

## **POLMOOT CLAIMANT MEMORIAL**

### INTRODUCTION

Your Honours, my name is Oskar Urban and this is my co-council Małgosia Phan in the present dispute we are representing the claimant Fred Johns in his appeal to the European Court of Human Rights against the Republic of Zeeland.

### STATEMENT OF FACTS

- Fred Jones is an influencer and environmental activist.
  - He occasionally partakes in recreational usage of marihuana
- Velma Dinkley is a journalist for the Republican Journal
  - She is known to have an anti-aristocratic bias
- Fred Jones has been followed for multiple days by the journalist Velma Dinkley
- Velma Dinkley has filmed and photographed Fred Jones in multiple private settings and published said material on social media and the internet

### **PURPOSE OF APPEAL**

Your Honors, the purpose of the claimant's appeal is the awarding of damages from the Republic of Zeeland for failure to sanction hostile behaviour, which exceeded the realms of reasonable journalism by representatives of the Republican Journal, and thus violating our clients right to private and family life as guaranteed to him by art. 8 of the European Convention of Human Rights.

### **Arguments on Jurisdiction**

As per art 34, ECHR states:

“The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention”

In the present case the person is Fred Jones and the infringer is the Republic of Zeeland.

The limitations of admissibility are set out in art. 35

*“the court may only deal with the matter after all domestic remedies have been exhausted”*

As the case file provides no information upon the legal system of the Republic of Zeeland it is impossible to assess if all domestic remedies have been attempted, thus this shall not constitute grounds for dismissal.

### **ARGUMENTS ON MERIT**

Your Honours, now that we have established the admissibility of the case to the court we can move on to its merits:

The case before us rests on the balance between two articles of the Convention: on the one hand art. 8 guaranteeing everyone the right for private and family life and on the other art. 10 establishing the freedom of expression.

If it may please the court I shall quote the relevant part of the articles:

#### *ARTICLE 8*

##### *Right to respect for private and family life*

- 1. Everyone has the right to respect for **his private and family life**, his home and his correspondence.*
- 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society, for the protection of the rights and freedoms of others.*

Thus as we can observe that although art. 8 firmly establishes a universal right to privacy, that right however is not absolute. In this case the allowed interference shall be understood as The Republic of Zeeland not sanctioning the actions of the Republican Journal under the

justification of preserving freedom of speech in a democratic society, as guaranteed in art 10 which shall now be presented:

*ARTICLE 10*

*Freedom of expression*

- 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.*
- 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, and for the protection of the reputation or rights of others.*

Thus the right to freedom of speech and the freedom to impart information as the right to privacy, is not absolute, with the protection of reputation explicitly mentioned as one of the instances where speech may not be protected.

To determine whether in the present case the freedoms guaranteed in art 10 outweigh the protections of art 8 a careful analysis of established case law is required.

The decision of this court in the case *TIMES NEWSPAPER v. THE UNITED KINGDOM* (a case between the same type of applicants and on a similar subject matter) establishes that “The leading case on the defence of qualified privilege [EXPLAIN QUALIFIED PRIVILEGE] is *Reynolds v Times Newspapers*”; as we are to establish whether the statements made in the *Republican Journal* by *Velma Dinkley* fall under qualified privilege and thus are exempt from the protections of art 8 of the convention we shall analyse the the ruling of this case.

*Reynolds v Times Newspapers* sets out 2 independent conditions for qualified privilege to be binding; if it may please the court the council shall quote the relevant part of the ruling:

*“The court is concerned to assess whether the information was of sufficient value to the public that, in the public interest, it should be protected by privilege **in the absence of malice** (ZŁA WOLA).”*

Thus the two conditions required for privilege of imparted information to be established is:

- 1) That the information is of sufficient value to the public that it is in the public interest for it to be protected.
- 2) The absence of malice in the production of said information.

Not fulfilling either one is grounds to invalidate privilege, in the present case it is the council for claimants firm view that neither were fulfilled.

The absence of malice claim shall be adjudicated first:

As per the case file we are aware that the journalist in question has a firm and established bias against all members of the aristocracy:

*“Her journalistic investigations often revolve around proving that the nobility cannot do any good for the society”*

We know that Velma has targeted Fred for his class identity as it is stated that she in fact supports the merits of what he is doing:

*“Velma is a strong supporter of introducing rights for environment”*

She thus targeted him for who he is and not what he does, and what is more, she did it with her mind made up, she had an established view that Fred was in the wrong and whatever he did could not change her mind, she did not pursue truth about our client she just pursued whatever looked like a justification for her claims, completely abandoning the spirit of honest, investigative journalism.

Citing further from the case Reynolds v. Times newspapers:

*“The motive with which the statement was made is crucial. If desire to injure was the dominant motive the privilege is lost. Similarly, if the maker of the statement did not believe the statement to be true, or if he made the statement recklessly, without considering or caring whether it was true or not.”*

Velma Dinkley had indeed no regard for whether her statements are true or not as evident by the case file when it talks about her perception of his smoking habits:

*“Velma doesn’t know a lot about marijuana, but who knows if it’s environmentally friendly to smoke anything? It must produce toxic substances!”*

She exhibits ambivalence towards the truth as her true intention is to harm the reputation of Fred Jones not critique his actions on their merits.

In conclusion of this argument it is more than clear that **both malice and ambivalence for the truth, both of which are considered in the law, clearly were present** in the reporting and investigation carried out by Velma Dinkley and thus the public information she reported is not protected by privilege as established by Reynolds v Times Newspapers in conjunction with TIMES NEWSPAPER v. THE UNITED KINGDOM.

Even if, *par impossible*, the court decides that the lack of privilege on the basis of the existence of malice is not valid, the second condition necessary for the fulfilment of the criteria of existence of qualified privilege that is:

*“That the information is of sufficient value to the public that, in is in the public interest for it to be protected”*

Which is assessed as per the case law of *Reynolds v. Times newspapers* on the bases of the so-called Reynolds Factors which the council shall now quote:

1. The seriousness of the allegation.
2. The nature of the information, and the extent to which the subject-matter is a matter of public concern.
3. The source of the information.
4. The steps taken to verify the information.
5. The status of the information.
6. The urgency of the matter.
7. Whether comment was sought from the plaintiff.
8. Whether the article contained the gist of the plaintiff's side of the story.
9. The tone of the article.
10. The circumstances of the publication, including the timing

Velma Dinkley, fundamentally made 3 major accusations which are erroneous to various extents about the claimant:

- 1) He is a drug dealer,
- 2) He bribed a public official,
- 3) He is socially irresponsible,

While the 3 allegations may hold some merit the first two clearly do not fulfil the Reynolds Factors as:

- 1) The allegations made (of bribery and drug dealing) are of the utmost seriousness thus placing upon her a responsibility to verify or at least attempt to verify the disseminated information which she did not do. This obligation is a consequence of what has been established by the case law of the court (AXEL SPRINGER AG v. GERMANY JUDGMENT) and the Reynolds Factors:

“freedom of expression carries with it “duties and responsibilities”, which also apply to the media even with respect to matters of serious public concern. These duties and responsibilities are liable to assume significance when there is a question of attacking the reputation of a named individual”

- 2) Furthermore the work of Velma Dinkley further fails to meet the requirements of the Reynolds factors as:
  - a) No comment was sought from the accused
  - b) The inflammatory nature of the publication, being a one sided story without room for nuanced interpretation
  - c) The source of the information being a known anti-aristocrate with a known and established bias against said social group to which the claimant belonged.

Ultimately the decision upon analysis of these factors is is up to you, your Honours to decide whether the claims made by Velma Dinkley and published by The Republican Journal violate are protected by qualified privilege:

“The decision on whether, having regard to the admitted or proved facts, the publication was subject to qualified privilege is a matter for the judge" as per Reynolds v. Times newspapers.

However as established by the council for claimant, non negligible errors, biases, and infringements of the conditions of the Reynold Factors have occurred strongly supporting the notion that qualified privilege in this case should not protect the infringements on the right to private life of the claimant.

In conclusion of this line of arguments the council for claimant has proven on 2 separate and independent accounts that in the present dispute it is in fact the right to private and family life guaranteed under art. 8 of the Convention which trumps the right to free expression under art 10 as the expression in question violated and harmed the reputation of the claimant whiles at the same time not being protected by qualified privilege. It was not protected as the publication was:

- 1) Malicious
- 2) Violated the standards of honest and fair journalism laid out in the Reynolds Factors

Before closing it is of the upmost importance to mention that just because some of the information imparted by the Republican Journal was or could have been true this does not mean that the video-article as a whole is not defamation as it would indeed be inconceivable

if one was able to hide false and slanderous information by just mixing it with something which may be true.

### **CLOSING SPEECH**

Your Honor let us establish the fundamentals of this case:

Does the press have a key role to play in a democratic society undoubtedly, does investigative journalism have a key role to play in a democratic society, undoubtedly a crucial crucial role;

however what has no place and should have no place in a democratic society is the abuse of privileges that one enjoys when exercising her duties as a journalist; journalists are not above the law they have a clear duty as established by the case law, for honesty, fairness and integrity, and they do not have a free pass to operate under malice.

In this case that is exactly what happened the journalist in question used her badge and the privilege of qualified privilege that usually comes with it to publish a hit piece against our client, as we know the journalist in question has a history of being anti-aristocratic she has a conviction that the aristocracy can never never never do anything good. She has a personal vendetta against all members of the aristocracy, including Mr. Jones from the outset she came in with her mind set the verdict had already been reached in her head. She didn't seek the truth but the material that cooperated her story, or which merely looked as if it cooperated her story, so she stocked Mr. Jones weeks.

The journalist in question has an established history of malice. She stocked our client for days, and eventually she did not produce anything resembling a piece of reporting, but a hateful hit piece. Nothing more as the publication was created under malice it is not protected by qualified privilege, and thus is in fact, a breach of the right to privacy guaranteed to Mr. Jones, under article 8 of the convention.