

**Yerevan
15.10.2012**

**OPINION
On the Court Case Filed by Margarita Aghvan Khachatryan
vs. “Hraparak” Daily**

1. The Circumstances of the Case

On 21 April 2011 an article entitled “Was there a scuffle?” was published in “Hraparak” daily’s issue No. 73/684 (hereinafter referred to as “Article”).

“Margarita Khachatryan, the Chairperson of “Zinvor” Law Defense Coordinating Council of Non-Governmental Organizations, the famous Moroz, pays frequent visits to the Armenian military units. She is distinguished with her rude behavior, does not obtain from curses when coming across shortcomings, violations in the military units.

According to our information, during one of the last visits a quarrel started in one of Nagorno Karabakh military units between Margarita Khachatryan and the commanding staff involving into a scuffle and even a beating. However Mrs. Margarita refuted this: “There is nothing like that sonny. They received me with all honours. I am the mama of Tanjo and there is no one person who can say a word to Tanjo’s mama. I have received twenty medals and if I was involved in a scuffle, I would not be a medal winner”.

On 26 April 2011, Margarita Aghvan Khachatryan (hereinafter the Plaintiff) applied to Court against “Hraparak” daily (hereinafter the Respondent) requesting to oblige the Respondent to publish refutation under the heading “Refutation” in one of the upcoming issues of “Hraparak” daily. Besides, the Plaintiff demanded from the Respondent to compensate the moral damage caused to her, in the amount of 2 000 000 AMD, as well as the state duty amounts paid for the court claim.

Hearing the case No. ԵԿԴ 0807/02/11, on 30 July 2012 the Court of General Jurisdiction of Kentron and Nork-Marash Administrative Districts of Yerevan made a verdict, rejecting the claim.

2. CONCLUSION

According to the respondent media outlet, in the disputed article the Respondent published the Plaintiff's response and/or refutation by mentioning: "However Mrs. Khachatryan refuted this: "There is nothing like that sonny. They received me with all honours. I am the mama of Tanjo and there is no one person who can say a word to Tanjo's mama. I have received twenty medals and if I was involved in a scuffle, I would not be a medal winner". According to the Respondent the presence of a text of such content is itself a publication of a refutation or response, hence the Plaintiff could not use the protection means set forth in the part 8 of Article 1087.1 of the Civil Code of the the RoA.

The Court has found that the journalist has acted in good-faith particularly by listening to and publishing the interested person's position on the published information, thereby actually refuting the information presented in part 1 of the Article.

According to the second paragraph of the part 1 of Article 8 of the Law on Mass Media, a refutation request can be presented in a one month period, starting from the day of the dissemination of information which pertains to refutation; and, according to the third paragraph of the part 3 of the same Law, refutation shall be published under the heading "Refutation" and in terms of its location, design, font size and type, as well as the timing of transmission shall not be inferior to the originally published information that it pertains to. Thus, it can be concluded that refutation is a process which starts **following the publication (dissemination) of the relevant information and is implemented as per a procedure defined by law**. Whereas in this particular case the Respondent media outlet has published the Plaintiff's refuting position on the information it disseminated, **which, in a formal sense, cannot be considered a proper refutation since it was published simultaneously along with the disseminated information and does not correspond to the format stipulated by the law. Besides, the Council finds that the publication (dissemination) of information about a person and the same person's refuting position (opinion) can not exempt the implementer of media activity from liability to publish proper refutation as per procedure defined by law.**

In the legal position presented to court the **respondent media outlet** has expressed the opinion that "Submitting a request for refutation is a compulsory extrajudicial procedure which should be observed by the person requesting refutation before going to court. A person can not bypass that procedure and go straight to the court with a demand to oblige for refutation". According to part 1 of Article 8 of the Law on Mass Media, a person has the right to demand that the implementer of media activity refutes factual inaccuracies violating his/her rights, which were included in the information disseminated by the implementer of media activities, if the latter does not prove that the facts correspond to the reality. Besides, Article 18 of Armenia's Constitution stipulates that each person has a right for effective judicial protection of his/her rights and freedoms. Hence, demanding a refutation from the implementer of media activity is not a person's obligation but it is a right, which has been addressed by court, by finding that applying to a media outlet for restoring a violated right which has been defined as an extrajudicial means is not a mandatory condition for submitting an application for

a judicial protection of that right. **With this, the Council places on record that** the Respondent's statement according to which "having submitted a refutation request is a mandatory extrajudicial procedure" or that a person can go to court only after having demanded a refutation, does not correspond to the Armenian legislation, according to which applying to a media outlet for restoring a violated extra judiciary right is not a mandatory condition for submitting a court application for the protection of the right.

Taking into account the above-said the Council arrives to the following conclusion:

- 1) The inclusion of the refuting position (opinion) of the Plaintiff on the published information in the same article cannot be formally deemed as a proper refutation, since it has been published simultaneously with the disseminated information and does not correspond to the format stipulated by law. Besides, the Council also finds that publication of information on a person and at the same time refuting position (opinion) of the same person can not exempt the implementer of media activity from the liability for publishing refutation as per procedure set forth by law. It is not permissible that an attempt is made to manipulate with the opposite opinion presented in an article and present it as a refutation.
- 2) The Council places on record that the statement of the Respondent media outlet according to which "having submitted a refutation request is a mandatory extrajudicial procedure" or that it is only after demanding refutation that a person may go to the court, does not correspond to the Armenian legislation, according to which applying to the media outlet for the protection of a right violated in an extra judiciary procedure is not a mandatory condition for submitting a court application. Such approach has been also deemed as irrelevant in the verdict of the General Jurisdiction Court of Kentron and Nork-Marash Administrative Districts of Yerevan, dated 12/03/2012, on the case No. ԵԿԴ/0790/02/11 (Hayk Babukhanyan vs Khmbagir Ltd., Erik Andreasyan and Abel Miqayelyan).

Information Disputes Council

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