



COMPARATIVE STUDY ON THE
SITUATION IN THE 27 MEMBER STATES
AS REGARDS THE LAW APPLICABLE TO
NON-CONTRACTUAL OBLIGATIONS
ARISING OUT OF VIOLATIONS OF
PRIVACY AND RIGHTS RELATING TO
PERSONALITY

ANNEX III – EU 27 National Reports

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CYPRUS⁵

1. Substantive Law

The legal system is a mixture of English and continental law. On issues of human rights the relevant part of the Constitution is almost identical to that of Greece. On the other hand common law (anglo-saxon) principles apply extensively. Protection on such issues derives from the international treaties, the EU law, the Constitution and the internal secondary legislation.

The right to respect for the private life of every person is provided by Article 15 (Part II) of the Constitution of the Republic of Cyprus. According to this article:

“1. Every person has the right to respect for his private and family life.

2. There shall be no interference with the exercise of this right except such as is in accordance with the law and is necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the rights and liberties guaranteed by this Constitution to any person”⁶.

For its part, the law on the freedom of expression is acknowledged in art. 19 of the said Constitution⁷.

These rights are also protected by the *European Convention of Human Rights and Fundamental Freedoms*, since the Convention was ratified by Cyprus in 1962. The Convention forms part of the Law of Cyprus and its force is superior to any other internal rule, although according to the hierarchy it is under the Constitution.

Another of the internal regulatory instruments to be taken into consideration in connection with this matter is the *Civil Wrongs Law*. Defamation is regulated in sections 17-24 of the *Civil*

⁵ Dr. Pavlos Neofytou Kourtellos and the University of the Basque Country

⁶ *The Police v. Yiallourus (1992), CLR 147.*

⁷ “1. Every person has the right to freedom of speech and expression in any form. 2. This right includes freedom to hold opinions and receive and impart information and ideas without interference by any public authority and regardless of frontiers. 3. The exercise of the rights provided in paragraphs 1 and 2 of this Article may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the reputation or rights of others or for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary. 4. (...). 5. (...).

*Wrongs Law*⁸. Defamation consists of the publication by any person by means of print, writing, painting, effigy, gestures, spoken words or other sounds, or by any other means whatsoever, including broadcasting by wireless telegraphy of any matter which: imputes to any other person a crime, or; imputes to any other person misconduct in any public office, or; naturally tends to injure or prejudice the reputation of any other person in the way of his profession, trade, business, calling or office, or; is likely to expose any other person to general hatred, contempt or ridicule, or; is likely to cause any other person to be shunned or avoided by other persons⁹.

Responsibility for defamation is divided into two categories: *libel and slander*, according as to whether the defamatory statement is in a permanent form.

According to section 19 of the *Civil Wrongs Law* The defendant can allege that: the matter of which complaint was made was true; the matter of which complaint was made was a fair comment on some matter of public interest; the publication of the defamatory matter was privilege under sections 20 and 21 of the Act, and; the defamation was unintentional under section 22 of the Law¹⁰.

2. Rules of Conflict

The jurisdiction of Cyprus is one of *common law* and the principles of *common law* of English Law will apply in the courts of Cyprus when no specific regulation or jurisprudence exists in the law of Cyprus for the specific case¹¹. This point has been acknowledged by the courts of Cyprus in the matter *Cochino v. Irfan*¹².

In regard to non-contractual liability, in the private international law of Cyprus the central question is as follows: When a claim is presented in the courts of Cyprus in respect of facts that have taken place in another State, should the courts of Cyprus declare themselves to be competent? And in the case of an affirmative response, which law must be applied?

When the *tort* occurs in Cyprus, the courts will apply the Substantive Law of Cyprus; this is the same solution for which provision is made in English law. This option was confirmed by the *Supreme Court of Cyprus* in the case *Georghiades and son v. Kaminaras*¹³.

In cases of defamation taking place abroad, the courts of Cyprus will apply Private International English Law. Accordingly, the rule of *double actionability* will apply. In order for

⁸ A Neocleous, *Introduction to Cyprus Law*, Limassol, Yorkhill Law Publishing, 2000, pp. 558 et seq

⁹ Cf. *ibid.* p. 559.

¹⁰ Cf. *ibid.* pp. 561-562.

¹¹ *Ibid.*, p. 871.

¹² *Cochino v. Irfan* (1997) 11 JSC, 1780.

¹³ *Georghiades and son v. Kaminaras* (1958), CLR, 276.

the courts of Cyprus to hear a claim, it must be actionable both in accordance with the Law of the State where the unlawful action (*lex loci delicti*) took place, and in accordance with the Law of Cyprus (*lex fori*).

The Court hearing the case *Coupland v. Arabian Gulf Oil Co.* considered that once the requirement of double actionability had been met, the Law according to which the court should decide must be the *lex fori*, to the extent that this corresponds with the provisions of the *lex loci delicti*. This decision was cited and approved by the *Supreme Court* of Cyprus in the case *Safarino v. Stavrinou*¹⁴.

Civil liability according to the *lex fori* and the *lex loci delicti* must exist between the same parties involved in the proceeding. In the event that in accordance with the *lex loci delicti* the action may only be brought by another person who is not the plaintiff, the said action may not be brought in Cyprus. Equally, if a claim cannot be brought against the defendant in accordance with the Foreign Law according to the *lex fori* the said action cannot take place¹⁵.

However, the general rule on *double actionability* does have one exception. According to this special rule, in specific cases the court may apply another Law when this presents closer connections with the proposed Law and the parties. By means of this exception the flexibility of the rule is increased and instances of injustice can be avoided that could arise as a consequence of the application of the general rule¹⁶, as legal uncertainty is increased.

3. Case Law concerning Rules of Conflict

In regard to the relevant case law concerning rules of conflict in cases of defamation, English case law must be taken into consideration. In particular: *Phillips v. Eyre* (1870) L.R. 6 Q.b. 1 (Exch.) and *Boys v. Chaplin* (1971) AC 356.

Among the decisions the Courts of Cyprus the aforementioned *Safarino v. Stavrinou* is especially noteworthy.

4. Specialised Courts

In Cyprus we do not have courts especially for violations of personality and/or privacy rights.

¹⁴ Cf. *Ibid.*, p. 883.

¹⁵ Cf. *Ibid.*, p. 883.

¹⁶ Cf. *Ibid.*, p. 883.

5. Directive 95/46/EC

According to art. 3.3 on the *Processing of Personal Data (Protection of the Individual) Law of 2001, as amended in 2003*:

“This law shall apply to any processing of personal data, where this is performed –
a) By a controller established in the Republic or in a place where Cyprus law applies by virtue of public international law;
b) a controller not established in the Republic who, for the purposes of the processing of personal data, makes use of means, automated or otherwise, situated in the Republic, unless such means are used only for purposes of transmission of data through the Republic. In such a case, the controller must designate, by a written statement submitted to the Commissioner, a representative established in the Republic, who is vested with the rights and undertakes the obligations of the controller, the latter not being discharged of any special liability”.

As can be observed in this article, the Cyprus Law of Transposition coincides to a great extent with the provisions of art. 4 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 in relation to the protection of natural persons in connection with the processing of personal data and the free circulation of such data.

However, a notable difference does exist. The Directive establishes that National Law will apply to the entities responsible for the processing the data which are not established within Community Territory and have access, for the processing of personal data, to resources, electronic or otherwise, located within the territory of the said Member State, except where the said resources are used solely for purposes of transit by the territory of the European Community. For its part, the Law of Cyprus provides that in these same cases the Law of Cyprus will apply when the entity responsible for the processing is not established within the Republic of Cyprus (and not in a Member State). This is an important difference, in that the Law of Cyprus will, in principle, apply, notwithstanding that the entity responsible for the processing is established in another Member State where the Directive has been transposed by means of domestic law. This defective transposition goes against the spirit of the rule and amounts to nonfulfilment of the Directive. Accordingly, it would be possible that in future decisions handed down by the Courts of Cyprus contrary to the provisions of art. 4 of the Directive may not be recognized in the other Member States.

6. Bibliography

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