

APPEAL IN FAVOUR OF JANE

I appeal in favour of Jane and ask the Court to grant her claim for compensation.

Applicable Law

Article 8 of the Universal Declaration of Human Rights states:

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 12 states:

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 19 states:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Reasoning

We should first ask what law is applicable to this dispute. The parties are Jane and the social media site. We do not know where they reside and what legal system they are used to. All we know is that they have a contract which obliges the site to provide Jane with access to that site and that allows Jane to post on there.

Since we do not have a more detailed contract and since we cannot rely on a specific legal order that governs the dispute, we should try and apply principles that are common among all legal systems in the world. Human rights are such principles. They are derived from moral values which everybody shares and they are rather abstract and therefore leave room for applying them with regard to the circumstances in the individual case. The Universal Declaration of Human Rights provides a codification of many human rights. But we would find the above mentioned rights in several other international documents.

Applying human rights is also in line with Kleros' General Court Policy. It states that a party that engages in immoral conduct should not win a dispute. Human rights are rooted in morals and can therefore help to correctly apply this policy.

What do human rights tell us about this case? It is fairly obvious that Jane's right to non-interference with her honour and reputation is affected by Dave's statements. However, merely affecting a human right does not mean that there is an infringement. The right to privacy and honour often opposes the rights to freedom of opinion and expressions of others.

We therefore must ask, whether in this particular case Jane's right to honour outweighs Dave's right to freedom of expression. Dave is distributing false and defamatory statements. They do no good, except maybe causing some pleasure to Dave, and they might even mislead people who try to use their right of freedom to receive information to form an opinion on Jane's restaurant. Jane on the other hand has an economic interest in fair reviews and criticism. She also has an interest in not being personally and publicly attacked. This interest also aligns with the interest of the public to receive correct information. So Jane's rights clearly outweigh Dave's here.

But why should the website be held responsible? First, because it allowed Dave to make the defamatory statement and did nothing about it. Second, because Jane does not know Dave or where he lives so she cannot claim compensation from him directly. Her right to an effective remedy, as cited above, would be violated if she had no chance of getting any compensation.

Holding the site liable is also fair because the website itself can then try and get the money back from Dave. It is easier for them to find and sue him.

A final note: this case does not concern the deactivation of Dave's account. Despite Jane demanding the account to be deactivated the question of the dispute only asks for compensation. We, therefore, need not consider whether she would also have a right to deactivate Dave's account.