



## ՀԱՅՍՏԱՆԻ ԶԱՆԳՎԱԾՍՆԻՆ ԵՐԱՎՈՐԹՅԱՆ ՄԻՋՈՇՆԵՐԻ ԷԹԻԿՍԻ ԴԻՏՈՐԴ ՄԱՐՄԻՆ

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### EXPERT OPINION OF MEDIA ETHICS OBSERVATORY

#### Regarding the “Lala Mnatsakanyan v. 'Hraparak' website” case

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#### A. FACTS

1. On June 2, 2023, Media Ethics Observatory received Lala Mnatsakanyan's complaint against the piece entitled “My 2018 activity made me realize I have learnt nothing,” published on “Hraparak” website.

2. According to Lala Mnatsakanyan, Hraparak.am journalist Hayk Gevorgyan contacted her, and they just talked, as she had initially stated she would not give an interview. During and following the conversation, Lala Mnatsakanyan requested the journalist several times not to publish their talk, as she had no intention of giving an interview. However, the journalist published the conversation on the website, framing it with certain elements found in interview-style content.

3. On May 25, Lala Mnatsakanyan sent an e-mail to the editorial office of “Hraparak”, requesting to remove the piece from the website and publish her statement that she had not actually given an interview.

4. The editorial team of “Hraparak” responded to Lala Mnatsakanyan via email, noting that: *“If a journalist contacts an individual, presents him/herself as a journalist working for a particular media, and asks questions, it already constitutes an interview. The journalist is not a friend of Lala Mnatsakanyan to make calls and chat, he/she is not her therapist to provide a listening ear and comfort her, and he/she is not her colleague to gossip with her about political or professional topics... Someone who is unwilling to give an interview refrains from talking to a journalist and does not respond to their calls.”*

5. With regards to the comments generated by the piece, the editors of “Hraparak.am” stated: *“We have no control over those comments, and if we focus on them, this would mean that no content should be published either on social networks or in the media at all.”*

6. One of the readers’ comments under the published piece contains offensive language against Lala Mnatsakanyan.

#### B. ETHICAL NORMS

## **Code of Ethics of Armenian Media and Journalists**

2.6 To respect rights of interviewee in regard to the text of the interview, as its coauthor.

3.5.6 To moderate comments on publications on social network pages of media, if possible deleting entries of an openly offensive nature containing hate speech, calls to violence or other actions prohibited by law.

4.2 In case of a conflict between the freedom of expression and other fundamental human rights, the media independently decides what to give preference to, and bears responsibility for its decision.

6.3 To admit mistakes and to be ready to correct them.

### **INTERVIEW COPYRIGHT ISSUE**

To discuss Lala Mnatsakanyan's complaint, it became necessary to address the question of whether both parties involved in the interview, the journalist and the interviewee, possess copyright over the interview, and how this right is exercised in practice.

The issue pertains to the realms of free speech and copyright. These are competing rights: as experts have pointed out, interview copyright is the obscure part of copyright law. There is no straightforward and unequivocal answer, making it challenging for journalists to contest the claims of well-known or wealthy plaintiffs.

According to Article 32 of the RA Law "On Copyright and Related Rights":

*(1) The copyright in an interview belongs to both, the interviewee and interviewer, as to co-authors, unless agreed otherwise.*

*(2) The making public of an interview shall be permitted only with the consent of the interviewee and the interviewer.*

It follows from this provision that the interviewee is considered a co-author of the interview, which implies that the journalist cannot publish the piece without their consent. The interviewee reserves the right to object the publication of the interview, and the journalist must respect the co-author's request.

The rationale behind the law is that the interviewee also has a creative input to present his/her thoughts correctly, uniquely and understandably, while responding properly to the journalist's questions. By the way, when defining co-authorship, the law states that each of the co-authors has the right to use the independently significant part of the work created by him/her at his/her discretion, unless otherwise stipulated by the contract signed between them.

On the other hand, it should also be noted that the subject of copyright protection is not the idea, but rather the unique manner of its expression. In essence, if the journalist changes the way the idea is expressed, presenting it with their unique language and style, refrains from direct and verbatim quotation of the interviewee's statements, but instead rephrases, modifies and presents them in their own words and individual style, it might raise questions about the co-authorship of the other party. To be recognized as a co-author, an individual must display sufficient creative effort in the expression of their ideas. When their responses are predominantly limited to "yes" or "no" without offering a personal analysis and unique insights, their co-authorship status may be considered questionable.

## THE ISSUE OF MEDIA LIABILITY FOR RESPONSES TO PUBLISHED CONTENT

The European Court of Human Rights addressed the issue of “third-party liability” in “Delphi v. Estonia” and later “MAGYAR TARTALOMSZOLGÁLTATÓK EGYESÜLETE AND INDEX.HU ZRT v. Hungary” judgments. Information Disputes Council has also carried out a comparative analysis of the two judgments in its [Opinion No 50](#).

The main legal position reflected in these judgments is that the media are responsible for the comments of third parties left on their pages. This applies particularly to the unlawful forms of speech (for example, hate speech, insult, defamation, vulgar language, etc.) and to the cases when the media was aware of the existence of such comments, but failed to remove them. Moreover, being “aware” is determined *a priori* based on whether the media controls the given platform.

The editorial standpoint of “Hraparak.am” as articulated in the statement *“we have no control over those comments, and if we focus on them, this would mean that absolutely no content should be published either on social networks or in the media”* contradicts the legal regulations outlined in the aforementioned judgments, and even more so, goes against the ethical principles. Firstly, the meaning of the media’s assertion on the lack of *“control over those comments”* is ambiguous. Even if the media intended to highlight their lack of technical capacity to immediately remove or block the comments, their duty to remove such comments arises as soon as they become aware or get notified about the presence of the comments through any means. This is exactly what the European Court of Human Rights had in mind in the above judgments, particularly in the second one, emphasizing the viability of the “notify and remove” system for such cases (for others’ illicit comments) to balance the rights and interests of different parties. According to this system, media have a duty to remove illicit comments of third parties once they are made aware of their existence. This can be achieved through notifications to the media via personal letters, some automated electronic systems, or when circumstances indicate that the media was aware or could not have been unaware of the presence of illicit content.

The significance of the ECHR rulings lies in the fact that they did not leave any “room” for the media to sidestep their duty of removing illegal content. Accordingly, the media had to moderate their pages using modern technologies. If these technologies are unavailable, a notification from any person of the existence of illicit comments in conventional manners (such as phone, letter, verbal communication, sms, etc.) imposes the same legal duty to remove the content.

### C. MEO EXPERT OPINION

- In the response letter sent to Lala Mnatsakanyan, the editorial team of “Hraparak.am” used an ironic tone, which is unacceptable from the point of view of journalistic ethics. Paragraphs 6.2 and 6.4 of the Code of Ethics underscore that the media should be ready to meet with those who are offended by the publication about them, and should encourage the public to express critical opinions about media.
- In accordance with Paragraphs 3.5.6 and 3.5.7 of the Code, “Hraparak.am” should have immediately removed the offensive content directed at Lala Mnatsakanyan from the comments section

of the publication. Due to the failure to do so in a timely manner, the media should have also sent written apologies to Lala Mnatsakanyan.

- When an individual voluntarily engages in a conversation with someone claiming to be a journalist, it rather implies their consent for their views to be published. Nevertheless, MEO reminds public figures or social activists, well-known persons that they can record their conversation with journalists in order to avoid further misunderstandings or misquotations.
- “Hraparak.am” failed to properly obtain Lala Mnatsakanyan's consent for conducting an interview, while Paragraph 2.5 of the Code stipulates: “Not to abuse the credulity of persons who do not have experience of interaction with media and journalists.”
- From journalistic standpoint, the publication in question does not align with the traditional interview genre, even though technically it is a Q&A. Therefore, MEO does not recognize the co-authorship of the complainant in this case.
- Lala Mnatsakanyan's demand to remove the publication from the website is groundless.
- MEO urges the editorial team of “Hraparak.am” to demonstrate goodwill, by engaging in a constructive dialogue with Lala Mnatsakanyan to search and find effective ways to eliminate the mentioned violations.

#### **Note**

According to provision 4.13 of MEO Regulations, *“Complaints regarding the publications by non-member media can be reviewed with the media’s consent. Nevertheless, if the media refuses to grant consent, MEO reserves the right to present an expert opinion on the publication, disseminating it through the means at its disposal.”*

***Adopted on July 20, 2023  
by the following MEO composition:***

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**Narineh AVETISYAN**, Executive Director of Vanadzor “Lori” TV Company  
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**Vigen SARGSYAN**, Chairman of the Commission on Professional Ethics  
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**Anzhela STEPANYAN**, Editor of Armavir “Alt” TV Company

*[Media Ethics Observatory](#) was established by the media, joining the self-regulation initiative, which make 76 as of today. In its judgments MEO is guided by the Code of Ethics of Armenian Media and Journalists, adopted on March 10, 2007 and revised at the June 25, 2023 general meeting of the media that joined the self-regulation initiative.*