

21.01.2013

## OPINION

### **On the Court Case Filed by Mariam Yepremyan vs. “Mig” TV Company and News.am website**

#### **1. CIRCUMSTANCES OF THE CASE**

Mariam Yepremyan, Vanadzor city resident, has filed a court case vs “Mig” TV Company in Vanadzor and News.am website for broadcasting video materials about the death of her husband on 13 March 2012 as he was run down in Vanadzor, and for placing these videos on the Youtube. Immediately after the accident, the crews of the respondent media outlets were present at the accident site, filmed it, broadcast reports on their media outlets and then uploaded them on the Youtube. The news material has a total duration of 122 minutes, in which the corpse was shown in two footages, each lasting 4-5 minutes. Both footages are made from a close distance. Both footages do not show the face of the deceased but clearly depict the body of the deceased who was a victim of an accident and lying helplessly on the ground. The Plaintiff has considered the materials insulting and humiliating. According to the court claim the video has been disseminated publicly and has caused heavy psychological blow to the Plaintiff and her children, insulted the husband’s dignity, honour and business reputation. The Plaintiff has requested that the Court obliges Respondents to remove the video materials from Internet and charge each of the Respondents 500 000 AMD for insult, as well as a compensation of court expenses.

According to the Director of “Mig” TV Company Samvel Harutyunyan, such videos have a restraining and preventive influence on the population, thus they pursued a prevailing public interest. Besides, according to the Director of the media company, it is not possible to prepare a news material about accidents without such videos, whereas in such situations it is important that proportionality has been maintained since there was no

close-up of the face of the deceased and in a 122 minute material the body of the deceased is shown only during about 10 seconds<sup>1</sup>.

Although the disputable news material was published on 14 March 2012, the Plaintiff has for the first time applied to the Court on 09.20.2012 and the Court returned the application for the correction of mistakes and the applicant applied again, for second time on 08.10.2012. The court investigation is underway.

## 2. CONCLUSION

The Plaintiff has applied to the Court 6 months following the publication of the disputable materials. Even if the applicant justifies that the application has been submitted to the Court within one month after becoming aware of the publications, in accordance with point 13 of Article 1087.1 of the Civil Code, the term for the limitation of court actions starts counting also in cases, when an application has been submitted to court after the six month period following the public statement has expired. Moreover, no exception from this rule is defined. According to the Case Law of the Cassation Court, “In all those cases, when a person becomes aware of the insulting and defamatory statements, after the expiry of six months period, the terms for the limitation of court actions is missed<sup>2</sup>”. Thus, in this particular case, the Plaintiff has missed the term of the limitation of court actions.

As far as the video material is concerned, doubtlessly in any case, showing a corpse by mass media creates physiological stress and tension and causes psychological trauma and devastating feelings to the relatives of the deceased. Furthermore, showing the corpse right after the accident deepens the pain of relatives who mourn the death of a family member. This circumstance definitely is intervention into personal life, which is a ground on which the right to disseminating information can be subject to certain limitations<sup>3</sup>. Thus the question is whether the public right to receive information can prevail over the right of respect to personal and family life.

**The Council finds** that the media’s publication of a photo or video of a person who died as a result of accident, crime or suicide is a gross intervention to the right to family and personal life of the relatives of the deceased, which is not necessary in a democratic society. In such circumstances, neither the social status of the deceased, nor the level of public interest towards him, or the method, environment or purpose of the publication matter. It is worth mentioning as well that abstaining from publishing a photo or video

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<sup>1</sup> <http://media.am/mig-tv-news-am-dead-body-coverage>

<sup>2</sup> Decision dated 27/04/2012 of the Cassation Court of the RA, on the civil case No. ԵԿԴ/2293/02/10, page 20.

<sup>3</sup> *HACHETTE FILIPACCHI ASSOCIES vs. France*, No. 71111/01, 14/06/2007, § 46:

showing a corpse does not in any way hamper the possibility of the media to publish information about an accident. In this aspect it is impossible to agree with the view of the respondent company that one can not prepare news material about traffic accidents without the use of such video materials. Unacceptable is also the respondent company's position that the publication of such materials can have a preventive impact for the occurrence of traffic accidents, which pursues public interest. **The Council finds** that such "shock therapy" methods in disseminating information are not in line with the commitments of respecting human rights, enshrined in part 2 of Article 10 of the European Convention of Human Rights.

As for the compensation claim, we find that to an extent that upholding of the demanded monetary means would not hamper the smooth operation of the media outlet, the compensation claim is proportionate. According to the precedent law of the Cassation Court, it is necessary to take into account "*the issue of the quick and public dissemination of information through the means and methods used*"<sup>4</sup>, as well as the "*scope of dissemination of information*"<sup>5</sup>. In this particular case the information was disseminated on internet and television, through which both media outlets could ensure a wide coverage and audience in a very short period of time. Moreover, it is necessary to also take into consideration the fact that information uploaded on the Internet can become non-controllable in time and space, thereby causing an irreversible and unrecoverable damage to personal and family life. This risk is not eliminated even in those cases when the company who placed the information removes it from the Internet.

### ***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

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<sup>4</sup> Decision dated 27/04/2012 of the RA Cassation Court on civil case No. ԵԿԴ/2293/02/10/, page 17

<sup>5</sup> Ibid