

POLMOOT RESPONDENT MEMORIAL

Your Honours, esteemed judges, and respected members of this court, I, Ha Ngan Phan representing the Counsel for the Respondent, stand before this honourable court to defend the Republic of Zeeland and present our case on behalf of our client. The Counsel for the Respondent is confident that this honourable court will make a fair decision upholding the principles of our society - protect the integrity of our democratic institutions, safeguard freedom of expression, and allow journalists like Velma Dinkley to scrutinise those in power and the public sphere. Let the Counsel however first define what the terms used by the respondent mean in this context:

- Public interest - encompasses matters of significant concern or impact that affect the well-being of citizens and the community, attracting the attention and legitimate interest of the public.
- Qualified privilege - refers to the the rights of journalists and ordinary privilege to impart and spread information without fear of litigation

We can undoubtedly state that Mr. Fred Jones, being related to the noble family from the Republic of Zeeland, as well as famous environmental activist and content creator with a large following numbering in the hundreds of thousands, operating in the public domain, can be described as a public figure in this context.

We ask that this court carefully consider the evidence presented and reject the appeal of the claimant either on grounds of **inadmissibility** or due to **lack of merits**.

ARGUMENTS ON JURISDICTION

Firstly, the Counsel would like to outline that this case should be inadmissible to this court. According to the Covenant of the ECtHR, for the Court to have jurisdiction over a matter, it has to fulfil all of the criteria of art.34 and art.35 of ECHR. While art. 34 is satisfied, art. 35 is not.

Art 35 §1

“The Court may only deal with the matter after all domestic remedies have been exhausted”

In this case, Mr. Jones only filed a case within the District Court, and did not appeal to domestic courts of higher instances. As such, this does not follow the criteria set by the ECHR, and therefore proves that the Court has no jurisdiction over the matter, seeing as Mr. Jones did not first try to solve the dispute within the bounds of the legal system of the republic of Zeeland.

ARGUMENTS ON MERIT

However, if this Court still wishes to proceed with the case, then the Counsel for the Respondent shall also gladly move on to the merits based argument on behalf of the Republic of Zeeland.

The Counsel would now also like to recall art.8 of ECHR. There is no denying, that everyone has the right to respect for his private and family life, however we should take into account subclause (2) in the article, which states:

“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”

Thus, Art, 8 firmly establishes a universal right of privacy, that right however is not absolute.

With the legislation setting up the condition under which the right to privacy can be undermined; that is:

- If it is in accordance with the law and necessary in a democratic society

Thus we shall now analyse if despite the fact that the Republic of Zeeland did not sanction the publication in the Republican Journal it still acted in accordance with the law and in a cause necessary in a democratic society.

To assess whether speech infringing on an individual's reputation is protected by law we must establish whether it had qualified privilege, in that pursuit an analysis of the case law is necessary. We shall base this analysis on the case of Reynolds v. Times newspapers which is established as a leading case in adjudicating qualified privilege by *TIMES NEWSPAPER LTD (NO. 1) v. THE UNITED KINGDOM*. Thus quoting from the Reynolds decision:

“Whenever a matter is such as to affect people at large, so that they may be legitimately interested in, or concerned at, what is going on; or what may happen to them or others; then it is a matter of public interest on which everyone is entitled to make fair comment.”

Furthermore the decision also states that:

“When the [public] interest is of sufficient importance to outweigh the need to protect reputation, the occasion is regarded as privileged.”

In the present dispute the actions involved clearly satisfy criteria mentioned in both extracts those being:

- 1) A matter affecting people at large
- 2) Public interest is of sufficient importance

As [EXPLAIN FUNDAMENTAL CHANGE TO LEGAL SYSTEM OF THE RIGHTS FOR TREES]

Furthermore the allegations raised by Velma Dinkley are undeniably and evidently reasonable suspicions as recounting the basics of the meeting between [READ OR EXPLAIN]: A environmental rights activist Mr. Johnes and a the most anti-environment law-maker Mr. Rogers, which in itself would have been newsworthy, but during that meeting an exchange of an envelope with unknown contents occurred after which the anti-environment law maker suddenly switched his vote and voted for the rights of trees to be guaranteed. Something completely not in line with his established political inclinations.

Furthermore, the Counsel would like to mention that as a public figure, Mr. Jones is inclined to accept more restricted right of privacy, as the ruling of the case of von Hannover v. Germany stated:

- 1) *“public figures must recognise that the position they occupy in society – in many cases by choice – automatically entails increased pressure on their privacy.’ ”*
 - 2) *“Certain facts relating to the private lives of public figures, particularly politicians, may indeed be of interest to citizens, and it may therefore be legitimate for readers, who are also voters, to be informed of those facts.’”*
 - 3) *‘A“ distinction had to be drawn between political figures, public figures and ordinary individuals. Whilst the latter enjoyed the greatest protection of the three groups, political figures could expect only a small degree of protection from media reports about themselves.’*
- Meaning, that Mr. Jones choosing to be a more prominent public figure by establishing himself as an environmental activist and content creator, is supposed to recognize that he will not have the same degree of protection from media as ordinary citizens. Furthermore, this proves that additional information with regarding politicians, shall be indeed be of interest to citizens, as readers, which are voters, have the right to know.”

Moving on to further argumentation, the Court has previously ruled in AXEL SPRINGER AG v. GERMANY that:

“Article 8 (right to privacy) cannot be relied on in order to complain of a loss of reputation which is the foreseeable consequence of one’s own actions”

Fred Jones was involved in morally and socially questionable activities, like growing and publicly smoking marijuana, fully voluntary. The Republican Journal published the video article and disclosed personal information because of the newsworthiness of Fred's choices. The Republic of Zeeland is not accountable for the alleged violation of Fred's right to privacy under Article 8 of the ECHR as the Republican Journal as a public watchdog and the biggest journal in Zeeland had every right to publish material it considered should be in the public domin, and it is necessary to stress that the video-essay was a facts based production, which yes contained some accusations but ultimately always differentiated between what was

established fact and what is speculation, thus the claimant has no right to seek damages for an a loss of reputation which was the result of his doing and his doing only.

The Counsel would now like to provide legal justification of the publication of materials gathered by the Republican Journal.

Art. 10 (1) of the ECHR

“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.”

This means that the Republican Journal has a firm right to spread information, exercising its freedom of expression. With that, the Republic of Zeeland, a public authority, could not have interfered with the publications made by the Journal, and actually would have violated art. 10 of ECHR if it did so. The protection of freedom of expression, as enshrined in Article 10 of the European Convention on Human Rights (ECHR), affirms the right of the Republican Journal to engage in reporting on matters of public interest and contribute to public discourse as a reputable journalistic platform. In this case, the actions of the Republican Journal can be justified as serving the public interest by shedding light on the behaviour of Fred Jones, a well-known public figure, and raising valid concerns about the morality of his actions.

The Counsel for the Respondent would now like to recall the Court’s judgement in the case of Axel Springer AG v. Germany, a case which concerns the violation of art. 10, freedom of expression. Axel Springer, a large public newspaper, whose such right was taken away, after the respondent State suppressed two articles published on a public figure with a drug-related offence. In that case, the court has specifically stated that

“Journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation. Furthermore, it is not for the Court, any more than it is for the national courts, to substitute its own views for those of the press as to what techniques of reporting should be adopted in a particular case”

Lawfully justifying that:

1. articles published by the Republican Journal could have within them a degree of speculations and some exaggeration; [EXPLAIN THAT IN THIS CASE THE DEGREE OF SPECULATION WAS REASONABLE]
2. It is not for this court or any national court to decide how the media shall conduct its function as a public watchdog.

Now at this point of is is prudent to analyses one by one the accusations and statements made by journalist Velma Dinkley in her investigative reporting to finally assess whether they fell in the realms of reasonable journalism:

She fundamentally made 3 statements which shall now be analysed:

- 1) She stated the fact that he smoked marihuana next to a primary school [EXPLAIN - CAN'T ARGUE WITH THAT]
- 2) That he **might** be a drug dealer given the documentation of cannabis crops in his apartment [EXPLAIN - JUST AN SPECULATION - AS SHE WAS ENTITLED + WE DON'T EVEN KNOW IF IT IS CRIMINAL IN ZEELAND TO BE A DEALER]
- 3) That he **might have** bribed the minister given that after he gave him an envelope he changed his mind in a major way [EXPLAIN - AS BEFORE FULLY REASONABLE ASSUMPTION UNDER THE CIRCUMSTANCES]

OPTIONAL RESPONSE TO ART 14

Furthermore, the allegation of a violation of Article 14 of the European Convention on Human Rights (ECHR) by the Respondent lacks foundation. The discrimination claims made by the plaintiff are speculative and lack evidentiary support. The absence of tolerance for LGBT individuals in Zeeland is irrelevant to the case before us. Article 14 (claims of discrimination) is the sort of provision in the convention which is applicable only in conjunction with another article which opposing counsel has not proven. Even if the decision of the lower court was in part influenced by the status of LGBT individuals in Zeeland this does not automatically make the decision discriminatory as the primary purpose of the court was not the punishment of the sexual orientation of the individual in this case Fred Johnes but

affirming the right to expose the truth by journalists in the course of their journalistic profession.

In brief your honour, the for the claim that discrimination was valid grounds to grant damages the following would have to be true:

Everything remains the same Mr. Johnes meets with the minister in a private almost intimate manor in a uptown restaurant, Mr. Jones still gives the minister a suspicious envelope with unknown contents and the next day the minister also miraculously radically switches how he votes, THE ONLY DIFFERENCE would be that now the minister was a woman, thus not violating the social stigmas present in Zeeland.

I ask you, Your Honour would Velma Dinkley in this case assume all was good and not publish her article?

Of course she would still go ahead and publish it as this case is not and was never about the sexuality of the claimant but about the people's right to know. Thus there is no legal basis to support the claim of a violation of Mr. Jones' rights under Article 14 of the ECHR.

SUMMARY OF ARG:

- 1) Violation of privacy necessary in a democratic society, matter of public interest
- 2) Art 8 cannot protect from reputation loss that is one's own doing
- 3) The press have a right to a degree of speculation and exaggeration
- 4) It is not for this court to judge the journalistic methods of obtaining information
- 5) All the statements and accusation were fully reasonable under the circumstances
- 6) [discrimination not a valid claim]

CLOSING SPEECH

Your honour fundamentally this case is the balancing act and evaluation of whether under the convention, in the present case, privacy trumps freedom of speech or freedom of speech trumps privacy. And were it not for the fact that Mr. Jones is a public figure he would have probably been right in his accusations against Zeeland, but... he is not a private citizen, he is

a widely known public figure with an established influence on politics. And in such a case the public has a right to know, even if that means that the public figure must give up some of his privacy. How can it be fair in a democratic society for the people not to know how policy decisions are made, should the people not know that those who preach one thing in the public sphere act in a completely different manner when not in the spotlight?

Fundamentally your honour - THE PEOPLE HAVE A RIGHT TO KNOW, the people have a right to know and they have a right to speak or even shout without fear if they see injustice, corruption or hypocrisy; because if they don't then what are we if not a DICTATORSHIP in disguise.

The publication of the video article by Velma Dinkley and its subsequent dissemination across social media platforms was not an act of defamation, but rather an exercise of journalistic freedom in the pursuit of truth. The content presented in the video, while perhaps provocative and controversial, was rooted in the public interest, shedding light on Fred's actions, associations, and their potential impact on politics and his activism.

The national court's decision to reject Fred Jones' claim was well-founded, recognizing the importance of protecting the freedom of expression of journalists and the public's right to be informed. Any limitation on the media's ability to question, investigate, and report on matters of public interest would undermine the core principles of transparency and accountability upon which our society rests.

Acting upon this information we respectfully petition the court to reject the motion of the claimant in its entirety.