



Yerevan

25.03.2013

OPINION

Tigran Urikhanyan vs Edgar Barseghyan

1. CIRCUMSTANCES OF THE CASE

On 26 October 2012, the Armenian-Italian Holding “Amore”, with the support of the Italian Embassy to Armenia, organized “Style Screen” annual award ceremony, which recognized the MP Tigran Urikhanyan as a winner in the category of the “Most Stylish Political Figure of the Year”. In response to this, blogger Edgar Barseghyan placed Tigran Urikhanyan’s photo in the website www.demotivator.am, with half-naked body of a model. Edgar Barseghyan reasoned his action in the following way: *“It is my subjective opinion that in our country which has a number of unsolved problems, an MP who should be in the forefront of fighting for the solution of these problems, spends time on looking stylish and on sending press releases concerning this. And since the matter is about style and fashion field, for me the whole thing is associated first and foremost with woman, so I depicted him with a body of a woman and I do not think that a comparison with woman is insulting”*.¹

In response to this Tigran Urikhanyan made the following statement:

“If in the opinion of the blogger this is not insulting, then henceforth he will see in various places his photo and photos of those close to him, edited on the half-naked bodies of models. Then I will try to hear his opinion as to whether this is an insult or not. I have a number of other occupations and I am not dealing with preparing pictures but I am confident that the persons who understand very well what is happening will undertake relevant actions in this context”.²

¹ <http://media.am/MP-sues-blogger>

² Ibid.

On 21/22/2012 Tigran Urikhanyan filed lawsuit vs Edgar Barseghyan in the General Jurisdiction Court of Kentron and Nork-Marash Administrative Districts of Yerevan. He requested the Court to define that with the disputable photo the Respondent has damaged his honour, dignity and business reputation and to oblige the Respondent to publicly apologize, to charge the Respondent 1 500 000 AMD for insult and for court expenses³, as well as to remove the disputable photo from www.demotivoator.am and www.blognews.am websites.

On 27/12/2012 the Plaintiff applied to court with a request to apply a measure for securing the claim and to ban the Internet dissemination of any materials which damage his honour, dignity and business reputation, as well as to ban the assets and monetary means of the Respondent in the amount of 1.500.000 AMD. The Court upheld the claim partially by deciding to ban the Internet dissemination of any materials discrediting the Plaintiff's honour, dignity and business reputation, including the disputable photo. The Court rejected the claim on putting a ban on the assets and monetary means of the Respondent in the amount of the claim, reasoning that the claim is not grounded since its necessity has not been substantiated.

The case is currently at a stage of preliminary court examination.

2. CONCLUSION

The disputed photomontage belongs to the genre of political satire. Satire is a form of artistic expression and social commentary and by its inherent feature of exaggeration and distortion of reality, provocation and acute criticism, falls under the protection of free expression⁴.

Thus the issue under question is not whether the photo was insulting or not by itself, out of the environment, but whether the author succeeded in reasonably balancing his speech with the rights of the others, in this particular case with the right to respecting the honour of the person who became target for criticism. In order to determine this, the Council took into account all factors, which all together make the context of the information under discussion.

With the disputed photomontage the author expressed his complaint about the respective action of the political figure. This was criticism directed at the Plaintiff's activity as a political figure and not towards his personal life. Thus the development and dissemination of the photo was not an end in

³ According to www.datalex.am information database, as of 3/22/2013.

⁴ Vereinigung Bildender Künstler vs Austria, No. 68354/01, 25/01/2007, §33.

itself but was a special form of value judgment by a civic activist about certain action of a political figure.

A value judgment can be protected by law if it is based on certain factual ground. In this particular case such factual ground was the well-known circumstance of the Plaintiff's attendance of the award ceremony "Stylish Political Figure of the Year", his receiving of the award and the interview he gave afterwards.

In addition, the personality of the Respondent, is also a factor which needs to be taken into consideration. In this case, the Respondent is a civic activist who carries out a public watchdog remit⁵, which stems from the interests of the democratic society, and which limits the margin of appreciation of the authorities in limiting civic rights⁶.

The Plaintiff's personality is also a factor which needs to be taken into account. In this case the Plaintiff is a political figure who is distinguished by his wide public activity. In such circumstances the admissible scopes of criticism towards political figures are wider and they need to demonstrate more tolerance. This stems from the general constitutional-legal contents of Articles 1, 2 and 5 of the Armenian Constitution since an authority can be exercised as well though a public service thus the public and private behavior of the persons who provide such service can objectively become subject to public discussion⁷.

And finally, the matter needs to be looked at from a moral point of view as well, under part 2 of Article 10 of the European Convention on Human Rights, since amongst the grounds for limiting free expression there is a natural link between the legitimate aims of "protection of morals" and "protection of the rights of others"⁸. In this case the blogger has depicted the Plaintiff's photo in a form of a half-naked body of a model which, according to the norms and values established in our society, is an indecent way of presenting a person publicly.

Taking into account all factors mentioned above, and especially the importance of political speech in public relations, the Council finds that in this particular case, it is nevertheless necessary to demonstrate tolerance towards the means of expression chosen by the blogger which, although spiced with exaggeration, was however targeted at the public activity of the political figure and not towards his personal life.

⁵ Decision No. ՄԴՈ-997 of the Constitutional Court of the RoA, page 22.

⁶ *ibid*

⁷ Decision No. ՄԴՈ-997, page 20.

⁸ Muller and others versus Switzerland, No. 10737/84, 24/05/1988, page 30.

As far as the monetary demand is concerned, the Council once again notes that it is desirable that the political figures refrain from monetary demands when submitting complaints with regard to cases involving matters of public importance and debate. The Council finds that if the court satisfies the claim, the factual recognition of a violated right can be already deemed as a satisfactory means of fair compensation.

With regard to the court's decision versus securing the claim and the requested ban of assets, the Council finds that the decision was made in line with law, pursues a legitimate aim by maintaining the principle of proportionality in selecting a measure, since the court selected a measure with the least impact in limiting the rights, which does not hamper the activity of the Respondent.

Information Disputes Council

Shushan Doydoyan (Secretary of the Council)- President of the Freedom of Information Centre of Armenia;

Manana Aslamazyan - Director of Alternative Resources in Media program;

Boris Navasardyan - President of the Yerevan Press Club;

Aram Abrahamyan - Chief Editor of "Aravot" newspaper;

Ara Ghazaryan - Deputy Director of "Arni Consult" Law Firm office