

An Introduction to Law and Practice

Greece:
Press Freedom
and Defamation Laws
in a Time of Crisis

Commissioned by



International
Press
Institute



October 2015

An Introduction to Law and Practice

Greece:
Press Freedom
and Defamation Laws
in a Time of Crisis

Commissioned by



International
Press
Institute

S·E·E·M·O
SOUTH EAST EUROPE MEDIA ORGANISATION

October 2015

Greece: Press Freedom and Defamation Laws in a Time of Crisis

An Introduction to Law and Practice

Report Commissioned by the International Press Institute
and the South East Europe Media Organisation

October 2015

Author: *Dr. Eleni Polymenopoulou*, Lecturer in Law at
Brunel University

Publisher: **International Press Institute**

Managing Editor: **Scott Griffen**, International Press Institute



This work is licenced under a Creative Commons Attribution-NonCommercial 4.0 International License.



The production of this report was supported by a grant from the Foundation Open Society Institute in cooperation with the Program on Independent Journalism of the Open Society Foundations.

Table of Contents:

7	I. Constitutional Framework for the Media in Greece
11	II. Defamation, Personality Rights and Press Freedom
12	a. Restrictions in civil law
12	i. Tort provisions and special liability for the press
15	ii. Interpretation of the civil law framework by the Greek courts
16	Compensation levels and proportionality
18	Duty of truth; good faith and due diligence
19	Breadth of personality rights
20	iii. Data protection and access to information: Challenges and ambiguities for journalists
21	b. Restrictions in criminal law
21	i. Defamation and insult provisions in the Penal Code
24	ii. Defences for the press
26	iii. Interpretation of the criminal law framework by the Greek courts
29	III. Interview: Kostas Vaxevanis , journalist and owner, HotDoc magazine
33	IV. Conclusion
35	V. Recommendations
	• Constitutional provisions
	• Civil and criminal provisions
37	VI. Acknowledgements
39	VII. References
	• Literature
	• Case Law
43	VIII. Annex
	• Law 1092/1938 on the Press and the General Obligations of Publishers and Journalists
	• Presidential Decree No. 77/2003 – Code of conduct for news broadcasting and other journalistic and political programmes
	• Law 1178/1981, last amended by 2243/1994, on the Civil Liability of the Press

List of Abbreviations

Areios Pagos	Greek Court of Cassation
EFE	Hellenic Photojournalists' Association
ERT	Greek Public Service Broadcaster
ESIEA / JUADN	Journalists' Union For Athens Daily Newspapers
ESIEMTH / JUTDN Thrace	Union of Journalists of Daily Newspapers of Macedonia-
ECtHR	European Court of Human Rights
EFJ	European Federation of Journalists
GCC	Greek Civil Code
GCPP	Greek Code of Penal Procedure
GPAA	General Police Authority of Attica (ΓΑΔΑ)
GPC	Greek Penal Code
IFJ	International Federation of Journalists
IPI	International Press Institute
NCRTV	National Council for Radio and Television
PACE	Parliamentary Assembly of the Council of Europe
POESY	Pan-Hellenic Federation of Journalists' Unions

About this Briefing

The International Press Institute (IPI), the global network of publishers, editors and journalists for press freedom, commissioned this briefing as part of a larger report on press freedom in Greece in the context of a joint IPI – South East Europe Media Organisation (SEEMO) visit to Greece in November 2015.

This briefing is intended as a general overview of the legal provisions related to defamation and insult in Greece and how these provisions may affect the work of the media. The briefing is not a systematic analysis of instances in which these provisions are applied against the press, although it recommends that such an analysis be done. While focusing overall on the question of defamation and freedom of expression, the briefing also touches on other, distinct issues under the broader umbrella of personal-ity rights, including privacy.

Any opinions expressed in this briefing are solely those of the author and may not reflect the view of the International Press Institute or the South East Europe Media Organisation.

Author's Preface

This report focuses on personality rights and defamation laws, including the interpretation of these laws by the Greek courts. The report does not involve an extensive discussion on the right to privacy or personality rights nor on any other, more controversial limitations to free expression in Greece, such as hate speech laws, anti-racism laws, blasphemy laws and restrictions related to public morals. Although not part of this report, blasphemy and obscenity laws should receive thorough attention as they represent a particularly problematic aspect of freedom of expression in Greece.

Moreover, the report confines itself to reviewing the general legal framework for understanding the complexities of journalistic freedom, attempting to combine legal theory and practice. In this effort, however, it does not extensively analyse media laws or other non-legal aspects of journalistic freedom, such as ethics, deontology or journalistic codes of conduct. It also does not look at general debates on equality, non-discrimination and media independence.

I Constitutional Framework for the Media in Greece

The present Greek Constitution, promulgated in 1975,¹ just after the restoration of democracy in the country (a period known as *Metapolitefsi*), contains strong proclamations of freedom of speech. In line with the German constitutional tradition and the 1905 Bonn Constitution, Art. 14, par. 1 of the Greek Constitution provides that “[e]very person may express and propagate his thoughts orally, in writing and through the press”. Art. 16 impressively proclaims the unqualified freedom of research and of the arts and sciences. Prior censorship and other preventative measures are prohibited, as is the seizure of newspapers either pre- or post-publication.

Nevertheless, the Greek constitutional framework for press and media freedom contains clear pitfalls for the work of journalists.

First, Art. 14, par. 8 gives the State to establish in law the “conditions and qualifications” required for the exercise of the journalistic profession. As such, the most substantial guarantee of the press’s independence remains unfulfilled. Furthermore, while the Constitution prohibits MPs from being involved in any way – including by serving as owner, board member or shareholder – with an enterprise that owns or manages a newspaper or broadcast media outlet with national reach (Art. 57, par. 2, sec. c), there is no such parallel injunction upon ministers or members of the government.

Second, although the Constitution proclaims the press to be free, it states that media such as “films, sound recordings, radio, television or any other similar medium for the transmission of speech or images” are subject to the direct control of the State (Art. 15, par. 1). This control refers goes beyond a mere procedural license requirement for broadcasting as it involves a “unusually strict” licensing regime inherited from the previous Greek Constitution.²

Constitution of Greece 1975/2001 (*Syntagma*)

Art. 14 par. 1: “Every person may express and propagate his thoughts orally, in writing and through the press in compliance with the laws of the State.”

Art. 14 par. 2: “The press is free. Censorship and all other preventive measure are prohibited.”

Art. 14 par. 3: “The seizure of newspapers and other publications before or after circulation is prohibited ...”

Art. 16 par. 1: “Art and science, research and teaching shall be free and their development and promotion shall be an obligation of the State. Academic freedom and freedom of teaching shall not exempt anyone from his duty of allegiance to the Constitution.”

¹ See Constitution of Greece, available in English on the website of the Hellenic Parliament, <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20agglisko.pdf>.

² Vasileios Skouris, “A freedom subject to the direct control of the State” (1989) 2 *Hellenic Review of European Law* (Elliniki Epitheorisi Eyrwpaikoy Dikaïou), 1989 at 193, 197-8 [Greek] (suggesting a more ‘modern’ interpretation of article 15 of the Constitution) and generally also Dagtoglou, *Radiotelevision and Constitution*, 1989.

In 1987, Greece's highest administrative authority, the Council of State (*Symvouleio tis Epikrateias*), clarified that the monopoly of the Greek state over national television does not preclude the existence of private television and radio broadcasters.³ Even today, however, Art. 15, par. 1 of the Greek Constitution is interpreted to mean that a 'right' to run a radio or television station in Greece cannot be deduced from the right to freedom of expression.⁴ Hence, although, for example, the Greek courts generally endorse the idea that any provider of information must respect all views, the Constitution does not guarantee substantive independence of audiovisual media from the State.

Art. 15 of the Greek Constitution subjects audiovisual media to the control of an independent authority, the National Radio and Television Council (NCRTV, in Greek *Ethniko Symvoulío Radio-tileorasis* or ESR),⁵ which has the power to impose administrative sanctions. NCRTV was initially conceived with limited powers. Its status, however, has recently been strengthened following adoption of the EU Audiovisual Media Services Directive.⁶

It should be noted that Law 3592/2007 liberalised and "softened" the situation of media ownership, including by allowing the allocation of licenses without "effective action ... to verify whether the rules are respected".⁷

Third, Art. 14 par. 3 enumerates four grounds upon which the seizure of publications is – exceptionally – allowed. These grounds are:

- a. insults against the Christian or any other known religion;
- b. insults against the President of the Republic;
- c. publication of certain information about the armed forces or information aiming at the violent overthrow of the regime or directed against the territorial integrity of the State; and
- d. obscene publication that are "obviously offensive to public decency".

These provisions clearly override the aforementioned constitutional prohibition of prior censorship as such seizure may also take place prior to publication. As a result, criminal laws found in either the Penal Code or other 'special laws'⁸ have formed the basis of criminal prosecutions against any content that may potentially be considered offensive or dangerous. Most commonly, the laws involved have targeted content that allegedly offended either public morals or

³ Council of State (StE) 5040 / 1987, with respect to radio stations, cited by Skouris, at 200.

⁴ Athens Appeal Court, Civil Chamber, No 5538 / 2006 referring to the German BGH 26.11.1996. See also, Karakostas, *The Law of the Media* (3rd ed Athens Sakoulas 2005) at 178.

⁵ The same article provides that direct State control, which takes the form of licensing requirements, aims at ensuring a number of different values and State interests, namely, "... the objective and on equal terms transmission of information and news reports, as well as of works of literature and art, at ensuring the quality level of programs mandated by the social mission of radio and television and by the cultural development of the Country, as well as at the respect of the value of the human being and the protection of childhood and youth."

⁶ Directive 2010/13/EU. See analytically the report by Evangelia Psychogiopoulou, Dia Anagnostou & Anna Kandyla (ELIAMEP), "Case study report: Does media policy promote media freedom and independence? The case of Greece", ELIAMEP, at 17, available at <http://www.mediadem.eliamep.gr/wp-content/uploads/2012/01/Greece.pdf>.

⁷ See analysis by Psychogiopoulou et al, *supra* note 6, at 10-11.

⁸ With respect to the relationship between the two sets of provisions, see GPC Art. 12: "The provisions of the general part of the Penal Code are also applied in punishable acts stipulated in special laws, if such laws do not provide for the contrary by express provision."

the state religion. Prosecutions have targeted artistic, literary and scientific works, particularly novels, films, plays, comic books, historical research and dictionaries.⁹

These provisions include Law 5060/1931, which punishes obscenity and was enacted during the first dictatorship period of Greece. The law defines obscene materials broadly as “all manuscripts, publications, images and other relevant objects that are offensive to public morals, according to the common sentiment”. Another example is the Greek Penal Code’s prohibition on blasphemy (Art. 198), under which anyone who “insults God in any way publicly and maliciously) faces up to two years in prison.

Other types of limitations to freedom of expression are also possible. Any such limitations are always constitutional according to Art. 14, par. 1 of the Constitution, which provides that “[e]very person may express and propagate his thoughts ... in compliance with the laws of the State”. However, the legitimacy of these limitations is subject to the review of the Greek courts and, ultimately, to the European Court of Human Rights.

⁹ See Tsakyrakis, *Religion and the Arts* (Polis, Athens: 2005); Spyridon Vlachopoulos, *Artistic Freedom: The Limits of an Unlimited Right Efarmoges Dimosiou Dikaiou* (2001).

II Defamation, Personality Rights and Press Freedom

Journalistic freedom in Greece is subject to laws protecting privacy, honour and reputation. As in the case of freedom of expression, personality rights enjoy a high threshold of protection under the Greek Constitution. Art. 5, par. 2 guarantees, among other things, the full protection to the *honour* of all persons residing in Greek territory “irrespective of nationality, race or language and of religious or political beliefs ...”.

As such, the opposing values in civil and criminal defamation cases (free expression on the one hand and the protection of honour or reputation on the other) are a priori equal. There is nothing in the Greek Constitution that suggests that the two provisions cannot be reconciled or effectively balanced. As the Athens Court of Appeal has noted, this “balancing exercise” has to take place *in concreto* in each case, according to the principle of proportionality and in such a way that “both rights maintain their normative scope”.¹⁰ However, since Greek courts generally understand defamation to involve the active infringement of the victim’s personality rights, the ‘balancing exercise’ between the two values is based solely on limitations to freedom of expression.

There are two relevant types of limitations here. The first are subject-specific limitations that apply only in political affairs. For example, Art. 29, par. 3 of the Constitution prohibits public enterprises (including the Greek public service broadcaster) from publicising information in favour of one political party.

The second are provisions prohibiting the abuse of rights. These are much more commonly referred to by the courts, which highlight in particular Art. 281 GCC and Art. 25 par. 3 of the Constitution.

Greek courts have stated that the purpose of such limitations is “not to impede freedom of the press or journalistic freedom, but rather to protect individuals, legal persons and the whole society from abuses of this constitutional right”, noting that “the constitutional provisions that establish civil and social rights [e.g. freedom of expression] draw limits on their exercise (e.g., Arts. 5 par. 1 and 13 par. 2), while in any case there is the prohibition of abusive exercise of those rights enshrined in Art. 25 par. 3 of the Constitution”.¹¹ These provisions, however, are rather generic and are formulated in an identical way (e.g. “the abusive exercise of rights is not permitted”). They may, by implication, potentially limit any right.

Article 29 of the Constitution

3. Manifestations of any nature whatsoever in favour of or against a political party by magistrates and by those serving in the armed forces and the security corps, are absolutely prohibited. In the exercise of their duties, manifestations of any nature whatsoever in favour of or against a political party by public servants, employees of local government agencies, of other public law legal persons or of public enterprises or of enterprises

¹⁰ Athens Court of Appeal, 6089/2011.

¹¹ Aegean Appeal Court 26/2010; Thessaloniki Appeal Court 1280/2003.

of local government agencies or of enterprises whose management is directly or indirectly appointed by the State, by administrative act or by virtue of its capacity as shareholder, are absolutely prohibited.

a. Restrictions in civil law

More specifically, two sets of laws exist in the Greek legal tradition to protect a person's reputation and honour: **civil and criminal laws**.

i. Tort provisions and special liability for the press

The press is liable for offences to the rights of others on the basis of general tort provisions as well as on the basis of laws providing special liability for the press.

There are currently two laws subjecting the press to the laws of the State. Both are constitutional according to Art. 14, par. 2 and both are broadly worded.

Law 1092/1938 on the press and the general obligations of publishers and journalists. In addition to Law 1092/1938, Presidential Decree No. 77/2003, entitled "Code of conduct for news broadcasting and other journalistic and political programmes", describes the basic deontology principles regarding the production of news ("Deontology Law"). The Decree includes a provision establishing a Committee on Deontology.

Law 1178/1981 (last amended by Law 2243/1994) on civil liability of the press ('Press Law'). This law, which is commonly referred to by journalists as the 'press-killer' (*typoktonos*), consists of one article with nine paragraphs. It states that the publishers or owners of newspapers and magazines are liable to pay moral damages to anyone offended by an article containing inaccurate information. It also provides for a minimum amount of compensation in the case of "moral harm caused deliberately by statements that were intended to insult someone's honour or reputation".

According to the Act on the Legal Status of Private Television (**Law 2328/1995**), the Press Law also applies to television and radio stations. Under Art. 4, par. 10, sec. a of this Act, in the case of audiovisual media the "owner" is deemed to be the legal representative of the licensed company and the "director" is deemed to be the programme manager or director of the news department. In turn, the "author" of the publication is determined to be the producer, moderator, presenter or responsible journalist according to the type and structure of the broadcast.

In addition, Art 3 par. 1, sec. b of Law 2328/1995 provides that "all kinds of emissions (including advertisements) that are broadcasted by radio and television stations must respect the personality; honour; reputation; private and family life; and the professional, social, scientific, artistic, political or other similar activity of every person whose image appears on the screen or whose name or information is sufficient for him to be recognised".

It goes without saying that these laws are genuinely problematic.

Article 4 of the Deontology Law (P.D. 77/2003):

(1) It is not allowed to present persons in a way that, under the specific circumstances, may encourage humiliation, social isolation or negative discrimination against them by sections of the public with regards in particular to their gender, race, nationality, language, religion, ideology, age, illness or disability, sexual orientation or profession;

(2) It is not allowed to disseminate degrading, racist, xenophobic or sexist messages [...]

Article 7 of the Deontology Law:

Any indiscriminate intervention in personal suffering and in particular mourning should be avoided. Most notably, the presentation of scenes of people in times of mourning, grief, despair or anger should be avoided. Images or sounds that aggravate or cause pain to the depicted persons in their immediate environment should not be disseminated without good reason.

Turning **first** to the Deontology Law, it is certainly true that journalistic deontology, ethical reporting and media self-regulation are important aspects of press freedom. Allowing courts to rule on deontology and ethics, however, is by definition problematic. This is not only because there are few, if any, provisions that evince strict justiciable content, but also because most of the Law's provisions are phrased in extremely broad terms and appear overly protecting of personality rights. In particular, the Deontology Law does not allow strong criticism of public figures.

On the contrary, the Law provides that "private life for everyone, including public figures, is respected and inviolable" (Art. 6, par. 2). This statement amounts to an implicitly higher threshold of protection for personality rights. The same article also prohibits "recording, showing and publicising private moments or citizens' discussions without their permission" without specifying any exceptions or grounds that would potentially allow another value to prevail over privacy (for example, public interest, national security, public order, the rights of others, protection of minors).

Over the last decade, the ECtHR has taken ethics and deontology codes into account when deciding on the lawfulness of an interference with freedom of expression. In many controversial judgements, the Court has considered whether the journalist in question complied with the ethical requirements of the profession in order to assess whether he or she acted in accordance with his or her "duties and responsibilities".¹² It would appear, however, more appropriate for such assessments to be undertaken by professional bodies – such as journalist unions, associations or committees or other self-regulatory bodies – rather than directly by the courts, as in the case of Greece.

In Greece, bodies such as NCRTV, POESY and ESIEA/ESIETH are far more competent to address the challenges posed by laws relating to journalistic ethics. To give an example, in 2010 ESIETH, within the context of its collaboration with the EJP, participated in a project on equality and non-discrimination in journalism. The project produced the study "Getting the facts right: Re-

¹² As an indication only, see ECtHR *Prager and Oberschlick v. Austria*, 26 April 1995, Series A no. 313; *Stoll v. Switzerland*, Application no. 69698/01, 10 December 2007, paras 145-161; *Flux v. Moldova* no 6, Application no. 22824/04, 29 July 2008. See Dirk Voorhoof, "Freedom of expression, journalists' rights and duties and the impact of ethics and self-regulation in the light of Article 10 ECHR", paper prepared for IRCM Seminar on Freedom of Expression, Strasbourg, 2008 available at http://www-ircm.u-strasbg.fr/seminaire_oct2008/docs/Report_by_Dirk_Voorhoof_Session_II.pdf.

porting ethnicity and religion” and compared legislation in nine Council of Europe countries.¹³ For its part, POESY has signed the so-called Charter of Rome, a soft-law document on the representation of migrants, refugees, asylum seekers and victims of trafficking in the media.¹⁴

In practice, the Greek media are selective in publishing information that may breach public officials’ right to privacy. It is not uncommon to see journalists ‘hacking’ into the private space of politicians or other public figures. For instance, after the Syriza government took power in 2015, the media, especially magazines such as Proto Thema, focused significant attention on the private and family life of former Finance Minister Yannis Varoufakis. This attention continued even after Varoufakis left the government. In July 2015, bodyguards for Varoufakis allegedly attacked journalists for following the former minister in his private residence.¹⁵

Second, the Press Law is harsher than the general framework for tort law. More specifically, according to the Press Law,

“The owner of any press publication is liable to pay full compensation for the illegal material and moral damage that was intentionally caused by a publication and that insults an individual’s honour or reputation – even if the fault under Art. 914 of the Greek Civil Code of 1946 (GCC), the intention under Art. 919 GCC and/or the knowledge or culpable neglect under Art. 920 GCC is not applicable to the publisher or the editorial director of the publication.”

In practical terms, this means that the publisher or the owner of the publishing house may always be responsible for any publication even if the owner or publisher did not him- or herself, in fact, commit any intentional offence.

Third, the Press Law establishes a minimum amount of compensation. I.e., if a journalist writes an article that a person considers to have damaged his or her reputation, and the offended person manages to prove the journalist’s intent, then the journalist is liable to pay a minimum level of compensation. Currently, the minimum level for the printed press is set at €6,000 (i.e., equivalent to 100 times the current basic salary in Greece). No reference is made to a maximum.

Greek law also establishes minimum compensation levels for television and radio broadcasters found liable for defamation. According to Law 2328/1995 those levels are: 100,000,000 (approx. €295,000) drachma for national television broadcasters; 30,000,000 drachma (€90,000) for regional broadcasters; 50,000,000 drachma (€150,000) for national radio broadcasters; 20,000,000 drachma (€60,000) for radio stations with lesser reach.

If the offended person does not manage to prove intent, the court will still adjudicate compensation according to the Press Law if the journalist did not take reasonable care when writing the article and the information contained therein was inaccurate.

¹³ See Yiannis Kotsifos, “Freedom and Independence of the Media in Greece”, Conference paper for ELIAMEP, 11 December 2012, available at https://www.dropbox.com/s/9ak0llkthozfzuy/ELIAMEP_contibution.doc?dl=0 (in Greek).

¹⁴ POESY, “POESY signs the Charter of Rome on migrants and refugees”, 11 December 2012, POESY press release, available at http://www.poesy.gr/index.php?option=com_content&view=article&id=949:--l-r----&catid=32:news&Itemid=4 [Greek].

¹⁵ Anon, “Shocking! Varoufakis attacks Proto Thema journalist on his way to Aegina”, Thema, 11 July 2015, available at <http://en.protothema.gr/shocking-varoufakis-attacks-proto-thema-journalist-on-his-way-to-aegina-pics-vids/>.

Both circumstances hinder journalistic freedom. The first opens the door to potential abuses in the appreciation of the circumstances of the offence, allowing for large compensation claims. They latter may potentially have a strong chilling effect on journalists who take reasonable care when writing yet are found to have made an involuntary mistake in their reporting. It should be noted that in this latter case, criminal proceedings would not be successful but the journalist would still be liable in a civil case.

In addition, the Press Law does not exclude compensation under general tort provisions. Hence, compensation may also be requested under Arts. 914 and 932 of the GCC. Art. 914 GCC provides that “whoever damages another unlawfully and intentionally has an obligation to redress. Art. 932 GCC states that “regardless of compensation for material damage, the Court may adjudicate according to its discretion monetary compensation for moral damage”.

These two provisions are applied in combination with GCC Art. 57, which provides that an individual whose personality rights have been *unlawfully* infringed has the right to claim “the cessation of such infringement and its non-recurrence in the future”. They are also applied together with GCC Art. 59, which prescribes a right to just satisfaction for moral harm “after taking into consideration the kind of infringement”. Additionally, GCC Art. 59 states specifically that this compensation may consist of the “payment of a sum, or of publication, or anything else that is deemed suitable.

As such, in practice anyone who feels insulted may request compensation under either the general provisions of the Civil Code or the specific provisions of the Press Law. Both frames of protection are relatively broad and favour the plaintiff. GCC Art. 57 in particular does not require intent, but merely “unlawful” behaviour. Likewise, the Press Law provides objective liability for the publisher, i.e., the plaintiff may be awarded compensation without even the requirement of unlawfulness

ii. Interpretation of the civil law framework by the Greek courts

The Greek courts have further clarified the link between the general tort provisions and the special liability for the press. In particular, and with respect to the media, the courts have ruled that the figure who is liable to pay compensation for moral damage caused by intentional insult to honour or reputation is the owner. This is the case even if civil liability under Arts. 914 and 932 GCC is applicable to the author (*syntaktis*), if he or she is known, “or, if the author is not known, the publisher (*ekdotis*), or the director of the publication (*dieythyntis syntaksis*)”.¹⁶

Furthermore, Areios Pagos – the transliterated Greek name for the Court of Cassation, Greece’s supreme court for civil and criminal matters – has established that in the case of a newspaper, according to the Law on the Civil Liability of the Press, both the publisher (*ekdotis*) and the editor (*syntaktis*) are co-responsible with the owner (*idioktitis*), unless the former two can prove that they did not know about the publication of the defamatory statements.¹⁷ In any case, the person offended may always be awarded compensation for any damage that was caused intentionally.

¹⁶ Areios Pagos 346/2004; Areios Pagos 72/2004; and Larissa Appeal Court 639/2006 (criminal).

¹⁷ Areios Pagos 1260/1993.

Hence, while the higher courts (Courts of Appeal and Areios Pagos) generally strike a balance, it is extremely easy to file a civil lawsuit at the first-instance level. The JUTDN itself has urged journalists not to use the Press Law, stating that “journalists are always the victims of this law”.¹⁸ Indeed, there are three additional reasons why journalists and publishers may find themselves paying large amounts of compensation for having disseminated inaccurate information – even involuntarily.

Compensation levels and proportionality

The amount of compensation awarded by the Greek courts in personality-rights cases seems to mostly range between €10,000 and €30,000. This is not a trivial amount, and could have a potentially fatal impact on small-scale media and television channels.

In a 2011 case, for instance, in which journalists had secretly taken pictures of an artist’s working space and broadcasted false information on a small television station, the Athens Court of Appeals considered the following specific circumstances, as provided in Art. 59 GCC, in order to ascertain the degree of offence to the applicant’s rights:

- the size of the offence;
- the type and severity of the offence;
- the viewing percentage of the specific TV programme;
- the implications for the offended party; and
- the social and economic situation of the parties.

In this specific case, the viewing percentage was relatively low (0.7% - 1%) and the channel was broadcast only in the region of Attica. However, the implications for the plaintiff were found to be severe, given that friends and family were among the viewers who watched the programme. The Court also took into account the social and economic statuses of the parties involved. It found the TV presenter to be liable for the illegal broadcast. The Court ultimately ordered the broadcaster to pay the complainant €30,000 in compensation for damage to reputation.¹⁹

Similar criteria are applied for insult. In a case concerning a local official who sued a magazine over an article that called the official “arrogant and rude”, the Larissa Appeal Court took into account:

- the type of the offence;
- the size of the harm to the injured party;
- the context in which the harm appeared;
- the responsibility of the person who committed the harm;
- the social and economic situation of the parties; and
- the behaviour of the person who committed the harm after the offence.

In this specific case, taking into account particularly a) the fact that the magazine had only a small local circulation; and b) that the plaintiff “kept apologising” to the plaintiff, the Appeal Court confirmed that an award to the plaintiff of €6,000 was a reasonable amount.²⁰

¹⁸ JUADN, “Journalists should not use the press-killer law for their personal interests”, 21 April 2015, available at <http://www.esiea.gr/oi-dimosiografoi-na-min-aksiopoioun-ka/> [Greek].

¹⁹ Athens Appeal Court, 3/2011.

²⁰ Larissa Appeal Court, 123/2008.

In another 2011 civil defamation case in which the female president of a football team had sued a radio sports presenter, an appeals court, in weighing the circumstances involved, awarded the plaintiff €30,000 in compensation. In applying the laws related to press liability (Law No. 1178/1981 and Law No. 2328/1995 as discussed above), the Court found that the radio station was also objectively liable for the content of the programme. Likewise, in 2006, the Larissa Appeal Court sentenced a journalist to pay compensation of €20,000 for publicising information on the plaintiff's private family life because the Court determined that the journalist had not conducted appropriate research prior to publication.

In older cases, Greek courts have adjudicated even larger amounts. In a famous 2004 judgment, Areios Pagos deduced that, if the offence to personality was perpetrated by means of a radio station that broadcasted in more than one Greek department, the minimum amount of compensation for moral harm under laws 1178/1981 and 2328/1995 was 50,000,000 drachmas (approx. €150,000).

The plaintiff in the specific case was renowned journalist Nikitas Lionarakis, who had invited another journalist, Emmanouil Vasilakis, to discuss aspects of Greek foreign policy in relation to the Öcalan affair, referring to Abdullah Öcalan, leader of the Kurdish militant group PKK. Vasilakis at that time had published a series of articles criticising several politicians and lawyers in relation to the affair. In particular, Vasilakis had criticised certain persons belonging to the so-called "Network 21", including Failos Kranidiotis, a well-known Greek lawyer involved in right-wing politics who had stood in national and European elections. The radio programme was scheduled to be broadcast live on national Greek public radio. At that time, the Öcalan affair was a hotly debated issue: Greece had decided to offer Öcalan asylum, in spite of his being accused of terrorism and other international crimes. In the course of the discussion, Vasilakis accused Network 21 of having provided assistance to Öcalan. Among other things, Vasilakis called Kranidiotis a "pseudo-patriotic neurotic" and accused him of being a member of a "parallel state".

Kranidiotis initiated civil defamation proceedings. Eventually, Areios Pagos ordered Lionarakis, Vasilakis and the station to pay the impressive sum of 55 million drachmas (€161,408) in compensation. As lawyers for the defendants noted, this amount "corresponded to salaries of six years of a well-paid employee in Greece or the rent over six years of an apartment in Athens and was therefore in breach of Art. 25 par. 1 of the Constitution that guarantees the principle of proportionality". Areios Pagos, however, characterised the argument as "general".²¹ Following a friendly settlement, Lionarakis paid Kranidiotis approximately €40,000 in compensation for damage sustained, along with all costs.

Around the same time, in 2005, Areios Pagos also condemned Vasilakis for a series of articles on members of Network 21, especially Kranidiotis and Dionisis Karahalios, again in relation to the Öcalan affair. The two men individually and jointly initiated proceedings in civil courts, claiming compensation for defamation and insult in the total amount of two billion drachmas (approx. €6 million). Here, too, the proceedings reached Areios Pagos, which again found that Vasilakis was liable to pay compensation.²²

Eventually, both cases reached the European Court of Human Rights. In *Lionarakis v. Greece*, Lionarakis complained that domestic courts had violated both Art. 10 (freedom of expression)

²¹ Areios Pagos, 772/2004.

²² Areios Pagos 225/2005.

and Art. 6§1 (right to a fair trial). He argued in particular that he should not have been held liable for his guest's remarks during a radio programme of a political nature. He also contented that the compensation awarded was disproportionate. The Court agreed with him on both points and unanimously found violations of both Art. 10 and Art. 6§1. In relation to Art. 10, the Court applied consistent jurisprudence (cf. *Lingens v Austria*, *Jersild v Denmark*, *Thoma v Luxembourg* etc) and found that a journalist and programme coordinators should not be held liable in the same way as the person who made the defamatory remarks. It paid particular attention to the fact that the programme had been broadcast live and ultimately concluded there was no pressing need that justified the interference of Lionarakis's rights. The Court awarded Lionarakis €42,238 in pecuniary damage along with all costs and expenses.

Similarly, in *Vasilakis*²³ the Court unanimously found violations of Arts. 6 and 10 of the Convention, and ordered Greece to pay Vasilakis €6,000 in moral damages and another €6,000 in costs.

Areios Pagos again considered the proportionality criterion in a recent case in which a newspaper, Proto Thema, had been ordered to pay €70,000 for defamation in criminal proceedings under Art. 363 GCC. In this case, the plaintiff was a judge who claimed that the newspaper had published inaccurate information about him. Areios Pagos agreed with the applicant and found that the specific amount, under the circumstances, did not breach the principle of proportionality (Areios Pagos 531/2014, referring to Areios Pagos 6/2009).

Duty of truth; good faith and due diligence

The Greek courts have deduced a "duty of truth" for journalists and the media as a general principle. Areios Pagos, in particular, as well as several Appeals Courts (civil chambers), have taken the view that journalists should ensure that any news and information is accurate and true prior to publication.

According to Areios Pagos, this duty of truth consists of two supplementary duties: first, a duty of good faith with respect to the accuracy of information: and second, a duty of due diligence "as requested by the circumstances".²⁴

Such tests (e.g., truth, due diligence, good faith and absence of malice in the case of insult) are commonly found in the legal systems of commonwealth countries in the form of "defences" in defamation cases, rather than as duties. In England and Wales, for example, the so-called Reynolds test was commonly applied to protect journalists from liability in defamation cases until the passage of the Defamation Act 2013.²⁵

In Greece, on the contrary, the three tests in defamation cases are conceived not as defences for journalists but rather as duties. As such, and especially because courts demand that they be invoked conjointly, they are unlikely to be used in favour of the press. A journalist, in addition, will not be able to prove the duty of truth in certain cases, such as in the event that the information obtained from sources was inaccurate.

²³ ECtHR: *Vasilakis v. Greece*, Application No 25145/05, 17 January 2008.

²⁴ Athens Appeal Court 5538 / 2006; see also Karakostas, *supra* note 43, at 177-1708.

²⁵ This was a 10-point test on the basis of which a journalist would not be liable for inaccurate information published. See *Reynolds v. Times Newspaper Limited*.

It should be noted, in addition, that journalistic sources may be confidential (as per Art. 8, par 3 of the Deontology Law, journalists are allowed not to reveal their sources). This means that, even if a journalist has acted in good faith and has shown due diligence, a publication may still be considered inaccurate. As a result, the three tests always play in favour of the plaintiff.

Further, according to Law 1178/1981, the press is always liable to pay compensation. The Greek courts, at least in civil law procedure, have only seldom referred to reasoning based on other potential tests – for instance, a test of public interest. Exceptions may be seen in a few Appeals Court judgments that refer to the role of the press as a watchdog, in line with the jurisprudence of the ECtHR.²⁶

Breadth of personality rights

As mentioned earlier, personality rights enjoy strong protection in the Greek constitutional and civil law tradition. Art. 5 of the Constitution and Arts. 57-59 GCC are examples. It therefore falls upon the courts to strike the right balance between two values: personality and the protection of one's honour on the one hand, and freedom of expression or the press on the other.

That said, it appears that the Greek courts generally lean toward privileging personality rights. In fact, the right to personality is understood in a relatively, if not extremely, wide way by the Greek doctrine and domestic courts. According to Areios Pagos, personality encompasses "every good that is closely related to the person, perceived as a natural, moral, social, intellectual being". It has been therefore understood as encompassing honour, esteem, freedom etc.²⁷. In some cases, it may also include religious convictions and beliefs.²⁸ In addition, according to Georgiadis, the right to personality, "among its other manifestations also encompasses the mental existence of the person, namely [his or her] sentimental and emotional existence".²⁹

ECtHR: Avgi Publishing and Press Agency S.A. & Karis v Greece, Application No 15909/06, 5 September 2008

In 2007, Areios Pagos (case no. 1208/2007) found the owner of the left-leaning daily I Avgi (I Avgi Publishing) along with the paper's editor jointly liable for defamation on account of an article that referred to a journalist elected to Parliament with the Popular Orthodox Rally party as a "notorious crazy nationalist". Areios Pagos stated that an appeals court's judgment ordering damages in the amount of €60,000 was justified (Areios Pagos no. 1462/2005). The ECtHR disagreed with that conclusion. It found in particular that the incriminated term was a value judgment, which, in addition, had a factual basis (given that K.V. indeed expressed publicly conservative and nationalistic ideas, glorifying the history of the Greek nation). It further found the amount of the damages disproportionate to the aim pursued.

²⁶ Such as, for instance, Athens Appeal Court 3092 /2012 concerning a TV presenter's critique of the Greek criminal justice system. The aforementioned Athens Appeal Court 6089/2011 also mentions the role of the press as a 'watchdog'. However, the impugned publication in this case was a TV show of social interest (involving a psychologist and a pregnant woman who had suffered violence) rather than a political show, or a publication that could be indeed of an acute public interest.

²⁷ Areios Pagos (Plenary) 13/1999.

²⁸ Ibid.

²⁹ Georgiadis, *General Principles of Civil Law* (Athens, Sakkoulas 1996) at 86 [Greek].

As noted earlier, the deontology code is also taken into account by the Greek courts in considering the amount of compensation.

iii. Data protection and access to information: Challenges and ambiguities for journalists

Law 2472/1997 on the Protection of Individuals with regard to the Processing of Personal Data is one of the more recent Greek laws protecting privacy.³⁰ Art. 7 (“Processing of sensitive data”) prohibits both the collection and processing of sensitive data. Art 7, par. 2, however, provides that “[e]xceptionally, the collection and processing of sensitive data, as well as the establishment and operation of the relevant file, will be permitted “ by the Data Protection Authority. Such permission may be granted, among other circumstances, when “[p]rocessing concerns data pertaining to public figures, provided that such data are in connection with the holding of public office or the management of third parties’ interests, and is carried out solely for journalistic purposes” (Art 7, par.2, sec. g).

However, the authority is to only grant such permission if “absolutely necessary in order to ensure the right to information on matters of public interest, as well as within the framework of literary expression and provided that the right to protection of private and family life is not violated in any way whatsoever”. As such, in controversial instances in which something could, potentially, concern sensitive personal data, journalists have to prove in advance that their research concerns matters of public interest in order to secure the permission of the Authority.

Art. 11 of Law 2472/1997 requires the data collector to inform the subjects of data regarding details of the data collection, including the data collector’s identity and purpose of collection, as well as to notify the subject when data are to be disclosed to third parties. It further states that “*without prejudice to the rights arising from paragraphs [sic] 12 and 13, the right to inform does not exist when such collection is carried out solely for journalistic purposes and refers to public figures*” (emphasis added). This provision therefore subjects journalists’ ability to access data to two very strong rights, namely, the right to access (Art. 12) and the right to object (Art. 13).

These latter two rights may be exercised at any time. Art. 12 provides that “everyone is entitled to know whether personal data relating to him are being processed or have been processed” as well about the details of such processing. Art. 13 states, in turn, that the “data subject shall be entitled to object at any time to the processing of data relating to him. Such objections shall be addressed in writing to the Controller and must contain a request for a specific action, such as correction, temporary non-use, locking, non-transfer or deletion. The Controller must reply in writing to such objection within an exclusive deadline of fifteen (15) days. His/her response must advise the data subject as to the actions s/he carried out or, alternatively, as to the grounds for not acceding to his/her request. In case the objection is rejected, the relevant response must also be communicated to the Authority” (Art. 13, par. 1).

These provisions, which provide for additional duties beyond deontological commands, appear to be incompatible with the very notion of press freedom and particularly with the time constraints of the journalistic profession, creating a hindrance for investigative reporting. There

³⁰ Law 2472/1997 on the Protection of Individuals with regard to the Processing of Personal Data (as amended), available at http://www.dpa.gr/pls/portal/docs/PAGE/APDPX/ENGLISH_INDEX/LEGAL%20FRAMEWORK/LAW%202472-97-APRIL010-EN%20_2_.PDF. Greek version: http://www.dpa.gr/portal/page?_pageid=33,19052&_dad=portal&_schema=PORTAL#7

are, fortunately, internal decisions of the Data Protection Authority concerning the processing of private data that favour the press in relation to its role as a “watchdog”. For instance, in a case concerning the newspaper Proto Thema’s publication of the assets of a judge and the judge’s immediate family members, the Authority noted:

“// The control of assets of a Supreme Court judge, and even the control of assets of [that judge’s] children, insofar as the latter is relevant to the assets of the [judge], is a matter of interest to public opinion and can be associated with the broader problem of the proper functioning of the judicial system – whatever the cost might be in terms of possible political responsibility of the competent authorities.”³¹ //

b. Restrictions in criminal law

In addition to this robust civil law framework for the protection of personality rights, Greece still maintains criminal defamation laws. In many instances, these defamation laws are a weapon in the hands of politicians and others seeking to intimidate journalists and silence criticism.³²

i. Defamation and insult provisions in the Penal Code

The provisions related to criminal defamation are found in Section XXI of the Greek Penal Code³³ under the headline ‘Crimes against Honour’. These provisions include simple defamation (Art. 362) and malicious defamation or calumny (Art. 363). In addition, the Code establishes the offences of criminal insult (Arts. 361 and 361A), offending the memory of the deceased (Art. 365) as well as a peculiar offence called on defamation of a corporation (S.A.) (Art. 364). The Code makes no distinction between libel and slander.

With respect to criminal procedure, Art. 368 of the Penal Code establishes that all offences against honour are to be prosecuted upon complaint only and (almost) never *ex officio*. It is therefore necessary that the victim file a complaint with the authorities in order for prosecution to take place. However, if the victim is a public official and the impugned act took place in the course of his or her duty or was related to such duty, the complaint may be exercised by the victim’s superior and even by the relevant Minister. The only circumstances in which *ex officio* prosecution for offences against honour can take place is if the victim is “a police officer, port authority, fireman and health officer and the act occurs during the execution of the service by the person who acted masked or altered the characteristics”.

Simple defamation (GPC Art. 362)

The primary offence of simple defamation (*apli disfimisi*) concerns the spreading or claiming of allegations of fact in any way. As with the Press Law, in the case of liability for simple defamation there is no need to establish intent or to claim that the allegations of fact were false. Punishment may be imposed even if the allegation is true, as long as the allegation was (a) made publicly and (b) amounted to harming the victim.

³¹ Data Protection Authority, Decision no. 43/ 2007.

³² Paschos Mandravelis, “Lawsuits to gag the press”, paper for the 15th Journalists’ Conference of Samothraki, 22 June 2007, available at <http://medium.gr/2008-09-02-09-54-04/1699-2009-01-15-09-45-27.html> [Greek].

³³ Greek Penal Code (GPC); Some articles related to defamation are translated into English by the Helsinki Observatory at <http://www.greekhelsinki.gr/english/reports/ghm29-9-1998.html> (last accessed 25 June 2015).

This means that virtually any statement undermining another's personality in some way may be caught by this provision. The offence of simple defamation makes no distinction among allegations of fact, opinions and value judgments. Indeed, opinions and value judgments may also be penalised under Art. 362 as the crime is defined in overly broad terms.

GPC Article 362: "Whoever claims or spreads about another and before a third party, facts that may harm their honour or reputation, in any way shall be punished by a maximum of 2 years of imprisonment or a fine."

Malicious defamation (*calumny*) (GPC Art. 363)

Art. 363 provides for an 'aggravated' offence of defamation known as calumny or malicious defamation (*sykofantiki disfimisi*):

GPC Article 363: "If in a case under Article 362, the information is false and the offender was aware of the falsity thereof, he shall be punished by imprisonment for not less than three months, and, in addition, a pecuniary penalty may be imposed and deprivation of civil rights under Article 63 may be decreed."

The interpretation of this provision has fallen to the domestic courts (see section below). However, two distinctive features appear straight from the outset: first, the inaccuracy of the disseminated facts ("the information is false ..."); and second, the intention of the offender to hurt the person whom those facts concerned ("... and the offender was aware of the falsity thereof").

Defamation of a corporation (GPC Art. 364)

The offence known as defamation of an S.A. (a type of corporation usually referring to a public limited company) may be punished with either an administrative fine or imprisonment for up to one year. The punishment is always imprisonment if "the information which the accused asserted or disseminated is false, and he was aware of the falsity thereof, he shall be punished by imprisonment" (Art. 364, par. 3)

GPC Article 364: "1. One who by any means asserts or disseminates information concerning a corporation with respect to its business, financial condition, product or members of its board of directors which may lower the confidence of the public in the corporation and generally injure its business shall be punished by imprisonment for not more than one year or by pecuniary penalty."

Insult (GPC Arts. 361 & 361A)

In cases that do not 'qualify' for defamation proceedings, insult provisions may apply. These provisions (Arts. 361 and 361A) are broadly formulated. For instance, they may apply in the mere cases of indignation or having one's feelings offended. Insult may be punished with imprisonment for up to one year. For insult offences that are not particularly severe, the punishment is administrative detention ('jailing') or a fine (Art. 361, par. 2).

Certain aggravating circumstances are described in Art. 361A. If the offence was unprovoked by the victim, the punishment is imprisonment for at least three months (Art. 361A, par. 1). In addition, if two or more persons participated in the act according to Art. 361A, par. 2, the minimum punishment is six months in prison.

It should also be noted that Art. 366, par. 3 allows for defamation and insult to be punished jointly: "Proof of truth of defaming information shall not exclude punishment for insult, provided that intent to insult is apparent from the conduct or circumstances under which it occurred."

GPC Article 361

Insult

1. Except in cases which amount to defamation (Articles 362 and 363), one who by words or by deeds or by any other means injures another's reputation shall be punished by imprisonment for not more than one year or by pecuniary penalty. The pecuniary penalty may be imposed in addition to imprisonment.
2. If the injury to reputation is not severe, considering the circumstances and the person injured, the offender shall be punished by jailing or fine.
3. The provision of paragraph 3 of Article 308 shall here apply.

GPC Article 361A

Unprovoked Insult Through An Act

1. An insult committed through an act (article 361 par. 1) is punished by imprisonment of at least three months if it was unprovoked by the victim.
2. If in the action of the previous paragraph participated two or more persons, it will be punished by imprisonment of at least six months.

Until the late 1990s, Art. 181 of the Penal Code criminalised insult against nearly all public officials, including the prime minister, the government, parliament, the speaker of parliament, the leaders of the political parties recognised by the Rules of Parliament and the judicial authorities. The punishment in such cases was imprisonment for to two years. The article also punished insulting, displaying hatred or contempt, damaging or disfiguring an emblem or symbol of State sovereignty or the President of the Republic.

Art. 74 of the Military Penal Code provided a corresponding offence titled "Insults to the Flag or the Armed Forces". This provision provided that "a member of the armed forces who insults the flag, the armed forces or an emblem of their command shall be punished by a term of imprisonment of at least six months. If he is an officer, he shall also be stripped of his rank."

Following the ECtHR's 1997 decision in *Grigoriades v. Greece*, GPC Art. 181 was amended. Today it only criminalises insults against the flag or emblems of sovereignty: "Whoever expresses hatred or contempt for, or removes or destroys or deforms or denigrates the official flag of the State or the emblem of sovereignty, is to be punished by imprisonment of up to two (2) years."

Case of *Grigoriades v. Greece* (121/1996/740/939); Judgment of 25 November 1997

This case challenged Greek law on the protection of the military and contributed to clarifying the boundary between ‘insult’ and ‘mere criticism’. The applicant was a probationary military officer of the Greek forces, holding the grade of second lieutenant. He claimed to have witnessed several abuses against conscripts that he denounced to his superiors, with whom he then eventually came into conflict.

A disciplinary penalty was imposed on the officer. In May 1989, the applicant abandoned his unit. He also sent to his unit’s commanding officer a letter that the Greek authorities found to be disparaging of the army. The letter included such statements as: “... The army remains a criminal and terrorist apparatus which, by creating an atmosphere of intimidation and reducing to tatters the spiritual welfare of the radical youth, clearly aims at transforming people to mere parts of an apparatus of domination”

The officer was tried by the competent first-instance court (in this case, the Permanent Army Tribunal of Ioannina) and found guilty on charges of ‘desertion and insulting the army’ (Article 74 of the Military Penal Code). He was sentenced to one year and ten months in prison. After his appeal was dismissed by both the Athens Appeals Court (which upheld the insult charges) and Areios Pagos, the officer lodged a complaint with the ECtHR.

At that time, the ECtHR followed a dual Commission–Court system. While the Commission agreed with the applicant, the Grand Chamber was divided. By a vote of 12-to-8, the Grand Chamber agreed that the applicant’s conviction under Art. 74 of the Military Penal Code had not been necessary in a democratic society and, hence, constituted a violation of Art. 10 of the Convention. In its decision the Court wrote: “ ... it must be open to the State to impose restrictions on freedom of expression where there is a real threat to military discipline, as the proper functioning of an army is hardly imaginable without legal rules designed to prevent servicemen from undermining it ... It is not, however, open to the national authorities to rely on such rules for the purpose of frustrating the expression of opinions, even if these are directed against the army as an institution.”

ii. Defences for the press

In the Greek penal system, ‘defences’ are more commonly known as either “reasons for lifting the unjust character of the act” (i.e., the act is not unjust and therefore not an offence) or “reasons for lifting the punishable character of the act” (i.e., the act is an offence, yet not a punishable one), depending on their implications. In defamation cases, defences are set out in Arts. 366 and 367 of the GPC.³⁴ These are of three kinds: truth, honest opinion (fair comment) and “justified interest” or “any other comparable circumstances” (privilege). There is also a peculiar defence of ‘honour’ that applies only in the case of insult. Under more recent

³⁴ Exercising a lawful duty or fulfilling a duty required by the law is also a reason for lifting the unjust character of the act, according to GPC Art. 20.

jurisprudence, the defences under Art. 367 can also be invoked, by analogy, as “objections” in the context of civil law cases.³⁵

(1) Truth

Art. 366 par. 1 provides that ‘if the [allegedly defamatory information] is true, the act shall not be punished’. In addition, proof of truth is taken *de facto* into account by the court if the allegations in question concern punishable offences and if there is another ongoing judicial prosecution related to those allegations. In this case, according to Art. 366 par. 2, the defamation trial is postponed until the other trial comes to an end. This means, for example, that the person accused (e.g., journalist or reporter) under the aggravated offence of Art. 363 should not be punished if another court finds that the person who triggered the defamation proceedings is indeed found to be guilty of having committed the crimes that were the subject of the defamatory statement.

GPC Article 366

General Provisions

1. If the information described under Article 362 is true, the act shall not be punished, but proof of truth shall not be admitted if the information concerns solely family or personal relationships which do not affect the public interest and if the assertion or dissemination was done malevolently.

2. In cases under Articles 362, 363, 364 and 365, if the information which the accused asserted or disseminated discloses a criminal act which is prosecuted, the defamation trial shall be suspended until the termination of such prosecution, and subsequently the truth of the information shall be deemed proved by a conviction and its falsity by an acquittal based upon failure of proof of commission of such criminal act by the person defamed

[...]

However, the defendant or accused journalist does not have the freedom to invoke truth as a defence in all cases. According to Art. 366, par.1, truth may not be invoked if the defamatory allegations were disseminated maliciously and referred to the victim’s private family life without any relevance for the public interest. *A contrario*, this means that defendants are able to rely on the proof of truth for information about a person’s family life if the dissemination of such information was in the public interest.

The defence of truth may also be raised in the case of defamation against corporations. According to Art. 364, par. 2, the offence prescribed in Art. 364, par. 1 is not to be punished if the perpetrator proves the truth of the event claimed or disseminated.

³⁵ Areios Pagos 1486/2010 and Larissa Appeal Court 494/2011. (“ο άνω ισχυρισμός προβαλλόμενος για να αποτελέσει και από το άρθρο 367 παρ. 1γ ΠΚ ένσταση, που εφαρμόζεται αναλογικά και στο χώρο του ιδιωτικού δικαίου (ΑΠ 1486/2010 δημ.σ. στην ΤΝΠ Νόμος). See also above, on the ‘duty of truth’ in civil cases.

GPC Article 367

1. Disapproving criticisms of scientific, artistic or occupational developments, or such criticisms which appear in a public document issued by an authority concerning the activities of such authority, or such criticisms for the purpose of fulfilling lawful duties, the exercise of lawful authority or protecting a right or some other justified interest, or such criticisms in similar cases shall not constitute an unjustified act.

2. This provision shall not apply when the above criticisms constitute the essential elements of an offense under Article 363 or intent to insult is apparent from the manner of criticism or the circumstances under which it occurred.

(2) Honest opinion (fair comment)

Under GPC Art. 367, judgments that may be perceived as unfavourable, particularly with respect to scientific, artistic, or professional works, do not constitute the offence of defamation. Speech that consists of “acute criticism” is generally accepted in the context of journalism or other circumstances that may demonstrate justified interest (see below),³⁶ rather than in the context of fair comment.

(3) Justified interest (privilege)

There is no liability for defamation under the GPC if the defendant was exercising his or her lawful duties or powers or for “other justified interest”. The defence of privilege may also be invoked in comparable circumstances, according to Art. 367.

(4) Honour (in the case of insult)

Interestingly, and as a form of protection for honour, Art. 361, par. 3 refers to Art. 308, par. 3, which in turn provides “reasons for lifting the punishable character of the act” in cases of bodily harm. More specifically, this provision provides that simple bodily harm may remain unpunished if the offender was driven by “justified outrage by a previous particularly cruel or brutal act caused to them by the victim”. Hence, the offence of insult under Art. 361 may also remain unpunished if the defendant was provoked by “justified outrage by a previous particularly cruel or brutal act caused to them by the victim”. In addition, the perpetrator of an insult prescribed in Art. 361 may also be exempted from punishment in practice due to justified indignation that occurred immediately before having committed the act of insult.

iii. Interpretation of the criminal law framework by the Greek courts

The Greek courts have contributed to clarifying the subtleties of these penal provisions in many ways.

The **first point** is the clarification of the elements of the offence of calumny in Art. 363. In terms of the actus reus of the offence, the Greek Court of Cassation has clarified:

- That in the context of these provisions, a “fact” is every act or specific event of the internal or external word that is susceptible of being perceived and proved (24/1991, 569/1974);

³⁶ Areios Pagos 825/02; Areios Pagos 780/55 and more recently, e.g. Areios Pagos 1044/2015.

- That a “fact” can also refer to a specific relation or behaviour of the past or present that must be perceived by one’s senses, especially if it goes against morality or public decency (478/1986);
- A ‘fact’ has to be prone to harm one’s honour or reputation by its mere announcement (1156/1985); and
- A ‘fact’ can also be the expression of opinion, evaluative judgement or characterisations in relation to the fact in such a way that the expression substantially defines the extent of the fact’s qualitative and quantitative weight (248/1986, this is not the case when the two [i.e., fact and relevant expression] are expressed in an independent way (914/1987).

While commenting on the Deontology Law in 680/2012, Areios Pagos highlighted that “... in order to fulfil the constituent elements of crimes committed by the press, it is necessary to fulfil not only the element of ‘form’, as conceptually defined in Law 1092/1938, but, additionally, the element of ‘publication’ ... [A]ccording to Art 2, par. 1, this happens after distributing or selling or exhibiting these facts in a place open to the public.”

In terms of *mens rea*, Areios Pagos has ruled that calumny demands a higher threshold than simple defamation. It has clarified that the requirement of malicious behaviour in Art. 363 should be read as *dolus malus*, i.e., that the perpetrator must act with the intention to destroy the victim’s reputation. More specifically, *dolus* is needed for the mental element of the crime to be fulfilled: The offender has to have *willingly* disseminated false allegations and has to have been aware of their falsity. In the view of the Areios Pagos, indirect intent and *dolus eventualis* are not sufficient.³⁷ To summarise, in order for the offence of calumny to have taken place, the fact has to be false; the perpetrator had to know that the fact was false; and the perpetrator had to have the intent to harm the victim *knowing* that the dissemination of the fact in question would harm him or her.

The **second point** that Areios Pagos has clarified is the distinction between the offences of defamation and insult, including the requirements of the formal insult provisions (that act as complementary to defamation under Art. 366 GPC). For Areios Pagos, honour is understood as the ethical and social value of the person who is insulted. In order for the offence of insult to be committed, *mens rea* must include that special purpose of insult.³⁸ This is understood by the way of manifestation of the offensive behaviour.³⁹

This distinction is particularly crucial as the defences of privilege and fair comment apply to both simple defamation (Art. 362) and calumny (Art. 363), but not to insult (Art. 361). When a “purpose to insult” is obvious, the defence of justified interest is not valid. In the words of Areios Pagos, “the aforementioned circumstances that strip the act from its unlawful character [i.e. the defence of privilege] attack with defamation or insulting are overturned, in the instance that, from the way that the defamatory or abusive events happened, one may deduce that there was a purpose to insult, i.e. purpose of disparagement by the offender towards the person offended”..^{40 41}

³⁷ See e.g. Areios Pagos 914/1987; 680/2012; 42/2000.

³⁸ Areios Pagos 420/1981.

³⁹ Areios Pagos 1233/2010.

⁴⁰ Areios Pagos 772/2004, cited supra 59; also Areios Pagos 647/2008; Areios Pagos 159/2008, Areios Pagos 479/2008. This jurisprudence is generally followed by appeal courts (eg Patras Appeal Court 4/2010; Larissa Appeal Court, no 639/ 2006).

⁴¹ Ωστόσο η προαναφερόμενη άρση του άδικου χαρακτήρα της προσβολής με δυσφήμιση ή εξύβριση ανατρέπεται, αν από τον τρόπο που έλαβαν χώρα οι δυσφημιστικές ή υβριστικές εκδηλώσεις προκύπτει σκοπός εξυβρίσεως, δηλαδή σκοπός εκφράσεως καταφρονήσεως από τον προσβολέα προς εκείνον που προσβάλλεται.

The **third point** is the clarification of the defences available to journalists. As provided in Art. 367 GPC, defamation is not a crime if the accused exercised his or her lawful duties or powers for “any other justified interest”. What could this ‘justified interest’ be?

According to Greek courts, the exercise of journalism by definition amounts to justified interest. Moreover, this interest covers “sharp criticism and negative characterisations”. More specifically, according to Areios Pagos, “the justified interest stems from the freedom of the press and its social mission, in particular that of newspapers” and is therefore “inherent to the persons directly associated with the operation of these media”. As such, journalists may enjoy this defence “particularly when publishing news, comments and the reporting of facts about persons ... accompanied even by acute criticism and unfavourable characterisations of these persons”.⁴² Notably, the concept of the press may include other persons, i.e., encompassing “those who are directly connected to the function of the press, for the publication of news and events related to the conduct of persons or groups of persons that are of an interest to the community, or, might it also be other persons who have such an interest, which stems from the protection of freedom of expression by the Constitution (Article 14), the ECHR (Article 10) and the ICCPR (Article 19). It also ensues that such persons may proceed to comparable publications or emissions for the information of the public even by using acute criticism or negative comments at the expense of the aforementioned persons”^{43 44}

In contrast, lifestyle shows and broadcasts that are not of journalistic nature and do not aim at the provision of information to the public do not fall under the same protective scope of Art. 367.⁴⁵

In addition, Areios Pagos has made an additional clarification with respect to proceedings. In the case of crimes committed by the press, and unless there is a case of *force majeure*, all criminal procedure deadlines are cut in half according to what is stated in the Press Law (2243/1994, par. 3).⁴⁶ For example an appeal deadline would be ten days instead of twenty, three months instead of six months and so on. This means that when a court finds a journalist liable for defamation, he or she would not have the same time to prepare as ‘common’ offenders.

⁴² Areios Pagos 772/2004 cited supra 59; Areios Pagos 1662/2005. See also, Larissa Appeal Court, no 444/ 2011; Giannena Appeal Court 244/2005; Larissa Appeal Court, no 639/ 2006; Aegean Appeal Court 26/2010; Thessaloniki Appeal Court 142/2003; Athens Appeal Court 9975/1986.

⁴³ Areios Pagos 772/2004 supra 59.

⁴⁴ Τέτοιο ενδιαφέρον, που πηγάζει από την προστατευόμενη από το Σύνταγμα (άρθρ. 14) και από την επικυρωμένη με το ΝΔ 53/1974 ΕΣΔΑ (άρθρο 10) ελευθερία του τύπου ή από την προστατευόμενη από την ΕΣΔΑ (άρθρο 10) ελευθερία της ραδιοφωνίας, έχουν και τα πρόσωπα που άμεσα συνδέονται με τη λειτουργία του τύπου ή της ραδιοφωνίας για τη δημοσίευση ή εκπομπή ειδήσεων και γεγονότων σχετικά με τη συμπεριφορά φυσικών προσώπων, ιδίως δε εκείνων που ασκούν δημόσιο λειτουργήμα, ή νομικών προσώπων ή ομάδων προσώπων, που ενδιαφέρουν το κοινωνικό σύνολο ή, έστω, και άλλους. Παρέπεται ότι τα ως ανωτέρω συνδεόμενα με τον τύπο ή τη ραδιοφωνία πρόσωπα μπορούν να προβαίνουν σε αντίστοιχη δημοσίευση ή εκπομπή για πληροφόρηση, ενημέρωση και κατατόπιση του κοινού ακόμη και με οξεία κριτική ή δυσμενείς χαρακτηρισμούς σε βάρος των ως άνω προσώπων ή ομάδων).

⁴⁵ Athens Appeal Court 34/2011.

⁴⁶ Areios Pagos 957 /2010.

III Interview: Kostas Vaxevanis, journalist and owner, HotDoc magazine

In 2014, Kostas Vaxevanis, a journalist and owner of the magazine HotDoc, was arrested and prosecuted for publishing the so-called ‘Lagarde list’. The list contained the names of 2,059 Greek citizens who allegedly maintained accounts with the Swiss branch of HSBC and were therefore likely to be tax evaders. Interestingly, the list had initially been in the possession of France’s then-Finance Minister Christine Lagarde, who had shown it to her Greek counterpart.⁴⁷ Although Vaxevanis was acquitted at the first instance, the case ignited a debate about the quality of press freedom in Greece. The European Journalists Federation (EFJ) declared its support for Vaxevanis, while the president of the JUADN, an affiliate of the EFJ in Greece, called the prosecution a “fastidious inquiry against investigative journalism”⁴⁸

Two years later, Vaxevanis was again prosecuted, this time for calumny under GPC Art. 363 in relation to his investigative reporting on the “Marfin affair”. The criminal proceedings were initiated following a complaint by a businessman, Andreas Vgenopoulos. Vgenopoulos was the former manager of Marfin Investment Group (MIG) and was allegedly involved in financial scandals that had a disastrous impact on the financial stability of the economy in Cyprus. The impugned publication was an article on the collapse on banks in Cyprus that appeared in HotDoc in 2012. The piece was accompanied by a image of Vgenopoulos with the Marfin Bank ‘sinking’ behind him, implying that Vgenopoulos was part of the crisis in Cyprus. For this publication, Vaxevanis, as the owner of HotDoc, was sentenced to 26 months in prison, suspended for three years.⁴⁹ Notably, the criminal prosecution against Vgenopoulos in relation to the alleged Marfin scandal – which could have had an impact on the defamation proceedings under GPC Art. 366, par. 2 – has remained at a preliminary stage since April 2015.

In response, the IFJ and EFJ highlighted an “urgent need to reform the Greek law on defamation to strike a fairer balance which protects both the rights of journalists and the reputation of individuals”. Mogens Blicher Bjerregård, president of the EFJ, said: “This sentence amounts to intimidation of journalists who seek to report without fear nor favour on the activities of those with power and influence in our societies. We look to the Court of Appeal to recognise this important role and review this decision.”⁵⁰

Kostas, what are your thoughts about defamation laws in Greece?

K.V.: Before discussing the legal question as such – i.e., to explain the widely discussed legal framework as to how and why journalists are brought to trial – I would like to say a few words about the situation in Greece as it has been shaped. This situation has to do with the way that

⁴⁷ Maria Malagardis, “La Grèce à cache-cache avec la liste qui fâche” 14 May 2013, http://www.liberation.fr/monde/2013/05/14/reperes_902898 (in French).

⁴⁸ IFJ/EFJ, “EFJ calls Greek Court to drop charges against journalist Kostas Vaxevanis”, 30 October 2012.

⁴⁹ JUADN, Press Release, 24 April 2015, <http://www.esiea.gr/deltio-typoy-dod-eod-me-aformi-tin-kat/>.

⁵⁰ IFJ/EFJ, “IFJ/EFJ urge law reform in Greece after jail term sentence against journalist for defamation”, 10 April 2015, <http://www.ifj.org/nc/news-single-view/backpid/1/article/ifjefj-urge-law-reform-in-greece-after-jail-term-sentence-against-journalist-for-defamation/>.

the public perceives journalists and the way that journalists perceive themselves. There is here a triangle of corruption. On one side, entrepreneurs do whatever they want. On the second side, politicians increasingly change the laws and avoid punishment. On the third side are journalists and the press.

In Greece, businessmen may undertake public works while stealing and at the same time maintaining TV channels and even being part of the 'Lagarde list'. The politicians who are supposed to be working to suppress corruption are themselves corrupt or involved in scandals. This situation degenerates with time. So why does the press remain silent about such scandals? Well, because the press is directly associated with the other two. And the people working for the press and TV channels think something like: "I am working at a TV channel owned by W, therefore I cannot criticise X, Y and Z."

The press is self-censored and in this way loses its sharpness. It is self-contained within its role in public relationships and is satisfied by merely undertaking [soft] journalism and criticism toward lesser public figures, such as mayors, or the occasional small-scale scandal. This means we have a situation where the press has stopped playing the role it was supposed to play. By implication, when someone enters the scene who does not play this role, he is considered ridiculous in the public eye, like some kind of Don Quixote.

How many cases and prosecutions do you have pending against you?

K.V.: Over the past two years we have been the target of fifty lawsuits and prosecution orders. We have loads and those who complain are not 'average' citizens: They are public persons, public officials.

When it comes to public persons and officials, we ask them to *answer* their involvement with one scandal or another before publishing our material. And what is their response? "I am not answering anything to slanderers. I will take them to court. They will have to respond directly to justice." They use this smart way to avoid answering.

What sort of general effect do these cases have?

K.V.: One aspect is that we are faced with an extremely costly procedure. Here at HotDoc we make just enough money to be able to pay our court and legal fees. Every court appearance costs about €200 – 300. Consider the cost for fifty pending suits: €150,000. This is "elimination of the press".

Moreover, the problem is that in the defamation proceedings you are automatically considered a suspect. So you do everything you can to reveal the truth. But still the public thinks: "Why is he on his own then?" Why are there no other media talking about him?" "Since it is just he, he must be wrong."

One TV channel broadcast a "Vaxevanis: Wanted" notification. They had never done such a thing before, not even for paedophiles or drug dealers. In this way, Vaxevanis is pre-criminalised in the eyes of the world. He is *a priori* considered unreliable.

Regarding the article for which you were recently convicted and sentenced to prison for defamation, did you present relevant documentation and testimonies for your claims?

K.V.: Yes, we did. We presented in our report approximately 5,000 documents and statements from the Cyprus prosecutor's office, the Cypriot police, the Greek authorities, the Cypriot Parliament and the Greek Parliament.

And after all of that? We were sentenced to 26 months in prison for criminal defamation!

The Penal Code specifically mentions that criminal defamation requires intent to harm. How did that requirement figure into your court case?

K.V.: That is precisely the interesting point. What does the law say? What does Art. 10 of the European Convention say? What does the European Court of Human Rights say? They all say that a journalist is free to criticise. They also say that the press is a watchdog, especially when criticising public persons. This is what I have argued before the courts every time.

Even [in the case that] some of the things a journalist writes are not true, there is still no intent to harm. My intent was to serve the public interest. I constantly refer to the public interest. That is my job.

And what did the prosecutor say in the Vgenopoulos case? He said: "Well, Vaxevanis is one of the best journalists in Greece. He is very smart. He ought to have done the examination properly." So what the court did was take a possibility and deduce from it a legal certainty. I don't understand how this was possible.

Has this case had any kind of 'chilling effect' on your work?

K.V.: This is the problem of self-censorship. What did I do? I have only told the truth. Have I lied? No. Have I offended someone? No. How we do know what the truth is? It is documented. What is the result? I have paid €150,000 in fees and court proceedings. What is the next step? I have three children to raise. Shouldn't I be more careful?

This is how a journalist functions. And then, mouths are shut. Of course, unless one is crazy. Like me. Not because I am really crazy, but because these people have stolen.

People ask: "So how come you say there is no press freedom? You are able to speak out." Well, press freedom is not defined by a one-off occasion to speak out or the foolish or the brave decision to speak out at one moment only.

What is your view on the existence of criminal defamation laws?

K.V.: Criminal defamation in Greece should be repealed. Why should it be a criminal offence? Whoever has a problem can file an action in civil court.

Aren't the civil defamation laws also problematic?

K.V.: Well, yes, they are. The problem is that in Greece, there is no preparatory committee to examine whether a complaint is well-founded. I was once called as a witness to a colleague's trial. The judge was saying that the journalist could have said what he was claiming in a different way.

And then I thought: Wait a second. Isn't there a danger that we transform into prosecutors and you become journalists? It is society that has designed these roles. Journalists should be free

to say something in their own way and exactly in the way they want to say it. We are now at a point when *articles* trigger civil actions – not statements, but opinions and value judgments. From the moment that a journalist says something, the person who is offended also has the right to reply. Isn't that what democracy and dialogue are about?

People are exasperated. There is a huge volume of first-instance cases that may be humiliating or badly written. The first-instances judges may be afraid of these powerful interest. And these cases do not get to the Supreme Court.

Kouti Pandoras appears to continue to be popular in Greece, despite the legal troubles.

K.V.: Yes, that is true. We have many followers. More than one million people follow Kouti Pandoras on social media.

On the other hand, it is dangerous. The public might start wondering, "Why is it only he who speaks out?" There is, however, a cost. Those who speak the truth should stand for the truth.

IV Conclusion

The Greek press currently faces important challenges that have an impact on the quality and free flow of information in Greece. These challenges are not only political and social, but also legal.

A critical reading of Greek legal provisions related to reputation and honour, along with the alarming number of legal actions for defamation against journalists, suggests that these provisions inhibit press freedom. Neither ESEIA nor any other body currently maintains a list of all legal injunctions against journalists. It is, however, a matter of public record that many of these legal actions are initiated by politicians – regardless of political affiliation – which may lead to a chilling effect on the press.

More specifically, both civil and criminal laws related to defamation hinder press freedom. These laws are not contrary to the Constitution, which also allows for the seizure of publications on grounds of religion, national security and public morals. The civil law framework is disproportionately hostile to the press. The Greek Press Law (called the “Press-Killer” by journalists) provides for objective liability for the publisher and minimum compensation of €6,000 for print media and is based on extremely broad legal grounds of appeal. This situation facilitates the filing of suits against the press and implies a significant problem of vexatious litigation – what journalists in Greece refer to as an “industry of legal actions”.⁵¹ In many cases, courts have managed to balance the values involved in the “clash” between press freedom and personality rights effectively, taking into account the press’s watchdog role. In other cases, however, the amount of compensation adjudicated has been disproportionately large. This may have a chilling effect on press freedom.

Restrictions based on criminal laws are equally problematic. The Greek Penal Code maintains provisions on defamation, calumny and insult. The defences for the press are broadly formulated and cannot always be invoked effectively. The most common helpful defence for journalists is the defence of justified interests, which protects journalists’ right to publish even “sharp criticism and negative characterisations”, according to Areios Pagos. On the other hand, defences are not applied in the case of calumny (GPC Art. 363) and insult (GPC Art. 361), since they both involve an intent to hurt the offended party. In the case of calumny, the impugned allegation is by definition “not accurate”, which means by implication that the defence of truth cannot be invoked. The case of Vaxevanis, although it resulted in a suspended sentence, showed the international community that defamation laws are still utilised to cover scandals even in the heart of Europe.

⁵¹ “The scourge of the industry of legal actions against journalists”, Kouti Pandoras, 9 October 2014, available at <http://www.koutipandoras.gr/article/124474/mastiga-i-viomihania-agogon-kata-ton-dimosiografon> [Greek].

V Recommendations

With respect to constitutional provisions:

- The provisions in the Greek Constitution allowing the seizure of newspapers on certain grounds (i.e., insults against religion; insults against the President; disclosure of information about the State military; obscenity and offenses to public morality) should be reconsidered during the next round of constitutional amendments, as they unduly restrict freedom of expression.

With respect to civil and criminal laws:

- A list of all legal injunctions, actions and lawsuits against journalists should be compiled, examined and publicised.
- The Press Law should be immediately amended. The minimum amount of compensation should be revised or entirely suppressed. The grounds for legal actions on the basis of this law should be limited according to specifically designed criteria.
- Deontology codes for journalists, reporters and TV presenters should be enforced by the relevant journalistic, reporters' and media unions and Committees (e.g., the NCRTV, the EFE or the ESIEA). In order to guarantee the independence of the journalistic profession, courts should not apply deontology codes and other requirements of journalistic ethics as legal texts in order to define the amount of compensation in a civil defamation case. The Greek Deontology Law (Presidential Decree) should be amended accordingly.
- Greece should immediately reform its criminal defamation laws in order to bring its legislation more closely in line with international standards on freedom of expression. In particular,
 - Art. 363 should be completely repealed. Greece would conform here to PACE Recommendation 1589 (2003) on freedom of expression in the media in Europe, and also, in particular, with Recommendation 1814 (2007) and Resolution 1577 (2007) entitled "Towards decriminalisation of defamation", as well to the comments of the U.N. Human Rights Committee related to criminal defamation and to those of the OSCE Representative on Freedom of the Media.
 - Other criminal defamation provisions should at least be reformed according to the following standards:
 - Imprisonment should no longer be a possible punishment.
 - Cases should never be pursued ex officio by a public prosecutor.
 - The burden of proof should be placed on the plaintiff.
 - Existing defences, such as truth, should be applied in an effective and functional manner.
 - Additional defences, such as reasonable publication and public interest, should be introduced, especially in cases involving the press.
 - Legal costs incurred by the respondent should be reimbursed in the case that the court does not find a violation.
- In both criminal and civil cases, steps should be taken to reduce vexatious litigation based on a "serious harm" principle.
- Judges should receive training on European and international standards on freedom of expression and personality rights. They should be made aware in particular of the extensive case-law of the ECtHR on the matter, as well as of its elaborate methodology in dealing with conflicts of rights.

VI Acknowledgements

The author would like to thank Maria Psarra (journalist at Ethnos); Kostas Vaxevanis (journalist, publisher of Hot Doc magazine); Marios Lolos (president, EFE); and Anastasia Tsoukala (criminologist and associate professor at the University of Paris IX) for their valuable time and advice.

Many thanks to Scott Griffen (IPI) and Yiannis Kotsifos (director of ESIEMTH); Ntina Daskalopoulou (journalist at EfSyn); Tasos Anastasiou and Spyros Derveniotis (cartoonists).

Special thanks to Vassilis Vardakas & Vlassis Maronitis, publishers of Key Books (Athens) and Ilias Bantekas (Professor at Brunel University), for their valuable support.

VII References

Literature

MONOGRAPHS

- Karakostas, *The Law of the Media* (3rd ed Athens Sakoulas 2005)
- Tsakyrakis, Stavros, *Religion and the Arts* (Polis, Athens: 2005)

ARTICLES & BOOK CHAPTERS

- Nikos Leandros, "The media at the centre of the crisis", in: Giorgos Pleios (ed), *The Crisis and the Media* (Papazisi 2013) [Greek].
- Skouris, Vasileios, "A freedom subject to the direct control of the State" (1989) 2 *Hellenic Review of European Law* [Elliniki Epitheorisi Eyrwpaikoy Dikaiou] 193.
- Vlachopoulos, Spyridon, "Artistic freedom: the limits of an unlimited right", *Efarmoges Dimosiou Dikaiou* 2001.
- Kerstin Bartsch and Björn Elberling, "Jus Cogens vs. State Immunity, Round Two: The Decision of the ECtHR in the *Kalogeropoulou et al. v. Greece and Germany* Decision" (2003) 4 *German Law Review* 477.
- Yannis Theocharis & Jan Deth, "Causes and Consequences of the Greek Crisis", Mannheim Center for European Social Research (MZES) April 2013 at 4, available at SSRN: <http://ssrn.com/abstract=2283215>.
- Katerina Serafeim, "The Impact of Social Media on Press Freedom in Greece: Benefits, Challenges and Limitations" (2012) 5 *Journal for Communication Studies* 163.
- Dirk Voorhoof, "Freedom of expression, journalists' rights and duties and the impact of ethics and self-regulation in the light of Article 10 ECHR" paper prepared for IRCM Seminar on Freedom of Expression, Strasbourg, 2008 available at http://www-ircm.u-strasbg.fr/seminaire_oct2008/docs/Report_by_Dirk_Voorhoof_Session_II.pdf.

NGO SOURCES / EXPERT REPORTS

- Reporters without Borders (RwB) *2015 World Press Freedom Index* available at <https://index.rsf.org/#!/index-details>.
- Report of the Greek Truth Committee on the Public Debt available here: <http://cadtm.org/IMG/pdf/Report.pdf>.
- Evangelia Psychogiopoulou, Dia Anagnostou & Anna Kandyla (ELIAMEP), "Case study report: Does media policy promote media freedom and independence? The case of Greece", ELIAMEP, at 17, available at <http://www.mediadem.eliamep.gr/wp-content/uploads/2012/01/Greece.pdf>.

Case Law

Greek Appeal Courts (Efeteio)

- Athens Appeal Court 3092/2012
- Athens Court of Appeal 6089/2011
- Athens Appeal Court 34/2011
- Athens Appeal Court 3/2011
- Larissa Appeal Court 444/2011

- Aegean Appeal Court 26/2010
- Patras Appeal Court 4/2010
- Athens Appeal Court 5538/2006
- Larissa Appeal Court 639/2006
- Giannena Appeal Court 244/2005
- Thessaloniki Appeal Court 1280/2003
- Thessaloniki Appeal Court 142/2003
- Athens Appeal Court 9975/1986

Greek Court of Cassation (Areios Pagos)

- Areios Pagos 1044/2015
- Areios Pagos 531/2014
- Areios Pagos 680/2012
- Areios Pagos 1233/2010
- Areios Pagos 957/2010
- Areios Pagos 1380/ 2009
- Areios Pagos 6/2009
- Areios Pagos 647/2008
- Areios Pagos 479/2008
- Areios Pagos 159/2008
- Areios Pagos 1662/2005
- Areios Pagos 1462/ 2005
- Areios Pagos 225/2005
- Areios Pagos 772/2004
- Areios Pagos 346/2004
- Areios Pagos 72/2004
- Areios Pagos 825/02
- Areios Pagos, 42/2000
- Areios Pagos, S13/1999
- Areios Pagos 1260/1993
- Areios Pagos 24/1991
- Areios Pagos 914/1987
- Areios Pagos 478/1986
- Areios Pagos 248/1986
- Areios Pagos 1156/1985
- Areios Pagos 420/1981
- Areios Pagos 569/1974
- Areios Pagos 780/55

Council of the State (Symvouleio tis Epikrateias)

- Council of the State (StE) 5040 / 1987

European Court of Human Rights

- *Leonidis v Greece*, Application no. 43326/05, 8 January 2009
- *Avgi Publishing and Press Agency S.A. & Karis v Greece*, Application No 15909/06, 5 September 2008
- *Lionarakis v Greece*, Application No 15909/06, 5 September 2008
- *Vasilakis v Greece*, Application No 25145/05, 17 January 2008

- *Petropoulou-Tsakiris v Greece*, Application no. 44803/04, 2008, 6 December 2007
- *Bekos and Koutropoulos v Greece*, Application No. 15250/02, 13 December 2005
- *Makaratzis v Greece*, Application No. 50385/99, 20 December 2004
- *Grigoriades v Greece*, Application Nos 121/1996/740/939, 25 November 1997

VIII Annex

Law 1092/1938 on the Press and the General Obligations of Publishers and Journalists

Άρθρο: 3

Υποχρεώσεις εκδοτών εφημερίδων και περιοδικών, Κατάχρηση δικαιώματος ελευθεροτυπίας, Εκτέλεση αδικημάτων δια του Τύπου

1. Η κατάχρησις της ελευθεροτυπίας προς εκτέλεσιν κακουργήματος τινός ή πλημμελήματος αποτελεί ιδιαίτεραν επιβαρυντικήν αιτίαν. Εις τοιαύτας περιπτώσεις οσάκις ο νόμος επιβάλλει διαζευτικώς στερητικήν της ελευθερίας ή χρηματικήν ποινήν, η δια του Τύπου τέλεσις του αδικήματος επισύρει αμφοτέρας τας ποινάς.
 2. Εν περιπτώσει καθ' υποτροπήν καταχρήσεως της ελευθεροτυπίας προς εκτέλεσιν οιουδήποτε αδικήματος και διαφόρου έτι του εις ό αφορά η προηγουμένη καταδίκη, επιβάλλεται υποχρεωτικώς υπό του Δικαστηρίου η προσωρινή παύσις του επιτηδεύματος των ενόχων διευθυντού, εκδότου της εφημερίδος ή του περιοδικού και συντάκτου του επιληψίμου δημοσιεύματος μέχρις ενός έτους.
- Η προσωρινή παύσις αύτη του επιτηδεύματος του εκδότου της εφημερίδος ή του περιοδικού συνεπάγεται αυτοδικαίως την επί ίσον χρόνον απαγόρευσιν της χρήσεως του τίτλου αυτών. Η παύσις του επιτηδεύματος και η απώλεια ή απαγόρευσις της χρήσεως του τίτλου επέρχεται άμα ως καταστή αμετάκλητος η καταδικαστική απόφασις.
- Εν τοιαύτη περιπτώσει το προσωπικόν της εφημερίδος ή του περιοδικού δικαιούται των εκ των νόμων περί καταγγελίας συμβάσεως εργασίας αποζημιώσεων.

Άρθρο: 4

Υποχρεώσεις εκδοτών εφημερίδων και περιοδικών, Ορισμός εφημερίδων

Εφημερίς κατά την έννοιαν του παρόντος νόμου είναι παν έντυπον καθ' εκάστην ή και κατά τα μεγαλύτερα "αλλά τακτά πάντως" χρονικά διαστήματα μέχρις ενός, κατ' ανώτατον όριον, μηνός εκδιδόμενον, και περιέχον ύλην γενικού πολιτικού και κοινωνικού ενδιαφέροντος, ήτοι ειδήσεις, κρίσει επί ζητημάτων απασχολούντων την δημοσίαν γνώμην, αναγγελίας και διαφημίσεις.

Άρθρο: 5

Υποχρεώσεις εκδοτών εφημερίδων και περιοδικών, Ορισμός περιοδικού

1. Περιοδικόν κατά την έννοιαν του παρόντος νόμου είναι παν έντυπον, όπερ εκδίδεται άπαξ τουλάχιστον κατά τριμηνίαν, εις τακτικές εκδόσεις, και του οποίου το εν γένει περιεχόμενον δεν δύναται να προσδώση αυτώ την κατά το άρθρο 4 του παρόντος έννοιαν της εφημερίδος.
2. Επί πασης αμφισβητήσεως επί του διαχωρισμού της εννοίας των άρθρων 4 και 5 αποφαίνεται ο Υφυπουργός Τύπου και Τουρισμού (μετ' εισήγησιν επιτροπής αποτελουμένης εξ ενός των διατελεσάντων προέδρων του Συνδέσμου Διευθυντών Αθηναϊκού Τύπου, ενός των ιδιοκτητών περιοδικών και δύο υπαλλήλων του Υφυπουργείου Τύπου και Τουρισμού, ως και των αναπληρωτών αυτών).
3. "Προς πάσαν μεταβολήν της χρονικής περιόδου καθ' ην εκδίδονται οι εφημερίδες και τα περιοδικά, ως και προς πάσαν μεταφοράν της έδρας αυτών απαιτείται ειδική άδεια του Υφυπουργού Τύπου και Τουρισμού".

Presidential Decree No. 77/2003 – Code of conduct for news broadcasting and other journalistic and political programmes

Άρθρο 1

Πεδίο εφαρμογής

Οι κανόνες του παρόντος κώδικα ισχύουν για ειδησεογραφικές, δημοσιογραφικές και πολιτικές εκπομπές στη δημόσια και την ιδιωτική ραδιοφωνία και τηλεόραση. Στην έννοια της δημοσιογραφικής εκπομπής εμπίπτουν όλες οι εκπομπές λόγου, που έχουν ενημερωτικό χαρακτήρα, ανεξάρτητα από το χαρακτηρισμό που τους προσδίδεται από τον ραδιοφωνικό ή τον τηλεοπτικό φορέα. Στις ειδησεογραφικές εκπομπές εμπίπτουν τα δελτία ειδήσεων και στις πολιτικές εκπομπές εμπίπτουν εκείνες που έχουν αντικείμενο πολιτικά θέματα.

Άρθρο 2

Γενικές αρχές

1. Οι ειδησεογραφικές και άλλες δημοσιογραφικές και πολιτικές εκπομπές πρέπει να εξασφαλίζουν την ποιοτική στάθμη που επιβάλλει η κοινωνική αποστολή της ραδιοφωνίας και της τηλεόρασης καθώς και η πολιτιστική ανάπτυξη της χώρας.
2. Ο δημοσιογράφος υπερασπίζεται την ελευθερία της έκφρασης και, στο πλαίσιο της δημοσιογραφικής δεοντολογίας, έχει το δικαίωμα, να μεταδίδει ανεμπόδιστα πληροφορίες και σχόλια για να εξασφαλίσει την ενημέρωση της κοινής γνώμης.
3. Το Σύνταγμα και η εν γένει έννομη τάξη της χώρας πρέπει να παραμένουν σεβαστά ακόμη και όταν ασκείται κριτική σε συγκεκριμένους νόμους ή θεσμούς.
4. Η τήρηση των γενικά παραδεκτών κανόνων που αφορούν στην ορθή, ευπρεπή και καλαίσθητη γλωσσική διατύπωση και εκφορά λόγου είναι απαραίτητη. Ιδιαίτερη μέριμνα επιβάλλεται, ώστε να τηρούνται με προσοχή στη σύνταξη, στην παρουσίαση και στους υπότιτλους των εκπομπών οι κανόνες της γραμματικής και του συντακτικού της ελληνικής γλώσσας. Το αντίστοιχο ισχύει και για τη χρήση άλλων γλωσσών στο πλαίσιο ελληνικών ή ξενόγλωσσων εκπομπών.

Άρθρο 3

Εριζόμενα ζητήματα

Η ραδιοφωνία και η τηλεόραση πρέπει να αναγνωρίζουν και να σέβονται εμπράκτως τη διατύπωση διαφορετικών απόψεων και να υπερασπίζονται την ελευθερία μεταδόσεώς τους. Οι διαφορετικές απόψεις πρέπει να παρουσιάζονται έγκαιρα και με ίσους όρους.

Άρθρο 4

Δυσμενείς διακρίσεις

1. Δεν επιτρέπεται η παρουσίαση προσώπων με τρόπο ο οποίος, υπό τις συγκεκριμένες συνθήκες, μπορεί να ενθαρρύνει, τον εξευτελισμό, την κοινωνική απομόνωση ή τις δυσμενείς διακρίσεις σε βάρος τους από μέρος του κοινού βάσει ιδίως του φύλου, της φυλής, της εθνικότητας, της γλώσσας, της θρησκείας, της ιδεολογίας, της ηλικίας, της ασθένειας ή αναπηρίας, του γενετήσιου προσανατολισμού ή του επαγγέλματος.
2. Δεν επιτρέπεται η προβολή μειωτικών, ρατσιστικών, ξενοφοβικών ή σεξιστικών μηνυμάτων και χαρακτηρισμών καθώς και μισαλλόδοξων θέσεων και γενικά δεν πρέπει να θίγονται εθνοτικές και θρησκευτικές μειονότητες και άλλες ευάλωτες ή ανίσχυρες πληθυσμιακές ομάδες.

Άρθρο 5

Ανακρίβεια, παραπλάνηση, δημιουργία σύγχυσης

1. Η μετάδοση των γεγονότων πρέπει να είναι αληθής, ακριβής και όσο είναι δυνατό πλήρης. Τα γεγονότα πρέπει να παρουσιάζονται με προσοχή και αίσθημα ευθύνης, ώστε να μη δημιουργούν υπέρμετρη ελπίδα, σύγχυση ή πανικό στο κοινό.
2. Ανακρίβειες ή παραπλανητικές δηλώσεις διορθώνονται αμέσως στο πλαίσιο της ίδιας ή παρόμοιας εκπομπής.
3. Η χρήση μαγνητοσκοπημένου υλικού, πλάνων αρχείου, αποσπασμάτων κινηματογραφικών ή τηλεοπτικών εκπομπών, σηματοδοτείται. Καθ' όλη τη διάρκεια της χρήσης, με την ένδειξη "πλάνα αρχείου".
4. Δεν επιτρέπεται η χρήση παραπλανητικών σκηνοθετικών τεχνασμάτων, μεθόδων ή τεχνικών που απευθύνονται στο υποσυνείδητο ή εγγίζουν τα όρια του συνειδητού.
5. Μεταξύ τίτλου και περιεχομένου των ειδήσεων δεν πρέπει να υπάρχει προφανής αναντιστοιχία.

Άρθρο 6

Ιδιωτική ζωή

1. Η ιδιωτική ζωή όλων, συμπεριλαμβανομένων και των δημοσίων προσώπων και των προσώπων της επικαιρότητας, είναι σεβαστή και απαραβίαστη.
2. Δεν επιτρέπεται να καταγράφονται, να απεικονίζονται και να δημοσιοποιούνται ιδιωτικές στιγμές ή συνομιλίες πολιτών χωρίς την άδειά τους.
3. Δεν επιτρέπεται η μετάδοση εικόνων οι οποίες έχουν ληφθεί χωρίς προειδοποίηση, με χρήση κάμερας ή μαγνητοφώνου για την καταγραφή, απεικόνιση ή δημοσιοποίηση μαρτυρίας ή συνεντεύξεως ή των κινήσεων οποιουδήποτε προσώπου.

Άρθρο 7

Πένθος ή πόνος

1. Πρέπει να αποφεύγεται κάθε αδιάκριτη παρέμβαση σε προσωπικό πόνο ή πένθος και ιδίως να αποφεύγεται η παρουσίαση σκηνών ή ατόμων σε στιγμές πένθους, οδύνης, απόγνωσης ή αγανάκτησης.
2. Δεν επιτρέπεται να προβάλλονται, χωρίς σπουδαίο λόγο, εικόνες ή ήχοι, που επιτείνουν ή προκαλούν πόνο στους εικονιζόμενους ή σε πρόσωπα του αμέσου περιβάλλοντός τους.

Άρθρο 8

Πληροφορίες

1. Δεν πρέπει να μεταδίδονται πληροφορίες χωρίς να έχουν ελεγχθεί. Η συλλογή στοιχείων και πληροφοριών πρέπει να γίνεται με θεμιτά μέσα. Ιδίως δεν επιτρέπεται η μετάδοση πληροφοριών που υποκλάπηκαν με παράνομες παρακολουθήσεις τηλεφώνων, κρυφά μικρόφωνα ή κάμερες ή οποιοδήποτε άλλο συναφές μέσο.
2. Απαγορεύεται η μετάδοση απορρήτων πληροφοριών και εικόνων οι οποίες είναι δυνατόν να βλάψουν την εδαφική ακεραιότητα, την άμυνα και την ασφάλεια της χώρας.
3. Ο δημοσιογράφος δικαιούται να μην αποκαλύπτει την πηγή της πληροφορίας, που εξασφάλισε με συμφωνία ή εν γένει υπό συνθήκες εχεμύθειας.

Law 1178/1981, last amended by 2243/1994, on the Civil Liability of the Press

Περί αστικής ευθύνης του τύπου –

1. Ο ιδιοκτήτης παντός εντύπου υποχρεούται εις πλήρη αποζημίωσιν δια την παράνομον περιουσιακήν ζημίαν ως και εις χρηματικήν ικανοποίησιν δια την ηθικήν βλάβην, αι οποίαι υπαιτίως επροξενήθησαν δια δημοσιεύματος θίγοντος την τιμήν ή την υπόληψιν παντός ατόμου, έστω και αν η κατά το άρθρο 914 του ΑΚ υπαιτιότητα η κατά το άρθρο 919 του ΑΚ πρόθεσις και η κατά το άρθρο 920 του ΑΚ γνώσις ή υπαίτιος άγνοια συντρέχει εις τον συντάκτην του δημοσιεύματος ή, εάν ούτος είναι άγνωστος, εις τον εκδότην ή τον διευθυντήν συντάξεως του εντύπου.

“2. Η κατά το άρθρο 932 του Αστικού Κώδικα χρηματική ικανοποίηση λόγω ηθικής βλάβης του αδικηθέντος από κάποια από τις προβλεπόμενες στην προηγούμενη παράγραφο πράξεις ορίζεται, εφόσον αυτές τελέσθηκαν δια του Τύπου, κατά την κρίση του δικαστή, όχι κατώτερη των δέκα εκατομμυρίων (10.000.000) δραχμών για τις Ημερήσιες Εφημερίδες Αθηνών και Θεσσαλονίκης, καθώς και για τα περιοδικά που κυκλοφορούν μέσω των Πρακτορειών Εφημερίδων και των δύο εκατομμυρίων (2.000.000) δραχμών για τις άλλες εφημερίδες ή περιοδικά, εκτός αν ζητήθηκε από τον ενάγοντα μικρότερο ποσό και αυτό ανεξάρτητα από την απαίτηση προς αποζημίωση για περιουσιακή ζημία”.

3. Ο ιδιοκτήτης πάσης εφημερίδος ή περιοδικού υποχρεούται να ορίζει εκδότην και διευθυντήν φυσικά πρόσωπα έχοντα την μόνιμον κατοικίαν και διαμονήν των εν Ελλάδι και μη καλυπτόμενα οπωσδήποτε υπό ασυλίας, ετεροδικίας ή άλλου λόγου αίροντος το αξιόποινον ή παρακωλύοντος την ποινικήν τούτου δίωξιν. Η σύμπτωσις αμφοτέρων των ως άνω ιδιοτήτων εις το αυτό πρόσωπον επιτρέπεται.

Ποινική ευθύνη εις βάρος του ιδιοκτήτου του εντύπου υφίσταται μόνον εάν συντρέχουν εν τω προσώπω του αι ιδιότητες του εκδότη ή του διευθυντού ή εφ’ όσον δεν έχει ορίσει εκδότην.

Ο ορισμός του εκδότη ή του διευθυντού εμφανίζεται μόνον εκ της αναγραφής του επί του φύλλου του εντύπου.

Εν η περιπτώσει ο ιδιοκτήτης δεν έχει ορίσει εκδότην ή διευθυντήν συγκεντρώντα τα ως άνω στοιχεία ή ούτος (ο ιδιοκτήτης) καλύπτεται υπό λόγων ή περιπτώσεων καθιστώντων αδύνατον ή δυσχερή την ποινικήν τούτου δίωξιν ή καταδίκην, το δικαστήριο δεν κωλύεται να αναζητήσει τον πράγματι υπεύθυνον αξιοποιούν πράξεως μη δεσμευόμενον υπό των περί πλασματικής ευθύνης διατάξεων του παρόντος, ως και του άρθρου 46 του περί τύπου νόμου, ισχύοντος εν προκειμένω κατά τα λοιπά.

Εις περίπτωσιν καθ’ ην δεν έχει ορισθή εκδότης, ως εκδότης τεκμαίρεται ο ιδιοκτήτης.

Εάν ο ιδιοκτήτης ημερησίου ή περιοδικού εντύπου είναι άγνωστος, την ευθύνην φερουν τα εν εδαφ. γ του άρθρ. 46 του ΑΝ 1092/1938 “περί τύπου” αναφερόμενα πρόσωπα.

4. Αι περί των παρόν άρθρων απαιτήσεις εκδικάζονται κατά την διαδικασίαν των άρθρ. 663 επ. ΚΠολΔικ.

Εάν δια διατάξεως προσωρινώς εκτελεστής η εκδοθησομένη απόφασις επιτάσση την καταβολήν εις τον ενάγοντα οιοσδήποτε ποσού εξ οιασδήποτε αιτίας, η καταβολή αυτή πραγματοποιείται δια παρακαταθέσεως του ποσού εις το Ταμείον Παρακαταθηκών και Δανείων, μέχρις εκδόσεως τελεσιδίκου αποφάσεως.

“5. Η εκδίκαση της κατά το παρόν άρθρο αγωγής χωρεί ανεξάρτητα από την άσκηση ποινικής δίωξης για την αυτή πράξη, καθώς και της τυχόν για οποιονδήποτε λόγο αναβολής ή αναστολής της ποινικής διαδικασίας που έχει αρχίσει”.

“6. Σε περίπτωση που γίνει δεκτή αγωγή του παρόντος άρθρου σε βάρος εφημερίδας, το δικαστήριο, εφ’ όσον έχει υποβληθή αίτημα το αργότερο ενώπιον του πρωτοβαθμίου

δικαστηρίου, διατάσσει με την καταψηφιστική απόφασή του και την καταχώριση στην εφημερίδα αυτήν περιλήψεως της αποφάσεως. Η περίληψη αυτή αρκεί να περιέχει: α) τον αριθμό και τη χρονολογία δημοσιεύσεως της αποφάσεως, β) το δικαστήριο που την εξέδωσε, γ) το ονοματεπώνυμο του θιγέντος από το επιλήψιμο δημοσίευμα, δ) τις φράσεις που κρίθηκαν δυσφημιστικές ή εξυβριστικές, βάσει των οποίων επιδικάστηκε η αποζημίωση ή η χρηματική ικανοποίηση και ε) το φύλλο της εφημερίδας και την ημερομηνία δημοσιεύσεώς του. Η περίληψη αυτή και η είδηση ότι καταδικάστηκε η εφημερίδα δημοσιεύεται στην ίδια θέση της εφημερίδας, που είχε καταχωριστεί η αρχή του επιλήψιμου δημοσιεύματος, εντός δεκαπέντε ημερών από της επιδόσεως της τελεσίδικης απόφασης. “Με την απόφαση καθορίζεται χρηματική ποινή για κάθε ημέρα καθυστέρησης δημοσίευσης της απόφασης ίση προς το 1/10 της ελάχιστης αποζημίωσης που επιδικάζεται κατά την παράγραφο 3 του άρθρου αυτού”.

7. (Αντικαθίσταται η πρώτη περίοδος του πρώτου εδαφίου της παρ. 2 του άρθρου 122 του Κώδικος Ποινικής Δικονομίας).

8. Πάσα ετέρα διάταξις ρυθμίζουσα κατ’ άλλον τρόπον το παρόν θέμα καταργείται.

9. Η ισχύς του παρόντος νόμου άρχεται από της δημοσιεύσεώς του δια της Εφημερίδος της Κυβερνήσεως.



International
Press
Institute

IPI: Defending Press Freedom for 65 Years

The International Press Institute (IPI), the oldest global press freedom advocacy organisation, is a worldwide network of editors, media executives and leading journalists dedicated to furthering and safeguarding press freedom, promoting the free flow of news and information, and improving the practices of journalism.

International Press Institute

Spiegelgasse 2/29
1010 Vienna, Austria
www.freemedia.at
+43 1 512 90 11
ipi@freemedia.at

