ATHENS COURT OF FIRST INSTANCE

INJUNCTIONS DIVISION

Ruling No. 9118/2014

THE ATHENS SINGLE-MEMBER COURT OF FIRST INSTANCE

(Injunctions Procedure)

The Court, consisting of the Judge, Demosthenes Vlachos, President of the Judges of First Instance, appointed by public drawing of lots, in accordance with Law 3327/2005, met in public session on 11-03-2014, without the assistance of a Clerk, to hear the case between:

The petitioner, THEODOROS KATSANEVAS, son of KONSTANTINOS, resident of Nea Erythraia, Attica, at 1 Romylias St., who was represented at the hearing by his authorized attorneys Panayiota Breanou and Lambros Breanos.

The defendants, (1) the not-for-profit company known as ΕΛΕΥΘΕΡΟ ΛΟΓΙΣΜΙΚΟ -ΛΟΓΙΣΜΙΚΟ ΑΝΟΙΚΤΟΥ ΚΩΔΙΚΑ-ΕΛ.ΛΑΚ [FREE/OPEN SOURCE SOFTWARE SOCIETY – EL.LAK], registered in Athens at 31 Arkadias St., as legally represented, represented at this hearing by its authorized attorney Prodromos Tsiavos, and (2) DIMITRIOS LIOURDIS, resident of Athens at 69 Ippokratous St., represented at this hearing by his authorized attorneys Harikleia Daouti and Ioannis Philiotis.

The petitioner asks that the Court admit his petition of 03-01-2014, lodged with the Court under general no. 15165/2014, case file no. 1617/2014, scheduled to be heard on the date specified at the head of this ruling.

During the hearing of the case the authorized attorneys of the parties involved asked that the Court admit their oral statements during the proceedings and the written submissions they had laid before the Court.

HAVING STUDIED THE CASE FILE,

THE COURT HAS REASONED AS FOLLOWS, IN ACCORDANCE WITH THE LAW

Blogs are internet journals which contain hyperlinks and entries giving personal views; these entries constitute their basic components, in contrast to the pages which make up websites. The blogger, or owner-administrator of a blog, who may operate under his real or an assumed name, or anonymously, records, posts and enters his views and opinions on various issues, while the blogs may be linked to other websites, web pages and blogs and may allow their users-readers to respond to the author's views, posting on the same blog their own comments, which can be read by any third-party user of the internet. Blogs are maintained by their users (bloggers), who exchange views by means of the blog. The blog is an interactive medium that differs from the websites maintained on the internet by the media in that the content is not shaped only by the owner-administrator, but by all users-readers of the blog (see S. Tassis, Διαδίκτυο και ελευθερία έκφρασης - το πρόβλημα των Blogs [Internet and freedom of expression – the problem of blogs], DiMEE [Media and Communication Law Press], 2006, pp. 518ff). It is important to note that even in cases where the owner-administrator may, using access protocols, control which of the users-readers will be allowed to post their own comments on his blog - this ability depending on the software being used at any time to run each individual blog - he will not be able to verify the truth or falsity of the personal details supplied by any reader, insofar as such readers are very likely to use pseudonyms, making it very difficult to uncover their true identities. For this reason the owner-administrator will usually only intervene after the event, to suppress the participation of a reader and block his access to the blog. Blogs have close links among themselves and have developed their own culture; the term 'blogosphere' has even been invented to refer to the totality of blogs on the internet, as a community and social network. Users of the internet see blogs as a medium where absolute freedom of expression prevails, and thus the motivation

behind the creation and operation of blogs, particularly those which do not carry news content, is not the dissemination of information for mass consumption (a necessary condition for characterization of a medium – printed or digital – as an arm of the press) but rather the exchange of views, ideas, thoughts and analysis. This is made possible by a mechanism of dynamic communication, using a medium which, by its very nature, has the immediate and necessary effect of rendering its content, the users' texts, accessible to an unlimited number of people, even if this is not in itself the intention of the blog owner-administrator or its readers. As a consequence, in accordance with the letter of the provisions on the press and the intentions of historical legislation, the criterion for application of legal provisions relating to the press to texts posted on blogs is not merely the objective fact that the blog text has been produced using a mechanical, physical, chemical or electronic process suitable for generating a significant number of copies; in addition to this, the intended use of the blog must be dissemination – and this is not as a rule the case with internet blogs. Therefore, the cases being compared in this instance are similar insofar as it is true that the entries posted on blogs are, under certain conditions, accessible to an unlimited number of persons, but of more significance for the purposes of evaluation, and more critical in legal terms in the case in question, is the difference between them, namely the fact that in the provisions of the law concerning the press there is a requirement that the text be intended and destined for dissemination and mass consumption, a condition which, as we have said, is not met in the case of the creation and operation of a blog. Presidential Decree 131/2003, which incorporated into domestic law Directive 2000/31 on e-commerce and the information society states, *inter alia*, (Article 11): 'Mere conduit 1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network, the service provider is not liable for the information transmitted, on condition that the provider: (a) does not initiate the transmission; (b) does not select the receiver of the transmission, and (c) does not select or modify the information

contained in the transmission. 2. The acts of transmission and of provision of access referred to in paragraph 1 include the automatic, intermediate and transient storage of the information transmitted in so far as this takes place for the sole purpose of carrying out the transmission in the communication network, and provided that the information is not stored for any period longer than is reasonably necessary for the transmission. 3. This Article shall not affect the possibility for a court or administrative authority of requiring the service provider to terminate or prevent an infringement'. (Article 13) 'Hosting 1. Where an information society service is provided that consists of the storage of information provided by a recipient of the service, the service provider shall not be liable for the information stored at the request of a recipient of the service, on condition that: (a) the provider does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent, or (b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information. 2. Paragraph 1 shall not apply when the recipient of the service is acting under the authority or the control of the provider. 3. This Article shall not affect the possibility for a court or administrative authority of requiring the service provider to terminate or prevent an infringement'. (Article 14(1)) 'No general obligation to monitor 1. No general obligation shall be imposed on providers, when providing the services covered by Articles 10, 11 and 12, to monitor the information which they transmit or store, nor a general obligation actively to seek facts or circumstances indicating illegal activity'. Finally, pursuant to Article 17 of the same Presidential Decree 131/2003: 'If there is a likelihood that rights are being infringed by information society services, the Single-Member Court of First Instance shall order any suitable measure to be taken, by means of an injunction… In these cases a provisional order must be issued, pursuant to Article 691(2) of the Code of Civil Procedure' [Efthrakis 91/2012, Piraeus Multi-Member Court of First Instance 4980/2009 NOMOS Database].

The petitioner, citing the assault on his personality by the defendants, which has taken the form of the posting on the web page referred to herein of insulting, defamatory remarks, disparaging to his person, as set out in detail in the petition, asks the Court, invoking the existence of urgent circumstances, a) to require the defendants to remove provisionally from his biographical entry on the said site (Wikipedia) the defamatory words and phrases referred to in the petition, which are defamatory and damaging to his reputation and standing, until such time as his regular suit is heard, b) to threaten the defendants with a fine and, in addition, in the case of the second defendant, that he be held in custody for each day of refusal to comply with the executive part of the ruling to be issued, and c) to order the defendants to pay his legal costs.

With the aforesaid content and requests, the petition in question is rightly and admissibly laid before this Court, competent to hear it under the injunctions procedure (22, 37 para. 1, 682, 683 paras 1 and 3, and 686ff. of the Code of Civil Procedure), given that the injunctions to be issued will be executed on Greek soil (Tzifras, Ασφαλιστικά Μέτρα [Injunctions and Court Orders], 1985, pp. 23ff.). The petition is lawful, based on the aforesaid provisions of Presidential Decree 131/2003, Articles 57 of the Civil Code and 731, 732, 947 and 176 of the Code of Civil Procedure. It is therefore appropriate for the Court to investigate further the substance of the petition.

From the appropriate assessment of the sworn testimony of the witnesses Elisaios Artopoulos, son of Ilias, and Georgios Yiannopoulos, son of Panayiotis, examined in court at the initiative of the litigants; from the affidavits nos. 3692/11-03-2014 (sworn before the notary of Kalymnos, Sevasti Riga), 2188/11-03-2014 (sworn before the Athens magistrate Akrivi Ermidou) and 6601/12-03-2014 (sworn before the Athens notary Theodoros Sgoumbopoulos), all taken in accordance with due legal form, following the serving of writs by the litigants; and from all the documents lawfully cited and laid before the court by the litigants, either to be used per se as evidence or to allow the court to form judicial presumptions - from all the foregoing it can be concluded that the following most probably constitute the facts of the case: The

petitioner is a university professor, a former Member of Parliament for the PASOK party, and the son-in-law of the former Prime Minister of Greece, Andreas G. Papandreou. On 25 November 2009 the petitioner typed his own name into the Wikipedia search engine and discovered, *inter alia*, the existence in the entry of a separate paragraph under the heading 'THE LAST WILL AND TESTAMENT OF ANDREAS PAPANDREOU'. The content of the paragraph was as follows: 'In 1996, shortly after the death of Andreas Papandreou, the father-in-law of Katsanevas, the first handwritten will of the former Prime Minister was opened, dated 24 November 1990, in which Katsanevas was characterized as a 'disgrace' to the family and accused of having sought to make political capital from the name of George Papandreou and from his own name – characterizations which Sophia Katsaneva attributed to third parties, not to her father. Papandreou's reference to his son-in-law was from a note to the first will, which was 'to be published as part of my will when I die'. In this note Papandreou referred to a fierce disagreement which had occurred a few days previously between Katsanevas and Papandreou's private secretary of many years, Angela Kokkola, concerning his (Papandreou's) archive. He accused Katsanevas of preventing Kokkola, in an offensive manner, from removing part of the archive to his new home in Ekali, where he was living with his third wife Dimitra Liani. In his second will in 1993 he referred to what he had left to his children and wife. Katsanevas himself challenged the authenticity of the will, saying that words like these did not express the magnanimity and spirit of Andreas Papandreou, whom he respected and revered. A number of legal experts maintained that the will was genuine, but of an earlier date. In 2003 Spyros Karatzaferis was sentenced, in the first degree, by the Athens Multi-Member Court of First Instance to pay damages of ten million drachmas for defamation of the character of Theodoros Katsanevas. In 1998 the then publisher of the newspaper *Athinaiki* placed in each day's issue a photograph of the MP with the caption 'Disgrace', referring to Andreas Papandreou's characterization of his son-in-law. It should be noted that Wikipedia is an international, digital encyclopaedia, visited by huge numbers of people, with

unregulated content, to be found online at the address http://www.wikipedia.org. It is a collaborative venture, in which entries are written by the users themselves, using the wiki software, and this means that entries can be added or changed by anyone who wishes. In this sense, the second defendant is also an administrator of the site. It was launched by Jimmy Wales on 15-01-2001 and is operated by the not-for-profit Wikimedia Foundation, based in the USA. From consideration of the evidence cited above we deem it probable that the late Andreas Papandreou, son of Georgios, deceased on 23-06-1996, father-in-law of the petitioner, drew up a handwritten will, in Ekali on 24 November 1990, and titled 'My last will and testament Section One (There are two [2] Sections)', in which he stated the following, cited verbatim: 'This note is to be made public as part of my will when I die. It concerns, first, the role of Theodoros Katsanevas. From the attached documents (a letter of mine to Angela Kokkola, dated 20 November 1990; a memorandum of Angela Kokkola, dated 19.11.1990, and a memorandum of Kyveli Zografidi and Effie Bambeta, dated 19.11.1990) it is apparent that Katsanevas is a disgrace to the Papandreou family. His aim is to politically inherit the history of struggle of Georgios Papandreou and Andreas Papandreou. He seized possession, using unlawful force, of my office and the house at Kastri – i.e. my archive, my personal effects and my library. (Obviously it is my intention to pursue this matter in the courts, as soon as this is politically feasible). Secondly, it concerns the role which my three sons are called on to play. They have a moral duty, as heirs to the tradition of the Papandreou family, to make public the role and character of Theodoros Katsanevas and to sever any public or private links they may have with him. Of course, none of this concerns my grandson, Andreas Katsanevas, for whom I wish the most illustrious future'. The said will was published in Proceedings of a Session of the Athens Single-Member Court of First Instance no. 3242/12-09-1996, declared to be the main will of the deceased in Proceedings 1152/12-09-1996 of the same Court, and entered in the book of wills of the Athens Court of First Instance, in volume 1936, no. 2. To date the authenticity of the will has not been challenged, as is apparent from certificate 3057/10-03-2014 issued by the

General Archive Dept. of the Athens Court of First Instance. Furthermore, in the Proceedings of the Session of the Athens Single-Member Court of First Instance no. 3241/12-09-1996 there was published the, also, handwritten will of 28-05-1933 (the date is obviously an error), which was declared to be the main will in Proceedings 1151/12-09-1996 of the same Court and entered in the book of wills, volume 1936, no. 1. In this will the same testator made his sole heir his wife Dimitra Liani, daughter of Konstantinos, bequeathing her his entire fortune, including both moveable assets and real estate, impelled by a sense of especial moral duty and conjugal affection, stating that his children had already been provided for through more than adequate settlements made on them during his lifetime, and adding that they would be enjoying the legacy of his name. From a simple reading of the second will it is clear that there is no judgment or comment on or reference to the person of the petitioner. This fact led the latter mistakenly to interpret the second will as a revocation of the first, at least in respect of his person. This reasoning is, in the view of the Court, incorrect, first and foremost because there is no change in the arrangements set out in the individual provisions of the will in respect of distribution of the testator's assets, which are the only components of a will which a subsequent final testament of last wishes is presumed to revoke or change. Therefore the fact that content of the first will is not reiterated in the second does not mean it should be removed from the first, particularly because it has been accepted beyond dispute that there can be more than one valid will left by the same person, the wills being valid in parallel to one another at the same time, insofar as their contents do not contradict or cancel each other out, in which case the later provisions of the final will and testament take precedence. There can be no other explanation for the failure of the petitioner to compare the text of the first will with the remarks cited above under the title 'Last will and testament of Andreas Papandreou'. And this is because a simple comparison and contrast of the two texts (first will and Wikipedia entry) makes it clear that the Wikipedia entry does not differ in its content from the remarks made in the above will. There is therefore no question of the entry being false. Furthermore, the petitioner does not maintain, nor were there

any grounds to believe, that the entry contained more unfavourable facts or more pejorative judgments of the person of the petitioner in addition to those already featuring in the first will. Nor does the formulation used in the entry indicate an intention of disparaging the reputation or honour of the petitioner. All the more so in that at one point under the same title the entry refers to 'characterizations which Sophia Katsaneva attributed to third parties and not to her father', and at another point states that 'In 2003 Spyros Karatzaferis was sentenced by the Athens Multi-Member Court of First Instance, as a court of first degree, to pay damages of ten million drachmas for defamation of the character of Theodoros Katsanevas. In 1998 the then publisher of the newspaper *Athinaiki* placed in each day's issue a photograph of the MP with the caption 'Disgrace', referring to Andreas Papandreou's characterization of his son-in-law' – in other words, facts and judgments which are objectively supportive of the petitioner. In respect of the fullness of the reasoning, the following should be noted: The Athens Appeal Court issued ruling 8661/2000 on the dispute between the petitioner and the then publisher of the *Athinaiki* newspaper, which admitted the following: A) Furthermore, the same issue of the same newspaper, on the left-hand side of its front page, featured a schematic representation in the shape of a blue parallelogram, containing on its left-hand side within a white circle the photograph of the plaintiff (the petitioner), and right next to it and to the right, in yellow letters, the word 'Disgrace', and immediately beneath it the words 'A. Papandreou'; the same design appeared in the subsequent issues of the paper, for a total of sixteen days, until 20-06-2007. B) It is true that Andreas Papandreou had indeed described the plaintiff (the petitioner) as a 'Disgrace'. To be more specific, after his divorce from Margaret Papandreou, Andreas Papandreou maintained for quite some time in his former marital home (the Villa Galini in Kastri) a political office, being at the time leader of the official opposition party. C) On 14-10-1990 admittance to the said office was denied to his secretary Angela Kokkola and the employees Kyveli Zografidi and Effie Mambeta, on the instructions of his former spouse and his daughter, Sophia Katsaneva, as they were informed by the secretary of his former spouse, Ms

Markopoulou. When Ms Kokkola demanded access, the plaintiff (the petitioner) appeared and an angry scene ensued, of which Andreas Papandreou was immediately informed. D) As a consequence of this event, the latter, in his draft handwritten note of 24-11-1990, in which he expressed the wish that the note form part of his will, stated that the plaintiff was a disgrace to the Papandreou family because his aim was to politically inherit the history of struggle of Georgios Papandreou and himself Andreas Papandreou and he had seized possession, using unlawful force, of his office. E) The fact that the publisher of the newspaper had isolated the word 'disgrace' and the addition, to the right of the photograph of the plaintiff, of the attribution to Andreas Papandreou, gives the reader the impression that the latter had characterized Katsanevas in general terms as a disgrace, i.e. in all the facets of his political and social life, not simply as a disgrace to the Papandreou family merely for the reasons given, i.e. the misappropriation of the history of struggle… F) Presenting the public with the photograph of the plaintiff as a political figure was acceptable, but to accompany it with an unfavourable comment, of such general reference, was likely to damage his reputation… and that the publisher's interest was in damaging his personal standing was clear from the fact that the paper featured the photograph and comment for sixteen days in succession… G) Moreover, if the printing of the photograph and comment was motivated by a duty to inform the public, the publisher would have made sure to cite the entire phrase concerning the plaintiff attributed to Andreas Papandreou, and publication on one occasion would have sufficed. The above assumptions of ruling 8661/2000 of the Athens Appeal Court do not affect the judgment of our own Court, first and foremost because they rest on a number of true facts. More specifically, the Appeal Court hearing related to sixteen successive daily printings of the image of the petitioner, accompanied by the words 'Disgrace' and 'Andreas Papandreou', giving the reader the mistaken impression that the characterization related to the entire personality and curriculum vitae of the petitioner, not to an isolated incident inseparably linked to the unfortunate events described above occurring on 14-10-1990 at the former political office of Andreas Papandreou

in Kastri. Also that the intention to communicate contempt for the personality of the petitioner was evident, given that the publication on sixteen successive days was excessive, while on none of these sixteen occasions did the paper print the full text of the will and thereby allow the reader to form an objective judgment. In the Appeal Court proceedings the intention to defame the petitioner was demonstrated by the partial publication of just a small extract from the will, and by the fact that the disagreement recorded there was just a part of a broader dispute between the parties, as recorded in the reasoning behind the Appeal Court's ruling. However, in the case before us here the true facts in question are presented in a way so substantively different that there is no justification for any recourse to the conclusions of the aforesaid Appeal Court ruling. This is firstly because the entry in question contains the entire contents of the first will, it does not contain further comments or pejorative expressions and does not lead to a mistaken impression that the characterization cited therein applies to the personality of the petitioner in all its facets. On the contrary, it makes very clear its reference to the unfortunate events occurring on 14-10-1990 at the former political office in Kastri of Andreas Papandreou. And secondly because the form of words used is not immoderate, and therefore there is no question of an intention to inspire contempt for the personality of the petitioner.

In light of the above, the personality of the petitioner is not in need of provisional judicial protection from the entry in question, which, for the reasons set out above, is not illegal. Therefore the petition before us should be dismissed as lacking foundation in substance, in respect particularly of the first defendant, and for the reason that as a provider it did not have the ability to control and thus intervene in the content of the entries. The legal costs of the defendants, following on their request to this effect, shall be met by the petitioner who has lost the case (Article 176 para. 1, 191 para. 2, 192 para 1 and 591 para. 1 of the Code of Civil Procedure), as appointed more specifically in the executive part of this ruling.

FOR THESE REASONS

The court,

HAVING HEARD the arguments of all parties,

DISMISSES the petition.

REQUIRES the petitioner to pay the judicial costs of the defendants, which it hereby appoints at 300 Euro.

CASE HEARD, ruling issued and published in Athens on 31.08.2014 at an extraordinary public session of the Court, in the absence of the parties to the dispute and their authorized attorneys.

THE PRESIDENT	**THE CLERK TO THE COURT**
[signature]	[signature/stamp]

DEMOSTHENES G. VLACHOS