

OPINION

On the case of the “Civil Contract” Party versus the Union of Informed Citizens Consulting NGO”

Facts

On June 7, 2024, the Court of General Jurisdiction of Yerevan concluded the legal proceedings concerning the lawsuit filed by the Civil Contract party against the Union of Informed Citizens non-governmental organization, ruling to partially uphold the lawsuit. Consequently, the court obliged the defendant to refute the defamatory statements published on their “Uic.am” and “Fip.am” websites, using the following wording: *“On 21.07.2023, a news piece was published on www.uic.am, claiming that the Civil Contract party was using the administrative resources of other communities to collect votes for the Yerevan elections. We declare that this is untrue, and the Union of Informed Citizens consulting NGO has defamed the Civil Contract party.”*

Although the court rejected the claim for 1 million AMD compensation from the NGO to the party, it decided to confiscate 20,000 AMD as pre-paid state duty and 150,000 AMD as reasonable attorney fee from the defendant NGO in favor of the plaintiff. Furthermore, the court ordered the Civil Contract party to pay 50,000 AMD to the Union of Informed Citizens NGO as reasonable fee for the defendant’s attorney.

As a reminder, the Information Disputes Council, in its Opinion No. 99 dated January 26, 2024, addressed this court case, triggered by the article titled [“The CC uses the administrative resources of other communities to secure votes for Avinyan,”](#) published on “Uic.am” and “Fip.am” websites. The publication, in fact, presented the recordings of telephone conversations organized by the Union of Informed Citizens, which served as evidence that the heads of various communities of Spitak region were making efforts to get the Yerevan-based relatives of local residents to vote for the ruling force in the Yerevan Council of Elders elections.

In the above-mentioned Opinion No. 99, the IDC concluded that the authors of the piece had not violated the rights of the Civil Contract party. Moreover, according to the Opinion,

the UIC pursued a legitimate goal of informing the public about election violations, the contested expressions were value judgments with factual basis, presented in a balanced manner and good faith, thereby placing the publication under the protection of Article 1087.1, Paragraph 5, Point 2 of the RA Civil Code. The IDC also found that filing a defamation lawsuit by the party against a human rights organization was unnecessary in a democratic society and urged the CC to withdraw their lawsuit.

At the time of publishing Opinion No. 99, the trial was still ongoing. Given the fundamental difference between the rendered verdict and the Expert Opinion, the IDC found it necessary to revisit the issue and provide additional substantiation for its position.

Conclusion

The court concluded that the NGO's publication lacked evidence to confirm the accuracy of the information regarding the party's use of administrative resources during the pre-election period. The court justified its decision by noting that despite the article containing a hyperlink to recordings, the defendant failed to specify "*when, where, by whom, how and in what circumstances these recordings were made,*" and since this requirement, stipulated by Paragraph 2 of Article 83 of the Civil Procedure Code, was not fulfilled, the recordings could not be considered evidence subject to examination in this case.

In fact, an exceedingly high standard of proof has been applied, which is nearly impossible to meet for professions like investigative journalism or fact-checking. This approach essentially also nullifies the right to privacy for journalistic sources, as it implies that in any such circumstances, authors of publications will have to disclose their source to comply with the procedural requirement to satisfy the burden of proof. Despite all this, the court missed or neglected the fact that the piece contained the answer to "by whom?", as the recordings are accompanied by captions, indicating the sources, namely the interlocutors.

A thorough analysis of the mentioned piece may also reveal answers to other questions posed by the court. For example, the answer to "when?" is evident: on the eve of the Yerevan Council of Elders elections (the exact date and time are not crucial in this context). Similarly, the answer to "where?" is not hard to find: the NGO conducted phone calls from Yerevan to various communities of Spitak region, whose names are mentioned in the captions, and spoke with their heads. In this context, there is no pressing need for more precise data either. As for "how and in what circumstances," these are the exaggerated demands by the court, as discussed previously, for which there are also answers available to some extent, with their details unlikely to significantly impact the piece's perception and the resolution of this dispute. Thus, the standard of proof applied by the court is undue in the given circumstances.

Meanwhile, proceeding with the same method of analysis, the court concluded from this unacceptable criterion that the defendant had not demonstrated good faith in presenting the

information. It turns out that if the media's evidence, including about its sources, does not meet the undue demands imposed on it, it is deemed to have acted in bad faith. However, the court should have considered the defendant's mission and its public significance and, based on this, determined whether the proposed requirements would not have a disproportionately constraining effect on the organization's activities. In fact, instead of balancing the competing legitimate interests, the court applied a presumption that led to imposing overly strict requirements on the publication in question and unreasonably interfering with the activities of the NGO's fact-checking platform.

Similarly, another presumption was made: according to the court, since the media failed to provide evidence of the information's accuracy and substantiate its good faith actions, it was inferred that the authors of the disputed publication had the intent of tarnishing the party's good reputation.

The IDC also considers this conclusion to be improper and not derived from the case materials and the content of the publication in question. Firstly, as mentioned, the disputed piece consists almost entirely of telephone conversation recordings, which inherently remove any doubt about the accuracy and good faith reproduction of the information. Added to that, the court failed to examine the nature of the defendant organization's activities, their goals, and professional background—crucial factors for evaluating the presence of the intent to defame.

During the trial, the defendant pointed out that the plaintiff had gone to court without first exercising the right to demand a refutation under the RA Law "On Mass Communication", which could be interpreted as an attempt to pressure, "punish" for a critical publication. In response to this argument, the court noted that it is within the plaintiff's discretion to choose between out-of-court or judicial means of legal protection. Nevertheless, the court emphasized that the CC party's rejection of an out-of-court settlement would be considered when examining the claim for monetary compensation.

In this regard, the IDC observes that avoiding the chance to settle the dispute out of court could also be viewed in terms of whether the plaintiff initially intended to refute the piece about them or publish a response, or whether they decided to target and pressure the defendant for their activities, particularly for the piece in question. However, the court failed to examine this circumstance, which is another example of a disproportionate approach.

To summarize the aforementioned, the IDC concludes that the court's verdict is improper, constituting an unjustified interference with the activities of the defendant NGO. The court's evidence standards seriously jeopardize the right of investigative journalists, fact-checking platforms, and whistleblowers to disseminate information and ideas. As a result, the freedom of expression of the Union of Informed Citizens NGO was violated under Article 42 of the RA Constitution and Article 10 of the European Convention on Human Rights.

Information Disputes Council

Shushan Doydoyan (IDC Secretary), President of Freedom of Information Center

Ara Ghazaryan, Director of “Ara Ghazaryan” Law Firm

Boris Navasardian, Honorary President of Yerevan Press Club

Aram Abrahamyan, Chief Editor of “Aravot” Daily

Ashot Melikyan, Chairman of Committee to Protect Freedom of Expression

Olga Safaryan, Lawyer