1983 July 19

[HADJIANASTASSIOU, STYLIANIDES & PIKIS, JJ.]

TAKIS HJIDEMETRIOU,

Appellant.

v.

1. "TELEGRAPHOS" PUBLISHING COMPANY LTD.,
2. COSTAS GEORGHIOU HIPPIS.

Respondents.

(*Criminal Appeal No.* 4387).

Criminal Procedure—Appeal—Piecemeal appeals—Ruling—Whether an appeal lies against a ruling—Even if it lies it is highly undesirable—After determination of the case an appellant may raise an appeal on the points relevant to the decision, including rulings, given in the course of the trial.

Press Law, Cap. 79—Correction—Publication—Section 24 of Law—Prerequisites for the application of—Obligation of proprietor to publish correction exists only when there is strict compliance with s.24—Correction should emanate from person affected and should be limited to a denial of a statement of fact, which is alleged to be incorrect and to a statement setting forth the correct facts.

Statutes—Construction—Penal Statutes—To be strictly construed——Section 24 of the Press Law, Cap. 79.

In its issue of 4.4.82 "Haravghi" newspaper published in the first page news or information under the title: "The Archbishop leads movement for the splitting of the democratic forces". In the said article it was stated that on 26.3.82 a meeting took place at the Archbishopric in which Matsis and Zachariades on behalf of DISSY Party, the appellant, Aleccos Michaelides for NEDIPA, Tassos Papadopoulos for E.K. and Mikis Tembriotis for PEAM, participated. The object of the Archbishop, who convened the meeting, was the nomination of a common candidate by the

participants, in the meeting, for the forthcoming presidential elections.

On the following day the appellant delivered to the chief Editor of "Haravghi" a letter dated 5.4.82,* which was addressed to respondents 1 wherein it was stated that the contents of the publication relating to him, were untrue and called upon them, to publish the following correction, in virtue of the provisions of section 24 of the Press Law, Cap. 79.

> "Due to a mistake and/or oversight we proceeded in our issue of the 4th April, 1982 to the publication of the information that Mr. Takis HadjiDemetriou, Secretary-General of S.P. EDEK, on the 26th March, 1982 took part in a conference at the Archbishopric together with representatives of DISSY, NEDIPA, E.K. and PEAM. In fact and as we ascertained Mr. T. HadjiDemetriou never had any meeting or conference with the above at the Archbishopric or anywhere else. We express our sorrow for any insult and/or defamation which was caused to Mr. T. HadjiDemetriou as a result of the said publication."

There was no response to this letter and the appellant instituted proceedings against the proprietor of the newspaper and the person named under section 3(A)(1) of the Press Law, Cap. 79, as responsible for the management and control of the newspaper answerable in criminal Law for offences committed by the proprietors.

At the end of the case for the prosecution the trial Court concluded that the letter of the appellant did not comply with the requirements of s.24(1) and the proviso thereto and that this defect absolved the proprietor of the obligation cast on him by s.24** of the Press Law and therefore, the ingredients of the offence created by s.24(3) were not proved.

Upon appeal by the prosecutor it was submitted that as the law does not prescribe a specific form of correction, the letter satisfied the statutory requirements and at any rate the proprietor had a duty in law to accede to the request; that they might reframe the form of the correction sent to them in such

* The letter is quoted at pp. 274–275 post
** Section 24 is quoted in full at pp. 276–277 post.

a way as to appear that it emanated from the appellant and not from the newspaper.

At the commencement of the hearing counsel for the respondents raised the objection that the appeal is out of time in so far as it related to a ruling of the trial Court which was delivered on 1.2.1983 whereas the appeal was filed on 12.3.1983. The appeal was directed against the judgment of the Court delivered on 2.3.1983.

Held, on the preliminary objection, that irrespective of whether an appeal lies against such a ruling or not as such appeals are highly undesirable, the appeal, was rightly taken after the determination of the case and an appellant may raise an appeal on all points relevant to the decision, including objection and dissatisfaction with rulings given in the course of the hearing. The appeal, therefore, is not out of time and the objection of counsel for the respondents fails.

On the merits of the appeal:

That section 24 is a penal statute and has to be construed narrowly in favour of the press, in case of doubt, on whom the obligation is imposed; that the correction under s. 24, should be limited to denial of a statement of fact which is alleged to be incorrect and to a statement setting forth the correct facts in connection therewith; that the law imposes an obligation only in the event of strict compliance with the above; that the letter of the appellant was not a correction that appeared to the eyes of the readers as amanating from the person affected; it was not a denial of the publication of 4.4.1982 but it savours of an apology from the newspaper; that it was outside the ambit and the spirit of the Law; accordingly the appeal must be dismissed.

Appeal dismissed.

Observations with regard to the desirability of reforming the Law so that the right of response be extended to cover also comments and not only statements of facts and that the period provided in the request to be enlarged from ten days to thirty days.

Appeal against acquittal.

Appeal by Takis Hadjidemetriou, with the sanction of the Attorney-General of the Republic, against the judgment of the

District Court of Nicosia (Kramvis, Ag. D.J.) given on the 2nd March, 1983 (Criminal Case No. 870/82) whereby the respondents were acquitted of a charge of failing to publish a correction of fact, contrary to section 24(1) and (3) of the Press Law, Cap. 79 and section 20 of the Criminal Code, Cap. 154.

P. Frakalas, for the appellant.

M. Papapetrou, for the respondents.

Cur. adv. vult.

HADJIANASTASSIOU J.: The judgment of the Court will be delivered by Mr. Justice Stylianides.

STYLIANIDES J.: The appellant prosecutor is the General Secretary of EDEK Party. The first respondents are the proprietors of "Haravghi", a daily newspaper, and the second respondent is the person named under s.3(A)(1) of the Press Law, Cap. 79, as responsible for the management and control of the said newspaper answerable in criminal law for offences committed by the proprietors.

The appellant complains against the acquittal of the respondents of a charge of failing to publish a correction of fact, contrary to section 24(1) and (3) of the Press Law, Cap. 79, and s.20 of the Criminal Code, Cap. 154.

At the commencement of the hearing learned counsel for the respondents raised the objection that this appeal is out of time in so far as it relates to ground No. 1, as the ruling of the trial Court that the truth or falsity of the publication is not relevant or material for the purposes of s.24 was delivered on 1.2.83 whereas this appeal was filed on 12.3.83. The appeal is directed against the judgment of the Court delivered on 2.3.83.

The appeal is taken under the Courts of Justice Law, No. 14/60, s.25, and the Criminal Procedure Law, Cap. 155, s.137, and was sanctioned, as prescribed by Law, by the Attorney-General.

In the first place it is very doubtful - and we leave it open - whether the ruling of 1.2.83 constitutes a judgment so as to enable a litigant to appeal against it. The appellate jurisdiction of this Court is statutory. It derives from the Constitution and

from the particular statute providing for and regulating appeals. Such appeals are made subject to rules of procedure governing the matter. We know of no rule providing for a separate appeal from a ruling on the admissibility of evidence. Even if the ruling constituted a judgment and could be the subject of an appeal, such piecemeal appeals would be most undesirable and should be discouraged by the Courts.

In *Costas Korallis v. Cleanthis Christoforou and Others,* (1957) 22 C.L.R. 159, the trial Court in a libel action, made a ruling as to who was the first party in the trial. Appeal was taken against that ruling. Zekia, J., at p.161 said:-

> "In the first place it is very doubtful whether the ruling made could be embodied in an order so as to enable a litigant to appeal against it. Indeed a trial Court conducting the hearing of a case and directing the various phases of trial usually has to make a number of rulings. To hold that each of these rulings constitutes a decision within the meaning of section 27 of the Courts of Justice Law, 1953, and, therefore, is subject to appeal to the Supreme Court would unnecessarily protract litigation and encourage piecemeal appeals in one and the same case, which is highly undesirable."

In *The Republic v. Georghios Theocli Kalli,* 1961 C.L.R. 266, Vassiliades, J., as he then was, said that interruption in criminal cases is highly undesirable for a number of obvious reasons, and Josephides, J., said:-

> "Needless to say that it is highly desirable that the trial of a criminal case and especially an Assize case involving a charge of premeditated murder should not be interrupted unduly."

In *Pinelopi Demetriou Christofidou v. Elli P. Nemitsas and Others,* (1963) 2 C.L.R. 269, at pp. 272-273, we read:-

> "In the course of a trial, or of a hearing of any proceeding before a trial Court, there may well be numerous occasions when the Court may have to make a ruling on objections or other matters raised by either side. One need not have a strong imagination to see the embarrassment which may be caused, in both civil and criminal matters, if there was to be

an interruption of the proceeding for the purposes of an appeal, every time a party was dissatisfied with the Court's ruling."

And further down, after referring to *Kalli* case (supra):-

"As that was a criminal case, I shall not make further reference to it here, except for saying that such interruptions during a trial, are as 'highly undesirable' in criminal matters as they are in civil suits".

And in *Nedi Charalambous v. The Municipality of Nicosia,* (1966) 2 C.L.R. 34, an appeal against the ruling made by the District Court of Nicosia dismissing a plea of autrefois aquit, Vassiliades, Ag. P., said:-

"We would only add that what was said regarding appeals from rulings or decisions made in the course of civil or criminal trials in *Pinelopi Christofidou v. Elli Nemitsas,* (1963) 2 C.L.R. 269, should be borne in mind by litigants intending to take such a course. In the circumstances of this case we do not propose making any order for costs; but in different circumstances, such an order might be one of the ways of discouraging 'piecemeal appeals' causing embarrassment, delay and expense in litigation, civil or criminal."

In view of the foregoing weighty pronouncements, irrespective of whether an appeal lies against such a ruling or not, as such appeals are highly undesirable, the appeal was rightly taken after the determination of the case and an appellant may raise an appeal on all points relevant to the decision, including objection and dissatisfaction with rulings given in the course of the hearing. The appeal, therefore, is not out of time and the objection of counsel for the respondents fails.

The salient facts of the case are:-

In its issue of 4.4.82 "Haravghi" published in the first page news or information under the title: "The Archbishop leads movement for the splitting of the democratic forces." In the said article it is stated that on 26.3.82 a meeting took place at the Archbishopric in which Matsis and Zachariades on behalf of DISSY Party, the appellant, Aleccos Michaelides for NEDIPA, Tassos Papadopoulos for E.K. and Mikis Tembriotis for PEAM,

participated. The object of the Archbishop, who convened the meeting, was the nomination of a common candidate by the participants in the meeting for the forthcoming presidential elections.

On the following day - 5.4.82 - Demetris Phanaris (P.W.3), on the instructions of the appellant, delivered to Kannaouros, the Chief Editor of "Haravghi", at the offices of "Haravghi", a letter which we consider pertinent to quote verbatim:-

"Λευκωσία 5 'Απριλίου 1982

Κυρίους
'Εκδοτικὴ 'Εταιρεία 'Τηλέγραφος'
Λευκωσία.

Κύριοι,

Σᾶς πληροφορῶ ὅτι εἶναι παντελῶς ἀναληθῆ ὅσα ἀναγράφονται σχετικὰ μὲ τὸ πρόσωπο μου στὴν πρώτη σελίδα τῆς ἔκδοσης τῆς 4ης 'Απριλίου 1982 τῆς ἐφημερίδας 'Χαραυγὴ' ποὺ ἐκδίδει ἡ ἑταιρεία σας ὑπὸ τὸν ἐνιάστηλο τίτλο ' 'Ο 'Αρχιεπίσκοπος ἡγεῖται κίνησης γιὰ διάσπαση τῶν δημοκρατικῶν δυνάμεων'. Γιὰ αὐτὸ πέρα ἀπὸ τὴν ἔκφραση τῆς ἔντονης διαμαρτυρίας μου σᾶς καλῶ σύμφωνα μὲ τὸν περὶ τύπου Νόμο, Κεφ. 179, ἄρθρον 24, νὰ δημοσιεύσετε τὴν πιὸ κάτω ἐπανόρθωση στὴν αὐτὴ περίοπτη θέση ὅπως καὶ τὸ ἀναληθὲς δημοσίευμα:

' 'Εκ λάθους καὶ/ἢ ἀβλεψίας μας προβήκαμε στὴν ἔκδοση μας τῆς 4ης 'Απριλίου 1982 σὲ δημοσίευση τῆς εἴδησης ὅτι ὁ κ. Τάκης Χ'' Δημητρίου, Γενικὸς Γραμματέας τοῦ Σ.Κ. ΕΔΕΚ, τὴν 26 Μαρτίου 1982 ἔλαβε μέρος σὲ σύσκεψη στὴν 'Αρχιεπισκοπὴ μαζὶ μὲ ἐκπροσώπους τοῦ ΔΗΣΥ, τῆς ΔΕΔΗΠΑ, τῆς Ε.Κ. καὶ τοῦ ΠΕΑΜ. Στὴν πραγματικότητα καὶ ὅπως διαπιστώσαμε ὁ κ. Τ. ΧατζηΔημητρίου οὐδέποτε εἶχε οἱανδήποτε συνάντηση ἢ σύσκεψη μὲ τοὺς πιὸ πάνω στὴν 'Αρχιεπισκοπὴ ἢ ὁπουδήποτε ἄλλοῦ. 'Εκφράζουμε δὲ τὴν λύπη μας γιὰ τυχὸν προσβολὴ καὶ/ἢ δυσφήμιση ποὺ προξενήθηκε στὸν κ. Τ. Χ'' Δημητρίου σὰν ἀποτέλεσμα τοῦ σχετικοῦ δημοσιεύματος'.

Είναι αὐτονόητο πὼς ἐπιφυλάσσω ὅλα τὰ νόμιμα δικαιώματα μου σὲ περίπτωση ποὺ θὰ ἀρνηθεῖτε νὰ δημοσιεύσετε τὴν πιό πάνω ἐπανόρθωση.

(Ὑπ.) Τάκης Χατζηδημητρίου".

("Nicosia 5th April 1982

Messrs. 'Telegraphos' Publishing Company
Nicosia.

Sirs,

I inform you that all that is published in the first page of the issue of the 4th April 1982 of 'Haravgi' newspaper which is being edited by your company about my person under a ninth column title 'The Archbishop leads movement for the splitting of the 'democratic forces' is completely untrue. For this reason, further to the expression of a strong protest, I call upon you in accordance with section 24 of the Press Law, Cap. 179, to publish the following correction in the same conspicuous place as the untrue publication.

'Due to a mistake and/or oversight we proceeded, in our issue of the 4th April 1982, to the publication of the information that Mr. Takis HadjiDemetriou, Secretary-General of S.P. EDEK, on the 26th March, 1982 took part in a conference at the Archbishopric together with representatives of DISSY, NEDIPA, E.K. and PEAM. In fact and as we ascertained Mr. T. Hadjidemetriou never had any meeting or conference with the above at the Archbishopric or anywhere else. We express our sorrow for any insult and/or defamation which was caused to Mr. T. Hadjidemetriou as a result of the said publication'.

It is self-evident that I reserve all my legal rights in case you refuse to publish the above correction.

(Sgd) Takis Hadjidemetriou").

There was no response to this letter; it was not published in "Haravghi" newspaper.

At the close of the case for the prosecution the trial Court, on submission made by counsel for the accused, ruled that no prima

facie case was made out against the accused sufficiently to require them to make their defence and proceeded and acquitted them.

The trial Court concluded that the letter of the appellant (exhibit No. 1) did not comply with the requirements of s.24(1) and the proviso thereto and that this defect absolved the proprietor of the obligation cast on him by s.24 of the Press Law and, therefore, the ingredients of the offence created by s.24(3) were not proved.

Section 24 of the Press Law reads as follows:-

"24.(1) Subject to subsection (2) hereof, the proprietor shall publish free of charge, not later than in the second issue of his newspaper after receipt thereof, a correction without additions or omissions of any statement of fact published in such newspaper if so requested in writing by the person referred to in such statement, and any such correction shall be given the same prominence as the original statement: Provided that -

(a) such correction shall be limited to a denial of the statement of fact which is alleged to be incorrect and to a statement setting forth the correct fact in connection therewith;

(b) the request for such correction shall be made within ten days from the date of the statement in connection with which such request is made or, if the person affected is not in the Colony when the statement is published, within ten days from his return to the Colony;

(c) if the person affected dies before the expiration of the ten days as herein before, the request may be made, within that period, by any of his heirs.

(2) The proprietor may refuse to publish a correction if it contains matter which, on the face of it, is defamatory and might expose the proprietor to proceedings criminal or civil.

(3) Any proprietor who refuses or fails to comply with a request as in subsection (1) hereof shall be guilty of an offence and shall be liable to imprisonment not exceeding three months or to a fine not exceeding twenty-five pounds or to both such imprisonment and fine.

(4) Proceedings for an offence under this section shall not be instituted except by the person having a right to make a request under the provisions of subsection (1) hereof.

(5) Nothing in this section contained shall prejudice or affect any other right or remedy of the person affected by any statement published in any newspaper".

There is no comparable provision in the English Law. Attempts to give by statute a right of response or to reply to the readers or to persons affected by publications in the English newspapers have not proved successful. The right to response, however, is well embedded in the French Law. It is one of the fundamental rights of the personality for over a century.

The right of rectification and reply was introduced in France in 1822 and today is governed by ss. 12 and 13 of Law 13.7.1881 as amended by Laws 29th September, 1919, and Ordinance 26th August, 1944, and Law 5th October, 1946. Similar provisions are found in Belgium, Denmark, Luxemburg and Italy. In Greece it was introduced as early as 1831 during the rule of Kapodistrias. Presently the right of rectification and reply is governed by Law 1092/1938. In this country it was introduced by the Press Law of 1947 (Law No. 28/47).

The press is a very important element in modern society. It renders an important service to the public. The press is rightly considered as the defender of freedom of opinion in the whole spectrum of life - political, economic, social, philosophic and literary. The press is often referred to as the fourth power of State. The true freedom of the press, however, implies equal freedom for all. The press has a great responsibility towards its readers and the public at large. True freedom, however, is the one that not only does not overlook but safeguards the freedom of others. The right to freedom of citizens and sections of the public must be justly balanced so that the right of the one is not exercised at the expense of the right of the other. A healthy equilibrium must be maintained between competing rights to freedom of expresssion.

Our Constitution (Article 19) safeguards the right to freedom of speech and expression in any form, the freedom to hold opinions and receive and impart information and ideas without

interference. This freedom, however, is subject to conditions and restrictions prescribed by Law, that are necessary only in the interests, inter alia, of the protection of the reputation or rights of others. (*Police v. Ekdotiki Eteria*, (1982) 2 C.L.R. 63).

Freedom of expression is subject to a number of constitutionally valid exceptions which must be narrowly interpreted. (*Sunday Times v. United Kingdom*, (1979) 2 E.H.R.R. 245, at 281). Freedom of expression in the press should not be unwarrantably fettered.

Section 24 of the Press Law aims to protect the rights of others. It is a constitutionally valid restriction and, in our view, a necessary one. It is absolutely necessary for the protection of a person who is referred in a publication in a newspaper. A publication in a newspaper is read by many. It is not possible for an individual or even an organization to counteract or to restore his reputation in the eyes of the readers without this right of correction provided by s.24 of our Law.

The remedy for a civil libel is damages, and a criminal libel may lead to punishment of the offender. This, however, falls short of the immediate restoration of the truth in the mind of the readers of a publication affecting a person.

Having made these general observations, we turn to the case in hand. The law imposes on the proprietor of a paper an obligation and provides criminal sanction for failure to perform such obligation. This is a penal statute and has to be construed narrowly in favour of the press, in case of doubt, on whom the obligation is imposed. The strict construction of a penal statute is applied in requiring the fulfilment to the letter of statutory conditions precedent to the infliction of punishment. (*Maxwell on Interpretation of Statutes*, 12th edition, pp. 239-240).

It was submitted by learned counsel for the appellant that as the law does not prescribe a specific form of correction, the letter (exhibit No. 1) satisfied the statutory requirements and at any rate the proprietor had a duty in law to accede to the request; that they might reframe the form of the correction sent to them in such a way as to appear that it emanated from the appellant and not from the newspaper.

Having given our best consideration to the provisions of s.24 of the Law, we are of the view that we are not entitled in this

case to depart from the wording of the Law which is clear and unambiguous. The proprietor has a statutory duty to publish a correction without additions or omissions of any statement of fact published in such newspaper. The request should be in writing by the person referred to in such statement. The correction should be limited to a denial of a statement of fact which is alleged to be incorrect and to a statement setting forth the correct facts in connection therewith. The law imposes an obligation only in the event of strict compliance with the above. The word "correction" in s.24(1) must be read subject to the preceding phrase. Thus read it refers to the notice of the requested *correction and not correction simpliciter.*

The appellant requested the proprietor to publish the part of his letter which appears in quotes:-

" 'Εκ λάθους καὶ/ἢ ἀβλεψίας μας προβήκαμε στὴν ἔκδοση μας τῆς 4ης 'Απριλίου 1982 σὲ δημοσίευση τῆς εἴδησης ὅτι ὁ κ. Τάκης Χ" Δημητρίου, Γενικός Γραμματέας τοῦ Σ.Κ. ΕΔΕΚ, τὴν 26 Μαρτίου 1982 ἔλαβε μέρος σὲ σύσκεψη στὴν 'Αρχιεπισκοπὴ μαζὶ μὲ ἐκπροσώπους τοῦ ΔΗΣΥ, τῆς ΝΕΔΗΠΑ, τῆς Ε.Κ. καὶ τοῦ ΠΕΑΜ. Στὴν πραγματικότητα καὶ ὅπως διαπιστώσαμε ὁ κ. Τ. ΧατζηΔημητρίου οὐδέποτε εἶχε οἱανδήποτε συνάντηση ἢ σύσκεψη μὲ τοὺς πιὸ πάνω στὴν 'Αρχιεπισκοπὴ ἢ ὁπουδήποτε ἀλλοῦ. 'Εκφράζουμε δὲ τὴν λύπη μας γιὰ τυχὸν προσβολὴ καὶ/ἢ δυσφήμιση πού προξενήθηκε στὸν κ. Τ. Χ" Δημητρίου σὰν ἀποτέλεσμα τοῦ σχετικοῦ δημοσιεύματος".

("Due to a mistake and/or oversight we proceeded in our issue of the 4th April, 1982 to the publication of the information that Mr. Takis HadjiDemetriou, Secretary-General of S.P. EDEK, on the 26th March, 1982 took part in a conference at the Archbishopric together with representatives of DISSY, NEDIPA, E.K. and PEAM. In fact and as we ascertained Mr. T. HadjiDemetriou never had any meeting or conference with the above at the Archbishopric or anywhere else. We express our sorrow for any insult and/or defamation which was caused to Mr. T. HadjiDemetriou as a result of the said publication".).

This is not a correction that appears to the eyes of the readers as emanating from the person affected. It is not a denial of the

publication of 4.4.82 but it savours of an apology from the newspaper. This is outside the ambit of the spirit and the letter of the law. The object of the right to correction is to give to the reader the opportunity to read the true version as stated by the person affected. The newspaper has a duty to publish such correction not later than in the second issue of its circulation after receipt of a correction. If there is a dispute as to the true facts, the newspaper is not entitled to refuse to publish the correction requested as inexact or incomplete. (See *Traite du Droit de la Presse*, by Blin, Chavanne and Drago, (1969), and Cass. crim. 2 aout 1928: D.H. 1928 p.465 - Cass. crim. 8 juill. 1905: D.1909, 1, 407). The proprietor cannot correct any inexactitudes; he is not the judge of the correction. The proprietor may comment or give his own version on the correction but this must be done either before or after the correction; he is not entitled to insert anything in the text.

It is unnecessary to decide if the truth or falsity of the first publication is relevant. It is abundantly clear, however, that the proprietor may not refuse to publish that correction except if it is defamatory and might expose the proprietor to proceedings, criminal or civil. He is not the arbiter of truth in the sense that he cannot refuse to publish the correction though he may comment on it.

Before concluding, we would add a few general words not necessary for the decision in this case but relevant to the reform of the Law. We would suggest that the right of response be extended to cover also comments and not only statements of facts and the period provided in the request to be enlarged from ten days to thirty days. By expanding the statutory right to response the law would reconcile in a fairer way the rights of all members of the community to voice their views on matters affecting them. The expansion of the right of reply is more necessary where the press is controlled by strong financial or political interests. The right of the people - readers - to be correctly informed militates in favour of a right to response both on facts and comments.

In view of the foregoing this appeal fails and is hereby dismissed.

Appeal dismissed.