

2009 INTERNATIONAL ROUNDS IN OXFORD

CASE

The Case of KWAME MASR AND THE PRP NEWS-LEADER VS. PEOPLE'S REPUBLIC OF PETROLIA

1. The People's Republic of Petrolia is a landlocked country whose eponymous name has become a source of humor to its neighbors, and a source of chagrin and humiliation to the seven million Petrolians. Petrolia's seemingly endless reserves of hydrocarbons have been depleted, and Petrolia has recently become a net importer of energy. This collapse of Petrolia's oil and gas fortunes has produced both economic and political instability.

2. Petrolia is governed by a parliamentary system and a Basic Law which guarantees, among other things, that "everyone shall have the right to freedom of expression, and to hold opinions and impart information and ideas without interference by public authority, subject to such restrictions as are prescribed by law and are necessary in the democratic society of Petrolia in the interests of national security, prevention of crime, protection of morals, protection of reputation and the rights of others, preventing the disclosure of confidential information, and maintaining the authority and impartiality of the judiciary." Petrolia, moreover, is a member of the United Nations, and has signed and ratified the International Convention on Civil and Political Rights (ICCPR).

3. For many weeks, the lights in Petrolia's Ministry of Defense stayed on late into the night. Something was afoot. Colonel Rudolph Abelovic, a career soldier assigned to the Planning and Intelligence Directorate of the Ministry of Defense, was hard at work on top secret Project Plausible Deniability (Project PD). His superiors instructed Colonel Abelovic to help devise war plans under Project PD which would enable the armed forces of Petrolia to invade and occupy Varitanea, a neighboring country with rich deposits of uranium ore. Colonel Abelovic and his Project PD colleagues, under orders, devised a false casus belli under which the armed forces of Varitanea would be falsely blamed for making bogus border attacks on villages in Petrolia, giving Petrolia a pretext to invade and occupy Varitanea.

4. As Project PD plans matured, Colonel Abelovic frequently confided to his military colleagues in the Directorate that Project PD would surely fail, that the invasion of Varitanea would provoke armed retaliation from powerful neighboring countries in the region, and that Petrolia's army would be decimated. He told his colleagues his suspicion that the ruling party of Petrolia, the Liberal Democratic Union led by Prime Minister Shirley Xu and President Curt Goncalves, was losing its coalition partners and would likely be defeated in the upcoming parliamentary elections. Project PD, he told his colleagues, was nothing more than a crude attempt to create the distraction of a foreign crisis in order to revive the flagging political fortunes of Prime Minister Xu and the Liberal Democratic Union.

5. Colonel Abelovic secretly arranged to meet with Kwame Masr, an investigative reporter for The PRP News-Leader, a daily newspaper with a popular website, www.newsleader.pe. As a condition of providing secret military information,

Colonel Abelovic extracted a promise from Masr to ensure his anonymity under all circumstances. Colonel Abelovic repeated to Masr what he had said to his colleagues about Project PD, adding his derisory observation that in his Directorate, planning came before intelligence.

6. Colonel Abelovic explained to Masr the entire scope of Project PD, and moreover, gave Masr an official document marked "Most Secret" showing the Order of Battle of Petrolia, that is, the exact disposition, location and strength of all of Petrolia's armed forces.

7. Masr told his editors what he had learned from Colonel Abelovic about Project PD and the Order of Battle but did not disclose Colonel Abelovic's identity. Masr began to write a news story based on the information he received from Colonel Abelovic. Without thinking, and following his standard practice, Masr called the Press Officer of the Ministry of Defense to obtain its official comment about Project PD and the Order of Battle. The Press Officer curtly replied, "No Comment!", and immediately notified both the Minister of Justice and the Minister of Defense.

8. Alerted to the leak of highly classified information, agents from the Ministry of Justice served Masr with a summons demanding that he appear in court and submit to questioning. The laws of Petrolia provided a qualified right for journalists to protect confidential sources and confidential information: "the party seeking the disclosure of sources' identities or information from a journalist must first prove in a Court of First Instance that the information is material, relevant and necessary, and that alternative nonmedia sources have been exhausted."

9. At a hearing in the Court of First Instance, attorneys for Masr argued, in response to the summons, that the Government had failed to show that it had made any effort to examine other potential sources who might have leaked the information to Masr. The Government argued that the exigencies of the war effort and the imperatives of national security obviated the need to first examine alternative nonmedia sources. The Court of First Instance, after hearing and relying on the above law, ordered Masr to

(1) disclose the source of his information about Project PD and the Order of Battle, and (2) to return to the Ministry of Defense all documents in his possession relating to the Ministry of Defense. Masr refused to comply with the Court judgement, was criminally convicted, and was imprisoned until such time as he complied. The highest court of Petrolia, the Supreme Judicial Council, affirmed the judgement.

10. The Ministry of Justice commenced a separate legal proceeding in the Court of First Instance, seeking a court judgement restraining and prohibiting The News-Leader from publishing any information obtained from any person or persons in the Ministry of Defense. After a court hearing, and citing a threat to national security, the Court issued a judgement prohibiting The News-Leader from publishing any such information. The Court, additionally, specifically prohibited The News-Leader from publishing the Order of Battle or any part thereof.

11. While their lawyers were preparing an appeal, the editors of The News-Leader considered the situation. Project PD plans called for the armed forces of Petrolia to launch their plan in three days: first, staging the bogus provocative attack on villages in Petrolia near the border; next, issuing false statements blaming Varitanea for the incursion; then, on the fourth day, invading Varitanea. Failing to get the Court of Appeals to consider an expedited appeal from the judgement of the Court of First Instance, the editors of The News-Leader posted on the paper's widely-read website a detailed news story two days before the launch of Project PD under the headline:

WAR WITH VARITANEA IMMINENT! SECRET PLANS TO INVADE VARITANEA IN TWO DAYS! The Goal:
Uranium Ore

12. The news story revealed that in a few days Petrolia's armed forces under Project PD planned to stage a raid on villages in Petrolia near the border, place the blame on Varitanea, and invade and occupy Varitanea in order to seize its rich uranium ore deposits. Nothing was said in the news story about the Order of Battle.

13. The Ministry of Justice promptly sought a judgement from the Court of First Instance convicting and imprisoning the editors of The News-Leader for a term of three years for having violated the judgement prohibiting publication. Lawyers for The News-Leader argued that the court judgement restraining publication was invalid and unenforceable as a prior restraint in violation of the Basic Law of Varitanea. They argued further that they had made good faith efforts to obtain an expedited appeal, that they withheld publication of the Order of Battle, and that the public interest was best served by the timely exposure of Project PD before Petrolia went to war. The Government, nonetheless, prevailed and the editors were arrested and imprisoned. The Supreme Judicial Council affirmed the judgement.

14. When the now-famous news story appeared on The News-Leader website, Senator Li Andrus called a press conference. Senator Andrus was a leading member of the opposition party, the Citizens Reform Alliance, and a potential candidate to succeed Prime Minister Xu if the latter's ruling party fell. Senator Andrus' attacks on the Xu government and the Ministry of Defense were unsparing. The NewsLeader headlined its coverage of Senator Andrus' press conference and posted the story on its website:

ANDRUS ON THE ATTACK: XU IS "IRRESPONSIBLE", A "WARMONGER" AND A "DISGRACE"

The News-Leader reported that Senator Andrus called for the Xu government to resign, and to "abandon now its transparent plans for naked and unprovoked aggression". The News-Leader quoted Senator Andrus as calling Prime Minister Xu an "aggressor, an "embarrassing national disgrace" who "conspired with Petrolia's foreign enemies to wage an unjust war." As to the latter conspiracy charge, the story added that reporters at the press conference pressed Andrus to provide corroborating details, but the Senator refused to answer. Xu, added Senator Andrus, was a "warmonger" whose "flimsy war plans were an act of irresponsible folly."

15. A shaken and angry Prime Minister Xu vowed to retaliate. Prime Minister Xu commenced a two-part criminal proceeding action against The News-Leader and its website and publisher. Part one was a criminal defamation action alleging that the statement that Prime Minister Xu had "conspired with Petrolia's foreign enemies to wage an unjust war" was false and defamatory. This was the sole allegation. The Chief Procurator in the Ministry of Justice appeared on Prime Minister Xu's behalf to prosecute the action. Lawyers for The News-Leader sought production of documents from Xu and the Government relating to Petrolia's communications with neighboring countries concerning Varitanea. The Government and Xu refused to comply with The News-Leader's requests, and the Court of First Instance denied the defendant's request to compel production of the documents. At trial, lawyers for The News-Leader argued that The News-Leader should not be required to verify the accuracy of statements it reproduced and attributed to Senator Andrus, and that to impose such a burden on the defendants would infringe their rights of free expression as guaranteed in the Basic Law. After trial, the Court found that The NewsLeader had failed to prove the truth of the impugned statement, and that no privilege or protection covered the publication by The News-Leader. The Court judged The News-Leader guilty of criminal defamation and imposed a three-year term of imprisonment on the publisher of The News-Leader and a fine of the equivalent of 50,000 Euros. The Supreme Judicial Council affirmed the judgement.

16. The second part of Prime Minister Xu's criminal proceeding against The News-Leader and its website and publisher was brought pursuant to Petrolia's insult law which criminalized statements impugning the honor and dignity of certain high-ranking public officials, including the Prime Minister. Xu's complaint alleged that posting the statements that Xu was a "warmonger", an "aggressor" and an "embarrassing national disgrace" damaged Xu's honor and dignity in violation of the insult law. At trial, lawyers for The News-Leader sought to introduce evidence of

both (1) Xu's complicity in and responsibility for Project PD, and (2) the hostile reaction in the international community when the war plans of Petrolia were exposed by The News-Leader. The Court of First Instance refused to admit such evidence, noting that the so-called defense of truth or justification does not apply in proceedings under the insult law. The Court adjudged The News-Leader guilty of violating the insult law and imposed a fine on The News-Leader of the equivalent of 25,000 Euros. The Supreme Judicial Council affirmed the judgement.

17. A series of investigations followed the exposure of Project PD by Masr and The News-Leader. Investigative reporters from the financial press studied the stock trading activities of a number of high ranking government officials in the weeks leading up to the expose and the planned invasion of Varitanea. They discovered unusually volatile market activity in the shares of uranium mining stocks. The account of one government official was conspicuous: thousands of uranium mining shares were sold immediately before the invasion was scheduled to commence. The reporters discovered that the account belonged to a certain Colonel Rudolph Abelovic. The leading financial newspaper, The Commercial Times, headlined its report:

WHY SELL SHORT? CAREER COLONEL DUMPS URANIUM HOLDINGS ON EVE OF WAR

18. The story reported that Colonel Abelovic held a sensitive position in the Planning and Intelligence Directorate of the Ministry of Defense, and that he had sold thousands of shares of uranium mining stocks in his portfolio immediately before the invasion was scheduled to commence.

19. Meanwhile Masr remained in prison for his defiance of the Court judgement requiring him to disclose the source of his story about Project PD. When he read the story in The Commercial Times, he instructed his lawyer to seek a hearing in open court. At the hearing Masr testified under oath that the source for the leak of Project PD was Colonel Abelovic, and that he believed he was released from his obligation to protect the identity of Colonel Abelovic because of the Colonel's cynical and meretricious stock manipulations on the eve of war. Colonel Abelovic, Masr stated, abused his fiduciary position and traded on the basis of confidential information to which he was privy. The Court thereupon ordered the release of Masr from prison. Masr's record of conviction for a serious crime remained unchanged.

20. Colonel Abelovic was arrested, court-martialed and convicted for unlawfully disclosing highly classified information. He was dismissed from the service with loss of his entire pension, having an estimated value of the equivalent of 250,000 Euros. Colonel Abelovic thereupon brought a civil action against Masr and The News-Leader, alleging that he had reached a binding agreement of confidentiality with Masr and The News-Leader, that he provided information to Masr under that agreement, and that Masr breached and violated the agreement causing him to lose the sum of the equivalent of 250,000 Euros. Lawyers for Masr and The News-Leader argued that their rights of free expression as guaranteed in the Basic Law protected them when publishing accurate facts of public concern and testifying truthfully in open court. Those Basic Law protections, the lawyers argued, should prevail over the ordinary commercial claims of Colonel Abelovic. After a civil trial, the Court of First Instance reluctantly found in favor of Colonel Abelovic, requiring Masr and The News-Leader to pay the required sum to Colonel Abelovic. The Supreme Judicial Council affirmed the judgement. Project Plausible Deniability had claimed its last victims.

21. Masr failed in the Supreme Judicial Council to obtain reversal of his criminal conviction for having violated the Court judgement requiring him to disclose the identity of his source.

22. Similarly, The News-Leader failed in the Supreme Judicial Council to obtain reversals of (1) the judgement restraining it from publishing information from the Ministry of Defense including the specific prohibition concerning the Order of Battle; (2) the judgement criminally convicting The News-Leader for having violated such judgement by

posting on its website the expose of Project PD; (3) The NewsLeader's conviction of criminal defamation, and (4) The News-Leader's conviction of criminal violation of the insult law.

23. Masr and The News-Leader failed in the Supreme Judicial Council to obtain reversal of their liability to pay Colonel Abelovic the equivalent of 250,000 Euros.

24. Masr and The News-Leader submitted an application to the Universal Human Rights Court citing the various prosecutions, convictions, prior restraints, court orders, sentences and the decisions of the courts and governmental authorities of Petrolia. Such actions, they claimed, represented interferences with the claimants' rights to freedom of expression, which interferences were not necessary in a democratic society and which had violated their human rights and freedoms as guaranteed by Article 19 of the ICCPR. More precisely, Masr and The News-Leader asserted in their application that the following alleged interferences violated their Article 19 rights:

1. the Court judgement requiring Masr to reveal the identity of a confidential source, and his criminal conviction for refusing to comply therewith;

2. the Court judgement prohibiting The News-Leader from publishing information from the Ministry of Defense, including the specific prohibition concerning publication of the Order of Battle;

3. the conviction of The News-Leader and its editors, and the imprisonment of the editors for having violated the above court judgement;

4. the prosecution and conviction of The News-Leader for having criminally defamed Prime Minister Xu. The application noted specifically the refusal of the Court to require Xu and the Government to produce documents demanded by The News-Leader;

5. the prosecution and conviction of The News-Leader for having insulted Xu. The application noted specifically the refusal of the Court to permit The News-Leader to prove the truth of the allegedly insulting words; and

6. the Court judgement requiring Masr and The News-Leader to pay Colonel Abelovic the equivalent of 250,0000 Euros.

25. The Universal Human Rights Court declared the above application admissible and referred the application to the Special Chamber within the Universal Human Rights Court for matters relating to Article 19: the Universal Freedom of Expression Court.