

## The 2<sup>nd</sup> European Human Rights Moot Court Competition 2013/2014

### ELSA in Cooperation with the Council of Europe

#### “CASE OF ADAM v. EVRYLIA”

##### THE CIRCUMSTANCES OF THE CASE

1. The applicant, Mr Victor Adam, is a Favonian and Evrylian national born in 1975 and living in Garand, the capital of Favonia. He is a very well-known journalist with FTVN, an influential television news channel in Favonia, but also widely followed in Evrylia, whose shared cultural heritage and almost identical language facilitate access to Favonian media.
2. Both countries became members of the Council of Europe and ratified the European Convention on Human Rights in 1998. Since then, they have also ratified all existing Protocols of the Convention.
3. The two countries are in good terms and their similar background facilitates exchange in many areas, including culture, education, social life etc. Favonia is ethnically homogenous whereas Evrylia has a 25% of its population belonging to the Kroppa minority. While in Evrylia the Kroppa population is integrated as a result of a long process of political action and the implementation of a protective legal framework, there is widespread anti-Kroppa sentiment in Favonia, allegedly for reasons linked with a historic clash between the Kroppas and the Favonians. In Evrylia, the expression of such sentiments is forbidden, in particular by strong anti-hate-speech legislation.
4. The applicant has a personal blog, hosted by the blog platform Bbligg ([Bbligg/victor.adam](http://Bbligg/victor.adam)), where he posts articles and commentaries based on information gathered through his sources on a broad range of topical subjects including politics, news and prominent people. His blog has wide coverage, being visited by many readers, both from Favonia and Evrylia and is often referred to in the media.
5. Being a firm believer in complete freedom of speech, the applicant undertook to allow his readers to freely express their views on the matters brought to their attention through his posts and had included on his blog manifesto, in clearly legible lettering, the following disclaimer:

“I strongly believe in freedom of speech. If you are stupid, ignorant or bigoted, it’s your responsibility, not mine, so I solemnly undertake not to censor any comments posted on this blog no matter how profoundly I may disagree with them. If other readers find comments on this blog unpalatable, they should either ignore them or respond, preferably with reasoned argument.”
6. The applicant also has an account on the social networking site Phrendbook. Access to this account is limited to his friends, mostly fellow journalists and a few family members. He uses an

alias on this account and posts are visible only to friends. Using this account, he is also member of a Phrendbook forum group (“EvryFav Media”) where journalists share information related to their activities and projects and which is also used by most of their respective trade unions to disseminate information concerning the profession. This is a restricted group accessible, by invitation only, mainly to Favonian and Evrylian journalists.

7. On 20 March 2010 the applicant posted on his blog an article about an alleged connection between David K., a famous Evrylian footballer, and certain obscure individuals involved in drug and human trafficking, with whom he had allegedly been seen at a party organised in an exclusive club in Evrylopol, the capital of Evrylia. Rumours were circulating about use of drugs and the presence of minors. The story had been published in the context of recent statements by the coach of the Favonian national football team to the effect that he was examining the possibility of obtaining Favonian nationality for David K., so that he could play for the country. Mr K. was considered to be a player of great potential who, despite his promising international career, had never been called up by the Evrylian national team due to open disagreements with the Evrylian national football federation. The interest of the subject for applicant lay in the relevance of bringing such a character into the Favonian national team, considering that he was perceived as a controversial figure, had always been kept away from the Evrylian national team on grounds of his relationship with the football authorities, his controversial social life and his undisguised interest in lucrative commercial contracts and media visibility.

8. Several comments were added to the blog post by readers, making clear reference to the fact that David K. is a Kroppa, i.e., a member of the national minority present in Evrylia. These contributors expressed open disapproval of the possibility of Mr K.’s playing for Favonia or obtaining Favonian citizenship. The relevant part of the forum comments reads as follows:

*“Ban\_the\_Kroppas* : If K. will ever join the Favonian team, we shall force him to eat that football! A Kroppa to have Favonian citizenship?? Let’s have some bloody flash-mob in front of the Government building and have our say through deeds, not words! No doubt that every Favonian who is a real patriot is going to join us in this righteous fight...

*Dan\_Bo\_75*: I agree! Down with the Kroppas !!!!

*FavForever* : Like! A good Kroppa is a dead Kroppa !

*Kroppabonecrusher* : True ! Favonia for Favonians, Kroppas go home !

*Cordon Bleu*: @Ban\_the\_Kroppas, Dan\_Bo\_75, FavForever and Kroppabonecrusher: You guys must be crazy... There is no evidence of that, it’s just rumours...

*Ban\_the\_Kroppas* : @Cordon Bleu : Why are you defending this Kroppa cockroach ? Every single bloody Kroppa is an arch-enemy of our nation and has no place in our society... they have abused our patience for too long ! You don’t get to tell us what to do. Don’t make us angry mate, you won’t like us when we’re angry !!!!! Wait until we meet you, buddy, we’ll make mincemeat out of you, too.

*Dan\_Bo\_75* : Yeah, true Favonian patriots shall bloody fight all Kroppas and any of their supporters !

*Kroppabonecrusher* : Cordon Bleu is either a Kroppa himself or a traitor!

*FavForever*. A good Cordon Bleu is a dead Cordon Bleu!"

9. Following these comments, members of the Kroppa community in Evrylia initiated a series of protests in front of the Favonian Embassy in Erylopol, asking that impunity for anti-Kroppa remarks be ended by Favonian authorities and accusing them of passivity towards an escalating trend of anti-Kroppa propaganda. During the protests, violence was reported during clashes with groups of Favonian residents in Evrylia, making the intervention of Evrylian police forces necessary to re-establish order, and a scheduled football match between the Evrylian and the Favonian teams was cancelled on grounds of stirring tension and high risk of violence between the supporters.

10. In conformity with his principled declaration of not censoring the readers' comments, which covers readers posting anonymously and those using an alias or their real name, the applicant did not delete any of the impugned posts appearing on his Bbligg site.

11. The applicant posted a link to the relevant thread on his private Phrendbook profile "wall" and on the journalists' forum group EvryFav Media, in line with the common practice between the group members to share information on their work.

#### **a) The civil proceedings against the applicant for defamation**

12. Having been informed of the post about him on the applicant's Bbligg site, David K. brought civil proceedings against the applicant before the Evrylian courts, claiming damages and demanding the deletion of the offending article and the publication of an apology.

13. He argued that the article was defamatory and that allegations concerning links with drug trafficking and prostitution had resulted in the cancellation of several publicity contracts and the threat of suspension by Selsee Football Club for whom he played. He also mentioned that following this news, his fiancée cancelled their engagement and left him.

14. On 20 September 2012 the Evrylopol tribunal allowed Mr K.'s claim and ordered the applicant to pay damages, to delete the blog post and to post a public apology regarding the unproved assumptions of involvement in drugs and prostitution, especially having in mind the effect this had had on the football player's private and family life. The judges stated that in establishing a balance between the rights of the two parties, it had given priority to respect for the footballer's right to his private and family life, which had been undermined in a manner not justified by the public-interest value of the news. It also took note of the loss of income sustained by the footballer as a result of the cancellation of the commercial contracts when assessing the amount due in damages.

15. The applicant appealed the judgment, arguing the Evrylian courts' lack of jurisdiction to order him to delete a post which was posted from another country (Favonia), on a website platform hosted on a foreign server and thus not having any relation to Evrylia. He further contended that it is the very nature of the internet to be accessible across frontiers. The appellate court dismissed the applicant's appeal and confirmed the first-instance judgment, which thus became final on 20 March 2013.

16. The applicant refused to delete the post. He did publish an attached apology statement in the terms laid down by the courts, having in mind its accessibility and reparatory effect in Evrylia.

17. David K. instituted enforcement proceedings in respect of the unenforced decisions outlined above and the Evrylian tribunal ordered the applicant to pay a fine for each day of delay in complying with the final decision ordering him to delete the impugned post.

#### **b) The criminal proceedings against the applicant for endorsing hate-speech**

18. On 20 September 2010, the Evrylian Prosecutor General's department opened an investigation against the applicant under the legislation on hate-speech and the protection of national minorities, which states as follows:

“Any person who provokes hatred or hostility between different groups through any form of expression which is offensive and based on race, religion, sect, gender, social class or regional differences such as to create a danger to public safety shall be sentenced to a term of imprisonment of six months to three years.”

19. The applicant was accused of having allowed hate-speech comments on his blog, thus implicitly endorsing these statements. The prosecutor filed for an injunction to have the blog post blocked together with any subsequent reference to it, thus including the links to the post he had shared on his private Phrendbook profile and the forum group EvryFav Media. The injunction was granted and an order was sent to the Evrylian Telecommunications Directorate (ETD) to implement it.

20. The ETD wrote to the tribunal stating that individual posts could not be blocked; the order should specify the taking down of the applicant's entire Bblig page and private Phrendbook profile including the journalists' forum group. The tribunal re-worded the order accordingly.

21. Several fellow Favonian and Evrylian journalists asked to intervene in the injunction proceedings, being directly affected by the potential measure of blocking the Phrendbook forum group EvryFav Media, their requests being dismissed.

22. The applicant appealed the injunction before the appellate court, which dismissed his appeal on 20 June 2013. The order was consequently executed. Access to the applicant's personal blog was blocked in Evrylia, whereas the applicant's private Phrendbook profile, together with the

Phrendbook-hosted EvryFav Media forum group were taken down completely, upon demand of the ETD made to the Phrendbook administrator.

23. The criminal investigation against the applicant is still pending before the prosecutor's office.

24. On 30 July 2013, the applicant's lawyer brought an application before the European Court of Human Rights (ECtHR), asking the Court to recognise a violation of Mr Adam's rights and freedoms protected by the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights).