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Regional Court of
Bernese Jura-Seeland

Criminal
division
President
Richard

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SA	Geneva
27 NOV. 2025	

REGISTERED
ROLE

Order

PEN 24 764 COM

Moutier, November 26, 2025

In criminal proceedings

Public Prosecutor's Office of Bernese Jura-Seeland, Rue du Château 13, 2740 Moutier
represented by the Prosecutor Am (BJS 2023 8695)

Prosecuting authority

Werner Alain, 102, Route du pas de l'Echelle, 1255 Veyrier
Represented by Mr. Paul Gully-Hart and Etude Schellenberg Wittmer SA, 15bis Rue des Alpes, P.O. Box 2088, 1211 Geneva

plaintiff in criminal and civil proceedings

[redacted]

against

White Alan, 10681 Jackson Square Drive, Estero, FL 33928, US
represented by Mr. Lukas Bürge, Bürge & Janggen Law Firm, Hirschengraben 8, P.O. Box, 3001 Bern

defendant for defamation

The President orders:

1 The parties have been informed that Mr. Bürge has announced an appeal against the judgment of May 27, 2025, of the Bernese Jura-Seeland Regional Court.

2. The written grounds for the judgment shall be notified to the parties.

   The party that announced the appeal is advised that it is required to submit a written statement of appeal to the Criminal Chambers of the Supreme Court of the Canton of Bern, Hochschulstrasse 17, P.O. Box, 3001 Bern, **within 20 days** of notification of the reasoned judgment.

3. The file is forwarded to the Criminal Chambers of the Supreme Court of the Canton of Bern.

4. To be notified :
   - to the parties (with the written grounds for the judgment)

To be communicated :

- to the Criminal Chambers of the Supreme Court of the Canton of Bern, Hochschulstrasse 17, P.O. Box, 3001 Bern (with file PEN 24 764, pages 1 to 949).

Bernese Jura-Seeland Regional Court
Criminal Division

The President:

Richard

Applicable legal provisions

The party that announced the appeal must submit a written statement of appeal to the appellate court (Criminal Chambers of the Supreme Court of the Canton of Bern) within 20 days of notification of the reasoned judgment (Art. 399(3) and (4) CPC).

In its statement, the appealing party shall indicate:

a. whether it intends to challenge the judgment as a whole or only certain parts of it:
b. the changes to the judgment of the court of first instance that it is requesting;
c. his/her requests for evidence.

Anyone who challenges only certain parts of the judgment is required to indicate definitively in the notice of appeal which parts are being appealed, namely:

a. the question of guilt, where applicable in relation to each of the acts;
b. the severity of the sentence;
c. the measures that have been ordered;
d. the civil claims or some of them;
e. the incidental consequences of the judgment;
f. costs, compensation, and reparation for moral damages;
g. subsequent judicial decisions.

Remarks

Documents must be submitted no later than the last day of the deadline to the criminal authority, Swiss Post, a Swiss consular or diplomatic representation or, in the case of detained persons, to the prison administration (Art. 91(2) CPC).

Faxes and emails are not valid and do not meet the deadline.

The file number must be included on all submissions (PEN 24 764).

Regional Court
Bernese Jura-Seeland

Criminal Division
President
Richard

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Reason

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Prosecuting authority

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represented by Mr. Paul Gully-Hartet and Mr. George Ayoub, Schellenberg Wittmer SA, 15bis Rue des Alpes, P.O. Box 2088, 1211 Geneva

Plaintiff in criminal and civil proceedings

against

White Alan, 10681 Jackson Square Drive, Estero, FL 33928, US

Defended by Mr. Lukas Bürge, Bürge & Janggen Law Firm, Hirschengraben 8,
P.O. Box, 3001 Bern

defendant for defamation

REASONS FOR THE JUDGMENT OF 27.05.2025

Table of contents

A. IN PROCEEDINGS

1. Criminal complaint and joinder of parties

In a letter dated April 6, 2023 (D. 7ff), which was produced by Mr. Paul Gully-Hart and Mr. George Ayoub, Alain Werner filed a complaint against Alan White for defamation (Art. 173 Swiss Penal Code (cited: PC)) and/or slander (Art. 174 PC). He brought criminal and civil proceedings as the plaintiff. However, he subsequently withdrew his civil claims and did not seek damages (see letter dated June 14, 2024 in D. 277).

2. Opening of the investigation

By order dated September 28, 2023 (D. 1), the Bern Public Prosecutor's Office opened an investigation against Alan White (cited: the defendant) for slander, possibly defamation, committed on July 19, 2021, in Saint-Imier and elsewhere, to the detriment of Alain Werner.

3. Intercantonal jurisdiction

Given that the complaint was filed in both the canton of Ticino and the canton of Bern, the question of jurisdiction based on location arose (see D. 2f.). In a decision dated April 21, 2023 (D. 5f.), the Office of the Attorney General of the Canton of Bern acknowledged that jurisdiction lay with the Bernese authorities, specifically the Public Prosecutor's Office of Bernese Jura-Seeland.

4. Private defense

In a letter dated April 6, 2023 (D. 7), Mr. Werner announced that he would be represented by Mr. Gully-Hart and Mr. Ayoub, attorneys at Schellenberg Wittmer (see D. 20).

In a letter dated November 4, 2024, Mr. Bürge informed the Public Prosecutor's Office that the defendant had appointed him to defend his interests (D. 499). The power of attorney specified that the defendant had elected domicile at his office.

In a letter dated November 21, 2024, Mr. Bürge informed the Court that he was no longer representing the defendant Mr. White and requested that the authorities address the defendant directly in future (D. 509). In view of this letter, the court order dated the same day crossed paths with the letter and never reached its destination, as Mr. Bürge further noted in a letter dated December 19, 2024 (D. 552). This order was intended to notify the defendant in advance that if he revoked his election of domicile at Mr. Bürge's office, he would have to designate another domicile for service in Switzerland, failing which notifications concerning him would be published in the official gazette, in accordance with Art. 88(1)(c) of the Swiss Criminal Procedure Code (cited: CPC) (D. 512). This order did not reach the defendant.

By letter dated March 6, 2025, once the summons to appear at the hearing had been notified to the defendant in the United States through international mutual assistance, Mr. Bürge indicated that he was once again representing the defendant (D. 576f.) and produced a power of attorney (D. 578).

5. Criminal order

By criminal order dated August 15, 2024 (D. 463 to 465), the defendant was found guilty of defamation and sentenced to a fine of 90 daily penalty units at a daily rate of CHF 100.00, for a total of CHF 9,000.00, with a two-year suspended sentence, an additional fine of CHF 3,000.00 (the custodial sentence in the event of non-payment amounting to 30 days), and court costs of CHF 950.00 (fees of CHF 800.00 and disbursements of CHF 150.00). The facts of the case are as follows:

It was stated that the offense was committed on July 19, 2021, at 8:04 p.m. (local time at the place of dispatch), specifically in Saint-Imier, to the detriment of Alain Werner, and that the facts were as follows: the complainant, Mr. Werner, is the director of the organization Civitas Maxima, which aims to provide assistance and legal representation to victims of international crimes. On November 10, 2014, the Swiss authorities arrested Mr. Alieu Kosiah, who was allegedly involved in mass killings in Liberia between 1993 and 1995 during the Liberian civil war. Mr. Kosiah was allegedly a commander of the United Liberation Movement of Liberia for Democracy. In a ruling dated June 18, 2021, the Federal Criminal Court in Bellinzona, Switzerland, sentenced the defendant to 20 years in prison, in particular for ordering the murder of civilians and soldiers, for rape, and for ordering the cruel treatment of civilians. Several victims were represented by Alain Werner in this trial. During the hearing, the defendant's lawyer, Mr. Dimitri Gianoli, a lawyer in Saint-Imier, submitted an email that he had received on July 19, 2021, from the defendant.

The email contained the following:
"The charges were based upon information provided by Civitas Maxima headed by Alain Werner and Hassan Bility, Global Justice Research Project, in Monrovia, which is financed by Werner. Werner & Bility became close friends during the Charles Taylor trial. So they have been making millions of Euros pursuing cases, principally immigration fraud cases, against individuals from Liberia outside of Liberia. Their cases have been suspect based on false/coached testimony of witnesses recruited in Liberia and in return offered something of value such as money, witness protection for life in Europe and elsewhere, and in Switzerland Mohamed Kromah was reportedly provided asylum in return for providing false testimony against your client Alieu Kosiah. I have personally spoken to a couple of witnesses who said Bility offered them money and relocation to a first world country if they would provide false testimony against Kosiah." In doing so, the defendant implied, in the context of criminal proceedings, that the injured party had, essentially to earn money, recruited false witnesses in serious criminal cases and then coached them, while making certain promises to them, with a view to giving false testimony in court, thereby implying that the injured party had behaved in a manner contrary to honor, or had engaged in conduct constituting a criminal offense in the context of criminal proceedings opened against Liberia for serious crimes. In that regard, the defendant damaged the honor of the injured party by addressing to third parties (Mr. Dimitri Gianoli, Mike Müller, and Kaarle Gummerus) and, indirectly, to Civitas Maxima, an association headed by the injured party. Finally, the defendant refused to explain himself on this matter to the Swiss authorities when he had the opportunity to do so through an international letter rogatory and therefore failed to prove the truth of his allegations, or that he had serious reasons to believe in good faith that these allegations were true.

On September 16, 2024, the defendant personally filed an objection to the criminal order (D. 485) that the Public Prosecutor's Office had served on him in the United States through international mutual assistance.

It appears that the notification took place on September 16, 2024 (D. 560).

By order dated November 4, 2024, the Public Prosecutor's Office informed the parties that the criminal order was upheld and the case file was forwarded to the Regional Court for trial (D. 488). The defendant was notified of this order through international mutual assistance on November 20, 2024 (D. 560/564).

6. First hearing

6.1. Preparation

Since the court order of November 21, 2024, was unable to achieve its purpose—the mandate between the defendant and Mr. Bürge and the election of domicile having been terminated on the same day—the summons to appear on December 16, 2024 (D. 531) and to elect a domicile for service in Switzerland was sent personally to the defendant in the U.S. through international mutual assistance (Federal Office of Justice D. 542). The President of the Regional Court of Bernese Jura-Seeland, Moutier branch (hereinafter the President), set the date for the hearing of the case for April 28, 2025, and gave the defendant a deadline to submit any requests for evidence and the plaintiff a deadline to quantify and justify their civil claims (D. 531ff).

At the request of the Court, the plaintiff confirmed his complaint and his status as a party to the criminal and civil proceedings. He did not seek damages, but requested a symbolic CHF 1.00 as compensation for moral damages (D. 549f). On June 14, 2024, he had already waived his right to assert civil claims in the present criminal proceedings (D. 277).

In a letter dated March 6, 2025 (D. 576), Mr. Bürge stated that the defendant had once again instructed him to defend his interests (power of attorney with election of domicile dated February 27, 2025, in support, D. 578) and had forwarded to him the summons to appear dated December 16, 2024, which he had received on February 26, 2025. Mr. Bürge requested that the hearing scheduled for April 28, 2025, be postponed, stating that neither he nor his client would be able to attend on that date.

By order dated March 12, 2025, the President rejected the request to postpone the hearing and extend the time limit under Art. 331 CPC (D. 585ff.). Reference is made here to the content of this order, which recalls, among other things, the principle of good faith (Art. 3(2)(a) CPC), which also applies to the defendant.

On March 21, 2025 (D. 592ff), Mr. Bürge requested that his client and four witnesses be heard as evidence. He also produced ten supporting documents, requesting that they be added to the case file.
By order dated March 27, 2025 (D. 651ff), the President agreed to include in the file the supporting documents submitted. However, he rejected the request for evidence concerning the hearing of four witnesses. As for the hearing of the defendant, he noted that it was already scheduled, so the request for evidence was irrelevant.

In a letter of April 17, 2025, Mr. Gully-Hart and Mr. Ayoub submitted additional documents to be included in the file (D. 672ff).

6.2. Hearing of April 28, 2025

The first hearing of the proceedings was held on April 28, 2025 (see D. 747ff).

Present in person at the opening of the hearing were the plaintiff in the criminal and civil proceedings, Mr. Werner, represented by Mr. Gully-Hart and Mr. Ayoub, both accompanied by several colleagues, as well as Ms. Schlatter, trainee lawyer for Mr. Bürge, the lawyer representing the defendant, who filed a substitute power of attorney (D. 746). A few people were present in the audience. Ms. Black was present as a translator. The cantonal public prosecutor's office was not personally represented.

The President noted the absence of the defendant. He explained why it had to be considered that the opposition was maintained (D. 748). The principles of default proceedings were reiterated. The parties gave their opinions on this matter. The President then formally noted the absence of the defendant, and new hearings were set for May 27, 2025.

7. Second hearing

7.1. Preparation

By summons dated April 28, 2025 (D. 753ff), the second hearing was set for May 27, 2025. The summons to appear was served on April 28, 2025, directly to the associate of Mr. Bürge's law firm who was present at the hearing (D. 750), in two copies, for the attention of Mr. Bürge and the defendant, who had chosen the law office as his address for service. The defendant was made aware that if he did not appear at the new hearing, it could be conducted in his absence, in accordance with the provisions of Art. 366(4) CPC.

By letter dated May 12, 2025, Mr. Gully-Hart and Mr. Ayoub filed new additional documents to be added to the case file (D. 761ff).

In a letter dated May 16, 2025 (D. 784 et seq.), Mr. Bürge first challenged the question of jurisdiction, producing supporting evidence (D. 786). He then submitted requests for evidence in view of the hearing on May 27, 2025, and filed documents.

By order dated May 20, 2025, the documents filed in the case file were taken into account. In addition, the request to admit the jurisdiction of Neuchâtel or to issue a non-admissibility order was rejected, as were Mr. Bürge's other requests for evidence. Reference is made here to the content of this order. The Court further noted that it was submitting a few additional newspaper articles to the file of its own accord (D. 791ff).

In a telephone call on May 21, 2025, Mr. Bürge informed the Court that the parties were in settlement talks with a view to possibly signing an agreement (D. 827).

In an email dated May 23, 2025, from the law firm of Mr. Gully-Hart and Mr. Ayoub, it was confirmed to the Court that the hearing scheduled for May 27, 2025, would go ahead as planned (see D. 829).

7.2. Hearing of May 27, 2025

The second hearing of the proceedings was held on May 27, 2025 (see D. 830ff).

The plaintiff in the criminal and civil proceedings, Mr. Werner, was present in person, represented by Mr. Gully-Hart and Mr. Ayoub, both accompanied by their trainee lawyer. One person accompanied the plaintiff. Mr. Bürge was present, accompanied by his trainee lawyer, Ms. Schlatter. Ms. Black was present as a translator. The cantonal public prosecutor's office was not personally represented.

The defendant was absent for the second time. The second summons had been served on his newly appointed lawyer and on the defendant himself personally through his lawyer, with whom he had elected domicile (see power of attorney with election of domicile, D. 578). The fact that the parties had attempted to negotiate (D. 827) demonstrates that the defendant was well aware of the second summons to appear.

The President noted this absence and pointed out that the conditions for default proceedings were met in this case. He gave the parties the opportunity to express their views on this matter. The defense indicated that it did not share the Court's opinion and argued that the second summons had not been served, as it had been served on his lawyer and not directly on the defendant. The plaintiff considered that the defendant was validly represented by his lawyer and that the summons had therefore been validly served.

The President ordered that default proceedings be initiated. He briefly explained his reasoning orally. He referred to the defendant's election of domicile at his lawyer's office (D. 578), which meant that the defendant himself had been duly notified, and that the conditions of Art. 366 CPC had been met. Reference is made to the oral explanations given in the minutes (D. 832).

There were no preliminary questions from Mr. Gully-Hart and Mr. Ayoub. However, Ms. Schlatter did raise one, namely that the penalty order had not been validly notified to the defendant and that the proceedings should be dismissed or referred back to the Public Prosecutor's Office (D. 832 to 833). This argument was rejected since it was clear from the file that the defendant had indeed received the penalty order in question (D. 560). He had himself lodged an objection, which showed that he had indeed been notified of the penalty order (D. 485).

Mr. Bürge indicated that the defendant was provisionally maintaining his opposition.

Ms. Schlatter raised another question regarding the penalty order, which was addressed by the President: the penalty order did indeed refer to defamation, with the reference to Art. 174 PC instead of Art. 173 PC being a recognizable clerical error in the penalty order (D. 463ff). In fact, it is indeed the term "*defamation*" and not "*slander*" that is used, and nowhere in the statement of facts described in the indictment is there any mention that the defendant was aware of the falsity of his allegations.

The President asked Mr. Bürge whether he wished to enter into settlement negotiations. Mr. Bürge indicated that this had already been attempted but had not been successful. It was therefore abandoned.

The presentation of evidence began.

The complainant was heard.

The President listed the issues to be addressed in this defamation case. It was then proposed to the parties that they argue all these points and that, if the exculpatory evidence were admitted, if necessary, the proceedings would be resumed for the possible administration of such evidence. Failing that (if the exculpatory evidence were excluded), a judgment would be rendered (D. 840).

The defense submitted additional documents.

The President then conducted a brief additional hearing of the plaintiff, at the request of his representatives, concerning the documents newly filed by the defense.

The parties agreed to argue for the admission of exculpatory evidence at the same time as everything else (in particular, the defense's other requests for evidence related to exculpatory evidence).

No other evidence was requested or ordered at this stage.

The presentation of evidence was temporarily closed. The President stated that if, at the end of the pleadings, it appeared that the exculpatory evidence should not be excluded within the meaning of Art. 173(3) PC and that the evidence proposed by the defense appeared relevant, the proceedings would be resumed (D. 843), in accordance with Art. 349 CPC. Otherwise, as already stated, a judgment would be rendered (D. 840).

Mr. Gully-Hart reached and justified the following conclusions:

> Exclude the admission of exculpatory evidence (Art. 173(3) PC) and find the defendant guilty of defamation;
>
> Alternatively, if exculpatory evidence was not excluded, reject the defense's requests for additional evidence and find the defendant guilty of defamation.

Ms. Schlatter reached and gave reasons for the following conclusions:

> Admit the exculpatory evidence and acquit Mr. White of the charge of defamation within the meaning of Art. 173(1) PC;
>
> Charge the costs of the proceedings to the Canton of Bern;
>
> Pay compensation to the defendant in accordance with Art. 429 CPC for defense costs in accordance with the fee note submitted by Mr. Bürge;
>
> Award compensation for moral damages in the amount of CHF 500.00 pursuant to Art. 429(1)(c) CPC for a particularly serious infringement of his personality rights in connection with the criminal proceedings against him;
>
> Dismiss the civil action brought by the plaintiff, or alternatively, refer the plaintiff to civil proceedings, with costs and expenses.

A reply was submitted by Mr. Gully-Hart. Mr. Bürge declined to file a rejoinder.

The hearing was closed, and the Court withdrew to deliberate in private.
When the hearing resumed, the judgment was delivered orally and briefly explained. The operative

part of the judgment was notified to the parties in writing immediately and was notified to the Public Prosecutor's Office in writing. Two copies were given to Mr. Bürge—one for himself and one for his client, who had elected domicile at his office.

8. Notice of appeal

In a letter dated June 4, 2025 (D. 897), Mr. Bürge announced, on behalf of Mr. White, the appeal against the judgment of May 27, 2025. The parties were notified of this by order dated June 16, 2025 (D. 905).

B. ASSESSMENT OF THE EVIDENCE AND ESTABLISHMENT OF THE FACTS

1. Preliminary remarks

The subject matter of the proceedings is relatively simple and should not be exceeded.

The question is whether the email dated July 19, 2021, addressed primarily to Mr. Gianoli, who has his office in St-Imier (with copies sent to two other people)—an email that came to light in the appeal proceedings against Alieu Kosiah (defended by Mr. Gianoli) before the Federal Criminal Court in Bellinzona—constitutes an attack on the honor of the plaintiff and, where applicable, if the defendant can be allowed to provide evidence to prove his good faith (or the truth) and, where applicable, if he is able to provide it by the means of evidence proposed

It should be noted that each previous order has already been justified, particularly with regard to jurisdiction based on location or the conditions of the default proceedings, given that the defendant has been systematically summoned in accordance with the rules of procedure. Reference is made to this.

We can also refer to the order of March 12, 2025, regarding the refusal to postpone the hearing to a later date, which has also already been justified.

2. Context surrounding the filing of the complaint

This case arises from a professional context. The complainant, Mr. Werner, is a lawyer and director of the NGO Civitas Maxima, whose purpose is to provide assistance and legal representation to victims of international crimes.

The complainant, Mr. Werner, represented the plaintiffs in the Swiss trial against Mr. Alieu Kosiah, who was involved in a mass massacre in Liberia, in Lofa County, between 1993 and 1995, during the first Liberian civil war. He was arrested in Switzerland on November 10, 2014, following several complaints filed by Liberian victims. The trial took place in 2020 (for the first instance), and the appeal was heard from January 11, 2023, to February 3, 2023, before the Criminal Chamber of the Federal Criminal Court in Bellinzona (SK.2019.17, D. 44ff).

During his trial before the Federal Criminal Court, Mr. Alieu Kosiah stated on January 13, 2023, that the organization of the complainant, Mr. Werner, was a criminal organization, and that a former friend of the complainant, namely the defendant, Mr. White (who was allegedly the "*chief prosecutor*" in the prosecution of Charles Taylor), believed the same thing. The defendant (Mr. White) had written to

Mr. Kosiah's lawyer, Mr. Gianoli, to say that he was the chief investigator at the SCSL, that he had led the prosecution against Taylor, that he had information, and that Mr. Gibril Massaquoi (another defendant in the crimes) had won his case in Finland (D. 81).

It was in the context of this trial that Mr. White sent the disputed email on July 19, 2021, to Mr. Gianoli, Mr. Kosiah's defense attorney, who has his office in St-Imier. It was during the appeal trial of Mr. Kosiah on January 17, 2023, that Mr. Gianoli submitted the disputed email dated July 19, 2021 (D. 64).

This famous email, which appears in the file D. 64 to 66, contained accusations against Mr. Werner, in particular, that the complainant and Hassan Bility allegedly instigated witnesses to lie during trials in exchange for benefits. It was said that the complainant and Hassan Bility would earn millions of euros by prosecuting cases involving Liberian individuals outside Liberia. For example, the defendant stated in this email that Mr. Mohamed Kromah had been granted asylum in exchange for false testimony against Mr. Kosiah.

Based on the content and statements made in the email, the complainant states in his complaint that he felt his honor had been damaged. He also added that the information was completely false, highly disputed, and absolutely unfounded (D. 17). In his letter dated August 31, 2023, the complainant adds that the defendant continues his actions behind the scenes while refusing to appear before the Court. Civitas Maxima depends on the support of donors, who could turn away from the organization because of such allegations against the complainant (D. 192 to 193).

It is in these circumstances that the complainant filed a complaint against the defendant on April 6, 2023, for defamation.

3. Admitted and contested facts

The defendant had many opportunities to express himself. However, he only took advantage of this opportunity once, after repeatedly refusing to answer questions submitted through international mutual assistance. At the second hearing on May 27, 2025, his lawyer provided answers to only five of the 75 questions sent to him in a letter rogatory dated December 11, 2023 (D. 242-247 questions; D. 849-850 answers).

The defendant does not dispute authorship of the contested email (D. 849) and acknowledges that he independently decided to write it.

The core facts are therefore relatively clear and straightforward to establish with regard to the basis of the offense, namely the incriminating email. The email is contained in the case file and is expressly cited in the judgment of the Federal Court of Appeal (CA.2022.8), in proceedings in which Mr. Gianoli represented the defendant, Alieu Kosiah. Page 49 of this judgment (D. 303, consid. 6.3.2) confirms that the email referred to is the same as the one contained in our file at D. 64ff. The same terms are used. And these are the ones used in the criminal order serving as an indictment, namely:

“The charges were based upon information provided by Civitas Maxima headed by Alain Werner and Hassan Bility, Global Justice Research Project, in Monrovia, which is financed by Werner. Werner & Bility became close friends during the Charles Taylor trial. So they have been making millions of Euros pursuing

cases, principally immigration fraud cases, against individuals from Liberia outside of Liberia. There cases have been suspect based on false/coached testimony of witnesses recruited in Liberia and in return offered something of value such as money, witness protection for life in Europe and elsewhere, and in Switzerland Mohamed Kromah was reportedly provided asylum in return for providing false testimony against your client Alieu Kosiah. I have personally spoken to a couple of witnesses who said Bility offered them money and relocation to a first world country if they would provide false testimony against Kosiah."

When questioned by the Federal Criminal Court, the defendant never denied being the author of the email, merely responding through his lawyer that he believed his testimony would be of little interest (D. 303 and email D. 778). As already noted, he confirmed in the present proceedings that he was the author of the email in question in a written response filed on May 27, 2025 by his lawyer (D. 849). Nor does he dispute having sent the email to three people, namely Mr. Gianoli, Mr. Müller, and Mr. Gummerus (D. 849, email D. 64-65).

However, he states that he did not initiate contact with Mr. Gianoli; he was copied into a conversation initiated by Mr. Müller. He claims that he had no malicious intent and explains the basis for his allegations. According to the defense, the defendant acted in good faith. This will be examined below.

4. Principles concerning the assessment of evidence

4.1. Presumption of innocence, free assessment of evidence, and the principle of *in dubio pro reo*

According to Art. 10 CPC, everyone is presumed innocent until proven guilty by a final judgment. The court freely assesses the evidence gathered based on its innermost conviction derived from the proceedings as a whole. Where there remain insurmountable doubts as to the factual elements justifying a conviction, the court shall base its decision on the facts most favorable to the defendant.

The first paragraph enshrines the presumption of innocence (also provided for in Art. 32(1) Cst. [RS 101], Art. 6(2) of the ECHR [RS 0.101) and Art. 14(2) of the UN Covenant II [RS 0.103.2]). It implies that a conviction must be based on the judge's firm belief that the evidence establishes the defendant's guilt.

There are thus two aspects to the presumption of innocence: a rule concerning the burden of proof and a rule concerning the assessment of evidence. As a rule concerning the burden of proof, the presumption of innocence implies that it is not up to the defendant to prove his innocence, but up to the prosecution (together with the judge) to prove the existence of each of the constituent elements of the offense, as well as the guilt of the defendant (See the Romand commentary (cited: RC) of the CPC-VERNIORY, Art. 10 CPC n. 16). With respect to the assessment of evidence, it should be recalled that in a system of free evaluation of evidence, any piece of evidence may, depending on the circumstances, form the basis of the judge's conviction.

The accused is presumed innocent until proven guilty. The presumption of innocence remains until the judge is convinced of the defendant's guilt. A criminal conviction cannot be based on mere probability. In principle, the only admissible standard of proof is guilt beyond a reasonable doubt (RC CPC- VERNIORY, Art. 10 CPC n. 17 and references cited).

However, the presumption of innocence is not violated by a guilty verdict based solely on the victim's

testimony. This is particularly common in cases of sexual assault, where the victim is often the only witness (judgment 1P.677/2003 of August 19, 2004, consid. 3.3, confirmed by the judgment of July 10, 2019 of the Criminal Appeals Chamber of the Cantonal Court of Fribourg, 501 2018 209, consid. 2.2.3). In such circumstances, the victim's statements must be assessed as credible and must convince the judge beyond a reasonable doubt (judgment 1A.170/2001 of February 18, 2002, consid. 3.4.1, confirmed by the judgment of July 10, 2019 of the Criminal Appeals Division of the Cantonal Court of Fribourg, 501 2018 209, consid. 2.2.3).

4.2. Credibility analysis of statements

According to BENDER/NACK, statements are considered credible when they are clear, individualized, and coherently structured, and when they provide a rich and detailed account of the core facts capable of being established. (BENDER/NACK, Tatsachenfeststellung vor Gericht, 1995, 2nd ed., p. 68). The person being heard must behave naturally during the hearing, in a manner consistent with the content of the statements, and recount their experiences clearly, fluently, and in sufficient detail. A further indicator supporting the credibility of a statement is the absence of particularities or unusual features in its genesis.

In the analysis of statements, primary emphasis is placed on their content. That content must be assessed in light of the manner in which the person questioned presents the facts, the overall context of the trial, the motivations underlying particular statements, and, finally, through comparison with other available sources of information (HAUSER, Der Zeugenbeweis, Zürcher Schriften zum Verfahrensrecht, Band IV, p. 311ff).

The text of the statement must therefore be subjected to critical analysis, consisting of examining the existence of elements supported by reality and the absence of fanciful or misleading signs (see BENDER, Die häufigsten Fehler bei der Beurteilung von Zeugenaussagen, in RSJ 1985 p. 53ff). In this context, particular attention should be paid to how the person being interviewed perceives the facts, the determination with which a statement was made and its objectivity, the consistency and internal coordination of the statements made, the manner in which the statement was made and how it evolved, its consistency on essential points, its consistency with other evidence, and general life experience.

When analyzing the content of statements, special emphasis should be placed on indicators of reality as well as on signs suggesting fantasy or falsehood (for criteria, see NACK, Glaubwürdigkeit und Glaubhaftigkeit, Kriminalistik 4/95, p. 257ff, and BENDER, op. cit.).

The following are considered criteria of reality: detail, individuality, continuity, and consistency. On the other hand, the following are signs of falsehood:

- significant inaccuracies or contradictions;
- the withdrawal or significant relativization of statements;
- exaggeration of facts during successive hearings;
- long-winded, unnecessary explanations or vague, evasive, or dodgy answers, or, on the flip side, stereotypical, repetitive comments;

- reluctance to reveal interesting events and abandonment of this reluctance when it comes to unimportant details;
- refusal to elaborate on facts regarding questions that could not be prepared; or
- inappropriate or ambiguous choice of vocabulary.

According to statement psychology (see the renowned publications on statement psychology by ARNTZEN, BENDER, NACK, WEGNER, UNDEUTSCH, TRANKELL, as well as the good summary by ZWEILDLER THOMAS, Würdigung von Aussagen, in ZBJV [1996] 132 p. 105ff), the personality of the person being questioned and their general credibility play a secondary role here.

Due to the specific conditions of memory psychology, the first statement is of decisive importance (ATF 129 I 49, consid. 6.1, JdT 2005 IV 141, recently confirmed by ATF 147 IV 409, consid. 5.4.1.). As a result, in the event of contradictory statements by the same person during the proceedings, the rule of evidence assessment should in principle be applied, according to which the first spontaneous statements are generally free from bias and more reliable than subsequent statements, as the latter may have been consciously or unconsciously influenced by subsequent reflections, particularly regarding their scope and consequences (ATF 142 V 590, consid. 5.2, which confirms ATF 121 V 45, consid, 2a, 115 V 133, consid. 8c).

5. Credibility analysis

5.1. Credibility of the defendant's statements and analysis of his behavior

The defendant was never heard, either by the Public Prosecutor or by the Court, despite having had several opportunities to speak. During the investigation, he refused to answer the Prosecutor's questions. Subsequently, he failed to appear at any of the hearings.

At most, his few written responses to questions asked by letter rogatory during the investigation, submitted on May 27, 2025, indicate that he denies having had any malicious intent in writing the disputed email (D.849). This allegation should be examined in depth.
The defendant states in his written response filed on May 27, 2025 by the defense that he did not initiate contact with Mr. Gianoli, but was copied in by Mr. Mueller, who, as he understood it, was seeking to provide useful and exculpatory information to Mr. Gianoli in the Alieu Kosiah trial. However, this does not explain why he decided on his own initiative to write directly to Mr. Gianoli to make such incriminating allegations against the plaintiff, in particular. The Federal Criminal Court of Appeal, in its appeal ruling of May 30, 2023, had, on the contrary, found that the fact that he had spontaneously contacted Mr. Gianoli seemed to indicate that he had acted in his own personal interest (D. 306, consid. 1.1.2.3). It should be noted that the defendant is renamed "*Carlos Ellis*" in the partially anonymized version of this judgment in the file.

Furthermore, we can also note in the defendant's behavior the contradiction between the content of his email to Mr. Gianoli, Alieu Kosiah's defense attorney, which uses strong language and paints a very clear and very negative picture of the plaintiff and Mr. Hassan Bility (D. 64ff), and his subsequent

behavior in responding to the Federal Criminal Court of Appeal, which is in charge of Alieu Kosiah's trial, through Mr. Gianoli, that his hearing would be of little interest because he did not believe he personally had sufficient relevant information directly related to the cases (D. 778). The Federal Criminal Court of Appeal had already held that this "*nullified the allegations contained in the email of July 19, 2021*" (D. 303, judgment of May 30, 2023, consid. 6.3.2, see also D. 306, consideration 1.1.2.3).

In his disputed email of July 19, 2021, the defendant claimed that witnesses stated Mr. Bility had offered money and relocation to a *"first world*" country (as opposed to Third World countries) in exchange for false testimony. When asked to identify these witnesses and explain how he obtained this information, he referred instead to a certain Mr. Alvin Smith (see written response D. 850), despite having previously stated that he himself had personally spoken to the witnesses (D. 64). His response filed on May 27, 2025 omits this entirely creating a contradiction that undermines both the credibility of his statements and the reliability of his intentions.

The defendant also claims, in his disputed email of July 19, 2024, that Mohamed Kromah was promised asylum in Switzerland in exchange for giving false testimony against Mr. Gianoli's client, Alieu Kosiah. The Federal Criminal Court of Appeal has already had the occasion to respond to this: to claim this is to ignore how the asylum procedure works in Switzerland (consideration 1.1.2.2, D. 305). It should be noted that Mohamed Kromah is referred to as Waldrop in this judgment, as can be seen in consideration 1.1.2.3 (D. 306). Furthermore, the accusation of having *"offered asylum in exchange for false testimony against Alieu Kosiah*" was based on documents signed by the complainant and Mr. Hassan Bility, which simply gave their opinion that the person concerned would be in danger if returned to Liberia. The Federal Criminal Court of Appeal concluded that their actions were in no way open to criticism. Finally, the Federal Criminal Court of Appeal emphasized that Mohamed Kromah's testimony had been anything but negative for Alieu Kosiah (D. 305). The accusations reported in the defendant's email in this regard are therefore meaningless.

In his written responses of May 27, 2025, the defendant asserts that he knew the charges against Gibril Massaquoi, who was indicted in Finland, were false, since, at the time of the alleged offenses, Massaquoi was not in Liberia but under the witness protection program of the Special Court for Sierra Leone. He claims to have learned that it was the complainant who provided the (false) information against Massaquoi, as well as several prosecution witnesses, and explains that his source for his accusations against the complainant and Mr. Hassan Bility was Mr. Alvin Smith, who himself had a source among the witnesses who had been "*coached* by the complainant and Hassan Bility, and that Alvin Smith's allegations also appeared in articles in newspapers and that there is written testimony from Alvin Smith in the Massaquoi trial that would confirm all of this.

It must therefore be noted that, with regard to the accusations against the plaintiff of having instigated witnesses to give false testimony, the defendant is now placing all the blame on Mr. Alvin Smith, on what emerged from the Massaquoi trial, and on newspaper articles.

The Massaquoi trial is also mentioned in the Federal Criminal Court’s appeal judgment. In this regard, in

the partially anonymized judgment of May 30, 2023, which is included in the case file, Massaquoi has been renamed "*Sean Landa*," Alan White has been renamed "*Carlos Ellis*," and Hassan Bility has been renamed "*Dai'iel Todd*" (see remarks in D. 279). It is stated that the absence of a conviction for "*Sean Landa*" (Gibril Massaquoi) in Finland does not in any way allow for the existence of evidence of witness tampering to be retained (D. 306, judgment of May 30, 2023, consid. 1.1.2.2.).

Indeed, it can be seen from the Finnish judgment, on appeal by the prosecution, in the Massaquoi case (submitted in English by the defense on May 16, 2025, on a USB key, D. 787) that there is no mention anywhere of bribed witnesses. Nothing was retained concerning false testimony. On the contrary, there is mention of problems with memory and identification, given the long period of time that had elapsed. The possibility of unconscious transference, the identification of a person known from another context, could not be ruled out, for example (p. 91). Reference is also made to pages 26 to 29 of this judgment. The Finnish Court of Appeal repeatedly emphasizes that the difficulties encountered in assessing the testimony are exclusively due to objective and general factors, such as the passage of time (nearly 20 years since the events, p. 91), the inherent weaknesses of human memory, the influence of subsequent exchanges between witnesses and relatives, and the media impact of the case at the time of the investigation (USB key D. 787).

Thus, the Finnish court expressly states that:

> *"Recollections fade over time and details are forgotten"* (p. 26).
>
> *"In this case, changes in witness testimonies may be caused, on the one hand, by better recollection of the facts during a later hearing. On the other hand, there is a reasonable possibility that the witnesses' recollections of the events have been mixed with the circumstances of other events and have been influenced at different stages by conversations with other people"* (p. 28).
>
> *"In the case of the pre-trial investigation hearings conducted after March 2020, there is a reasonable risk that news coverage had already influenced the perception of the witnesses who identified Gibril Massaquoi as the perpetrator during the pre-trial investigation"* (p. 29).

Nowhere does the Court conclude that there was any active manipulation of witnesses or incitement to lie. On the contrary, it emphasizes the fragile and fallible nature of human memory, exacerbated by the passage of time and unintentional external influences.

There is no trace of established facts of bribed witnesses in the judgment of the Massaquoi case. On the contrary, the defense had again submitted newspaper articles from a witness, L4, who claimed to have been paid to testify. However, the newspaper later retracted the report, stating that the journalist had not adequately verified his sources (p. 15, on exhibit 24).

In conclusion, the judgment in the Massaquoi case does not in any way uphold the existence of organized false testimony or bribed witnesses. Any interpretation to that effect is not only erroneous, but also constitutes a clear distortion of the content of the judgment.

The defendant claims to base his case on the allegations of Alvin Smith. Yet, according to PJ 4 submitted by the defense during the proceedings (D. 858 to 859), Smith asserts that Massaquoi’s acquittals in the

first and second instances in Finland "*prove*" that the witnesses lied under oath and that the complainant and Mr. Bility coached them to lie and conspired to falsely accuse Massaquoi. This assertion is seriously incorrect. Massaquoi's acquittals in the first and second instances in Finland do not demonstrate that the witnesses deliberately *"lied*" under oath, as the court's findings reflects its assessment and application of the benefit of the doubt. Above all, it would not prove that these witnesses were coached to lie by the complainant or by Hassan Bility.

It is incomprehensible that a person of good faith—and as experienced as the defendant—could also interpret the judgment in the Massaquoi case as proof that the witnesses lied under oath, and worse still, were instigated to lie under oath. It is incomprehensible that the defendant could thus follow Alvin Smith's absurd statements in this regard. Remarks on this subject are also included in the judgment of the Federal Criminal Court of Appeal of May 30, 2023, consid. 6.3.3. (D. 303) and consid. 1.1.2.5 (D. 306), under the name "*Barry Ortega*." The Court was surprised "*by the level of English used in the emails in view of the alleged functions"* and noted the irrelevance of the evidence presented.

With regard to newspaper articles, it should be noted that they do not have particular probative value and do not really allow facts to be established. At most, they can serve as indications, but the Court does not base its findings solely on newspaper articles. It is surprising that a former investigator for a UN Special Tribunal would dare to cite newspaper articles as sources for these allegations, as this does not seem serious.

These articles can only establish the existence of tensions and disagreements between the various parties in this case.

Taken together, however, they constitute a body of converging evidence that supports the thesis that Mr. Bility and the complainant, Mr. Werner, are the targets of a smear campaign, as the Federal Criminal Court held in its judgment. In this regard, reference is made to paragraph 1.1.2.5 of the judgment of May 30, 2023 (D. 306 to 307), which can be reproduced here as is. It was held that the incriminating articles were characterized by the reproduction of vague (generally unsourced) information and the recurrence, as the only tangible element, of a so-called infiltrated source among the witnesses whose credibility was "*undermined*" and who allegedly exchanged messages with the defendant in the present case. The fact that six articles appeared on January 25 and 26, 2023, during the appeal hearings, and the clearly incriminating and outrageous style of said articles, in addition to being repetitive, also clearly pointed to a smear campaign. One can note that this did not cease after the judgment on appeal by the Federal Criminal Court, in view of exhibits 1 to 8 filed by the defense on March 21, 2025 (D. 596).

It is surprising that the defendant, who is experienced, should attempt to claim in good faith that he is relying on such articles, which clearly did not convince the Federal Criminal Court.

Finally, the defendant's behavior during the proceedings, which consists of refusing to answer the prosecutor during the investigation under an international mutual assistance request, and subsequently requesting to be heard before the court without appearing in person, raises serious concerns. Such behavior is contradictory and seems to be marked by bad faith.

We may also note that the defendant revoked his lawyer's mandate and elected domicile at his law firm after the Public Prosecutor's Office referred the case to the Court, only to reactivate the mandate as soon as the summons to appear in court reached him in the United States. This maneuver appears to have been purely dilatory, aimed at obstructing the progress of the proceedings so that the four-year statute of limitations would expire before a first instance judgment could be rendered (Art. 178(1) and 97(3) PC).

In summary, the defendant's allegations, whether in his disputed email or subsequently in his few written responses dated May 27, 2025, filed with the Court, lack credibility.

5.2. Credibility of the plaintiff's statements

With respect to Mr. Werner, he was heard in person only once, during the second hearing.

His statement contains several elements that support its credibility. First, it is clear, structured, and responds directly to the questions asked. When asked about Mr. White's identity and role, the complainant provides a precise and orderly response. *"Mr. Alan White is American. He was head of investigations for the Special Court for Sierra Leone from 2002 to 2005. That is how I came to know him, because at the time I had been sent by the Swiss Federal Department of Foreign Affairs (FDFA), Political Affairs Division 4, by the FDFA's pool of experts. I was sent there as an expert to work as a lawyer for the Office of the Prosecutor*" (D. 834 li. 21-25). The account is not limited to a general statement but includes the context, the functions performed, and the dates, which demonstrates a logical structure and a wealth of detail.

Secondly, the complainant's statements are distinguished by their individuality and precision. He does not merely describe events in vague terms, but gives names, places, and institutions. When referring to his subsequent contacts with Mr. White, he qualifies his remarks *"[...] he sent me emails either congratulating me or asking me to talk, but it was sporadic, this way of staying in touch*" (D. 835 li 17-18). The mention of the sporadic nature of these exchanges reinforces the impression of a story rooted in real experience, far from exaggeration or generalization.

The internal consistency of the statement is also evident from the examination. The complainant carefully distinguishes between what he saw and experienced and what he learned from external sources. Regarding BW Global Group LLC, he states: "*I, what I knew afterwards, what I learned indirectly from the press or from reports by organizations {…} "* (D. 834 li. 34-35). This type of distinction demonstrates an effort at objectivity and enhances credibility. The same is true when he refers to the creation of a possible war crimes tribunal in Liberia: *"What I know so far, for the most part, is what has been reported in the press, particularly in the Liberian press*" (D. 835 li. 29-30)

The statement as a whole remains consistent and coherent. The complainant's account of the Massaquoi case illustrates this consistency. He describes the chronology in detail*: "it dates back to 2017-2019 "* (D. 836 li. 16), the nature of the information provided *"[...] the crimes allegedly committed by Massaquoi in 2001-2002 in Liberia*" (0. 836 li. 16-17) and the procedural consequences *"[...] the Finns took our information [...] and then they opened a confidential investigation [...]"* (0. 836 li. 18-20). This consistent precision regarding places, dates, and individuals demonstrates a desire to accurately recount the facts

and shows that the complainant remains objective.

On several occasions, the complainant acknowledges his limitations and qualifies his statements. For example, in response to a question about the possible establishment of a court in Liberia, he states: *"What I knew [...] was that Mr. White had been commissioned by certain politicians [...]*" (D. 834 li. 34-37). The use of terms such *as* "*what I understood "* (li. 37-38) or "*According to what appeared in the newspapers [...]*" (D. 835 li. 32) shows that he does not claim to have more knowledge than he actually has. Far from adopting an accusatory or exaggerated tone, he simply recounts what he knows.

Finally, the statement is notable for the absence of any signs of lying. There are no major contradictions, bearing in mind that he was only interviewed once. His tone remains measured and consistent with the explanations provided previously. For example, when he mentions the civil complaints filed against him, he does not try to downplay their existence: "*No*, *nothing like that. Wait, I have two civil complaints against me [...]*" (D. 838 li. 20). This transparency is consistent with a desire to explain everything, even things that could be unfavorable to him.

Ultimately, the statement appears to be rich in detail, individualized, consistent and coherent. The complainant carefully distinguishes between personal experiences and indirect information, his behavior is natural and his statements show no signs of fabrication. All of this leads to the conclusion that the account is credible and can be relied upon as a reliable basis for the assessment of evidence.

6. Other contextual elements

The facts surrounding the sending of this email on July 19, 2021, and the role currently played by the defendant in relation to the NGO of which the plaintiff is the director remain relatively unclear, particularly highlighted by the press campaign against the NGO Civitas Maxima noted in the judgment of the Court of Appeal of the Federal Criminal Court (considering 1.1.2.5 of I judgment of May 30, 2023, D. 306 to 307).

With regard to the defendant, various documents in the case file show that he has in the past served under the orders of the Prosecutor, among the investigators, at the Special Court for Sierra Leone, an international court created by the Government of Sierra Leone and the United Nations to try those most responsible for crimes, notably in the trial of Charles Taylor. This is also evident from the statements made by the complainant during the hearing.

A key witness for the prosecution against Charles Taylor was Mr. Massaquoi (although his role for the prosecution is now being questioned according to some articles submitted to the court, see Justicelnfo.net, Massaquoi case, investigation into the Sierra Leone spy, D. 800ff, particularly D. 807).
The fact that this prosecution witness, who had been protected in the trial against Charles Taylor and had sought refuge in Finland, appears to have been the trigger for the dispute between the defendant and the complainant. This was confirmed during the proceedings (see statements by the complainant, D. 836, li. 4ff, which specified that the extension of the charges to the period when Gibril Massaquoi was in a "*safe house*" under the defendant's responsibility was not due to the information provided by his NGO, but rather from the Finnish investigators themselves, a development the plaintiff expressly regretted.)

The defendant is now involved in the politics of the countries concerned, having registered "*BW Global Group LLC*" as representatives in the US of *"Liberia Renaissance Offices Inc*" in particular (see registration dated August 24, 2021, and exhibits D. 687 to 723). He appears to support certain political movements there, representing their interests before the U.S. Congress in particular.

In light of certain press articles submitted, his current role appears divisive, particularly with regard to the use of signatures of members of the association of survivors of the massacre in Liberia, who accuse him of having used said signatures without their consent, according to an article added to the file by the President, D. 814ff and D. 818. It should be noted that an article does not constitute proof of anything, but simply that criticism has been made.

Furthermore, Ambassador Van Schaack stated last summer before the U.S. Congress that the unfounded accusations made by the defendant against human rights activists were detrimental to civil society (D. 819ff). It should be noted that this person's opinion was simply reported in a press article and does not, of course, constitute "*proof*" of anything.

In summary, for the Tribunal—which does not want to and must not rule on these matters—what matters here is to note that the defendant is active in the region concerned, as a representative of private interests and public relations, even before the U.S. Congress. Whether this is good or bad is not the issue here, nor is it within the jurisdiction of the Tribunal. All that matters is to note that there are indeed interests at stake for the defendant and for the people he represents.

It appears that the defendant also wishes, according to certain articles filed, to position himself to play a role in a future court that is to be created, with the help of the U.S. Congress, to deal with war and economic crimes (see Liberian Investigator, article added to the file by the President, D. 814ff). It appears that the defendant does not want the plaintiff's NGO to participate in this court, according to statements made before the U.S. Congress in the summer of 2024 (D. 820).

It is not a question here for the Tribunal to establish the facts concerning the defendant's current activities, but simply to note that he plays a role in these countries, where he conducts his business and career, and that he defends or represents the interests of certain political factions.

There therefore appears to be a competition, from the defendant's perspective, between the plaintiff and himself, concerning the role each could play in a court to be established in Liberia.
The plaintiff, through its NGO Civitas Maxima, acts on behalf of victims of war crimes and crimes against humanity, and played a role in the lawsuit against Massaquoi, conducting investigations in 2018 and sharing its findings with the Finnish authorities (https://civitas-maxima.org/september-8-2023-finland-day-60-the-defenses-closing-arguments/). Reference can be made here to the association's statutes (see D. 24ff) and to the credible statements made by the plaintiff heard by the Court during the hearing.

The complainant represented the plaintiffs in the Swiss lawsuit against Alieu Kosiah, in which the disputed email was sent by the defendant to Alieu Kosiah's defense attorney on July 19, 2021, Mr. Gianoli, who has his law firm in St-Imier.

It thus appears that the interests of Civitas Maxima on the one hand and those of the defendant—or respectively the interests of those he represents and for whom he acts—on the other hand, diverge with

regard to the prosecution of certain individuals or the manner of handling the prosecution of crimes in these countries.

The defendant therefore has an objective interest in damaging the reputation, and thus the influence, of Civitas Maxima, in particular by alleging facts that are damaging to the honor of the plaintiff, who is its director.

7. Conclusion

In light of the above, considering the context (section 6 above) and also what has been said in the examination of the credibility of the defendant's statements (section 5.1 above), it seems clear that the email sent to Mr. Gianoli by the defendant on July 19, 2021 was indeed motivated by malicious intent toward the complainant, with the aim of speaking ill of others, and without sufficient grounds, given the total absence of any credible basis for the allegations, nor regard for the public interest, the defendant subsequently declined to appear before the Federal Criminal Court of Appeal, claiming that he did not have sufficient relevant evidence to support his allegations.

C. LAW

1. Defamation (Art. 173 PC)

1.1. Preliminary remark

It should be noted here that only the charge of defamation is to be examined, notwithstanding a clerical error in the indictment, which referred to Art. 174 PC instead of Art. 173. This has been clarified with the parties in the preliminary ruling (D. 833 and Art. 344 CPC if necessary), as the facts of the indictment do not in any case allow for the examination of possible slander, since they do not indicate that the defendant was aware of the falsity of his allegations.

1.2. Applicable law

Under Article 2 of the Swiss Penal Code (PC; RS 311.0), anyone who commits a crime or offense after the entry into force of this code shall be judged according to this code (para. 1). This Code shall also apply to crimes and offenses committed before the date of its entry into force if the perpetrator is brought to trial after that date and if this Code is more favorable to him than the law in force at the time of the offense (para. 2). The article in question thus enshrines the general principle of the non-retroactivity of new criminal law, insofar as criminal law is not intended to deal with facts that occurred before its entry into force.

However, the exception provides for the application of the new law to acts committed before its entry into force when the new law is more favorable to the perpetrator than the old law *(lex mitior:* NATHALIE DONGOIS/KASTRIOT LUBISHTANI, Commentaire romand du Code pénal, 2e ed. 2021, no. 2 ad Art. 2 PC).

The entry into force of the revision of the Criminal Code and special laws (in accordance with the Federal Act on the Harmonization of Penalties; FF 2021 2997) on July 1,2023, did not change the criminal penalty for defamation. The offense of defamation itself was subject to purely linguistic (cosmetic) changes, which

had no impact on the substance. Furthermore, these linguistic changes were only made in the French version and not in the German version. The question of the applicable law depending on the time does not therefore arise. The wording in force at the time of the events will nevertheless be used below.

1.3. Formal condition for prosecuting the offense

The offense of defamation is only prosecuted upon complaint, according to the terms of Art. 173 PC. The complaint must be filed within three months. The period runs from the day on which the entitled party became aware of the perpetrator of the offense (Art. 31 PC by reference to Art. 178(2) PC).

"The three-month period referred to in Article 31 shall commence on the day on which the author becomes known to the right holder. This knowledge must be sufficiently certain to allow the injured party to consider that they would have a strong chance of success in prosecuting the perpetrator, without risking being sued for false accusation or defamation. Mere suspicion is not sufficient, but it is not necessary for the injured party to already have evidence. Thus, for example, where the injured party has had suspicions for some time about the existence of an offense but only later received the evidence to verify them, it is the date of this confirmation that is decisive. The time limit for filing a complaint begins to run from the moment the perpetrator can be identified, even if their name is not known to the injured party." (RC PC I - 2e "e ed. 2021 — Katia Villard, Art. 31 PC no. 8 and references cited.

It is apparent from the case file that the disputed email was submitted to the Appeals Chamber of the Federal Criminal Court on January 17, 2023 (as noted in D. 64), following statements made by the accused in separate proceedings, Alieu Kosiah, on January 13, 2023 (D. 67 in conjunction with D. 81). The complaint addressed to the Public Prosecutor's Office of Bernese Jura – Seeland on April 6, 2023 (D. 8) was therefore clearly filed within the time limit. There is no evidence to suggest that the complainant was aware of the facts and the disputed email before hearing about them in Alieu Kosiah's appeal trial. Furthermore, it appears that the three-month period only began to run once the facts had been sufficiently established, i.e., once the email in question had been submitted to the Court, as the statements made by the accused Alieu Kosiah did not appear to be sufficient in themselves. In any event, even if the three-month period is calculated from the statements made by Alieu Kosiah, the deadline for filing a complaint has been met.

1.4. Constituent elements of the offense

In accordance with Art. 173(1) PC, anyone who, when addressing a third party, accuses a person or casts suspicion on them of conduct contrary to honor, or of any other act likely to damage their reputation, or anyone who spreads such an accusation or suspicion, shall, upon complaint, be liable to a monetary penalty (meaning a penalty of up to 180 daily fines).
Pursuant to Art. 173(2) PC, the accused shall not be punished if he proves that the allegations he made or disseminated are true or that he had serious reasons to believe them to be true in good faith. However, in accordance with Art. 173(3) PC, the accused shall not be permitted to provide such evidence and shall be punishable if his allegations were made or disseminated without regard for the public interest or in the absence of other sufficient grounds, and primarily with the intention of defaming others, particularly when they relate to private or family life.

Accordingly, from an objective standpoint, defamation implies damage to reputation and communication of

the defamatory statement to a third party. Subjectively speaking, the offense requires intent.

1.4.1. Damage to reputation

Art. 173 PC protects the honor and reputation of individuals. Honor is understood as the right to respect, a right that is violated when allegations are made that expose the person concerned to contempt as a human being. This concerns a person's reputation and their sense of honor, understood as the standing of an individual who conducts themselves in a manner consistent with the behaviour expected of a dignified person under generally accepted social standards. (RIEBEN/MAZOU in: MACALUSO/MORELLION/QUELOZ, Romand Commentary Penal Code II, Basel 2017, Art. 173 PC n.1-2 [cited: RC PC II])

Where the perpetrator makes allegations that do not directly concern the conduct of the person targeted, in particular statements intended to seriously harm that person by disclosing allegedly reprehensible behaviour of one of their relatives, the offence under Art. 173 PC may likewise be constituted (RC PC II-RIEBEN/MAZOU, art. 173 CP n. 7-8).

"*Conduct contrary to honour* " refers to behaviour attributable to the person concerned which, from the standpoint of generally accepted moral standards, is capable of lowering that person's reputation or esteem in the eyes of third parties. The latter does not necessarily have to be punishable under criminal law. As for "*acts likely to cause harm to reputation*," these are allegations made with the aim of belittling others, regardless of their own behaviour. This is the case, for example, when referring to a person's despicable behaviour (DUPUIS, MOREILLON ET AL., Little Commentary Penal Code, 2nd ed., Basel 2017, Art. 173 PC n. 7-8 [cited: LC PC])

Reputation relating to professional activity or a role played in the community is not protected under criminal law. This applies to criticism directed at a professional, artist, or politician as such, even if it is likely to cause harm and discredit them (ATF 119 IV 44 consid. 2a p. 47; ATF 105 IV 194 consid. 2a p. 195). In the field of socio-professional activities, it is therefore insufficient merely to deny a person certain qualities, to attribute faults to them or to belittle them in relation to their competitors. On the other hand, even in these areas, there is an attack on a person's honor if a criminal offense or behavior that is clearly reprehensible according to generally accepted moral standards is mentioned (ATF 145 IV 462, consid. 4.2.2, judgments 6B 226/2019 of March 29, 2019 consid. 3.3; 6B 224/2016 of January 3, 2017, consid. 2.2).

For defamation to occur, there must be an allegation of fact and not merely a value judgment (DUPUIS, MOREILLON ET AL., PC CP, art. 173 CP n. 9-11 and 14; CR CP II-RIEBEN/MAZOU, art. 173 CP n. 8).

Unlike pure value judgments, the allegation must relate to facts (ATF 92 IV 98, consid. 4, ATF 117 IV 27, consid. 2c; ATF 128 IV 53, consid. e).
Facts constitute *"events or states of the present or past [...] that manifest themselves externally and thus become perceptible and accessible to proof*" (ATF 118 IV 41, consid. 3). Therefore, an attack on honor within the meaning of Art. 173 PC may result from a pure factual allegation or a mixed value judgment (PK StGB-TRESCHEL/LEHMKUHL, Art. 173 n. 2).

The assertion of a defamatory fact is not the only conduct act under Art. 173 CP. Indeed, "*casting suspicion*

on another person" as well as "*spreading an accusation or such suspicion about a third party*" also fall within the scope of Art. 173 CP. The perpetrator cannot avoid falling under Art. 173 CP by expressing reservations about the alleged facts or by citing their source (DUPUIS, MORELLON et al., LC PC, Art. 173 PC n. 9-11 and 14, RC PC II-RIEBEN/MAZOU, Art. 173 CP n. 8).

The person targeted by the offense does not necessarily have to be named. It is sufficient that they be recognizable (DUPUIS, MOREILLON ET AL., LC PC, Art. 173 PC n. 9-11 and 14).

In the context of the allegation, the question of whether the fact is injurious to honour must be assessed objectively, according to the meaning that a reasonable, uninformed recipient would attribute to it in the circumstances of the case (ATF 128 IV 58, consid. 1a). In the case of a text, its overall meaning must be determined, rather than construing the individual expressions in isolation. (ATF 117 IV 27, consid. 2c; ATF 137 IV 313 consid. 2.1.3 RC PC II-RIEBEN /MAZOU, Art. 173 PC n. 13).

The content of a letter that refers to despicable conduct is likely to damage a person's reputation (Federal Supreme Court ruling 6B_506/2010 of October 21, 2010, consid. 3.2).

In order to assess whether a statement is defamatory, it is necessary to base the assessment not on the meaning attributed to it by the person concerned, but on an objective interpretation based on the meaning that an impartial recipient would, in circumstances of the case, attribute to it (ATF 148 IV 409, consid. 2.3.2; 145 IV 462, consid. 4.2.3; 137 IV 313, consid. 2.1.3)

Furthermore, it is well established that, in matters of offenses against honor, the same terms do not necessarily have the same meaning depending on the context in which they are used (ATF 148 IV 409 consid. 2.3.2; 145 IV 462 consid. 4.2.3; 118 IV 248 consid. 2b).

1.4.2. Communication to a third party

The criminal behavior is the communication of the injurious statement to a third party (DUPUIS, MOREILLON ET AL., LC PC, Art. 173 CP n. 9-11). A third party is understood to be any person other than the perpetrator and the injured party (RC PC II-RIEBEN/MAZOU, Art. 173 PC n. 16), including the courts (ATF 71 IV 187, ATF 80 IV 56) or lawyers (ATF 145 IV 462 consid. 4.3.3 TRESCHEL/LEHMKUHL, in: TRESCHEL/PIETH, Swiss Penal Code StGB, Practical Commentary, 4th ed., Zurich 2021, Art. 173 PC n. 5 [cited PK StGB]).

1.4.3. Intention

The offense is intentional. The perpetrator's intent must relate to all of its objective elements. It is sufficient that the perpetrator is aware of the defamatory character of the allegation; conditional intent suffices (DUPUIS, MOREILLON ET AL., LC PC, Art. 173 PC n. 21-22). With regard to the defamatory act, it is irrelevant whether or not the perpetrator expressed doubts (RC PC II-RIEBEN/MINOU, Art. 173 PC n. 20).

1.5. Exculpatory evidence

The accused may provide exculpatory evidence that precludes his or her conviction. In this regard, Art. 173(2) provides for two types of exculpatory evidence: proof of the truth and proof of good faith. However,

in accordance with Art. 173(3), the accused is not automatically entitled to present either type of exculpatory evidence in every case. The judge must therefore examine *ex officio* whether the conditions for admitting such evidence are satisfied (CORBOZ, Les infractions en droit suisse — Volume 1, 3rd ed., Bern 2010, Art. 173 CP n. 51-54 (cited: CORBOZ, Volume 1]).

1.5.1. Exclusion from admission of exculpatory evidence

In principle, the accused must be allowed to establish exculpatory evidence, and it is only in exceptional cases that this possibility should be denied. For exculpatory evidence to be excluded, two cumulative conditions must be met.

- The accused must have made the defamatory statements without sufficient justification, whether of public or private interest, and
- The accused must have acted primarily with the intention of speaking ill of others.

Both conditions must be met cumulatively in order to refuse exculpatory evidence. If both conditions are not met cumulatively, the accused will be allowed exculpatory evidence if they acted for a sufficient motive, even if their primary intention was to disparage another person. If they did not act with the intention of defaming others but wanted to do someone a favor, they will be allowed to present exculpatory evidence, even in the absence of a sufficient motive (ATF 137 IV 313, consid. 2.4.4, ATF 132 IV 112, consid. 3.1 CORBOZ, Volume 1, n. 54-56).

However, there must be a certain link between the admission of exculpatory evidence and the assessment of the evidence of good faith. If the reason for making the statement appears to be barely sufficient, the court must be more stringent in admitting that evidence of good faith has been provided (ATF 116 IV 38, consid. 3).

Defining the motive behind the author's actions is a matter of establishing the facts. Determining whether or not the motive is sufficient is a question of law (ATF 132 IV 112, consid. 3.1 CORBOZ, Volume 1, n. 58).

In a recent case, the Federal Supreme Court considered the relevance and utility of the defamatory allegation made by the perpetrator, taking into account the recipient and the timing of the allegation, in order to uphold the judgment of the lower court, which had found that there was no public interest in taking action and concluded that the author had acted out of malice and revenge, primarily with the intent of speaking ill of another person (judgment 6B 450/2024, consid. 1.2.2).

1.5.2. Exculpatory evidence if its admission is not excluded

With regard to proof of truth, the author of the defamation is not punishable if he proves that what he alleged, suspected, or propagated is true. The proof relates to the facts. The proof may be provided by any means of evidence admissible under procedural law (document, recording, photo, testimony, etc.). The author may also state elements that were unknown to them at the time of their allegation. It does not matter whether the author was mistaken or not at the time of making the allegation. If the author establishes the truth, they must be acquitted (DUPUIS, MOREILLON ET AL., LC PC, Art. 173 PC, n. 30 and 33-34).

With regard to proof of good faith, it is necessary to base the assessment on the information available to the author at the time of the allegation and to consider whether he had serious reasons to believe in good faith that what he claimed was true. The author cannot prove his good faith by citing evidence discovered subsequently or events that occurred later (DUPUIS, MOREILLON ET AL., LC PC, Art. 173 PC n. 36). Two conditions must be met in order for good faith to be established:

- First, the perpetrator must establish that they had serious reasons to believe what they were saying. The author of an allegation is therefore subject to a duty of care and diligence, which consists of taking the steps that can reasonably be expected of them, given the circumstances and their personal situation, to satisfy themselves of the truth of the allegations they are about to make against others.
- Secondly, the author must have genuinely believed his allegations to be true (DUPUIS, MOREILLON ET AL., LC PC, Art. 173 PC n. 37, RC PC II-RIEBEN/MAZOU, Art. 173 PC n. 37-39).

The content and scope of the duty to verify must be examined, taking into account the defendant's reasons for making the statement; the less consistent these reasons are, the higher the verification requirements will be. If proof of good faith is accepted, the author of the allegation is acquitted (RC PC II-RIEBEN/MAZOU, Art. 173 PC n. 39 and 43).

Whether it is to prove the truth or good faith, the author bears the burden of proof, the burden of evidence, and the risk of evidence (RC PC II-RIEBEN/MAZOU, Art. 173 PC n. 40).

1.6. In this case

1.6.1. Commission of the offense

It is necessary to examine whether the defendant's conduct fulfills the objective and subjective elements of the offense of defamation. The objective elements include damage to reputation and communication to a third party, while the subjective elements include intent.

With regard to the defamation, the disputed email written by the defendant contains several facts against the plaintiff, Mr. Werner. The email must be considered as a whole, not word by word or sentence by sentence, and the overall meaning must be taken into account.

The name of the complainant is mentioned alongside that of Hassan Bility. These are the two individuals who allegedly provided the information that formed the basis of the charges that led the Finnish government (sic!) to (wrongly) prosecute Massaquoi. According to the disputed email, they "*make millions of euros*". There have been suspects based on false or coached testimony from witnesses who are recruited in Liberia and who, in exchange, are offered valuable gifts.

It is said that Mohamed Kromah obtained asylum in exchange for false testimony against the defendant Alieu Kosiah, who was defended by Mr. Gianoli, the recipient of the email.
In addition, the defendant says that he himself spoke to two witnesses, who told him that Mr. Bility had offered money and relocation to a first world country in exchange for false testimony against Mr. Kosiah.

Admittedly, this specific passage refers only to Mr. Bility, but the link between Mr. Bility and Mr. Werner was

made earlier in this email. It is the NGO headed by the complainant that would finance Mr. Hassan Bility's work, and the two became close friends during Charles Taylor's trial. Given that they work together, anyone reading this email objectively will understand that the comments aimed at one also apply to the other. Furthermore, Werner's name, which is repeated twice in this email, is in any case one of those providing the authorities with truncated information based on false testimony, the witnesses having been coached by them.

This is a case of incitement to commit perjury, which is a criminal offense. It goes far beyond simply questioning the complainant's professional competence. The behavior described in the email and attributed to the complainant consists of making very serious accusations based on false testimony before judicial authorities that are likely to hand down heavy sentences. This is very serious, deeply offensive, and makes the complainant appear despicable, especially since, according to the email in question, the complainant would make "*millions of euros*" in this way and would therefore also be motivated by greed.

There is no doubt that this email is indeed defamatory to the complainant, as well as to Mr. Bililty, incidentally (but there is no complaint from him on file).

With regard to communication to a third party, in this case, the defendant did send the email to three people, namely Mr. Gianoli, and also Mr. Gummerus and Mr. Müller. It should also be added that Mr. Werner's name is mentioned twice in full, which obviously makes him recognizable. These various facts were therefore brought to the attention of several people, including Mr. Gianoli as the main recipient. The objective element of communication to a third party is also clearly fulfilled. These allegations were then disseminated, even reaching the Court of Appeal of the Federal Criminal Court.

With regard to intent, it could not have escaped the defendant's notice that, in addressing a third party (Mr. Gianoli, with other third parties also in copy), he was making serious accusations against an individual or, at the very least, casting suspicion on them for conduct seriously contrary to honour.

In view of the above, the defendant fulfilled all the elements of the offense of defamation punishable under Art. 173(1) PC.

1.6.2. Exclusion from admission to exculpatory evidence and conviction

The conditions for the offense of defamation have been met. It must be examined whether the defendant is entitled to provide exculpatory evidence, namely whether he had sufficient grounds for his statements and whether he did not act primarily to speak ill of others (Art. 173(3) PC).

The facts listed in sections B.5 and B.6 above have already led the Court to conclude in section B.7 above, that the defendant made his statements without regard for the public interest, without sufficient justification, and primarily with the intent to disparage another person. Reference is made to that section here.

It should be noted here that, when examining Art. 173(3) PC, all the circumstances surrounding the disclosure must be taken into account, such as the intended purpose, the interest defended, the recipient, etc. (judgment 6B 450/2024, consid. 1.2.2).

In this case, the defendant contacted the lawyer representing Alieu Kosiah, a defendant accused of serious crimes, which the Federal Criminal Court and the Federal Criminal Court of Appeal upheld. These crimes could have resulted in over 100 years in prison if it weren't for the legal limit of 20 years. The defendant claimed that Mr. Kosiah had been the victim of false testimony, allegedly orchestrated by the complainant and Mr. Bility. This claim was rejected by both courts.

It should be noted from the outset that, as mentioned in section B.5.1, the email contains factual elements that are completely false, in particular the claim that Mr. Kromah was paid to make false allegations against Mr. Kosiah during the trial. This point has already been noted by the Federal Criminal Court and is completely inconsistent with the role played by Mr. Kromah in the proceedings before the Federal Criminal Court. Indeed, Mr. Kromah did not provide any incriminating evidence against Mr. Kosiah. On the contrary, it should be noted that his testimony was "anything but negative" for the defendant Kosiah.

The Federal Criminal Court of Appeal specifically offered the defendant the opportunity to demonstrate that there was substance and a legitimate purpose behind his allegations made to Mr. Gianoli. In this regard, reference should be made to the decision (D. 303), in which the Federal Criminal Court of Appeal expressly stated that it was willing to hear Mr. White (substitute name: Carlos Ellis), on the basis of the email dated July 19, 2021, in which he claimed to have personally collected testimony.

His lawyer replied that hearing her client, as an expert investigator, would in any case be of little interest, since he himself considered that he did not have sufficient relevant information or information directly related to the cases in question. In this case, the defendant himself admitted before the Federal Criminal Court of Appeal that he had nothing to contribute. This was duly noted.

This reversal before the Federal Criminal Court of Appeal strips the allegations in the email of any substance, rendering the communication of July 19, 2021, completely useless, meaningless, and solely intended to speak ill of the plaintiff to a third party.

Furthermore, according to the ruling of May 30, 2023 (D. 306), the fact that Mr. White spontaneously contacted Mr. Gianoli demonstrates that he acted out of personal interest, his allegations being both vague and based on indirect sources that were highly unreliable and implausible. The defendant seems to be aware of this when he tells the Federal Criminal Court of Appeal that his hearing would be of no interest. It is therefore clear that there was no legitimate interest, either public or private, in him making such accusations to Mr. Gianoli. This conduct is wholly unjustified.

Such communication to the lawyer of a defendant—who will ultimately be sentenced to a heavy penalty—is not justified. If such assertions had any relevance, they should have been submitted to the competent judicial authorities.

An approach to the Federal Criminal Court itself would have been understandable. But the defendant did not do so. When invited by the Federal Criminal Court to demonstrate the usefulness of the communication he had previously made to Mr. Gianoli, it appeared that the defendant actually had nothing more to say.

These remarks nonetheless resurfaced in the criminal proceedings against the defendant Alieu Kosiah, unjustifiably casting doubt on the work of Civitas Maxima. The Court was therefore compelled to intervene to dismiss any credibility given to these rumors. This situation clearly ran counter to the public interest, as

confusion and doubt were created without justification.

It is clear from the defendant's behavior in these proceedings against Alieu Kosiah that the defendant had no legitimate grounds for making this communication and that he acted without regard for the public interest, with the sole aim of speaking ill of the plaintiff to third parties and spreading rumors harmful to the plaintiff. Such statements would be of interest to the judicial authorities, but they would have to be substantiated, which was not the case, and the defendant refrained from making any statements to the judicial authorities.

There was absolutely no point in making such statements to a private lawyer if he was not going to defend his position before the Federal Criminal Court in the proceedings in question.

As for the intention to speak ill of others, this is also clearly evident, given that there is absolutely no other motive for acting as the defendant did.

Furthermore, the factual elements noted regarding the defendant's current position and activity appear to clearly conflict or compete with that of Civitas Maxima, an NGO of which the complainant is the director. Reference may be made to what was mentioned in the "*facts*" section, in point B.6 above, and also to the evidence of a smear campaign in the press noted by the Federal Criminal Court. It should be added that the defendant may also harbor a grudge against the complainant because of the proceedings brought against Gbril Massaquoi in Finland, even though the complainant is not responsible for the fact that he was charged for dates on which he was in a "*safe house*" intended for witnesses against Charles Taylor, under the responsibility of, among others, the defendant.

The defendant therefore had the intention to harm, to speak ill of the plaintiff and the activities of Civitas Maxima, to spread rumors behind his back, in short, to discredit the plaintiff and speak ill of him. It should be noted that the defendant does not behave in this manner only towards Mr. Gianoli, even though this is the only case before this Court.

The defendant cannot therefore be admitted to exculpatory evidence, which in this case implies his conviction for defamation.

Even if it had been, the following can still be mentioned, as a secondary point.

Proof of the truth, in the case of a criminal offense allegedly committed by the person targeted by the defamation, should be provided by a conviction. No one claims that such a judgment exists in this case (RC PC II, 1st ed. LAURENT RIEBEN/MIRIAM MAZOU, Art. 173 PC no. 29, as well as the nuances).

With regard to possible evidence of good faith, it can in any case be noted that the defendant is educated and has worked for international justice. It can be expected that he distinguishes between, on the one hand, an established fact of extreme gravity (i.e., fabricated testimony, concocted in proceedings for war crimes and crimes against humanity, all for money, which is particularly despicable), and, on the other hand, vague allegations from few but repeated sources, which have never been recognized by any authority. If he were acting in good faith, he should be able to tell the difference between an investigation into suspicions and facts, and weigh up the evidence.

When reading the email, one does not get the impression that these are mere suspicions; his accusations against the complainant seem to be proven to the defendant, just as they were in the summer of 2024, he

appeared before a subcommittee of the U.S. Congress, to the point that an ambassador had to react and ask him to stop making serious allegations that were never substantiated (D. 819). In any case, he casts suspicion on the plaintiff and is perfectly aware of this. However, it was demonstrated before the Federal Criminal Court that he had nothing concrete to contribute on this subject.

Even if there were an "*investigator*" named Alvin Smith who believed certain things, how did that authorize the defendant to adopt those beliefs as his own and spread the same suspicions? Especially since the source in question appears to be unreliable, as already noted in section B.5.1. It should be noted that according to PJ 4 filed by the defense at the hearing, this person Alvin Smith claims that Massaquoi's two acquittals, in first and second instance in Finland, *"would prove*" that the complainant and Mr. Bility coached witnesses to lie under oath (D. 858), whereas a reading of the judgments in the Massaquoi case shows that this is not the case and that nothing has been proven in this regard. This is clear from the Finnish court's appeal ruling. It is completely false and incorrect to present the situation in this way. It is difficult not to see this as deliberate malice. It is surprising that the defendant can claim to be following the advice of this third party "*in good faith*" without questioning it.

Furthermore, the contradictions identified in point B.5.1 above would demonstrate, if necessary, that the defendant did not act in good faith on July 19, 2021. Additional witness hearings would clearly not provide any evidence likely to overturn this finding.

If the defendant is so quick to listen to these clearly malicious statements against the plaintiff, it is because it is in his interests and the interests he represents. In any event, his conduct and statements are clearly characterized by bad faith.

Even if exculpatory evidence had not been excluded, the defendant would not have offered any relevant evidence to demonstrate his good faith, which must be denied given his subsequent behavior before the Federal Criminal Court and the context, and even less so the veracity of his statements. His requests for additional evidence could be dismissed without further ado.

D. SENTENCING

1. General principles on sentencing

According to Art. 47 PC, the judge determines the sentence based on the guilt of the perpetrator. The judge takes into consideration the perpetrator's criminal record and personal circumstances, as well as the effect of the sentence on their future (para. 1). Guilt is determined by the severity of the injury or of the endangerment of the legal interest concerned, by the reprehensible nature of the act, by the motives and aims of the perpetrator, and by the extent to which the perpetrator could have avoided the endangerment or injury, taking into account his personal situation and external circumstances (para. 2).

The perpetrator's guilt must be assessed on the basis of all relevant objective factors relating to the act itself, in particular the seriousness of the injury, the reprehensible nature of the act and the manner in which it was carried out ("*objective Tatkomponente*"); from a subjective point of view, the intensity of the criminal intent and the perpetrator's motives and goals ("*subjective Tatkomponente*") are taken into account. In addition to these components of culpability, factors relating to the perpetrator themselves

("*Täterkomponente*") must be taken into account, namely their background (judicial and non-judicial), reputation, personal circumstances (state of health, age, family obligations, professional situation, risk of reoffending, etc.), vulnerability to punishment, as well as behavior after the act and during the criminal proceedings (judgments 6B_1092/2009 of 22.06.2010; 6B_67/2010 of 22.06.2010, consid. 2.1 and the reference cited: ATF 129 IV 6, consid. 6.1)

Objective factors relating to the act also include the outcome of the criminal activity, the method chosen by the perpetrator, the extent of the damage caused intentionally, the repetition or duration of the criminal acts, and the role played within a group. On a subjective level, the judge must examine the circumstances that led the perpetrator to act, the motives for their act, the intensity of their criminal intent or the seriousness of their negligence, lack of scruples, persistence in committing offenses despite one or more previous convictions, psychological disorders or personal difficulties that influenced the offender, the existence or absence of remorse after the act, the willingness to make amends (ATF 118 IV 25, consid. 2b).

Other determining factors relate to the person of the offender. These include the offender's background, which includes their family and professional situation, education and training, social integration, any previous convictions, and, in general, their reputation. The offender's behavior after the act and during the criminal proceedings, as well as their sensitivity to the punishment, must also be taken into account.

The Federal Court has specified that "*the seriousness of the offense depends on the freedom of choice available to the offender; the easier it would have been for the offender to comply with the norm that he or she violated, the more serious is his or her decision to violate it and, therefore, his or her* offense" (ATF 117 IV 8, consid. 3a). Art. 47 PC also requires the judge to consider the effect of the sentence on the offender's future.

Considerations of general prevention, which are secondary, are not excluded provided that the sentence imposed does not exceed that which is justified by the offender's guilt (ATF 107 IV 63).

It is therefore up to the judge to assess the offender's guilt (or the seriousness of the offense) on the basis of all relevant factors (ATF 120 IV 136).

In his decision, the judge must set out the essential elements relating to the act and the perpetrator that he takes into account (Art. 50 PC). Thus, the convicted person must be aware of the relevant aspects that were taken into consideration and how they were assessed. The judge may omit elements that, without abuse of discretion, appear to him to be irrelevant or of minor importance. The reasoning must justify the sentence, allowing the reasoning adopted to be followed. However, the judge is under no obligation to express in figures or percentages the importance he attaches to each of the elements he cites (ATF 134 IV 17, consid. 2.1, ATF 129 IV 6, consid. 6.1)

2. Type of penalty

Only a monetary penalty may be imposed in cases of defamation.

3. Legal Framework

The legal framework for penalties is determined first and foremost in accordance with the penalties provided for each offense in the special section of the Criminal Code or in other federal or cantonal laws containing criminal provisions. Secondly, Art. 48 and 49 PC requires judges to take into account any aggravating or mitigating circumstances. If there are grounds for mitigating the sentence, the judge is not bound by the minimum legal sentence for the offense (Art. 48 and 48(a)(1) PC). The judge may also impose a penalty of a different type from that provided for the offense, but remains bound by the legal maximum and minimum for each type of penalty (Art. 48(a)(2) PC).

Under Art. 34 PC, the legal framework for financial penalties is between 3 and 180 daily fines of at least CHF 30.00 (or even CHF 10.00) up to a maximum of CHF 3,000.00.

4. Elements relating to the act

Objectively speaking, the defendant's actions are undoubtedly serious. The disputed email, sent to Mr. Gianoli with copies to third parties, contains extremely serious accusations against the plaintiff, accusing him of orchestrating false testimony in international proceedings for personal gain. These statements, which are without factual basis, damage the honor and professional reputation of the plaintiff, who works in the particularly sensitive field of defending victims of war crimes. By disseminating these accusations to the lawyer defending a defendant who was subsequently convicted of serious war crimes, the defendant discredited not only the complainant personally, but also the organization of which he is the director, Civitas Maxima. The manner in which this was done, in a considered and written form, demonstrates a lack of impulse and a conscious desire to make serious accusations.

Subjectively speaking, the defendant acted with clear intent to cause harm. His behavior was motivated by professional and political rivalry with the complainant, whom he perceived as a competitor in the Liberian justice system. His motives were selfish and malicious; he sought to discredit the complainant and weaken his influence. As a former employee of an international court, the defendant had the necessary knowledge to understand the seriousness of his statements. His refusal to cooperate with the proceedings, his lack of remorse, and his persistence in claiming that his allegations were true confirm his unscrupulous attitude. The intensity of his criminal intent is therefore significant, and no mitigating factors can be taken into account.

In light of the foregoing, it is clear that the act committed by the defendant is of a serious nature, both in terms of the nature of the comments made and the context in which they were made. However, the Court notes that the charges brought in the present proceedings are limited to a single, isolated act, without repetition, namely the email of July 19, 2021.

The defendant's behavior reflects a deliberate and abusive use of the written word for the purpose of discrediting others. In the disputed email, he did not merely use phrases that would have suggested

mere suspicions from which he would distance himself; on the contrary, he deliberately used strong words, revealing an accusatory tone and a malicious intent to harm the complainant.

5. Qualification of the fault related to the act

Given all the circumstances, the defendant's offense is classified as "*moderate*," it being specified that this classification has only legal significance in relation to the determination of the sentence within the legal framework, and does not mean that the offenses committed are not serious in the common sense of the term. It simply reflects the degree of guilt determined in the overall legal assessment of the facts and will serve as the basis for determining the penalty.

6. Information about the perpetrator

The Court has no information regarding the defendant's criminal record, which is not known in Switzerland. It will therefore assume that he has no previous convictions.

With regard to the elements relating to the perpetrator, it should be noted that the defendant never cooperated during the proceedings, either with the Public Prosecutor's Office or with the Court. In fact, throughout the proceedings, the defendant completely refused to answer the questions sent to him, with the exception of five of them—answers that he would produce almost two years later. However, this is his right.

He also hired a lawyer in Switzerland, whom he dismissed two weeks later, before rehiring him a few months later, after the summons had reached him in the United States through international legal assistance. This instability demonstrated a lack of consideration for the proceedings and wasted the Court's time, particularly with regard to the service of documents, which had to be re-served through mutual legal assistance. It should also be added that the Court expressly informed him on several occasions that he could be excused from appearing in person. He always stated his intention to attend the hearing, but never appeared, which also wasted time for all parties involved, including the Court. It is clear that he was playing with the rules and trying to exploit their limitations to his advantage, in particular by dragging out the proceedings with the obvious aim of reaching the statute of limitations, which was approaching—the deadline being July 19, 2025. But once again, that was his right.

However, this cannot be seen as any kind of repentance or other mitigating factor in his favor. There is no basis to suggest that his sentence should be reduced.

The defendant also worked in the legal field and is educated, which implies a good knowledge of the applicable rules and the particularities of the judicial system. He was therefore expected to distinguish between, on the one hand, an established fact of extreme gravity and, on the other hand, mere gossip or accusations defamatory statements originating from one or two sources, which have never been confirmed by any authority.

In addition to the above, it should be noted that throughout the proceedings, the defendant never wished

to speak. However, in his faxed communication of his opposition to the criminal order of August 15, 2024, he stated, "*I am appealing the verdict; the allegations are factually incorrect*" (D. 478) and added ten minutes later, "*The complaint against me factually incorrect, so I must appeal it"* (D. 481). These words clearly show that he expressed no regret or remorse for having written the email. On the contrary, he denied it and said that the content of the email was true. He clearly did not understand the significance of his actions. At no point did the defendant question himself. He persisted. On April 28, 2025, seven months after his objection on September 16, 2024, he continued to declare that his allegations were true in his written responses, which were finally filed on May 27, 2025. He added that he had received this information from Mr. Alvin Smith, who in turn had received it from one of Mr. Werner and Mr. Bility's alleged false witnesses (D. 850), without questioning or distancing himself from it. These statements, which are clearly malicious towards the plaintiff, are in line with his interests and the interests he represents. Thus, he persists and continues to stand by them in the course of the present proceedings. This last element is rather unfavorable and argues in favor of an increase in the penalty.

7. Determining the length of the sentence

Firstly, it should be noted that when determining the actual sentence, the Court refers to the recommendations of the Association of Bernese Judges and Prosecutors regarding sentencing (currently available on the website http://www.justice.be.ch), if they contain a proposal for the offense to be punished or if they include a reference case comparable to the case under consideration. These recommendations are not binding on the judge, but they are a means of ensuring equal treatment as far as possible.

Based on these "*basic"* sentences*,* the sentence must then be individualized to take into account the specific circumstances of the case (Art. 47 PC).

The recommendations provide for a sentence of 30 penalty units in the case of defamation by letter to around ten different people. In the example cited, the person targeted is described as "*someone who is always looking for trouble, to the point that it has already caused several members to leave his former clubs*."

However, the case in question is very different. It should be emphasized that the allegations against the complainant are extremely serious. The stakes and consequences are not insignificant for the plaintiff. The existence of his NGO depends on donors, and this kind of malicious gossip about him is likely to cause him serious harm, or even force him to cease his activities, which may in fact be the goal. The punishment is therefore not comparable either. The communication initially took place via an email addressed to only three people, but the suspicions were then spread in the proceedings against Alieu Kosiah before the Federal Criminal Court of Appeal. It is serious to "*play*" in this way in such proceedings. In view of the foregoing, the penalty is set at 100 units, increased to 120 in view of the circumstances relating to the perpetrator, namely persisting and signing his allegations during the proceedings.

8. Amount of the daily fine

There is no objective evidence in the file that would allow the defendant's current income to be estimated.

The defendant did not cooperate on this point either and did not provide any evidence, which is his right.

The judge may then contact the Swiss authorities. Art. 34(3) PC requires federal, cantonal, and municipal authorities to provide the judge with all the information he or she needs regarding the offender's financial situation, so that the judge can determine the amount of the daily fine.

As legal doctrine points out, "*the judge's investigative resources will obviously be much more limited, if not non-existent, when the defendant is a foreigner with no ties to Switzerland. In such cases, the judge will be largely dependent on the information that the defendant is willing to provide. Legal doctrine recognizes that the broad discretion granted to the judge by Article 34(2) of the Criminal Code allows him, in exceptional cases, to estimate the amount of the daily fine on the basis of the information available to him. However, the judge must not abuse this discretion by threatening a very unfavorable estimate in order to compel the defendant to provide information that he or she has the right to withhold"* (RC PC I, 2e ed. 2021 — YVAN JEANNERET, Art. 34 PC no. 44 and references cited).

In this case, the Court was able to find a brief online biography of the defendant (D. 825). Given the unreliable nature of such sources, this information was treated with caution. In fact, we do not know who wrote it or what the person concerned thinks of it. However, it does help to make a rough assessment.

It is clear that the defendant has held various important positions and has had a long career. He must have completed his studies before that.

It is stated that he currently works for a human rights foundation in Washington. Documents in the file show that he also works for BW Global Group LLC. He previously held a senior executive position within US Federal Law Enforcement, where he served as Director of Investigations. He was also Head of Investigations for the United Nations Special Court in Sierra Leone, among other positions.

Therefore, given this background and career, and considering that income in the private sector is generally not lower than that previously earned in the public sector, as well as the standard of living in the United States, an estimated net income of approximately CHF 10,000.00, subject to a flat-rate deduction of 30%, does not appear excessive, particularly since the defendant's actual income is likely higher. Nevertheless, in the absence of concrete evidence and in case of doubt, the Court confines itself to this estimate.

The amount of the daily fine is therefore set at CHF 220.00 on the basis of these factors.

9. Suspension

9.1. In theory

According to Art. 42(1) PC, the judge shall, as a general rule, suspend the execution of a financial penalty or a custodial sentence of up to two years where a definitive sentence does not appear necessary to deter the offender from committing further crimes or offenses.

Subjectively, the judge must make a prognosis regarding the future behavior of the perpetrator. In the absence of an unfavorable prognosis, the judge must impose a suspended sentence. This is therefore the rule, from which the judge may only deviate in the event of an unfavorable or highly uncertain prognosis

(ATF 134 IV 1, consid. 4.2.2). In order to make this prognosis, the judge must make an overall assessment, taking into account the circumstances of the offense, the offender's history, reputation, and personal situation at the time of the judgment, in particular the state of mind he or she displays. The judge must take into account all factors that shed light on the overall character of the accused and his or her chances of reform. He may not give particular weight to certain criteria and neglect others that are relevant (ATF 134 IV 1, consid. 4.2.1). The judge must also provide sufficient grounds for his decision (see Art. 50 PC), and his reasoning must demonstrate that all relevant factors have been taken into account and how they have been assessed (ATF 134 IV 1, consid. 4.2.1).

Art. 42(4) PC provides for the possibility for the judge to impose an additional fine as an immediate penalty. According to the case law of the Federal Court, this fine must not exceed one-fifth of the main penalty. Exceptions to this rule are possible in the case of lower penalties in order to ensure that the cumulative penalty is not merely symbolic (ATF 135 IV 188, consid. 3.4.4, JdT 2011 IV 57).

9.2. In the present case

The conditions for probation are met in this case, given that it is not possible to make any unfavorable prognosis in this case, in the absence of any known previous convictions of the defendant, even though the defendant's attitude during his rare interventions in the proceedings does not seem particularly encouraging (we refer to his writings of April 28, 2025, filed on May 27, 2025).

The suspension of the financial penalty is therefore granted, with the probation period set at the legal minimum of two years.

In order for the defendant to still feel the effects of the penalty, the Court decides to impose an additional fine in addition to the suspended sentence, in accordance with Art. 42(4) PC, the amount of which is set at CHF 4,400.00 (equivalent to 20 daily fines of CHF 220.00).

Thus, the suspended monetary penalty amounts to 100 daily fines, and the additional fine is equivalent to 20 daily fines.

10. Conclusion

In view of the above, the defendant is sentenced to a fine of 100 daily fines at CHF 220.00, for a total of CHF 22,000.00. The defendant has been granted a suspended sentence, with a probation period of two years. He is also ordered to pay an additional fine of CHF 4,400.00, equivalent to 20 days' imprisonment in the event of non-payment.

E. CIVIL ACTION

Under Art. 122(1) CPC, an injured party who is a complainant may assert civil claims arising from the offense by joining the criminal proceedings. The civil action becomes pending as soon as the injured party has asserted civil claims under Art. 119(2)(b) (Art. 122(3) CPC). If the complainant withdraws their civil action before the conclusion of the first instance proceedings, they may again assert their civil claims through civil proceedings (Art. 122(4) CPC).

In this case, Mr. Werner had claimed a symbolic CHF 1.00 for moral damages in the form dated December 18, 2024 (D. 550). However, he had already waived his right to assert civil claims in the context of the present criminal proceedings (D. 277, letter dated June 14, 2024).

The Court therefore finds that the civil action has been withdrawn. In any event, the concept of moral damages quantified at CHF 1.00 is not very satisfactory from the Court's point of view.

Civil proceedings remain open (Art. 122(4) CPC).

F. LEGAL COSTS AND COMPENSATION

1. Legal costs

In principle, the costs of proceedings are borne by the canton that conducted the proceedings (Art. 423(1) CPC). However, the defendant who is convicted bears the costs of the proceedings (Art. 426(1) CPC).

As the defendant has been convicted, the costs of the proceedings are borne by him. The fees consist of investigation costs of CHF 800.00 and court costs set at CHF 2,600.00 (including written grounds). These fees fall within the scales set by the cantonal decree on procedural costs (Art. 15 and Art. 22 (1)(a) DFP, RSB 161.12). The only disbursements are those of the Public Prosecutor's Office, amounting to CHF 150.00. This represents a total of CHF 3,550.00.

Additional costs for translation and interpretation services for defendants who do not speak the language of the proceedings shall be borne by the State.

2. Compensation

Under the terms of Art. 433(1)(a) CPC, the complainant may request fair compensation from the defendant for the mandatory expenses incurred by the proceedings if the case is successful.

In the present case, the complainant waived any compensation for costs in the present criminal proceedings in its letter dated June 14, 2024, and did not subsequently revisit this point (D. 277).

For its part, the convicted defendant cannot claim compensation in this case.

Bernese Jura-Seeland Regional Court Criminal Division

The President

Richard

La Greffière e.r. :

Musico

Appeals:

The party that has announced the appeal must submit a written statement of appeal to the Criminal Chambers of the Supreme Court within 20 days of notification of the reasoned judgment, in accordance with Art. 399(3) and (4) CPC (Supreme Court of the Canton of Bern, Criminal Chambers, Hochschulstrasse 17, P.O. Box, 3001 Bern). The notice of appeal must be sent either by post or electronically with a valid electronic signature (Art. 110(1) and (2) CPC).

In their statement, the appellant shall indicate

a. whether it intends to challenge the judgment as a whole or only certain parts of it;
b the changes to the first instance judgment that they are requesting;
c its requests for evidence, subject to Art. 398(4) CPC.

Anyone who challenges only certain parts of the judgment is required to indicate definitively in the notice of appeal which parts are being appealed, namely

a the question of guilt, where applicable in relation to each of the acts
b. the sentence,
c the measures that have been ordered;
d. the civil claims or some of them;
e. the incidental consequences of the judgment
f costs, compensation, and damages for moral injury;
g. subsequent judicial decisions.

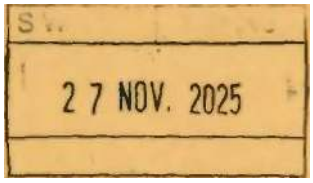
The appeal suspends the res judicata effect of the contested judgment within the limits of the contested points (Art. 402 CPC).

Comments .

Faxes and emails are not valid and do not meet the deadlines.

Submissions may be made electronically under certain conditions. Further information on this subject can be found on the Bernese Justice website (http://wwwjustice.be.ch/depots-electroniques).

The file number must be included on submissions (PEN 24 764).



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