V. Cyprus

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In matters relating to tort law and civil procedure, Cyprus follows the common law tradition, as applied in the UK. Landmark judgments in Cyprus mostly follow developments of UK law.[1]

1. Supreme Court 8 May 2001, *T Yiallouros v E Nicolaou*[2]

This is a landmark judgment because it, first, established that violations of fundamental rights by private persons can create an actionable right in tort; second, it provided for the method of assessing damages in such cases.

The defendant was a director of the Nicosia Sewerage Board. Over a period of one year, he illegally monitored and recorded the telephone calls of the plaintiff, who was an engineer and member of the same board. The disclosure of the recordings led to the plaintiff being placed on compulsory leave for one year. He filed an action for damages, citing a violation of his constitutional rights to private life and secrecy of communications, under arts 15 and 17 of the Cypriot Constitution (CC). No material damage was proven. The trial court found for the plaintiff and awarded CYP 5,000 (€ 8,543) in general damages, with punitive elements. The defendant appealed on the grounds that (a) a violation of constitutional rights does not grant a right to compensation via civil proceedings unless it is a recognised civil wrong under the Civil Wrongs Law (CWL); and (b) the damages awarded were too high.

The Supreme Court ruled that the violation of fundamental rights directly enshrined in the Constitution is an actionable wrong and grants the right to a remedy through the courts. This upholds the principle of *ubi jus ibi remedium* (where there is a right, there is a remedy). Courts have a duty to protect the fundamental rights of citizens under art 35 CC and this includes protection from violations by any person by awarding remedies.

[1] The European Case Law Identifier (ECLI) for the Cypriot judgments referred in this chapter is cited where available.

[2] (2001) 1 Apophaseis Anotatou Dikasteriou (Supreme Court Reports, AAD) 558.

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Otherwise, fundamental rights would be demoted to mere declarations of good conduct.

The leading principle in awarding damages is *restitutio in integrum*. Damages must be fair and may be aggravated or even punitive in exceptional cases. Citing English authorities and the case law of the European Court of Human Rights (ECtHR), the Court observed that the governing principle for compensation in cases of human rights violations is 'equitable compensation', which covers non-pecuniary damage (moral damage) caused by the violation and includes factors like distress, sorrow, anxiety, feelings of injustice, adverse effects on lifestyle, and pain and suffering. The Court affirmed the CYP 5,000 award, noting that it was not punitive.

The third-party effect of fundamental rights had been analysed in previous judgments of the Supreme Court.[3] However, this was the first case in which the Court (almost) explicitly ruled that provisions on fundamental rights may directly apply to private disputes. Such a conclusion was unambiguously confirmed in a later judgment of the Supreme Court.[4] The *Yallouros* judgment has been positively accepted by legal doctrine, albeit with reservations.[5]

Some uncertainties remain regarding the exact scope of the application of fundamental rights to private disputes. The judgment implies that the constitutional provisions will directly apply only when ordinary tort law does not provide (adequate) protection against the violation of a person's fundamental rights, ie in the case of a *lacuna*.[6] This was affirmed by subsequent judgments of the Supreme Court.[7]

As to compensation for such violations, it has been correctly observed that the judgment appears to combine (or conflate) three different categories of damages under 'equitable compensation': special damages for pecuniary loss, general damages for feelings of pain, sorrow, humiliation,

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[3] Eg *Police v Andreas Georghiades* (1983) 2 Cyprus Law Reports (CLR) 33.

[4] *Republic v V Vassileiou* (2015) 1 AAD 1169, ECLI:CY:AD:2015:A376.

[5] *P Polyviou*, Civil wrongs in the law of Cyprus (2020) (in Greek) 1023, who criticises its generic scope; *C Paraskeva*, Cyprus Constitutional Law: Fundamental rights and liberties (2015) (in Greek), who points to unclarities as to the scope of the judgment regarding common law and the freedom of contracting under art 26 Cypriot Constitution; *P Jougleux*, Civil liability of the State (2012) (in Greek), who questions the foundation of the judge's authority in such cases; *P Constantinides*, The horizontal effect of fundamental rights and its reception in Cypriot legal order (2025) (in Greek) 297–299, who finds preferable an indirect application of the fundamental rights through progressive development of the case law.

[6] See *Paraskeva* (fn 5) 132.

[7] Eg *Alitheia Publishing Company & Anor v Alonefti* (2002) 1 AAD 1863, commented below.

etc, and damages for the violation per se.[8] Recent case law of the Supreme Court has adopted a similar view.[9]

2. Supreme Court 29 November 2022, *Alitheia Publishing Company and A Constantinides v A Alonefti*[10]

This judgment clarifies the relationship between tort law and fundamental rights enshrined in the Constitution and adopts the *Reynolds* defence[11] in Cypriot law.

A newspaper and its editor-in-chief (defendants) published twelve articles from December 1992 to January 1993, shortly before the presidential elections. The articles alleged that the plaintiff, who was then Minister of Defence, had conspired with arms dealers to defraud the public and damage Cyprus. The defendants denied that the publications were defamatory, and claimed that the articles presented true facts and fair comments. During the trial, the defendants changed their position and admitted, subject to the raised defences, that the publications were defamatory. The defendants did not present any evidence to substantiate their claims of conspiracy.

The trial court found bad faith on the part of the defendants, an intention to defame the plaintiff and awarded general and exemplary damages. The defendants appealed, challenging, among others, the compatibility of the provisions on defamation of the CWL with art 19 CC on freedom of speech.

The Court found that the defamation provisions of the CWL aim to protect an individual's reputation, a restriction recognised by art 19(3) CC. Such restrictions must not violate the core of the guaranteed right. The presumption of innocence, guaranteed as a fundamental human right by art 12(4) of the Constitution, excludes the attribution of a criminal act to a person by anyone other than a state court, which, as art 30(2) CC provides, is the sole judge of their criminal responsibility.

The Court underlined that the presumption of innocence under art 12(4) CC is as equally fundamental as the right to freedom of speech. Its protection through the civil wrong of defamation is not only permissible but also

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[8] *Polyviou* (fn 5) 1042 f.

[9] *Attorney General v L.I.K, F.I et al*, Civil Appeals nos 142/2019 to 149/2019, 189/2019 to 191/2019, 216/2019 to 220/2019, 241/2019, 269/2019 and 270/2019, ECLI:CY:AD:2022:A353.

[10] (2002) 1 AAD 1863.

[11] *Reynolds v Times Newspapers Ltd and Others* [1999] United Kingdom House of Lords (UKHL) 45.

imperative. The defamation provisions of CWL balance the safeguarding of the two rights with reference to the truth of what is written. Thus, the restrictions imposed by the provisions of the CWL on defamation find support in art 19(3) CC for the protection of an individual's reputation and their fundamental rights.

The *Aloneftis* judgment exemplified how constitutional and tort law provisions apply side by side in the law of defamation. It can be seen as a follow-up to the *Yiallouros* judgment, commented on above, regarding the role of fundamental rights in tort law. It was the first time that the tort law provisions on defamation were specifically examined in the light of both their constitutional compatibility and recent developments in English case law. Its grounds have been influenced by the judgment of the House of Lords in *Reynolds*,[12] which, accounting also for the Human Rights Act 1998, extended the common law defence of qualified privilege in defamation to ascertain whether the publication related to a matter of public interest and was the product of responsible journalism.[13]

Since *Aloneftis,* Cypriot courts have consistently applied the defences to defamation, mainly the defences of fair comment and the qualified privilege, with reference to a balance of conflicting fundamental rights, especially the right to free speech and the right to private life.[14] They put particular emphasis on the case law of the ECtHR, since the section of the Consitution on fundamental rights was modelled on the European Convention on Human Rights. Nevertheless, under Cypriot law, issues of public interest publications and responsible journalism are still governed by common law principles, as these have been codified in art 17 ff CWL.

3. Supreme Court 24 September 2010, *A Varianou v A Vorca*[15]

This judgment signalled a departure from the traditional *Bolam* test in medical negligence in informed consent cases, as well as a deviation from the standard but-for test regarding factual causation in such instances.

The case concerned a patient who sued an ophthalmologist for negligence, regarding severe corneal damage allegedly caused by cosmetic laser eye surgery (excimer laser) in 1999 to correct high myopia. The

[12] Ibid.

[13] *A Mullis/R Parkes* (eds), Gatley on Libel and Slander (12th edn 2013) para 15.1.

[14] Eg *L Loukaidis v Alitheia Publishing Co Ltd* (2003) 1 AAD 22; *K Mavri v Arktinos Publishing Ltd* (2015) 1 AAD 1151, ECLI:CY:AD:2015:A365.

[15] (2010) 1 AAD 1541.

plaintiff's main claim was the doctor's negligent failure to warn her of significant potential risks and complications, especially since the surgery was purely cosmetic and not medically necessary. The evidence supported the view that a major medical school of thought considered the procedure inappropriate for high myopia.

The trial court dismissed the claim. It found no negligence and stated that, even if there was negligence, the plaintiff had failed to prove a causal link between the doctor's behaviour and the resulting damage. The plaintiff appealed. The Supreme Court allowed the appeal.

The Court found that in cases of informed consent, it was not appropriate to apply the usual *Bolam* test, which was laid down in *Bolam v Friern Hospital Management Committee*[16] and had been applied by Cypriot courts to all categories of medical negligence up to that date,[17] including the trial court of the particular case. Under the *Bolam* test, a doctor is not guilty of negligence if they acted in accordance with a practice accepted as proper by a responsible body of medical practitioners skilled in that particular art. Under the *Bolam* test, there is no breach of the doctor's duty of care for failure to warn patients of risks of potential treatments if the possibility of the risks is close to zero. Moreover, it is required that the patient proves that they would not have undertaken the treatment should they have known about the undisclosed risks.

The Supreme Court, adopting the ruling of the English Court of Appeals in *Pearce v United Bristol Healthcare NHS Trust*,[18] argued that in cases of a patient's informed consent, the appropriate standard of care is what a reasonable patient would like to know under the circumstances. In the case at hand, the average patient would want to have known, before consenting, that a large segment of the medical profession considered the surgery unsuitable for the plaintiff's condition (high myopia), because it involved serious risks, such as those suffered by the plaintiff. Therefore, the doctor would have to have disclosed such information.

Moreover, the Court argued that in cases of a doctor's failure to warn a patient, a partial deviation from traditional causation principles is necessary to achieve justice. The appropriate approach is to inquire whether a reasonable patient would have consented to the particular treatment if they had known about the risks that the doctor had failed to disclose.

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[16] [1957] 1 Weekly Law Reports (WLR) 582.

[17] Eg *K Athanasiou v A Kounouni* (1997) 1 AAD 614; *Ch Aggeli v A Vorca* (2007) 1 AAD 761.

[18] [1998] England & Wales Court of Appeal, Civil Division (EWCA Civ) 865.

Thus, an objective test is required, not a subjective one, ie with reference to the particular plaintiff, as the Cypriot courts had been applying until then. The Court referred in this regard to the judgment of the English Court of Appeal in *Chester v Affshar*[19] and cited passages from the judgment of the House of Lords on the same case,[20] which underline that reasons of policy and corrective justice, including the need to respect the patient's autonomy, require that a less stringent causation test is applied. The Court observed that such a relaxed, objective standard of causation also aligns with art 5 of the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (Oviedo Convention).

This judgment aligned Cypriot case law with what had already been followed in other common law jurisdictions in cases relating to informed consent of a patient. It is remarkable that the Court made explicit reference to art 5 of the Oviedo Convention, something that the UK Supreme Court also did five years later in *Montgomery v Lanarkshire Health Board.*[21] Subsequent developments in UK case law, especially in *Montgomery*, developed the law of informed consent even further: the duty to disclose risks was expanded to risks that have a very low probability of materialising but which may have grave consequences for the particular patient, and risks for which the doctor is, or should reasonably be, aware that the particular patient would be likely to attach significance to them.[22] Trial courts in Cyprus have accounted for such developments in UK case law, citing *Montgomery* alongside *Varianou v Vorca*.[23] Nevertheless, a 2025 judgment of the (new) Court of Appeal[24] affirmed that a doctor's standard of care in such cases is objective, without referring to any subjective standards. Although it is doubtful whether the recent judgment consciously ignored the developments in the UK, the issue has yet to be clarified at the highest level in Cyprus.

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[19] [2002] 3 All England Law Reports (All ER) 532.

[20] [2004] 4 All ER 587.

[21] [2015] United Kingdom Supreme Court (UKSC) 11, para [80].

[22] See *Montgomery* (fn 21) paras [87] and [89].

[23] Eg *Sotiriou v Attorney General*, 19.8.2020, ECLI:CY:EDLEF:2020:A599; *K Moleskis v Apollonio Private Hospital Ltd*, action no 8015/2007, 30.3.2018, ECLI:CY:EDLEF:2018:A210.

[24] *N Neophytou v M.X.T*, Civil Appeal no 145/2016, 11.3.2025. In 2023, a judicial reform was completed in Cyprus, and a new Court of Appeal was created as an intermediate instance.

4. Supreme Court 21 September 2022, *Attorney General v L.I.K, F.I et al*[25]

This judgment is important because it clarifies various issues regarding torts and especially causation in mass torts.

A shoe sole factory operated in a mixed residential area from 6 am to 1 am daily, causing noise, odours, and emitting dichloromethane (DCM), a suspected carcinogen. The factory operated without proper planning permission, which was later denied due to DCM use. Local residents sued the company, its director, and the Republic of Cyprus for nuisance, personal injury (various cancers allegedly caused by DCM exposure), breach of statutory duty, and violation of fundamental rights under the ECHR and the Cypriot Constitution, namely the rights to life, respect of private and family life, and protection of property.

The trial judge ruled for the claimants and adjudicated damages. He found the defendant company and its director liable for private nuisance (noise and odours) and breach of statutory duty regarding unsafe workplace conditions and for causing a cancer cluster through DCM emissions. The Republic was found liable for breach of statutory duty under pollution control laws.[26]

On appeal, the Supreme Court upheld liability for private nuisance regarding noise and odour. However, citing English case law,[27] it clarified that private nuisance cannot be claimed for personal injury (cancer). Moreover, the Court clarified that private nuisance does not depend on building permits or statutory breaches, although the lack of permits was connected to the nuisance suffered. In this regard, it cited English law[28] and its own previous recent judgments on public nuisance concerning the distinction between unlawfulness and illegality.[29]

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[25] Civil Appeals nos 142/2019 to 149/2019, 189/2019 to 191/2019, 216/2019 to 220/2019, 241/2019, 269/2019 and 270/2019, ECLI:CY:AD:2022:A353. See also *M Chatzipanagiotis*, Cyprus, in: E Karner/BC Steininger (eds), European Tort Law 2022 (2023) 113, nos 8–28.

[26] Pollution Control Law 70/91 and the Atmospheric Pollution Control Law 187(I)/2002, which transposed Directive 1999/13/EC on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations [1989] Official Journal (OJ) L 85/1.

[27] *Transco v Stockport MBC* [2003] UKHL 61; *Hunter and others v Canary Wharf Ltd* [1997] 2 WLR 684.

[28] Eg *Attorney-General v Cole & Son* [1901] 1 Law Reports, Chancery Division (Ch) 205; *M Jones,* Textbook on Torts (1986) 140.

[29] *Attorney General v Cyfield-Nemesis & Ors,* Civil Appeal E52/21, 10 February 2022, ECLI:CY:AD:2022:A79; *Attorney General v Cybarco Contracting Ltd & Ors,* Civil

As to breach of statutory duty and potential violations of fundamental rights, the Court underlined the necessity of a causal link between the breach or violation and the damage suffered. Such link requires two stages: (a) general causation, ie epidemiological evidence showing the defendant's conduct can generally cause the type of harm suffered; and (b) specific causation, ie additional evidence linking the harm to each particular claimant. The plaintiffs had not pleaded on specific causation, while the trial judge had examined only general causation and had not considered evidence that there was no significant statistical link between the operation of the factory and most forms of cancer developed by the plaintiffs (save for the brain cancer).

Moreover, the Court observed that the trial judge had improperly conflated general damages for tort and equitable compensation for violations of fundamental rights.

As a result, the Court quashed the judgment of the trial judge, except for the part relating to damages for interference with the enjoyment of property in the context of private nuisance.

The most important contribution of the present judgment lies in clarifying the role of epidemiological evidence in personal injury claims. Regardless of the legal basis, ie public nuisance, negligence, breach of statutory duty, violation of fundamental rights, there must be proof of causation between the defendant's behaviour and the claimant's injury. The Court followed English case law, especially the judgment of the UK Supreme Court in *Sienkiewicz*,[30] according to which, epidemiological evidence must be accompanied by additional proof of the causal link between the defendant's behaviour and the damage to the particular claimant. It is also interesting that the Court quoted specific passages from the *Sienkiewicz* judgment, which did not exclude the possibility of using epidemiological evidence as such to establish causation.[31] This implies that the Court did not exclude the use of such evidence on a standalone basis either.

Furthermore, the Court did not exclude the application of less strict rules for the establishment of causation in the vein of the *Fairchild* ex-

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Appeal E53/21, 10 February 2022, ECLI:CY:AD:2022:A81. See details and comments in *Chatzipanagiotis* (fn 25) nos 2–7.

[30] *Sienkiewicz v Greif* [2011] UKSC 10. The Court referred also to *Hotson v East Berkshire AHA* [1987] Appeal Cases (AC) 759; *Wardlaw v Farrar* [2003] EWCA Civ 1719 and *The Claimants appearing on the Register of the Corby Group Litigation v Corby District Council* [2009] England & Wales High Court (EWHC) 1944.

[31] *Sienkiewicz v Greif* [2011] UKSC 10, para 192 (Lord Mance) and para 221 (Lord Dyson).

ception regarding the material increase in the risk of damage.[32] However, since neither the plaintiffs' pleadings nor the trial judge had made any references to causation as to the particular claimants, the Court ruled that it could not apply the *Fairchild* exception.

In general, there have been no cases before Cypriot courts that required them to deal with elaborate issues of causation, such as material contribution to the risk, significant increase in risk, doubling the risk, etc. This is the first major case of such kind.

5. Supreme Court 20 July 2011, *L Ioannides v M Kallias as Receiver and Administrator of Intercosmetics Ltd* [33]

This is one of the very few Cypriot cases on product liability based on the tort of negligence and the Product Liability Directive (PLD),[34] and clarifies various aspects of both causes of action.

The plaintiff had purchased a hair-straightening product, manufactured abroad, and imported and distributed by the defendant. The plaintiff claimed that, following the application of the product, he suffered severe hair loss, scalp dermatitis, redness, and swelling. He filed an action on negligence, breach of the Defective Products (Civil Liability) Law of 1995 transposing the PLD,[35] and breach of statutory duty under the law on product safety,[36] seeking damages for physical injury, mental distress, and loss of income.

The trial judge dismissed the action, noting that the plaintiff's loss was due to inappropriate use of the product. As to negligence, the judge found that the defendant had not breached its duty of care to the plaintiff by failing to provide adequate warnings or by importing a dangerous product. The *res ipsa loquitur* doctrine was inapplicable, since the plaintiff had produced evidence to prove the defendant's negligence. Moreover, no causal link was proven between the alleged negligence and the loss suffered. As to breach of the Defective Products (Civil Liability) Law 1995, the trial judge noted that there was no 'defective product'. The fact that the safety instructions of the product were changed after the lawsuit was filed and following an investigation of the competent authority did not suffice as such to prove defectiveness. The plaintiff appealed.

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[32] *Fairchild v Glenhaven Funeral Services Ltd* [2002] UKHL 22.

[33] (2011) 1 AAD 1522.

[34] Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products [1985] OJ L 210/29.

[35] Law 105(I)/1995.

[36] Consumer Product Safety Law of 1994 (Law 74(I)/1994).

The Supreme Court dismissed the appeal. The Court distinguished between two causes of action, ie negligence and breach of the Defective Products (Civil Liability) Law 1995. Regarding the latter, the Court observed that suppliers and distributors have a duty of care to the consumer, but not to the same extent as the manufacturer. They may have to inspect the product and, if there are risks that they ought to be aware of, they may need to provide the consumer with warnings additional to those provided by the manufacturer. Given the proven facts, namely that the product did not contain any prohibited substances, that the manufacturer provided adequate warnings for the safe use, and that the defendant did not make any representations that the product was safe to use under any circumstances, there was no breach of the duty of care. Furthermore, the trial judge did not err by not applying the doctrine of *res ipsa loquitur*, since such application required that the defendant was allegedly unaware of the cause of his loss, which was clearly not the case here.

Concerning the breach of the Defective Products (Civil Liability) Law 1995, the Court noted that, under the Law, 'defectiveness' exists when the product is not safe taking into account all the circumstances of the case, including any instructions and warnings. The fact alone that a safer product was later put into circulation does not prove defectiveness. Besides, a product may be safe for one use but unsafe for another In this case there were adequate warnings, while the fact that after an investigation of the competent product safety authority, following a complaint by the defendant, the distance of the application of the product from the head skin was increased from 0.5cm to 1cm did not prove defectiveness.

The Court's judgment relied on English authorities regarding both negligence and the strict liability under the PLD.[37] Although its analysis could have been more extensive and clearer as to the distinction between the elements of the two causes of action, the judgment has provided useful guidance to trial courts, especially regarding the duty of care of suppliers and distributors.[38] In addition, it has highlighted the importance of instructions and safety warnings for the evaluation of 'defectiveness' under the law transposing the PLD.

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[37] *Donoghue v Stevenson* [1932] AC 562; *Watson v Buckley* [1940] 1 All ER 174; *A v National Blood Authority* [2001] 3 All ER 289; *WVH Rogers,* Winfield and Jolowicz on Tort (17th edn 2006) para 10-3.

[38] Eg *Ch Pilakoutas Ltd v A Dimosthenous*, 25 January 2016, ECLI:CY:EDLEF:2016:A41; *Diexodos Ltd v Dan-Form Ltd*, 14 April 2020, ECLI:CY:EDLEF:2020:A194; *A Hadjishammoutti v Pop Life Electric Shops Ltd & Ors*, 20 May 2022, ECLI:CY:EDLEF:2022:A338.