

11th World Human Rights Moot Court Competition

15-19 July 2019

Geneva, Switzerland

IN THE MATTER BETWEEN

MOSEIDON ATTORNEYS FOR DIGNITY (MAD)

AND

THE GOVERNMENT OF WANGPOLE

MEMORIAL FOR THE APPLICANT

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LIST OF ABBREVIATIONS

ACHPR	AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS
ACTHR	AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
AI	ARTIFICIAL INTELLIGENCE
CC	CONSTITUTIONAL COURT
CCPR	HUMAN RIGHTS COMMITTEE
CRPD	CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES
DoD	DEPARTMENT OF DEFENSE
ECOSOC	UNITED NATIONS ECONOMIC AND SOCIAL COUNCIL
ECTHR	EUROPEAN COURT OF HUMAN RIGHTS
FOC	FACTS OF THE CASE
FoE	FREEDOM OF EXPRESSION
HC	HIGH COURT
HR	HUMAN RIGHTS
IACHR	INTER-AMERICAN COMMISSION OF HUMAN RIGHTS
IACtHR	INTER-AMERICAN COURT OF HUMAN RIGHTS
IBAP	INTELLIGENT BAIL ASSESSMENT PLATFORM
ICCPR	INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS
ICESCR	INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS
IHRL	INTERNATIONAL HUMAN RIGHTS LAW
IPIJ	I PROSECUTE I JUDGE
KC	KROKODILOS CONVENTION ON HUMAN RIGHTS
KCTHR	KROKODILOS HUMAN RIGHTS COURT
MAD	MOSEIDON ATTORNEYS FOR DIGNITY
NGO	NON-GOVERNMENTAL ORGANIZATION

SAI	SHINGKOK ARTIFICIAL INTELLIGENCE
SCA	SUPREME COURT OF APPEALS
SSG	PROJECT SOFT-SHOT GUN
TITF	TOO INTELLIGENT TO FOOL
UN	UNITED NATIONS
UNSC	UNITED NATIONS SECURITY COUNCIL
V11	VIRTUAL ELEVEN
WAGO	WANGPOLE ATTORNEY GENERAL'S OFFICE
WPD	WANGPOLE POLICE DEPARTMENT

TABLE OF AUTHORITIES

TREATIES AND DECLARATIONS

ACHPR	African Charter on Human and Peoples' Rights (Banjul Charter), 27/06/1981.
ACHPR	African Charter on Human and Peoples' Rights (Banjul Charter), 27/06/1981.
ECR	Rules of Procedure of the European Court of Human Rights, 02/05/1991.
ECHR	European Convention on Human Rights, 04/11/1950.
ICCPR	International Covenant on Civil and Political Rights, 16/12/1966.
ICESCR	International Covenant on Economic, Social and Cultural Rights, 16/12/1966.
SA-Constitution	Constitution of the Republic of South Africa, 1996.
UDHR	Universal Declaration of Human Rights, 10/12/1948.
CRPD	Convention on the Rights of Persons with Disabilities, 13/12/2006.
IACHR	Inter-American Convention on Human Rights, 22/11/1969.

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Akhlyustin	Case of Akhlyustin v. Russia, Application no. 21200/05, 07/11/2017.
Aksoy	Case of Aksoy v. Turkey, Application no. 21987/93, 18/12/1996.
Alajos-Kiss	Case of Alajos Kiss v. Hungary Application no. 38832/06, 20/05/2010. Aliyev Case of Aliyev v. Azerbaijan, Application no. 68762/14 , 20/09/2018. Allan Case of Allan v. The United Kingdom, Application no. 48539/99, 05/02/2003.
Bankovic	Case of Bankovic and others v. Belgium and others, Application no. 52207/99, 12/12/2001.
Bernh	Case of Bernh Larsen Holding AS and others v. Norway, Application no. 24117/08, 14/03/2013.
Borbala Kiss	Case of Borbala Kiss v. Hungary, Application no. 59214/11, 26/06/2012.
Bouyid	Case of Bouyid v. Belgium, Application no. 23380/09, 28/09/2015.

Bragadireanu	Case of Bragadireanu v. Romania, Application no. 22088/04, 06/03/2008.
Buck	Case of Buck v. Germany, Application no. 41604/98, 28/04/2005.
Bucur	Case of Bucur and Toma v. Romania, Application no. 40238/02, 08/04/2013.
Buzadji	Case of Buzadji v. the Republic of Moldova, Application no. 23755/07, 05/07/2016.
Bykov	Case of Bykov v. Russia, Application no. 4378/02, 10/03/2009.
D.H.	Case of D.H. and others v. The Czech Republic Application no. 57325/00, 13/11/2007.
Debelic	Case of Debelic v. Croatia, Application no. 2448/03, 26/05/2005.
Donadze	Case of Donadze v. Georgia, Application no. 74644/01, 07/03/2006.
Guja	Case of Guja v. Moldova Application no. 14277/04, 12/02/2008.
Heaney	Case of Heaney and McGuinness v. Ireland, Application no. 34720/97, 21/03/2001.
Hurk	Case of Van de Hurk v. The Netherlands, Application no. 16034/90, 19/04/1994.
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Maldonado Vargas	Case of Omar Humberto Maldonado Vargas v. Chile, Judgment on Merits, Reparations and Costs, 02/09/2015.

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Serrano-Cruz	Case of the Serrano-Cruz Sisters v. El Salvador Judgment on Merits, Reparations and Costs, 01/03/2005.
Street-Children	Case of the "Street Children" (Villagran-Morales et al.) v. Guatemala Judgment on Merits, 19/11/1999
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SUMMARY OF THE FACTS

WangPole is a State of the Krokodilos Continent with around 15 million inhabitants. It is a state party to the KU and the UN.

For years, WangPole has been involved in serious confrontations with the Republic of Nero, a southern state in the Krokodilos Continent. Frictions heightened in 2017 when the WangPole DoD dropped chlorine munitions on the eastern region of Nero. This conflict goes beyond the southern state's territory limits: Wangpolis troops are also involved in an armed conflict with KaDove.

Within WangPole's national borders, WangPoleis citizens of Neronian origin are strongly discriminated. In fact, almost 700 cases were filed against the WangPole Police Department (WPD) for racial profiling, police brutality and overall discrimination towards people of Neronian origin.

Professor Camillo Prometheus is an internationally recognized scientist with a strong Neronian heritage. Neronians consider hunting as a major part of their culture, that is why Prometheus practices this sport since a young age. However, during his youth Prometheus suffered an accident while hunting in which he lost both of his legs.

Years later, together with Professor Jonah Heart, Camillo founded ShingKok Artificial Intelligence, a company specialized in artificial intelligence. Their inventions have benefited the financial and health systems of WangPole. Additionally, in 2013 WangPole contracted Prometheus' company in order to improve its judiciary system. To archive this, he created two systems: the "Intelligent Bail Assessment Platform" and the "Too Intelligent To Fool" systems.

The first one, helps judges to decide whether suspects deserve bail by analyzing their criminal record, education and financial status. The latter is a lie detector which is used by

prosecutors and other judiciary State agents to analyse if the suspect is lying when questioned.

However, university studies have shown that this type of algorithms are biased against people of Neronian origin. Therefore, in 2018, Moisedon Attorneys for Dignity sued the State for the unconstitutionality of these programmes. The Wangpolis Constitutional Court ruled in favor of the government.

Furthermore, and due to Prometheus' impressive intellectual skills, WangPole's DoD hired him to work in military projects. Despite being a public figure, between October 2016 and December 2018 nothing was heard from him. Nonetheless, on the last day of 2018 Prometheus appeared in a live Facebook broadcast and narrated how the DoD was implementing Project Zeus, a system involving lethal autonomous weapons which the aim of targeting people of Neronian origin.

Even though the State denied the afore-mentioned facts alleging the Professor's resentment after being dismissed in November 2018, Camillo carried out these confessions in the public interest because the project was financed with Wangpolis' taxes. In January 2019, Project Zeus' confidential information was leaked confirming Camillo's statements and raising international preoccupation.

Straightaway, Professor Prometheus was charged with treason for leaking state secrets and for obtaining personal data illegally. However, because of the IBAP results, he was released on bail.

Later, Professor Jonah Heart developed the V1, an online hunting game that allows Prometheus and other people with disabilities to enjoy hunting without facing the difficulties the jungle brings for people with physical disabilities. The game was commercialized, but to take care of the local fauna, subscriptions and play hours were limited, as well as the number

of animals hunted per year to only a thousand. Consequently, Prometheus designed Project Soft-ShotGun in order to make the 3D printed guns for the game, accessible to everyone.

However, a total ban on online hunting games, such as the V11 was imposed. Even though Professor Heart argued before the Constitutional Court that the law violated his constitutional rights. The tribunal did not hear any of Jonah's claims and ruled in favor of the Government.

On May 2019, Prometheus was arrested for illegal dealing of firearm. The following day, SAI systems were hacked, damaging them and deleting Project Soft-ShotGun. Independent experts concluded that the malicious virus belonged to the DoD and their report was presented to the Attorney General in order to commence a prosecution. This was dismissed on lack of evidence, and when appealed to the High Court of WangPole, dismissed on the merits.

During his trial, Prometheus was denied bail without using the IBAP. Finally, by relying on the TITF he was found guilty of treason for leaking state secrets, obtaining personal data illegally and dealing in firearms. He was sentenced to life imprisonment without the possibility of parole.

On 29 June 2019, Prometheus authorized MAD to approach the Krokodilos HR Court in his behalf.

SUMMARY OF ARGUMENTS

Claim A

By prosecuting Prometheus for treason, illegal dealing for firearms and disclosing personal data, WangPole imposed a disproportionate sanction to his right to freedom of expression. Further, his due process guarantees were violated during his trial: he was not afforded enough time to prepare his defence and was unlawfully denied bail. Finally, by relying on TITF as the sole piece of evidence against him, he was sentenced to life imprisonment without parole which constitutes degrading treatment.

Claim B

WangPole failed to provide effective access to justice by denying to prosecute the invasion of SAI's systems. In that sense, it did not conduct a proper investigation even if DoD agents were involved, which cannot be delegated by means of a private prosecution onto the Applicant. Consequently, Respondent indirectly violated the victims' rights to property and privacy.

Claim C

The ban on V11 constitutes an unlawful limitation upon Prometheus and other Neronian PWD's rights to culture and sports. This restriction did not pursued a legitimate aim but the ulterior purpose of being a retaliation against Prometheus. Subsidiarily, the restriction was not proportional to the alleged aim pursued as it did not take into account the State's obligations towards PWD.

I. JURISDICTION

KHRCT has jurisdiction over this case since: (i) WangPole is a party to the KC,¹ (ii) it violated the KC and other international HR treaties² (iii) infringements occurred after they entered into forced³ and (iv) were committed under Respondent's jurisdiction.⁴

II. MAD HAS LEGAL STANDING

To submit a case before the KHRCT, applicants can be represented by advocates.⁵ MAD has legal standing since it obtained permission from Prometheus to approach the KHRCT on his behalf.⁶

III. ADMISSIBILITY

APPLICANT EXHAUSTED DOMESTIC REMEDIES

The obligation to exhaust domestic remedies is not absolute,⁷ applicants do not need to exhaust those that lack prospects of success.⁸ Moreover, political contexts and victims' special circumstances can render remedies ineffective.⁹

Furthermore, to exhaust domestic remedies, Applicants are not required to prosecute privately criminal cases that public prosecutors dismissed.¹⁰

¹ FoC [2]

² Idem; ECHR Art. 32.1

³ Kopecký [38]

⁴ Banković [71]

⁵ ECR [36]

⁶ FoC [31]

⁷ Akdivar [69]

⁸ Scoppola [71]

⁹ Akayeva [117]; Radilla [21]

¹⁰ Matko [95]; R.B. [62]

Regarding claims A and B, applicant exhausted local remedies by reaching the HC of WangPole.¹¹ Since WAGO decided not to prosecute, Prometheus is not obliged to privately investigate the attack to the SAI systems.¹² Furthermore, both the general political context affecting Neronians¹³ and Prometheus status as a whistleblower render local remedies futile.

Historically, there have been confrontations between WangPolis and Neronians¹⁴ that have intensified after Prometheus revealed WangPole's intended attack against Neronians with lethal autonomous weapons.¹⁵ Moreover, Prometheus disclosure of Project Zeus, has made him the target of the State's authorities hostility and constant harassment.¹⁶ Therefore, the exhaustion of local remedies was unattainable for him.

Concerning claim C, applicant exhausted local remedies by approaching the CC,¹⁷ final judicial instance in WangPole,¹⁸ which rejected the complaint.

OTHER VICTIMS ARE NOT REQUIRED TO EXHAUST DOMESTIC REMEDIES

When the right to privacy of different individuals is violated by the same interference, each case should be evaluated as an aspect of a wider complaint.¹⁹

Claim B concerns the invasion of SAI that violated the right to privacy of Prometheus and the company's users and should therefore be considered a sole complaint.

¹¹ FoC [21/27/28]

¹² FoC [27]

¹³ FoC [4/5/11/19/20]

¹⁴ FoC [4]

¹⁵ FoC [19/20]

¹⁶ FoC [19/27/28]

¹⁷ FoC [25]

¹⁸ SA-Constitution [167]

¹⁹ Bernh [90]

Moreover, victims under similar circumstances would not reach different decisions by filing almost identical complaints before the same courts that have been incapable of offering redress.²⁰

Concerning claim C, nothing shows that the CC would have decided differently if other Neronians with disabilities presented complaints against the ban on V11.

Therefore, other victims are not required to exhaust domestic remedies.

IV. MERITS

CLAIM A: PROFESSOR PROMETHEUS' PROSECUTION, SENTENCE AND USE OF TITF DURING HIS TRIAL VIOLATED HIS FUNDAMENTAL HR.

1. Prometheus' prosecution violated his right to freedom of expression and fair trial guarantees.

Illegal interference on Prometheus right to freedom of expression

Freedom of expression²¹ has two dimensions:²² (a) the individual right to spread information²³ and; (b) the social right to have access to information of public interest,²⁴ which includes exposures of serious wrongdoings and HR violations.²⁵

²⁰ D.H. [122]

²¹ KC Art. 32(1)

²² Olmedo-Bustos [64]; CRP [36]

²³ Granier [136]

²⁴ Lingens [41]; A/RES/350 [10]

²⁵ A/RES/361 [10]; A/RES/362 [37]; Resolution (1954) [9.5.3]; Tshwane Principle 37.b

Legal frameworks have been adopted to protect whistleblowers,²⁶ i.e. individuals who disclose, in good faith, threats to the public interest²⁷ which are usually targeted by criminal investigations to create silence through fear.²⁸

In determining the necessity of interferences with whistle-blowers' right to freedom of expression²⁹ the following elements should be analyzed: (i) the public interest involved in the disclosure;³⁰ (ii) its authenticity;³¹ (iii) whistleblower's good faith³² and (iv) the severity of the sanction imposed.³³

Prometheus revealed secret information about lethal autonomous weapons to target Neronians.³⁴ Eleven days after, he was accused of treason and illegally disclosing personal data.³⁵ Leaked information on Project Zeus which revealed grave HR violations,³⁶ lead local HR organizations to ask for UN investigations.³⁷ For its content and impact, the information revealed is of public interest.

The disclosure was authentic because Prometheus personally witnessed the creation of "killer robots"³⁸ and it was in good faith, as it had the sole purpose of protecting his own people.³⁹

Prometheus prosecution is not only an extremely severe punishment for disclosing

²⁶ A/RES/58 Art. 33; OAS Model Law [1]; ACHPR/Res/62 [IV.2]; Europe WB [1/6]

²⁷ Recommendation (2014) [a]; OAS Model Law [2.c]

²⁸ Cotonou [4]; HR Defenders America II [98]; Europe WB [2]

²⁹ Bucur [92/93]; ACHPR/Res/62 [II.2]

³⁰ Guja [74]; A/RES/361 [31]

³¹ Bucur [107]

³² OAS FoE [10]; A/RES/362 [68]; JS Wikileaks [3]

³³ Guja [78]

³⁴ FoC [19]

³⁵ FoC [21]

³⁶ FoC [20]

³⁷ Idem

³⁸ FoC [19]

³⁹ Idem

information of public interest, but also spreads a chilling effect on other civil servants that would like to report wrongdoings. Hence, his prosecution was an unproportioned limitation to his right to freedom of expression.

Prometheus was wrongfully denied bail

The risk of the accused committing further offences if released, is a generally recognized reason for refusing bail⁴⁰ if it is well founded and does not rely on stereotyped perceptions.⁴¹ Indeed, axiomatic refusal of bail without relying on relevant evidence contravenes HR.⁴²

The presiding judge argued that Prometheus had already shown his propensity to commit crimes.⁴³ However, his criminal responsibility had not been proved when this decision was made.⁴⁴ Therefore, denying bail was ill-founded.

2. Prometheus's sentence to life imprisonment without parole constitutes degrading treatment

Sentences for life imprisonment must be limited to especially serious crimes,⁴⁵ such as murder.⁴⁶ Also, such sentences must offer the possibility of being reviewed and a prospect of release.⁴⁷ Otherwise they entail degrading treatment.⁴⁸

⁴⁰ Buzadji [88]

⁴¹ Merabishvili [222]; Fermín [89]

⁴² Piruzyan [105]

⁴³ FoC [28]

⁴⁴ Idem

⁴⁵ László [47]

⁴⁶ Vinter [106]

⁴⁷ Hutchinson [42]; Murray [100]

⁴⁸ Vinter [121]; Report CPT [73]

Additionally, convicts' health plays an important role in defining whether punishments reach the minimum level of severity that ill-treatments must attain.⁴⁹ Accordingly, continued detention of people with serious physical disadvantages is inappropriate.⁵⁰

The decision by the HC was disproportionate to the charges against Prometheus since, unlike murder, they did not involve lethal consequences. Also, his disability⁵¹ made life imprisonment an extremely severe punishment and constitutes degrading treatment. Further, the absence of mechanisms for reviewing his sentence and the lack of prospect of release violates his HR.

3. By relying on TITF during the trial, Respondent violated Prometheus's HR

Guarantees of due process⁵² include the privilege against self-incrimination⁵³ and the right to remain silent.⁵⁴ To respect such rights, prosecutors have the duty to provide enough evidence to support their allegations.⁵⁵ In this sense, convictions cannot be solely or mainly constructed on evidence given by the accused.⁵⁶

The use of lie detectors has been rejected in countries such as: United States,⁵⁷ Australia⁵⁸ and Canada.⁵⁹ In particular, the ECHR has also addressed the use of polygraphs: in the case *A. v. Germany* it denied the Applicant's request to be interviewed by the use of

⁴⁹ Prince [30]

⁵⁰ Mandela Rules, N°109.1; Recommendation (98) [III.C]

⁵¹ FoC [8]

⁵² KC Art. 13

⁵³ WangPole Constitution Art. 5; ICCPR Art. 14.3.g; Allan [44]

⁵⁴ ICCPR Art. 14.g; Bykov [92]

⁵⁵ Saunders [68]; Heaney [40]

⁵⁶ John Murray [47]

⁵⁷ USA Scheffer [313]

⁵⁸ AUS Mallard [373]

⁵⁹ CAN Béland [18]

polygraphs⁶⁰ and in the case *Bragadireanu v. Romania* it stated that convictions cannot be decided solely on polygraphs' results.⁶¹

TITF algorithms elaborate a person's credibility score by examining the accused physiological reactions while interviewed.⁶² However, its accuracy can be questioned since Gun Soldier was wrongfully released using TITF.⁶³

Moreover, this piece of evidence was the sole basis for Prometheus conviction, as the judges relied on TITF during both his trial and sentencing.⁶⁴ Therefore, WangPole breached his due process guarantees.

CLAIM B: WAGO'S REFUSAL TO PROSECUTE THE INVASION OF SAI VIOLATED IHRL

1.WangPole failed to provide effective access to justice

Access to justice includes the availability of effective remedies⁶⁵ to vindicate other rights.⁶⁶ Remedies are effective when allegations are duly considered by courts⁶⁷ and offer a prospect of success⁶⁸ in practice and in law.⁶⁹ Further, individuals must obtain a determination by a competent tribunal,⁷⁰ without obstruction by state actions, or omissions.⁷¹

⁶⁰ A v. Germany

⁶¹ *Bragadireanu* [102]

⁶² FoC [12]

⁶³ FoC [29-30]

⁶⁴ FoC [28]

⁶⁵ KC Art. 13, 23; ICCPR Art. 2.3.(a)

⁶⁶ CCPR/21 [15]

⁶⁷ *Donadze* [35]

⁶⁸ *Jawara* [32]; *Shumba* [57]

⁶⁹ *Mozer* [207]; *Debelic* [44]

⁷⁰ *Kutic* [25]

⁷¹ *Aksoy* [95]

SAI was damaged by a malicious virus that, according to independent experts, belonged to the DoD.⁷² Prometheus denounced such invasion before the relevant authorities, but the complaint was dismissed. Even if domestic remedies were available in theory,⁷³ they turned ineffective in practice since Prometheus' complaints remained unheeded and no measures were taken to address them.⁷⁴

Therefore, WangPole violated its obligations to provide access to justice.

2. Respondent did not comply with its obligation to investigate

The duty to investigate HR,⁷⁵ implies that States must recollect proof⁷⁶ using all the means at their disposal⁷⁷ to clarify the facts.⁷⁸ Accordingly, they become responsible when committing grave omissions in collecting and producing evidence.⁷⁹ Further, the obligation to investigate is reinforced when violations are committed by agents in leadership positions.⁸⁰

Moreover, States should also consider the evidence provided by victims,⁸¹ but investigations cannot depend solely upon it.⁸² In that regard, prosecutors shall initiate judicial litigations⁸³ whenever there is reasonable basis to believe that crimes have been committed after evaluating the available information.⁸⁴

⁷² FoC [27]

⁷³ Idem

⁷⁴ Idem

⁷⁵ Escher [194]

⁷⁶ García-Prieto [112]

⁷⁷ Velásquez-Rodríguez [174]; Tiu-Tojín [77]; Serrano-Cruz [83]

⁷⁸ Tunç [172]

⁷⁹ Cotton-Field [349]

⁸⁰ Bouyid [116-117]; Jeronovičs [103]; Guidelines-Banjul [F(k)]; A/RES/361 [66]

⁸¹ Hurk [59]; Fleury [106]; Article-19 [77]

⁸² Street-Children [226]

⁸³ Guidelines-Prosecutors [11]

⁸⁴ Ramirez [117]; Rome Statute 53.1.a

In addition, States must prosecute and punish violations of HR,⁸⁵ which cannot be delegated onto victims.⁸⁶ In particular, allegations towards State agents must be assessed by public prosecutors.⁸⁷

Prometheus presented a list of DoD suspects involved in the invasion of SAI but the WAGO dismissed the prosecution on lack of evidence.⁸⁸ This decision was confirmed by the HC.⁸⁹ WangPole did not conduct a proper investigation and failed to produce evidence. Although the Applicant could pursue a private prosecution, this did not relieve WangPole from its duty to investigate.⁹⁰

3. WangPole violated Prometheus and others' right to property and privacy

If access to justice is not guaranteed, other rights are indirectly violated:⁹¹ in this case, the rights to privacy and property.

In particular, the right to property⁹² comprises the use and enjoyment of a person's assets,⁹³ including intellectual creations.⁹⁴ Therefore, the destruction of personal inventions violates this right.⁹⁵

⁸⁵ CRPD/C/18/D/22/2014 [7.3]

⁸⁶ Greco [51]; Zimbabwe-HR [70]; Borbála-Kiss [26]

⁸⁷ Stojnšek [79]

⁸⁸ FoC [27]

⁸⁹ Idem

⁹⁰ FoC [6]

⁹¹ Dinah-Shelton, p. 96

⁹² KC Art. 31; WangPole's Constitution Art. 4

⁹³ Shumba [191]

⁹⁴ Iribarne [102-103]

⁹⁵ Mozote [182]

Moreover, the right to privacy⁹⁶ includes the protection of professional offices⁹⁷ and electronic⁹⁸ and communications data.⁹⁹ Interferences on privacy must be subject to governmental controls against abuse of power.¹⁰⁰ Furthermore, States must take appropriate measures to protect private data stored in private or public entities.¹⁰¹

In this case, SAI and SSG blueprints constituted Prometheus and Heart's intellectual property.¹⁰² Further, SAI was their workspace,¹⁰³ and contained users' personal data.¹⁰⁴ DoD's virus damaged SAI systems and deleted blueprints.¹⁰⁵ Hence, the rights to property and privacy were violated.

CLAIM C: WANGPOLE'S BAN ON V11 VIOLATES PROMETHEUS AND OTHERS' HR

The CRPD, binding upon WangPole,¹⁰⁶ obliges States to ensure the full realization of PWD's HR,¹⁰⁷ including the rights to sport and culture.¹⁰⁸

Accordingly, States must refrain from implementing practices inconsistent with the CRPD and must modify discriminatory regulations.¹⁰⁹ Hence, they must eliminate all barriers that

⁹⁶ KC Art. 21

⁹⁷ Buck [31]

⁹⁸ Aliyev [38]

⁹⁹ Liberty [56]; A/HRC/27/37 [20]; ACHPR/Res/362 [1]

¹⁰⁰ Klass [57]

¹⁰¹ CCPR-34 [7]

¹⁰² FoC [27]

¹⁰³ FoC [9]

¹⁰⁴ FoC [19]

¹⁰⁵ FoC [27]

¹⁰⁶ FoC [2]

¹⁰⁷ CRPD Art. 1 and 4; KC Art. 3/40

¹⁰⁸ KC Art. 33.4; CRPD Art. 30; ICESCR, Art. 15.1.(a)

¹⁰⁹ CRPD Art. 4; KC art. 40.6; CRPD-6 [15]; A/HRC/34/58 [48]; WHO-Report, page 175

prevent PWD's participation in cultural life¹¹⁰ and sport,¹¹¹ and ensure they benefit from the application of scientific progress¹¹² that allows them to fully participate in all aspects of life.¹¹³

1. The ban on V11 constitutes an unlawful limitation

Limitations upon rights may only be imposed if they are prescribed by law,¹¹⁴ pursue a legitimate aim¹¹⁵ and are necessary in a democratic society and proportionate.¹¹⁶

Here, the restriction imposed over PWD' rights to culture and sport by banning V11 does not pursue a legitimate aim and is neither necessary nor proportional.

Legitimate aim

Limitations must pursue the aim of "*promoting the general welfare in a democratic society*",¹¹⁷ restrictively interpreted.¹¹⁸ However, International Courts can evaluate if restrictions have an ulterior purpose that contravenes HR such as punishing the applicant,¹¹⁹ which can be proved through circumstantial evidence.¹²⁰

Here, the alleged aim of protecting animal rights¹²¹ is actually concealing the retaliation against Prometheus for disclosing Project Zeus, which derives from circumstantial evidence: he was being investigated for treason¹²² when V11 was created¹²³ and WAGO had refused to prosecute a cyber-attack against his company.¹²⁴ WangPole's ulterior purpose was to

¹¹⁰ CESCR, Art. 15.1.(a); CRPD-2 [17]

¹¹¹ CRPD, Art. 9; CRPD-2 [17]

¹¹² ICESCR Art. 15,1(b)

¹¹³ CRPD, Art. 9; Furlan [134]

¹¹⁴ CESCR, Art. 4; Islam-Ittihad [43]; Konaté [131]

¹¹⁵ CESCR, Art. 4

¹¹⁶ Kimel [58]; Alajos Kiss [25]; Konaté [139]; Keun-Tae Kim [12.5]

¹¹⁷ Castañeda-Gutman [176]

¹¹⁸ Sidiropoulos [38]

¹¹⁹ Lutsenko [109]

¹²⁰ Merabishvili [317]

¹²¹ FoC [25]

¹²² FoC [21]

¹²³ FoC [22]

¹²⁴ FoC [27]

punish Prometheus by banning technology intended to help him hunt, despite his disability.¹²⁵ Therefore, the restriction is not lawful.

In the alternative, the ban is neither necessary nor proportionate

Restrictions can only limit rights when strictly necessary,¹²⁶ and the less restrictive measure should be selected to achieve the aim pursued.¹²⁷ Further, the means should be proportional to the aim.¹²⁸ Specifically, considering the State's obligations towards PWD,¹²⁹ weighty reasons must be alleged to restrict their rights.¹³⁰

According to the CRPD, States must promote the development of assistive technologies and support,¹³¹ including assistive devices and software,¹³² that allow PWD to perform activities they would not otherwise be able to do.¹³³

Further, States must make sports accessible to PWD¹³⁴ encouraging specially designed games.¹³⁵ Particularly, the right to culture¹³⁶ encompasses hunting¹³⁷ and States must promote its accessibility.¹³⁸

Prometheus physical disability prevents him from fully enjoying the Neronian tradition of hunting.¹³⁹ V11 serves as an assistive technology that helps PWD exercise their right to sport and culture.¹⁴⁰ V11's total ban is not necessary, since the State did not provide

¹²⁵ FoC [22]

¹²⁶ Canese [96]

¹²⁷ E/C.12/GC/21 [19]; Castañeda-Gutman [186]

¹²⁸ Posti [83]

¹²⁹ CRPD, Art. 4.

¹³⁰ Alajos-Kiss [42]; Gonzales-Lluy [257]

¹³¹ KC Art. 40.6; CRPD Art. 4 and Art. 9.1.(f); CRPD/C/19/D/19/2014, 8.6; A/HRC/34/58 [48]; A/RES/48/96 [Rule 4]

¹³² CRPD Art 4(g); A/HRC/34/58 [14]; UNICEF, page 13

¹³³ A/71/314 [44]; A/HRC/34/58 [15];

¹³⁴ CRPD, Art. 30.5; A/RES/48/96 [Rule 11]

¹³⁵ A/RES/48/96 [Rule 10.3]; CRPD, Art. 4; A/HRC/34/58 [47]

¹³⁶ KC, Art. 25; ICCPR, Art. 27; ICESCR Art. 15.1. a; CRPD, Art. 30; ICERD Art. 5.(E).vi

¹³⁷ Länsman [10.3]; Paadar [7.5]

¹³⁸ A/RES/48/96 [Rule 10]

¹³⁹ FoC [7/22]

¹⁴⁰ FoC [23]

evidence to support that the killing of 1,000 animals per year in a private property¹⁴¹ endangers the environment.

Further, is disproportionate since less restrictive measures, respectful of PWD's rights, were available: e.g. permitting V11 access only to Neronian PWD.

2. The law banning V11 discriminates Neronian PWD

According to the principle of non-discrimination, States must guarantee the enjoyment of rights without distinction based on, among others, race, nationality and disability.¹⁴² A distinction is discriminatory if it has the effect of impairing rights.¹⁴³

States must ensure PWD's enjoyment of rights without discrimination,¹⁴⁴ by repealing discriminatory legislation.¹⁴⁵ Even if a law appears neutral, when implemented it may cause indirect discrimination against a particular group,¹⁴⁶ regardless the absence of a discriminatory intention.¹⁴⁷

In addition, State patterns historically violating rights of groups due to their cultural condition constitute structural discrimination.¹⁴⁸ Furthermore, intersectional discrimination, occurs when "*several grounds operate and interact with each other at the same time in such a way that they are inseparable and thereby expose relevant individuals to unique types of disadvantage and discrimination*".¹⁴⁹ When intersectional discrimination occurs, States

¹⁴¹ *Idem*

¹⁴² KC Art. 3; ICCPR Art. 2.1; CPRD Art.1; 3(b); CERD/C/GC/14 [1]

¹⁴³ CRPD, Art. 2; CRPD-6 [17]; CERD/C/GC/14 [1]

¹⁴⁴ CRPD, Art. 5; A/HRC/37/56 [20]

¹⁴⁵ CRPD Art. 4; UDHR Art. 7; ICCPR Art. 2 (1), 26; ICESCR Art. 2 (2); A/71/314 [22]; A/RES/48/96 [2]

¹⁴⁶ Oršuš [150]; Dorzema [234]; CRPD/C/15/D/13/2013 [8.3]

¹⁴⁷ Jordan [154]

¹⁴⁸ Muigai, page 6

¹⁴⁹ CRPD-6 [19]; E/C.12/GC/20 [17]; A/CONF.189/PC.3/5 [23]

should take specific measures towards the group in question in order to achieve inclusive equality.¹⁵⁰

WangPole has historically discriminated Neronians,¹⁵¹ evidencing structural discrimination. Moreover, PWD *per se* are considered a disadvantaged group.¹⁵² Hence PWD with Neronian origin, experience intersectional discrimination.

Therefore, the V11 ban discriminates Neronians PWD, since it deprives them from the only way in which they can fully enjoy their right to culture and sports¹⁵³ in equal conditions to others.¹⁵⁴

V. REPARATIONS

Customary international law¹⁵⁵ recognizes States obligation to repair violations of HR adequately¹⁵⁶ and must restore the previous existing situation.¹⁵⁷ If impossible, States should implement measures to integrally compensate victims.¹⁵⁸

In particular, the right not to be tried twice¹⁵⁹ should not impede bringing a person to trial again if the proceedings were previously conducted in violation of their HR¹⁶⁰

¹⁵⁰ CRPD-6 [32]

¹⁵¹ FoC [5]

¹⁵² CRPD-6 [5]; A/HRC/34/58 [46]

¹⁵³ FoC [7]

¹⁵⁴ FoC [5]

¹⁵⁵ Velásquez-Rodríguez II [25]

¹⁵⁶ Reparations p. 184; Chinchilla [261]; ICERD Art 6

¹⁵⁷ Abdoulaye [60]; Kuric [79]; Garifuna [255]

¹⁵⁸ Maldonado Vargas [150]

¹⁵⁹ ICCPR Art. 14

¹⁶⁰ Almonacid-Arellano [154]; Nikitin [56]

Further, whenever States have not adequately investigated HR violations, they must carry out proper investigations aiming to punish those responsible.¹⁶¹

Finally, reparations may modify domestic legislation in order to fit international standards.¹⁶²

Regarding claim A, Prometheus must face a new criminal proceeding respecting his HR. Concerning claim B, WangPole should diligently investigate the invasion of SAI. As for claim C, the V11's ban must be abolished and less restrictive measures should be considered, which reasonably accommodate Neronians PWD's needs.

VI. PRAYER FOR RELIEF

MAD humbly prays this Court to adjudge and declare that:

1. Applicant's claims are admissible.
2. Professor Prometheus' prosecution, sentence and use of TITF during his trial violated his fundamental HR.
3. WAGO's refusal to prosecute the case concerning the invasion of SAI violates Prometheus and others' HR.
4. WangPole's ban on V11 violates Prometheus and others' HR.
5. Consequently, reparations must be granted.

¹⁶¹ Five Pensioners [179]

¹⁶² Olmedo-Bustos [XII,4]

VII. WORD COUNT

- Summary of arguments: 201
- Memorial: 2999