

TEAM CODE: T-05

5th RMLNLU SCC ONLINE INTERNATIONAL MEDIA LAW MOOT COURT
COMPETITION

IN THE INTERNATIONAL COURT OF JUSTICE



THE PEACE PALACE,
THE HAGUE, THE NETHERLANDS

THE CASE CONCERNING THE TURENCIA NEWS NETWORK

[2017 General List No. . . .]

THE DEMOCRATIC REPUBLIC OF TURENCIA
(APPLICANT)

v.

THE KINGDOM OF GHOULUM
(RESPONDENT)

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LIST OF ABBREVIATIONS

¶	Paragraph
A.J.I.L.	American Journal of International Law
Annex.	Annexure
App.	Applicant
Art.	Article
CASE W. RES. L. REV.	Case Western Reserve Law Review
COLUM. L. REV.	Columbia Law Review
Doc.	Document
E.C.R.	European Court Reports
EC	European Community
ECtHR	European Court on Human Rights
ed.	Edition
EU	European Union
GAOR	General Assembly Official Records
I.C.J.	International Court of Justice
I.C.L.Q.	International and Comparative Law Quarterly
I.L.M.	International Legal Materials
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and
Int'l	International
J.I.E.L.	Journal of International Economic Law
L.Q.R.	Law Quarterly Review
Ltd.	Limited
NAFTA	North American Free Trade Agreement
No.	Number
OECD	Organization for Economic Co-operation and Development

P.C.I.J.	Permanent Court of International Justice
Pt.	Part
R.I.A.A.	Reports of International Arbitral Awards
Re.	Response
Rep.	Report
Res.	Respondent
S./Sec.	Section
Ser.	Series
Sess.	Session
Ss.	Sub-section
Supp.	Supplement
U.N.	United Nations
U.N.T.S.	United Nations Treaty Series
U.S.	United States
v./vs.	Versus
VCLT	Vienna Convention on Law of Treaties
Vol.	Volume

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- Durga Das Basu, *Law of the press*, (5th Ed., Lexis Nexis, 2010).
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2. International Covenant on Economic Social and Cultural Rights (adopted 16 December 1966, entered into force 23 March 1976), 993 U.N.T.S. 3
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8. The UN Special Rapporteur on Freedom of Opinion and Expression Abid Hussain UN Doc. E/CN.4/1995/32 13
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14. Statute of the International Court of Justice, Oct. 24, 1945, 832 U.S.T.S. 993
15. Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR)
16. American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123 (ACHR) 1, 6
17. UN Human Right Committee, General Comment NO. 34 1, 2 VII

STATEMENT OF JURISDICTION

The Democratic Republic of Turencia and the Kingdom of Ghoulum have agreed to submit the present dispute to the International Court of Justice in compliance with Article 36(1)¹ and Article 40(1)² of the Statute of this Court vide a Special Agreement submitted before the Court duly signed by authorized representatives of the two parties. The Parties shall accept any Judgment of the Court as final and binding upon them and shall execute it in its entirety and in good faith.

¹**Art. 36(1) of ICJ Statute:** *The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.*

² **Art. 40(1) of ICJ Statute:** *Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the parties shall be indicated.*

STATEMENT OF FACTS

1. Since its independence in 1992, The Democratic Republic of Turencia (**Turencia**) is the largest democracy in the world located in the northern hemisphere. Together with being the largest democracy, Turencia is also the fourth largest nation in the world as according to its geographical size. Turencia is a secular nation which respects all religions. It is considered to be one of the fastest growing free-market economies and the world leader in the quality of print and visual media.

On the other hand, The Kingdom of Ghoulum (**Ghoulum**) is geographically a smaller nation situated in the Southern Hemisphere. Ghoulum is a Monarchy since, its independence in 1942 the leader of their nationalist army assumed the throne and declared him the monarch of the kingdom. Since then the throne is being passed to the Descendants without any election. The official religion of Gholum is “Illia” and the entire legal system of Gholum is based on the principles of Illia law and is governed through its Holy book “Iliyatah”. The book suggests that, *“King is the representative of God on Earth and even death is too small a punishment for a man who defies his King”*, and the whole Illia Law is based on this principle.

2. In December 2009, Anshianah Praksheshi, the King of Ghoulum issued an executive order opening up the economy in a limited manner and inviting foreign investors to set up their businesses in Ghoulum. The order specifically allowed up to 100% foreign direct investment in Ghoulum and assured the investors about investment friendly practices and that they will be treated similar to the domestic corporations.

3. The Turencia News Network (“**TNN**”) is the largest media corporation incorporated in Turencia, founded in 1998 by Robin Pestos, a well renowned journalist. On January 2, 2010, TNN’s board of directors passed a resolution for the company to expand its business to the southern hemisphere. The executive order by Ghoulum in 2009 was considered as an open opportunity. The legal department of TNN on January 5, 2010 advised the company not to invest in Gholum without any investment treaty.

4. On April 21, 2010, Robin Pestos met King Praksheshi, and the king assured Mr. Pestos a hassle-free environment for the company and also provided TNN with 45 Acres of land to setup

the offices. TNN established them in Ghoulum and the first show was aired on November 12, 2011. Mr. Pestos started a talk show “way of life” and it became very popular in a short span. On December 10, 2015, www.theworldofwomen.org, a popular website espousing the cause of equal treatment of women, published a report titled “The Ghoulum Report”. This report contained several vilifying statement about the nation and the King.

5. On January 1, 2016, the episode of “way of life” took up the issue of women’s condition in Gholum. Several affronting statements about the king were made on the show by Mr. Pestos. This episode had an unprecedented reaction and thousands of women rights activists took to streets shouting slogans against the King, burning his effigies and claiming equal rights for women.

6. On January 28, 2016, the Justice Department of Ghoulum issued a press statement asserting that TNN has committed serious violations of Section 12³ of the Information and Broadcasting Act. TNN’s offices were sealed, their equipment confiscated and the all the Turencian citizens, except Mr. Pestos were sent back to their country. Mr. Pestos was arrested and was charged with sedition under Section 23B⁴ of the Ghoulum Criminal Code.

7. TNN sought the help of the Democratic Republic of Turencia to get the dispute resolved through the ministerial level talks between the two states. However, the said talks did not reach any conclusion. Both the states were facing immense pressure from the international community to resolve the dispute expeditiously.

8. Both the nation came to a conclusion and agreed to refer all matters in dispute to the International Court of Justice, through a Special Agreement. It was agreed that the Court will also adjudge the issue of maintainability and the jurisdiction of the Court over these disputes.

³**Section 12 (Information and Broadcasting Act)** *“Every individual or corporation (whether a national or foreigner) shall independently corroborate every information before broadcasting the same, failing which the State shall have the power to terminate all the information broadcasting activities and confiscate all the property belonging to such person or individual.*

Notwithstanding anything contained in any other law for the time being in force, such termination shall be final and binding on the parties concerned and may not be subject to judicial scrutiny.”

⁴**Section 23B (Ghoulum Criminal Code)** *“Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the King, shall be hanged till death.”*

ISSUES RAISED

The Democratic Republic of Turencia respectfully asks this Court to decide:

ISSUE I: Whether the ICJ has the jurisdiction over the dispute or not?

ISSUE II: Whether the action of the Kingdom of Ghoulum amounts to expropriation and denial of Fair and Equitable Treatment?

ISSUE III: Whether Section 12 of IB Act imposes an extremely onerous obligation on the TNN and violates International Law?

ISSUE IV: Whether Iliia law directly conflicts with some of the most fundamental principles of the human rights and is not consistent with Customary International Law?

ISSUE V: Whether the comments made by Robin Pestos on ‘Way of Life’ are protected under freedom of speech and expression or not?

SUMMARY OF ARGUMENTS

1. Whether the ICJ has the jurisdiction over the dispute or not?

The ICJ has jurisdiction over the matter. It has a contentious jurisdiction over the dispute. Article 36 of the Statute of the International Court of Justice states that the jurisdiction of the court comprises of all cases which the parties (here state) refer to it. Further the court has jurisdiction as the matter involves breach of international obligations by the Kingdom of Ghoulum.

2. Whether the action of the Kingdom of Ghoulum amounts to expropriation and denial of Fair and Equitable Treatment?

The action of the Kingdom of Ghoulum including that of sealing of the office of TNN and confiscating its property amounts to expropriation and clear denial of fair and equitable treatment. When it comes to foreign investment, the UNCTAD, OECD and various other conventions on the international investment consider 'Fair and Equitable Treatment' as the International Minimum Standard which shall followed by the host nation while dealing with the foreign investments. It has been approved by various judicial bodies and tribunals.

3. Whether Section 12 of IB Act imposes an extremely onerous obligation on the TNN and violates International Law?

Section 12 of the Information and Broadcasting Act which asks for independent corroboration of all information before broadcasting the same is violation of the global commitment of freedom of press, supported by UN. Section 12 violates Article 19 of the United Nation Declaration on Human Rights. Further it violates article 10 of European Convention. Moreover the provision also goes against the international standard of protection of journalistic sources which is one of the basic conditions for freedom of press.

4. Whether Ilia law directly conflicts with some of the most fundamental principles of the human rights and is not consistent with Customary International Law?

Ilia law is a set of very stringent, archaic and draconian laws which violates some of the most fundamental principle of human rights and customary international law including gender discrimination, inhuman treatment and there are consistent patterns of gross violation of internationally recognized human rights under the provisions of Ilia law which also include denial of fair trail and freedom of speech.

5. Whether the comments made by Robin Pestos on ‘Way of Life’ are protected under freedom of speech and expression or not?

The comments made by Robin Pestos on ‘Way of Life’ are covered under freedom of speech and expression provided under Article 19 of the Universal Declaration of Human Rights which allows a person, freedom to hold opinion without interference and to impart information and ideas through any media.

ARGUMENTS ADVANCED

1. Whether the ICJ has the jurisdiction over the dispute or not?

The applicant most humbly submits that the ICJ has a contentious jurisdiction over the dispute as the dispute has been referred to it by both the states under a special agreement. Article 36 of the Statute of the ICJ gives jurisdiction to this court. Article 36(1) of the ICJ states that the jurisdiction of the court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nation. The scope of this article is to give a vast and wide jurisdiction to this court over all sorts of matters between to member states. In the case of *Nicaragua v. United States of America*,⁵ the court relied on the declaration of acceptance of jurisdiction of the parties to determine the jurisdiction of the Court over the dispute.

Further in absence of any convention or treaty between the nations barring the jurisdiction of this court, the ICJ has a clear jurisdiction over the dispute.

Further Article 36(2) of the ICJ gives Turencia being a state party to the present statute right to recognize the jurisdiction of ICJ as the matter also involves question of international law .and breach of international obligations. In the present case, the action of the Kingdom of Ghoulum is in the violation of some of the basic principles of customary international laws and thus the court has a clear jurisdiction over the dispute. The present case also involves arbitrary detention of Mr. Pestos and on that ground to the ICJ has jurisdiction over the dispute.

As far the jurisdiction of ICJ in the cause of private citizen is concerned *Asylum case*⁶ and many other cases relating to diplomatic asylum confer authority on the ICJ to adjudicate a matter a state is advocating the cause of its private citizen.

⁵ 1986 I.C.J. 14.

⁶ (*Columbia vs. Peru*), I.C.J. Rep. 1950, p.266.

Moreover in the *Brazilian Loan Case*,⁷ the PCIJ ruled that it had jurisdiction under article 36 of its statute to decide cases involving disputes between states which turned not upon international law but the interpretation of municipal law. Similar was the finding of the court in the *Serbian loans*.⁸ In the present case also the matter also involves around the interpretation of some very arbitrary municipal laws of the Kingdom of Ghoulum which are in direct conflict with the international laws.

2. Whether the action of the Kingdom of Ghoulum amounts to expropriation and denial of Fair and Equitable Treatment?

The applicant humbly submits that the action of the Kingdom of Ghoulum including that of sealing of the office of TNN and confiscating its property amounts to expropriation and clear denial of fair and equitable treatment. When it comes to foreign investments, the UNCTAD, OECD and various other conventions on the international investment consider 'Fair and Equitable Treatment' as the International Minimum Standard which shall be followed by the host nations. As defined by the OECD, The international minimum standard is a norm of customary international law which governs the treatment of aliens, by providing for a minimum set of principles which States, regardless of their domestic legislation and practices, must respect when dealing with foreign nationals and their property. The UNCTAD gives huge importance to the FET and states that despite the absence of FET obligation in a treaty, the international minimum standard still exists in customary law. In the *Bayindir case*,⁹ the question was whether the claimant could invoke FET standard even though it was absent from the investment treaty between Pakistan and Turkey. The ICSID held that FET must be observed as the international minimum standard. In the present case, on April 21, 2010, King Praksheshi assured Robin Pestos of hassle free business in the Kingdom of Ghoulum and offered TNN a piece of 45 acres of land to set up their offices and conduct operations.¹⁰ This gesture of the king can be considered as the acceptance of the TNN's investment in Ghoulum. Moreover, from the date of their first show in Ghoulum on November 12, 2011, it has been almost four years thus it is clear that there was an implied

⁷(*France v Brazil*) (1929) P.C.I.J. Reports, Series A, No. 21, pp. 124-125

⁸ Ed. P.C.I.J. Rep., Series A. No. 20, p.46 (1929)

⁹ ICSID Case No. ARB/03/29.

¹⁰ Statement of Relevant Facts, para 7.

foreign investment. The kingdom of Ghoulum has shown a very unprecedented behavior by sealing the office of TNN and confiscating its equipment. The UNCTAD has accepted the policy that in case there is no expressed obligations on the part of the host nation in an investment, the foreign investors will be able to have customary international law applied to any dispute which may arise.

In NAFTA, the minimum standard and the fair and equitable treatment are contained in Article 1105 (1).¹¹ Amid various interpretation of Article 1105 (1), the NAFTA Free Trade Commission (FTC) issued a binding interpretation on July 21, 2001, in accordance to which, the article prescribes the customary international law minimum standard for treatment of aliens as the minimum standard of treatment to be offered to investments of investors of another party. In the case of *Azurix Corp. vs. The Argentine Republic*¹² and *Saluka Investments B.V. (The Netherlands) vs. The Czech Republic*,¹³ tribunals gave weightage to the concept of international minimum standard and stated that the customary minimum standard is in any case binding upon a state and provides a minimum guarantee to foreign investors, even where the state follows a policy that is in principle opposed to foreign investors. Similar is the situation in the present case.

In the case of *U.S.A. (L.F. Neer) v. United Mexican State*,¹⁴ the US-Mexico commission stated that to check whether the host country has violated the international minimum standard on the treatment of aliens, the propriety of the government should be put to the test of international standard and the insufficiency of the governmental action so far short of the international standard that every reasonable and impartial man would readily recognize its insufficiency will be considered as failure to those standard. In the present case the action of the kingdom has been highly criticized and condemned by most of the civilized states, human rights organizations and media corporations and thus it proves the insufficiency and mishandling of the situation by the kingdom. Further the case of *Roberts v. United Mexican*

¹¹ Each Party shall accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.

¹² ICSID Case No. ARB/01/12.

¹³ IIC 210 (2006).

¹⁴ Opinions of Comm'rs (1926), 7.

*States*¹⁵ suggests that aliens should be treated in accordance with ordinary standard of civilization.

Moreover respect for private property is one of the substantive principles of the law of nations and international tribunals have ruled that security of the private property and of the acquired rights of the aliens constitutes one of the general legal principles recognized by international law.¹⁶ In the given case the confiscation of equipment of TNN and sealing of its office amounts to violation of international obligation.

3. Whether Section 12 of IB Act imposes an extremely onerous obligation on the TNN and violates International Law?

The applicant humbly submits that the Section 12 of the Information and Broadcasting Act of Ghoulum puts an onerous obligation on the TNN and it also violates International laws. Section 12 makes it compulsory for every individual or corporation to independently corroborate every information before broadcasting the same failing which the state have power to terminate all the information broadcasting activities of the such person or individual. The given law is against the international standard on the protection of sources which violates the right to receive and impart information, and thus ultimately violating the right to freedom and expression given under Article 19 of the Universal Declaration of Human Rights.¹⁷

Section 12 of the Information and Broadcasting Act of Ghoulum contravenes Article 19 of UDHR.¹⁸ It is further contended that that the Section 12 puts such limitations on the freedom of press which are not consistent with Article 29(2) of UDHR.¹⁹ Journalistic act of imparting information through media fall under the ambit of this article. The ECtHR, in *Goodwin v.*

¹⁵ 4 RIAA 77 (1926).

¹⁶ See *L'Affaire Goldenberg (Rumania v. Germany)*, U.N.R.I.A.A. 901, 909 (1949). Rapporteur Huber puts this well in the British Claims in the Spanish Zone of Morocco (*Great Britain v. Spain*) Arbitration, 2 U.N.R.I.A.A. 615, 641 (1949)

¹⁷ *Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*

¹⁸ *Supra* note. 13.

¹⁹ *In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.*

UK,²⁰ stated that protection of the journalistic source is one of the basic conditions for freedom of the press. Moreover, the US Supreme Court in *Branzburg v Hayes*²¹ held that the journalists and news agencies are entitled to journalistic privilege as they often have to agree not to disclose the identity of the source while gathering news.²²

In the modern world, the status and public position of the newsman has accorded the profession of journalists as the “fourth estate”. So it is argued that the journalists in this quasi-public role should be entitled to protect secrecy of source before officials and government person demanding information from him. It is urged that the aptitude of the journalists to collect confidential information deserves immunity at the expense of the judiciary and other authorities to demand disclosure. It is clear from the facts of the case that the show of Robin Pestos, “Way to Life” gained quick popularity as it would raise issues concerning day to day lives of the citizen of Ghoulum and then suggested corrective measures to the citizen themselves. TNN is a news network working in accordance with the standard media ethics of fairness, truthfulness, objectivity, accuracy, impartiality and public accountability. In order to carry their profession in a fair manner, the media to a large extent depends on the member of public for supply of information with public interest. Sometimes sources are happy to be quoted but when it comes to a serious or secret news, anonymity is often a pre-condition for the source to provide the information. They believe that such information, for example relating to corruption, misgovernment or other illegal activities should be made known to the ordinary public to expose such evils and wrongs of the government and other organization. In such circumstances, when TNN wants to protect the rights of the people of Ghoulum and make them aware of the atrocities done by the king, Section 12 of the Information and Broadcasting Act of Ghoulum stands as an obstacle. It serves as a shield for the wrongs of the king and his ministers, as according to this law no information can reach the general public without censorship. This law violates the customary international law of freedom of expression which is enshrined in the UDHR. All states

²⁰ *Goodwin v. United Kingdom*, 27 March 1996, Application No. 17488/90 ; Resolution No. 2: Journalistic Freedoms and Human Rights, 4th European Ministerial Conference on Mass Media Policy - Prague, 7-8 December 1994.

²¹ U.S. 665 (1972) 408

²² Supra note 22.

regardless of whether or not they specifically engage in the particular practice officially recognize it.

In an English case of *Attorney-General v Mulholland*²³ and *Attorney-General v Foster*,²⁴ the Hon'ble judge held that disclosure of source will not be ordered unless the answer will serve a useful purpose in the instant proceeding, a matter wholly within discretion of judges. The court said that it may cause more harm than good, compelling a disclosure or punishing a refusal.

Furthermore section 12 of the information and broadcasting act causes a chilling effect. The ECtHR in *Axel Springer*²⁵ held that chilling effect occur when a person or a media restrains from imparting information or ideas of public interest in fear of criminal or other sanctions. As previously explained the provision of the act will result in arbitrary censorship of the media and its contents which in fear of sanctions will restrain from producing information related to public interest. It will lead to a chilling effect on the free flow of information in society.

4. Whether Ilia law directly conflicts with some of the most fundamental principles of the human rights and is not consistent with Customary International Law?

The petitioner humbly submits that, Ilia law is a set of very stringent, archaic and draconian laws which violates some of the most fundamental principle of human rights and customary international law including gender discrimination, inhuman treatment and there are consistent patterns of gross violation of internationally recognized human rights under the provisions of Ilia law which also include denial of fair trail and freedom of speech.

Article 7 of UDHR²⁶ states that all are equal before the law and entitled without any discrimination to equal protection of the law. It also provides equal protection against any discrimination in violation of this declaration and against any persuasion to such

²³ [1963] 1 All ER 767.

²⁴ [1963] 1 All ER 771.

²⁵ *Axel Springer AG v. Germany*, ECtHR Application No. 39954/08

²⁶ *All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.*

discrimination. In the present case many of the practices in Ghoulum are discriminatory to women and thus Illia Law is in violation of the international obligations under UDHR.

From the very beginning the international public opinion imposed on the UN a concern for human rights. The Universal Declaration on Human Rights (UDHR) was adopted as the relevant international norms on Human Rights. Under International Law the UDHR together with some other important resolutions of UN General Assembly is seen as a contribution to the formation of *opinio juris*, forming customary law. In the *Nicaragua case*²⁷ the International Court of Justice stated that there exists in customary international law an *opinio juris* as to the binding character. Further in the *Hostage case*²⁸ the International Court of Justice referred directly to the UDHR and found in its “principles” proof for the existence of Universal Human Rights.

Article 53 of the Vienna Convention on Law of treaties²⁹ defines a *Jus cogens* as one accepted and recognized by the international community of states as a whole from which no detraction is permitted. Some human rights instruments provide that Human Rights are not derived from the will of states but are inherent and inalienable. The American Convention on Human Rights proclaims that the essential rights of man are not derived from one’s being a national of a separate state, but are founded upon attributes of the human personality.³⁰

In an advisory opinion the Inter-American court cited nineteen treaties and fourteen soft law instruments on the principles of non-discrimination, concluding that taken together they form an evidence of universal obligation to respect and guarantee human rights without discrimination and thus, suggested that non-discrimination is *jus cogens*.³¹ In the present case there are evidences of gross discrimination on the ground of gender and that has been supported and carried in accordance with the Illia Law which is the law of the land. This shows the violation of customary International law obligation.

²⁷1986 I.C.J. 14.

²⁸ *United States vs. Iran*, 1980 ICJ 3.

²⁹*A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.*

³⁰ Pact of San Jose. Preamble, para.2.

³¹ Inter-American court, juridical condition and right of undocumented migrants, Advisory Opinion, OC-1818/03 Ser A, no. 18, 2003.

Customary international law gives importance to the dignity of the human life and the way people particularly women are treated in Ghoulum is inhuman and in violation of customary international law of human rights. Child abuse, child marriage and marital rape are extremely prevalent in the society and the saddest part of the whole story is that people of Ghoulum justify all these practices in the name of religion.

Further ilia law being a third century BC religion based law supports and make ways for various unethical and draconian laws which are quite contrary to the values of a civilized nations. There are strict norms which hardly provides of freedom of press. Section 12 of the Information and Broadcasting Act and Section 23B of the Ghoulum Criminal Code are example of some arbitrary laws enriching under the Ilia Law. These laws also violates the customary international obligation of the free and fair trail and thus as it can be concluded that Ilia law violates some of the most basic human rights that every person must get in the 21st century.

5. Whether the comments made by Robin Pestos on ‘Way of Life’ are protected under freedom of speech and expression or not?

The petitioner humbly submits that, the comments made by Robin Pestos on ‘Way of Life’ are covered under freedom of speech and expression provided under Article 19 of the Universal Declaration of Human Rights³² which allows a person, freedom to hold opinion without interference and to impart information and ideas through any media.

The scope of this article protects freedom of expression through any media. In the case of *Sunday times vs. United Kingdom*,³³ the ECtHR held that the speech that offends shocks or disturb is also protected. In the present case the comment made by Mr. Pestos is shocking as it reveals the mismanagement of the king and his ministers and that too should be protected

³² Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) art 19; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 19(2); Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) art 10; American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123 (ACHR) art 13.

³³ (1979) 2 EHRR 245.

under article 19 of UDHR.³⁴ Further in *Jersild vs Denmark*,³⁵ the ECtHR concluded that it was not necessary in a democratic society to convict a journalist for aiding or abetting in the spreading of a negative remark. The court was of the opinion that it was not for the court or judges to substitute their own views for those of the press as to what technique of reporting should be adopted by the journalist. In the case of *Lingens vs. Austria*,³⁶ the court held that press has right to criticize a politician and in *Thorgeir Thorgierson vs. Iceland*,³⁷ the court upheld the right to comment critically on alleged police brutality. Similarly, in the present matter Mr. Pestos has criticized the evils of Illia law and also has questioned the wrongs committed by the king and his ministers and thus based on the above case comments, Mr. Pestos also has right to be protected under the principles of International law.

In a number of cases relating to Turkish authority the court had found that the media has freedom of (political) expression and right of critical media reporting. In the case of *Tusalp vs. Turkey*,³⁸ which was about a defamatory article criticizing the Turkish Prime Minister the court concluded that domestic courts has failed to establish convincingly any pressing social need for keeping the Prime Minister's personality rights above the journalist's right.

³⁴ *Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*

³⁵ IHR 2917 (ECHR 1994)

³⁶ [1986] ECHR 7.

³⁷ 14, EHRR 843 (1991).

³⁸ ECtHR, 41617/08.

PRAYER

In light of the issues raised, arguments advanced and authorities cited, the counsel for the Petitioner humbly prays that the Hon'ble Court be pleased to adjudge, hold and declare

1. That the court has jurisdiction over the present dispute.
2. That Section 12 of the IB Act and the action of the kingdom of Ghoulum impose onerous obligation on TNN and also violates the international law.
3. That the Ilia law conflicts with most of the fundamental principles of human rights and also violates obligations under customary international law.
4. That the comments made by Mr. Pestos are protected under the right of freedom of speech and expression and thus not seditious.

And pass any order that this Hon'ble court may deem fit in the interest of equity, justice and good conscience. And for this act of kindness, the counsel for the petitioner shall duty bound forever pray.