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OPINION

On “Zangezur Copper-Molybdenum Combine” CJSC v. Tehmineh Yenokyan

Facts

On December 1, 2022, journalist Tehmineh Yenokyan made the following post on her Facebook page: *“Yesterday, the pipeline going to the tailings dump of ZCMC broke again, the Voghji River was polluted again, a criminal case was initiated again, and it will be forgotten, swept under the rug once again, and they will carry on as usual. After all, the RA Government now holds a 28% share in ZCMC, right? They already operate cleanly, meaning, they come out clean from wastewater. No responsibility—just money has the power to blind anyone.”* On December 16, 2022, “Zangezur Copper-Molybdenum Combine” CJSC sent a letter to Tehmineh Yenokyan, demanding to publicly refute the statement, as it was untrue and damaged the company’s business reputation. Tehmineh Yenokyan did not respond to the letter.

On January 5, 2023, “Zangezur Copper-Molybdenum Combine” CJSC filed a lawsuit with the Court of General Jurisdiction of Yerevan against Tehmineh Yenokyan. The company stated in the lawsuit that on December 1, 2022 the defendant had made a post on her Facebook page (<https://www.facebook.com/Tehmineh.yenoqyan/mibextid=LQQJ4d>), in which the statement “Yesterday, the pipeline going to the tailings dump of ZCMC broke again, the Voghji River was polluted again” constituted defamation, was untrue and tarnished the good reputation of the combine. It was argued that Tehmineh Yenokyan had intentionally spread disinformation about the “tailings dump accident” (during the trial, the plaintiff also attributed the phrase “tailings dump explosion” to the defendant), and this intent was evidenced by the fact that the defendant had not even responded to the company’s demand for a refutation.

Tehmineh Yenokyan objected to the lawsuit, claiming that the publication fell under the protection of Article 1087.1, paragraph 5, point 2 of the Civil Code, as it concerned overriding public interest, reflected in an environmental issue. She highlighted the need to consider the purpose of the publication and her role as a journalist, an active environmentalist, and head of “Green Armenia” NGO, who constantly monitored and actively reacted to the environmental issues in the country. The defendant mentioned that she had learned about the November 30, 2022 pollution of the Voghji River in Syunik marz

from the press and had raised her concern in a Facebook post. According to Yenokyan, through her post she did not intend to target and defame the company, as her criticism was aimed at the inaction of the RA General Prosecutor's Office regarding the criminal case initiated in 2019 concerning the combine's damaged pipelines. That case has been under investigation for nearly five years, and in relation to it "Green Armenia" NGO sent a request to the RA General Prosecutor's Office, whose response was shared on the NGO's social media page.

The defendant also noted that while making the post, she had relied on a number of articles and videos on the Internet concerning the incident. In particular, on November 30, 2022, the Facebook page of "Iravater Kapantsiner" (Right Holder Citizens of Kapan) NGO shared videos, where the NGO members characterized the event as an accident. Added to that, multiple news websites published articles and videos with headlines such as "The Tailings Dump of Zangezur Copper-Molybdenum Combine in Syunik Exploded, Flooding the Village," and the post in question was essentially a reproduction of those reports.

The judicial examination is in progress.

Conclusion

In its expert opinions No. 80 and 87, the IDC addressed the legal matters regarding human rights activists and journalists raising environmental issues. [Opinion No. 87](#) specifically emphasized that courts, when handling such civil cases, must take into account the status of the individuals involved in these issues, the nature and purpose of their activities, as well as pay attention to the fact that the level and nature of legal protection provided to individuals and commercial entities in case of defamation or insult differ. While in case of individuals insult or defamation tarnish their dignity, this moral dimension is absent for companies. A company may claim defamation of its business reputation, which does not carry the same level of seriousness in terms of interference with private life, as defamation or insult directed at an individual (see also the 08/09/2020 judgment of the European Court in case No. 22649/08 of "*Regnum Ltd. v. Russia*", paragraph 66). The IDC believes that similar circumstances are also present in this court case, and will adhere to the above-mentioned principles in its conclusions.

In this case, Tehmineh Yenokyan brought attention to an environmental issue that is of wide public interest and concern. It stems from the nature of her activities. The facts demonstrate that there were indeed problems at the tailings dump of the mining enterprise, as even the combine did not deny this in their lawsuit. Moreover, in her objection, Tehmineh Yenokyan referenced a number of public sources, which had reported on the emergence of environmental issues at the tailings dump. These sources' reports have not been refuted so far either. In this context, there is no reason to suggest that Tehmineh Yenokyan's post was apparently arbitrary, lacked factual basis, and was aimed at discrediting the enterprise. It is important that the author did not state that an "explosion" had occurred,

making it unclear why ZCMC claimed in their lawsuit that the defendant had made such a statement, thereby damaging the company's reputation. This factual inaccuracy is a serious cause for concern regarding the plaintiff's objectivity.

By analyzing the post alongside other data, publications and statements presented, it can be concluded that Tehmineh Yenokyan's objective was to inform the public about an environmental issue, while her evaluation of the situation was formed based on sufficient and relevant facts obtained from publications of other sources. It is also important to consider the style and nature of the post: it is balanced, devoid of arbitrary, exaggerated and offensive labeling. The author's concerns stemmed from a concrete fact: the investigation into a criminal case initiated on the basis of an earlier environmental issue has been ongoing for nearly five years without any results. In light of these circumstances, Tehmineh Yenokyan's lack of response to the plaintiff's demand for a refutation holds no significance. Moreover, this and many other lawsuits filed against Tehmineh Yenokyan by mining companies are turning into strategic trials aimed at silencing the journalist covering environmental topics.

Thus, taking into account the nature of the publication, the underlying facts, as well as the author's profile and status—specifically her long-standing engagement in raising environmental issues—the post in question and its author, Tehmineh Yenokyan, are protected by point 2 of paragraph 5 of Article 1087.1 of the Civil Code. In this regard, she has exercised her right to freedom of expression in good faith.

Information Disputes Council

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