

May 30, 2024

OPINION

On the court case of the “Armenian National Intetest Fund” CJSC versus the “Pastinfo” Ltd.

Facts

On August 2, 2022, Armenian National Interests Fund (ANIF) CJSC, filed a lawsuit against Pastinfo Ltd. with the Court of General Jurisdiction of Yerevan under paragraph 3 of Article 1087.1 of the RA Civil Code. The lawsuit was caused by an article titled [“The Foreign Members of ANIF’s Board of Directors Excluded from Managing the Entrusted ZCMC Shares.”](#) published on Pastinfo Ltd.’s *Pastinfo.am* news website on June 25, 2022. According to the plaintiff, the article contained the following two defamatory expressions: *“In fact, ANIF uses the names of foreigners to disguise various murky deals”* and *“... The administration decided to censor official correspondence addressed to foreign members of the Board of Directors and the Investment Committee, preventing them from learning the details of the political corruption deal.”* ANIF CJSC argued that these expressions attributed actions to ANIF that tarnished their business reputation. The piece particularly suggested that the company had engaged in “murky” political corruption deals, using the names of foreign partners to disguise them. The plaintiff requested the court to oblige Pastinfo Ltd. to publicly refute the information tarnishing their business reputation and pay 5,000,000 AMD as compensation for defamation.

The defendant objected to the lawsuit, claiming that they had exercised their right to disseminate information of public interest, as guaranteed by Article 42 of the RA Constitution and Article 10 of the European Convention on Human Rights. Pastinfo Ltd. highlighted that the issues discussed in the article regarding Zangezur Copper Molybdenum Combine shares were of public importance, and given the media’s mission of contributing to open discussions on such issues and transparency in the activities of state institutions, the editorial team had attempted to shed light on the extent of legitimacy of the ANIF actions. Added to that, the defendant told the court that they had made reasonable efforts to obtain detailed information about the transaction involving the Combine, albeit without success. It was only after this that the editorial team presented the entire process in good faith and in a balanced manner in the article. Thus, Pastinfo Ltd. argued that they had exercised their right

to freely express their opinion, and the expressions in the publication, which formed the basis of the court dispute, could not be qualified as defamation.

On April 11, 2023, the Court of General Jurisdiction of Yerevan ruled to entirely reject the lawsuit. The ruling concluded that the controversial expressions were value judgments rather than factual data, hence, they could not be qualified as defamation and be subject to refutation. According to the court, these judgments by the media were made on sufficient factual grounds, and were therefore legitimate.

On August 1, 2023, Armenian National Interests Fund (ANIF) CJSC filed an appeal against the verdict, which was accepted for proceedings on September 8. The examination in this court was conducted in writing. On May 13, 2024, the Civil Court of Appeal issued its decision, rejecting the plaintiff's appeal and leaving the verdict of the first instance unchanged.

Conclusion

The IDC agrees with the position of Yerevan Court of General Jurisdiction that the controversial expressions in the publication are value judgments rather than factual data. These expressions refer to specific actions of ANIF, and while the wording might be considered excessively harsh (e.g., “murky deals”, “political corruption deals”), as such they fall within the bounds of permissible journalistic freedoms, since, as commonly acknowledged, free speech protections cover not only neutrally perceived remarks, but also provocative, shocking, or disturbing speech. Therefore, the critical factor is not the severity of the expression, but whether the journalist formed this judgment based on sufficient factual evidence, demonstrating good faith.

Prior to publishing the article, the editorial team made reasonable efforts to verify specific circumstances. For example, they sent official inquiries to the members of the Board of Directors, as well as the Chairman of the Investment Committee of ANIF CJSC, aimed to find out whether they had analyzed the legality of the process by which the Zangezur Copper Molybdenum Combine shares, regarded as the RA Government's property, were transferred to the company for management. They also inquired why the shares under court dispute had been handed over to fiduciary management. Additionally, they questioned whether the members of the Board of Directors or the Chairman of the Investment Committee had personally participated in the decision-making related to the ZCMC shares, etc.

All these inquiries posed by the author of the article were of public significance, addressing legitimate concerns that had lingered in society for a considerable period of time. After all, these issues were related to two crucial aspects of open governance of a public body: accountability and transparency, which are vital for anti-corruption policies. These factors provide the article with extra protection against any interference, such as, for example, the

current lawsuit brought against the media. It is evident that in this case, the public's interest in receiving information on the issues raised by the editorial team outweighs the business reputation of Armenian National Interests Fund CJSC.

In the absence of responses to these questions, the author reasonably concluded that ANIF CJSC was not conducting its operations with transparency and accountability, in particular, that the foreign members of ANIF's Board of Directors had been excluded from managing the ZCMC shares. The dispute appears to have arisen due to the conclusion being expressed too strongly with figurative expressions. However, as the court rightfully highlighted, these are abstract, evaluative judgments deriving from specific factual circumstances. This is highly important and enables these judgments to be qualified as proportionate and legitimate.

This approach is substantiated and corroborated by the case law of the European Court of Human Rights^[1], the positions of the RA Court of Cassation^[2], as well as the decision DCC-997 of the Constitutional Court. The Information Disputes Council has also addressed this issue in its previous conclusions.^[3]

Hence, through its verdict, the Court of General Jurisdiction of Yerevan legitimately resolved the information dispute between Armenian National Interests Fund CJSC and the founder of Pastinfo news website, taking under protection the media's right to disseminate information and ideas on matters of public importance.

Information Disputes Council

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^[1] Goodwin v. the United Kingdom, case law No. 17488/90, 27/03/1996

^[2] RA Court of Cassation ruling in the civil case No. [EKD/2293/02/10](#), p. 9, paragraph 3

^[3] IDC Opinion No. 31 on the court case of "Tigran Urikhanyan v. Edgar Barseghyan"