is the position of the plaintiff that the text in question is libelous because its content attributes to him and to ex plaintiff 2, among others, the following:

- (a) That they threaten other people and/or support and/or adopt threats against the life of other persons and/or incite other persons to take the life of other persons,

- (b) That they manage and support online Blogs, which publish threats and/or are nationalistic and/or fascist,
- (c) That they support human rights violations,
- (d) That they spread nationalism and racist hatred,
- (e) That they promote violence and hatred against other persons,
- (f) That they are undeserving to represent Cyprus at the Agency of Fundamental Human Rights of the European Union,
- (g) That they do not tolerate a different opinion,
- (h) That they are deserving of isolation and/or contempt and/or shaming
- (i) That they are fascists and/or nationalists and/or anti-democrats,
- (j) That they are undeserving as lawyers to handle cases that relate to human rights,
- (k) That they follow and/or support antidemocratic and/or nationalistic ideas and practices
- (l) That directly or indirectly, they encourage others to hatred and the use of violence against persons with a different opinion to theirs,
- (m) That they do not respect and/or defend the freedom of expression and human rights for all, regardless of citizenship, race, nationality, religion or opinions, gender, sexual orientation or other difference.

The plaintiff also supports that the relevant publication arose as a result of the following facts:

On or around 04.03.2010 an article was published on an online newspaper – website, known as Christofias-Watch, with the title *“a Magarios in the garden of Artaxerxis”*. In this website, visitor could, at the relevant time, upload their own comments, which were put in a separate page from the central one. The relevant article was exercising ‘severe’ criticism against journalist Makarios Drousiotis, in relation to his action of interviewing Turkish Prime Minister, Recep Tayyip Erdogan.

In the specific website, among other things, a comment of an anonymous visitor was published with the nickname “R”. I quote the comment in its entirety below:

“[04 March 2010 2:06 p.m.

Rigas said...

If Magarios...

*** Lived in Ireland and instead of wiping the asses of the English and the Turks here he was wiping the asses of the English there, they would have wiped him out years now and no one would know him

** Lived in Palestine and instead of wiping the asses of the English and the Turks here he was wiping the asses of the English and the Israelis there, they would have wiped him out years now and no one would know him.

**Lived in occupied Greece of '40 and instead of wiping the asses of the English and the Turks here, he was wiping the asses of the Germans there, they would have wiped him out years now and no one would know him.

** Lived in Angola and instead of wiping the asses of the English here he was wiping the asses of the English there, they would have wiped him out years now and no one would know him

**Lived in southeastern Turkey, in the Kurdish lands and of wiping the asses of the Turks here he was wiping the asses of the Turks there, they would have wiped him out years now and no one would know him

** Lived in the USSR in '40 an instead of wiping the asses of the English and the Turks here he was wiping the asses of the german Nazis there, they would have wiped him out and no one would know him.

**In the time of the german occupation of Serbia, in France, ...etc.

Conclusion:

Magarios can live ONLY in Cyprus. Where traitors, collaborators, “yousoufakia” (derogatory term insinuating young, premature boys offering sexual services to their ottoman bosses), whore and asswipers of the conqueror (and the relevant little person of shame combines ALL of these) are able to show face.

Fire and axe to traitors

Pit of lime to collaborators (of the enemy)

R.”

Journalist Makarios Drousiotis complained about the incident and the Police Authorities issued an order for the provision of user data IP Address and thereafter a search warrant in the house of plaintiff 2, who was found as the user of the IP Address at the above website. In this frame, which was known to the addressees of the publications, the defendants, always according to the pleaded positions of the plaintiff, proceeded with the publication of the relevant publications. The defendants sent the text in question to the Executive Office of FRA, in Vienna and to third persons.

The plaintiff claims that the said publication constitutes an injurious falsehood and that it was composed in bad faith from the defendants. He supports his position on the following reasons:

- (a) While the defendants knew that the relevant comment was anonymous, one of the thousands that had been uploaded by the visitors and not the administrators of the page, they related it to the website and/ or to the plaintiffs and they presented it as a publication of the Blog Christofias-Watch itself or of the plaintiffs.
- (b) While the defendants knew or ought to have known that the plaintiffs never applauded the publication, but on the contrary, they condemned it, the defendants omitted mentioning this and/or presented the plaintiffs as identifying themselves with and/or endorsing the comment.
- (c) The defendants omitted taking into account the opinion and/or position of the plaintiffs on the topic
- (d) The defendants presented the said comment as threatening, whereas it was the public positioning of the Attorney General that there was no threat.

In their submitted Defense, the Defendants admit the composition of the text in question but they allege that they forwarded it via email to some non-governmental organisations with the indication ‘in absolute confidentiality’. The goal of Defendant 3 was the signing of the text in question by other non governmental organisation and then to send it to FRA. According always to the defense, this never happened, the text in question was never sent to FRA and it was never, as they distinctively mention, forwarded or published to the general public.

It is their position that the comment published on 04.03.2010 on the website Christofias-Watch and which concerned Makarios Drousiotis was threatening and urged or incited ‘...the commission of violent acts against the life of a person, who the defendants recognize to be the journalist Makarios Drousiotis’ and/or ‘the imposition of spiritual terrorism, due to the disagreement of the administrators of the online blog Christofias-Watch and/or its content-

writers and/or plaintiff 2 with the positions and/or opinions of journalist-researcher Makarios Drousiotis.

In relation to the plaintiff, they claim that on 13.01.2010, he had given an interview on this specific website and that throughout his political career he was expressing extremist and nationalistic ideas about the 'way and/or the philosophy of the solving of the Cyprus problem and/or rejecting the co-existence of Greek-Cypriots and Turkish-Cypriots in a bizonal, federal state, expressing at the same time racist and/or nationalistic positions and opinions about the Turkish-Cypriots.

It is their position that the text in question contains honorable and/or fair and/or comments made in good faith about facts of general and/or public interest, which became public during the relevant time, before and or after the relevant time and which, in any way had been repeatedly expressed in writing and/or orally by the plaintiff and/or ex plaintiff 2. In another point of his defense and specifically in paragraph 5, he repeats the above and adds the defense of 'privileged commentary'. I quote the relevant part in its entirety directly below:

"5. Without influence to the above-mentioned, the defendants claim that the said publications...are the result of a privileged commentary and constitute the right to expression of defendant 3 as its responsibilities and duties are derived from its collaboration with FRA, as an observer and commentator of such behaviours but also generally from its purposes as a non-governmental organisation."

TESTIMONY

As I mentioned above the only witness who testified on behalf of the plaintiff, was himself. I summarise his testimony, below:

The plaintiff in his written statement, which he adopted as part of his main examination, repeats what he mentions in his Statement Claim, which he submitted in relation to his qualifications and his career, with a specific emphasis in the field of human rights and in his action in the International Association for the Protection of Human Rights in Cyprus. He mentions, among other things that under this capacity of his he has cooperated with bodies and committees of the Council of Europe on human rights issues, especially with committees against torture. He has also been a member of the Committee on human Rights of the Parliament from 2001 until 2006. He makes specific mention to his relations with the Turkish-Cypriots and he mentions that he represented them in a large number of cases, in his capacity as a lawyer. Due to his contribution to the field of human rights, he participated in the Committee of the National Council on topics related to the proprietary issue. From 2007 until the summer of 2010, he was a member of the Managing Board of FRA. During the disputed time, in 2010, he was a Deputy Professor of Law at the European University of Cyprus.

The plaintiff also made mention to the article/ comment published on 4.3.10 on the website Christofias-Watch entitled "*a Magarios in the garden of Artaxerxis*" which made sever criticism against journalist Makarios Drousiotis. He found out about the article after he was appointed as the lawyer of his colleague, Xenis Xenofonots, ex-plaintiff 2.

After the publication of the above article, the anonymous visitor of the same website with the nickname "R" uploaded the comment. The plaintiff criticised publicly the above article and did not hesitate to characterize it as "*stupidity and extremist positioning*", the publication in the newspaper Phileleftheros, date 7.5.2010, exhibit 12, page8, is relevant.

According to the plaintiff, he did not know the owner or administrator of the website, Christofias-Watch. In this website, which the plaintiff had visited sometimes, the visitors could upload their own comments. The visitors who uploaded comments, belonged to different ideological spectrums and often disagreed with the uploads of the page or other times agreed with them or they even conducted discussion, at times intense, between them. On the said website, political personalities gave interviews, like the president of DIKO, Nicolas Papadopoulos, ex-president of EDEK, Vasos Lissaris and others. The plaintiff submitted to the court different uploads and comments of readers, among which is his own interview on the website, as is the interview of D.Papadakis, the then press representative of EDEK, and of Nicolas Papadopoulos, the then Vice-President of DIKO, exhibit 4.

The online newspaper / website sharply criticized the government of the then President of the Republic of Cyprus, Dimitris Christofias, as well as other members of the government, in connection with the resolution of the Cyprus problem.

Following the complaint of the journalist Makarios Drousiotis, for the article of the unknown «R» on the website Christofias-Watch, the Police Authorities, on or about 16/3/2010, obtained a court order of the data provision of the user of the IP Address and subsequently they obtained a warrant of search of the plaintiff's 2 home, who was considered to be the user of the IP address of the above website. The detection of the IP address was detected after an illegal surveillance and trapping of the contacts of the above person. The search of his home was also illegal. The former plaintiff 2 to whom the address of the page Christofias-Watch was attributed submitted a request for certiorari to the Supreme Court after a relevant permit. He was represented in the above procedure by the plaintiff's law firm and by him personally. Finally, following a joint statement by the parties involved, decrees were issued ... which annulled both the data decree and the search warrant, the exhibit 6 being relevant.

The plaintiff's involvement in the above case was, as he characteristically stated, "purely professional" as a lawyer for the former plaintiff 2 and his wife, in relation to the legality of the search warrant, the illegal trapping, monitoring of his contacts and confiscation of his computer. He defended them against the accusations levelled against them in public and promoted legal action on their behalf for damages.

In this context, which had become known to the recipients of the publications from the beginning, the defendants proceeded to publish the publication in question. The plaintiff's perception was that the defendants had widely circulated the text in question by e-mail. They sent it to hundreds of recipients, including the journalist of the newspaper Simerini, M. Loizou. The text was sent online to the above journalist by the non-governmental organization, RUBSI.

The plaintiff, in his letter, exhibit 8, asked the defendants to withdraw the publication and apologize, but instead of apologizing, they sent the text to the European Union's Fundamental Rights Organization (FRA) and to the permanent staff working there.

At that time, the former plaintiff 2, participated in a meeting of FRA in Vienna. The latter, when he returned to Cyprus, informed the plaintiff that during the above meeting he had to constantly give explanations for the publication in question to his colleagues in the FRA and the staff of the organization.

Loukis Loukaidis, then president of the International Association for the Promotion of Human Rights in Cyprus, at the request of the plaintiff, sent a letter to the FRA on this issue. The FRA, through its Chairman of the Board of Directors, responded in writing to Mr. L. Loukaidis and confirmed the receipt of the disputed letter of KISA, this is the exhibit 9.

After an investigation conducted by the plaintiff on the internet, he found an article of the "CYPRUSE directory the best Cyprus recourse" which summarizes newspaper articles and in which a reprint of the newspaper Cyprus Mail was posted with the title "Free speech row hits KISA". In this article submitted as exhibit 13, reference is made to the invitation of KISA with which it called on non-governmental organizations and individuals to condemn the death threats against Makarios Drousiotis. The same article states that KISA expressed concern that the two plaintiffs represented the Republic of Cyprus in the FRA and that they had asked KISA to apologize to them.

The above post is repeated in the May 2010 file with news headlines 28/5/2010 in a post by the Center against European Racism CAR, this is the exhibit 14.

A post on the internet titled, "No one is more enslaved than anyone who thinks he is free." publishes an event on 11/12/2010 of an anti-fascist initiative for neo-fascism in which the speaker is Doros Polykarpou, among others for KISA. Reference is made to the end of the text, to the publication in question and to the need for the two plaintiffs to be removed from the FRA.

Furthermore, the newspaper POLITIS at or around 6/6/2010 published a defamatory text based on the text in question, in the form of an article by Nikos Trimikliniotis. In relation to the above publication, the lawsuit 4937/2010 of the District Court of Nicosia was submitted. The lawsuit was settled out of court, with the plaintiffs agreeing to pay the plaintiffs for damages. Relevant are exhibit 10 and 11. The POLITIS Newspaper proceeded with similar publications as a result of the publication in question, on 6/9/2010 and on 13/6/2010. Relevant are the exhibit 10 and 11 A. For these publications, the plaintiff was compensated by a decision of the District Court in the lawsuit 5208/2010.

The defendants, according to the plaintiff, never offered any apology or reparation. On the contrary, they have insisted and continue to insist on their claims to this day.

The publication in question upset him. His good name and reputation were tarnished; his objectivity, morals, work and professional activity were unjustly questioned. He was insulted in

the eyes of others and his friends and acquaintances. According to his position, the text in question was written and circulated maliciously by the defendants, in order to hit him both as a person and as a lawyer and to make him the object of ridicule, hatred and contempt.

While the defendants knew that the controversial comment on the unknown "R" was an anonymous comment, one of the thousands posted by visitors to the site identified him with the site itself, as if it were the author of the poll or had approved it, while he himself was publicly condemned for the content of this publication. They deliberately omitted to take into account that statements from 7.5.2010 of his in the Fileleftheros, in which he condemned the text in question, describing it as "nonsense and extreme attitude".

From the moment the defendants published the text in question to other non- government organizations it would be expected that the article "would be leaked outside and especially to journalists". The plaintiff presented many publications that he had found online which indicates, according to his suggestions, that the text in question or a summary of it had been circulated and published to the Media and to civilians and that defendants 1 and 2 supported this publication even in public.

On the cross-examination, it was submitted to the plaintiff that the website Christofias –Watch was promoting "hate speech and promoted extremist and ethnicistic views" and that he himself as a member of the FRA should have spoken against such positions that are being expressed by this website. The plaintiff answered that he could not point out whether this particular website promoted hate speech, and in another part of his statement said that he "is not a policeman of opinions, views and positions on different matters" and that he cannot "restrict freedom of speech". At the end of his cross-examination he was told that as a member of the FRA at the time he had the duty to fight against hate speech that was surfacing on this particular website. The plaintiff stated that his only duty was "to defend his client's rights".

The witness was presented that during his identity as a lawyer he never took on cases of Turkish Cypriots who went against the Cypriot Republic, a fact that indicates "selective and proportionate views when advocating for human rights." The witness rejected this statement and supported his version with evidence.

The witness was also cross examined regarding the circulation of this publication. At first he was presented by the defense's advocate that this particular publication was only sent to the non profit organization, RUBSI, but this claim was later on modified and was told that it had been sent to "a few non profit organizations ". The plaintiff did not agree with the above statement and insisted that the publication was circulated to the public for a long period of time and was sent among others to the FRA. He made a point that in support to his statement that he had been informed about this matter by the ex-plaintiff 2 after having a conversation about this topic with Mr. Sisilianos, a member of the FRA. Mr. Sisilianos had informed ex-plaintiff 2 that they had received the letter in question from KISA. After being informed the plaintiff asked Mr Loukaidis to send a letter to FRA in order to challenge the validity of the letter's content, which the latter did. As an answer to Mr. Loukaidis's letter he received the following letter, which consists of evidence 9 and is shown below:

" Mr. Loukis G. Loukaidis,

President if the International Association for the Protection of Human Rights in Cyprus

Vienna, 2 August 2010

Subject: Response to your e-mail of 2 June 2010

Dear Mr. Loukaides,

Thank you for your e-mail of 2 June 2010 as well as for your interest in the EU Fundamental Rights agency (FRA) and the reputation of its Management Board. Please accept my apologies for the delay in sending this reply.

Your background information concerning the e-mail we received from KISA about Cypriot representation on the FRA Management Board was very helpful. As the Chairperson of the Management Board, I share your concern regarding the allegations raised against Christos Clerides, the Cypriot member of the Management Board, and his alternate, Xenis Xenofontos. It is important to guard the high reputations of the Members of the Board. At the same time, a new MB member and alternate member have been appointed by the Cypriot authorities.

According to Council Regulation No. 168/2001, the FRA Management Board is composed of independent persons appointed by the EU Member States, all holding high level responsibilities in an independent national human rights institution or other public or private sector organization. In fact, the composition of the FRA Management Board has been highlighted as a good practice for other EU agencies and praised as a "highly effective professional management board" in a report commissioned by the European Commission on the evaluation of the EU decentralized agencies. All efforts should be made to ensure the continuation of this situation.

In this light, I thank you for taking the time to inform the Agency.

Sincerely,

Lize BrandsKehris

Chairperson of the management Board."

It was submitted to the plaintiff that the conversation between ex-plaintiff 2 and Mr. Sisilianos never took place and that it was Mr. Loukaides who informed the FRA about the matter by sending the letter. The plaintiff rejected these statements and reported among other things that:

"...Moreover, I would never take my eyes off by myself and send to the FRA which I was a member of it, the stupid claims of KISA."

This was in short the plaintiff's testimony and the only testimony that was presented to the Court.

The next witness was defendant 2. The Defendant 2, as I have stated above, at the relevant time till today is the Executive Director of Defendant 3. The Defendant 2 gave a detailed testimony in relation to the purposes and work of the Defendant 3 and FRA's goals. From the evidence turns out that, the Defendant 3 participated since 2007 on FRA's platform and it has a close collaboration with FRA.

The Defendant 2, at the same time he was observing the website Christofias-watch and realized that the website's articles were full of "hate speech, racism, threats of violence, libel and humiliation and general ethical and political destruction of those who supported the Bi-Communal

Bi-zonal Federation as the solution to the Cyprus Problem. Their hate was especially targeted towards those who publicly supported and voted “Yes” during the 2004 referendum that related to the Anan plan to solve the Cyprus Problem.” He presented various articles that had been posted on the website between 2009 and 2010. I have come to the conclusion that all of these articles are of political nature and have as a main topic the basis on which the Cyprus Problem will be solved, whereas two articles were focused on journalist Makarios Drousiotis. These articles express strong beliefs regarding political matters and in some of them rude characterizations are used.

Defendant 2 repeatedly and intensively criticized the fact that the Plaintiff had given an interview on this website on 13.01.2010, and instead of “condemning” this website, he “legalized” it. He also condemned the fact that the Plaintiff never condemned the systematic attack against journalist Makarios Drousiotis and the “... website’s racist views and hate speech against refugees and Muslims.” During the cross examination he was informed of the plaintiff’s statement on Phileletheros newspaper on 07.05.2010, evidence 12, in which the Plaintiff condemns the article that was posted on Christofias-Watch by unknown “R”. I quote the exact wording:” Regarding the content of the website, Christos Klerides said that it is someone’s stupid and extreme view , adding that it shouldn’t have been given any attention”. Defendant 2 answered that the above statement was not an “adequate statement” and it means to diminish the importance of violations rather than condemn them.

But beyond that, according to Defendant 2, the Plaintiff, as a public figure, "receives public criticism and comment". Orally, he stated that the role of the defendant 3, as an organization of "civil society", is to criticize the statements and actions of public figures. In this particular case, the Plaintiff was criticized for having a common position on the form of a solution to the Cyprus problem with the website Christofias – Watch.

Defendant 2 also testified that Defendant 1 had instructed him to draw up a text to be sent to all non-profit organizations on the FRA’s platform, in which Defendant 3 was concerned about the events taking place in the essential time and, if the other organizations agreed, to proceed collectively with a complaint to the FRA. The text in question was then drafted and sent to a "portion" of non-profit organizations that were members of the FRA’s platform or had substantial human rights action. The procedure adopted in this case, through the sending of a letter, a "draft", was a common practice among non-profit organizations. In such cases, there was an exchange of views to determine whether there was a common position on the issue that concerned them.

Defendant 3, always in accordance with Defendant 2, never sent the text in question to the FRA as it had been meanwhile filed a lawsuit against him and the other defendants. In view of this, no damage was done to the Plaintiff. During the cross-examination, it was submitted to Defendant 2 that the action was submitted several days after the dispatch of the disputed letter to the non-governmental organizations, ie on 20.05.2010 while the action was submitted on 25.05.2010. Defendant 2 insisted that the letter had not been sent to the FRA.

Defendant 2 was also shown the letter - exhibit 9, which was received by Mr. Loukis Loukaidis. I would like to remind that this is the letter sent by the FRA to Mr. L. Loukaidis, which acknowledges that the above organization received a letter from KISA regarding the plaintiffs. Defendant 2 did not dispute the sending of the above letter, but claimed that its content was probably "subliminal", by Mr. L. Loukaidis or by a third party. He insisted that Defendant 3 did not send the disputed letter to the FRA and in support of the position referred to the exhibit 34. Exhibit 34 is a letter on a letterhead of the

FRA signed by someone Michael O' Flaherty and was addressed to KISA. It has a date of 06.06.2018. I quote it as follows below:

“Subject: Your request for information of 04 May 2018

Dear Mr Papadopoulou,

«I am writing in reply to your email dated 04 May 2018. While refraining from partaking in the judicial proceedings described therein, the Agency has treated your enquiry within a framework of a public access to information.

In the said communication you are enquiring whether KISA sent in 2010, or at any time since then, to the FRA's Director or Management Board *“a formal complain against Mr Clerides or a request for an investigation and of his replacement from the FRA's Management Board”*.

Having checked our records, the Agency would like to confirm that, to best of our knowledge, no such formal complaint or request from KISA arrived to FRA's Director or Chair of the Management Board since 2010.

I would like to thank you for your interest in the Agency and its work.»

Defendant 1, who at the time was the Chairman of the Board of Directors of Defendant 3, also testified before the Court. Defendant 1 adopted what Defendant 2 stated and insisted, inter alia, that the disputed letter had not been sent to the FRA. He was cross-examined on how it had come to “Politis” newspaper notice, but he was unable to give a clear answer.

He was also cross-examined on the content of the letter in question and stated that the text was the decision of the Board of Directors of which he was chairing. He also stated that in the above letter he did not ask the FRA to fire the plaintiff. I quote the relevant report as follows:

"We did not ask the FRA to fire Mr. Clerides, we asked the NGOs, if they agree with us, to take this action clearly."

He went on to say that it was not their intention to hurt the Plaintiff, but if they wanted to do so, they would do so, as he put it, "publicity, campaign". At another stage, he called the Plaintiff a 'friend' and stressed that they did not want to hurt his good name. I quote the relevant report as follows:

‘...We do not want to hurt, nor do we want to hurt the good name of Mr. Clerides. I have nothing against him, and in fact he was my lawyer in the Supreme Court when I was at the University, I have nothing personally or my organization.’

At another stage of his cross-examination, he agreed with the position that the Plaintiff was a person interested in human rights and clarified that what he was criticized for was that *‘..as a representative of Cyprus in the FRA should have reacted differently to the blatant violations of the basic and fundamental human rights that were being violated that were violated by this website’*.

The Plaintiff's "fault" was, according to Defendant 1, that he had decided to act as a lawyer for the former Plaintiff 2, while he was a member of the FRA. In his view, in that particular case, the Plaintiff should have stated "that he was prevented" and not taken over the defense of that person.

In his written statement, which he adopted as part of his main examination, he stated, among other things, that at a meeting of the Board of Directors of Defendant 3, it was decided that the text in question should be sent to all non-governmental organizations. During his examination, he

differentiated his initial position and stated that it had not been sent to *all* the above organizations but was sent to those that had as their object human rights and were part of the FRA. He was unable to remember the names of these organizations or even their number and said he was unable to provide any information.

He also denied the allegations that the letter in question had been sent to FRA, but when he was shown exhibit 9, which was the letter that was received by FRA, he was not in a position to give an explanation and stated that "The issue needs to be investigated."

This was briefly the testimony before the Court.

EVALUATION OF EVIDENCE

I had the opportunity to watch the witnesses testify and to examine their statements. Evaluation of the evidence will not be limited to the individual judgment of the credibility of each individual witness, but where deemed necessary will be correlated, contrasted and investigated with the rest of the evidence and the objective nature of the positions on either side.¹ The assessment will focus on the allegations made by controversy as I find it unnecessary and pointless to expand on allegations that have not been challenged.

Starting with the plaintiff's testimony, I would first like to point out that the general picture I formed of his face was positive. His testimony was stable, he did not fall into any contradiction, and his credibility was not shaken at any stage during the cross-examination. Most of his testimony, as far as facts are concerned, has not been disputed by the Defense. The only point that was strongly disputed in relation to the facts cited by the plaintiff was his position that the disputed letter had been sent to the FRA. His cross-examination focused on issues such as whether the site Christofias-Watch cultivated hate speech or whether it was correct on his part, because of his involvement in the FRA to defend the former plaintiff 2, who had been linked to the site Christofias-Watch.

I find that the line of defense in the plaintiff's cross-examination in relation to his person is inconsistent with the testimony that was eventually presented. The defense aimed at demonstrating that he was a backward person with racist and fascist views, possessed of negative feelings towards Turkish Cypriots. Defendant 1, however, did not have this view. He openly and unequivocally expressed his appreciation for the plaintiff's face, did not hesitate to describe him as a "friend" and stated, among other things, that he had previously appointed him as his lawyer. At this point I should point out that defendant 2 did not have the same assessment of the plaintiff as defendant 1.

Defendant 2 tried unsuccessfully, in my view, to present the plaintiff as an anti-democratic individual with extreme and extremist positions, as a person who applauded "racist attitudes and hate speech against refugees and Muslims." The above statements do not support the evidence before the Court.

Defendant 2 strongly criticized the fact that the plaintiff on 13/01/2010 had given an interview to Christofias-Watch. Reference to the above interview is also made in the text in question, in a critical manner. I had the opportunity to read this interview, which was presented as an evidence and I did not see anything extreme or reprehensible in it. The plaintiff, in the above interview, expressed some positions regarding the solution of the Cypriot problem, which he supported with legal arguments. I can't understand why the applicant's action had to be so strongly commented on. Freedom of speech is the right of every citizen in a democracy that is one of his basic constitutional rights. The fact that

¹ Στυλιανίδης v. Χατζηπιέρας (1992) 1 AAD 1056 και Ευαγγέλου και Δημοκρατίας (2008) 2 AAD 371 και 378

the plaintiff's positions regarding the resolution of the Cypriot problem are not in line with the positions of Makarios Drousiotis or defendants 1 and 2 is not, of course, reprehensible. Every citizen has the right to freely express his views.

The plaintiff was severely criticized by the defendant 2 for the fact that he did not publicly condemn the articles published on the website Christofias-Watch. I am unable to understand in what capacity the plaintiff could take such action. The fact that the plaintiff is a public figure does not mean that he has a duty to judge and / or criticize the positions of third parties, even if he disagrees with them. I agree with the position put forward by the plaintiff that he has no obligation to "be a policeman for views, opinions and positions" published in the press. Nor is it expected of a public figure to be informed of all the articles published daily in the press and to comment on them. I vehemently reject the position of defendant 2 that if the plaintiff did not publicly condemn the articles posted on Christofias-Watch, this meant that he applauded them.

Regardless of the above, however, I find, based on the evidence that has been put before the Court and it has not been disputed, that by referring to an article published in the newspaper "Phileleftheros", on 07.05.2020, exhibit 12, page 8, he publicly criticized the article of allegedly as "Rigas" and did not hesitate to describe it as "nonsense and extreme position". This is a disparaging characterization, laconic but comprehensive.

Of course, the plaintiff's biggest "mistake", according to both defendants, was the fact that as a lawyer he defended the former plaintiff 2. I recall that the plaintiff defended the former plaintiff 2 in a case involving a violation of the constitutional rights of the latter and his wife. And in this case, I do not see anything wrong with this action. The fact that the plaintiff represented the Republic of Cyprus in the FRA did not prevent him from representing the former plaintiff 2 in defending his own constitutional rights or any person wishing to go to court either to claim his rights or to defend himself.

Both from the line of defense during the cross-examination of the plaintiff and from the testimony of the two defendants, but especially of the defendant 2, I formed the impression that the plaintiff's biggest "misstep" was that he had different positions from the journalist Makarios Drousiotis and them. themselves in relation to the solution of the Cypriot problem. This was the reason why both defendants expressed themselves in such a disparaging way about Christofias-Watch. The site often featured articles that, in their view, promoted "nationalist positions." I would like to point out that the notion that the two defendants attributed to the phrase "nationalist positions" was not what is given in dictionaries, that is, "patriotic positions". The defendants used the above phrase in the sense of "extremist and anti-democratic positions". Their disagreement over the positions expressed on this site for the resolution of the Cyprus problem was obviously the reason why they criticized the interview given by the plaintiff in Christofias-Watch and which, as I mentioned above, concerned the solution of the Cyprus problem. The different views they had on the solution of the Cyprus problem, their belief that the views expressed by the plaintiff and many others posted on the website Christofias-Watch in relation to this issue were wrong and extremist, I think was what prompted them to compile and publish the text in question.

Defendant 1 also testified in court that he did not want to harm the plaintiff and that he had never requested his dismissal from the FRA. I do not think it is appropriate to expand on this issue as I believe that this article speaks for itself. I would like to point out that the plaintiff is described in the publication as an inappropriate person to participate in the FRA, this in itself rejects the above positions of the defendant 1.

I now turn to the subject of the circulation of the text in question, and in particular whether it was sent to the FRA. It was the position of defendants 1 and 2 that the letter was never sent to the FRA. To support their position, they invoked the letter exhibit 34. I note that the letter, exhibit 34, was sent many years after the incident and is signed by a person for whom we do not know his position in the FRA or even whether he worked in the FRA during the disputed time. In addition, the content of the above letter is inconsistent with the letter received by Mr. Loukaidis on this issue during the disputed time, exhibit 9. I recall that in exhibit 9 it is recognized that the FRA received a letter from the KISA concerning the plaintiffs.

It was the position of defendant 2 that the content of the above letter, exhibit 9 was "subliminal" by Mr. L. Loukaidis or by a third party. He also claimed that he was the plaintiff who notified the text in question to the FRA. These positions do not make sense. I can't understand why the plaintiff had to disclose the content of the text in question to the FRA on his own, which was derogatory for his person, nor what reason he or Mr. L. Loukaidis would have had to point out to the FRA to write the specific letter, presumption 9. I will adopt the phrase used by the plaintiff himself, he had no reason to "take his eyes off himself".

Defendants 1 and 2 claimed that they had not finally sent the letter because they had in the meantime received the letter, dated 22.05.2010, from the plaintiff, warning them that he would take action against them. The above position does not convince me. Both defendant 1 and defendant 2 did not give me the picture of the individuals who would deviate from their target because the person concerned took legal action against him.

My above belief is reinforced by the actions that followed; the defendants not only did not apologize to the plaintiff for the publication in question, but continued to publicly criticize him for the specific incidents, while on 26.10.2010 they gave a press conference which had as its subject the specific issue.

Finally, I would like to point out that the decision to send the letter in question to the FRA regarding the actions of the plaintiff was taken by the Board of Directors of the Organization, ie the defendant 3. It is logically expected that in case of revocation of the above decision, that there was a relevant decision by the specific body, ie the Board of Directors of the Organization. No evidence has been brought before the Court that the above decision has been annulled by the above body or that any decision has been taken, even in an unofficial manner, such as that the text in question has not been forwarded to the FRA.

Taking into consideration all of the above, I have come to the conclusion that the letter in question had been sent to the FRA ,as it was decided by the Board of Directors of the defendant 3. According to the exhibit that has been presented to the Court it is not possible to accurately point out when the letter in question was sent. The only thing that can be accurately traced is that it had been sent before the date the letter regarding exhibit 9 was sent, which Mr. Loukaidis had received from the FRA before 02.08.2010.

It was the plaintiff's belief that the letter in question was sent by the defendants to hundreds of people. The evidence that has been presented to the Court does not support this claim. Defendants 1 and 2 recognized that the letter in question had been sent to non-governmental institutions, but they were not willing to reveal to which and how many institutions the letter was sent. The plaintiff did not present any evidence for the current matter. In light of the above, his claim that the letter was sent to "hundreds of people" is dismissed

At the same time I dismiss the defendants claim that the content of such letter was not shown to the general public. This statement is falsified by the fact that followed and particularly by the publishing of exhibits 13,14 and 16 in the newspaper «Politis» , which are mentioned above.

Legal Aspect and Conclusion

The Court regarding cases with such nature must balance between two basic principles, the freedom of expression and the right regarding the protection of reputation. The case of *Arktinos Publishing v. Papaefstathiou*² highlights the following:

“ The current position of the European Court of Human Rights is that it restricts one’s right regarding the protection of their reputation in favor of the freedom of expression, which the Court views as having a high value. In the case of **Lingens v. Austria, App. No. 9815/82 Ser. A, vol. 103 [1983] 8 E.H.H.R. 407** at para. 41 the Court came to the conclusion that the freedom of expression ,as it is safeguarded by the first paragraph of article 10, is one of the main foundations of a democratic society and one of the main requirements regarding its progress and ensuring citizen satisfaction. This freedom, with the restrictions listed in paragraph 2, is used not only regarding information and ideas that are perceived as values or at least as non threatening or indifferent but also to such information or ideas that are deemed as insulting, surprising or irritating. This is necessary in order to have pluralism, tolerance and acceptance, without which we cannot have a democratic society. However, as the E.C.H.R has pointed out, the freedom of expression can be restricted in order to protect a persons reputation according to paragraph 2 of article 10. This balance between these two rights has been examined in a series of cases by the E.C.H.R., according to which any restriction upon one right must be proportional and necessary for the protection of the other right.”

Another factor that is taken into consideration is that the plaintiff was during the time a public figure and regarding his position he should have been more tolerant towards criticism. The judgement in **Newspaper Apokalipsi and Konioti**³ is relevant.

Regarding whether the text in question was derogatory or not is a matter of fact and not a matter of law. A rightly thinking person can evaluate the published article during an objective examination of the words used whether it was defamatory or not. The standard whether an article is defamatory or not is measured regarding the impression it gives to the average citizen.⁴ In this particular case the plaintiff is presented in the text in question, in the first appendix is the letter that had been sent to non-governmental organizations, as a person who manages and promotes websites such as Christofias – Watch, a website that undermines democratic values and human rights and publishes death threats towards journalist Makarios Drousiotis. In the second appendix the plaintiff is presented as a person who publicly supports “extremist views and actions” of the ex- plaintiff 2, manager of the the website Christofias – watch. The aforementioned website, according to the defendants, encourages acts of violence and violation of human rights, even the right to life. I should mention that the Court did not find that the ex- plaintiff 2 had extremist views or that he performed extremist actions, I am just presenting the plaintiff’s views, as they are shown in the statement in question. In a different paragraph that follows, the plaintiff is given a very important role, that of representing the Republic of Cyprus against victims of human rights violations and that he and ex-plaintiff 2 had managed websites together on the internet that lead readers to ‘hatred” and encouraged acts of violence against people who have different views from their own.They manage the website Christofias –

² (2007) 1B A.A.Δ. 856

³ (2010) 1 A.A.Δ 1697

⁴ Εφημερίδα Αποκάλυψη και Κωνιώτη (above)

Watch. I conclude that the aforementioned statements in the whole of the statement in question, are harmful to the plaintiff's position and reputation.

The defendants in their defense claim that the published statement contains honestly and or rightly and or with good faith comments regarding general facts and or facts that regard the public interest, which had been published at the time that we are focusing on, before and or after that and which, had been repetitively been expressed in writing and or verbally by the plaintiff and or by the ex-plaintiff 2. They further claim that the publishing of the text in question was privileged.

The above is regulated by the article 19, paragraphs (b) and (c) of the Civil Offences Act, Cap. 148 .

19. In a lawsuit regarding libel it is accepted as a defense that:-

(α).....

(β) that the published statement for which the lawsuit was filed was a truthful; comment that is of public interest:

It is noted that when the defamatory publication is comprised on one part as claims regarding facts and on the other part as an expression of one's opinion, the defense of a honest comment cannot be dismissed for the only reason that it can not be proven that every claim or fact is true, if the expression of the opinion is a truthful comment after these claims are taken into consideration and can be proven.

It is also noted that the defense that is based on this paragraph will not be successful if the plaintiff can prove that the publishing was not done in good faith according to paragraph (2) of article 21 of this Law.

(c) that the publishing of the defamatory statement was confidential according to articles 20 and 21

The first thing that I will refer to is the Defense's claim that the publication in question is an honest comment. With the basis of the above legislation, which encodes case law findings, in order to plead the defense of having an honest comment:

- a. The publication in question must be comprised of opinion or comments and not cite facts.
- b. The comment must have been done honestly, and not in the absence of good faith.
- c. The publication in question must be of public interest.

Starting with our last requirement, I believe that the choice of person who will represent Cyprus at the FRA ,and especially if they are capable or not to have this post is a matter of public interest and therefore the current case facts meets this requirement.

I am now going to examine the first requirement that has to do with the publication in question being comprised of opinions and comments and not of facts. The following statement from **RIK και XXX Kapsos**⁵ is helpful in order to determine the difference between comments and facts.

⁵ (2009) 1 B A.A.Δ. 1175

“In the well known English case Reynolds v. Times newspaper Ltd and others [1999] 4 All E.R. 609, the House of Lords highlighted the following regarding the defense based on an honest comment on page 615 (L. Nicholls).:

“It is important to keep in mind that this defense is concerned with the protection of comment, not imputation of fact. If the imputation is one of fact, a ground of defense must be sought elsewhere. Further, to be within this defense the comment must be recognizable as a comment, as distinct from an imputation of fact.”

Therefore the defense of the honest comment can be used to cover cases where comments and opinions are published, and not that of attributing a fact to the person who has been defamed. The Court in the case of Hunt v. Star Newspaper Co. Ltd [1908] 2 K.B. 319 has correctly distinguished that a comment must, in order to be viewed as fair or honest, must be presented as a comment and it should not be so mixed up with the facts that the readers cannot distinguish if it is a report or a comments. The same view is held in Gatley on Libel and slander, 6th edition, para 705, which highlights that a defamatory statement of a fact cannot be interpreted as a comment, nor an opinion, nor as criticism. Claiming or attributing a fact is when someone is attributed to have done an act or power, whereas a comment is the characterization of such act as disgusting or dishonest and so on. The above views have been adopted repeatedly in case law among Cypriot Courts. (Example: Εταιρεία Δημοσιογραφική Χ.Λ.Σ. Λτδ κ.α. v. Φιλίππου (άλλως Φαλκονέτσι) (1998) 1 (B) A.A.Δ. 958) “

As I have mentioned in the above, in the text in question the plaintiff is presented as the manager of the website Christofias _ Watch, a website that undermines democratic values and human rights and makes threats against journalist Makarios Drousiotis’s life. He is also presented as a person who publicly encourages “extremist views and actions” of the ex-plaintiff 2, manager of the website Christofias – watch. The aforementioned website according to the published statement is encourages acts of violence and the violation of human rights, even the right to life. In a different paragraph, the plaintiff is being presented to be managing together with the ex-plaintiff 2 websites that cultivate hatred to their viewers and encourage the use of violent acts against people who have different views from their own. All the above are, in my opinion, facts and not comments.

Moreover, I have noticed that these facts are not true. In order to claim defense of an honest comment it is not necessary for that comment to be completely accurate or correct but “the facts upon which the comment had been made must be essentially true”. The case in **Drousiotis and Papadopoulos**⁶ is relevant

In the current case, the facts not only are not essentially true but also are false. The plaintiff was not the administrator of this website, he had nothing to do with the website in question, neither did he care to promote any website, and at the same time regarding the case he holds the role of a lawyer. I just remind that the plaintiff during that time was representing ex-plaintiff 2 in legal proceedings that had to do with an unlawful search in the ex- plaintiff’s 2 house, the confiscation of his personal computer and for locking of his contacts.

The defendant’s claims were not only dishonest but were also very carefully selective. They chose to connect the plaintiff, for their own reasons, with the article that was written by an unknown “R” that turns against journalist Makarios Drousiotis which was posted on the website Christofias – Watch, but they forgot to take into consideration and mention it in the text in question the fact that the plaintiff

⁶ (2012) 1 A.A.Δ. 102

not only did not applaud the unknown “R” journalist’s views, but he also condemned the article saying that it was “silly”. The defendants knew this. I feel the need to remind you that the article written by unknown journalist “R”, that goes against journalist Makarios Drousiotis, was the article that inspired the defendants to write and publish their own statement. This resulted into creating a false image regarding the plaintiff’s person. In such cases where facts are missing from published statements, these statements cannot be perceived as honest. The English case of *Branson v. Bower (No.2)*⁷ is relevant.

The next requirement I will examine is whether the text was privileged. The Defence claims that the text in question is the result of privileged commenting and is “an expression of the freedom of expression of defendant 3 because of its responsibilities and obligations as a result of their collaboration with the FRA namely as an observer and commenter of such behaviors and for the purposes of this nongovernmental organization.” The defense of qualified privilege is stated in article 21 of the Legislation, Cap. 148, which I quote for ease of access.

21...-(1) the publication of a defamatory post is classified under the reservation that it had been done under good faith, in the following cases:

(a) if the relationship between the person from which and the person towards which the publication was made is such as to give the person who published the text to do so under a legal, ethical or social duty towards the person who received the publication and that person has the same interest in receiving that publication or the person who published it personally has legal interest and which needs to be protected, and the person which is publication was made about has the same legal, ethical or social duty to protect such interest.

It is understood that the publication must not exceed the necessary length and essence that is needed under such circumstances.

(b) if the publication is a reproach from one person against someone else’s behavior, regarding any matter in which the first person has authority either under contract or in any other way towards the other person or regarding the other person’s character in the way it is portrayed in any such behavior.

(c) if the publication is a complaint or accusation from a person towards another person in regards to their behavior in regard to any matter, or in regard to their character to the extent that this is visible in their behavior, which was done to a person who has authority , contractual or otherwise, which was done towards a person who has authority based on legislation to examine such behavior or to receive complaints regarding this matter or such behavior.

(d) if the publication is done in order to protect human rights or the interest of the person who made the publication, or a third person for which the publisher has interest.

(e) If the publication is an objective and exact report of what has been said, done or published in any lawmaking body that could be formed in the future.”

This particularly defense is based on the general principle that the public convenience is more important than private interests, under the concept of “ statements, reports and publications

⁷ (2001) QB 737

along the line of certain relations will have to have a high level of protection with the purpose of promoting the freedom of expression and publication of information.”⁸

I will quote an abstract from the relevant English judgement in *Henwood v. Harrison*⁹, which is one of the basic common law judgements for this matter.

“The principle on which these cases are founded is a universal one, that the public convenience is to be preferred to private interests and that communications which the interests of society require to be unfettered may freely be made by persons acting honestly without actual malice notwithstanding that they involve relevant comments condemnatory of individuals.”

Taking into consideration that both the FRA and the defendant 3 were founded with the purpose to protect human rights and that the plaintiff represented Cyprus at the FRA, in my judgement that the publication that was sent to the FRA could fall into one of the categories listed in article 21 and particularly in the paragraphs (a),(b) and (c) and could be deemed as confidential, under the requirement that it was done in good faith. Paragraph 2 of article 21 lists in detail all the cases, which are considered to have published defamatory text and have not been done in good faith. I will quote the paragraph underneath;

(2) The publishing of defamatory publications cannot be deemed to have been done with good faith from a person as is perceived by the meaning given by paragraph (1), of this article, if it is proven that:

(a) The publication is untrue, and the publisher did not believe it to be true or

(b) The publication was untrue and the publisher did not show the reasonable amount of care to find if the statement is true or not or

(c) By publishing the publication, they acted in such a way as to harm the person who is being defamed in a serious way or in a way that is seriously different from that of a reasonable person for the public interest or for the protection of a private right or interest concerning deserving privilege.

In this case, the facts, as are stated in the text in question, are as I had previously stated untrue. The plaintiff had no relation with the website Christofias – Watch and with the article that went against journalist Drousiotis. He never adopted, or encouraged it, on the contrary he publicly called it “silly and extreme statements”. The above facts were known to the defendants. The defendants in their text in question linked the plaintiff with the article of “P” the unknown writer and with the acts both associated with the ex-plaintiff 2, in relation to the website Christofias – Watch, whereas the only thing he did was to represent him as his lawyer and defend his fundamental constitutional rights. In the text in question the plaintiff is also presented as a person who manages webpages on the internet that “incite to hatred and encourage to violence against persons with a different opinion than their own!”. It is a false statement. As I have mentioned in the above the basic ‘mistake’ the plaintiff had made, according to the defendant’s testimony, and what led them to write that publication was that he had different views than those of journalist Makarios Drousiotis and their own regarding the solution to the Cyprus Problem. However, it is never mentioned in the publication that their dislike towards him stems from this reason.

⁸ Abstract from the textbook «Η ΔΥΣΦΗΜΙΣΗ»(“THE DEFAMATION”), P. Polyviou, page 213

⁹ (1872) L.R. 7 C.P. 606

Having taken into consideration all of the above I have come to the conclusion that the defendants did not act in good faith, but that all of their actions had as a purpose to undermine the plaintiff.

Having taken into consideration all of the above I have concluded that the text in question is defamatory and that the defenses being called by the defendants cannot be applied in this particular case.

I will now turn my attention to the matter of damages. The calculation of damages in cases that involve libel depends on the plaintiff's behavior, his position in society, the nature of the libel he was subject to and the mode and extent of such publication. The defendants' behavior from the time of publication until the issues of a verdict is also taken into consideration. The withdrawal of the text in question or apologizing to the plaintiff are both seen as factors that are taken into account. The following abstract from Gatley on Libel¹⁰ is relevant:

«...The jury is entitled to take into their consideration the conduct of the plaintiff, his position and standing, the nature of the libel, the mode and extent of publication, the absence of refusal of any retraction or apology, and the conduct of the defendant from the time when the libel was published down to the verdict».

The plaintiff's right to be awarded damages is created when a civil offence is committed. These damages are calculated according to the leading case law that exists on the day of the verdict. Such damages must be reasonable, that is to find support objectively in the social aspect. As Judge Nikolatos said in the case XXX Hadjipanayiotou and XXX Drousioti¹¹:

« Damages are a primary remedy in cases of libel. The purpose of awarding damages is to restore the plaintiff from the result of a defamatory statement. General damages, in the case of libel, serve three main purposes: (a) to provide a remedy for the plaintiff who has been harmed by the publishing of such a defamatory statement, (b) the restoration of damage that has been done to the plaintiff's fame, and (c) to ensure justice. The calculation of damages in libel cases cannot be attributed to certain mathematical equations. The Court must take into account all relevant factors, among which are, the plaintiff's conduct, his position and reputation, the nature of the libel, the mode and extent of publication, the absence or refusal from the defendant to apologize and to restore the plaintiff's fame and the defendant's conduct from the time of publication to the day of the verdict.»

During the calculation of damages in our current case, I took into consideration the plaintiff's reputation, fame and place in society, the content and the circumstances in which this certain publication was made, the damage that this publication had done and the defamation it has caused to the plaintiff's reputation, the level of publication, i should remind you that the letter was sent to an unknown number of non- governmental organizations and to the FRA and it became known to the public due to publications and demonstrations the defendants held and organized , as I have explained in the above. At this point I should clarify that the fact that articles had been published in the Politis newspaper had been taken into consideration by the Court when dismissing the defendants' claim that the publication had only been sent to non-governmental organizations, it will not be taken into consideration for calculating damages since

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¹¹ (2009) 1B A.A.Δ. 1321

the plaintiff has already been awarded damages related to these articles and he cannot be awarded a second time for the same articles twice.

In calculating damages I have also taken into account that the plaintiff had repeatedly requested from the defendants to apologize, a factor that will moderate the amount he will receive in compensation, however they refused to do so. In essence, the only thing the plaintiff wanted from the defendants, even during trial, was a simple apology.

Looking at the evidence given to me during the trial, I have concluded that the amount of €10.000 is a reasonable and fair compensation for the defamation the plaintiff had suffered. Regarding the plaintiff's request to the Court to impose punitive damages and/or exemplary damages, it is noted that the defendants' malicious intent is taken into account for the calculation of general damages and I cannot conclude that any other exceptional reason exists which would justify the award of such damages.

The request for special damages which was not advocated further has also been dismissed.

A verdict is issued in favor of the plaintiff and against the defendants 1, 2 and 3 jointly and or separately for the sum of €10.000, plus legal interest on this amount from the date the lawsuit was submitted till the date the amount is repaid, as well as expenses on the scale of their success as they will be calculated by the Registrar and will be approved by the Court.

(Signature).....

T. Paraskevoidou- Karakanna

True copy

REGISTRAR