

IN THE NAME OF THE REPUBLIC

The Civil College of the Supreme Court, composed of the members of the Supreme Court:

Ervin PUPE - Chairman
Albana BOKSI - Member
Sandr SIMONI - Member

On 12.05.2021, he took into consideration in the counseling room the civil case with No. 11118-00223-00-2015 of Reg. Fundamental, belonging to the parties:

PLAINTIFF: Genc Pollo.

RESPONDENT: Taulant Balla.

OBJECT: Compensation for non-contractual damage in the amount of 1,000,000 (a million) ALL.

LEGAL BASIS: Articles 31/1, 32/a, 34, 154/a of the Civil Code; articles 608, 609, 625/a and 640 of K.Civil; articles 3, 17, 18/1 and 42/2 of the Constitution; ARTICLE 10 of the European Convention on Human Rights.

HIGH COURT CIVIL COLLEGE

After hearing the report of Judge Ervin Pupe and discussing the case in its entirety in the advisory room,

NOTES:

I. Circumstances of the Case

1. The Court of the Judicial District of Tirana has been set in motion for the start of the judicial process on the lawsuit filed by the plaintiff Genc Pollo with the object of research: "Rewarding the damage in the amount of 1,000,000 (one million); claiming rights and obligations to the defendant Taulant Balla, the amount representing the non-pecuniary moral damage suffered as a result of the defendant's speech in the interpellation dated 20.10.2011, in the Parliament of Albania, the lawsuit based on articles 608, 609, 625/a and 640 of the Civil Code.

2. According to the submissions of the plaintiff on 20.10.2011 in the Parliament of Albania at the request of MP Taulant Balla, an interview was held with the Minister for Innovation and Information and Communication Technology, Genc Pollo.

3. The plaintiff, through his representative, submitted that: The word of the defendant in the interpellation dated 20.10.2011 in the Parliament of Albania is full of insults and defamation and was reflected in the most important media of the country, both visual and written. . The defendant's speech in the Parliament of Albania and its reflection in the visual and written media have violated honor and personality; since in this word he (the plaintiff) claims that there is defamation and insult and for this reason he addressed the Court for moral damages with the lawsuit subject to trial. Thus, according to the plaintiff, the word of the defendant is full of

insults and slanders which were intended to damage both his image (honor and personality), as well as his figure and career.

4. According to the plaintiff, during this interpellation what was expected to be held as a constructive and informative debate on the progress of affairs and the activity of the Ministry was used in an ugly way by the defendant Taulant Balla as an opportunity to vent hatred by false accusations against him. Likewise, according to the plaintiff, throughout his speech in this interpellation, the defendant has made very serious and direct accusations against him, without worrying at all about verifying their validity or the consequences that these accusations would have for his person and the public and political figure he represents.

5. During the trial of the case, the plaintiff also referred to the statement that the defendant addressed to the plaintiff, specifically, the statements that: "The gentleman has a very big problem, Saliu has also heard about it, that he was reluctant to spoke, received 1.2 million Euros. He received 1.2 million Euros in bribes from a company and talked about everything, but did not talk about the topic that this interview is about. So, thanking a company that will make an investment worth 12.5 million Euros, shows that you also have your share. This Government, which at least receives 10%, and Mr. Pollo justifies the 1.2 million Euros received for this tender.....

6. Likewise, it has been submitted that the word of the defendant has been reflected in the most important visual media of the country, specifically: Top-Channel starts the news edition under the title "Pollo, 1.2 million Euro bribe"; Ora-News repeatedly shows the news "Interpelanca, Balla: Minister Pollo to resign; News 24 publishes "Parliament, Balla-Pollos: You took bribes, we will send the files to the prosecutor's office"; Vizion Plus publishes: "Debates and lawsuits in parliament".

7. Also, it turns out that parts of the respondent's speech in the interpellation were also published in the written press, where some of these newspapers displayed the news on their front page; such as the Panorama newspaper, the Albanian newspaper or the Shekulli newspaper. Immediately after the defendant's statements in the Assembly, and precisely because of them, on 21.10.2011, the High Inspectorate of Assets Declaration and Control started proceedings

Immediately after the defendant's statements in the Assembly and precisely because of them, on 21.10.2011, the High Inspectorate of Declaration and Control of Assets started the administrative investigation procedure against the plaintiff Genc Pollo. In this proceeding, the defendant Taulant Balla was also called to give explanations, but despite receiving the notification, he did not participate in this proceeding. Despite the above, the proceedings continued and at the end of it, it was found that there is no legal violation or conflict of interest in the exercise of duty and activity of the plaintiff Genc Pollo.

8. In addition to the above, regarding the criminal report filed by the defendant (which the Court notes was registered long after the filing of the lawsuit subject to trial), it follows that the Prosecutor's Office of the Tirana Judicial District, after the investigations carried out, concluded in the dismissal of criminal proceedings. This decision of the Prosecutor's Office has not been appealed to the Court or the Supreme Prosecutor.

9. In contrast, the defendant Taulant Balla, through his representative, requested the dismissal of the lawsuit, claiming that his word in the interpellation was in fulfillment of his duty as a political and elected representative, to clarify the general public about the way of governance; has denounced the cancellations, violations, criteria, clientelism and lack of transparency in the process of granting the Concessionary Permit for the construction of a National Broadband Network (REKAB) in this process for the direct responsibility of the plaintiff Genc Pollo, acting Minister of Technology Innovation of Information and Communication, the respondent stated that in the interpellation conducted with MITI and

Communication Mr. Genc Pollo on October 20, 2011, the respondent based on the regulation of the Parliament of Albania, article 96 "Interpellation" called to give explanations and presented the government's intentions regarding the "Practices followed for the extension of optical fiber on the national road and at sea as well as in the establishment of the wide communication network" with all the insistence to receive an answer regarding the fact that this international tender had deficiencies and that was designed in such a way to fail the granting of this profitable license for the state budget Mr. Pollo did not give us an answer.

10. Doubts expressed publicly in the plenary session on October 20, 2011, were confirmed by order no. 5 dated February 29, 2012, through which the procedures were closed, thus enabling the determined failure of the international tender.

The respondent did not make any defamation against the natural person Genc Pollo, but the statements were intended to clarify the next corrupt affair to the public and were accompanied by the logical and economic analysis of the non-granting of the license and the favoring of the company.

11. In his pleadings, the respondent also referred to articles 73/1, 22 and 23 of the Constitution of the Republic of Albania, as well as article 10 of the European Convention on Human Rights. Also, it turns out that he referred to the jurisprudence of the European Court of Human Rights and the Supreme Court of Albania in which, in similar cases, priority was given to freedom of expression in relation to the rights of others alleged to be violated.

12. The Court of the Judicial District of Tirana, with decision no. 4424 dated 24.04.2013, decided: "Partial acceptance of the lawsuit. The obligation of the defendant Taulant Balla to pay in favor of the plaintiff Genc Pollo the sum of 30,000 (thirty thousand) ALL; this much, which represents the non-pecuniary moral damage suffered as a result of the Defendant's Word in the interpellation dated 20.10.2011 in the Parliament of Albania; This word, which carries falsehood and has been reflected in both visual and written media. Dismissal of the lawsuit for the rest as unfounded. Court costs are charged to the litigating parties in relation to the accepted and dismissed part of the lawsuit". With the reasoning that, after examining the case, hearing the claims of the plaintiff's representative and the infractions of the defendant's representative, referring to articles 608, 609 and 625 of the Civil Code, he came to the conclusion that the claim of the plaintiff must be partially accepted by determining the obligation of the defendant Taulant Balla to pay in favor of the plaintiff Genc Pollo the sum of 30,000 (thirty thousand) ALL; this much, which represents the non-pecuniary moral damage suffered as a result of the word of the respondent in the interpellation dated 20.10.2011 in the Parliament of Albania; This word, which carries falsehood and has been reflected in both visual and written media.

In this final conclusion, the Court reached on the basis of the following reasoning: "It is proven in the trial that, from a legal point of view, the word of the defendant in the interpellation in terms of the way it was offered to the public constitutes an illegal act and committed with guilt; this action, which is judged by this Court to have damaged the plaintiff's image, causing him a concrete moral damage manifested in terms of damage to his honor and personality as well as a damage suffered in the social sphere; in view of articles 608, 609 and 625 of the Civil Code, it brings civil legal responsibility for the defendant Taulant Balla, for the compensation of this damage. In this aspect, the Court notes that in Article 608 of the Civil Code, it is expressly sanctioned that "The person, who illegally and culpably causes damage to another in his person.....is obliged to compensate the damage caused. The person who caused the damage is not liable when he proves that he is not at fault. The damage is called illegal when it is the result of the violation or infringement of the interests and rights of another, which are protected by the legal order or by good customs". Whereas, in article 609/1 of the Civil Code it is determined that; "The damage must be a direct and immediate result of the person's action or inaction." Meanwhile, in article 625 of the Civil Code it is stated that "The person who suffers a damage,

other than property damage, has the right to ask for compensation when: a) ...the honor of his personality has been violated" . Precisely, in view of these above-mentioned legal provisions of the Civil Code "On liability for causing non-contractual damage" as well as the general principles of the Theory of Civil Law "On civil legal responsibility for causing damage and compensation for this damage"; this Court creates the internal conviction that in the case under trial, the civil legal responsibility of the defendant Taulant Balla for the damage caused to the plaintiff Genc Pollo is clearly evidenced.

13. The defendant Taulant Balla filed an appeal against the court's decision, which requests the change of the decision and dismissal of the lawsuit.

The decision was made in violation of the law by incorrectly assessing the evidence presented. In its decision, the court analyzed the statements of MP Balla, finding, among other things, that their falsity influenced public opinion (quoted pages 5-6).

The above analysis of the court, which is the basis of this decision-making, actually proves that the defendant Balla has given his opinion on the plaintiff. This fact in itself cannot serve as a reason to punish a deputy, either criminally or civilly, since in both cases there must be an element of guilt.

The respondent, in fulfilling his duty as a political representative and chosen to clarify the general public about the way of governance, has denounced the cancellations, violations, criteria, clientelism and lack of transparency in the process of granting this license. For these convictions in this process for the direct responsibility of the plaintiff Genc Pollo, acting Minister of Information Technology Innovation

For these convictions in this process for the direct responsibility of the plaintiff Genc Pollo, in charge of Minister of Innovation, Information Technology and Communication, the defendant after the debate developed in the assembly, has also filed a criminal report in the Prosecutor's Office of the Judicial District of Tirana.

The defendant has had enough information to suspect that through corrupt actions the granting of a license has failed, which according to experts' assessment would give the state a minimum amount of 12 million euros, favoring a company that had meanwhile built a national network with broadband, but unlicensed.

Given that in Albania the general and universally accepted assessment as public perception of corruption has a percentage of 10%-20%, then the defendant has cast "minimalist" doubts that the value of this corrupt affair is at least 1.2 million euros (He described the chronology of the event).

Doubts expressed publicly in the plenary session on October 20, 2011, were confirmed by order no. 5, dated February 29, 2012, through which the procedures were closed, thereby enabling the determined failure of the international tender.

The defendant's intentions through these statements were clearly related to the fulfillment of his duty as a parliamentarian and politician and are not related to the defendant as an individual, but to executive power and the forms of its misuse.

According to articles 22 and 23 of the Constitution of Albania and article 10 of the European Convention on Human Rights, freedom of expression is guaranteed. Given that the parliamentary immunity that members of parliament enjoy, follows the legal goals of protecting free speech, constitutes a stable practice which aims to ensure freedom of expression among representatives of the people, freedom of expression is provided for in Article 22 of the Constitution . (The respondent has referred to several decisions of the ECtHR and the Supreme Court of Albania). In the case under trial, the necessary elements provided for in Article 608 of the Civil Code, which defines "responsibility for causing damage", are not met.

14. The Tirana Court of Appeal, with decision no. 3574 dated 29.10.2014, has decided: "The annulment of decision no. 4424, dated 24.04.2013 of the Court of the Judicial District of Tirana

and sending the case for retrial to that court with another panel .” On the grounds that, in its decision, the district court did not analyze any of the defendant's objections regarding the purpose of these statements, and that the reason, according to the defendant, were the violations committed by MITI and Communications, whose Minister is the plaintiff regarding the international tender for the granting of a concessionary permit for the construction of a national broadband network (REKAB), evidence which is also the source to verify the truth of the content of the speech and the facts on which the lawsuit was filed, which does not result in has been subject to judicial debate.

The Court of Appeal finds that; the district court, although the respondent refers to the ECHR and the jurisprudence of the ECtHR and the Supreme Court of Albania, did not analyze the claims of the respondent, regarding the legal definition of the statements, in terms of freedom of expression, guaranteed by the Constitution and ECHR, as well as the right to preserve the plaintiff's honor and personality.

The court also did not analyze and answer the defendant's objection on his role as a politician and the purpose of the statements, which according to the defendant are related to the public interest on this issue, and that the defendant's intention through this statement was related to the fulfillment of the duty as a parliamentarian and politician and are not related to the defendant as an individual, but to the executive power and the bad forms of its exercise.

In Article 10 of the ECHR, freedom of expression is guaranteed as one of the basic rights and freedoms of the individual, specifically: "1. Every person has the right to freedom of expression. This right includes freedom of opinion and freedom to receive or impart information or opinions, without interference by public authorities and regardless of frontiers. This article does not prevent States from establishing a regime of authorizations for broadcasting, cinema or television establishments. 2. The exercise of these freedoms, containing obligations and responsibilities, may be subject to certain formalities, conditions, limitations or sanctions provided by law, which, in a democratic society, constitute the necessary measures for national security, territorial integrity or public security, for the protection of order and the prevention of crime, for the preservation of health or morals, for the protection of the dignity or rights of others, to prevent the dissemination of confidential information or to guarantee the authority and impartiality of the judicial power. "

As stated above, the respondent has referred in the trial in the district court, several cases of this Court, in which freedom of expression has been assessed as very important for a democratic society, especially when it is exercised by elected politicians, with the aim drawing attention to voters' concerns and protecting their interests.

Regardless of the conclusion it will reach regarding the facts claimed by the parties presented in the trial, the court is obliged to respond to every claim presented by the parties during the judicial process.

15. Against the decision of the Court of Appeal, the defendant Taulant Balla appealed on 27.11.2014, which requests the cancellation of the decision and dismissal of the claim.

15.1. Causes of recourse:

The deputy as a citizen, but even more so as a public official, bears the obligation to publicly denounce the violations that he becomes aware of, and in the case that is the subject of this civil trial, the defendant for the same facts has filed a criminal complaint for those given that he considers that they have criminal elements.

In Article 17 of the Constitution of the Republic of Albania, it is sanctioned that: "Limitations of the rights and freedoms provided for in this Constitution can only be established by law... and that these limitations cannot violate the essence of freedoms and rights and in in no case can exceed the limitations provided for in the European Convention on Human Rights".

To find the balance between freedom of expression and the right to a peaceful private life is not easy and requires a detailed analysis of the facts of the case, its subjects and the consequences that may come as a result of the violation of one or the other of right or freedom. In this context, we appreciate that there are no illegal actions of the defendant in his exercise of the right of expression as a citizen of the Republic of Albania and even more so as a deputy in fulfilling his obligation to reflect the truth and information to the public, under a context of political communication with the public, presenting to him (the public) directly the concrete facts and the interpretations on them.

In this view, the necessary elements provided for in Article 608 of the Civil Code, which defines "responsibility for causing damage", are not met, which are:

- a) Existence of illegal action.
- b) Existence of the element of guilt.
- c) Existence of effective damage suffered by the person.
- d) The cause-and-effect relationship between the action and the damage suffered.

In the specific case, the existence of illegal action is not proven.

Statements claimed as illegal actions cannot and should not be considered as such by the Court since the respondent acted in the name of the right as argued above.

Likewise, the illegality of the action cannot be proven, in the analysis of Article 608 of the Civil Code, therefore there can be no effective damage caused by the defendant to the plaintiff.

The plaintiff's claim that "the defendant is presumed guilty" and the burden of proof belongs to him, and the legal analysis of this claim by the plaintiff, is legal nonsense and probably relies on the political assumption that "the opposition is guilty".

In the same way, the analogy with the unifying decision no. 12 dated 14.09.2007 is inappropriate and incorrect, as it deals with non-pecuniary damages that the parties suffer from car accidents, such as "the case of causing death by an illegal fact".

The final claim that the defendant's words have caused the plaintiff "torment and constant spiritual suffering" and that the acceptance of this lawsuit "would somewhat alleviate this torment that has been caused to the plaintiff" sound "ridiculous".

Neither at the claim level has it been raised by the defense, nor can it be justified that there is any action with "guilt" on the part of the defendant Balla, nor can there be when the political war is built with hints and accusations and mutual counter-accusations and such there is will have regardless of the end of this civil process. It is enough to follow the media in the last two days where the plaintiff Pollo is again accused of a corruption affair.

Finally, we request the annulment of the decision of the Court of Appeal and the dismissal of the lawsuit.

II. Civil College Assessment

16. Case no. was registered in the Supreme Court on 02.03.2015. 11118-00223-00-2015 reg. I say, which belongs to the parties: the plaintiff; Genc Pollo and defendant; Taulant Balla with object: Compensation for non-contractual damages in the amount of 1,000,000 (one million) ALL.

17. The Civil College assesses that the recourse presented by the defendant Taulant Balla does not contain any of the cases provided for in the law, therefore it should not be accepted as such.

18. From the consideration of the case in the counseling room, it appears that the recourse presented by the defendant Taulant Balla was made for reasons other than those provided for in Article 472 of the Code of Civil Procedure, since the Court of Appeal respected the procedural

law and that material, interpreting and applying them correctly. Its decision is not contrary to any decision of the Civil College of the Supreme Court, or of the United Colleges of the Supreme Court. During the examination of the case in the counseling room, no serious violations of the procedural norms were noticed, with the consequence of the invalidity of the decision or the trial procedures.

19. At the end of the examination of the case in the counseling room, the Civil College comes to the conclusion that the recourse presented by the defendant Taulant Balla is not based on the law, therefore it should not be accepted.

FOR THESE REASONS,

The Civil College of the Supreme Court relied on Article 480 of the Civil Code.
V E N D O S I :

Rejection of the appeal presented by the defendant Taulant Balla, against decision no. 3574 dated 29.10.2014 of the Tirana Court of Appeal.
Tirana, on 12.05.2021