

CERTIFIED TRANSLATION FROM GREEK

**Judgement number
55/2019
(Case filing number 593/ΠΤ56/2018)
(Court notice/impleader* filing number 868/ΠΤ71/2018)
(Additional intervention filing number 954/ΠΤ82/2018)**

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**KOS MULTI-MEMBER COURT OF FIRST INSTANCE
ORDINARY PROCEDURE**

Composed of the Judges: Antonios Kourtoglou, Presiding Judge;
Nadia Romanidou, Judge; Georgia Koumanakou, Judge-Rapporteur and the
Registrar, Maria Sioziou.

The court sat in open session on the 5th of March 2019, in order to adjudicate: a) case number 593/ΠΤ 56 /27-6-2018, b) court notice/impleader number 868/ΠΤ 71/17-9-2018 and 3) additional intervention number 954 /ΠΤ82/17-10-2018, between:

The plaintiff (respondent in the third-party intervention): Georgios Pavlis, son of Emmanouil, resident of Sydney, Australia, and of Platanos, Leros, Leros Island, Dodecanese, on whose behalf his attorney, Ioannis Benetatos, lodged in a timely manner – within the specified timeframe of one hundred (100) days from the filing of the suit – written arguments and supporting documentation, in accordance with article 237 of the Code of Civil Procedure as in effect (as replaced by article 1 ‘second’ article § 2 Law 4335/2015) and who was not present during the hearing mentioned at the start of this document.

The defendant (beneficiary of the third-party intervention): Michail Kollias, son of Efthymios, resident of Alinta, Leros Island, Dodecanese, in his capacity as Mayor of Leros, on whose behalf his attorney, Haralambos Haralambeas, lodged in a timely manner – within the specified timeframe of one hundred (100) days from the filing

[page 2]

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of the suit - written arguments and supporting documentation, and who was not present during the hearing mentioned at the start of this document.

The third-party intervener: Leros Municipality OTA NPDD* on whose behalf the attorney, Athanasios Paraponiaris, lodged in a timely manner – within the specified timeframe of one hundred (100) days from the filing of the suit – written arguments and supporting documentation and who did not appear during the hearing mentioned at the start of this document.

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The plaintiff (respondent in the third-party intervention) lodged case number 593/ΠΤ 56 /27-6-2018 dated 27.6.2018 which was set down for the above-mentioned hearing date. The defendant (beneficiary of the third-party intervention) lodged court notice/impleader number 868/ΠΤ 71/17-9-2018 dated 14.9.2018

***Translator’s Notes: Impleader/:** “a procedural method by which an original party to an action may bring in and make a claim against a third party in connection with the claim made against the original party. *Also called:* third party procedure.” (<https://www.collinsdictionary.com/dictionary/english/impleader>)

OTA NPDD: Local Self-Government Organisation, Public Entity.

which was set down for the above-mentioned hearing date and entered on the list. Finally, the third-party intervener lodged additional intervention number 954 /ΠΤ82/17-10-2018 dated 11.10.2018 which was set down for the above-mentioned hearing date and entered on the list.

The plaintiff (respondent in the third-party intervention) requests that his case dated 27.6.2018 which was lodged at the Registry of this Court with number 593/ΠΤ 56 /27-6-2018, be accepted.

The issuer of the court notice/impleader and beneficiary of the compulsory third-party intervention, requests that his forced impleader dated 14.9.2018, which was lodged at the Registry of this Court with number 868/ΠΤ 71/17-9-2018, be accepted.

The third-party intervener requests that his additional intervention dated 11.10.2018, which was lodged at the Registry of this Court with number 954 /ΠΤ82/17-10-2018 be accepted.

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[page 3]

2nd folio of decision 55/2019 of the Kos Multi-Member Court of First Instance*

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The parties' attorneys requested that during the case discussion, all matters mentioned in the minutes and their written arguments be accepted.

**AFTER THE CASE FILE WAS EXAMINED
IT WAS CONSIDERED ACCORDING TO LAW**

The matters numbered: a) case 593/ΠΤ 56 /27-6-2018, b) court notice/impleader 868/ΠΤ 71/17-9-2018 and c) additional intervention 954 /ΠΤ82/17-10-2018, which are being evaluated according to this (ordinary) procedure, are to be adjudicated together, due to the connection between them and also because by this means the trial process will be facilitated (art.246 Code of Civil Procedure).

It follows from the purpose of the provisions of article 105 of the Introductory Law to the Civil Code (ILCC), interpreted in view of article 1 (para.2 subpara.8) of Law 1406/1983, by which the legislator intended all disputes of substance relating to public action by the Administration and which arise from the State's liability for compensation, to come under the regular administrative courts, in accordance with article 94 para. 1 of the Constitution; that, despite its restrictive wording, since it refers to unlawful actions or omissions during the exercise of public authority, its meaning is that a claim for compensation against the State for unlawful actions or omissions by its agents, which under Law 1406/1983, already falls within the jurisdiction of the regular administrative courts, in cases of State liability (based on these provisions of article 105 ILCC), it provides not only for cases of enforceable administrative actions by its agents or for omissions in effecting such actions, but also for cases of material acts or actions or omissions which occur in relation to or because of the organisation and functioning of the public entity and which are not

***Translator's Notes: Each folio of a court decision consists of 2 pages.**

connected with personal handling of State assets, nor are due to the personal fault of an agent acting outside the scope of his employment responsibilities. Further, it follows from the same provisions that in circumstances where the personal liability of agents of the State or Public Entity has not been excluded and it is the agent (of the State or Public Entity) which caused the damage who is being sued as personally liable for compensation for the above- mentioned actions, omissions or material acts and not the State or Public Entity (article 106

[page 4]

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ILCC), then it falls under the jurisdiction of the civil courts to decide such a case because in cases where the lawsuit is not founded upon the liability of the State or Public Entity, it is a matter for private law (see Special High Court Judgement No. 5/1995, 'Jurisprudence Archive'* 1995.258, Special High Court Judgement No. 53/1995, 'Greek Justice'* 1996.575). Further, according to the provisions of article 85 para. 1 of the Civil Servants' Code, codified by Presidential Decree 611/1977 and in effect until 09.04.1999, when the updated Civil Servants' Code, ratified by Law 2683/1999, came into effect and remained so until 08.02.2007, when the Public Sector Employees' Code came finally into effect, ratified by Law 3528/2007; a public sector employee is liable to the state for any material damage that he causes to it through fraud or gross negligence in the course of his duties, as well as for any compensation to which it was subject towards third parties on account of his illegal actions or omissions, arising from fraud or gross negligence. However, the employee is not liable towards third parties for those same actions or omissions. The civil immunity of public sector employees is established by these provisions and the purview of article 105 ILCC, which in its second paragraph specifies that "together with the State, the person at fault is fully responsible" (see Areopagus* Judgement No. 294/2008 Legal Information Database 'NOMOS') is limited. The following was put forward as the rationale for the civil immunity of public sector employees, " ... because by the adoption of liability by the State, the citizen is protected more effectively...", " ... because it is considered that public sector employees cannot work under the Damoclean Sword of liability for even minor negligence and that employees under such a threat would become hesitant towards the interpretation and implementation of laws ...", " ...we would render the employee unable to undertake any initiative and he would tremble before any action ..." (see 4th Parliamentary Review Chamber, Minutes of the Special Inter-Party Committee on the Civil Servants' Code, 1949, pp. 114-123). In addition, article 183 of the Municipal and Community Code, codified by Presidential Decree 410/1995 (Government Gazette, 1st Issue, 231) regarding elected local Government officials,
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[page 5]

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3rd folio of decision 55/2019 of the Kos Multi-Member Court of First Instance

specifies that mayors, deputy mayors, municipal councillors, municipal committee members, community presidents and community councillors are liable to compensate the Municipality or Community for any material damage

***Translator's Notes:** 'Jurisprudence Archive' (Archeio Nomologias) and 'Greek Justice' (Elliniki Dikaosini) are law-related periodicals in Greece.

'Areopagus' is the Supreme Court in Greece – similar to the High Court in Australia.

caused to their property through fraud or gross negligence. In addition, it is specified in paragraph 3 of article 36 of Law 2800/2000 (Government Gazette, 1st Issue, 41) that “according to the true meaning of article 183 of Presidential Decree 410/1995, the civil liability of elected officials of first degree local government organisations, who are mentioned in paragraph 1 of the same article, is limited only to the obligation to compensate relevant legal persons for any material damage which was caused to their property through fraud or gross negligence and that the same officials are not subject to individual liability for the compensation of third parties”. From the combined effect of the above two articles, it follows that, according to the regulations regarding illegal acts, from the commencement in effect of paragraph 3 of article 36 of Law 2800/2000, that is from 29.02.2000, the person injured by the illegal act or omission by the elected local government official, is not able to claim compensation from the individual official directly but he can direct his claim towards the public entity which the person causing the damage belonged to at the time the damage was caused (see Areopagus Judgement No. 1214/2000, ‘Greek Justice’ 2002.124, Thessaloniki Court of Appeal Case No. 1246/2009 unpublished, Larissa Court of Appeal Case No. 388/2011, ‘Brief’* 2012.105). Further, the provisions of article 141 of Law 3463/2006 “Ratification of the Municipalities and Communities Code”, which commenced in effect from 08.06.2006, specify that, “mayors, deputy mayors, municipal committee members, community presidents and community councillors, as well as municipal ward councillors, local councillors and deputies are liable to compensate the municipality or the community for any material damage which they caused to its property through fraud or gross negligence. The above-mentioned persons are not liable for compensation towards third parties”, whilst the provisions of article 232 of Law 3852/2010, which commenced in effect from 01.01.2011, specify that “regional governors, deputy regional governors, regional councillors, mayors, municipal councillors, local and municipal community councillors and the representatives of

[page 6]

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local communities, as well as members of the boards of directors of municipal and regional public entities and of executive committees of the corresponding institutions, are liable to compensate the municipality, the region, the public entity or the institution for any material damage which they caused to its property through fraud or gross negligence. The above-mentioned persons are not liable for compensation towards third parties”. Finally, in article 124 of law 4555/2018 it is specified that, “Article 232 of law 3852/2010 is replaced as follows: “1. regional councillors, mayors, deputy mayors, municipal councillors, community presidents, community councillors, as well as the collective bodies managing local government public entities and their related associations, whether elected local government organisations or not, are liable to compensate the municipality, the region, the public entity or the association for any material damage which they caused to its property through fraud or gross negligence. The above-mentioned persons are not liable for compensation towards third parties”.

In the present case under adjudication, the plaintiff states that by ‘Decision’ dated 21.7.2004 of the Mayor of Leros, he was appointed ‘Ambassador of Leros in Australia’ and Special Councillor for promotion of the island’s issues in

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***Translator’s Note: ‘Brief’ (Dikografia) is a law-related periodical in Greece.**

Australia. That the defendant in his capacity as legal representative of the public entity, Leros Municipality, lodged case number A 2018/170, dated 1.2.2018, against him in the Kos Magistrate's Court, in which he falsely and libellously claimed that the plaintiff committed the offence of usurpation of authority under article 175 of the Criminal Code because he claimed in an information pamphlet which circulated in January of 2018 and in advertising material, even invoking before Greek authorities, that he acts in the capacity of Ambassador of Leros in Australia by virtue of a relevant decision by the former Mayor of Leros, Timotheos Kottakis, whereas no relevant decision exists which would grant him that title. That the above claim in the lawsuit is completely false because, based on the above document, the former Mayor addressed him in that capacity over a long period and the Municipal Council [Two signatures]

[page 7]

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4th folio of decision 55/2019 of the Kos Multi-Member Court of First Instance

also recognises his official capacity in his letter number 90/13-1-2005 containing an invitation for a trip and visit by the Mayor and municipal Councillors of Leros island to the Municipality of Burwood in Sydney, Australia, to which the Municipal Council replied in the affirmative in its Decision number 11/13-4-2005. That the content of the above lawsuit is false, libellous and offensive and insults his character, his honour, his standing and his professional reputation as well as his political career as a serving Municipal Councillor and Mayoral candidate in the upcoming Leros municipal elections, presenting him as a liar, untrustworthy and as behaving in a delinquent manner, and that the defendant proceeded to the above actions even though he was aware of the falsity of what he was saying, with the intention of causing him to be persecuted and vilified, whilst confirming the content of the suit by a statutory declaration; that third parties: all the electronic news sites of Leros and the Greek community newspaper, KOSMOS, in Australia, became aware of the above false facts through the filing of the false lawsuit at the Office of the Public Prosecutor of the Kos Courts of First Instance, with the result that he suffered an insult to his character, his honour and his standing, as well as to his professional and social reputation, causing moral damage in consequence. That the above unlawful and culpable conduct by the defendant, apart from its tortious* character, constitutes the criminally punishable act of bringing a false accusation, bearing false witness and libel and in relation to which he [the plaintiff] lodged case number AE2018/22, dated 25.6.2018, against the defendant at the Office of the Public Prosecutor of the Kos Courts of First Instance. On the basis of the above background, he requests, having allowably amended his case by means of written submissions, changing it to a claim for a declaratory judgement (articles 223, 295 and 297 of the Code of Civil Procedure), declaring that the defendant must pay him the sum of 500,000 € in financial satisfaction of the moral damage he suffered from the tort outlined above,

[page 8]

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which also constitutes an insult to his character, together with the lawful interest accrued after service of the lawsuit; to desist in future from any injury whatsoever to his character, under the threat of a financial penalty of 3,000 €. In

***Translator's Note: Tortious: Relating to a tort or punishable as a tort**
(<https://www.macmillandictionary.com/dictionary/british/tortious>)

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addition, he requests the interim decision which will be issued to be declared enforceable and for costs to be awarded against the defendant.

With this content and these claims, the lawsuit is, by substance and location, competently brought for discussion under ordinary procedure before this Court (articles 18, 22, 35 of the Code of Civil Procedure), which has jurisdiction to adjudicate the dispute, according to the matters set out in the basic premise of this judgement, because in cases where it is not the State or Public Entity which is being sued as personally liable for compensation for unlawful acts or omissions or material acts, but the agent (of the State or Public Entity) who caused the damage, then it is a dispute under private law and consequently the relevant case falls within the jurisdiction of the civil courts. However, the case is subject to dismissal as inadmissible due to lack of passive legitimacy of the defendant mayor, for the reason that, according to the main proposition of the above juridical reasoning, civil liability of elected local government officials is limited only to their obligation to compensate the relevant legal persons for any material damage which was caused to their property through fraud or gross negligence and the agents themselves are not individually liable to compensate third parties for things that occurred during the performance of their duties (see Areopagus Judgement No. 887/2013 Legal Information Database 'NOMOS', Areopagus Judgement No. 986/2008 Legal Information Database 'NOMOS', Larissa Court of Appeal Case No. 388/2011 op. cit., Thessaloniki Court of Appeal Case No. 1246/2009 op. cit., Patra Court of Appeal Case No. 782/2008, 'Jurisprudence Archive' 2009.636). Consequently, in the matter at hand, the defendant mayor is not subject to individual (personal) liability towards the plaintiff for the insult to his character, by the filing of the lawsuit mentioned in the brief, which, according to

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[page 9]

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5th folio of decision 55/2019 of the Kos Multi-Member Court of First Instance

the matters outlined in the case file, took place exclusively in the context of the exercise of his lawful duties. In every case, as evidenced from a review of the lawsuit filed as above, it was carried out by Leros Municipality collectively and by the lawful procedure (following a decision taken by the Municipality's Finance Committee), lawfully represented by the Mayor of Leros, and not individually by the latter. Consequently, even if it is considered that liability exists for the insult to the plaintiff's character from the lawsuit in question, that burdens Leros Municipality and not its Mayor, who was acting in the context of his duties.

From the combined effect of the provisions of articles 80 and 81 of the Code of Civil Procedure, it follows that if in a case which is pending between others, a third person has a legitimate interest in one of the litigants being successful, he has the right, until the issue of a final judgement, to file an additional intervention by means of a legal document distributed to all litigants, with the aim of supporting that litigant. The additional intervention may be filed at any stage of the trial (Areopagus Judgement No. 553/95, 'Greek Justice' 37.306) until such time as a final judgement is handed down by the Court. It is subject, however, to the precondition that a legitimate interest exists. More specifically, for the filing of an additional intervention, the existence of a specific legitimate interest is required in the person of the intervening third party, for the case pending between others to turn out in favour of the litigant for whom he is intervening. Such a legitimate interest exists if by it (the intervention), a right

enjoyed by the intervener can be protected, or the creation of a legal burden can be prevented, even if the right that is to be protected or the burden that is to be avoided are not in the nature of property. It is necessary though, for these to be threatened by the binding or enforceable nature of the decision to be issued or these must be infringed upon by the wider consequences, a situation which arises when the terms of the decision create a liability for the third-party intervener, that is, the outcome of the trial must affect his legitimate interests,

[page 10]

which are recognised under Private or Public Law (Areopagus Judgement No. 448/96 'Jurisprudence Archive' 47, 51, Areopagus Judgement No. 1277/1994, 'Greek Justice' 37,588). The legitimate interest of the intervener must be referred to in the brief, otherwise the intervention is inadmissible. Even where the additional intervention was filed by means of a separate brief, if the main trial results in the dismissal of the case or of the proceedings, then the additional intervention must also be dismissed because there is no opportunity for discussion of it, given that, as follows from the above provisions of article 80 and article 274 of the Code of Civil Procedure, the case commenced by the additional intervention is not separate and independent, but is dependent upon the main case which was commenced by the action or the proceedings, from which it cannot be separated and the completion of it (main) also results in the completion of the case which was commenced by the additional intervention (Athens Court of Appeal Case No. 4355/2002, 'Greek Justice' 2004/206, Athens Court of Appeal 8560/1991, 'Legal Tribune'* 39.1407.

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In the case at hand, Leros Municipality filed an additional intervention for the defendant in the main case, Michail Kollias, son of Efthymios, in which it pleaded a legitimate interest in the outcome of the above case, because in the circumstance that it was successful, it (the Municipality) would be implicated as the principal behind the tortious liability; it requested the dismissal of the main case and for costs to be awarded against the plaintiff. With this content and claim, the legitimate interest of the third-party intervener being evident, based on the above-mentioned provisions, the additional intervention was allowably filed and is lawful. However, following the above dismissal of the main case and according to the preceding basic premise, the additional intervention is ancillary in nature because the intervener does not introduce his own claim for consideration but joins the main case in order to support the claims of one of the original litigants; an examination of it (the additional intervention) becomes redundant.

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[page 11]

6th folio of decision 55/2019 of the Kos Multi-Member Court of First Instance

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Following the above, the case must be dismissed and the costs of the defendant and the intervener must, due to his defeat, be awarded against the plaintiff, in accordance with the more specific provisions in the pronouncement.

***Translator's Note: 'Legal Tribune' (Nomikon Vima) is a law-related periodical in Greece.**

FOR THESE REASONS

The matter is ADJUDICATED after hearing all parties:

a) case **593 /ΠΤ56/2018**, b) court notice/impleader **868/ΠΤ 71/2018** and c) additional intervention **954 /ΠΤ82/ 2018**.

The case is DISMISSED

The plaintiff is ORDERED to pay the legal costs of the defendant, which are set in the amount of five hundred (500) euros and to pay the legal costs of the third-party intervener which are set in the amount of three hundred (300) euros.

ADJUDICATED and decided in Kos , on 17.9.2019.

PRESIDING JUDGE

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REGISTRAR

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HANDED DOWN in Kos in extraordinary public session, in the absence of the parties and their attorneys, on 30.10.2019.

PRESIDING JUDGE

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KOS, 10.03.2020

REGISTRAR

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AIKATERINI BALASA

TRANSLATOR CERTIFICATION

I certify this to be a true and accurate translation from Greek into English of the Court Judgement, beginning with the words, 'Αριθμός απόφασης' [Judgement number], relating to Georgios Pavlis, which I have completed to the best of my knowledge and ability, based on a copy of the document sighted. A printout of the source document is attached to the hard copy translation.

Felicity Warren

NAATI Certified Translator Greek -> English No. CPN8MZ23A

