

*Committee to Protect
Freedom of Expression*



Justice for Journalists
Foundation for International
Investigations of Crime against Media

REPORT

On Monitoring of Court Cases Involving Media Outlets and Journalists in 2019-2020



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INTRODUCTION

In July-December 2020, the Committee to Protect Freedom of Expression (CPFE) NGO, with the support of Justice for Journalists international organization, monitored court cases involving media outlets and journalists. The course of the examination of those cases, the arguments and the legal reasoning presented by the parties, the content of the judicial acts, as well as some statistical data were studied and analyzed. The CPFE conducted similar research in the past, namely in 2013-2014, reviewing all court cases since 2010 when insult and defamation were decriminalized.

The need for this monitoring was conditioned by the fact that 2019 was unprecedented in terms of the number of lawsuits against journalists and media outlets, and this trend continued in 2020, which caused serious concerns in the media. Besides, in the conditions of deep judicial crisis in the post-revolutionary period, such a study acquires a higher degree of topicality.

This study was conducted to find out to what extent courts comply with the Armenian legislation, international legal acts, the rulings of the RA Constitutional Court, the Court of Cassation and the European Court of Human Rights, whether the courts apply the same approaches in their practice and whether judicial acts take into account the role of the media and journalists in a democratic society.

The study was guided by the RA Constitution, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the rulings of the RA Constitutional Court, the judgments of the European Court of Human Rights, the rulings of the RA Court of Cassation, the RA laws and other legal acts. During the study, the conclusions and opinions of the Information Disputes Council professional initiative were taken into account, too.

The analysis of court cases was carried out with a unified approach, according to the following criteria:

- Separation of facts from value judgments,
- Defamatory nature of information,
- Proper defendant,
- Pecuniary and non-pecuniary compensation,
- Reasoning in judicial acts,

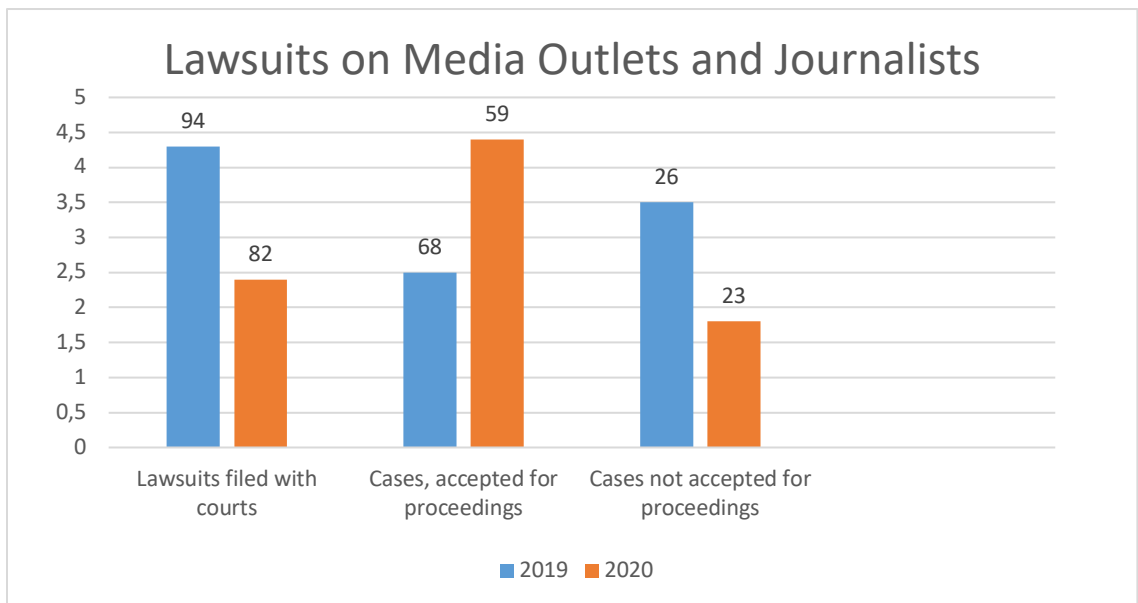
- Application of a measure to secure the claim,
- Litigation costs (state duty, attorney’s fee, etc.).

During the study, special attention was paid to the application of international legal norms by and the consistency of the Armenian courts. Thus, the compliance of freedom of speech restrictions and limitations with the principles of legality and proportionality, as well as the need for such restrictions and limitations in specific cases in a democracy served as the central topics of analysis within this study.

MONITORING RESULTS

In the reporting period, a total of 176 lawsuits related to the media and journalists were filed with the courts, of which 94 were submitted in 2019 and 82 in 2020. Out of those 176 lawsuits, 127 were accepted for proceedings (68 in 2019, 59 in 2020), the remaining 49 were not accepted for proceedings (26 in 2019, 23 in 2020) (see Figure 1).

Figure 1



During the monitoring exercise, the cases on which at least one or more judicial acts were adopted were subjected to expert analysis. Hence, the total number of such case amounted to 21. It should be noted that the judgments on 12 cases entered into force, that is, the disputes were resolved, and in 9 cases more than one act was passed, but the court proceedings are still in progress. Out of the remaining 106 cases, 5 (3 cases in 2019, 2 cases in 2020) were dismissed because the plaintiff withdrew the claims, in 2 cases a conciliation agreement was signed between the parties (both in 2019), and in 5 cases, the lawsuit was left without examination, on the grounds that one of the parties did not appear in two consecutive sessions (4 in 2019, 1 in 2020). As for the remaining 94 cases no judicial act was adopted as of December 31, 2020 (see Figure 2).

As the vast majority of court cases (114 out of 127) were on the grounds of insult or slander in the media (see Figure 3), it was important to find out to what extent the legal provisions on this issue (first of all, Article 1087. 1 of the RA Civil Code) and the interpretations thereof as based on judicial practice, served their purpose. Do courts manage to maintain a fair balance between the protection of freedom of expression as defined in Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention), on the one hand, and the right to protection from expressions, targeting persons' reputation and dignity, as guaranteed by Article 8 of the same Convention?

Figure 2

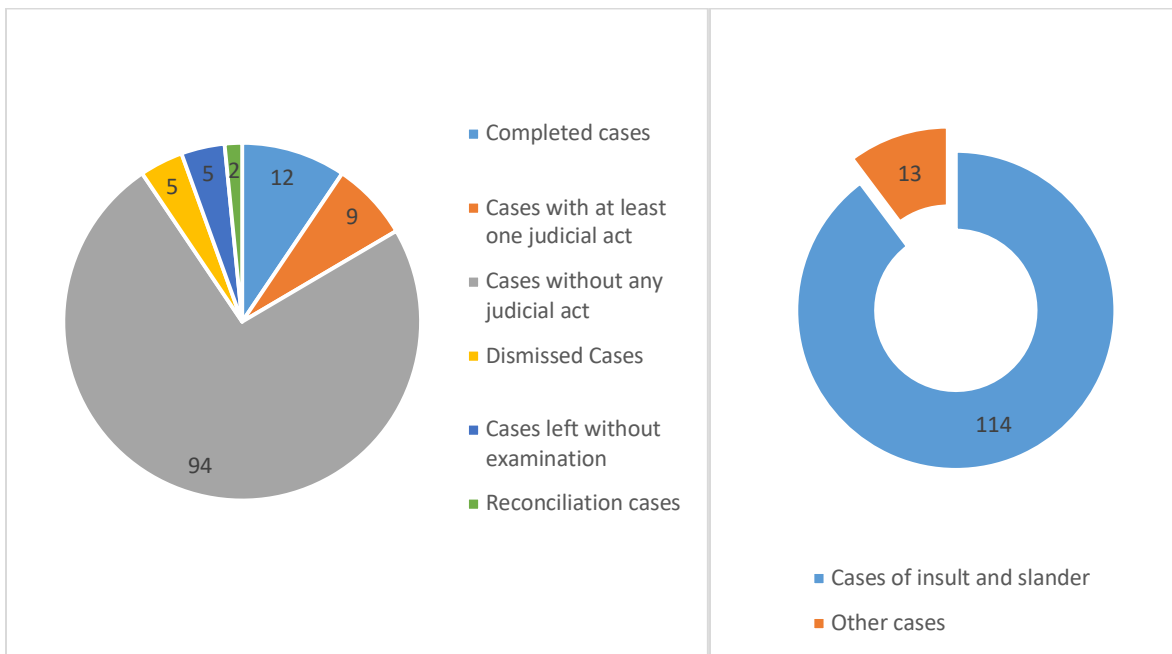
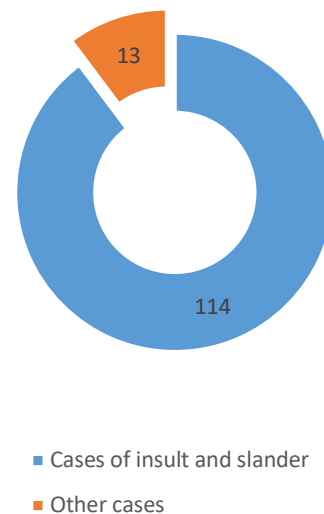


Figure 3

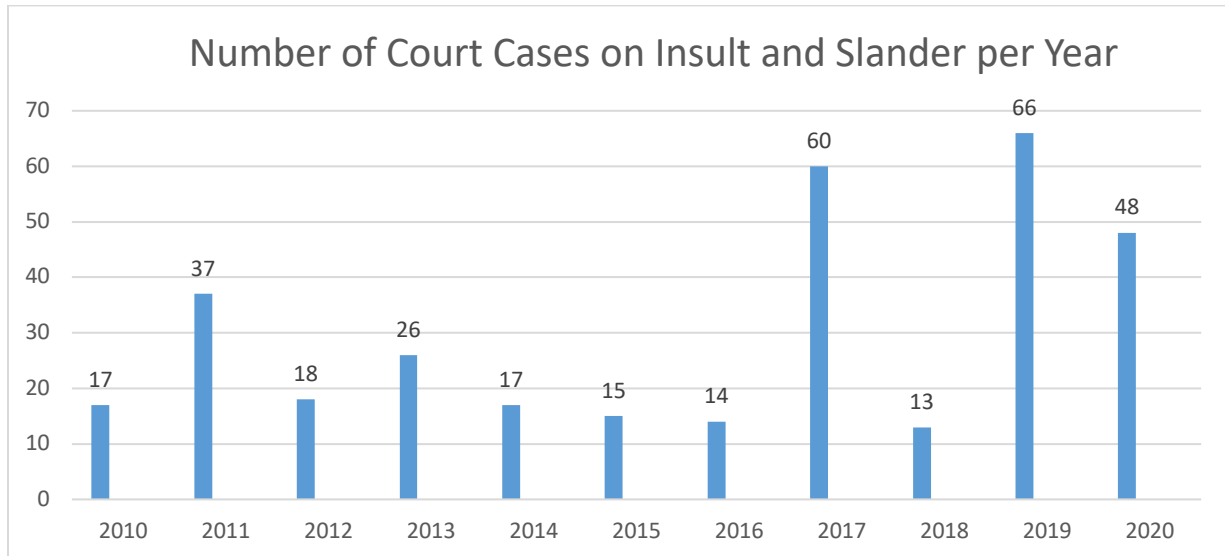


Besides such cases, 10 labor disputes involving the media as well as court cases involving economic, personal data protection and criminal law matters were analyzed, with one case on each. These are also interesting from the point of view of establishing relevant precedents in the judicial practice. It is no secret that, for example, there are many violations of journalists' labor rights, but they rarely go to court to resolve such disputes.

In 116 of the above-mentioned 127 cases, the founders of the mass media outlet acted as defendants, and in 11 cases they were involved as third parties. As for the 21 completed cases in which one or more judicial acts were passed, in 6 cases the claim was settled (in whole or in part), 6 were rejected, and, as we have mentioned, the investigation of 9 cases is still underway.

The comparison with similar studies conducted in 2013 and 2014 shows that the number of cases on the grounds of defamation and insult has almost tripled (see Figure 4). This is due to the rapid development of the Internet and social media, which fundamentally changed and expanded the ways and possibilities of disseminating information. These technological developments coincided with the turbulent socio-political events in Armenia, which were accompanied by hate speech, manipulations, insults and slander, widely used by the forces involved in the struggle and their supporters. All this flowed into the traditional media, which led to an unprecedented increase in the flow of court cases.

Figure 4



The comparative analysis of the acts adopted in the court cases in 2013-2014 and 2019-2020 shows that their quality has significantly increased both in terms of the reasoning presented by the courts and the arguments used by the parties. This development may be accounted for by the more consistent application of Ruling SDO-997 of the RA Constitutional Court of November 15, 2011, the case decisions of the Court of Cassation and the ECHR, the formulation of joint interpretations for legal regulations, as well as the increased activity of the media and journalists for the protection of their own rights, also through the involvement of professional attorneys.

At the same time, the monitoring exercise has revealed practical problems, which in some cases do not enable us to qualify the adopted acts on court cases as fair and accurate. For example, the case of the **Penitentiary service of the RA Ministry of Justice v. the Zhamanak daily** deserves attention, where the state body applied to the court against the media outlet, claiming public refutation of the information considered defamatory. The court settled the claim, ignoring the fact that according to Ruling SDO-997 of the Constitutional Court, state bodies are not considered legal entities, as defined by Article 1087.1 of the Civil Code, therefore the Penitentiary Service could not lawfully file a lawsuit with the court.

Identified Problems in Court Practice

Facts and Value Judgments

The courts have provided different interpretations of facts underlying defamatory expressions and value judgments. Meanwhile, the case decisions of the Court of Cassation require that uniform approaches be applied in such cases. Failure to comply with this requirement will result in a violation of a person's rights. Thus, in the case of *News.AM Ltd. v. journalist Sirush Harutyunyan* (No. AVD/2519/02/18), both the Court of General Jurisdiction and the Court of Appeals found that the defendant did not present evidence that the statements in question were based on true facts. Meanwhile, the defendant is not obliged to prove the truth of her assessment, moreover, Sirush Harutyunyan referred to publications of various media outlets prior to her post, but the courts did not examine whether they were sufficient and substantiated or not.

In this case, the possible recourse to a certain degree of exaggeration and provocation within the freedom of the press was examined, too. The court found that the journalist did not have accurate information about the facts she presented. (By the way, when a journalist's statements are based on accurate facts, the need to resort to journalistic exaggeration or provocation almost disappears). Meanwhile, the court should have been guided by the guarantees set out in Article 10 of the European Convention on Human Rights and should have examined the question of whether the journalist's expression caused a higher degree of damage to the honour and dignity than the legal guarantees of journalistic freedom. In the case of *Oberschlick v. Austria* the European Court of Human Rights held that "... journalistic freedom also covered possible recourse to a degree of exaggeration or even provocation".

The Court of Appeals gave an interesting legal interpretation to the value judgment in the case of *Lilit Martirosyan v. the founder of Irates.am website Tesaket Ltd.* (No. ED/14742/02/19). In particular, the court found that the defamatory expressions made by the defendant were considered value judgments about a phenomenon, but at the same time were addressed to the plaintiff. The court did not assess the public perception of the expression, which is of key importance for the case, as people unaware of the details of the case may think that the expression refers to Lilit Martirosyan and not the phenomenon, as the defendant claims.

In its ruling on court case No. EADD/2612/02/16 of October 18, 2019, the Court of Cassation stated: "When publishing any value judgment, the journalist ought to take all possible reasonable measures to verify whether the information is true or not. Even if the statement is based on facts obtained from a person, the journalist, as a professional participant of legal relations, must at least try to hear the opinion of the addressee, and only then publish the judgment. Moreover, even a value judgment must be based on a sufficient set of facts, due to the need to adhere to the principle of good faith. Otherwise, the expression used could be qualified as an insult. "

This case decision is one of the first to address the issue of insult and slander from the point of view of freedom of journalistic activity. In our opinion, in this case the Court of Cassation imposed stricter requirements on the journalistic community, as compared to other professional communities. This significantly restricts freedom of speech and journalistic activities. In particular, Para 6 of Article 1087.1 of the RA Civil Code does not obligate a person who made a defamatory statement to take measures to verify the information. It is sufficient for

the expression to be a literal or conscientious reproduction of the published information, and a reference should be made to the source of the original information when disseminating it.

Nature of defamatory statements and intention thereof

The judicial practice in handling this issue raises many questions, too. In its Ruling SDO-997 of November 15, 2011, the RA Constitutional Court noted that the terms "slander" and "insult" should be considered in the context of an intentional and deliberate act to disgrace a person's reputation. An insulting expression implies a deliberate act, a violation of a person's dignity. However, the courts often do not pay attention to this issue when examining such cases. In particular, in the case of *Karen Karapetyan v. Skizb Media Kentron Ltd.* (No. ED/24575/02/19) there was no reference to the fact that the disputed statement was intentional.

In some cases, the courts' interpretations on the defamatory nature of statements are controversial. In particular, in the case of *Hayk Sargsyan v. Hraparak Daily Ltd.* (No. ED/19158/02/19), the Court qualified the following as slander: "Hayk Sargsyan deals with issues related to human resources, as well as business matters, including Parliamentary lobbying for clinker business in favour of Mher Sedrakyan's son." In the same case – *Hayk Sargsyan v. ArmDay.AM Ltd.* (No. ED/24521/02/19) "acted as an 'akhrannik'" was assessed as an insult and "the latter often goes to the club with Pzo, and young ladies famous on Instagram and in other circles" was qualified as slander. We believe that in these cases the court set a lower threshold for the freedom of speech for the media and journalists than it had competence to.

Proper Defendant

The next issue, related to the judicial practice, is about lawsuits filed against improper defendants. In particular, Article 1087.1 Para 9 of the RA Civil Code establishes a rule according to which, if the source of the information was not mentioned in the insult or slander or if the person is not known, the responsibility for compensation rests with the entity who published it. Examining the judicial practice, we notice that there are also contraversial legal interpretations of these legal relations. Thus, in the court case of *Vardan Harutyunyan v. Investigative Journalists NGO* (No. ED/28943/02/19), the latter claimed that they were not a proper defendant, as they had not authored the disputed article, and the publication itself contained data about the author. However, due to the fact that the author of the article had a labour contract with Investigative Journalists NGO, the Court found that Investigative Journalists NGO should act as defendant. The Court ignored the fact that the terms "source of information" and "engaged in media activities" are clearly separated.

Another example to be quoted is the court case of *Lydian Armenia CJSC v. Skizb Media Kentron Ltd.* (No. ED/33691/02/19). When studying it, it becomes clear that the author of the disputed article is Sargis Artsruni, as the publication was signed in his name. The court stated this in the section of essential facts in its own act, but the court failed to justify what factual data should serve as a basis for holding Skizb Media Kentron Ltd. liable.

The study of *Mesrop Papikyan v. Boris Tamoyan* (No. AVD / 0193/02/19) case also reveals that Politik.am website, which published the article in questions, belongs to the Free Speech Platform journalistic NGO, yet the lawsuit was filed against the individual Boris Tamoyan, the editor of the website. In this case, too, there is the problem of "improper defendant."

Another important example is the case of *Hakob Charoyan v. Arthur Mnatsakanyan*, (No. LD2/1585/02/19) with *Arajin Lratvakan* (First News ("1in.am")) website, involved as the third party where the latter received a procedural status, but according to the law, only the founder or the owner of a media entity may have procedural rights. Therefore, we consider granting First News ("1in.am") a procedural status and defining rights and responsibilities unlawful.

Pecuniary and non-pecuniary compensation

In its Ruling SDO-997 of November 15, 2011, the RA Constitutional Court expressed its position, stating that it is necessary to approach the application of pecuniary compensation for insult with some reservations. It should be borne in mind that the European Court of Human Rights has repeatedly stated that tolerance and open-mindedness are at the heart of democracy and the right to free expression covers not only the speech that is considered generally acceptable, but also statements that could be considered shocking, insulting or annoying by some. In addition, when awarding pecuniary compensation, it is necessary to take into account its potentially restrictive effect on freedom of expression, as well as the possibility of lawful protection of reputation by other means available. The RA Constitutional Court also noted that for the damage caused by defamatory expressions, forms of non-pecuniary compensation shall be the first to apply.

According to the case decision made by the RA Court of Cassation on Case No. EKD/1320/02/14 of December 2, 2016, if the person claims only non-pecuniary measure of compensation for insult or defamation, the court is obliged to confine itself only to the application of this measure. And if the person claims both pecuniary and non-pecuniary measures of compensation, the non-pecuniary measure shall be applied first, and only in case of its insufficiency, can the court apply the measure of pecuniary compensation. The Court of Cassation also noted that non-pecuniary compensation, as a rule, ensures the proportionality of the compensation to the damage incurred, as in this case (when bringing a public apology or publishing a refutation) the person causing the damage suffers some non-pecuniary damage, in particular admitting one's own unlawful conduct. This is especially important for an aggrieved party whose honour, dignity, or business reputation were publicly tarnished.

Examining the judicial practice (*Hayk Sargsyan v. Hraparak Daily Ltd.* No. ED/19158/02/19, *Hayk Sargsyan v. ArmdayAM Ltd.* No. ED/24521/02/19, *Lydian Armenia CJSC v. Skizb Media Kentron Ltd.* No. ED/33691/02/19, *Alina Nikoghosyan v. Hraparak Daily Ltd.*, No. ED/16586/02/19), it becomes clear that the above-discussed principles are often applied inconsistently, and the courts deviate from the rules established by case decisions.

In particular, the plaintiffs of some cases do not substantiate the insufficiency of non-pecuniary compensation in their lawsuits, neither do they substantiate their claim for pecuniary compensation, and the courts, ignoring the above, set an amount of pecuniary compensation without substantiating the need for it. We consider that such a judicial practice is not in line with the principles of freedom of speech and can negatively affect exercising it in practice, especially if the proportionality of compensation is violated. Moreover, in some cases, there is an inadequate perception of the purpose of Article 1087.1 of the RA Civil Code by the participants of the trial: when applying this article, it should be borne in mind that it does not pursue the purpose of punishing or educating a person, but only prescribes a measure of compensation for the damage caused by insult or slander.

The need for reasoning in judicial acts

Judicial acts on insult and defamation lawsuits are often poorly reasoned. In a number of its decisions, the European Court of Human Rights has considered the non-reasoning or insufficient reasoning of acts drawn by domestic courts as a violation of the right to a fair trial. The ECHR gave the following explanation: according to Article 6(1) of the European Convention, the judgments of the courts, to a reasonable extent, must contain the reasoning supporting the judicial acts, in order to show that the parties have been heard, as well as to ensure public oversight of justice.

The RA Court of Cassation, too, addressed this issue in its Ruling of November 27, 2015, where it stated that in order to issue a reasoned act, the courts, to the best of their knowledge and belief, must assess all the evidence presented within a case in terms of its relevance, admissibility, credibility, and sufficiency on the basis of a comprehensive, complete and objective examination. In the reasoning part of its act, the court must point out the evidence on which it has based its inferences and conclusions, as well as the judgments, denying this or that evidence.

Examining the conclusions and reasoning presented in the judicial acts, we see that the courts are not guided by the above-mentioned principles in all cases. For example, in the act on *NewsAM Ltd. v. journalist Sirush Harutyunyan* (No. AVD/2519/02/18), the court obligated the defendant to refute the statements considered defamatory, but it did not analyze the expression against the provision of Article 1087.1 Para 8(1) of the RA Civil Code, particularly whether defamation was contained in the information disseminated or not. Moreover, the court obligated to refute the publication in its entirety, but in its act it did not analyze which parts contained slander, and did not reveal the defamatory nature of those expressions.

In the case of *Mher Derdzyan v. Zhoghovurd newspaper editorial office Ltd.* (No. ED/11182/02/19), the court did not assess whether the disputed statement was taken from the plaintiff's speech or the documents signed by him, whereas this was an essential circumstance to reveal the fact of defamation. Neither did the court substantiate the causal link between the number of views of the video made by the defendant and the overriding public interest, as it was extremely disputable to determine the overriding public interest based only on the number of views.

In *Lilit Martirosyan v. founder of Irates.am website Tesaket Ltd.* (No. ED/14742/02/19), the Court of Appeals did not present any proven fact that the plaintiff's speech or his homosexuality had become a subject of public discussion. Neither the court of first instance nor the Court of Appeals provided sufficient reasoning of factual data that could serve as a basis for the conclusion that the article in question fully complied with the "permissible limits of journalistic freedom of expression in accordance with democratic principles." Finally, no reasoning was presented to show that the content of the article was conditioned by overriding public interest. Even if we assume that there were discussions about the publication in the society, it does not mean that the publication was driven by overriding public interest. In this case, the conclusions of the courts of both instances on the concept of "overriding public interest" do not correspond to the legal interpretation of the same term, provided by the Court of Cassation (see the Ruling of the Court of Cassation of April 22, 2016, VD/ 0830/05/14).

In the case of *Davit Adyan v. Skizb Media Kentron Ltd.* (No. ED/16091/02/19), the court did not give any reasoning on why it considered the disputed expression as slander, in particular, it did not mention which statements attributed a misdemeanor or a crime to the plaintiff based

on untrue information. In settling the claim, the court did not substantiate the fact that the expression in question contained defamatory, slanderous content exceeding the threshold of a negative opinion or acutely critical, even provocative journalistic discourse. In addition, no reference was made to the fact that officials ought to display greater tolerance.

In some cases, the courts drew conclusions on the purpose or motives of the disputed expression in their acts, without providing any evidence or data, which, in our opinion, cannot be considered lawful. In particular, in the case *NewsAM Ltd. v. journalist Sirush Harutyunyan* (No. AVD/2519/02/18), the Court of Appeals noted that the defendant attributed a specific action to the plaintiff, stating in the published information that the newspaper was a “bought” media outlet and was doing the orders and instructions of a concrete person. However, the judgment did not make any reference to any evidence that would substantiate this interpretation. The plaintiff considered the phrase “a bought media outlet” as a reference to fulfilling orders and instructions, given by a specific person. However, the defendant stated that when she used the term, she meant it in the literal sense, namely, in the sense of purchasing the media outlet and becoming its owner, which could not be considered a defamation (no law prohibits owning or managing a media outlet). However, as it was mentioned, the court found that the defendant had used the expression in a different sense and failed to provide any evidence and substantiation for this position.

Measure to secure the claim

Measures to secure the claim are rarely sought in the judicial practice in Armenia, and they are applied even more rarely. This is a positive trend, as the application of this measure may unjustifiably restrict the activities and rights of a media outlet or a journalist, so the courts should be more careful in this regard.

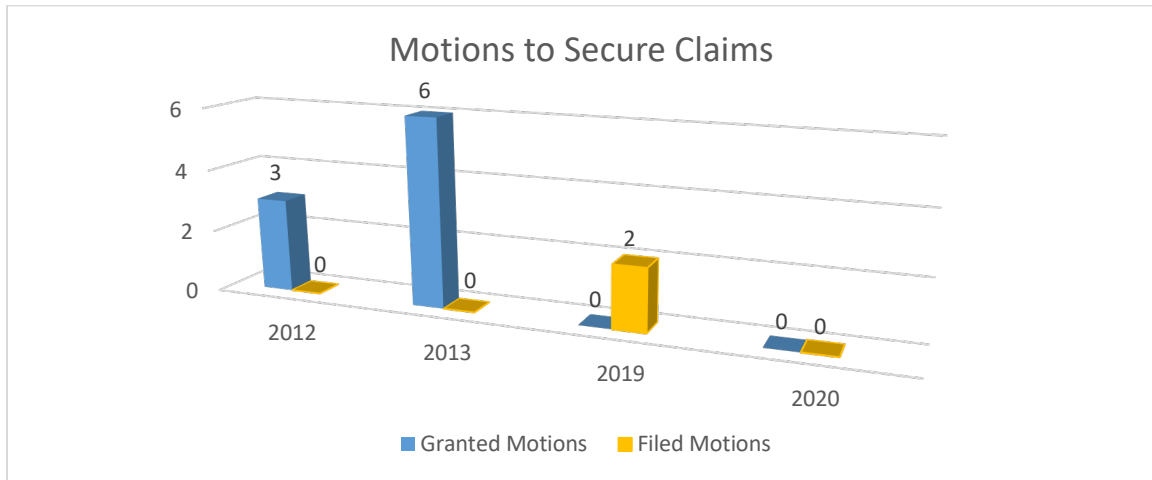
In one of the studied cases, i.e. *Emma Kirakosyan v. Dustrik Grigoryan et al.*, with ATV TV Company Ltd. involved as third person, (No. ED/8121/02/19) the plaintiff submitted a motion, requesting the court to apply a measure to secure the claim and obligate ATV TV Company Ltd. to remove the recordings of *Half Open Windows* show uploaded on February 22, 2019, and May 12, 2019, from its website. The court lawfully rejected that motion, as it was not a reasonable measure to ensure the execution of the judicial act.

A motion requesting the application of a measure to secure the claim was also filed in *Mesrop Papikyan v. editor of Politik.am website Boris Tamoyan* (No. AVD/0193/02/19), which was rejected by the court.

This positive trend becomes even more obvious when we compare the approaches of the courts on the same issue, for example, in 2013-2014 and during the last two years.

Examining the statistics of lawsuits filed in 2012-2013, regarding the motions to apply measures to secure claims, it becomes clear that they were granted in 9 cases, and in 2019-2020 2 such motions were filed, but both were rejected (see Figure 5).

Figure 5



Litigation costs (amount of state duty, attorney’s fee, etc.)

There are cases of improper calculation or determination of litigation costs in the studied judicial acts. For example, in cases *NewsAM Ltd. v. journalist Sirush Harutyunyan* (No. AVD/2519/02/18), *Hayk Sargsyan v. Hraparak Daily Ltd.* (No. ED/19158/02/19), *Emma Kirakosyan v. Dustrik Grigoryan et al.* with ATV TV Company involved as a third party (No. ED/8121/02/19) the plaintiffs, paying the state duty, were not guided by Article 9 of the RA Law on State Duty. That is, the amount paid was not calculated correctly. This was a reason to return the lawsuit, however, the courts did not apply this practice.

The analysis of the case and results obtained by the study, as well as the court cases, arranged in chronological order, and the recommendations of the monitoring group are presented below.

Cases with Judgments Entered into Force

Ani Yeranyan v. BlogNews.am News Website, in the Person of Its Editor-in-Chief Konstantin Ter-Nakalyan and Datablog Ltd. in the Person of Its Director Karen Antinyan (Court Cases No. ED/30242/02/18 and No. ED/32798/02/19)

1. Procedural Background of the Case

On December 21, 2018, Ani Yeranyan filed a lawsuit with the Court of General Jurisdiction of Yerevan against BlogNews.am news website, represented by Editor-in-Chief Konstantin Ter-Nakalyan, and Datablog Ltd., represented by Director Karen Antinyan, claiming a public apology (ED/30242/02/18). The lawsuit was caused by an article, titled “Ani Yeranyan Seems to Be Following Meline Daluzyan” and published on BlogNews.am website on November 22, 2018.

The court accepted the lawsuit for proceedings on January 9, 2019, and 5 court hearings were held on March 15, April 25, July 11, September 26, and December 3, 2019. During the September 26, 2019 hearing, the plaintiff filed a motion on refusing from the claim against BlogNews.am website in the person of its editor-in-chief Konstantin Ter-Nakalyan and requesting the dismissal of the civil proceedings over that part of the case. By its September 26, 2019 decision, the Court split Ani Yeranyan's claim against BlogNews.am website. The separated case was assigned a new number – ED/32798/02/19. It was accepted for proceedings on September 26, 2019, and a decision on dismissing the civil case was made on the same day.

The court proceeded with Case ED/ 30242/02/18 – *Ani Yeranyan v. Datablog Ltd.*, in the person of its director Karen Antinyan. This claim was rejected by the court decision of 27 February, among other grounds also because the plaintiff did not submit any evidence that BlogNews.am news website belonged to Datablog Ltd., hence the plaintiff bore the negative consequences thereof, too.

The judicial act was not appealed and entered into force.

2. Defamatory Nature of Information

As it has been mentioned, the lawsuit was caused by an article, titled “Ani Yeranyan Seems to Be Following Meline Daluzyan” and published on BlogNews.am website on November 22, 2018, which read particularly as follows: "Yesterday, everyone on the Internet was discussing Ani Yeranyan's new haircut. Certainly, the opinions varied. After posting a photo on her Instagram page, the actress wrote: «Я уважаю ваше мнение. Но, как я к нему отношусь, это уже другой вопрос» (Tr. – “I respect your opinion. But my take on it is a whole different matter.”) I have an impression that she has guarded herself against bad comments and has shown that she does not care for what people may say. The thing is that the actress does not seem to be able to find her style, she keeps experimenting, not realizing that she is losing the little femininity she has and is becoming very rough-looking. After moving to Moscow, Ani presented a new video where the singer was in a boyish style again. Isn't there anyone to work

with Ani properly and tell her: “Ani jan (dear Ani), you have made enough changes in your look already.” She seems to be following Meline Daluzyan.”

The plaintiff told the court that the title of the article already contained an insult, as she was compared with Meline Daluzyan, known to the public as a person who has undergone sex reassignment and displays a conduct, rejected by the society.

Referring to Judgment 9815/82 of the European Court of Human Rights in *Lingens v. Austria*, Constitutional Court Rulings SDO-278 and SDO-997, the Court found that in cases where there is a conflict between human dignity and freedom of expression, simple balance between the two should be found, since either is an indispensable component of a democratic society.

Referring to the ruling of the Court of Cassation on Case LD/0749/02/10 and Article 62 of the RA Civil Procedure Code, the Court noted that the plaintiff had not presented any relevant evidence, even though the onus of proof on the damage caused to her honour, dignity and business reputation by the expression published on BlogNews.am on November 26, 2018, rested on her.

The court ruled that “In this case, the article published on BlogNews.am discussed the plaintiff's haircut, and the statement "Ani Yeranyan seems to be following Meline Daluzyan" was used in this context, which does not damage the plaintiff's honour, dignity or business reputation.”

3. Facts and Value Judgments

Referring to the ground of the lawsuit, the Court mentioned that the article contained the author's value judgments. Particularly, the author used the word “seems” in both the title and the body of the article, which, by the court's judgment, is the author's opinion and perception, besides, “the article did not contain any insulting, unrestrained and emotional expressions that would be an exaggeration or imply a provocation.”

The Court mentioned that the legal positions of the European Court also defended the expression of a negative opinion or a value judgment as long as such an opinion or such a judgment are based on confirmed or admitted facts. Unlike facts that can be represented and substantiated, value judgments cannot be proven. It is impossible to fulfil the obligation of proving a value judgment and such an obligation is in itself a violation of the right to free expression which is part of the fundamental freedoms, established in Article 10 of the European Convention.

Also considering that a value judgment is a manifestation of the free expression of an opinion and not of the right to disseminate information, the Court found it necessary to address the issue of whether the judgment was based on specific facts. A value judgment devoid of any factual basis is not protected from the intervention of the state. The Court found that such a position is conditioned also by the fact that when addressing the above-mentioned issue the European Court noted that one's personal opinion might be considered excessive, in particular in the absence of any factual basis (see ECtHR Judgment on *Oberschlick v. Austria*, July 1997, Para 33).

In the light of the above, the Court noted that the expression in question was a value judgment, made by the author of the article, and discussed the plaintiff's hairstyle, which was a factual information. Therefore, the phrase “Ani Yeranyan seems to be following Meline Daluzyan” is not an insult.

4. Attorney's Fee

The court ruled to confiscate 50.000AMD from Ani Yerkanyan in favour of BlogNews.am, in the person of its editor-in-chief Konstantin Ter-Nakalyan, as an attorney's reasonable fee. On October 24, 2019, Ani Yerkanyan filed an appeal with the Civil Court of Appeals against the decision of the court of first instance, regarding the attorney's fee. By a judgment of 24 January 2020, the Court of Appeals upheld the appeal and rejected the part, related to the confiscation of an attorney's reasonable fee. The Civil Court of Appeals further substantiated its act as follows: the court of first instance made a judgment on September 26, 2019, to confiscate the attorney's fee from the plaintiff in favour of the editor-in-chief of BlogNews.am website Konstantin Ter-Nakalyan when the latter was not a party to the proceedings of this case. The defendant was the news website, not its editor.

In the main case (ED/30242/02/18), invoking Articles 109, 101, 105, 107 of the RA Civil Procedure Code, the judgment of the European Court of Human Rights on *Philip v. Greece*, of August 27, 1991, as well as the rulings of the Court of Cassation on EKD/1587/02/10 of June 29, 2012 and on EAKD/0554/02/11 of July 4, 2013, the court found that 350.000AMD was not a reasonable sum to be claimed as an attorney's reasonable fee. It should not exceed 50.000 AMD, because, according to the court, the amount of the work actually done by the legal counsellor was not large in volume, it did not include any action for gathering evidence independently. Besides, the attorney wrote only an objection to the lawsuit and participated in only three court hearings.

5. Conclusion

Studying the factual and procedural background of the case, it becomes clear that the Court did not address the expression "(...) she is losing the little femininity she has", published in the article, titled "Ani Yeranyan Seems to Be Following Meline Daluzyan" and published on BlogNews.am news website on November 22, 2018. The court did not compare it with the criteria describing insult, did not assess its character as either a fact or a value judgment. Besides, even though the court noted that special attention should be paid to whether one had an intention to defame someone or simply expressed one's value judgment objectively, it eventually failed to address the issue (see the ruling of the Court of Cassation on Case EKD/2293/02/10 of April 27, 2012).

The Civil Court of Appeals addressed the issue of the attorney's fee in its decision of January 24, 2020, and overturned the act of September 26, 2019. The Court of Appeals mentioned that Konstantin Ter-Nakalyan was not a party to the case, and the signed contract for the provision of the legal services could not be a basis for assigning an attorney's fee by the court. That is to say, the Court of Cassation has not examined whether the procedural rights and obligations within the case were implemented by Konstantin Ter-Nakalyan's attorney, based on a power of attorney granted by Konstantin Ter-Nakalyan. In other words, if he was not a subject within this case, why did the court accept the lawyer as an entity with the powers of the defendant's representative throughout the investigation of the case?

The Court of Appeals did not study whether BlogNews.am news agency cannot be a party to the case: according to the legislation, only the founder or the owner of a news entity can have procedural rights.

Mesrop Papikyan v. Boris Tamoyan
(Court Case No. AVD/0193/02/19)

1. Procedural Background of the Case

On January 24, 2019, the advisor to the RA Prime-Minister Mesrop Papikyan filed a lawsuit with the Court of General Jurisdiction in Ararat and Vayots Dzor Marzes against Boris Tamoyan, head of Politik.am news website, claiming to oblige to publicly refute the factual data considered defamatory and a compensation for the damage caused to the honour and dignity. On February 5, 2019, the lawsuit was accepted for proceedings. The court appointed 3 court hearings – on April 22, June 14, and September 24, 2019. And by the judgment of October 14, 2019, the claim was partially upheld, obligating the defendant to refute the information about Mesrop Papikyan in an article, titled “Criminal Authority “Tuy” Paid a Bribe of \$10.000 to Pashinyan’s Advisor” and published on January 17, 2109. The refutation was to be published on Politik.am news website and on Facebook within a week after the judgment entered into force. The court ruled to confiscate 250.000AMD from the defendant in favour of the plaintiff as compensation for the damage caused by defamation, 200.000AMD as an attorney’s reasonable fee and 9.000AMD as a pre-paid state fee.

The defendant filed an appeal with the RA Civil Court of Appeals on November 22, 2019, which was rejected in its entirety by the decision of February 6, 2020. The defendant filed an appeal with the Court of Cassation on March 4, 2020, which was returned with the ruling of April 29. On June 3, Boris Tamoyan filed an appeal with the Court of Cassation again which was not accepted for proceedings on August 12. As a result, the act of the court of October 14, 2019, entered into force.

2. Defamatory Nature of Information

The plaintiff mentioned that on January 17, 2019, Politik.am news website published an article, titled “Criminal Authority “Tuy” Paid a Bribe of \$ 10,000 to Pashinyan’s Advisor” where the defendant ascribed illegal actions to the plaintiff. A quote from the article reads: “Mesrop Papikyan from the My Step faction and advisor to the Prime-Minister (...) had close relations with Artur Ghazaryan, a criminal authority nicknamed Tuy” (...).” “(...) According to the information in circulation, Mesrop Papikyan was given 10 thousand USD by Tuy so that he did not “feel short of money” during the electoral campaign.” The defendant posted this content onto Facebook, too, namely at 01:25 a.m. on January 17, 2019, where it was widely shared. 43 people reacted to it, 25 people shared it, and 2 people left a comment.

The plaintiff also mentioned that in the publication quoted above the defendant used the photos of a person unknown to the plaintiff which, according to the article, was that of criminal authority Artur Ghazaryan with the nickname “Tuy”. Besides, defamatory data and circumstances, not reflecting the reality, were disseminated, which had damaged the personal reputation and dignity of the plaintiff, but they brought about a misperception among the public about him as the advisor to the Prime-Minister.

The defendant also mentioned that the statement “had close relations with a criminal authority” was about one’s personal connections and some part of one’s social status. That expression does not correspond to the definition of the legal term of “defamation”, consequently it cannot serve as a basis for legal liability. The RA legislation has never qualified the interaction

with or close relations with a criminal authority, including the receipt of gifts of money, as a prohibited act (a misdemeanor or a crime) (unless such an act contains substantial elements of a crime).

The Court noted that besides the sums of the pre-electoral foundations for the campaign, the use of other funds, and especially the use of funds donated by criminal authorities was not only illegal, but also is perceived by the public as a condemnable conduct, especially if it involves a top official, thus contradicting the ethical requirements of political life. In such conditions, the dissemination of information that does not reflect the reality is apparently damaging the person's, in the given case, top state official's merits and reputation.

In the appeal filed with the Court of Appeals, the defendant informed that the concept of "criminal authority" presumed that the person enjoyed a special position due to the authority, enjoyed among the bearers of criminal subculture or in the criminal world. Hence, the interaction between a person of criminal authority and a public servant is ethically problematic and undesirable, however, it is not defamatory, since such interactions may arise due to various reasons and circumstances. In the response to the appeal, the plaintiff mentioned that in the context of factual data of the above-mentioned publication an independent reader arrives at an objective perception that the political figure has violated the requirements of the legislation and has displayed an unfair conduct.

The Court of Appeals ruled that the expressions used in the publication were defamatory in nature, and the defendant had from the very beginning pursued the goal of damaging the honour and dignity of the defendant, in other words, had the intention of degrading the reputation of the plaintiff and humiliating him with those expressions.

3. Facts and value judgments

The plaintiff claims that the mentioned facts were published as doublechecked and verified circumstances, and they were not presented in an abstract or hypothetical sense. The defendant, in his turn, mentioned that the following part in the article "... certainly, there is no crime in Tuy financing Mesrop Papikyan's electoral campaign, but this is a violation of the principle, declared by Pashinyan. And most importantly, a question arises as to how the state authorities are going to pay it back to Tuy" contains the author's value judgments on an issue that is political in nature. The authors believed that the presented information, which was not defamatory in nature, served as a basis for such judgments. When examining this dispute, the Court underlined that it was important to understand the legal concept "aiming at defaming" correctly. In the given context, the expression implies intentional, deliberate action, offense to human dignity. Whereas a value judgment is an inference made, based on the analysis of factual circumstances which is not only the right, but also the duty of a journalist. Quoting the judgments of the European Court of Human Rights (on *Bladet Tromsø and Stensaas v. Norway* of May 20, 1999, Para 65; on *the Ukrainian Media Group v. Ukraine* of March 29, 2005, Para 61), the Court established that in the given situation they were dealing with a concrete fact that was being presented not as a value judgment but as an accurate and real circumstance.

4. Overriding Public Interest

The defendant claims that the mentioned expressions were used in an article within which the rights of the media outlet to disseminate information of public interest about a political figure, on the one hand, clashed with the right to protect the reputation of the given political

figure, on the other. Given the position of the plaintiff, the information about his conduct is of public interest, and the public has a right to receive this information. Besides, the press plays a special role in a democratic society in terms of the provision of information on publicly significant incidents, thus also implementing its role as the watchdog of public bodies. Consequently, the media outlet has implemented its mission by disseminating the above-mentioned information.

The Court has arrived at a different conclusion and found that in this case the requirements provided for in Article 1087.1 of the RA Civil Code were obviously lacking, namely “the person provides evidence that he/she has undertaken measures to a reasonable extent in order to ascertain the accuracy and justification thereof” and “has submitted information in a balanced manner and in good-faith”. Therefore, the reasoning of “overriding public interest” referred to by the defendant is unfounded.

5. Measure to secure the claim (court injunction)

Mesrop Papikyan filed a motion to secure his claim, in particular, by means of prohibiting the defendant from certain actions, seizing the property belonging to him in the amount of the claim, which was rejected by the decision of the Court of February 5, 2019.

6. Litigation Costs

The court found that the plaintiff was entitled to a reimbursement of court costs and fees to a reasonable extent. Comparing the complexity of the case and the amount of work done by the lawyer with the amount of money to be paid for the services provided, the court ruled that 200.000AMD should be considered as a reasonable attorney’s fee. In the Court of Appeals, the plaintiff asked to confiscate 150.000AMD from the defendant as an attorney’s reasonable fee for the legal service to defend his rights. This judicial instance found that the submitted claim could be upheld partially in the amount of 100.000AMD.

7. The property status of the defendant, considered by the Court

The plaintiff demanded to confiscate 500.000AMD from the defendant as compensation for the damage caused to his honour and dignity by slander.

The Court found that the plaintiff’s claim could be partially upheld in the amount of 250.000AMD, taking into consideration the property status of the defendant, on the one hand (Politik.am is owned by Free Speech Platform news NGO, Boris Tamoyan is the President of the organization and works there on a voluntary basis and without pay), and on the other hand, the absence of the defendant’s willingness to voluntarily refute a defamatory statement. Thus, the court ruled that only the obligation to refute in the given case could not be a sufficient measure.

8. Conclusion

First of all, it should be stated that the lawsuit was initiated and upheld against an individual, Boris Tamoyan, but the facts of the case lead to a conclusion that Politik.am website where the article in question was published is owned by Free Speech Platform news NGO which should have been recognized as a proper defendant. Whereas, the Court has not addressed this circumstance, thus passing a disputable judicial act.

Examining the factual and procedural circumstances of the case, it becomes clear that the court of first instance, in essence, applied the legal position of the Court of Cassation on Case EKD/1320/02/14 of December 2, 2016, according to which if one demands to apply both pecuniary and non-pecuniary measures, the non-pecuniary measure should be applied first, and only in case of its insufficiency, the Court can apply the measure of pecuniary compensation. Particularly, the Court reasoned that imposing an obligation for refutation was not a sufficient measure.

As for the claim for pecuniary compensation, the Court found that it should be settled in part, in the amount of 250.000AMD, taking into consideration the property status of the defendant, on the one hand (Politik.am is owned by Free Speech Platform news NGO, Boris Tamoyan is the President of the organization and works there on a voluntary basis and without pay), and on the other hand, the absence of the defendant's willingness to voluntarily refute a defamatory statement.

Another important issue was examined in the Court of Cassation: this is the circumstance of whether the defendant had used the expression intentionally. In case of no intention, the given expression may not be considered defamatory. That fact must be proven by the plaintiff; however, the courts do not always pay attention to this circumstance. On this case, the Court of Appeals concluded that the person had an intention to humiliate the plaintiff.

News.am Ltd. v. journalist Sirush Harutyunyan
(Case No. AVD/2519/02/18)

1. Procedural Background of the Case

On September 26, 2018, NewsAM Ltd. applied to the Court of General Jurisdiction in Ararat and Vayos Dzor marzes, demanding to obligate Sirush Harutyunyan to refute the defamatory information damaging the business reputation of the plaintiff on her personal Facebook page, publish the plaintiff's response to that information, and apologize for the insulting expression. Besides, the plaintiff demanded to publish the court judgment, as well as confiscate 100.000AMD from the defendant in favour of the plaintiff as compensation for slander and 100.000AMD as compensation for insult.

On February 11, 2019, the Court accepted the lawsuit for proceedings, and appointed 3 preliminary hearings – on April 23, May 29, and June 26, 2019, and the trial was appointed on July 9.

On July 24, the Court made a judgment to settle the claim partially and obligate the defendant, Sirush Harutyunyan, to publish a refutation on her personal Facebook page <https://www.facebook.com/sona.harutyunyan.376> within a week after the judgment entered into force. The Court also decided to confiscate 50.000AMD from Sirush Harutyunyan in favour of NewsAM Ltd. as compensation for slander. The remaining part of the lawsuit of NewsAM Ltd. was rejected.

The defendant Sirush Harutyunyan filed an appeal with the Civil Court of Appeals on August 20, 2019, which was accepted for proceedings on September 12, and was rejected on November 14. Thus, the judgment of the first instance court of July 24 remained unchanged. Sirush Harutyunyan did not go to the Court of Cassation.

2. Defamatory Nature of Information

The defendant Sirush Harutyunyan posted a status on her Facebook page that read as follows: “The recent changes have not left us aside, either. I mean journalists and the so-called journalistic solidarity. Yesterday News.am website posted the statement, disseminated by ARF where the ARF was responding to my article. We should start by noting that throughout its existence this website has never published a statement, a refutation about any peer media outlet. This is something they can confirm themselves. But this time they could not help violating their own principles, as this was ordered by the BUYER. By the way, the ridiculous thing here is that those responsible for this website were in such a hurry to realize the order of the BUYER, that along with the ARF’s statement they also published the instructions to the person, in charge of content management, who again hurriedly did a poor job. The face of the ARF candidate was blurred at the beginning. As a matter of fact, instead of the ARF’s statement they could have posted the recently posted clarification that Kocharyan has not bought them, thus preventing any potential misunderstanding.”

The plaintiff claimed that this post contained an insult and slander and disgraced its business reputation. Thus, it contained slander because the logic and the implicature of the published text led to a conclusion that the second President of the RA Kocharyan, “having bought” the plaintiff, had ordered them to disseminate information in his favour on the website, and the insult consisted in calling the plaintiff “unprincipled.”

Objecting against the lawsuit in its entirety, the defendant mentioned that the post was her value judgment, based on an article, titled “Ararat, Armnews, H2, News.am, Yerkir Media, fake accounts: which media outlets has Kocharyan “bought”?” and published in the *Armenian Times* on August 21, 2018. The defendant mentioned that the words “buyer” and “buy” were used in their direct sense, since the above-mentioned article of the *Armenian Times* referred to the act of purchasing News.am, and not in the figurative sense as dictated by the imagination and assumptions of the plaintiff. The opinion does not contain an element of insult since the value judgment, namely “But this time they could not help violating their principles” sentence referred to the following thought: “We should start out noting that throughout its existence this website has never published a statement, a refutation about any peer media outlet.”

Analyzing Ruling SDO-997 of the RA Constitutional Court of November 15, 2011, the judgments of the European Court of Human Rights on *Pedersen and Baadsgaard v. Denmark* of December 17, 2004, *Rizos and Daskas v. Greece* of May 27, 2004, *Lingens v. Austria* of July 8, 1986, *Oberschlick v. Austria* of July 1, 1997, *Dyuldin and Kislov v. Russia* of October 31, 2007, the Court came to the following conclusion:

- According to the defendant’s representative, the client did not mean to insult the plaintiff, consequently the sentence “But this time they could not help violating their own principles” which the plaintiff considered an insult had to be proven with factual data. However, the plaintiff had not proven the facts they invoked, which meant that the insult claim was unfounded and should be rejected,
- The defendant had not proven during the trial that the information mentioned in the post reflected the reality,
- Contrary to what is envisaged by Clauses 6 and 9 of Article 1087.1 of the RA Civil Code, the defendant had not presented any evidence that she had disclosed the source of information when she was disseminating information through the disputed post.

Referring to the defamatory nature of the post within the same case, the Court of Appeals mentioned that Sirush Harutyunyan's Facebook post contained expressions with which the defendant actually accused the plaintiff of being a bought (i.e. biased) media outlet and of following the orders and instructions given by a concrete person, and this, by the evaluation of the Court of Appeals, was perceived by the public as a condemnable, reprehensible and defamatory act.

3. Facts and value judgments

The defendant claimed that the post was her value judgment, based on the information published in the *Armenian Times* newspaper. The Court, referring to Ruling SDO-997 of November 15, 2011, of the Constitutional Court mentioned that a value judgment was an inference due to the analysis of factual circumstances, whereas in the disputed post Sirush Harutyunyan did her analysis of factual circumstances without any further action of checking the accuracy thereof.

In the appeal filed with the Court of Appeals on August 20, 2020, the defendant mentioned that the expressions in question were value judgments, inferences made as a result of the analysis of factual circumstances, which is a universal right, even more so, a journalistic duty.

In its decision of November 14, 2019, the Court of Appeals noted that the defendant had not submitted proofs to the Court of General Jurisdiction to confirm that the expressions posted onto her Facebook page were based on real facts, also failing to prove the validity of the facts she revealed in the trial.

4. Compensation

The court's judgment of July 24, 2019, set a compensation for the damage at 50.000AMD. In her appeal, the defendant referred to the issue of compensation and mentioned that the facts she quoted and the issues she raised had been overlooked and had been left out of examination by the court, which is the reason by the latter had arrived at the wrong conclusion, upholding the slander claim, and obliging her to publish a refutation, also confiscating 50.000AMD in favour of the plaintiff as compensation for slander. Referring to the appeal against the amount of compensation in its November 14, 2019 decision, the Court of Appeals mentioned that the Court of General Jurisdiction had taken into consideration the above-stated legal rules and regulations, comparing the facts of the case against them, coming from the fair and reasonable balancing principle, as well as the means and scope of the dissemination of the defamatory information, and had arrived at a correct conclusion that the claim for compensation against Sirush Harutyunyan was only partially substantiated and should be upheld partially in the amount of 50.000AMD.

5. Litigation costs

The plaintiff filed 4 non-pecuniary and a pecuniary claim with the court, submitting a receipt of 16.000AMD for a paid fee. In its judgment of July 24, 2019, the Court referred to the issue of the state duty and mentioned that the case did not contain evidence to prove the fact that the plaintiff had paid that amount. Since the lawsuit was upheld only partially, it was necessary to confiscate 7.000AMD from the plaintiff in favour of the RA state budget for the rejected part

of the case, and 5.000 AMD was to be confiscated from the defendant in favour of the budget from the upheld part of the case.

6. Conclusion

The defendant Sirush Harutyunyan claimed that the expressions posted onto her Facebook page were value judgments and were based on real facts, besides, she stated that journalistic freedom involved some exaggeration and even a possibility of resorting to some provocation, as guaranteed by Article 10 of the European Convention. However, both the General Jurisdiction Court and the Court of Appeals found that the defendant had not submitted any evidence that the expressions in question were based on real facts and that she had failed to prove that the information she reported were reflecting the reality. This interpretation is disputable as the defendant is not required to prove the truthfulness of a value judgment. It is required to indicate sufficient grounds for the value judgment the defendant had made, presenting the publications of various media outlets. However, the judicial instances did not examine whether these were sufficient and substantiated.

The Court of Appeals mentioned that the defendant had ascribed a clear and definite action to the plaintiff, that is, published information on being a bought media outlet and fulfilling the orders and instructions of a concrete person, however, without any reference to any proof that would substantiate such a statement. In fact, the court focused on a number of specific expressions and drew conclusions about their objective, which is not well substantiated.

Referring to the defendant's argument that the expression was based on the information on this topic published in various media outlets, the Court of Appeals mentioned: the defendant had not submitted evidence that they were literal and accurate reproductions. Whereas in this case we are dealing not with a case of faithful reproduction of an expression, but a value judgment, based on those publications.

The Court of Appeals also addressed the issue of a certain degree of exaggeration and the possibility for some provocation as part of journalistic freedom and noted that the defendant had presented facts which she did not avail of exact information about. Thus, in essence, the court had overlooked the possibility that a certain degree of exaggeration and provocation could be used, regardless of the existence or lack of accurate facts.

A number of other omissions were discovered when studying this case. Thus, the Court obliged the defendant to refute the defamatory expressions, whereas the judicial act had not analyzed whether Article 1087.1 Para 8(1) of the RA Civil Code was applicable, particularly whether slander was present in the disseminated information or not. Besides, the Court obliged the defendant to refute the published information fully, however, the judicial act did not contain any information with slander and did not disclose the defamatory nature of those expressions.

Neither the first instance court, nor the appeals court analyzed the necessity of applying a pecuniary means of compensation. Particularly, it was not substantiated why only non-pecuniary compensation was insufficient and what conditioned the application of pecuniary compensation, whereas this is a requirement set by the Court of Cassation in the leading case of EKD/1320/02/14 of December 2, 2016.

Examining the issues of litigation costs under the case, it becomes clear that, first of all, the plaintiff, paying a state duty of 16.000AMD, was not guided by Article 9 Para 1 of the RA Law on State Duty, according to which not only 16.000AMD was to be paid for 4 non-pecuniary claims, but also 2 percent of the pecuniary claim, amounting to 4000AMD in case of the total of

200.000AMD. This could serve as a ground for returning the lawsuit, however, it was not the case. By the way, the court admitted the circumstance of state duty payment by the plaintiff, not in the amount set.

Andrey Ghukasyan v. Karine Vanesyan
(Case No. LD2/0648/02/19)

1. Procedural Background of the Case

On May 15, 2019, the Governor of Lori Andrey Ghukasyan filed a lawsuit against journalist Karine Vanesyan with the Court of General Jurisdiction of Lori marz demanding to obligate her to make a public apology for an insult. The lawsuit was caused by a status posted by the journalist onto her personal Facebook, sharing a video, titled “Lori Governor Says: “From Now on We Shall Be Working Publicly and Openly”” uploaded onto Youtube.com.

The lawsuit was accepted for proceedings by the decision of the Court of May 17, 2019. 2 preliminary court hearings and a trial were appointed on September 4, October 3, and November 14, 2019, respectively, and on December 5 the Court made a judgment to settle the claim and obligate journalist Karine Vanesyan to make a public apology to Andrey Ghukasyan on her personal Facebook page for the status she posted about him within 5 working days after the judgment entered into force. On January 13, 2020, Karine Vanesyan filed an appeal with the Civil Court of Appeals against the judgment of the first instance court of December 5, 2019. The appeal was accepted for proceedings on March 23 and was rejected by the decision of April 17.

The defendant appealed this decision at the Court of Cassation on May 23, but on July 22 this instance ruled to reject the acceptance of the appeal for proceedings.

2. Defamatory Nature of Information

At 4:30 p.m. on April 15, 2019, Karine Vanesyan posted a status on her personal Facebook page, sharing a video, uploaded onto Youtube.com and titled “Lori Governor Says: “From Now on We Shall Be Working Publicly and Openly.”” The status read as follows: “You are hiding your eyes, and I do not like your facial expression. You have abundantly awarded your advisors and assistants. Ask them to train you a little, so that your statements are more impressive, my dear.” Later she commented to her own post that read “Lus jan (dear Lus,) that is another issue, but I can surely tell his state of mind. Everything can be guessed from his look and mimic, and if you stab a knife in his heart, it will not bleed. He is concerned because he has not managed to award everyone. We have stifled him halfway through his actions, and he does not know whether to proceed or set back. Before a number of instructed persons manage to “divert” the attention of the people, he will quickly make involve others in this party. I have said and will repeat it again, may you not enjoy that money, we will force you to spit it out cent by cent. None of you is worthy of additional money, or even a large salary, that we are paying you, the unworthy, as gifts from our pockets on a monthly basis, as taxpayers, and all this is purely for nothing. People, more intelligent than you, are at home in a state of uncertainty, whereas bums like you do not miss the opportunity of swallowing it all like pigs. Shame on you and your honour, if you have any, of course.”

Plaintiff Andrey Ghukasyan found that the public comment contained an insult, especially the part that reads “whereas bums like you do not miss the opportunity of swallowing it all like pigs.”

In response to the lawsuit, Karine Vanesyan mentioned that the comment she wrote consisted for 9 sentences the first five of which were concretely about the plaintiff. And since, according to the defendant’s explanation, “bums like you” and “swallow it all like pigs” were not about the plaintiff, hence, she asked to reject the lawsuit.

The Court found that the fact of the insult and its reference to the plaintiff as contained in the defendant’s comment on the Internet were to be proved by the plaintiff under this case. Whereas the defendant was to prove that the comment she made on the Internet was not about the plaintiff. Invoking the ECHR judgment on *Lingens v. Austria*, the Court found that the legal representative of the plaintiff had proven the fact that the defendant’s comment contained insult, addressing the plaintiff. The defendant presented expressions degrading one’s honour, dignity, and business reputation, namely “bums like you” and “swallowing it all like pigs”. She made these comments publicly, on her Facebook page, consequently, the presumption that at least a third person was exposed to it applies here.

The Court found that the defendant had not in any way substantiated her claim which stated that only the first five sentences of her comment related to the plaintiff, and the last four – “bums like you” and “swallowed like pigs” – did not. The Court considered this claim invalid, because her Facebook comment contained just one general thought. Hence, the defendant was bearing its negative consequences.

Summing up, the Court came to the conclusion that all the requirements for assessing the defendant’s expressions as insult were present, hence the claim was to be accepted.

Submitting an appeal, Karine Vanesyan again mentioned that only the first five sentences contained in her comment were about the plaintiff, and then the train of thought and the logic changed, not being personified any more and turning into general judgments. Even if these judgments apparently contained insult, they were not addressed personally at the plaintiff, hence he is not the person who can go to court on the grounds of Article 1087.1 Para 1 of the RA Civil Court. Not referring to the issue of whether the expressions “bums like you” and “swallowing it all like pigs” inherently contained insult or not, the defendant stated that they did not contain any expression that was a personal insult addressed at the plaintiff, hence the latter could not demand an apology from her in relation to these expressions.

The Court of Appeals stated that the above-mentioned claim by Karine Vanesyan was neither substantiated nor convincing. This court found that the main idea of the disputed comment was conditioned by the idea of the author and the topic she had selected. The sentences contained in it were logically and linguistically coherent, in other words, the nine sentences within the comment constituted one body of text and had one common perceptible meaning, implying one thought. Hence, the Court of Appeals concluded the judicial act on the case was lawful and was not subject to overturning due to the grounds and substantiations presented within the case. As for the defendant’s appeal filed with the Court of Cassation, as mentioned above, it was rejected and was not accepted for proceedings.

3. Conclusions

The examination of the judicial act makes it clear that the court established the form for the defendant’s apology, namely repeating the insulting expression in the text of the apology in its entirety. Article 1087.1 Para 7(1) of the RA Civil Code states that in case of insult, judicial

procedure may be used to claim a public apology the form of which shall be defined by the court. We believe that courts should avoid the practice of requiring the full repetition of the insulting expression in the text of apology, since they unnecessarily contribute to the spread of the insult twice. It should be noted that the plaintiff had not lodged a claim of pecuniary compensation for the damage caused by the insult, which is a rare phenomenon in judicial practice.

The Information Disputes Council addressed this case and mentioned that “court judgments are proportionate interferences with the freedom of expression, since, firstly, no claim for pecuniary compensation has been established, secondly, the journalist was only required to apologize publicly on her personal page on the social network to ensure remedy. Under these circumstances, such remedies are not disproportionate measures to be considered a restriction of freedom of expression.”

Ashot Gevorgyan v. Hraparak daily Ltd.
(Case No. ED/21345/02/19)

1. Procedural Background of the Case

On July 12, 2019, citizen Ashot Gevorgyan filed a lawsuit against the *Hraparak Daily* Ltd. with the Court of General Jurisdiction of Yerevan, claiming 1 million AMD as compensation for slander and publication of refutation in the newspaper and website owned by the Ltd. The lawsuit was caused by information on the plaintiff’s sexual orientation, published in Issue N 127 (2650) of the daily, dated July 11, 2019, and on Hraparak.am website that was titled “*Hraparak. Burn, slaughter and expel Naira Zohrabyan*”. The plaintiff also demanded to address the issues of state duty and attorney’s fee.

On July 23, 2019, the court accepted the lawsuit for proceedings and appointed preliminary court hearings on October 3 and December 11, 2019 and scheduled the trial for May 14, 2020. On June 1, 2020, the Court ruled to reject the lawsuit and confiscate 80.000AMD from the plaintiff in favour of the *Hraparak Daily* Ltd. as the sum for the reasonable attorney’s fee.

On June 29, 2020, the plaintiff filed an appeal with the Civil Court of Appeals which was returned because of the non-payment of the state duty. Thus, the judicial act entered into force.

2. Defamatory Nature of Information

At 07:05a.m. on July 11, 2019, Hraparak.am website reprinted the news published in the *Hraparak* newspaper on the same day, under the title of “*Hraparak. Burn, slaughter and expel Naira Zohrabyan*” and with the following content: “Along with the news on the ratification of the Istanbul Convention, the representatives of the community with non-traditional sexual orientation have targeted the “traditional” deputies of the NA. Transgender Lilit Martirosyan, who made a speech from the NA platform today, appealed to My Step faction Deputy Sophia Hovsepyan from who had criticized the Convention, demanding to terminate her mandate and yesterday, the Facebook user, named Gevorgyan Ashot, who is Facebook friends with Lilit Martirosyan, proposed to “burn”, “slaughter”, and “expel” Naira Zohrabyan, an MP from the Prosperous Armenia Party and the Chair of the NA Committee on Human Rights...”

The plaintiff stated that in the article the defendant gave a direct indication of the fact that he was of non-traditional sexual orientation and targeted MP Naira Zohrabyan. According to

Ashot Gevorgyan, Hraparak.am had violated the right to private life, since he himself had never made an announcement of his sexual orientation, no matter which. Besides, the plaintiff claimed, that the published information did not reflect the reality and was defamatory in nature.

Objecting to the lawsuit, the defendant mentioned that they had not published any information about Ashot Gevorgyan that would state that he was of non-traditional sexual orientation. The plaintiff himself had come to this conclusion, and the abstract position that the representatives of the community with non-traditional sexual orientation had targeted NA “traditional” MPs, as soon as the news on the ratification of the Istanbul Convention was publicized, did not come to mean, that the Facebook user Ashot Gevorgyan, too, was considered a person with non-traditional sexual orientation by the *Hraparak Daily* Ltd. The defendant also mentioned that if the plaintiff believed that the article was addressed to him, thus damaging his honour and dignity, he should have sought protection of his right not on the grounds of disgrace to his honour and dignity by defamation, but claiming an apology for insult. Since the material and legal grounds and claim of the lawsuit were not chosen correctly, this case was devoid of any subject.

Finding that the disputed information contained factual data about Lilit Martirosyan, who made a speech from the NA platform and the non-traditional sexual orientation of the latter’s Facebook friend, the user of the Facebook page, under the name “Gevorgyan Ashot”, mentioned that the plaintiff had not provided any proof that he was the user of the above-mentioned Facebook page and Lilit Martirosyan’s Facebook friend. And the article did not contain a circumstance to make the reader feel that the given statement in fact was directly targeting the plaintiff. Besides, the court, invoking decisions of cases EAKD/0483/02/15 and ESD/1342/02/11 of the RA Court of Cassation within this case, underlined that the computer screenshot as a kind of evidence (as submitted by the plaintiff in the given case) should contain specific data, thus enabling checks of their accuracy to verify that the given screenshot was real and not the result of computer manipulations.

3. Litigation Costs

According to the facts of the case, Lev Group Law Firm Ltd. and the *Hraparak Daily* Ltd. signed Contract N PG-19-36/LG on the provision of services on August 16, 2019, according to which the above-mentioned law firm undertook the obligation of defending the interests of the *Hraparak Daily* Ltd. upon the latter’s commission. The client was to pay 250.000AMD for legal services at the first instance court.

The court found that the defendant’s attorney objected to the plaintiff’s claims and was present at two of the three court hearings. Thus, the court defined 80.000AMD as attorney’s reasonable fee under this case.

4. Conclusion

The examination of this case makes it clear that there is a substantial fact for rejecting the lawsuit by the court: there is not proof that the user of the Facebook page under the name of “Gevorgyan Ashot”, as mentioned by the defendant, is the plaintiff himself. In other words, the court did not refer to all the other facts in the case, stating that there were no grounds to claim that the plaintiff was the addressee of the statement. We believe that in those cases when the defendant does not unequivocally assert that the plaintiff is the addressee of the expression, the court cannot arrive at a conclusion that this expression was not about the plaintiff. The decision

on assigning the plaintiff with the onus of proof as to being the addressee of the statement himself causes bewilderment. This matter shall be subject to examination in general, given one of the parties to trial qualifies it as disputable. However, in the present case, it appears that the defendant, although not choosing to unequivocally admit the fact that the expression was addressing the plaintiff, did not deny it either and did not present facts to prove that whatever was said was not addressed to the plaintiff.

Karen Karapetyan v. Skizb Media Kentron Ltd.
(Case No. ED/24575/02/19)

1. Procedural Background of the Case

On August 2, 2019, Karen Karapetyan, the former head of the Operational Intelligence Department at the State Revenue Committee filed a lawsuit with the Court of General Jurisdiction against Skizb Media Kentron Ltd. with claims of compensation for damage caused to his honour and dignity. The suit was caused by an article, titled “Someone related to SRC Deputy Head Appointed as Head of the Operational Intelligence Department.” The article was published in the *Zhamanak* on July 5.

The lawsuit was accepted for proceedings by the court’s decision of August 14, 2019. 2 preliminary sessions were appointed, followed by the trial in 2 court sessions, on November 12, 2019, February 18, April 20, and July 6, 2020, respectively. The claim was settled by the judgment of July 20. Skizb Media Kentron Ltd. was obligated to publish a refutation in the *Zhamanak* daily (as well as on the website owned by the newspaper) within five days after the judgment entered in force, stating that the published information about Karen Karapetyan, namely that he left his position as the head of the Operational Intelligence Department at the State Revenue Committee against the backdrop of a corruption scandal, was inaccurate, and confiscate 150.000AMD from Skizb Media Kentron in favour of Karen Karapetyan as an attorney’s reasonable fee. The judgment was not appealed and entered into force.

2. Defamatory Nature of information

The plaintiff mentioned that an article was published in the July 5 issue of the *Zhamanak* daily, which specifically read as follows: “Vahan Charkhifalakyian, Lulibert Charkhifalakyian’s son, was appointed as head of the Operational Intelligence Department at the State Revenue Committee. He was head of a department at the SRC before, too. Besides, Vahan Charkhifalakyian is believed to be related to Eduard Hovhannisyan, recently appointed in the position of SRC Deputy Chair. We should remind that before this appointment, Karen Karapetyan was the head of the Operational Intelligence Department at SRC, being Valeri Osipyan's godfather. He left against the backdrop of a corruption scandal.”

The plaintiff claimed that the article contained slander which damaged his honour and dignity, in particular, the stated information was inaccurate and did not reflect the reality. The plaintiff claimed that when reading the sentence “He left against the backdrop of a scandal” one had an impression that the person who left, namely the plaintiff, was somehow related to corruption. And accusing the person in involvement in corruption, in essence, meant that he was

being accused of a crime. Thus, the expression “he left against the backdrop of a scandal” was slander, since it did not reflect the reality and damaged the person’s honour and dignity.

The plaintiff also submitted the conclusion of a survey, dated February 17, 2020 (N S/T-170220) according to which the part of the article which contained Karen Karapetyan’s name and the sentence “He left against the backdrop of a corruption scandal” created an impression among the majority of respondents (68 out of 100) that the one who left was a participant of a corruption scandal and was dismissed because of that. Imagining themselves in the position of the person mentioned in the article, 81 out of the 100 surveyed perceived this information as disgracing one’s honour and dignity.

The defendant did not show up at the court sessions and did not submit a response to the lawsuit or any position in that regard.

The court found that the publication contained concrete information on some actions, taken by the plaintiff. Particularly, the sentence “We should remind that before this appointment, Karen Karapetyan was the head of the Operational Intelligence Department at SRC, being Valeri Osipyan's godfather. He left against the backdrop of a corruption scandal” makes it clear who it was addressed to, besides, that expression contained information about the plaintiff’s dismissal against the backdrop of a corruption scandal. The factual circumstances of the case lead to a conclusion that from the perspective of an ordinary reader the given statement was actually addressed immediately to the plaintiff and that he was the target of the accusation.

Thus, the defendant did not prove that the published factual data are accurate and reflect the reality, similarly they did not submit any substantiation that the obligation of proving such a fact required them to take unreasonable actions or make unreasonable efforts, which, too, is prioritized by the court from the perspective of the settlement of this dispute.

The plaintiff’s position leads to the conclusion that linking his resignation with a corruption scandal is in fact disgracing his honour and dignity, hence, the court found it essential to clarify that very circumstance, firstly, providing the definitions of the words “corruption” and “scandal”. The Court referred to E. Aghayan’s *Explanatory Dictionary of Modern Armenian*, according to which the word “corruption” has the following remark: “See bribing, bribery.” According to the same dictionary, a bribe is explained as money or an object/asset, given to an official or an intermediary, as remuneration for accomplishing a lawful or unlawful business or concealing acts otherwise punishable by law. The word “scandal” is defined as follows: 1. A case, a real development that has become widely known and disgraces the participants: an episode from real life, 2. A dishonorable, condemnable act, 3. a fight, an argument and mayhem.

In the light of the above, the court found that the plaintiff’s honour and dignity had been tarnished, as, according to the publication and the explanation of the words used therein, it appeared that the plaintiff had been involved in bribery, which had at least become widely known, leading to his dismissal. Meanwhile, this had not been proven in any way. Therefore, the court found that the claim should be settled.

3. Litigation Costs

The plaintiff asked the court to confiscate 300.000AMD from the defendant as attorney’s reasonable fee, but the court found that 150.000AMD should be confiscated. When determining the amount of compensation, the court took into account the fact that the attorney had filled in and submitted the lawsuit and the documents attached to court, worked to resolve the dispute out

of court, and attended most of the court hearings held. Besides, the court took into account the complexity of the case.

4. Conclusion

On November 12, 2019, a judicial act was adopted on this case, ruling to define the scope of facts to be proved, distribute the burden of proof, but the burden of proof for the fact that the disputed expression was intentional was not assigned. Meanwhile, in its Ruling SDO-997 of November 15, 2011, the RA Constitutional Court mentioned that the terms "slander" and "insult" should be considered in the context of an intentional and a deliberate act disgracing a person's reputation. The Constitutional Court also noted that the insulting expression implied an intentional, deliberate act of disgracing a person's dignity.

Hayk Sargsyan v. ARMDAY.AM Ltd. ***(Case N ED/24521/02/19)***

1. Procedural Background of the Case

On August 2, 2019, Hayk Sargsyan, an MP of the National Assembly of the Republic of Armenia, filed a lawsuit with Yerevan Court of General Jurisdiction against ArmDay.am Ltd., with claims of obligating to make a public apology and publishing the judgment on *ArmDay.am* news website, as well as paying a compensation of 400.000AMD for slander and 200.000AMD for insult. The cause of the lawsuit was an article titled "'Dukhov' (*Tr.* "Unfeared" – the slogan of the Velvet Revolution in 2018) Parties at La Scala" where the plaintiff was pictured as "a person who acted as an 'akhrannik' and held the selfie-stick from time to time."

On September 6, 2019, the Court accepted the lawsuit into proceedings, and appointed 4 preliminary hearings and a trial, on February 12, March 23, June 8, June 24, and August 7, 2019, respectively. In a judgment issued on August 28, the court partially upheld the lawsuit, obligating ArmDay.am Ltd. to pay 100.000AMD in favor of Hayk Sargsyan as compensation for defamation, and issue a public apology to the plaintiff in an Armenian language media outlet with at least 1,000 copies with the following text: "Hereby, ArmDay.am Ltd. apologizes to Hayk Sargsyan for calling him "a person who acted as an 'akhrannik'" in a publication on ArmDay.am news website on June 27, 2019. The defendant was also obligated to publish the final part of the court act on "ArmDay.am" after it entered into force, and the court ruled to confiscate 6000 AMD in favor of Hayk Sargsyan as a pre-paid state fee and 100.000AMD as an attorney's reasonable fee. The court rejected the remaining parts of the claim. The judicial act was not appealed and entered into force.

2. Defamatory Nature of Information

The article, titled "'Dukhov' Parties at La Scala" and published in ArmDay.am website owned by the defendant on June 27, 2019, specifically stated: "A few days ago there were publications in the media, stating that Hayk Sargsyan, an MP from My Step Faction, a person who acted as an 'akhrannik' and held the selfie-stick from time to time, was at La Scala Club with Armen Ghazaryan, deported from the USA, nicknamed Pzo, and show hosts Shushan

Yeritsyan and Suzan Sedrakyan.” The photos accompanying the article pictured Hayk Sargsyan with criminal authority Armen Ghazaryan and three half-naked girls two of which were in bed.

The plaintiff mentioned that the data in the publication were defamatory. The information that Hayk Sargsyan was at La Scala Club together with the famous criminal authority Armen Ghazaryan Pzo, and show hosts Shushan Yeritsyan and Suzan Sedrakyan, was not true. According to the lawsuit, Hayk Sargsyan had never done an act that could disgrace the reputation of an MP, whereas the given publication was disgracing his honour.

The plaintiff considered the photos used in the article and the expression “a person who acted as an ‘akhrannik’ and held the selfie-stick from time to time” as an insult. As a justification, he mentioned that according to the Armenian-Russian dictionary compiled by Ararat Gharibyan translated the word “Akhrannik” as a guard, a soldier of the guarding squad, as well as a bodyguard. He then added that there was nothing disgracing in the occupation of a guard or bodyguard; however, the author of the article used this expression not to underline Hayk Sargsyan’s former occupation (whereas he never had such a job) but rather to underline that he was Nikol Pashikyan’s guard or bodyguard and had become an MP because he had paid such a service.

Being notified of the court case the appointed sessions, the defendant did not either reply or object to the lawsuit.

In the reasoning of the judgment, the court stated that the information, specifically the part that the plaintiff was in the club with a criminal authority and young women famous on Instagram and in other circles, was false, unfounded and unreliable. According to the court, they tarnished the plaintiff’s honour and dignity, as the term "criminal authority" was publicly associated with a person who committed an illegal, criminal act under the RA Criminal Code, thus demeaning the person's dignity in the eyes of the public. As for the phrase "often goes to the club with girls famous on Instagram" and the photos published, both could be negatively taken by the public, given that the plaintiff Hayk Sargsyan, being an MP, ought to behave in a certain way, yet, according to the publication, he had failed in doing so and complying with Article 3 of the RA Law on Guarantees for Activity of RA National Assembly Deputies.

The Court, citing the ECHR judgments on *Pedersen and Baadsgaard v. Denmark* of December 17, 2004 and on *Rizos and Daskas v. Greece* of May 2006 found that the statements made in fact disgraced the plaintiff's honour and dignity. In particular, though the term "akhrannik", which translates from Russian to mean a guard, bodyguard, was not an insulting expression in itself, it was obvious that by writing the Russian word with Armenian letters in quotation marks, the defendant initially pursued the objective of disgracing the plaintiff's honor and dignity and had an intention to demean and humiliate him deliberately.

As to the phrase "held the selfie stick from time to time", the court stated that it did not disgrace the plaintiff's honour and dignity, as it did not demean his merits in the eyes of the public or make him feel ashamed.

4. Compensation amount

Referring to the amount of the pecuniary compensation, the court noted that the circumstances, usually considered in such an issue, were not exhaustive, due to the specificities of the given case. The court stated that the examination of the case had not substantiated why the plaintiff had not turned to the media outlet, demanding the publication of a refutation, before filing a lawsuit.

Given that the defendant carries out media activities, the court found that the amount of compensation should not lead to seriously adverse consequences for the normal activities of the media outlet. At the same time, the court took into account the dissemination scope of the slander, the fact that the news was published in an electronic media outlet, thus contributing to its wider dissemination. Therefore, the court ruled that ArmDay Ltd. should be obligated to compensate the plaintiff Hayk Sargsyan in the amount of 200-fold the minimum salary, namely in the total amount of 200.000 AMD.

5. Litigation costs

The court considered it proven that according to the agreement signed by Hayk Sargsyan and lawyer Tigran Hayrapetyan on providing legal aid, Hayk Sargsyan undertook the payment of 500.000AMD for legal services. Based on the above and taking into account the following criteria – the volume of work accomplished by the lawyer, the degree of the complexity of the case, the amount of remuneration paid for the provision of attorney’s services in similar cases – the attorney’s reasonable fee was set at 100.000AMD.

6. Conclusion

The content of the judgment makes it obvious that the court assessed the phrase “acted as an ‘akhrannik’” in this case as insulting, and "the latter often goes to the club with Pzo, and young women famous on Instagram and in other circles" as slander. We find that the court's reasoning and substantiations on the insult and slander were not only insufficient to classify them as such, but also, as it becomes obvious from the examination of the case, there is no combination of facts to suggest that the expression contains any defamatory features.

In its ruling No. EKD/3246/02/11 of April 5, 2013, the Court of Cassation referred to this issue and noted that the information, containing data on violations of enforced legislation, manifestations of unfair behavior, violations of ethical requirements in private, public or political life by a natural or legal person and other information, not supported by evidence (not real), should be considered disgracing and demeaning a person's honour, dignity or business reputation. In this case, considering that the plaintiff was a politician, and the defendant was a media outlet, the court did not substantiate that the impugned expression was an insult.

Referring to the amount of compensation, the court noted that for the determination thereof it was essential, on the one hand, to ensure that the journalistic activity would not be disrupted and would sustain normally, on the other hand, it was necessary to take into account the scope of dissemination. In the given case, the electronic media outlet caused an expansive dissemination of the publication. This is an important circumstance, as the court tried to combine those interests and draw a balanced judgment.

In this case, the court did not justify the need to apply a pecuniary compensation. However, according to the case decisions of the Court of Cassation, the courts are obliged to apply pecuniary compensation in case they consider that the non-pecuniary means are not sufficient to achieve full compensation. In this case, the court did not provide sufficient reasoning of the kind.

According to the court judgment, the amount of an attorney’s reasonable fee was set at 100.000AMD, which, we think, is lawful and reasonable. It should be noted that the courts rarely

refer to the actions of a lawyer in their acts and confine themselves only to the enumeration of legal norms and criteria. In that sense, this judgment is exceptional.

Vardan Harutyunyan v. Investigative Journalists NGO
(Case No. ED/28943/02/19)

1. Procedural Background of the Case

On September 5, 2019, the former Chairman of the State Revenue Committee under the Government of the Republic of Armenia Vardan Harutyunyan filed a lawsuit with the Court of General Jurisdiction of Yerevan against Investigative Journalists NGO, claiming to obligate the defendant to pay a compensation for the damage caused to his honor and dignity, publicly refute the defamatory data, and publish the response. The reason for the lawsuit was an article, titled “Cash registers were purchased at a high price due to a secret government decision. A criminal case has been initiated” and published on Hetq.am website of Investigative Journalists NGO on August 7, 2019. The plaintiff claims confiscation of 1 AMD from the defendant as compensation.

The lawsuit was accepted for proceedings on September 12. There were 2 preliminary court hearings and a session for trial, on December 6, 2019 and on February 4 and 20, 2020, respectively. On March 11, 2020, the Court settled the case in part, obligating the plaintiff to publish a refutation on Hetq.am within one week after the judgment entered into force. It was also ruled to confiscate 34.500AMD from Vardan Harutyunyan in favour of the Investigative Journalists NGO as an attorney’s reasonable fee. On April 14, 2020, the defendant – Investigative Journalists NGO – filed a complaint with the Civil Court of Appeals which was accepted for proceedings on May 25, 2020. On July 31, 2020, the Court of Appeals upheld the appeal. The judgment of the Court of General Jurisdiction on the partial settlement of the claim was overturned, and Vardan Harutyunyan's claim was completely rejected. The rest of the judgment was left unchanged.

On September 2, 2020, the plaintiff Vardan Harutyunyan, and on September 24, the defendant lodged appeals with the Court of Cassation. On September 30, the latter's appeal was dismissed without examination, and on November 18, the plaintiff's appeal was rejected. The act passed by the Court of Appeals entered into legal force.

2. Defamatory Nature of Information

Vardan Harutyunyan informed the court that on August 7, 2019, an article, titled “Cash registers were purchased at a high price due to a secret decision by the government. A criminal case has been initiated” was published on Hetq.am website owned by Investigative Journalists NGO. Vardan Harutyunyan’s photo was used to illustrate it. According to the plaintiff, the article contained the following defamatory expressions:

1. The *Hetq* published an investigation into the procurement of cash registers a few months ago. We had reported that the State Revenue Committee had bought cash registers from Pax Technology Limited at a price that was 70% higher than normal, and that the owners of the Armenian office, representing Smart Solutions company, were close friends with the former Prime Minister Karen Karapetyan and the former Chairman of the State Revenue Committee Vardan Harutyunyan. It was during their time in office that the price of a cash register was set at

about 70% more than the cost price. 2. In this context, it was also found out that the former high-ranking officials of the State Revenue Committee caused significant damage to the legitimate interests of the state, abusing their official positions for profit and acting against the principles of their service. 3. The owners of this company are affiliated with the former chairman of the State Revenue Committee Vardan Harutyunyan and the former Prime Minister Karen Karapetyan. One of the shareholders is a doctor, the other one is a restaurant manager, and both seem to be unaware of the details of the company's activities. 4. Smart Solutions Company was founded in 2013. We do not know any data about the activities of the company in the past, but Smart Solutions started servicing cash registers in 2017, a few months after Vardan Harutyunyan's appointment into the position of the Chairman of the State Revenue Committee, which this company is affiliated to.

The plaintiff claimed that the information contained in the article did not reflect the reality, was false, and tarnished his honor and dignity.

The defendant objected to the claim, stating that even if the wording in the article evoked a negative opinion, it should still enjoy protection. The topic covered in this article was certainly of great public interest, as it concerned thousands of entrepreneurs who had to pay about 70% more than the cost of cash registers. It was logical that in case of purchasing a cash register at a high price, there should be a certain increase in the price of goods and services, which was already relevant for all the segments of the population. Besides, it was known that on February 5, 2019, the RA Government announced that the new generation of cash registers would be sold for 60.000AMD instead of 160.000AMD, and 100.000AMD would be subsidized by the state. In this case, the public interest in receiving information became more emphasized, as the subsidized amount would be paid by taxpayers.

Summing up the above, the defendant stated that in this case we were dealing with facts of great public interest, and the interest of the public in being informed was paramount. In addition, the identity of the plaintiff was a significant factor, as he was a high-ranking state official, and all the facts mentioned in the article related to his tenure. In this respect, journalistic discourse should enjoy a higher level of protection. Citing the ECHR judgment No. 35839/97 on *Pakdemirli v. Turkey*, dated February 22, 2005, the defendant stated that the published material was in fact of political nature and referred to the activities, carried out by the plaintiff. And the opinions of the press on politicians were subject to a wider regulation in the case decisions of the ECHR, where the right to freedom of speech was actualized to its maximum.

The court of first instance ruled that it was proven that the expressions used had tarnished the plaintiff's honor, dignity or business reputation. In this case, considering the data provided by the defendant in full combination, it becomes clear that the plaintiff, holding the position of the head of the State Revenue Committee, through companies affiliated to him, caused damage to the interests of the state within the sector he curated. This is not only an accusation of behaving in a manner that contradicts the requirements of political ethics, but also a violation of the enforced legislation. This is evidenced by the fact that a criminal case has been initiated in connection with the fact under discussion.

The court found that the publication of the article was conditioned by overriding public interest, and the defendant, as a media operator, fulfilled its function of a "public oversight body" and disseminated information on serious issues of public interest. However, in contrast to insult, where the circumstance overriding public interest precludes the information from being considered as an insult, an additional set of data is required for statements to qualify as slander. In particular, the person publishing the information must prove that he/she has disclosed the

mentioned information in good faith.

Referring to the expression, contained in Clause 2 as presented by the plaintiff, the court noted that the journalist's good faith could not be questioned, as when considering the expression within the general context of the article, it became obvious that the journalist quoted an excerpt from the message, published and disseminated by the State Revenue Committee, and provided the corresponding link. Therefore, according to the court, this part of the claim was unfounded and was to be rejected. As for the good faith of the media outlet when publishing the fact of Vardan Harutyunyan's affiliation with Smart Solutions Ltd., the court noted that no evidence had been provided, and the claim was settled.

We have already mentioned that Investigative Journalists NGO filed a complaint against this judgment with the Court of Appeals, which found that the conclusion of the court of first instance on the partial settlement of the claim was unlawful, as the act did not contain any untrue information, to qualify as slander under Article 1087.1 of the RA Civil Code. In particular, the publication stated that the RA State Revenue Committee had published a message, and provided the details of that very message, and the court case did not contain any evidence to prove that they were untrue. In other words, it is an indisputable fact that a message with such content was released. As for the information contained in the article, titled "The *Hetq* published an investigation into the procurement of cash registers a few months ago", the Court of Appeals stated that they were true, too, as no one disputed the publication by a lawsuit, i.e. the addressees did not respond and admitted the information contained therein. Under these circumstances, the defendant did not have any restrictions to refer to that information or cite it. Based on the above, the Court of Appeals found that in this case, too, there was no untrue information that would qualify as slander under Article 1087.1 of the RA Civil Code.

3. Conclusion

When presenting the background of the case, we mentioned that the plaintiff had submitted 3 claims: 1. to refute the data contained in the article, published on *Hetq.am* on August 7, 2019, 2. to publish the response to it, and 3. to confiscate 1 AMD as compensation from the founder of the website, Investigative Journalists NGO, in favour of the plaintiff Vardan Harutyunyan. The court of first instance decided to settle the claim in part, but in the final part of its act it did not refer to part 2 and 3 of the claim.

Investigative Journalists NGO claimed that they were not a proper defendant, as they were not the author of the disputed article. The court noted that the defamatory information was disseminated through Investigative Journalists NGO, and the author of the article was only employed by the NGO on a contractual basis. Meanwhile, according to Article 1087.1, Para 9 of the Civil Code, if the author of the publication is specified, the lawsuit shall be initiated against him/her.

After examining the facts of this case, the Information Disputes Council (IDC) concluded that the journalist had combined the facts published by the state body and the information obtained individually and had reasonably inferred that the former officials were affiliated with a private company. It was unacceptable to equate the scope and nature of a journalist's professional responsibilities with the powers of criminal prosecutors, namely investigators, detectives, and prosecutors, who were obliged to check every fact or evidence underlying the accusation in terms of their relevance, credibility, legality and sufficiency. Establishing a similar requirement for journalists would undermine their freedom to provide urgent information on cases of public

importance, thus creating insurmountable obstacles for a journalistic investigation.

The court of first instance had in fact violated the above-mentioned principle, stating that the journalist was obliged to report information of almost absolute accuracy. Therefore, it is not surprising that the judgment did not refer to the public significance of the article, the legal remedy of "reasonable publication" was not applied.

At the same time, the IDC was satisfied with the fact that the above-mentioned principle was indirectly confirmed by the Civil Court of Appeals, which, overturning the unjust judgment of the first instance court, concluded that there was no substantiation that the journalist had published untrue information.

In the reasoning part of its act, the court also referred to the pecuniary claim, noting that it was to be settled, but did not refer to it in the final part. Besides, in the reasoning part of the same act it ruled to set the attorney's reasonable fee at 40.000AMD, whereas in the concluding section the sum of 34.500AMD was indicated.

***Hakob Charoyan v. Artur Mnatsakanyan, with Arajin Lratvakan (First News) (1in.am) website
(Case No. LD2/1585/02/19)***

1. Procedural Background of the Case

On October 8, 2019, citizen Hakob Charoyan filed a lawsuit in the Court of General Jurisdiction of Lori marz against Arthur Mnatsakanyan, with *Arajin Lratvakan (1in.am) website* as a third party, with the claims of refutation of defamatory information damaging his honour and dignity and compensation for the damage caused. The plaintiff asked to obligate Arthur Mnatsakanyan to give an interview to 1in.am website and refute the information defaming his honour, dignity, and business reputation, apologize, and compensate the damage caused in the amount of 2 million AMD.

By its judgment of November 5, 2019, the lawsuit was accepted for proceedings, 2 preliminary court sessions were appointed on February 13 and March 25, 2020, and the trial was scheduled for May 13, 2020. According to the judgment of May 15, 2020, the court rejected Hakob Charoyan's lawsuit on the grounds that the case lacked the necessary coexistence of conditions for insult and defamation, that is, the circumstance of causing damage to a person's honour and dignity by insult and defamation was not substantiated. The judgment rejected the claim for financial compensation, too. The judicial act was not appealed and entered into force.

2. Defamatory nature of information

The cause of the lawsuit was Artur Mnatsakanyan's interview to 1in.am website on November 5, 2018, where the latter, as claimed by the plaintiff, accused him of collaborating with the RA Investigative Committee, in particular, the Deputy Chairman of the Investigative Committee Vahagn Harutyunyan. The plaintiff stated that there was no such cooperation, therefore Arthur Mnatsakanyan insulted and slandered him, disgracing his business reputation in the above-mentioned interview.

In the legal comments section, the court found that the plaintiff failed to prove that such an expression defamed his honor and dignity, degraded his merits in the eyes of the public,

ridiculed him, and could turn him into an object of hatred or contempt. As for the form of the expression, the court found that the defendant did not initially seek to tarnish the plaintiff's honor, dignity or business reputation.

The court also noted that as a result of the examination it was established that the defendant had not used the verb "cooperate", but stated that the plaintiff did not inspire confidence, also recalling Vahagn Harutyunyan's words that "Hakob Charoyan is not a problem." It is impossible to unequivocally deduce from the above-mentioned expression that Vahagn Harutyunyan and Hakob Charoyan cooperated. That is, in these conditions there were no features of insult, as the defendant did not initially pursue the goal of defaming the plaintiff's honor, dignity or business reputation.

3. Facts and value judgments

The court referred to the ECHR judgment on the case *Prager and Oberschlick v. Austria* of April 26, 1985 in which the European Court of Human Rights draws attention to the fact that journalistic freedom also covered possible recourse to a degree of exaggeration.

Disclosing the content of the expressions, presenting their form, context and the author's intention, the court noted that the disputed expressions in themselves could not be considered an insult, as they expressed a person's negative opinion, based on evaluative judgment about the plaintiff, and a negative opinion in itself was not an insult.

4. Conclusion

The plaintiff filed a claim for refutation of defamatory information and compensation of the damage caused. In particular, for refutation it was required that the court obligated Artur Mnatsakanyan to give an interview to 1in.am website. Meanwhile, the legislative body had already established the procedure for refuting defamatory data in the media, and the plaintiff's claim for the form of the refutation was highly controversial. In other words, regardless of the factual and legal grounds of the case, the claim is problematic in part.

It should be noted that according to the Civil Code, the citizens of the Republic of Armenia, stateless persons, legal entities, the Republic of Armenia as a nation and the communities thereof shall be subjects of law. According to the law, the founder or the owner of a media outlet can enjoy procedural rights. Therefore, we consider that granting 1in.am the status of a third party and defining rights and responsibilities was unlawful.

Lydian Armenia CJSC v. Skizb Media Kentron Ltd. ***(Case N ED/33691/02/19)***

1. Procedural Background of the Case

On October 11, 2019, Lydian Armenia CJSC filed a lawsuit in the Court of General Jurisdiction of Yerevan against Skizb Media Kentron Ltd., claiming for a refutation of defamatory data, a compensation for an expression defaming the business reputation, and confiscation of the pre-paid state duty. The lawsuit was caused by an article, titled "What is the way out? Armen Sargsyan can change the situation," published on 1in.am, owned by Skizb

Media Kentron Ltd., at 3:10 p.m. on August 19, 2019. The lawsuit was accepted for proceedings on November 21, 2019, 3 preliminary court hearings and a trial were held on February 28, April 17, July 10, and September 18, 2020, respectively.

On October 12, 2020, the Court ruled to settle the claim, thus obligating the defendant to publish a refutation, and confiscate 1AMD from the plaintiff in their favour as compensation for defamation, along with 5500AMD for the state duty.

The judicial act was not appealed and entered into force.

2. Defamatory nature of information

The reason for the lawsuit, as mentioned above, was an article, titled “What is the way out? Armen Sargsyan can change the situation” and published on “1in.am” news website which contained the following defamatory section: “For example, it is obvious that if a comprehensive legal and political evaluation is to be given to the activity of the former system, it will inevitably affect Lydian, which had definitely received the right to operate the mine due to corrupt deals and arrangements, which the incumbent Armenian government may cancel at all, disposing of all the political and legal grounds for such a cancellation.”

The plaintiff stated that this idea was untrue, that the publisher of the article did not take any measures to verify the authenticity of the factual data, and did not base his claim on any exact fact, moreover, the word "definitely" was used, which highlighted the slanderous nature of the expression. By the way, the plaintiff stated that he had taken measures to receive a refutation by an extrajudicial procedure. In particular, on September 11, 2020, he wrote to the defendant asking him to publish a refutation within a week after receiving the letter, but the letter remained unanswered, and the refutation was not published.

The defendant did not participate in the court hearings, neither did they submit a reply to the lawsuit.

The Court, invoking the judgment of the European Court in the case of *Sandy Times v. United Kingdom* of April 26, 1979, Ruling SDO-997 of the RA Constitutional Court of November 15, 2011, Ruling EKD/2293/02/10 of April 27, 2012 of the RA Court of Cassation stated that the data contained in the impugned expression were specific details about a certain action, were not abstract, and therefore met the criteria for assessing the act as defamation.

Emphasizing the need for the semantic analysis of the word "corruption", the court noted that according to E. Aghayan's *Explanatory Dictionary of Modern Armenian*, a bribe is defined as money or an object/asset, given to an official or an intermediary, as remuneration for accomplishing a lawful or unlawful business or concealing acts otherwise punishable by law. The court also referred to the free encyclopedia of Wikipedia, according to which corruption is the abuse of official authority exerted in various ways (by action or inaction) for personal or other mercenary purposes.

The court noted that in its decision of February 28, 2020, the defendant should have proven that the factual data were true, but they did not do so. Therefore, according to the court, the published details were not true.

3. Amount of compensation

The plaintiff claimed confiscation of a symbolic sum of 1AMD from Skizb Media Kentron Ltd. in favour of Lydian Armenia CJSC as compensation for defamation. The court, referring to that claim, found that it was subject to settlement.

6. Conclusion

On 2 December, 2016, in case EKD/1320/02/14, the Court of Cassation ruled that if a person had claimed only a non-pecuniary measure of compensation for insult or defamation, the court ought to confine itself only to the application of that measure. And if the person claimed an application of both non-pecuniary and pecuniary means of compensation, first of all, the non-pecuniary means of compensation were to be applied, and only in case of its insufficiency the court could apply the pecuniary means of compensation, too. The court upheld both measures in this case without any justification. However, regardless of the amount of pecuniary compensation claimed, the court had to provide reasons for its necessity.

Sargis Artsruni was the author of the disputed article in the case, and the publication was signed in his name. The court also established this among the essential facts, presented in its own act, but did not substantiate which factual information should serve as a ground for holding Skizb Media Kentron Ltd. liable.

Hayk Stepanyan v. Angela Tovmasyan Mirror Club Democracy Support NGO (Cases No. ED/0144/02/20 and No. ED/6726/02/20)

1. Procedural Background of the Case

On January 8 and February 24, 2020, Hayk Stepanyan filed lawsuits in the Court of General Jurisdiction of Yerevan against the defendants *Mirror Club Democracy Support NGO* and Angela Tovmasyan, with the following claims: under case No. ED/02/20, to obligate Mirror Club and Angela Tovmasyan to refute the defamatory information contained in the video, titled "The Talkative Prime Minister Is Still Silent (video)" and published on Hayeli.am website on December 2, 2019, as well as confiscate 500.000 AMD as compensation from the two co-defendants for slander. And under court case No. ED/6726/02/20 the plaintiff claimed the following: to obligate *Mirror Club* and Angela Tovmasyan to refute the defamatory and insulting information about him as contained in the video, titled "You are worse than hooligans, you are perverts. Angela Tovmasyan(video)" and published on Hayeli.am website on January 22, 2020 as well as confiscate 500.000AMD as compensation from the two co-defendants under the principle of liability in solido.

Liza Grigoryan acted as the presiding judge in both cases. The court case No. ED/0144/02/20 was accepted for proceedings on February 26, 3 preliminary hearings and 2 trials were appointed, on April 29, May 19, June 11, July 9 and August 10, 2020, respectively. The case No. ED/6726/02/20 was accepted for proceedings on March 5, 2 preliminary court hearings and a trial were appointed on June 3, July 7 and August 17. Accordingly, on August 31 and September 7, the court rejected the lawsuits in their entirety. Judicial acts of both cases entered into legal force.

2. Defamatory Nature of Information

In case No. ED/0144/02/20, the plaintiff stated that on December 2, 2019, a video, titled "The Talkative Prime Minister Is Still Silent (video)" was released on Hayeli.am website that is operated by the defendant. This video was the recording of a press conference held with the participation of the President of Mirror Club Anzhela Tovmasyan, her attorney Zaruhi Postanjyan and media expert Aghasi Yenokyan. The video contains an announcement according to which the press conference was invited on the occasion of the protest action held on October 5 during which David Hovhannisyanyan, Sargis Manukyan, Artak Margaryan, and Hayk Stepanyan threw eggs at and put up posters onto the doors of Mirror Press Club. The plaintiff also informed that the above-mentioned video contained insulting and slandering statements. In particular, at 0 minute 45 seconds of the video (with the total duration of 28 minutes and 40 seconds) the defendant literally said: "... two months ago, I will put it this way, a group of hooligans...", at 10 minutes and 40 seconds: "I can say that Nikol Pashinyan contributes and fosters hooligans' actions, as he keeps silent or does not address this or that case, and such actions continue and repeat, especially when these same mobs, I do not hesitate to name them by that word, that team of young men, that gang I do not know ..."

Referring to the dictionary accessible on the Internet, namely Bararanonline.com, the plaintiff stated that the words hooligan, mob, and gang uttered by the defendant were defined as follows: hooligan – a person with bad behavior, rogue; mob – the lower class of the people, the poor, beggars; gang – a bandit group, a pack of counter-revolutionary criminals. The plaintiff asserted that he was not a mob, that he was not a hooligan, that he was not a member of a gang, and that portraying him as such defamed him.

As for the lawsuit filed in case No. ED/6726/02/20, the plaintiff stated that on January 22, a video, titled "You are worse than hooligans, you are perverts. Angela Tovmasyan (video)" was published on Hayeli.am website. This website was operated by Mirror Club. The video contained statements which were insulting and defamatory in nature. At 0 minute 47 seconds of the video (with a total duration of 01 minute 32 seconds) Angela Tovmasyan literally said: "... now I will add to the aforementioned the word scum, because this same scum continues to threaten ... threats following the murder, and I mean this same scum Hayk ..." At 01 minute 23 seconds of the video Angela Tovmasyan also said . "... You are worse than hooligans, you are also immoral and perverted people ..." The plaintiff presented the linguistic definitions for the words "scum" and "perverted", namely 'scum' – the lower strata of society, immoral people involved in all kinds of bad businesses or capable of all kinds of evil deeds; 'perverted' – at the point of total moral decline, immoral, promiscuous.

The defendant, objecting to the lawsuits, stated that the plaintiff intended to suppress and violate his right to free speech. If in the past this pressure was manifested by criminal actions against the lawful professional activity of journalists, now it continues with the aim of obstructing the exercise of the right to the freedom of speech through the initiation of civil proceedings. The defendant informed that the statement mentioned in the lawsuit was made when the plaintiff and the defendant were at the stage of an inquiry within the framework of criminal case No. 15959619, being parties to pre-trial proceedings. And if the disputed expression was used in this process or during the trial, the person is released from liability for defamation. Besides, the defendant did not admit that she had committed a violation of the law or had used a defamatory expression.

Citing the ECHR Judgments on *Lingens v. Austria* of July 8, 1986, *Shabanov and Tren v. Russia* of December 14, 2006, as well as the legal interpretations in Ruling SDO-997 of the RA

Constitutional Court of 15 November, 2011, in its judgment on case No. ED/0144/02/20, the Court noted that the examination of the case did not provide any information, leading to the conclusion that the impugned expression was addressed to the plaintiff. The court ruled that in the video in question, the defendant did not mention the name of the plaintiff anywhere and in such a case, the mentioned expression could not be viewed as addressed to the plaintiff, hence, it was abstract and without a clear addressee.

As for Case No. ED/6726/02/20, citing the ruling of the RA Constitutional Court SDO-678 of 16 February 2007 and the Judgments of the European Court of Human Rights on the case of *Shabanov and Tren v. Russia*, the Court concluded in its judgment that the statement in question was not personal in nature, but was rather a criticism of the actions, taken by perpetrators during a particular protest. From the information obtained, the court concluded that the plaintiff was associated with a political process because he had protested against a political piece of information, published by a media outlet. Therefore, according to the case law of the European Court, the court should provide less protection.

3. Facts and Value Judgment

The attorney of the defendant Zaruhi Postanjyan stated that a group of young people attacked the Mirror Club, did hooliganic actions, and it was the assessment thereof that was voiced by Angela Tovmasyan in the above-mentioned videos. In other words, these were evaluative judgments about what had happened, so they could not be considered as slander or insult. It was surprising for the defendant that the plaintiff, regardless of his young age, already had a criminal record. This circumstance was found out when she was acquainting herself with the materials of the case. That is why, according to the defendant, the plaintiff's actions could be a threat.

As for the facts and value judgments, the court noted that they should be differentiated. Thus, if it is possible to substantiate the existence of facts, according to the case decisions of the ECHR, value judgments are not subject to proof. When a statement is a value judgment, the proportionality of the intervention depends on whether there were sufficient factual grounds for making the statement, because otherwise the value judgment may be excessive. In this case, the court found that there were some factual grounds, namely the plaintiff's statement that he had held a protest action against the defendant's publication was viewed as a factual ground. Therefore, according to the court, the defendant could have expressed such an opinion, even if it were excessive.

4. Conclusion

During the study of the case, we identified some judicial problems that need to be addressed and solved. Thus, it is not clear on which factual grounds the court concluded that "... now I will add the word scum to it, because this same scum continues to threaten ... threatens after the murder, and I mean this scum Hayk ..." and "... You are worse than hooligans, you are also an immoral and perverted person ..." expressions are not personal and refer to the criticism of certain political processes.

The judicial act does not contain the answer to the question whether the impugned expressions were a reasonable criticism by their content or, considering their defamatory nature, could be considered as an insult.

And finally, the lawsuit was filed against the Mirror Club, but the litigation process was implemented and a judgment was drawn recognizing *Mirror Club* Democracy Support NGO as the defendant. Thus, the court did not provide reasoning and did not state how and on what grounds the change of the participant in the trial took place.

Cases with one or more judicial acts

The Penitentiary Service of the RA Ministry of Justice against the Zhamanak Daily ***(Case No. ED/0280/02/19)***

1 . Procedural Background of the Case

On January 11, 2019, the penitentiary service of the RA Ministry of Justice filed a lawsuit in the Court of General Jurisdiction of Yerevan against the *Zhamanak* daily, claiming a public refutation of the information, considered as slander. The cause of the lawsuit was an article published by the *Zhamanak* daily on December 12, 2018, under the headline “No control whatsoever: guards earn money for keeping cell doors open in penitentiary institutions.”

The lawsuit was accepted for proceedings on January 23, 2019. There were 7 preliminary hearings and 3 trials on the case, on April 12, June 13, September 18, October 29, November 25, 2019, and February 18, April 23, June 24, September 22, November 25, 2020, respectively. On December 10, 2020, the court decided to settle the claim, obligating the defendant to refute the defamatory information in the disputed article that defamed the plaintiff's business reputation, in the same newspaper, namely *the Zhamanak* daily, within one week after the judgment entered into force. As of December 31, the moment of the compilation of this article, there was no information on appealing this judiciary act.

2. Defamatory Nature of Information

The Penitentiary Service informed the court that the article, published in the *Zhamanak* daily, on December 12, 2018, contained the following idea: "The *Zhamanak* has learnt that there is no control whatsoever in the Armenian penitentiary institutions. Various groups have formed around penitentiaries in new Armenia, earning huge profits by supplying alcohol, drugs or food to detainees. The prison staff, in its turn, is earning profits through collaboration with inmates. Some detainees pay penitentiary staff to keep prison doors open. If such ‘progress’ continues, Armenia may have the most liberal prisons in the region, and perhaps in the world.”

Referring to Article 8 of the RA Law on Mass Media, Article 1087.1 of the RA Civil Code, as well as the legal positions expressed in the rulings of the RA Court of Cassation on cases No. EKD/2293/02/10 and EKD/2050/02/12, the plaintiff stated that the phrase “there is no control whatsoever in the Armenian penitentiary institutions” was obvious slander, and the statement “Various groups have formed around penitentiaries in new Armenia, earning huge profits by supplying alcohol, drugs or food to detainees” were noted as unfounded and inaccurate. Besides, according to the plaintiff, “The prison staff, in its turn, is earning profits

through collaboration with inmates. Some detainees pay penitentiary staff to keep prison doors open” was slander, too.

The plaintiff also noted that the Penitentiary Service had written to the *Zhamanak* daily with a claim of refutation before filing a lawsuit on December 13, 2018; this claim, however, was not settled.

Referring to the issue of business reputation and citing Article 4 of the RA Law on Penitentiary Service, the plaintiff stated that information, disseminated by the defendant, defamed the penitentiary service and was aimed at shaping a negative opinion of the institution among various segments of the society. Meanwhile, the Penitentiary Service, as a state body, and its employees, as public servants, exercised special powers, enjoyed public trust, and a business reputation arising from it, and were therefore subject to protection from insult and slander.

The defendant objected to the claim, stating that the disputed information was not slander, as it related to issues of great public interest and were published, based on information about a number of cases found in the penitentiary service. In particular, according to the defendant, as a result of repeated searches by law enforcement bodies, numerous illegalities were revealed. Information about a number of similar incidents within the service was published not only in the disputed article, but in other media outlets, too, including the plaintiff. The defendant stated that the information presented in the article was not an analysis of a specific case, but a general description of the recent violations in the penitentiary service.

In the reasoning part of its judicial act, the judge noted that the Penitentiary Service was a state body responsible for the fulfilment of functions assigned to it by the RA Constitution, and like all bodies endowed with public and governmental powers, dealt with large masses of the population when conducting law enforcement in the sphere it was entrusted with. Therefore, in order to carry out its activities more effectively, this body objectively needed public trust and a good reputation.

The court found that the disputed article referred to an area of great public interest, which, however, could not in itself be a basis for disseminating unfounded information about the state body, performing the relevant function. Thus, the court noted that “there is no control whatsoever in the Armenian penitentiary institutions”, “various groups have formed around penitentiaries in new Armenia, earning huge profits by supplying alcohol, drugs or food to detainees”, and “the prison staff, in its turn, is earning profits through collaboration with inmates. Some detainees pay penitentiary staff to keep prison doors open” were slanderous, as they were intended to damage the business reputation of the Penitentiary Service by disseminating factual data. Besides, the court found that accusing the employees of the penitentiary service of crimes or misdemeanors on the basis of unknown facts presupposed deliberate and intentional defamation of a state body’s business reputation.

3. Conclusion

We consider that the court made illegal conclusions in the reasoning part of its act, therefore the latter is not sufficiently substantiated. In particular, in its ruling SDO-997 the Constitutional Court stated that the honour, dignity or business reputation of a person should be protected from defamatory actions by other persons exclusively by the civil law, the term “person” did not refer to authorities. Meanwhile, the court that was hearing the case not only accepted the lawsuit of the Penitentiary Service, but also settled it. The above-mentioned

decision of the Constitutional Court (Para 11(3)) generally excludes the possibility of filing lawsuits by state bodies.

Moreover, the court did not take into account the position of the Constitutional Court, according to which the limits of criticism against public and political figures are wider than those, referring to the cases involving individuals (Para 8(7) of the same ruling). Unlike the latter, the activities of public and political figures are more public and require more tolerance.

Besides, the court ignored the fact that the published article contained expressions, referring to individuals not within the service, but its specific structural units, and the direct attribution thereof to the plaintiff as the perpetrator of a crime or misdemeanor was unfounded.

We consider it necessary to state that in this case the expression was not specific enough to be fully assessed as factual data. The information provided by the defendant in the court shows that the media outlet provided a general description of the recent violations in the penitentiary service. Meanwhile, the court did not give any assessment to that issue.

Another key circumstance is that state bodies should refrain from suing for insult or defamation, as, being holders of public power, they have a certain advantage, which may violate the right to equality in a civil court. After all, in a civil court, unlike the Administrative Court, there are no guarantees defined by the legislator.

It should be borne in mind that according to the law, the founder or the owner of the media outlet, and not the media outlet itself may have procedural rights. Therefore, we consider it illegal to give a procedural status to the *Zhamanak* daily and define rights and responsibilities for it.

It should be added that this court case was not examined within a reasonable time. The process lasted for about 2 years. 7 preliminary court sessions and 3 trials were held. The right to a trial within a reasonable time is enshrined in Article 63 of the RA Constitution and Article 6 of the European Convention. Given these provisions, as well as the need to expedite the examination of insult and defamation cases, the courts are obliged to undertake all possible measures to ensure the exercise of the right to a fair trial within a reasonable time.

***Liana Karapetyan and Siranush Muradyan v. Public TV and Radio Company Board, with the Armenian Public TV Company CJSC as a third party
(Case No. VD/0452/05/19)***

1. Procedural Background of the Case

On January 24, 2019, TV journalists Liana Karapetyan and Siranush Muradyan filed a lawsuit in the Administrative Court against the Public Television and Radio Company Board to repeal Administrative Act No. 46-L in order to protect their labor rights. The lawsuit was accepted for proceedings on February 22, 2019. During the preparation of the case for litigation, the plaintiffs clarified their claim, that is, to repeal Administrative Act No. 46-L of the the Public Television and Radio Company Board, regarding the unjustified cuts of the positions (jobs) occupied by the plaintiffs before the adoption of the act in question, and consequently, repeal Orders No. 86-A and 88-A of the Director of the Public Television of Armenia CJSC.

The court appointed 4 court sessions, on April 30, June 27, July 25, November 18, 2019, and the claim was fully settled on December 9, 2019.

On January 13, 2020, the Board of the Public Television and Radio Company and the Public Television of Armenia CJSC appealed the decision in the Administrative Court of Appeals. On October 13, 2020, the Court of Appeals upheld the appeal, overturning the judgment of the Administrative Court and sending the case for a new examination.

On November 5, the plaintiffs appealed the decision of the Court of Appeal in the Court of Cassation. There was no new development as of December 31.

2. Nature of Legal Dispute

In the Administrative Court the plaintiffs stated that the cuts had led to the termination of their labour contracts. While adopting the disputed act, the Board of the Public Television and Radio Company substantially violated Article 55 Para 4(e), and Article 57 Para 1 of the RA Law on Fundamentals of Administrative Action and Administrative Proceedings. In other words, the administrative act in question does not explain why the position was cut, namely why that specific post was cut instead of a different one. According to the plaintiffs, the administrative act also failed to define the criteria which determined who should stay with the company and who should leave. The answers to these questions are essential for the protection of the rights and freedoms of the addressees of the given act.

The defendant and the third person, objecting to the claim, stated that the rights of the plaintiffs were not violated by Board Decision No. 46-L, and the examination of the text only could testify to this fact. There was no reference to the plaintiffs in the administrative act, nor was there an order to dismiss them in the appendix to the act. If the plaintiffs' allegations that the Director of the company was actually ordered to terminate the labour contracts with the plaintiffs due to Decision No. 46-L of the Board, and the director had simply given it a purely "technical formulation" were true to fact, all employees whose positions were to be affected by the adopted decision should have been dismissed. Whereas 22 positions were rearranged in the newsroom, and only 3 people were fired due to redundancy cuts. In fact, the authority to dismiss a particular employee did not rest with the Board, but with the director and only the latter's actions could violate the employees' rights. Therefore, the plaintiffs could not, in any case, be viewed as entities that have a right to challenge Decision No. 46-L of the Board. It was also mentioned that the lawsuit should have been rejected on the grounds of the statute of limitations.

The court judgment stated that the defendant had not provided any adequate evidence to prove that the change in working conditions had led to job cuts. In addition, the defendant did not provide any evidence to prove that the employer did not have an appropriate job matching the plaintiffs' qualifications, professional training, or health status. As for the defendant's position that the statute of limitations for filing a lawsuit had expired, the court noted that Liana Karapetyan and Siranush Muradyan went to the Administrative Court on January 24, 2019, and during the preparation of the case for trial, the claim was clarified in accordance with Article 88 of the RA Code of Administrative Procedure, and the court allowed such a change, therefore, the defendant's position in this regard, too, was unfounded.

In its ruling, the Administrative Court of Appeals stated that the impugned decision was not an individual legal act, therefore it could not be qualified as an administrative act. It was also noted that "the Board of Directors of the Public Television and Radio Company, in fact, manages the Public Television of Armenia CJSC, and approving the staff lists of that company is within the mandate of the Board. And the legal relations with the management of the Public Television of Armenia CJSC relate to the internal issues of the company." The Court of Appeals stated that

the impugned decision was not an administrative act, it was an internal legal act that regulated the relations between the Board and the Company.

3. Conclusion

The main claim of this case did not refer to individual legal acts related to journalists, but an internal legal act passed by the Board of the Public Television and Radio Company. However, the opposite should have been done. The argument is substantiated with reference to Article 2 of the RA Law on Normative Legal Acts, which defines two different terms: "an individual legal act" and "an internal legal act". In particular, an individual legal act refers to a person or persons mentioned in it, and an internal legal act refers to a group of persons.

This issue served as a ground for the Court of Appeals to overturn the judgment of the Administrative Court and send it back for a new examination.

Andranik Kocharyan v. Hraparak Daily Ltd. **(Case No. ED/6559/02/19)**

1. Procedural Background of the Case

On March 7, 2019, MP of the National Assembly Andranik Kocharyan filed a lawsuit in the Court of General Jurisdiction of Yerevan against Hraparak Daily Ltd., with Hasmik Melkonyan involved as a third party, claiming a public apology to the plaintiff for insult, a refutation of defamatory information and compensation for the insult in the amount of 1000-fold the minimum wage.

The reason for the lawsuit was an article, titled "Who is really Andranik Kocharyan?" published on Hraparak.am website on February 12, 2019.

On March 21, 2019, the lawsuit was accepted for proceedings, and preliminary hearings were scheduled on June 11, July 1, July 15, November 11, December 2, December 25, 2019 and on January 29, February 17, April 13, and May 25, 2020. By the decision of June 16, Andranik Kocharyan's lawsuit was rejected.

On July 7, the defendant, and on July 13, the plaintiff filed an appeal with the Civil Court of Appeals against the decision of the Court of First Instance passed on June 6. On August 5, the appeals were returned for corrections. On September 4, the defendant, and on September 15, the plaintiff again filed complaints, which were accepted for proceedings on September 28. On December 14, the Court of Appeals rejected the appeals of both parties, ruling to confiscate 40.000AMD from Andranik Kocharyan in favor of Hraparak Daily Ltd. as an attorney's reasonable fee.

2. Defamatory Nature of Information

The plaintiff informed the court that the defendant published an article, entitled "Who is really Andranik Kocharyan?" and signed by Hasmik Melkonyan on Hraparak.am website, owned by the defendant, on February 12, 2019. In the publication, Andranik Kocharyan's name was linked with "big plunder". He was presented as the leader of bandits who created an atmosphere of fear in Gyumri, then misappropriated the construction material allocated for the reconstruction

of the city damaged by the earthquake. The author of the article also noted that all the people who collaborated with Andranik Kocharyan during those years had either died or lost their memory.

According to the plaintiff, the article contained explicit and deliberate insults, by means of disgracing his honor, dignity, and good reputation.

The defendant, objecting to the lawsuit, noted that, first of all, the plaintiff had not proven the fact that the expression was offensive, besides, they were not the author of those expressions, but simply published Hasmik Melkonyan's article.

Both the defendant and later the court, referring to Article 1087.1 Paras 1 – 6 of the RA Civil Code, reminded of the co-existence of two conditions exempting a person from responsibility:

1. where the factual data expressed or communicated constitute the literal or good-faith reproduction of information disseminated by a media agency, as well as of information contained in another person's public speech, official documents, other mass media or work of authorship,

2. in the course of dissemination a reference has been made to the source (author) of information.

Based on the above-mentioned circumstances, the court stated that when posting the article "Who is really Andranik Kocharyan?" on Hraparak.am website, Hraparak Daily Ltd. referred to the source of information, namely its author Hasmik Melkonyan. And this circumstance served as a ground for exemption from liability for insult or slander in compliance with Article 1087.1 Para 6 of the RA Civil Code.

In connection with the complaints submitted by the parties, the Court of Appeals noted that any entity that disseminated information through the media should be considered the source of information. If the media operator revealed its source in the material, publishing the name of the author, the media outlet should be released from the obligation to compensate. As for the arguments presented in the plaintiff's complaint regarding the identification of the defendant, it would be unlawful to obligate the media outlet to publish the author's address or other personal information when publishing or distributing opinion pieces in order to give others an opportunity to sue the author. The Court of Appeals noted that should this be the case, the reasonable balance of measures to protect the interests of individuals would have been violated and added that when the media outlet referred to its source of information, it acted only as a platform for others to disseminate information, i.e. it was not responsible for slanderous or offensive statements.

3. Conclusion

According to the judgment, the court rejected the claim on the grounds that the person disseminating the information had referred to the source of information. The plaintiff, on the other hand, claimed that he had applied to the media outlet with a request to provide the author's personal information, but the request had remained unanswered. Thus, the court did not substantiate the legal issue of whether mentioning a name and a surname without revealing other personal data for identifying the source could be interpreted as a proper reference to the source of the information by the media outlet. In addition, the court's approach to accepting or perceiving the author of the article as the source of information for a media outlet's publication is highly controversial.

***Emma Kirakosyan v. Dustrik Gorgoryan et al., with ATV TV Company Ltd. as a
third person
(Case No. ED/8121/02/19)***

1. Procedural Background of the Case

On March 22, 2019, citizen Emma Kirakosyan filed a lawsuit in the Court of General Jurisdiction of Yerevan against Dustrik Grigoryan, Karen Poghosyan, Tamara Poghosyan, Liana Petrosyan, Irena Petrosyan and ATV TV Company Ltd. as a third party, claiming to obligate them to pay a compensation of 2 million AMD for slander and refute the false information. The lawsuit was triggered by the expressions addressed to Emma Kirakosyan during the February 22, 2019 broadcast of the *Half Open Windows* TV show.

On April 2, 2019, the Court accepted the lawsuit for proceedings, deferring the payment of the state duty due to a relevant motion. 5 court sessions were held on the case on July 24, November 18, 2019, and on March 10, June 9 and June 22, 2020. On July 10, 2020, the lawsuit was rejected. The court also ruled to confiscate 44.000AMD from the plaintiff as a deferred state duty and 50.000AMD as an attorney's (public defender) reasonable fee.

The plaintiff filed a complaint with the Civil Court of Appeals on August 17. On October 7, 2020, the complaint was accepted for proceedings, and it was upheld by the ruling of December 18. The judgment of the court of first instance was overturned and returned to the same court for a new examination.

2. Defamatory Nature of Information

In the lawsuit filed with the court, Emma Kirakosyan stated that during the February 22, 2019 broadcast of the *Half Open Windows* TV show on the ATV channel of ATV Television Company Ltd., citizens Dustrik Grigoryan, Karen Poghosyan, Tamara Poghosyan, Liana Petrosyan, Irena Petrosyan, as well as the journalist who had prepared the videos screened during the programme, publicized false information about her, which damaged her honour and dignity. According to the plaintiff, Dustrik Grigoryan tried to persuade the public with slanderous statements that Emma Kirakosyan was a person engaged in criminal fraud, thus degrading her honor and dignity.

The defendant stated that the above-mentioned expressions could not be considered defamatory, as they were not defamatory expressions taken separately and did not demean the plaintiff.

The court noted that both the positions expressed by the parties and the submitted written documents substantiated that there had been long legal disputes on various issues between the plaintiff and Dustrik Grigoryan, Karen and Tamara Poghosyans. These disputes were examined in court, and there are court acts on various substantive, property and non-property disputes.

Based on the tense and conflicting relations between the parties, the court found that the opinions expressed by the defendants were exclusively their negative opinion of the plaintiff, and therefore could not be considered as slander. According to the court, these statements are judgments evaluating the exercise of the right guaranteed by Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which includes freedom of expression. As for Emma Kirakosyan's request to oblige the TV company to deny the

data defaming honor and dignity through the host, the court found that the statements were made by the defendant citizens, and if the claim was settled, they should be the ones to refute them.

Given the tense and conflicting relations between the parties, the Court found that the opinions expressed by the defendants were exclusively their negative opinions of the plaintiff, and therefore they could not be considered as slander. According to the court, these statements are value judgments, thus the right guaranteed by Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which includes freedom of expression, was guaranteed. As for Emma Kirakosyan's request to obligate the TV company to refute the data defaming honor and dignity as a statement made by the host, the court found that the statements were made by the defendants, and they had to refute it for the claim to be settled.

Overturing the act of the court of first instance, the Court of Appeals noted that it could not be considered substantiated and grounded. In particular, it refers to revealing the defamatory nature of the disputed expressions. And according to Article 365 Para 9 of the Civil Procedure Code, the judicial act shall be overturned in all cases, if it does not have a reasoning part.

3. Litigation costs

Referring to the litigation costs, the court noted that 44.000AMD was to be confiscated from the plaintiff in favor of the state budget as a deferred state duty, and 50.000AMD as an attorney's reasonable salary.

4. Measure to secure the claim

Emma Kirakosyan submitted a motion to the court to secure the claim, where she noted that it is necessary to obligate ATV Television Company Ltd. to remove the recording of the *Half Open Windows* TV show broadcasts of February 22, 2019 and May 12, 2019. The court rejected the motion on January 23, 2020. On March 23, 2020, the plaintiff appealed this decision in the Civil Court of Appeals, but the latter stated that there was no violation of the norms of the procedural rights and rejected the appeal.

5. Conclusion

The set of data, causing the defamatory nature of the disputed statements, is related to the routine, so there is no need for a separate analysis.

The court lawfully rejected the motion to apply a measure for securing the claim, based on which the plaintiff asked to obligate ATV Television Company Ltd. to remove the recordings of the disputed programme from the Internet. The court stated that it was not a reasonable measure to execute a judicial act.

Referring to the facts in the present case, the Information Disputes Council noted that the disputed statements did not damage the applicant's honour or dignity. For example, statements such as "*In this bandstand in Arabkir district in Yerevan, the neighbours anxiously wait for the arrival of the postman*" or "*and after that you should mind that there is the option of attacking instead of defending yourself*" could have shocked and disturbed the plaintiff, as the host portrayed her only in a negative light. However, they were not reprehensible enough to be considered defamatory according to the legal content given to it by the courts.

Referring to the attorney's reasonable fee, the court did not justify the fact that the litigation costs in the amount of 50.000AMD were assigned. Besides, the court, calculating the amount of the state duty at 44.000 AMD, did not explain how they arrived at that number, whereas the latter should be directly related to the number of defendants.

Mher Derdzyan v. Zhoghovurd Newspaper Editorial Office Ltd.
(Case No. ED/11182/02/19)

1. Procedural Background of the Case

On April 15, 2019, businessman Mher Derdzyan filed a lawsuit in the Court of General Jurisdiction of Yerevan against the *Zhoghovurd* newspaper's editorial office, claiming a public apology and confiscation of a compensation of 1 million AMD for insult, 2 million AMD for defamation, 500.000 AMD as an attorney's fee, and 70.000 AMD as state duty. The reason for the lawsuit was an article, titled "Head of the *Under One Roof* Housing Project Fled from Armenia" and posted on Armlur.am website, owned by the company, on March 29, 2019.

The court accepted the lawsuit for proceedings on April 19, 2019, and appointed 7 preliminary court sessions and one trial, on July 15, September 12, November 26, 2019, and on February 4, March 26, July 21, August 19, October 9, 2020, respectively. And by the judgment of October 28, the lawsuit was completely rejected.

The plaintiff Mher Derdzyan filed an appeal against the judgment with the Civil Court of Appeals on December 7, 2020. The appeal was accepted for proceedings on December 23.

2. Defamatory Nature of Information

The plaintiff informed that the article "Head of the *Under One Roof* Housing Project Fled from Armenia," published on Armlur.am website on March 19, 2019, contained the following expressions: "1. The *Zhoghovurd* daily had an opportunity to refer to the *Under One Roof* housing project, or rather to the fraud and deception under the disguise of the project," 2. "...The revealed facts were beyond all expectations: there are serious doubts that a very ordinary case of fraud was taking place," 3. "...and this is more than expected, as the project manager, being sure that people would not go to the police for 2000AMD, designed such a scheme."

According to the plaintiff, the above-mentioned expressions disgraced his honor, dignity, and business reputation. At the same time, he believed that the author initially pursued such a goal, as the article was full of groundless accusations and insults, and presented all the allegations as facts without any doubt.

The defendant's attorney, objecting to the lawsuit, told the court that the *Zhoghovurd* daily had gone to the office of the *Under One Roof* project in Echmiadzin and had talked to Van Hayrapetyan, the person who was in charge of that program in Armavir region. When asked who was exactly financing the project, he had answered that it had been financed by benefactors from abroad, from the Russian Federation, but had not mentioned any names. The journalist had asked to show some documents, but Hayrapetyan had said that he would submit them in a few days. Afterwards, the project manager Mher Derdzyan called the editorial office of the *Zhoghovurd* daily and made insulting remarks, addressed to the journalist, and then said that he had

objections to the publication. In response to the invitation of the editorial office, Mher Derdzyan promised to go to a meeting and present his objections but failed to do so.

According to the defendant, Mher Derdzyan, implementing a programme of public interest, ought to have realized the public demand for publicizing his activities and the journalists' mission in this context. The media outlet also referred to the statement, disseminated by the RA Police that a criminal case had been initiated on the fact of the crime, which had been sent to the Investigative Committee for preliminary investigation. Taking into account that the information obtained was sufficient to initiate a criminal case, the defendant found that there was no issue of insult or slander when publishing it, especially since the journalist took reasonable measures to find out whether the data was accurate and whether their presentation was balanced and honest.

Citing the Court of Cassation ruling on Case No. EKD/2293/02/10 of April 27, 2012, the Court stated that the terms "fraud", "illegal activity", "fled Armenia" used in the article meant that the plaintiff had violated the law and displayed an unfair behavior, hence, these expressions disgraced the person's honor, dignity, and business reputation.

At the same time, the court found that the defendant had not intended to demean and humiliate the plaintiff. The article thoroughly presented the data on the basis of which inferences were made about the plaintiff's activities and his absence from Armenia. The court noted that the defendant's position on the use of reasonable measures to verify the facts for the publication by the media outlet were founded and stated that they were presented in a balanced manner and in good faith. In particular, this was evidenced, first, by the reference to the information provided by the Public Relations and Information Department of the RA Police, followed by the conversation with Van Hayrapetyan, the head of *Under One Roof* project in Armavir region.

In addition, the court found it of key important that the journalist tried to listen to the opinion of the addressee of the information, Mher Derdzyan, that is, the latter had the opportunity to present his position and his own facts, but did not take advantage of the opportunity. The defendant's position that the judgments in the article were made in the form of interrogative sentences and were presented as suspicion was considered founded, which allows us to conclude that this was not done with the intention to disgrace the plaintiff's business reputation, but rather pursued the lawful objective of presenting commentary on accurate facts and events.

3. Public Interest

The court noted that the publication in question was conditioned by overriding public interest, and the author had taken reasonable measures to check the accuracy of the information, as he presented it in a balanced manner and in good faith. It was noted that the article referred to the potential illegalities of the housing project with a large number of beneficiaries, hence such information was of great interest to the public (as of April 9, 2019, the number of views of the article amounted to 107.344). In essence, the defendant, as a media outlet, fulfilled its function of a "public oversight body".

Based on the reasons mentioned above, the court concluded that the publication was not intended to demean or humiliate the plaintiff, and the impugned expressions, regardless of their negative tone, and could not be considered as either insult or slander from the legislative perspective, therefore the lawsuit was to be rejected.

4. Conclusion

The examination of the judicial act makes it clear that the court rejected the claim, being guided by the provision of Article 1087.1, Para 2(2) and Para 5 of the Civil Code. In particular, the court noted that there was no insult, since the article was based on accurate facts. As for the defamation claim, the court noted that the claim was to be rejected, because, first, these expressions were used by a party to the case at the pre-trial stage, as statements about specific circumstances within the case. In addition, due to their essence and content they were conditioned by overriding public interest, and the author had proved that he had taken reasonable measures to find out the accuracy of the data and presented them in good faith.

The judicial act is generally reasoned and indicates the legal and factual grounds for the decision. However, some questions are still left unanswered, particularly, in relation to accurate facts, as first, there was no criminal case initiated at the time of the publication of the article (it was initiated later on the basis of the facts described in the article), besides, there is no information about the indictment against the plaintiff.

The court did not assess whether the impugned statement was based on the plaintiff's speech or the documents submitted by him, a circumstance, that is essential for revealing the fact of defamation. The court did not substantiate the causal link between the number of views of the video made by the defendant and the "overriding public interest" either, because the determination of overriding public interest, only based on the number of video views, is highly debatable.

Lilit Martirosyan v. Irates.am website founder Tesaket Ltd. ***(Case No. ED/14742/02/19)***

1. Procedural Background of the Case

On May 16, 2019, citizen Lilit Martirosyan filed a lawsuit with the Court of General Jurisdiction of Yerevan, with claims to obligate Tesaket Ltd. to issue a public apology, publishing it on Irates.am website and confiscate 1 million AMD as compensation for insulting remarks. The lawsuit was caused by an article, titled "A Sodomite Openly Addresses the Public from the NA Platform" and published in the *Irates* newspaper and on Irates.am website on April 9.

On June 3, 2019, the lawsuit was accepted for proceedings, 4 court sessions were appointed on September 6, November 5 and November 28, 2019, and on May 11, 2020, respectively. The court rejected the claim in its judgment of June 2, 2020, and the plaintiff was obligated to pay 200.000AMD to the defendant as an attorney's reasonable fee.

The defendant – Tesaket Ltd., and the plaintiff Lilit Martirosyan submitted complaints to the Civil Court of Appeals, on July 1 and July 7, 2020, respectively, which were accepted for proceedings on July 21 and September 14, respectively, and on November 13 this court made a decision to reject the appeals. The plaintiff went to the Court of Cassation on December 16.

2. Defamatory Nature of Information

The plaintiff informed that an article was published in the *Irates* newspaper, founded by Tesaket Ltd. and on Irates.am website, disgracing her honour and dignity. In particular, the following defamatory expressions were contained in the article published on Irates.am website on April 9: "A Sodomite", "the one who spoke from the platform of the National Assembly is a pervert, a transgender, introducing oneself by the name of Lilit Martirosyan", "Even a year ago it was impossible for anyone to speak in the National Assembly and publicly declare that he is, say, a transgender, a homosexual or any other kind of a pervert."

The plaintiff stated that the above-mentioned expressions evoked negative feelings in the society, moreover, such expressions provoked hatred and a threat of violence, which she was actually witnessing.

The defendant, objecting to the claim, stated that the plaintiff's gender was not reassigned. The latter, according to the data contained in the passport, was named Lilit Martirosyan, however, the indicated sex is male, and yet the person looked female. Therefore, legally, the plaintiff acted as a male and legally speaking, a Lilit Martirosyan, a female, did not exist. The defendant also stated that the publication of the article was conditioned by overriding public interest, as well as by the interest of exercising the right of the public to be informed. The disputed expressions were based on accurate facts and were value judgments.

Referring to the impugned expressions, the court stated that the word "sodomy", according to Eduard Aghayan's "Armenia" dictionary, means "homosexuality", and "a Sodomite" means "immoral, perverted." As for the word "perversion", the plaintiff cited its meaning as presented in the reply letter of the RA Language Committee, according to which the verb "to pervert" means: 1. cause perversion, spoil the generation, the race, 2. *fig.* twist from what it is good or natural, train in these deeds. Based on the above-stated dictionary definitions, the court concluded that the phrase "a perverted person" means a demoralized person, devoid of any moral values.

Analyzing the above-mentioned linguistic and dictionary definitions from the semantic perspective, and invoking the judgment of the European Court in *Dyuldin and Kislov v. Russia* of October 31, 2007, and the interpretations, provided by RA Court of Cassation within Case No. EKD/2293/02/10, of April 27, 2012, the court noted that the statements made by the defendant evaluated a phenomenon. According to the court, in this case the author tried to make the phenomenon a subject of public discussion, and the above-mentioned expressions were not directed against the plaintiff. The court concluded that though the terms "pervert" and "a Sodomite" referred to the plaintiff, the author's judgments were not aimed at degrading the plaintiff's honour and dignity, but criticized the phenomenon of homosexuality.

3. Public Interest

The court concluded that the impugned expressions should have been understood in the context of the term "urgent public need", in particular, whether the public had a need for ideas and information about the phenomena in question or not. In addition, were the statements used by the plaintiff an insult, commensurate with the objective, i.e. the "overriding public interest" pursued? The court noted that these topics were covered by many Armenian mass media outlets, a large number of political, public, religious organizations and individual figures, which testified that the speech aroused great public interest and triggered an active discussion during this period.

Referring to the ruling of the Court of Cassation on Case No. EKD/2293/02/10, the court found that after the live broadcast of the plaintiff's speech on April 5, 2019, both the speech and

homosexuality as a phenomenon became topics of discussion in the public. In addition, the article in question fully complies with the permissible limits of journalistic freedom of expression. Therefore, according to the court, the article was conditioned by the overriding public interest in the given situation and with its actual content.

Analyzing this case and the complaints filed by the parties, the Court of Appeals noted that the author of the publication did not draw the readers' attention to the individual characteristics of the specific plaintiff, but to phenomena, namely gender reassignment or homosexuality, widely discussed in the Armenian society due to the existent public need. Taking this circumstance into account, the Court of Appeals found that the assessment of the first instance, stating that this publication was conditioned by overriding public interest in the given situation and its content, was grounded. Therefore, the court no longer found it necessary to address other issues, given that overriding public interest itself precludes the court from qualifying the expressions presented in the claim as an insult.

4. Facts and Value Judgments

Referring to the ruling of the Court of Cassation on Case No. EKD/0807/02/11 of July 4, 2013, the court stated that both in the lawsuit, in court and in her speech quoted in the article the plaintiff Lilit Martirosyan herself indicated that she was a transgender person. This means that as presented in the position of the European Court the defendant, like any other member of the society, had received the factual information from the original source and was not deprived of the right to make value judgments on it, and this was absolutely an element of a democratic society.

Referring to the judgments of the European Court of Human Rights in the cases of *Lengens v. Austria*, *Oberschlick v. Austria*, the court stated that both in the whole article under discussion and in the disputed expressions, the critical expressions should be considered as a defendant's response, i.e. a value judgment which is in line with the mission of journalism to spread ideas.

Touching upon the limits of criticism, the court of first instance noted that the plaintiff attended the sitting of the RA NA Committee on the Protection of Human Rights, then delivered a speech as the president of a non-governmental organization, knowing very well that the sittings were broadcast live, and every word uttered from the NA platform would be in the focus of journalists' and the general public's attention, thus becoming a subject of public debate. Moreover, in such conditions, the limits of criticism expanded further than, say, the limits of criticism of a private citizen.

In the adopted act, the Court of Appeals considered it significant that the plaintiff mainly structured her appeal against the court's reasoning that was based on exact facts and value judgments. Meanwhile, the reason for rejecting Lilit Martirosyan's claim was that the disputed article was not addressed to the plaintiff, and in the light of a number of positions, published by the ECHR and the Court of Cassation, the Court ruled: "(...) the intention should be the deliberate disgrace of a concrete person's honour and dignity and should be direct, however, the whole content of the article indicates that the author's value judgments contain a critical and negative opinion not about the plaintiff individually, but of the phenomenon in general. In these circumstances, the court concludes that both terms, namely "pervert" and "Sodomite", referred to the plaintiff, but the author's intention was not to degrade the plaintiff personally, but to criticize the phenomenon of homosexuality."

5. Litigation Costs

As regards litigation costs, the Court of General Jurisdiction noted that a contract had been signed between the defendant and Lev Group Law Firm Ltd., which defined the fee for the legal service in the amount of 500.000AMD. Analyzing the volume of the attorney's contribution, the number of court hearings and the frequency of the attorney's attendance, as well as the complexity of the case, the court considered 200.000 AMD as an attorney's reasonable fee for the work done in the first instance court, which was subject to confiscation in favour of the defendant.

By its decision of November 13, 2020, the Court of Appeals ruled to confiscate 50.000AMD from the plaintiff Lilit Martirosyan in favour of Tesaket Ltd. as an attorney's reasonable fee. The value of the contract signed by the defendant and Lev Group Law Firm Ltd. was 150.000AMD, however, analyzing the attorney's work, the Court of Appeals concluded that 50.000AMD was a reasonable amount.

6. Conclusion

The judicial acts within this case were adopted by Judge Zaruhi Nakhshkaryan in the Court of General Jurisdiction, and in the Civil Court of Appeals by Judges Taron Nazaryan and Harutyun Yenokyan, presided over by Arsen Mkrtchyan. According to the results of our monitoring, not all the reasons presented in the judicial acts are well-founded and in accordance with the law.

The examination of the judgment makes it clear that the court considered the terms "pervert" and "sodomite" to be value judgments based on factual data but failed to disclose them properly. Moreover, on the one hand, referring to the defamatory nature of the expression, the court found that "the expressions made by the respondent were an evaluation of the phenomenon", on the other hand, the same judgment noted that the expressions referred to factual data, as "the plaintiff Lilit Martirosyan declared that he is a transgender." In other words, on the one hand, the court attributes the defendant's expressions to the phenomenon, on the other hand, to a specific person, namely Lilit Martirosyan, and no reference is made to this discrepancy.

The Civil Court of Appeals reiterated the same controversy and did not justify how it was legally possible for the expression to be directed at a person, when the intention of this expression refers to a phenomenon.

In this regard, we would like to recall the legal interpretation in the ruling of the Court of Cassation on Case No. EADD/ 0524/02/12 of 4 October 2013 that the person who used the expression must initially seek to disgrace the honour, dignity or business reputation of the person, that is, he must have the intent to disgrace the reputation of the person or demean the person with his expression. In the examination of such cases, the courts should pay a close attention to the explanations, approaches, and attitudes of the person publicly presenting factual information to determine whether he or she intended to defame anyone or objectively express his or her judgments in good faith.

However, in this case it was established that the disputed expressions were addressed to the plaintiff, and their defamatory nature was not denied. Consequently, the interpretation given by the Court of Appeals that the expression was addressed to the plaintiff and the intention was targeting at the phenomenon was not strongly and duly substantiated. There is a contradiction

here: the intention could have been related to the phenomenon, if the expressions were not addressed against any person.

It is also necessary to refer to the following interpretation, provided by the Court of Appeals: 1. The plaintiff's speech and homosexuality as a phenomenon became a topic of discussion in the society, 2. The article under discussion fully complied with the permissible limits of journalistic freedom of expression in line with democratic principles. 3. The publication of this article, with the content presented above, in the given specific situation was conditioned by overriding public interest.

First, the Court of Appeals did not provide any evidence that the plaintiff's speech or homosexuality had become a matter of public debate. Second, the courts did not provide sufficient reasons to conclude that the article in question fully complied with the "permissible limits of journalistic freedom of expression in accordance with democratic principles". And thirdly, no substantiation was presented that the content of the article was conditioned by overriding public interest. Even if we agree that there were discussions about the article in the society, it does not mean that the expression can be conditioned by overriding public interest. In this case, such a qualification does not correspond to the legal interpretation, provided by the Court of Cassation of the same term (see the Court of Cassation Ruling on Case No. VD/0830/05/14 of April 22, 2016).

David Adyan v. Zhamanak Daily Founder Skizb Media Kentron Ltd.
(Case No. ED/16091/02/19)

1. Procedural Background of the Case

On May 29, 2019, David Adyan, Head of Social Sector Control of the RA State Control Service, filed a lawsuit with the Court of General Jurisdiction of Yerevan against the founder and publisher of *Zhamanak Daily* – Skizb Media Kentron Ltd., claiming a refutation of the information contained in the article, titled “The Old Fox of Old and New Armenia” and published on the front page of Issue N 86 (3795) of the daily newspaper, dated May 9, seeking a public apology and a compensation of 2 million AMD for defamation and 1 million AMD for insult.

On June 11, 2019, the court accepted the lawsuit for proceedings and appointed 3 preliminary hearings and 3 trials, on November 26, 2019, and January 16, February 19, April 9, June 4, and July 8, 2020, respectively. By its judgment issued on July 29, 2020, the court settled the claim in part, obligating Skizb Media Kentron Ltd. to publicly refute the defamatory expressions, contained in the above article, as well as confiscate 4.000AMD as the sum of state duty in favour of David Adyan and 150.000AMD as an attorney's reasonable fee. The remaining part of the lawsuit was rejected.

On September 4, plaintiff David Adyan appealed the act of the court of first instance in the Court of Appeals. On September 23, the appeal was returned to comply with the requirements of the law. The plaintiff filed another appeal on October 14, which was accepted for proceedings on October 22. As of December 31, 2020, no act was passed in this instance.

2. Defamatory Nature of Information

The reason for the lawsuit is the article, entitled "The Old Fox of Old and New Armenia", published on the front page of the May 9 issue of the *Zhamanak* daily, which ran as follows: "It is common knowledge that the criminal case against Davit Sanasaryan, the head of the SCS, started with the Adyan brothers who held positions in the SCS. "First, one of them was arrested, followed by the second, and according to the rumors, they were both released after interrogation, due to the testimony against Davit Sanasaryan." The article went on telling about Yura Adyan, the uncle of the Adyan brothers, who was considered "an old fox" in the sector of public procurement in the times of the previous government. "Yura Adyan used to participate in various procurements to supply for the needs of various departments and structures, from kindergartens to the Ministry of Defense, through different companies he had established under various names, including Amarasius Ltd., registered in Artsakh." By the way, the article was published under different headlines by a number of Armenian news websites, making reference to the defendant.

The plaintiff stated that the defendant had not attempted to verify the authenticity of the material prior to the publication, but relied on the information "they said." Otherwise, the defendant would have learnt that there was no kinship between Yura and David Adyans and, therefore, there would be no reason to present the plaintiff as Yura Adyan's cousin, who had accumulated and owned millions, thus insulting and slandering him.

Skizb Media Kentron Ltd. did not participate in the court hearings and did not submit a response to the lawsuit.

The court found that the phrase "old fox" alone could not be considered an insult, hence the claim to be held accountable in this part was unfounded and was subject to rejection. As for the defamatory nature of the publication, the court concluded that the disputed information about the release of the Adyan brothers due to their testimony against Davit Sanasaryan was ungrounded and inaccurate, was directly addressed to the plaintiff, disgracing his honor, dignity, and good reputation.

3. Public Interest

The court noted that the issue raised through this publication was of public interest, as the actions attributed to the plaintiff were directly related to the criminal case against the head of the State Control Service David Sanasaryan. However, the damage caused to his honour, dignity and good reputation of an official, due to the attribution of actions to the plaintiff, did not pursue any lawful objective and proved excessive, as the public did not expect such unfounded information. Therefore, according to the court, there was no overriding public interest in this issue. In the above-mentioned factual circumstances, the public interest in being informed did not prevail over the duty and responsibility imposed on the person, providing the information. If the plaintiff had anything to do with the criminal case, the factual circumstances of the case might have been assessed from the perspective of public interest. Otherwise, the restriction of freedom of speech is legal.

4. Amount of Compensation

Addressing the choice of penalties, the court noted that in case of charging a compensation, unnecessary financial problems might arise. And as long as there was no information about the financial situation of the defendant, it is not possible to justly and clearly

determine the amount of compensation, given the fact that the defendant was a media outlet and its further activities might be jeopardized. Thus, the court rejected the plaintiff's claim for compensation in the amount of 2 million AMD. Both pecuniary and non-pecuniary claims for insult were rejected.

The court concluded that the damage caused to the plaintiff's honour, dignity and good reputation in this case could be restored without the application of pecuniary compensation, as the non-pecuniary remedy defined by Article 1087.1 of the RA Civil Code and sought in the claim was sufficient, necessary, proportionate, fair, and legal.

5. Litigation Costs

The court took note that on May 15, 2019, an agreement was signed between AM Law Firm Ltd. and David Adyan for the provision of legal services, according to which the cost of services for this case was 400.000 AMD.

Taking into account the scope of work of the two lawyers in this case, the nature of the disputed legal relationship, as well as the key fact that the claim was settled only in terms of the claim for refutation, the court considered 150.000AMD as an attorney's reasonable fee.

6. Conclusion

The examination of the case makes it clear that the court did not substantiate the fact that the impugned expression was considered defamatory. Particularly, it did not specify which expressions in the given statements accused the plaintiff of a crime or misdemeanor, based on untrue facts. This statement shall be substantiated by the interpretation of the main differences of "insult" and "slander", established by Ruling SDO-997 of the Constitutional Court, dated November 15, 2011. The court, settling the claim, did not substantiate the fact that the statement contained information, exceeding the threshold of a negative opinion or an acutely critical, provocative journalistic speech, slander or defamation. Besides, the court did not address the fact that officials are obligated to be more tolerant.

In its act, the court substantiated the rejection of pecuniary compensation for defamation, providing legal and factual substantiations. As for the insult aspect of the case, that claim was lawfully rejected, as the disputed expressions could not be considered defamatory.

Alina Nikoghosyan v. Hraparak Daily Ltd. (Case No. ED/16586/02/19)

1. Procedural Background of the Case

On June 3, 2019, the Press Secretary of the RA Minister of Health Alina Nikoghosyan filed a lawsuit with the Court of General Jurisdiction of Yerevan against Hraparak Daily Ltd., claiming a public apology and confiscation of 1 million AMD as compensation. The reason for the lawsuit is an article, titled "The Ministry of Health Hides the Reality and Takes Lfik under Its Protection" and published on Hraparak.am website on May 9, 2019.

On June 13, 2019, the court accepted the lawsuit for proceedings. Two preliminary court sessions and a trial were held on the case, on September 19, November 11, 2019 and February

25, 2020, respectively. On March 17, 2020, the court settled the claim in part, deciding to obligate the defendant to post an apologetic text on the same website and confiscate 200.000 AMD in favour of the plaintiff as compensation for insult, 200.000 AMD as an attorney's reasonable fee, as well as 8.000 AMD as state duty. The rest of the lawsuit was rejected.

The defendant filed an appeal with the Civil Court of Appeals on May 8, which was rejected on September 25. On October 28, the defendant went to the Court of Cassation. As of December 31, there was no response to it.

2. Defamatory Nature of Information

As it was mentioned, the lawsuit was triggered by the publication of an article, titled "The Ministry of Health Hides the Reality and Takes Lfik under Its Protection" and published on Hraparak.am website on May 9, 2019. This article was written in connection with another article, published on the website in response to the plaintiff's text of refutation. According to the plaintiff, a number of statements contained in the article referred to her, disgracing her honour and dignity, in particular, "The health ministry spokesperson probably conducted an "expert evaluation" within minutes; besides, she must be clairvoyant, predicting the developments in the near future, because such a text of refutation could only be disseminated by a clairvoyant medium and someone who is concealing a crime."

While assessing the text of refutation presented by the plaintiff, the defendant actually mocked her, calling her clairvoyant, and insulted her, calling her someone who concealed a crime. In other words, these expressions disgraced the plaintiff's honour and dignity, and the defendant had an intention to demean and humiliate the plaintiff. According to the plaintiff, the subject of the article was significant and of interest to the public, but calling the speaker clairvoyant or someone concealing a crime in this situation could in no way be in the overriding public interest.

According to the defendant, guaranteeing the right to freedom of speech and expression was important for a democratic society, and it could not be disproportionately restricted, endangering the freedom to have one's own opinion, receive information and ideas, and disseminate them. Hence, the word "clairvoyant" cannot be considered as an insult and is not defamatory in nature. As for the phrase "someone who is concealing a crime", it is a value judgment and should be considered within the framework of the notion of "overriding public interest". Considering that all citizens are directly benefitting from healthcare services and the improper organization of work in this sector may endanger large groups people, it can be claimed that the mentioned publication was conditioned by public need. According to the defendant, they pursued the goal of providing information to the public and communicating the overview of the current situation, acting in good faith, and taking measures to verify the accuracy of the information. Besides, not only the official, i.e. the plaintiff of the case, but also the court must take into account that the activities of the state body presuppose constant public oversight of the latter's performance and tolerance for public criticism.

The court found that by using the conjunction "and" in the phrase, the defendant conferred equal and simultaneous features, implied by the two terms used: "a clairvoyant medium" and "concealing a crime." In other words, according to the author of the article, besides being "clairvoyant", the spokesperson of the ministry was also described as "someone who is concealing a crime", which, according to the court, could not be perceived by the reader in any other sense but criminal. This qualification presumes corpus delicti, provided for by the RA

Criminal Code. In this regard, the court ruled that the defendant's argument qualifying the used expressions as value judgments was unfounded, as the statement itself attributes a criminal act to the addressee, which is a violation of the presumption of innocence, a principle guaranteed by the Constitution.

Analyzing the disputed material, the court stated that if the second paragraph of the publication, namely "However, it turns out that the Ministry of Health, instead of investigating and finding what happened and punishing the guilty is busy with one thing, that is – refuting the publications in the press," referred to the actions of the Ministry of Health, and found that the third paragraph was directly about the spokesperson of the Ministry, i.e. the plaintiff. "The health ministry spokesperson probably conducted an "expert evaluation" within minutes; besides, she is clairvoyant and can predict what will happen in the near future, because such a text of refutation could only be spread by a clairvoyant and someone who is concealing a crime." Therefore, the court did not consider that these expressions were conditioned by the overriding public interest and qualified them as an insult.

The court came to this conclusion, also taking into account that the press secretary of the Minister of Health ex officio and within the powers vested in her fulfilled the instructions of her immediate supervisor, was responsible for her own performance and not the content of the actual assignment. In this respect, the court noted that the plaintiff, though a public servant, was not a public figure from the perspective of the European Court of Justice. Therefore, on this basis, the court qualified the above-mentioned expressions as insulting.

In its ruling based on the examination of the appeal against the judgment above, the Court of Appeals did not focus on whether the plaintiff was a public figure or a politician, but rather focused on the circumstance that even as a public official, she had the right to the protection of honor and dignity. Therefore, any defamatory expression, not being a value judgment and not conditioned by overriding public interest, would be perceived as an insult or slander. The exception applying to public figures and defining a higher threshold of tolerance to criticism for them was ruled out and was considered inapplicable by the Court of Appeals as the phrase "concealing a crime" qualifies more of an insult to an individual rather than criticism towards the position or activities of an official.

3. Value Judgment

In the appeal, the defendant stated that there was no journalistic error in the published material. The published material was of public interest, the journalist acted in good faith while preparing it on the basis of factual data and making a value judgment, which, however, was not taken into account by the court. According to the defendant, the value judgment referred to the phenomenon and could not damage the plaintiff's honour, dignity and business reputation. That is, those judgments were directed at the content of the text, not the plaintiff. The defendant also noted that the press secretary Alina Nikoghosyan was a public figure, she carried out public activities, therefore, in the published article reference was made to the press secretary and not to the natural person Alina Nikoghosyan.

Analyzing this issue, the Court of Appeals stated that in order to qualify the phrase "someone who is concealing a crime" as a value judgment, there should be supporting factual grounds, otherwise it might be considered an excessive personal opinion. It is clear from the materials of this case and the arguments of the parties that the statement made was not based on facts, because a person can be considered a criminal based on an enforced judgment and only an

enforced and a binding judicial act can establish this fact. However, in this case there are no grounds to confirm the above, so the statement made cannot be perceived as a value judgment.

4. Amount of Compensation

The plaintiff demanded to confiscate one million AMD from the defendant as compensation. The court, taking into account that the defendant was a mass media outlet, found that 200.000 AMD should be confiscated in favor of the plaintiff as compensation for insult. The Court of Appeals upheld the position of the Court of General Jurisdiction, stating that the expression qualified as insult was disseminated by a publicly accessible channel and could reach out to the wider public. At the same time, it was taken into account that the article was published not by an individual, but by Hraparak Daily Ltd., and the large amount of compensation could cause excessive financial complications. Therefore, the Court of Appeals found that the compensation in the amount of 200.000AMD for insult was reasonable.

5. Litigation Costs

Referring to the litigation costs, in particular to the attorney's fee, the court noted that, according to the submitted documents, the cost of the legal services provided to the plaintiff was 450.000AMD. Based on the requirement, stipulated in Article 107 Para 4 of the RA Civil Procedure Code, the court stated that the attorney's fee should be reasonable, and the criteria for its determination might be, in particular, the volume of the attorney's work, significant for the outcome of the civil case, the number of court sessions and the attorney's participation in them, as well as the degree of complexity of the case. Analyzing all this, the court set the amount of 200.000 AMD as an attorney's reasonable fee, which is subject to confiscation from the defendant in favour of the plaintiff.

6. Conclusion

Examining the case, it becomes clear that the court, settling the plaintiff's pecuniary claim in the amount of 200.000AMD, did not justify the need for it. However, according to the case decisions of the Court of Cassation, the courts ought to apply the pecuniary measures of compensation in case they consider that the non-pecuniary measures are not sufficient to achieve full compensation.

The Court of First Instance and the Court of Appeals referred to the reasonableness of the litigation costs without a proper analysis of the attorney's workload. Settling the claim for an attorney's fee in the amount of 200.000 AMD, the first instance court correctly mentioned the general criteria for the determination of a reasonable fee, but the court did not specify which of the existing criteria really applied. In other words, taking note of the criteria for an attorney's reasonable fee is not yet sufficient to justify the amount set. It is necessary to combine the existing actions in the litigation procedure with those criteria.

Hayk Sargsyan v. Hraparak Daily Ltd.
(Case No. ED/19158/02/19)

1. Procedural Background of the Case

On June 26, 2019, the RA National Assembly MP Hayk Sargsyan filed a lawsuit in the Court of General Jurisdiction of Yerevan against Hraparak Daily Ltd., claiming a public apology, publishing the court act in the *Hraparak daily* and on Hraparak.am website, as compensation for defamation at 500.000AMD and the payment of 300.000 AMD for insult. On April 25, 2019, the reason for the lawsuit was an article, published in *the Hraparak daily* and on Hraparak.am website under the headline "A New Schmeiss Appeared in the Parliament".

On June 28, 2019, the lawsuit was accepted for proceedings, and the court appointed 4 preliminary sessions and a trial, on November 20, 2019, and on February 4, March 24, July 9, and August 29, 2020, respectively. According to the judgment published on September 16, the claim was settled in part. The court obligated the defendant to publish a refutation in *the Hraparak daily* and on Hraparak.am website within five days after the judgment entered into legal force.

The court also ruled to confiscate 50.000AMD from the defendant in favour of the plaintiff as compensation for defamation, 1.000AMD for the state duty, and 150.000AMD as an attorney's reasonable fee. The rest of the lawsuit was rejected.

On October 16, 2020, Hraparak Daily Ltd. appealed the judicial act with the Court of Appeals. The appeal was accepted for proceedings on December 23.

2. Defamatory Nature of Information

The plaintiff, addressing the court, stated that the publication contained information about Hayk Sargsyan that constituted insult and slander, namely: "The most odious MP of My Step faction, Hayk Sargsyan, is called "the New Schmeiss" in the Parliament. According to NA sources, he is engaged in lobbying for matters, related to human resources and business. There are suspicions that he played a role not only in the hemodialysis criminal case currently at the State Control Service, but also that he was lobbying for the clinker business in the parliament in favour of Mher Sedrakyan's son who he has friendly relations with. During Bako Sahakyan's meeting with My Step faction, Hayk Sargsyan told the Artsakh President that Kocharyan and his supporters should be told to turn down the music in the court yard and not to dance, since the relatives of the 10 victims, who were still in grief, were in the same yard. "We think that Hayk does not act without the knowledge of the higher authorities," our source said."

According to the plaintiff, the part stating that he was lobbying for human resources and business issues was slander, since it would otherwise mean that he had exerted pressure to expect a beneficial decision. He mentioned that the nickname "Schmeiss" attributed to him was an insult which disgraced his honour, dignity and business reputation of an MP, as that nickname belonged to a former MP Arakel Movsisyan of the past convocation, known for his bad behavior, verbal abuse, and obscene expressions. In addition, that nickname was usually used to mock and ridicule due to associations with someone who treats others badly.

The defendant objected to the claim, stating that the disputed terms contained in the article were metaphorical, comparative, value judgments, used by the journalist to name a phenomenon and that the media outlet did not have any objective or intention to tarnish the plaintiff's honour and dignity, the article did not contain any statement of facts of defamatory nature.

Referring to Para 58 of the judgment of the European Court, passed on March 29, 2001 on the case of *Thoma v. Luxembourg*, Para 58, as well as the judgments on *Pedersen and Baadsgard v. Denmark*, Case No. 49017/99, *Greenberg v. Russian Federation and Karman v. Russian Federation*, Constitutional Court Ruling No. SDO-997, the Court found that the defendant had not provided factual information that Hayk Sargsyan was called the "new Schmeiss" of the parliament, that Hayk Sargsyan was involved in the lobbying for human resources and business affairs, including the lobbying for the clinker business in the parliament in favour of Mher Sedrakyan's son, with whom he is in friendly relations. According to the court, the media outlet should be held liable for the above-mentioned expressions and published unsubstantiated data. The court also stated that the latter had not taken any measures to find out how accurate and founded the above-mentioned actions and circumstances were.

Taking the above-stated into account, the court concluded that this controversial article slandered the plaintiff Hayk Sargsyan and damaged his honour and dignity.

Referring to the claim on insult, the court found that the phrase "New Schmeiss" used in the title could not be considered an insult, as it was not intentional, this wording was dictated by the content of the article, it was just a comparison with the activities of the former MP. As for the public perceptions, according to the court, the activities of the NA deputy might be perceived differently in the society at different times, moreover, they could be constantly criticized by the media, but if there was no obviously insulting expression, it was difficult to determine the subjective perception of the descriptive terms accurately, both by the plaintiff, and from the point of view of public opinion.

3. Facts and Value Judgments

Hraparak Daily Ltd. told the court that the disputed expressions used in the article were the journalist's value judgments about the plaintiff and his activity based on some similarities with that of a former politician (Schmeiss, i.e. Arakel Movsisyan) (specifically, the plaintiff is constantly in the media spotlight, with various attributions, etc.). The defendant also noted that "lobbying for human resources and business issues" was an assessment of the plaintiff's political and parliamentary activities. Moreover, the latter had been quite active, especially in relation to the cement and clinker business, and there were many publications in the press about such involvement of his.

Firstly, the judgment raised the following legal question: can controversial thoughts be considered a journalist's value judgments? The court noted that the defendant did not undertake any measures to find out how accurate and substantiated the actions and circumstances contained in the publication were. By presenting the impugned expressions as the journalist's value judgments, an attempt was made to avoid responsibility, since value judgments should be "balanced" and based on facts.

The court emphasized that any published material should be based on facts, be true, sufficiently balanced and credible. The free expression of an opinion by a journalist could be protected only if the pursued objective was legitimate and was based on a set of facts.

4. Compensation Amount

At the preparatory stage of the case, Hraparak Daily Ltd. expressed willingness to reconcile, publishing a refutation about the publication, but no agreement was achieved.

The defendant did not provide the court with information on the property situation, which created some difficulties in determining the amount of pecuniary compensation, as the amount of the compensation determined should not be done so as to disrupt the normal operation of the media outlet. Guided by this principle, the court found that the plaintiff's claim for confiscations of 500.000AMD for defamation and 300.000AMD for insult could not be considered reasonable and decided to set the amount of compensation at 50.000 AMD.

5. Litigation Costs

Considering that the claim was settled in part and the plaintiff had paid the state duty of 20.000AMD in advance, the Court found that 1000AMD should be confiscated from Hraparak Daily Ltd. in favour of Hayk Sargsyan as the amount of the pre-paid state duty, and consider the issue of the state duty in terms of the remaining amount of 19.000 AMD resolved.

Referring to Hayk Sargsyan's claim to confiscate AMD 500.000 as an attorney's fee, the court referred to the rulings of the Court of Cassation on Cases EKD/1587/02/10, EACD/0554/02/11, and analyzing the volume of the attorney's work, ruled that the amount of attorney's reasonable fee should be set at 150.000AMD, to be confiscated from the defendant.

6. Conclusion

The court case was initially assigned to Judge Ruben Vardazaryan, who accepted it for proceedings. Later, the case was reassigned to another judge, Sargis Yeritsyan, on the grounds that the examining judge was on leave. From Article 46 Para 2 of the Judicial Code of the Republic of Armenia it can be inferred that the redistribution of the case refers only to the period when the judge is on leave, however even after Ruben Vardazaryan returned from his leave, the case was examined, and the judgment was passed by Sargis Yeritsyan.

The court did not justify the fact that the impugned expressions were defamatory, but simply stated that the expression used defamed the plaintiff, damaging his honour and dignity. The court did not specify what illegal action the plaintiff was accused of, or whether the expression provoked a public attitude that was detrimental to his dignity.

In its ruling of December 2, 2016, on Case EKD/1320/02/14, the Court of Cassation stated that if a person claimed only non-pecuniary compensation for insult or defamation, the court was obliged to satisfy it by applying non-pecuniary compensation only. And if the person claimed both pecuniary and non-pecuniary means of compensation, first of all the non-pecuniary means of compensation should be used, with pecuniary means applied only in the case of the latter's insufficiency. However, in this case, the court did not give reasons why it found that only non-pecuniary compensation was not enough to achieve the objective of the lawsuit.

When filing the lawsuit, the plaintiff paid a state duty of 20.000 AMD, at the same time putting forward the following claims: to obligate the defendant to a public apology, publication of the judicial act in the *Hraparak* daily and on Hraparak.am website, the payment of 500.000AMD as compensation for slander, and 300.000AMD for insult. That is, there were 2 non-pecuniary claims along with one pecuniary claim in the amount of 800.000AMD, for which a state duty was to be set at $4000 + 4000 + 10000 + 6000 = 24000$ AMD. As a result, the court had sufficient grounds to return the lawsuit, but this was not the case, and the lawsuit was accepted for proceedings.

In the reasoning and concluding parts of the act, the court used the following wording “In the *Hraparak* daily and the website bearing the same name.” As judicial acts, especially their concluding parts, provide for rights and obligations for the parties to the trial, they should be as clear as possible and should not allow for any misunderstanding or misinterpretation. Yet, the court did not mention the exact name of the website, leaving the execution of the act uncertain.

LEGISLATIVE PROPOSALS

The study has identified a number of legal issues, the solutions of which imply legislative supplements and amendments. Hence, the recommendations are as follows:

1 . Given that four kinds of media outlets are defined in Article 3(2) of the RA Law on Mass Media, it is expedient and necessary for all mass media outlets, including those that operate on material carriers, via TV and radio broadcasts, public telecommunications or websites, to publish information about themselves. In particular, it is important to publish the full name of the legal entity, its legal status, location, state registration number (or the registration of its separate subdivision acting on behalf of the legal entity), and if the media operator is a natural person, his/her name, surname, and address, and if he/she is a sole proprietor, the state registration number and other data.

The above is necessary in order to be able to find out who should be requested to refute or respond or who should appear in court as a defendant in cases of alleged violations of human rights through insult or slander.

2. Article 1087.1 Para 8(1) of the RA Civil Code stipulates that a person may go to court claiming refutation of the information considered defamatory and (or) publish his/her answer to it, if defamation was contained in the information disseminated by a media operator. Meanwhile, there are cases when the information is disseminated by the journalist or another person. Therefore, the measure of non-pecuniary compensation (refutation, response) must be applicable in all cases.

In this regard, we propose to amend Article 1087.1 Para 8 of the RA Civil Code when envisaging a form of rights protection not to limit it to the status of persons.

3. Article 1087.1 Paras 7 and 8 of of the Civil Code of the Republic of Armenia stipulate that in case of apology for an insult and a refutation of slander, the form shall be approved by the court. In practice, however, courts often include defamatory expressions in the concluding sections of their acts; moreover, they obligate the defendant to publish them in entirety or in part.

In view of the above, it is necessary to legislate that when appointing the form of an apology or refutation, the courts shall refer to defamatory publications to the extent necessary to identify them. We consider that after confirming the defamatory nature of the statement, the courts should avoid to the extent possible the reproduction of the same statements in the final parts of their acts, otherwise it can be considered a double violation of the plaintiff's rights.