

2008 INTERNATIONAL ROUNDS IN OXFORD

CASE

**The Case of
TTV and Tanja Trotter
vs.
Turustein Republic**

Introduction

1. The facts of this case take place within the Turustein Republic.

The republic of Turustein is a country of 6.3 million inhabitants. Turustein has a coastline of about 1300 km., including its 27 islands, with sunny beaches and impressive mountains. The capital is Lisparjana, which is situated in between the two biggest lakes in the country. Tourism, agriculture, fishing, solar and wind energy are the main resources of the country.

2. Until 1990 Turustein was part of the Federation of the Peoples' Republic, although since 1958, after the so-called "Turustein Spring", a degree of self-determination and national autonomy has been developed.

3. Turustein became an independent democratic republic in 1991. It became a member of the UN in 1992 and ratified the UN-Convention on Civil and Political Rights (ICCPR) in 1995. The president's party, the Party for Liberty of the People (PLP), has been ruling the country since the elections in 1992. The current Prime Minister (since 2002) is the former chairman of the PLP, Mr. George W. Milosconi. The Vice-Prime Minister and Minister of justice is Mrs. Lana Mbwana. Apart from PLP, only a few other small political parties are represented in Parliament. None of these parties succeeded in creating an opposition against the PLP-majority and the government.

4. Over the years the Government and the PLP have been criticised for having too much influence on the media in Turustein, both in the press and the electronic media of radio and television. In 2003, however, a new, independent, commercial TV-station was granted a broadcasting licence, TTV, Turustein Television, which was financed by a consortium of NGO's and foreign investors.

The circumstances of the case

5. On 11 May 2003 on the open forum, "Politics and Society", at the TTV website, www.ttv.org, an article was posted criticising the Turustein Government by accusing the Prime Minister and the Vice-Prime Minister for having participated in the construction of large scale organised fraud. The article reported that funds of the World Bank and the EU for projects of sustainable energy had been used for investment in a military-nuclear programme and for a prestigious building project of exclusive residential villas by a company in which both family members of the Prime Minister and the Vice-Prime Minister had interests. The article also contained an invitation to participate in a demonstration against the Turustein Government on the National Day, 21 May, at Time Square, the central square of the capital. The Turustein people were invited to protest vigorously against the corruption of the government and to call for fully-fledged democracy, transparency of public affairs, access to official documents and the establishment of

broader freedoms in the country. In a reaction to that article, a few hours later a cartoon was posted on the forum which showed the Prime Minister and the Vice Prime Minister and alluded to rumours that the Prime-Minister and the Vice-Prime Minister were having an affair. Neither the article nor the cartoon contained any reference to its author(s). a cartoon featuring the Prime Minister and the Vice Prime Minister, alluded to rumours of an affair. Fig. 1 - The Cartoon

6. Throughout the following days, thousands of other reactions were posted on the TTV-forum, all in support of the demonstration to be held on 21 May 2003.

7. Following a complaint by the Prime Minister on 17 May 2003, TTV was prosecuted (1) for defamatory and insulting allegations toward the government, the Prime Minister and the Minister of justice, (2) for inciting an uprising and spreading hatred amongst the population, (3) for publishing a defamatory, insulting and obscene cartoon, (4) for organising and/or promoting an unauthorised public demonstration and (5) for anonymously posting content on a website which is an offence under Turustein Criminal Law.

8. By a decision of the public prosecutor on 18 May 2003, TTV was ordered to remove the forum "Politics and Society" from its website within 24 hours. This order was executed by TTV on 19 May 2003, while an appeal against this decision failed (Supreme Court 24 April 2007).

9. On 18 May 2003, TTV featured the case in its TV-news, presented by Tanja Trotter. During the programme, Tanja Trotter, who is also the editor in chief of the TV-news and of the related website, quoted some parts of the text published on the TTV-website on 11 May 2003 whilst showing the controversial cartoon. She also referred to the announcement and to the reactions on TTV's website regarding the demonstration of 21 May 2003 and to the fact that a criminal case had been started against TTV, on the request of the government.

10. The next day, on 19 May 2003, the Public Prosecutor started a prosecution against Tanja Trotter, based on the same charges as those previously brought against TTV (see par. 7).

11. On 22 June 2003, after a complaint by the Prime Minister and the Vice-Prime Minister, Mr. Milosconi and Mrs. Mbwana, TTV was requested by the Council for Media Ethics to broadcast an apology for showing a cartoon that was insulting toward the Prime Minister and the Vice-Prime Minister and violated their right to privacy and their right to human dignity. This apology was broadcasted on 24 June 2003. The Turustein Council for Media Ethics is a self-regulatory mechanism established by journalists and the media sector. An appeal before the High Administrative Court against this decision failed (judgment of 15 May 2007).

12. Following a decision by the court on 28 June 2003, TTV was next ordered to reveal the identity or the email address of the authors of the article and of the cartoon posted on the TTV-website forum on 11 May 2003. TTV refused to communicate this information, also after the court order had been confirmed by a judgment of the Court of Appeal on 25 May 2005. Due to this refusal, which was considered as an obstruction of a judicial investigation, Tanja Trotter was sentenced to five days imprisonment, as she was considered to be responsible for the TTV's website and its forum "Politics and Society". A request for an appeal was dismissed by the Constitutional Court on 29 April 2007. Tanja Trotter was therefore incarcerated in jail for the period 4 to 8 June 2007.

13. As a further result of the criminal charges against the content that was posted on the website on 11 May 2003 and against the TV-News on TTV the 11 May 2007, both TTV and Tanja Trotter were convicted by the Court of first instance (25 January 2004) to each pay a fine of about 10.000 US Dollars and eight days imprisonment (suspended). The conviction was based on all five of the accusations. This judgment was confirmed by the Court of Appeal on 2 March 2005, but was partly overruled by a judgment of the Supreme Court of 6 April 2006, referring inter alia to

Article 13 of the Turustein Constitution and Article 19 ICCPR. The Supreme Court considered that the TTV-news programme of 18 May 2003 had been focussing on an issue of public interest. The Court emphasized that freedom of expression and press freedom, as guaranteed by Article 13 of the Constitution and Article 19 ICCPR, also protects information and ideas that offend, shock or disturb and that there is little scope under these article for restrictions on political speech or on debates on questions of public interest. At the same time, the limits of permissible criticism are wider with regard to the government than in relation to a private citizen: in a democratic society the actions or omissions of the government must be subject to the close scrutiny of public opinion. With regard to the cartoon posted on the website forum and shown in the TV-news, the Constitutional Court was of the opinion that the drawing was to be considered as a form of political satire, satire being a form of artistic expression and social comment which, by exaggerating and distorting reality, is intentionally provocative. With regard to the other aspects of the convictions of TTV and Tanja Trotter, the Supreme Court was of the opinion that the Court of Appeal had not sufficiently justified the reasons why the alleged infringements of national law justified sufficiently and pertinently why these interferences were necessary and proportional in the light of the importance that is to be attached to freedom of expression by the media on matters of public interest. Finally the Supreme Court considered the conviction for posting an anonymous article and cartoon on a website as a violation of the right to anonymity that should in principle be guaranteed under the freedom of expression. The case has been referred to another Court of Appeal and is still pending on 15 September 2007.

14. During the proceedings before the Criminal Court of Appeal, TTV and Tanja Trotter were refused access, having requested it, to official documents they assumed to contain the proof of the allegations on corruption and fraud regarding the funding by the World Bank and the EU. Their request was refused by the government and by the ministry of justice on the grounds of "national security" and the right to privacy. The refusal was upheld by the National Commission for Access to Official Documents (NCAOD) with reference to the Federal Freedom of Information Act (FOIA), on 31 May 2007. No further effective domestic remedies were available against the finding by the NCAOD.

Complaint

15. On 11 July 2007 TTV and Tanja Trotter applied before the Universal Human Rights Court. They argued that the prosecutions, court orders, convictions, sentences and decisions by the Turustein authorities and by the Turustein Council for Media Ethics constituted interferences with their right to freedom of expression which were not necessary in a democratic society and had violated their human rights and freedoms as guaranteed by Article 19 ICCPR.

More precisely they considered the following interferences as violations of their freedom of expression:

15.1. the prosecution and conviction for defamatory and insulting allegations toward the government, the Prime Minister and the Minister of justice

15.2. the prosecution and conviction for incitement to an uprising and for spreading hatred amongst the population

15.3. the prosecution and conviction for publishing a defamatory, insulting and obscene cartoon

15.4. the prosecutions and conviction for organising and/or promoting an unauthorised public demonstration

15.5. the prosecution and conviction for posting content on a website anonymously

15.6. the court order to reveal the identity of the author(s) who posted the article and the cartoon on the TTV-website forum on 11 May 2003 and the sanction of imprisonment of Tanja Trotter for refusing to hand over the requested information to the public prosecutor

15.7. the decision by the Turustein Council for Media Ethics and the request to broadcast an apology for showing a cartoon that was considered insulting towards the Prime Minister and the Vice-Prime Minister and violating their right of privacy

15.8. the refusal to have access to the requested official documents

16. As of 14 September 2007 the case has been declared admissible and has been referred to the special chamber within the Universal Human Rights Court for matters related to Article 19 UDHR: the Universal Freedom of Expression Court.