

**Yerevan  
10.10.2012**

## OPINION

### **On the Court Case Filed by Hayk Babukhanyan vs "Khmbagir" Ltd. (report.am), Edik Andreasyan and Abel Mikayelyan**

#### **1. The Circumstances of the Case**

On 25 March 2011, a material (hereinafter referred to as the Article) entitled "When what can not be prompted is forcedly prompted", authored by Edik Andreasyan and publications (comments) made by unknown persons on the same material were published on [www.report.am](http://www.report.am) website by "Urbat" Club "Khmbagir" Ltd.

Considering the Article and comments as containing insulting statements which violate the rights set forth in the Armenian legislation, Hayk Babukhanyan (hereinafter: the Plaintiff) in his application of 21 April 2011 submitted to court, has requested to oblige "Khmbagir" Ltd., Edik Andreasyan and Abel Mikayelyan to publicly apologize in the same media outlet in accordance with the format decided by court, as well as to oblige the respondent company to publish the full version of the court verdict in the same media outlet, i.e. report.am website, where the article and comments on the article were published, at the same time requested to solve the issue of distribution of legal expenses. At the pre-investigation stage of the case the Plaintiff has made a supplement to the claim, requesting as well 1 000 000 AMD as a compensation amount for insult.

The First Instance Court of Kentron and Nork-Marash Administrative Districts of Yerevan (chaired by the judge A. Melkumyan) hearing the civil case No. ԵԿԴ/0790/02/11, in its decision of 12 March 2012 entirely rejected the application because of finding it unjustified.

## 2. Conclusion

The Plaintiff's mediation was upheld with the decision of 22.04.2011 of the First Instance Court of Kentron and Nork-Marash Administrative Districts of Yerevan and for the purpose of securing the claim, the Respondents "Khmbagir" Ltd., Edik Andreasyan and Abel Mikayelyan were prohibited from publishing any material about the Plaintiff in [www.report.am](http://www.report.am) website and placing statements made by other persons on the material or allow the posting of such statements, re-publishing or maintaining in the website a published material which contains an insult to the honour, dignity and business reputation of the Plaintiff and (or) defamatory statements.

In this particular case the court is led by Article 98 of the RoA Civil Code, which, in its point 2 of part 1, stipulates that one of the means to secure a court claim is to forbid the Respondent from resorting to certain actions. Although the Armenian legislation does not clearly define the list of actions which can be prohibited by court as a means to secure a claim, however, **the Council finds** that prohibiting the respondent to perform certain actions as a means to secure the claim can be applied only versus such actions which are legal or not prohibited by law, whereas in this case the court has forbidden an action, for which there is legal liability<sup>1</sup>.

As well, taking into account that according to part 2 of the European Convention and Article 43 of Armenia's Constitution, a number of human and civil rights and freedoms, including the freedom of expression guaranteed by Article 27 of the Constitution, can be limited only by **law** if this necessary in a democratic society, for the national security, protection of public order, crime prevention, public health and morality, for the protection of other persons' constitutional rights and freedoms, honour and reputation.

**The Council finds** that with its decision the Court was not to limit freedom of expression<sup>2</sup> (as it actually did by satisfying the Plaintiff's mediation during investigation of the case), since according to Article 43 of Armenia's Constitution, the freedom of expression can be limited exclusively in accordance with the law<sup>3</sup>.

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<sup>1</sup> According to part 1 of Article 19 of the RoA Civil Code, "a person's honour, dignity and business reputation are subject to protection from publicly made insult and defamation, in the cases and according to procedures defined in this code".

<sup>2</sup> Limitations, the narrowing down and reducing of the scopes of a right set forth in the Constitution and laws is an exclusion by the State, stemming from certain important interests (See, "Comments of the Republic of Armenia Constitution" edited by G. Harutyunyan, A. Vagharshyan, -Yer.: "Iravunq", 2010, 510 pages).

<sup>3</sup> The rights and freedoms listed under part 1 of Article 43 of the Constitution can be limited only by law. The form of limitation is the law itself which should provide a clear legal formulation of these limitations and ensure proper justification of the need for limitation (See "Interpretations on the Constitution of the Republic of Armenia", edited by G. Harutyunyan, A. Vagharshyan, -Yer.: "Iravunq", 2010, 510 pages).

Besides, according to part 1 of Article 4 of Armenia's Law on Mass Media, the implementers of media activities and journalists act freely, based on the principles of legal equality, legality, freedom of speech (expression) and pluralism, and points 1 and 2 of part 3 of the same Article prohibit 1) censorship; 2) actions that are aimed at or can lead to forcing the implementer of media activity and journalists to disseminating an information or refusing to disseminate that information.

**Hence, the Council places on record** that by satisfying the Plaintiff's mediation, the Court has actually applied censorship, as well as an action which was aimed at or could lead to forcing the implementer of media activity and journalist to disseminating an information or refusing to disseminate that information, which are forbidden by points 1 and 2 of part 3 of Article 4 of the Law on Mass Media.

**The Council finds** it important to note as well that it is only under certain strictly special circumstances that a well-justified and necessary demand will objectively occur to suspend the further publication of problematic information before the conclusion of a court examination. Such limitation however should be defined by law, secondly such limitation should have really small scopes. In this perspective the Council concurs with the opinion of "Article 19" reputable organization according to which a court ban should be practiced provided the below mentioned two conditions are in place: first, the Plaintiff should justify that the further publication of the problematic information can lead to an irreversible damage, which can not be fixed through a favorable court act later on, and second, the Plaintiff should be able to show that the statement is obviously of defamatory nature and with regard to this no protection will make any sense<sup>4</sup>.

As for the anonymous materials published on the website, which, in the opinion of the Plaintiff, also contain insult, the Court concluded that the Plaintiff's claims with this regard are not justified as well since in this particular case the Court deems the statements in the unsigned and anonymous materials to be a result of value judgments of the members of the society, since all significant pre-conditions are in place for finding it proven that these were value judgments. In particular the above-mentioned persons have expressed opinions on the material, having certain factual circumstances and expression of goodwill, which was the material published on the website. The court has also noted with regard to the case that before the Plaintiff's written or verbal request the media outlet could not have limited its readers' right to free expression (for instance, by deleting, removing the comments) since this would

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<sup>4</sup> "Definition of defamation: principles of free expression and copyright protection", "Article 19", London, July 2000. See principle No. 16. The full text is available at:  
<http://www.article19.org/data/files/pdfs/standards/definingdefamation.pdf>.

have been deemed unnecessary in a democratic society, hence the media outlet did not bear responsibility for the comments made by other persons, because first of all, the latter's deliberate intention for what happened with the Plaintiff was not in place and it is not possible to find out the identity of those persons since they were using their nicknames when leaving comments on the material. Besides, the Court has also noted that the comments made by anonymous persons concerning the article were subjective assessments or opinions which were conditioned by a prevailing public need, related with the published article's public and political resonance. By concurring with the Court's conclusions with regard to the user comments, the **Council also finds it appropriate to mention** that in its Opinion<sup>5</sup> published on 30 May 2012 concerning the verdict of the First Instance Court of General Jurisdiction of Kentron and Nork-Marash Administrative District on the case filed by Arthur Grigoryan vs "Hraparak" daily, the Council already addressed the comments' issue and found that the legal positions expressed in the Constitutional Court's decision No. ՄԴՈ-997, dating from 15 November 2011 are equally applicable for the user comments made on online media platforms. With this regard the Council once again calls on:

- All media outlets to moderate user comments by following the popular principles of the right to free expression;
- Online media to develop and place on their websites moderation rules to be visible for readers and to thereby guarantee the clarity and transparency of the use of moderation rules.

**The Council also finds** it necessary to address the issue that according to the Respondent, "if the Plaintiffs found that their rights were violated with the problematic article, they were obliged to request refutation of the disseminated information within the timeframes and order defined by the RA Law on Mass Media. The fact of not using their rights as per the timelines and procedures set forth by the law..., deprives the Plaintiffs of the possibility to use the protection means defined by points 7 and 8 of Article 1087.1 of the RA Civil Code". As a result of examining the Court's decision on the case under discussion, the Council placed on record that the Court has addressed the issue in detail, justifying its groundlessness. Agreeing with the Court's position, the Council places on record that the statement of the Respondent's representative that not using their rights as per the timelines and procedure set forth by the law deprives the Plaintiffs of the possibility to use the protection means defined by points 7 and 8 of Article 1087.1 of the RA Civil Code or, in other words, a person can go to the court, only after having requested refutation, does not correspondent to the legislation, since it is a person's right and not obligation to demand refutation before going to court.

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<sup>5</sup> <http://www.foi.am/hy/IDC/item/1027/>

Taking into account the afore-mentioned, **the Council arrives to the following conclusion:**

- 1) Banning the Respondent from performing certain actions as a means to secure the court claim can be applied only versus an action which is legal or not forbidden by law, whereas for the current case the Court has banned an action, for which there is legal liability.
- 2) The court was not to limit freedom of expression (as it actually did by satisfying the Plaintiff's mediation during investigation of the case), since according to Article 43 of Armenia's Constitution and part 2 of Article 10 of the European Convention of Human Rights freedom of expression can be limited exclusively in accordance with the law.
- 3) In its Opinion published on 30 May 2012 concerning the verdict of the First Instance Court of General Jurisdiction of Kentron and Nork-Marash Administrative District on the case filed by Arthur Grigoryan vs "Hraparak" daily, the Council addressed the comments' issue and arrived to conclusions that are also applicable for this particular case.
- 4) The statement of the Respondent's representative that not using their right to refutation as per the timelines and procedure set forth by the law deprives the Plaintiffs of the possibility to use the protection means defined by points 7 and 8 of Article 1087.1 of the RA Civil Code or, in other words, a person can go to the court, only after having requested refutation, does not correspondent to the legislation, since it is a person's right and not obligation to demand refutation before going to court.

***Information Disputes Council***

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