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***Introduction***

***Monitoring Results
Identified Problems in Court Practice
Cases with Judgments Entered into Force
Cases with One or More Judicial Acts***

COURT CASES AGAINST MEDIA OUTLETS AND JOURNALISTS IN 2021-2022

***Report Based on******Monitoring Data***

**INTRODUCTION**

*From June 2022 to January 2023, the Committee to Protect Freedom of Expression (CPFE) NGO, within the framework of a project implemented with the support of the Government of the Netherlands, conducted a monitoring of court cases against media and journalists[[1]](#footnote-1)*.

The monitoring covered lawsuits filed with courts, objections made to them, issues discussed in court sessions, as well as judicial acts. Based on the findings, including statistical data, the CPFE carried out an analysis and prepared the current Report.

This monitoring is another study of the CPFE, which focuses on the insult and defamation court cases initiated against media and journalists in the years 2021 and 2022 on the grounds of Article 1087.1 of the RA Civil Code[[2]](#footnote-2). The CPFE implemented similar projects in the past as well, and their continuity is crucial for identifying the ongoing trends and developments in judicial practice. This is especially relevant in the present post-revolutionary period, when the legal system is undergoing complex and sometimes ambiguous transformations.

Through the monitoring, the CPFE tried to examine the extent of judges’ adherence to the legal framework regulating the media, international conventions, as well as the rulings of the European Court of Human Rights, the RA Constitutional Court and the RA Court of Cassation. A significant emphasis was placed on examining whether the courts were taking identical, legitimate and predictable approaches when adjudicating similar disputes. Hence, the CPFE carried out comparative analyses, which revealed instances in which courts have issued differing judicial acts when presented with essentially the same factual data.

A particular emphasis was placed on whether the courts take into account the mission of the media and journalists, the standards of freedom of speech and its public interest. When analyzing some cases, reference was made to the judgments and opinions of the Information Disputes Council professional initiative.

Similar to previous monitoring efforts, the expert group conducted an analysis of court cases involving insult and defamation in the media using the following criteria:

* distinguishing between facts and value judgments
* defamatory nature of information
* challenge of identifying the proper defendant
* pecuniary and non-pecuniary compensation
* reasoning in judicial acts
* application of a measure to secure the claim
* litigation costs (amount of state duty, attorney's fee, etc.).

The study also delved into the compliance of freedom of speech restrictions with the principles of legality and proportionality, as well as their necessity in a democratic society.

**MONITORING RESULTS**

Throughout the monitoring period, **106** lawsuits were filed against media and journalists, **72** of which in 2021, and **34** in 2022. Out of those **106** lawsuits, **93** were accepted for proceedings (**69** in 2021 and **24** in 2022), the remaining **13** were not accepted for proceedings due to deficiencies in documents or withdrawal of the claim (see Figure 1).

Figure 1

In **48** out of the **93** cases accepted for proceedings (**38** in 2021 and **10** in 2022) the plaintiffs were current or former officials, politicians or state bodies, in **25** cases (**19** in 2021 and **6** in 2022) they were businessmen or business companies, in **9** cases (**5** and **4**, respectively) - ordinary citizens, in **4** cases (**3** and **1**, respectively) - representatives of civil society organizations, in **7** cases (**4** and **3**, respectively) - media.

The monitoring analyzed also the cases where at least one or more judicial acts were issued. A total of **17** such cases were recorded, with judgments on **7** cases already entered into force, indicating that the disputes were resolved. As for the remaining **10** cases, **1** or more acts were issued, but the court proceedings were ongoing at the time of publication of the study.

Among the 2021 and 2022 court cases, **2** conciliation agreements were reached, which led to the termination of the cases. The lawsuits were returned and not refiled (thereby the court cases were completed) in **10** cases, of which **3** in 2021 and **7** in 2022. And in **3** cases (all in 2022) after refiling the lawsuits, the decision to accept them for proceedings has not yet been released. There were **3** cases in which the plaintiffs failed to attend the court sessions two or more times without good cause: **1** in 2021 and **2** in 2022. In all **3** cases the courts left the lawsuits without examination (all in 2021).

The number of cases dismissed on the grounds of withdrawal of the lawsuit amounts to **9**, of which **3** in 2021 and **6** in 2022.

The figure below shows the comparative data of monitorings for the years 2019-2020 and 2021-2022 (see Figure 2).

Figure 2

**4** cases were identified in which lawsuits were filed in violation of the one-month statute of limitations, which were rejected by the courts based on the defendants’ motions.

As it was mentioned in the Introduction, the overwhelming majority of court cases accepted for proceedings are on the grounds of Article 1087.1 of the RA Civil Code, involving insult and/or defamation in media publications. In 2021, there were a total of **66** such cases, in 2022 - **22**. In 2021, there were **3** cases filed against media and accepted for administrative proceedings, in 2022 - **2** (see Figure 3).

Figure 3

In **14** out of the total **93** cases accepted for proceedings, media founders were involved not as defendants, but as a third party, with **10** occurring in 2021 and **4** in 2022.

Through a comparison with previous studies, one can observe a wave-like pattern in the influx of insult and defamation lawsuits: it increased in 2021, reaching the same level as in 2019, and dropped sharply in 2022, marking the lowest point in the past 4 years (see Figure 4). As years of the CPFE observations have shown, this is mainly conditioned by the socio-political climate in the country: in times of heightened tension, complaints and pressures on the media increase as well, including in the form of lawsuits. In this regard, for example, the increase in the number of insult and defamation court cases in 2021 is noteworthy, when following the 44-Day War in 2020 the domestic political atmosphere was highly charged. The period was marked by widespread polarization, intolerance and hatred both in society and in the media field, followed by snap elections, with the main actors of the confrontation vying for votes. In contrast, the year 2022 was much quieter, marked by threefold decrease in the number of lawsuits.

Figure 4

The number of these cases could obviously be even lower if there was an established practice of out-of-court settlement of information disputes, as well as media self-regulation system in the country, and if the overall level of professional capacities and legal knowledge among journalists were higher. Nevertheless, the study also highlights problems in the judicial system that often hinder the issuance of fully legitimate and well-founded acts in insult and/or defamation cases. This is illustrated in the analysis that follows, which is based on the monitoring criteria.

**Facts and Value Judgments**

The study shows that in the examination of insult and/or defamation cases the courts do not always make the necessary distinction between facts and value judgments in the disputed publications, which leads to the violations of individuals’ rights. While precedent decisions dictate that uniform approaches should be applied to such cases. The monitoring identified 5 such cases, and only 2 of those cases were exhaustively addressed by the courts.

According to the European Court, its legal positions safeguard the expression of negative opinions or value judgments to the extent that they are based on established or acknowledged facts. While the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof. The requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10 of the Convention. However, even where a statement amounts to a value judgment, there must exist a sufficient factual basis to support it[[3]](#footnote-3).

Thus, in the case of *Hraparak Daily Ltd. v. Media Initiatives Center NGO* (No. [ED/31882/02/21](http://datalex.am/?app=AppCaseSearch&case_id=45880421204182199)), the court of first instance found that the factual data presented by the plaintiff failed to support in any way the defendant's value judgment, as the publications did not contain any objectively expressed assessment: the pieces in question were found to be focused on specific actions and the person responsible for them, hence, there could be no talk of any good faith approach.

During its review of the verdict, the appellate court highlighted that when assessing whether a value judgment was present or not, the court should have paid attention to the clarifications and approaches of the person who had published factual data, as well as his/her attitude towards those data in order to determine whether the defendant had the intent to defame, or he/she acted in good faith, having objectively expressed his/her value judgments.

It is evident from the above that there is a challenge with distinguishing between value judgments and factual data in the courts, which has long been resolved through the precedent rulings of the Court of Cassation and the Decision of the Constitutional Court[[4]](#footnote-4). We believe that although there may be inaccuracies in the courts’ interpretation of whether an expression constitutes a value judgment or factual data, nevertheless, it is essential that the courts clearly and unambiguously emphasize the principled distinction between these two categories in all their judicial acts.

In another case, *Armenian National Interests Fund CJSC v. 168 Zham Ltd.* (No. [ED/2354/02/21](http://datalex.am/?app=AppCaseSearch&case_id=45880421204103019)), the court rightly concluded that the expression “engaged in questionable activities” was a value judgment with no factual basis, thus, it could not be refuted or confirmed.

*Thus, it can be concluded that the legal practice of distinguishing between value judgments and facts in courts is not yet fully established. While there are instances where these principles were correctly applied, there are also cases where errors were made in this regard.*

**Defamatory Nature of Statements and the Intention behind Them**

In its Decision DCC-997 of November 15, 2011, the RA Constitutional Court noted that the terms “defamation” and “insult” should be considered in the context of an intentional and deliberate act to disgrace a person’s reputation. An insulting expression implies a deliberate act, a violation of a person's dignity. The courts, however, fail to give sufficient attention to the issue of intention behind certain actions, as demonstrated by the lack of consideration of this matter in the reasoning sections of the acts and the distribution of the burden of proof. While the issue was raised in 8 of the 17 cases studied, it was only thoroughly examined in 3 and reflected in the reasoning part of the judgments.

For example, in the case of *Suren Papikyan v. Media Plus Ltd.* (No. [ED/27170/02/21](http://datalex.am/?app=AppCaseSearch&case_id=45880421204169119)), the plaintiff claimed that the statements were made intentionally, while the defendant denied that. In response, the court observed that the intention was to a certain extent proven as there was no evidence of lack of intention in the case. However, the court’s rationale in this case was not appropriate, since the existence of intention must be established through factual evidence, and cannot be presumed unless the contrary has been substantiated or proven.

In another case, *Alen Simonyan v. Ani Gevorgyan* (No. [ED/21669/02/21](http://datalex.am/?app=AppCaseSearch&case_id=45880421204154006)), the court failed to address the defendant's argument that the statements represented an inner conviction. In fact, the intention was not verified, and had the court given due attention to the matter, it could have impacted the content of the judicial act.

The interpretation of the defamatory nature of disputed statements is another key issue. Therefore, the CPFE analyzed the interpretations of the courts on the matter, and as a result, revealed that 9 out of 17 studied civil cases failed to properly discuss the fact of whether the statements were defamatory. In particular, in the case of *Khachatur Sukiasyan v. 168 Zham Ltd.* (No. [ED/16200/02/21](http://datalex.am/?app=AppCaseSearch&case_id=45880421204141829)), the court merely acknowledged that no evidence was presented during the trial to qualify the disputed expressions as defamation. However, it failed to thoroughly examine the issue and did not provide a detailed explanation that, for example, the falsity of information alone is not sufficient for the expression to be considered defamation. Courts must carry out certain procedural actions, including examining the expressions, assessing the evidence, taking into consideration the factual evidence of the case, the conduct of the trial participants, the motivation and intention behind the actions.

*Based on the comparison between the 2019-2020 and 2021-2022 monitoring results, it is apparent that the courts have not made any significant improvement in addressing issues involving defamatory expressions and the intention behind them, moreover, there is a certain regression in this area. Unlike the previous monitoring period, during which the courts conducted analyses of cases and provided comments on the intention behind the expressions[[5]](#footnote-5), the current study has not recorded any such reference.*

**Challenge of Identifying the Proper Defendant**

The data collected through monitoring indicate that the courts also face the challenge of improper defendants, when a lawsuit is initially filed against someone who is either non-existent or is not a real defendant in the case. The study recorded 3 such cases. In judicial practice, this problem is manifested mainly in 2 ways: firstly, when the media itself is implicated as defendant instead of the authentic entity that runs it (such as Ltd., CJSC, NGO, etc.), and secondly, when an allegedly defamatory article is published in any media with the signature of an unidentified person.

Paragraph 9 of Article 1087.1 of the RA Civil Code establishes that if the source of the information was not mentioned in the insult or defamation or if the person is not known, the responsibility for compensation falls on the entity who published it.

Throughout the monitoring, the above-mentioned issue was recorded, as seen, for example, in the case of *Suren Papikyan v. Media Plus Ltd.* (No. [ED/27170/02/21](http://datalex.am/?app=AppCaseSearch&case_id=45880421204169119)), when the defendant objected to the claim, noting that the author of the article was Aharon Hambardzumyan, and the media was only the publisher and bore no responsibility. After examining the factual context of the case, the court found that there was no evidence indicating that Aharon Hambardzumyan was an identified person, and hence, rightly concluded that the media that published the article was responsible.

In another case, *Helsinki Citizens’ Assembly-Vanadzor NGO* *v.* *Antifake.am* news website (No. [ED/2749/02/21](http://datalex.am/?app=AppCaseSearch&case_id=45880421204103801)), the plaintiff initially recognized *Antifake.am* as the defendant, but later Astghik Matevosyan, editor-in-chief of the media, was involved instead. It is obvious that according to the law, the website, not being an entity, cannot be a participant in legal proceedings. Nevertheless, the court had accepted the lawsuit under those circumstances.

*It should be noted that the same problem was also recorded in the 2019-2020 monitoring results. It is crucial for the courts to take into account the question of proper defendants while deciding* *whether to accept a lawsuit for proceedings.*

**Pecuniary and Non-Pecuniary Compensation**

In the examination of insult and defamation cases, non-uniform approaches are also applied to pecuniary and non-pecuniary compensation issues. According to the monitoring results, in 1 case, the court consistently followed the interpretations of higher courts, while in 4 cases, relevant terms were completely disregarded in the decision-making process (see Figure 5). In the remaining 12 cases, there were no claims for pecuniary compensation.

Figure 5

The RA Constitutional Court’s November 15, 2011 Decision No. DCC-997 outlined its stance on the application of pecuniary compensation measures for insult, emphasizing the need for caution. It should be borne in mind that the European Court of Human Rights has repeatedly stated that tolerance and open-mindedness are the basis of democracy, with the right to freedom of expression protecting not only acceptable speech, but also those expressions that may be considered shocking, offensive or upsetting by some. Additionally, when awarding pecuniary compensation, it is necessary to take into account its possible restrictive effect on freedom of expression, as well as other available lawful means of protecting one’s reputation. The CC further highlighted the non-pecuniary forms of compensation as the first remedy for the damage caused by defamatory statements.

In the RA Court of Cassation’s precedent ruling on case No. EKD/​​1320/02/14 of December 2, 2016, it was highlighted that if a person claims only non-pecuniary measure of compensation for insult or defamation, the court must confine itself to the application of that measure alone. And in cases where both pecuniary and non-pecuniary compensation are claimed, the non-pecuniary measure shall be applied first, and only in case it is found to be insufficient, can the court apply the measure of pecuniary compensation. The Court of Cassation also emphasized that non-pecuniary compensation, as a rule, ensures the proportionality of the compensation to the damage incurred, as in that case (when making a pubic apology or publishing a refutation) the person causing the damage suffers certain non-pecuniary damage, in particular by admitting one’s own unlawful conduct. This is especially important for an aggrieved party whose honor, dignity, or business reputation have been publicly tarnished.

The two key decisions above have underscored the criteria that should guide courts in determining pecuniary compensation. However, in 4 out of 17 cases, they were not included in the reasoning of judicial acts.

For instance, in the case of *Sasun Khachatryan v. Zhoghovurd Newspaper Editorial Office Ltd.* (No. [ED/42823/02/21](http://datalex.am/?app=AppCaseSearch&case_id=45880421204205270)), the court set 200,000 AMD as the amount of compensation, but failed to substantiate in any way why it considered that non-pecuniary compensation alone was not sufficient to restore the violated rights.

The study shows that in all 17 cases, the plaintiffs failed to properly justify the necessity of a pecuniary measure of compensation and the amount claimed. This allows us to conclude that the claim for pecuniary compensation is submitted mainly to “punish" or pressure the media or journalists, which is unacceptable.

In this regard, noteworthy are the judgments issued in the lawsuits of *Mega Trade Ltd.* and Khachatur Sukiasyan v. *Armday AM* and *News AM Ltds*, where for the publication of the same article in one case (*Mega Trade Ltd. v. ArmdayAM Ltd*., Court Case No. [ED/15948/02/21](http://datalex.am/?app=AppCaseSearch&case_id=45880421204141871)) the court rejected the pecuniary compensation, while in the other case (*Mega Trade Ltd. v. News AM Ltd.*, Court Case No. [ED/16030/02/21](http://datalex.am/?app=AppCaseSearch&case_id=45880421204141881)) granted that claim in the amount of 100 thousand AMD. In another case (*Khachatur Sukiasyan v. News AM Ltd*., Court Case No. [ED/16219/02/21](http://datalex.am/?app=AppCaseSearch&case_id=45880421204141920)) a total of 60 thousand AMD compensation was set for insult and defamation. All these cases highlight the non-uniform approaches applied in administrating justice, which is a cause for concern.

The monitoring results indicate that out of 21 cases analyzed in 2019 and 2020, claims for monetary compensation were submitted in 8 cases, of which 2 were rejected, 6 were granted, with one for a symbolic amount of 1 AMD. And in the 17 cases analyzed in 2021 and 2022, claims for pecuniary compensation were submitted in 5 cases, out of which 4 were granted by the courts. As can be seen, people going to court more often do not claim pecuniary compensation and are satisfied only with non-pecuniary compensation through refutation or apology. But the percentage of claims for pecuniary compensation that are granted by the courts, is not decreasing. Thus, in 2019 and 2020 it was 75 percent, while in 2021 and 2022 it amounted to 80 percent.

The sums of granted compensation (in AMD), are presented below:

Figure 6

The data in Figure 6 demonstrate a decrease in the amounts of awarded compensation, which is a positive trend. This is especially noteworthy in light of the amendments to Article 1087.1 of the Civil Code that entered into force on October 23, 2021, which tripled the upper thresholds of pecuniary compensation for insult and defamation, from 1 million to 3 million AMD, and from 2 million to 6 million AMD, respectively. In fact, these legislative changes have not had any impact on judicial practice, and the sums of pecuniary compensation set have not increased, but have rather decreased as mentioned earlier.

*It turn out that the courts did not use the tripling of the upper threshold as a justification or an incentive to award higher amounts of compensation.*

The monitoring has revealed another interesting trend: plaintiffs do not appeal against the amount of pecuniary compensation, when the sums set by courts are 10-20 times lower than what was initially claimed. This can be attributed to the fact that when setting a maximum amount in their claims, the plaintiffs, on the one hand, do not take into consideration the established judicial practice and the factual context of the case, and on the other hand, pecuniary compensation in reality is not the primary objective for most plaintiffs. However, they often tend to view this measure as an additional leverage to influence the media and their employees, and when this strategy fails, the plaintiffs opt to accept the court’s ruling rather than continue the futile battle.

**Importance of Reasoning in Judicial Acts**

As mentioned above, the 2019-2020 monitoring data showed that the judicial acts issued on insult and defamation cases during that period often lacked proper reasoning. The European Court of Human Rights has noted that according to Article 6 (1) of the European Convention, the judgments of the courts, to a reasonable extent, must contain reasoning supporting the judicial acts to demonstrate that the parties have been heard and to ensure public scrutiny of the administration of justice*.* However, Article 6 (1) cannot be understood as requiring a detailed answer to every argument raised by the parties. Accordingly, the question whether a court has failed to fulfil its obligation to state reasons can only be determined in the light of the circumstances of the particular case[[6]](#footnote-6).

The RA Constitutional Court Decision No. DCC-690 of April 9, 2007 emphasized the significance of the normative requirement of providing adequate reasoning in judicial acts to ensure both the accessibility of justice and the efficient legal protection of individuals’ constitutional rights[[7]](#footnote-7).

Nevertheless, the monitoring of judicial acts revealed that not in all cases the courts follow the above-mentioned principles. In particular, in 11 out of the 17 cases analyzed, the courts failed to provide proper reasoning in the judicial acts.

As an example, in the case of *Samvel Kharazyan v. Zhoghovurd Newspaper Editorial Office Ltd.* (No. [ED/41539/02/21](http://www.datalex.am/?app=AppCaseSearch&case_id=45880421204203343)), in the reasoning section of the act the court failed to address the distribution of the burden of proof, the existence of defamatory expressions, and failed to indicate the court's reasoning process with respect to each expression and the conclusions deriving from such reasoning.

The monitoring registered cases when the courts indicated in their reasoning what circumstances they were going to address, but did not address them later. For example, in the case of *Alen Simonyan v. Anna Gevorgyan* (No. [ED/14591/02/20](http://datalex.am/?app=AppCaseSearch&case_id=45880421204036126)), it was highlighted that courts should pay great attention to the clarifications, approaches and attitudes of a person who publicly presented factual data in order to find out whether the person had any intention to defame someone or whether he/she objectively expressed his/her value judgments, acting in good faith. Nevertheless, these issues were not discussed in the judgment’s reasoning section.

The rule of presenting sufficient reasoning in judicial acts is not an end in itself: it aims to clearly explain to the parties the reason behind the court’s decision, and additionally, it helps to prevent arbitrariness.

**Measure to Secure the Claim**

The 2021-2022 monitoring data indicate that in court disputes related to insult and defamation in the media, the submission of motions to secure the claims is a rarity, with even fewer instances of granting such motions. Thus, out of the 17 analyzed cases, only 5 had submitted such a claim, of which 2 were granted.

The court case of *Gevorg Harutyunyan v. Shark Ltd. (founder of 5th Channel TV Company) and Larisa Harutyunyan* (No. [ED/51484/02/21](http://datalex.am/?app=AppCaseSearch&case_id=45880421204234794)) provides an illustrative example, where the plaintiff submitted a motion to secure the claim by imposing a lien on the property of Larisa Harutyunyan in the amount of 9 million AMD. On November 24, 2021 the court ruled to grant the motion, without providing a detailed justification as to how the failure to take such a measure could impede the execution of the judicial act, or cause significant damage to the plaintiff.

In another case, *Alen Simonyan v. Anna Gevorgyan* (No. [ED/14591/02/20](http://datalex.am/?app=AppCaseSearch&case_id=45880421204036126)), the plaintiff also submitted a motion to secure the claim by putting a lien on the defendant's property and funds, which was rightfully rejected by the court. This position was further upheld by the appellate court, which rejected the plaintiff's appeal.

*Some plaintiffs, in fact, are trying to use the motions to secure claims as a means of punishment against the media and journalists. It is crucial for courts to counter these intentions through their rulings.*

**Litigation Costs (Amount of State Duty, Attorney’s Fee, etc.)**

In the studied cases, the problems related to litigation costs mainly arose when calculating the amount of state duty (in 2 cases) and when determining the amount of reasonable remuneration for an attorney (in 9 cases).

Thus, in the case of *Armenian National Interests Fund CJSC v. 168 Zham Ltd.* (No. [ED/2354/02/21](http://datalex.am/?app=AppCaseSearch&case_id=45880421204103019)), the court set 200,000 AMD for the attorney’s fee without stating the ground for such a conclusion. Although courts generally mention the factors that are mainly considered when determining the amount of remuneration, they do not specify which of those factors are present in a particular case and which are not.

It should also be noted that courts do not follow the average pricelist[[8]](#footnote-8) of attorney's fees defined by Article 6, Paragraph 5[[9]](#footnote-9) of the RA Law “On Advocacy.”

The issue with calculating the state duty can be observed in the court case of *Gevorg Harutyunyan v. Shark Ltd. (founder of 5th Channel TV Company) and Larisa Harutyunyan* (No. [ED/51484/02/21](http://datalex.am/?app=AppCaseSearch&case_id=45880421204234794)), in which the plaintiff submitted to the court two non-pecuniary and two pecuniary compensation claims. The court ruled to set the amount of state duty at 290 thousand AMD, while Article 9 (1) of the RA Law “On State Duties” stipulates that the state duty for a pecuniary claim should be 2 percent of the claim value, and 4 thousand AMD for each non-pecuniary claim. Thus, the court required the plaintiff to pay a total of 188 thousand AMD (2 percent of 9 million AMD equals 180 thousand AMD, and the state duty for two non-pecuniary claims amounts to 8 thousand AMD). Thus, the court made an erroneous calculation when determining the amount of state duty.

**Other Noteworthy Issues to Consider**

Throughout the monitoring, several additional issues were identified. Solving these issues will be beneficial for the courts in terms of making decisions in cases under examination.

1. The monitoring identified one case where the court **clearly did not adhere to the reasonable trial terms**. Thus, the court case of *Alen Simonyan v. Anna Gevorgyan* (No. [ED/14591/02/20](http://datalex.am/?app=AppCaseSearch&case_id=45880421204036126)) was accepted for proceedings on May 26, 2020, while the verdict was not issued until July 25, 2022, resulting in a more than two-year examination. In spite of the change of the judge in that period, we believe it is not reasonable to examine the defamation court case for two years in the first instance alone.
2. **In two cases, problems emerged in implementing the claims to oblige to publish a refutation**. In particular, in the case of *Alen Simonyan v. Ani Gevorgyan* (No. [ED/21669/02/21](http://datalex.am/?app=AppCaseSearch&case_id=45880421204154006)), the court obliged the defendant to disseminate the refutation through a press with a circulation of at least five thousand, which is unacceptable. Firstly, due to the development of information technologies, the print media has found itself in a deep crisis, and it is practically impossible to find a print media with a circulation of five thousand. And most importantly, the legislation does not entail any provision for publishing a refutation in a media that is not a party to the proceedings. Thus, the court did not sufficiently analyze the plaintiff’s claim for this type of refutation and granted it.

Added to that, in the case of *Hraparak Daily Ltd. v. Media Initiatives Center NGO* (No. [ED/31882/02/21](http://datalex.am/?app=AppCaseSearch&case_id=45880421204182199)), the court approved a refutation text that contained formulations having no relation to the disputed expressions. Moreover, the defendant was, in effect, required to publish praise of the plaintiff's activities. This fact was highlighted in the joint statement of journalistic organizations on the given case, which read: “We find it appropriate to remind the court that in line with international standards, the refutation text should be directly related to the disputed facts, and the demands to include therein assessments not immediately related to a specific case are illegal.”

1. **Other issues of concern are the lack of use of opportunities to settle information disputes throrugh out-of-court procedures, and the related legislative provisions, which are not clear and lead to various interpretations**. Under Paragraph 3 of Article 3 of the Civil Procedure Code, “In cases where the law or contract envisages an out-of-court procedure for settling the dispute between the parties before going to court, the dispute may be filed with the court of first instance for examination thirty calendar days after taking the necessary actions to resolve the dispute out of court as prescribed by the law or contract, unless specified otherwise.” The out-of-court procedure to settle disputes in cases involving media is outlined by Article 8 of the RA Law “On Mass Communication,” which stipulates that plaintiffs must comply with the out-of-court procedure, otherwise their claims may not be considered by the courts.

Nevertheless, the study of judicial practice allows us to conclude that the courts are generally disinclined to recognize the out-of-court procedures for the protection of rights as outlined in the above-mentioned article of the law. Hence, they believe that the right of an individual to seek legal protection cannot be restricted.

For example, in the case of *Suren Papikyan v. Media Plus Ltd.* (No. [ED/27170/02/21](http://datalex.am/?app=AppCaseSearch&case_id=45880421204169119)), the plaintiff did not approach the media with a demand for refutation prior to filing the lawsuit, i.e., he did not attempt to resolve the issue out of court. The courts, in their turn, found that this could not be an obstacle for going to court. **It should be emphasized that the RA Law “On Mass Communication” defines the right to refutation or response, and if this right is ensured, individuals can no longer seek judicial protection. This is also enshrined in paragraph 10 of Article 1087.1 of the RA Civil Code.** Thus, it is necessary to answer the following questions: is the dispute not resolved by the publication of a refutation or response in accordance with the RA law “On Mass Communication”, and is the court the only way to resolve it? There is no doubt that with the publication of a refutation or a response by the media, the dispute may be exhausted and not reach the court, hence, in this case we consider the reasoning of courts to be unfounded.

4․ **In one case, the monitoring recorded a problem of identification of officials and state institutions by the court**. In particular, in the case of *Sasun Khachatryan v. Zhoghovurd Newspaper Editorial Office Ltd.* (No. [ED/42823/02/21](http://datalex.am/?app=AppCaseSearch&case_id=45880421204205270)), the court, while determining pecuniary compensation (200 thousand AMD), also emphasized that the defamation discredited not only the plaintiff, but also the state institution led by him. This argument is highly questionable, especially if that entity is not a party to the information dispute in question, and the protection of its interests is beyond the boundaries of the court's review. It should be added that being a head of a state body requires greater tolerance for criticism. Therefore, the court should have rejected the claim for compensation, but the opposite happened.

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Below we provide an analysis of court cases brought against journalists and media in chronological order.

**Vazgen Adamyan v. Skizb Media Kentron Ltd.
*(Court Case No.*** [***ED0748/02/21***](http://www.datalex.am/?app=AppCaseSearch&case_id=45880421204097715)***)***

**1․ Procedural Background of the Case**

On January 14, 2021, Vazgen Adamyan, head of Tchambarak community, filed a lawsuit with the Court of General Jurisdiction of Yerevan against *Skizb Media Kentron Ltd.*, demanding compensation for the damage caused to his honor and dignity. The lawsuit was caused by the December 10, 2020 article entitled “The aid collected for the people of Artsakh and the front line is being sold in the store of the mayor's friend: the mayor denies,” published on *1in.am* news website, owned by *Skizb Media Kentron Ltd.* The lawsuit was accepted for proceedings on January 25, 2021, 2 preliminary court hearings and one trial were held on June 9, July 9 and August 17, 2021, respectively.

On September 7, 2021 the court ruled to partially uphold the claim and oblige the defendant to publish a refutation on *1in.am*. The court also ruled to reject the claim to confiscate 2 million AMD as compensation for damage caused to honor and dignity, and consider the issue of court costs resolved.

On November 18, 2021, *Skizb Media Kentron Ltd.* turned to the Civil Court of Appeal, which on December 28, 2021 returned the appeal against the first instance judgment due to deficiencies in the documents.

The re-submitted appeal was rejected by the Civil Court of Appeal on February 11, 2022 on the grounds that the applicant had only partially corrected the recorded documentary irregularities.

On March 22, 2022, the founder of the media challenged the ruling with the Court of Cassation, which returned the complaint on April 27, 2022, and after its re-submission rejected it on June 15.

**2.**  **Defamatory Nature of Information**

According to the plaintiff, the following expressions in the article in question were viewed as defamatory: “... Artsakh families that took refuge in the extended community of Tchambarak receive only a small part of the aid they are entitled to,” “... Most of the aid sent to the military posts and soldiers is being sold in some stores of Tchambarak,” “... A large amount of aid for Artsakh people has arrived, but the aid in boxes doesn't reach them,” “...Both that aid, and the aid that arrived for the servicemen and volunteers - warm clothes, cigarettes, more than 300 blankets - these days are for sell in a store owned by a friend of Tchambarak mayor Vazgen Adamyan,” “The friend of the community head owns a store, where a very large amount of clothes was sent, but they didn’t deliver it, giving to their close ones. “A benefactor from the USA had sent 300 sintepon blankets, but it was sold or is being sold in the same store. The cigarettes sent for the soldiers was put for sale in the same store. No one understands why so much aid was concentrated only in the hands of the community head so that he could act like that. If we have NSS, let them go and see what kind of aid they may find in the basements of the community head and his teammates. The whole of Tchambarak is talking that the head of the community together with his clan has pocketed the received aid," “...Vazgen Adamyan has many cars, with which he could at least help the people of Artsakh moving from Karvachar region after the war, as they were in need of trucks, but instead, dressed in the best military uniforms during the war, the mayor and his friends, caroused every day in the Tchambarak high school gymnasium,” “there was not a single day without a carousal in the gymnasium.”

*Skizb Media Kentron Ltd.* did not participate in the court hearings, neither did it submit a response to the lawsuit.

On June 9, 2021, the court issued a decision on the distribution of the burden of proof, according to which, the plaintiff was to prove that: 1. factual data, specific, clear-cut information about a certain action or inaction were presented; 2. the factual data were presented publicly; 3. the data actually tarnished the person's honor, dignity or business reputation; 4. the defamatory expressions were made by the defendant and were addressed to the plaintiff.

And the defendant was to prove that: 1. the presented factual data were true; 2. prior to publishing the piece, the media took such measures that allowed to conclude that those data were conditioned by overriding public interest and could be true.

In the reasoning part of the judicial act, it was mentioned that the topic of the publication was of public importance, and the media had a problem with responding promptly to the information. However, according to the court, this alone is not sufficient to refrain from applying liability measures against the defendant. The court reached such a conclusion as the defendant did not provide any evidence to prove that the published information was true or did not mention any questionable facts. *Skizb Media Kentron Ltd.* also failed to present justifications to the court as to why the source of information needed protection. In such circumstances, no assumptions can be made on the accuracy of the published data and any malpractice attributed to the plaintiff. Based on that, the court found that the disputed expressions were subject to refutation.

**3.**  **Amount of Compensation**

The plaintiff claimed 2 million AMD compensation the founder of the media. The court found that this claim should be entirely rejected, considering the publication of the refutation to be a sufficient compensation, since otherwise it would have a chilling effect on the media to cover issues of such public importance, constraining its activities. Added to that, the court noted that *1in.am* had reached out to the plaintiff to clarify the information they had received and quoted his position on the controversial data.

**4.** **Conclusion**

In this case, the court rightfully upheld only the claim for non-pecuniary compensation, rejecting the remaining part. The selection of this measure was based on two circumstances: first, the publication of a refutation is a sufficient compensation, as awarding pecuniary compensation would have a constraining effect on the media, and second, the court noted that the media had contacted the plaintiff for clarification and had quoted his position. The focus of the court on the mentioned factors is an important and commendable approach.

From a careful analysis of the case, it is evident that *Skizb Media Kentron Ltd.*, the defendant in the case, was unable to seize the opportunity to review the judicial act, as the Civil Court of Appeal first returned the complaint, and afterwards rejected it on the grounds that the provided receipt for the payment of the state duty was not in Armenian, the attached receipt was in a foreign language and did not meet the required criteria. The Court of Cassation, in its turn, left the decision of the appellate court unchanged.

It should be noted that in today’s age of information technologies, the implementation of payments is often reflected in electronic documents, which, due to the software, may contain foreign language notes. However, this should not be a reason for denying the media's right to legal protection. Moreover, the appellate court could have contacted the Judicial Department to obtain information on whether the state duty had actually been paid.

Regarding the ruling of the court of first instance, it should be noted that it lacks sufficient analysis and reasoning regarding the expressions made. In particular, the court failed to address the distribution of the burden of proof and its implementation, the fact of the expressions being defamatory proven by the plaintiff. The court did not clarify either the course of its rulings on each expression and the conclusions it drew from them.

The European Court of Human Rights, considering the non-reasoning of acts drawn by domestic courts as a violation of the right to a fair trial, has noted that according to Article 6 (1) of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, the judgments of the courts, to a reasonable extent, must contain reasoning supporting the judicial acts to demonstrate that the parties have been heard and to ensure public scrutiny of the administration of justice *(see, for example, Salov v. Ukraine, No. 65518/01, & 89).* The ECHR considered the reasoning of the judicial act as a principle of proper administration of justice. This duty includes at least a clear reference to the circumstances and arguments that may be decisive for the given case *(see Ruiz Torija v. Spain Case).*

**Styopa Safaryan v. 168 Zham Ltd. and Satik Seyranyan
*(Court Case No.*** [***ED/34388/02/20***](http://datalex.am/?app=AppCaseSearch&case_id=45880421204088658)***)***

**1․ Procedural Background of the Case**

On December 7, 2020, Styopa Safaryan, (now former) president of the RA Public Council, filed a lawsuit with the Court of General Jurisdiction of Yerevan against *168 Hours Ltd.* and its director Satik Seyranyan, demanding to publicly refute the defamatory information, oblige to remove the piece and compensate for the damage caused to honor, dignity and business reputation. The lawsuit was caused by the October 13, 2020 news captioned “Vladimir Solovyov's response to Styopa Safaryan's post,” which was published on 168.am website. On December 10, the court returned the claim due to deficiencies in the documents. The lawsuit was filed again on December 22 and returned again on the same grounds. It was filed for the third time on January 14, 2021 and was accepted for proceedings on January 25. 2 preliminary court sessions were held on March 31 and July 1, 2021. On July 23, 2022, the lawsuit was rejected. The court obliged the plaintiff to pay 100,000 AMD as attorney's fee.

On September 28, 2021, the plaintiff filed an appeal, requesting to overturn the ruling of the court of first instance. On October 29, the complaint was returned on the grounds that the state fee had not been properly paid. After a re-submission on November 22, the complaint was accepted for proceedings on January 31 and rejected on February 24, 2022.

The verdict was not appealed with the Court of Cassation, and the judicial acts entered into force.

Earlier, still on November 2, 2020, the defendants had filed a lawsuit against the plaintiff demanding to refute defamation, apologize for insult, remove the articles and pay damages. In connection with the same case, Styopa Safaryan filed a countersuit with the same claims that were again included in the new lawsuit of December 7. The first instance court returned the countersuit by its decision of November 16, 2020, while the Court of Appeal left it unchanged.

**2.  Defamatory Nature of Information**

Plaintiff Styopa Safaryan told the court that *168.am* had published news containing defamatory information about him. In particular, the following post about Styopa Safaryan was attributed to the Russian state television company host Vladimir Solovyov: “One of Armenia's most famous grant-eaters is surprised why Europe applies sanctions against Russia for every Navalny, but does not undertake anything against Turkey and Azerbaijan. Finally, the pro-Western sick minds are starting to understand that the European Union and KO are just instigators, while Turkey is their battering ram or infantry, call it whatever you want.”

According to the plaintiff, the words attributed to the Russian journalist were fictitious: the defendant party did not act in good faith and did not take adequate measures to verify the authenticity of the published information, therefore they were to prove that the disputed statement had actually been made. It was also noted that *168.am* has a large number of visitors, the publication was also spread on other Internet platforms, and hence, the defamation was public.

Styopa Safaryan touched upon the piece in question on social networks and a number of other websites, in response to which, according to him, 168.am and Satik Seyranyan refused to remove the news, which caused damage to his business reputation, in particular by labeling him as a “grant-eater.”

Based on the above, the plaintiff requested the court to oblige the defendants to refute the article, apologize to him, remove the publication and pay a compensation in the amount of 2 million AMD for defamation.

The defendant party filed a motion to apply the statute of limitations in the case, stating that the alleged violation of the plaintiff's rights had occurred on October 13, 2020, the day the disputed piece was published, while he had turned to court on December 7, 2020, missing the one-month statute of limitations. Therefore, the claim was subject to rejection on that ground.
At the July 1, 2021 court session, as proof of maintaining the statute of limitations, the plaintiff referred to the cash register receipt included in the lawsuit, according to which Styopa Safaryan had paid the state duty required for the lawsuit on November 13, 2020.

Having reviewed the defendant’s motion, the court concluded that the claim was to be rejected. This was reasoned by the fact that since October 13, 2020 Styopa Safaryan had the opportunity to initiate the defense of his violated right, however, he did so on December 7, when the one-month statute of limitations set by Article 1087.1 of the RA Civil Code had expired. As for the cash register receipt, the court noted that it could not be considered as substantiation.

The plaintiff appealed the court’s ruling to reject the claim on the grounds of expiration of the statute of limitations with the Civil Court of Appeal, stating that he had submitted documentary evidence to the lower court that he had met the statute of limitations. Regarding this issue, the appellate court highlighted that the evidence mentioned by the plaintiff had been submitted after the end of the trial, therefore, the court of general jurisdiction was already deprived of the opportunity to examine and assess it. Moreover, this evidence related to another case initiated on the basis of the lawsuit filed by the defendants on November 2, 2020. This led the court to conclude that the documents submitted to the court outside the proper timeframe could not in any way affect the issue of application of the statute of limitations.

By acknowledging and highlighting the facts that the complainant did not dispute that the information became available on October 13, 2020, the day of publication of the piece in question, and that the lawsuit for alleged insult or defamation was filed more than a month later, i.e., the statutory deadline was missed, and the defendant filed a motion to apply the statute of limitations, the Civil Court of Appeal, from a legal standpoint, rightfully rejected the plaintiff’s appeal, leaving the judgment of the lower court unchanged.

**3. Attorney’s Fee**

According the legal services contract signed on March 31, 2021 between *168 Zham Ltd.* and *ARES Law Firm Ltd.*, the client undertook to pay 500,000 AMD to the contractor. In its ruling the Court of General Jurisdiction considered 100 thousand AMD as a reasonable fee to be paid for legal services provided for the case. In the event the claim was rejected, the court ordered that 100,000 AMD be confiscated from plaintiff Styopa Safaryan and paid to the defendants (50 thousand to each).

Although the court referred to the criteria based on which the attorney's remuneration was to be determined, it failed to carry out any analysis or reasoning related to their actual use.

**4. Conclusion**

First of all, it should be noted that the claim filed by the plaintiff lacked clarity: the lawsuit did not specify which expressions were viewed as defamation and which ones were regarded as an insult. Whereas, the lawsuit included claims for both refuting defamation and issuing an apology, the latter being controversial as the insult as such was not specified.

We believe that in such situations it is necessary to clearly define the toolkit for the protection of the two rights, for they are to a certain extent similar in their nature, but different in regulations. In particular, defamation is understood to be the act of presenting untrue data about a person, while insult is a public expression aimed at intentionally tarnishing a person’s honor and dignity.

It is noteworthy that the courts of general jurisdiction and appeal did not address this issue, which cannot be considered legitimate. Before the start of the judicial process, the court should clarify the claim. After all, when issuing a judicial act, it is important to understand why the plaintiff ultimately turned to court and how he/she imagines the restoration of his/her rights.

Through a study of the expressions, it can be concluded that they mainly refer to insult rather than defamation. In particular, they do not contain any illegal factual data, but only data that could be viewed as tarnishing a person's honor, dignity and business reputation.

As for the ruling based on the statute of limitations, we believe that although, as already noted, the act is justified from the legal standpoint, nevertheless, in the light of fundamental human rights and freedoms, the court's interpretation may be considered controversial. In particular, the statute of limitations was applied in the event that the plaintiff, within a one-month timeframe, turned to court with another countersuit on the same dispute, but it was not accepted for proceedings. This allows to conclude that the court did not carry out a substantive examination in relation to this issue, disregarding Styopa Safaryan’s efforts in defending his rights.

It follows from the obligations assumed by the state under the Constitution and international treaties that the right of individuals to judicial protection is a high value, and it can be limited only when it is necessary for a democratic society. We find that the ruling is controversial from the point of view of restricting the right of access to the court, as the purpose of the statute of limitations is for individuals to protect their rights within the prescribed timeframe. In this case, the plaintiff suffered as a result of the application of different legal regulations.

**Armenian National Interests Fund CJSC v. 168 Zham Ltd.
 *(Court Case No.*** [***ED/2354/02/21***](http://datalex.am/?app=AppCaseSearch&case_id=45880421204103019)***)***

**1․ Procedural Background of the Case**

On January 25, 2021, *Armenian National Interests Fund CJSC* filed a lawsuit against *168 Zham Ltd.* and Oleg Safonov with the Court of General Jurisdiction of Yerevan, demanding to refute the information tarnishing the business reputation and to pay monetary compensation. The lawsuit was caused by the article entitled “On the expected sharp hike in electricity tariffs in 2022 and the corruption risks of solar power development: why is everyone silent?” (author: Oleg Safonov), published on December 31, 2020 on *168.am*. The lawsuit was accepted for proceedings on February 9, 2021. Three preliminary hearings and one trial were held on May 12, July 8, November 22, 2021, and April 20, 2022, respectively.

On May 12, 2022, the court ruled to reject the claim and oblige the plaintiff to pay 200 thousand AMD as the defendant's attorney's fee.

On October 11, 2022 the plaintiff filed an appeal against the verdict, which was accepted for proceedings on December 18.

**2.  Defamatory Nature of Information**

The plaintiff submitted claims for both insult and defamation, in particular arguing that the expressions “engaged in highly questionable activities” and “a practice fraught with corruption risks” referring to the Fund in the article tarnished its business reputation. According to the Fund, as an implementer of investment programs, its credibility is important, and it was undermined by the above expressions. The plaintiff, however, failed to specify which expression constituted defamation and which one constituted insult. This distinction is important, since legislation has established different legal mechanisms to address them.

The Fund requested the court to oblige the defendants in the case, *168 Zham Ltd.* and Oleg Safonov, to make a public apology for the offensive expressions, to confiscate from the two co-defendants 1 million AMD for defamation, 2 million AMD as compensation for the damage caused to business reputation, as well as to publicly refute the defamation.

The following was proposed as a refutation text: “The article “On the expected sharp hike in electricity tariffs in 2022 and the corruption risks of solar power development: why is everyone silent?” published on 168.am reported that “When the Government realized that this was not a very good way, a tender was announced, the results of which are currently being summarized, and a condition was imposed before *Masdar Clean Energy* company that, if anyone offered a tariff lower than 2.9 cents, the contract would be awarded to that other company. This is just an attempt to justify the contract negotiated with only one company, as it is known to everyone, including the *Armenian National Interests Fund (ANIF) CJSC,* engaged in highly questionable activities, that it was RA President Armen Sargsyan to have mediated the deal with *Masdar Clean Energy*. This is a shockingly unacceptable practice in the implementation of similar projects, which is fraught with corruption risks, especially when this investor should be given state guarantees that could lead to financial consequences.” We publicly declare that this information is false and unfounded, for which we apologize.”

One of the co-defendants, Oleg Safonov, did not attend the trial, while *168 Zham Ltd*., prior to the start of the trial, announced that they were not accepting the claims introduced in the lawsuit, that it was groundless and should be fully rejected. The media believed that it had fulfilled its mission: the publication of the information was conditioned by overriding public interest, as it related to a high profile case. According to the defendant, the mentioned expressions did not meet the criteria for insult, they could be qualified as defamation, as they attributed certain actions to the plaintiff. In that case, it became necessary to compare the evidence of the parties, including the intention of the defendant to demean the reputation of the plaintiff. While the media was convinced that the disputed expressions were exclusively value judgments. It was also pointed out that the plaintiff, as a state entity, should show greater tolerance towards criticism, including sharp one. Furthermore, the Fund did not attempt to resolve the information dispute out of court, i.e. prior to going to court, it did not demand a refutation or publication of a response from the editorial office in accordance with Article 8, Paragraph 1 of the RA Law “On Mass Communication.”

As for the amount of pecuniary compensation, according to the media, it was not reasonable to set such an amount that would disproportionately restrict the fundamental right to freedom of expression.

When examining the case, the court distributed the burden of proof in the following way: the plaintiff must prove that: a) the expressions “engaged in highly questionable activities” and “a practice fraught with corruption risks” were published by *168 Zham Ltd*., that their author is Oleg Safonov, one of the defendants, and that what had been said referred to the plaintiff; b) the given expressions tarnish the plaintiff's honor, dignity and business reputation; c) the expressions contain factual data and had the purpose of tarnishing the plaintiff's honor, dignity and business reputation.

And the co-defendants must prove the soundness of the arguments and objections mentioned by them.

Afterwards, upon the review of the evidence in the case, the court concluded that the phrase “engaged in questionable activities” was a value judgment with no factual basis, thus, it could not be refuted or confirmed.

Regarding the issue of considering the expression an insult, the court noted that no convincing substantiation had been presented by the plaintiff.

Referring to the expressions in question, the defendant clarified that the disputed piece focused exclusively on the hike in electricity tariffs, the analysis of regulations in the sector and the risks related to the development of solar energy, hence it was a topic of public concern. The court agreed with the defendant that the purpose of the article was to draw the attention of the wider public to the electricity supply, its tariffs, legal regulations and other issues in the sector, including possible corruption risks. In other words, highly relevant issues of significant public interest were raised. And the plaintiff was only mentioned at the end of the piece, which was a mere expression of doubt by the author rather than a harsh criticism.

The court reasoned that by conducting an analysis in any sector, the media may develop an opinion about the activity of a certain legal entity, even critical, and present it in the general context, which is necessary for a democratic society. The right to form and express an opinion in such a way is guaranteed by the RA Constitution, and since that opinion was a value judgment, the claim was subject to rejection. The defendant’s motion to terminate the case on the basis of failure to observe the out-of-court dispute resolution procedure by the plaintiff was also rejected. The court found that it was not in line with the principle of a person's right to fair legal protection.

**3. Measure to Secure the Claim**

On February 9, 2021, the day when the lawsuit was accepted for proceedings, the court partially upheld the plaintiff’s motion to secure the claim, putting a lien on the funds of *168 Zham Ltd.* in the amount of 3 million AMD requested in compensation. On March 1, the media, in its turn, submitted a motion to cancel the measure to secure the claim, which was upheld on March 9. On April 5, the plaintiff appealed this decision, and on May 13, the Civil Court of Appeal supported the complaint, reversing the ruling by which the first instance had revoked the previously applied measure to secure the claim.

The appellate court found that the defendant party failed to adequately support their claim that the applied measure to secure the claim would make it impossible to carry out their activities or would hinder them. Therefore, the first instance court's conclusion that the applied measures to secure the claim disrupted the smooth operation of the company was not legitimate and well-founded.

In its Opinion No. 77, the Information Disputes Council (IDC) referred to the cases involving the *Armenian National Interests Fund CJSC* and media, and regarding the issue of imposing a lien on the property and funds, noted that the Court of Appeal had placed the burden of proof on the defendant media, ignoring the fact that the plaintiff had also failed to substantiate that if a freezing order was not imposed the media would hinder the execution of the judgment, for example, by expropriating its property and funds.

Moreover, the IDC noticed a perplexing contradiction: in one case, the Court of Appeal considered the Fund's claim to put a lien on the media's property unfounded and illogical, and in another case, just a few months apart, the same instance considered it well-founded. This contradiction highlights a lack of a unified approach to disputes with identical content. Additionally, in this particular case it gives grounds to question the legality of the judicial act adopted by the appellate court.

**We believe that imposing a lien on media property by the courts may have severe consequences, restricting the activities of editorial offices and undermining the right to freedom of expression.**

Referring to the issue of confiscating the attorney’s fee from the media, the court, with no analyses of the criteria underscored by it in the case, with no reference to the facts, set 200 thousand AMD as a reasonable fee to confiscate from the plaintiff. The court did not specify how this amount was arrived at.

**5. Conclusion**

In relation to this legal dispute, let us first refer to the opinion by the IDC, according to which, there is no apparent word or expression of an offensive, defamatory nature in the publication in question. Moreover, the article does not display any undue aggression and derogatory language that could be viewed as serious grounds for litigation. Furthermore, the article questions the efficiency of the Fund's activities in general: concerned about that, the author provides facts. According to the Council, the opinion that some transactions contain corruption risks is not without factual basis either. Overall, the information and analyses presented are not apparently defamatory or offensive, and there is no evidence to suggest that the topic was covered in bad faith, with an undisguised intention to demean the Fund's business reputation.

It is noteworthy that the plaintiff, in fact, interpreted the same expressions as both an insult and defamation, while under paragraphs 2 and 3 of Article 1087.1 of the RA Civil Code, insult is defined as a public statement made with the purpose of tarnishing the honor, dignity or business reputation through speech, image, voice, sign or any other means. Meanwhile, defamation is defined as the public communication of factual data relating to a person that are untrue and defame the honor, dignity or business reputation thereof.

It is evident that these are different concepts, and the same expression cannot be interpreted both as an insult and defamation. Our monitoring has not revealed a single case where a court has adopted such an approach. Thus, the plaintiff's claim was problematic from the very outset. However, neither the media nor the court touched upon this circumstance.

We consider legitimate the defendant's position that the plaintiff has not presented any facts to substantiate the need for pecuniary compensation. We believe that in such a situation, the plaintiff must specify in the lawsuit the grounds for the claim for pecuniary compensation and how the mentioned sum has been calculated.

Article 9 of the Civil Procedure Code stipulates that a judicial act is deemed reasoned if it reflects the court's reasoning process with respect to assessing evidence, confirming of facts applying the law, and the conclusions deriving from such reasoning. In this sense, in its final act, the court did not address the plaintiff's claim to consider the expression “a practice fraught with corruption risks” as defamation, whereas the court was to review and substantiate that the expression did not constitute defamation.

According to the recorded facts, the plaintiff filed an appeal against the verdict of the court of first instance on October 11, 2022, noting that the judicial act had been issued on August 24, while the Fund had physically received it on September 10. The plaintiff petitioned the Civil Court of Appeal to recognize the missed appeal deadline as a valid reason and reinstate it. By the November 16 decision, the appellate court upheld that motion. Meanwhile, Paragraph 1 of Article 362 of the Civil Procedure Code stipulates that it is possible to file an appeal against the judgment within one month from the date of its publication. In other words, the crucial point is not the fact of physically receiving the judicial act, but the date of its publication. The plaintiff missed the deadline and failed to provide evidence to the Court of Appeal that they were not aware of the judgment’s publication on the court’s official website. Thus, the Court of Appeal should have refused to accept the complaint for proceedings or should have discussed the arguments that the publication of the judicial act on the official website was insufficient to assume that, under the law, the plaintiff was obligated to familiarize with it.

We believe that highlighting the issues of public interest in the disputed piece, the conclusions drawn in it are based on certain facts, and it is purely a result of journalistic activity. The piece contains no intention to insult or defame anyone or to advance self-interested motives. The fight against corruption and the development of an efficient state system are, without doubt, important topics, on which well-reasoned criticism is entirely within the boundaries of freedom of expression.

 **Helsinki Citizens’ Assembly-Vanadzor NGO v. Antifake.am
 *(Court Case No. ED*** [***/2749/02/21***](http://datalex.am/?app=AppCaseSearch&case_id=45880421204103801)***)***

**1․ Procedural Background of the Case**

On January 26, 2021, *Helsinki Citizens’ Assembly-Vanadzor NGO* filed a lawsuit with the Court of General Jurisdiction of Yerevan against *Antifake.am*, demanding to oblige the media to publicly refute the information considered defamatory and to pay 1 million AMD in compensation. The court returned the lawsuit for corrections twice - on February 5 and March 1, 2021. It was submitted for the third time on March 17, and *Antifake.am* editor-in-chief Astghik Matevosyan was named as the defendant. The lawsuit was caused by an article entitled “How much money the NGOs operating in Armenia have received in exchange for supporting the surrender of Artsakh” published on the website on December 29, 2020. The court accepted the lawsuit for proceedings on March 26 and scheduled 3 preliminary hearings and 2 trials on June 11, October 11, 2021, and March 10, June 7 and October 6, 2022, respectively.
On December 21, 2022, the court issued a judgment, rejecting the lawsuit.

**2.  Defamatory Nature of Information**

The plaintiff told the court that the article contained the following defamatory expressions: “In exchange for supporting the surrender of Artsakh,” "We present the names of the most active pro-Western non-governmental organizations operating in Armenia and the amount of their annual funding, which, having acted for years under the name of civil society in Armenia, were in reality engaged with serving foreign interests, bringing Nikol Pashinyan to power and eventually supporting the surrender of Artsakh,” “... The employees of these NGOs have been receiving millions of dollars for their destructive activities and contribution to the surrender of Artsakh.”

According to the plaintiff, these factual data were untrue, and were not abstract or hypothetical. The slanderous nature was substantiated in the following way: the article gave the impression that the plaintiff organization received money to support and contribute to the handing over of Artsakh, and to serve foreign interests. Thus, the untrue statements tarnished the plaintiff’s business reputation of a human rights organization.

Arguing against the lawsuit, the defendant stated that these expressions could not be considered as factual data, did not contain specific, clear-cut information on a particular action or inaction of the plaintiff. Added to that, in a democratic society, such criticism and open debates on this topic are acceptable and necessary, and hence, the freedom to express an opinion cannot be legally restricted.

Pointing to the arguments of the parties, the court noted that there were no grounds to conclude that the problematic expressions referred to *Helsinki Citizens’ Assembly-Vanadzor NGO* and tarnished its honor, dignity and good reputation. According to the court, those expressions did not attribute any crime or misdemeanor to the plaintiff, therefore, in the light of the legal stance enshrined in the RA Constitutional Court's November 15, 2011 Ruling DCC-997, there is no fact of tarnishing a person's honor, dignity and good reputation. For an expression to be considered as defamation, it must include factual data about the person, specific, clear-cut information on a particular action or inaction, and not be an abstract statement. In this case, the expressions “...serving foreign interests, bringing Nikol Pashinyan to power and eventually supporting the surrender of Artsakh” made by the defendant, in the court’s view, were abstract judgments rather than factual data.

And regarding the expression “...The employees of these NGOs have been receiving millions of dollars for their destructive activities and contribution to the surrender of Artsakh,” the court stated that it was also addressed in an abstract form to the employees of NGOs and not to *Helsinki Citizens’ Assembly-Vanadzor NGO*. Therefore, the court concluded that it could not be considered either as tarnishing the plaintiff's honor, dignity and business reputation.

**3․ Conclusion**

In the framework of this case, the court returned the lawsuit twice, which in a certain way limited the right of the plaintiff to seek legal protection. In their commentary on this procedure, the Supreme Judicial Council highlighted the unacceptability of returning the lawsuits more than once. For example, in this case, the court returned the lawsuit for the second time due to the missing patronymic of the defendant. We believe this is insufficient grounds for a return.

Noteworthy is the fact that the plaintiff changed the defendant from *Antifake.am* to its editor-in-chief. This creates a legal problem, as the lawsuit filed within the one-month limitation period was related to the media, and the lawsuit against Astghik Matevosyan could already be viewed to have been submitted in violation of that deadline.

The judgment on the claim to refute defamation stated that the defendant did not attribute to the plaintiff the commission of a crime or misdemeanor. Meanwhile, the Court of Cassation, referring to the defamatory nature of the expressions with its precedent ruling in Case No. LD/0749/02/10, noted that “the information, containing data on violations of enforced legislation, manifestations of unfair behavior, violations of ethical requirements in private, public or political life by a natural or legal person and other information, not supported by evidence (not real), should be considered disgracing and demeaning a person's honor, dignity or business reputation.”

It becomes evident from the above that the characterization of defamatory expressions is not confined to the charge of a crime or misdemeanor; it implies a broader range of characteristics. And the narrowing of that range in this case is not supported by sufficient legal grounds.

The position of the court suggesting that it does not follow from the article that the expressions are directed at the plaintiff, is questionable, as the article in question published data about the non-governmental organizations that, according to the defendant, had been engaged in certain activities. And that list includes also the name of the plaintiff NGO, which makes it obvious that the mentioned expressions refer to the latter as well.

The court failed to sufficiently substantiate why it considers that the disputed expressions by the defendant, specifically the part that says “... serving foreign interests, bringing Nikol Pashinyan to power and eventually supporting the surrender of Artsakh,” does not contain factual data and is an abstract judgment. Additionally, the court did not mention on what grounds it reached this conclusion.

**Hayk Terteryan v. Hraparak Daily Ltd.**

***(Court Case No.*** [***ED/3693/02/21***](http://www.datalex.am/?app=AppCaseSearch&case_id=45880421204106786)***)***

**1․ Procedural Background of the Case**

On February 2, 2021, RA Honorary Consul in Kazakhstan Hayk Terteryan filed a lawsuit with the Court of General Jurisdiction of Yerevan against *Hraparak Daily Ltd.*, demanding to oblige the media to refute information considered defamatory, and to confiscate funds as compensation for the expression discrediting his business reputation. The lawsuit was caused by the December 9, 2020 article entitled “The pig farm of the RA Honorary Consul in Kazakhstan has caused an ecological disaster” (author: Suzan Simonyan) published on *Hraparak.am* website, owned by *Hraparak Daily Ltd.* The lawsuit was accepted for proceedings on October 1, 2021, 2 preliminary court hearings and 3 trials were held, on July 20, October 13, December 9, 2021, and March 9, May 2, 2022, respectively.

On May 30, 2022, the court ruled to partially uphold the claim, obliging the defendant to publish a refutation on *Hraparak.am*. The text of the refutation was quoted in the judicial act, with highlights of the specific statements that were untrue.

On July 27, 2022, the defendant filed a complaint with the Court of Appeal. It was accepted for proceedings on September 5, and on December 5, the complaint was upheld, the ruling was overturned, and the claim was fully rejected. The appellate court obliged the plaintiff to pay the defendant 20 thousand AMD as state duty and 50,000 AMD as attorney’s fee.

**2.  Defamatory Nature of Information**

The plaintiff indicated the information he considered defamatory: “... The number of the pigs counted in the pig farm exceeded the number listed in the documents by ten thousand,” “... By the way, to our knowledge, RA Honorary Consul Hayk Terteryan has agreed to compensate the damage caused to the state and communities of Kazakhstan as a result of the operation of his pig farm.”

The plaintiff submitted a written request to the defendant, demanding them to refute the controversial information disseminated, however, on January 21, 2021, the media published the article entitled “The fraud case was initiated not against Mher Terteryan, but on the fact of fraud: the Terterians deny.” In fact, no refutation was published: the website claimed fraud. Meanwhile, according to the plaintiff, the above-mentioned opinions of the article in question were untrue and tarnished his honor, dignity and business reputation. Moreover, as Hayk Terteryan claimed, the publisher of the article had not taken any measures to verify the authenticity of the data, and the information was not based on any accurate facts.

Objecting to the lawsuit, the defendant stated that there was no insult or defamation in the article, adding that the plaintiff was a shareholder in the mentioned pig farm, there was a criminal case on fraud, and the media’s efforts to get information from Hayk Terteryan about having a share in that pig farm were in vain. As its source of information, *Hraparak Daily Ltd.* referred to publications of other media, and also claimed to have received certain information from the attorney of the plaintiff's ex-wife.

Օn July 20, 2021, the court issued a decision, according to which plaintiff Hayk Terteryan was to prove that: 1. the expressions were defamatory; 2. the expressions considered defamatory were made publicly, 3. the expressions considered defamatory did, in fact, tarnish his honor, dignity or business reputation.

The following facts were subject to proof by defendant *Hraparak Daily Ltd.*: 1. the data presented in the publication “The pig farm of the RA Honorary Consul in Kazakhstan has caused an ecological disaster” were true; 2. they took measures within reasonable limits to verify their authenticity and soundness, as well as reported these facts in a balanced manner and good faith.

The reasoning section of the judicial act read that the above-mentioned data published in the media, when viewed in combination, implied that the plaintiff had committed such acts that tarnished his honor, dignity and business reputation. Moreover, according to the court, these data were presented with the intention of damaging the plaintiff's reputation and honor, and the case lacked any ground to prove the opposite, i.e., that measures were taken to verify their authenticity. Furthermore, the defendant's mode of presenting evidence was deemed unacceptable as it was in a foreign language.

Afterwards, the court noted that in this case, no facts related to the disputed expressions were quoted in the timeframe set by the RA Civil Procedure Code, and no evidence was presented, which allowed to conclude that the information published by the defendant about the plaintiff could not be considered reasonable or legitimate.

As a result, the court ruled that the expressions “... The number of the pigs counted in the pig farm exceeded the number listed in the documents by ten thousand,” and “... By the way, to our knowledge, RA Honorary Consul Hayk Terteryan has agreed to compensate the damage caused to the state and communities of Kazakhstan as a result of the operation of his pig farm” had all the necessary elements to be classified as defamation.

In the appeal, the defendant stated that the author of the article was Suzan Simonyan, which was indicated under the article and was indisputable. The latter, as the other defendant in the case, confirmed that fact. In this regard, Article 1087.1 of the Civil Code stipulates that “a person is exempt from liability for insult or defamation, if the factual data expressed or communicated constitute the verbatim or good-faith reproduction of information disseminated by a media agency, as well as of information contained in another person’s public speech, official documents, other mass media or work of authorship, and if in the course of dissemination a reference has been made to the source (author) of information.” In this case, the author's name and surname had been clearly mentioned, which demonstrated that the refutation and compensation claims against *Hraparak Daily Ltd*. were groundless from the beginning, as the copyright of the article and the resulting duties rested with Suzan Simonyan.

The plaintiff fully objected to the appeal, noting that in the lower court the defendant had not raised the issue that Suzan Simonyan was the proper defendant. Therefore, the Court of Appeal lacked the authority to examine an issue that had not been raised in the lower court.

After analyzing the arguments of the parties, the Court of Appeal found that the lawsuit had been filed against the entity not legally responsible for defamation by virtue of Paragraph 6 of Article 1087.1 of the RA Civil Code, and that circumstance had not been taken into account in the court of general jurisdiction. As a result, a judicial error had been committed that affected the outcome of the case, as the claim was subject to rejection on the grounds that it had been filed against an improper defendant. Moreover, referring to the plaintiff's objections, the Court of Appeal noted that one way or another, the court of first instance should have identified the proper defendant, regardless of whether such an issue had been raised or not.

**3.  Attorney’s Fee**

The court of general jurisdiction, taking into account that the lawsuit was subject to satisfaction, the plaintiff's representative had participated in all three court sessions, as well as the fact that that the examination of the case lasted for about one year and three months, ruled to confiscate 120 thousand AMD from the defendant as a reasonable remuneration for the attorney. And the Appellate Court, overturning the verdict, ruled that 50 thousand AMD should be confiscated from the plaintiff in favor of the defendant as attorney’s fee.

Although the judgment (also by the appellate decision) included the services that were used as a basis to determine the amount, the calculation and assessment criteria of each of these services were not clarified.

**4. Conclusion**

Regarding the judicial act, let us first note that it lacks a sufficient analysis of the expressions in question and reasoning behind the conclusions reached. The court failed to address the evidence used by the plaintiff to prove that the controversial expressions were defamatory, and did not provide an opinion on the expressions, which formed the basis of the verdict.

On April 19, 2022, the Court of Cassation, with the precedent ruling issued in the Court Case No. AVD2/0224/02/21, referred to the reasoning parts of the judicial acts, highlighting that they were linked to the court's statement of the motives that had led to a certain conclusion and should refer to issues related to both law and facts. As a legal requirement, the reasoning, on the one hand, reflected the link between the facts established in the case and the court's conclusions, and on the other hand, it displayed the court’s understanding of the applied material, legal or procedural norms.

In this case, although the court acknowledged that the expressions were offensive, it failed to specify based on what facts or evidence it concluded that they were defamatory. Addressing the matter, however, would have provided an opportunity to determine the extent of the interference with the plaintiff's rights and interests.

The verdict made reference to the positions highlighted in the November 15, 2011 Decision DCC-997 of the Constitutional Court and the April 27, 2012 Court of Cassation precedent Ruling issued on civil case EKD/2293/02/10. These documents indicate that the limits of criticism against public and political figures are broader compared to criticism of private individuals, as their activities are more public, and they are expected to be more tolerant.

In this case, the reference to the precedent ruling is important, but its application is also necessary. In particular, having formally acknowledged in the verdict the need for public and political figures to show tolerance, the court, however, in the specific case at hand, did not evaluate whether the statements against the plaintiff had crossed the high threshold set by freedom of speech.

It is noteworthy that the court, on July 20, 2021, defining the facts and duties to be proved by the plaintiff and the defendant, however, in the reasoning part of the judicial act did not indicate whether they had fulfilled their duties or not. In particular, there was no mentioning of how the plaintiff had proved that the statements actually tarnished his honor, dignity or business reputation.

In this context, we find it necessary to refer to the Court of Appeal's position on the fact that the proper defendant issue should have been examined by the court of first instance, regardless of whether it had been raised or not. Paragraph 5 of Article 379 of the Civil Procedure Code clearly stipulates that the Court of Appeal addresses the ground of the complaint and its justifications, if the complainant expressed his/her position on the issue during the proceedings in the court of first instance. In fact, the law does not make distinctions regarding cases that refer to the duties of a court, and it turns out that the appellate court has no authority to address the issues that were not examined in the lower court. Therefore, the Court of Appeal’s intervention in the issue of proper defendant in this case is not well-founded.

**Mega Trade Ltd. v. ARMDAYAM Ltd., News AM Ltd. and Khachatur Sukiasyan v. News AM Ltd.**

***(Court Cases No.***  [***ED/15948/02/21***](http://datalex.am/?app=AppCaseSearch&case_id=45880421204141871)***,*** [***ED/16030/02/21***](http://datalex.am/?app=AppCaseSearch&case_id=45880421204141881) ***and*** [***ED/16219/02/21***](http://datalex.am/?app=AppCaseSearch&case_id=45880421204141920)***)***

**1․ Procedural Background of the Case**

On April 19, 2021, businessman (now a deputy) Khachatur Sukiasyan filed a lawsuit against *News AM Ltd.*, demanding to make a public apology, publish the court ruling, publicly refute factual data considered defamatory, as well as pay 3 million AMD as compensation.

On the same day, *Mega Trade Ltd.*, owned by the businessman, also filed a lawsuit with the court against *ARMDAYAM Ltd.* and *News AM Ltd.*, demanding to publicly refute factual data considered defamatory and pay 2 million AMD as compensation.

All three lawsuits were caused by the March 25, 2021 articles entitled “Due to low-quality fuel imported by Khachatur Sukiasyan, the engines of customers' cars break down,” published on *Armday.am* and *News.am* news websites.

The lawsuit in the case of Khachatur Sukiasyan was accepted for proceedings on April 28, 2021, 2 preliminary court sessions and 2 trials were held, on September 22, December 6, 2021, and March 7 and April 15, 2022, respectively. On April 29, 2022, the court ruled to partially uphold the claim, obliging the defendant to publish a refutation, pay 30 thousand AMD for insult and 30 thousand AMD for defamation, 13,500 AMD as a state duty, as well as 100 thousand AMD as attorney’s fee. The rest of the claim was rejected. On July 25, 2022, the judicial act was appealed with the Court of Appeal where it was rejected on December 9.

The lawsuit in the case of *Mega Trade Ltd. v. ARMDAYAM Ltd.* was accepted for proceedings on May 6, 2021, 2 preliminary court sessions and 1 trial were held on August 30, November 5, 2021, and January 26, 2022, respectively. On February 17, 2022, the court ruled to partially uphold the claim and oblige the defendant to publish a refutation. The court rejected the rest of the claim, including the demand for compensation. The judicial act was not appealed and entered into force.

The lawsuit in the case of *Mega Trade Ltd. v. News AM Ltd.* was accepted for proceedings on April 28, 2021, 5 preliminary court sessions and 3 trials were held, on September 7, October 22, November 30, 2021, February 14, April 18, July 6, August 6 and November 22, 2022, respectively. On December 12, 2022, the court ruled to partially uphold the claim and oblige the defendant to publish a refutation, confiscate 100,000 AMD in favor of the plaintiff as compensation for defamation and 100,000 AMD as attorney's fee. The rest of the claim was rejected.

**2.**  **Defamatory Nature of Information**

In the lawsuit, *Mega Trade Ltd.* and Khachatur Sukiasyan mentioned that the following false, groundless and inaccurate expressions of the above-mentioned article were the reason for going to court: “…Sukiasyan Grzo, upon taking control of the company (*RAN Oil* - ed.), began to import low-quality fuel at an extremely low price, as a result of which the engines of customers' cars break down after a short time. This information is rapidly spreading among drivers, they are massively refusing the service of *RAN Oil* petrol stations.”

According to *Mega Trade Ltd.*, the company did not import low-quality fuel and did not have any negative influence on the fuel market, and the defendant defamed their business reputation with the published article.

Khachatur Sukiasyan made the same claims in his lawsuit, further adding the following expressions as insulting and defamatory: “...Famous oligarch Khachatur Sukiasyan (nicknamed Grzo), who is in fact the oligarch of Nikol Pashinyan's family, has recently acquired *RAN Oil* company. It seemed that in the conditions of a non-growing market he would create serious competition, steal customers from other companies operating in the field, thus increasing the appetite of his and Pashinyan's avid families...”

*ARMDAYAM Ltd*. did not submit a response to the lawsuit, while *News AM Ltd.* stated in court that the plaintiff had not complied with the out-of-court procedure for going to court, in particular, prior to filing the lawsuit, the plaintiff had not demanded from the media to publish a refutation, therefore, the lawsuit should be left without examination. The media also noted that the source of the publication was *Dejavu* Telegram channel, to which it referred in good faith.

As for approaching the media with a refutation request, according to the court, it is the party's right, and the failure to do so does not exclude the option of seeking judicial protection, therefore, this circumstance cannot be used as a basis for leaving the lawsuit without examination. In addition, the court noted that the reference to the Telegram channel does not exempt the media from responsibility, as that source cannot be identified.

On September 21, 2021, in the case of *Khachatur Sukiasyan v. News AM Ltd.*, the court issued the following decision: the plaintiff was to prove that the expressions referred to him, the defamatory article was published by the media, and it was done intentionally. While the defendant was to prove that the article was critical, was not addressed to the plaintiff and was abstract in nature, as well as indicate legal grounds for leaving the lawsuit without examination.

Referring to another statement in the article that read “...Famous oligarch Khachatur Sukiasyan (nicknamed Grzo), who is in fact the oligarch of Nikol Pashinyan's family, has recently acquired *RAN Oil* company…”, the court found that the acquisition of a legal entity by anyone could not be considered as denigration of the latter's business reputation, hence the claim in this part was groundless and was subject to rejection. However, according to the court, the expressions overall were directly and intentionally addressed to the plaintiff and were not abstract in nature. As for the Telegram channel, the court found that it was not identified. Thus, the ruling obliged the media to make a public apology and refute the insulting and defamatory expressions and factual data.
The Court of Appeal basically confirmed the reasonings and substantiations highlighted by the court of first instance, and found that there were no grounds for overturning the judicial act.
In the case of *Mega Trade Ltd v. ARMDAYAM Ltd.*, on August 30, 2021, the court decided to distribute the burden of proof: thus, the plaintiff was to prove that factual data referring to them was presented, the expressions were public, and that they truly tarnished their business reputation. And the defendant was to prove that the presented data were true.

With regards to this case, referring to the RA Court of Cassation April 27, 2012 Ruling No. LD/0749/02/10, which dealt with the compensation for damage caused to honor, dignity and business reputation, the court confirmed that the expressions were not abstract and referred to bad faith practices by the plaintiff. According to the verdict, the presented factual data were not true, i.e., they were false, groundless and inaccurate, and tarnished the plaintiff's business reputation. Nevertheless, we believe that the facts related to these claims, which made the court draw such a conclusion, were not properly presented in court.

In the case of *Mega Trade Ltd. v. News AM Ltd.*, the court stated that no facts were presented during the trial to prove the information contained in the published article. With regards to the issue of pecuniary liability, the court, assessing the defendant's overall conduct and poor financial situation, found that envisaging such a measure could be a disproportionate interference with the media's activities. Therefore, the plaintiff's claim to confiscate 2 million drams as compensation for non-material damage could not be considered reasonable. Hence, the court decided that the claim regarding proprietary liability should be partially upheld in the amount of 100 thousand AMD.

**3. Amount of Compensation**

The plaintiff demanded to confiscate 2 million AMD from *ARMDAYAM Ltd.* in favor of *Mega Trade Ltd.* as compensation for defamation. Referring to this claim, the court found that it was subject to rejection, as the plaintiff had not provided any substantiation that setting non-pecuniary compensation alone would not be sufficient for the the damage caused to their business reputation to be restored.

In this regard, reference was made to the Court of Cassation December 2, 2016 Ruling No. EKD/1320/02/14, where the legal issues of setting non-pecuniary and pecuniary compensation in similar court cases were addressed. According to the Court of Cassation, the court may set pecuniary compensation if it decides that non-pecuniary compensation is not sufficient to restore the damage caused to the honor, dignity and business reputation.

In the case of *Mega Trade Ltd. v. News AM Ltd*., the court set 100,000 AMD as pecuniary compensation, however the judicial act failed to address the issue of whether non-pecuniary compensation alone would not be sufficient to restore the plaintiff's rights.

In the case of Khachatur Sukiasyan, the court found that given the media’s failure to provide evidence of its property status, 30,000 AMD for defamation and 30,000 AMD for insult were to be confiscated from the latter in favor of the plaintiff. While the court reduced the pecuniary compensation, still, it did not clarify on what grounds it determined that refutation and apology were not sufficient to restore the plaintiff's rights.

**5.** **Attorney’s Fee**

Regarding the amount of the attorney's remuneration, the court, based on the volume of work of the plaintiff's representative, the complexity of the case, the average price tag set by the Council of the RA Chamber of Advocates and given that the plaintiff's representative had filed a lawsuit, had participated in all court sessions, considered that 100 thousand AMD was to be set as attorney’s fee in this case.

The same amount was set for the attorney's fee in Khachatur Sukiasyan’s case, based on the peculiarities of the case and the work performed by the attorney.

In the case of *Mega Trade Ltd. v. News AM Ltd*., the court approved AMD 100,000 as attorney’s fee, failing to provide substantiation for the set sum.

**4. Conclusion**

According to the RA Court of Cassation December 2, 2016 Ruling on case No. EKD/​​1320/02/14, if the person claims only non-pecuniary measure of compensation for insult or defamation, the court must confine itself only to the application of this measure. And if the person claims both pecuniary and non-pecuniary measures of compensation, the non-pecuniary measure shall be applied first, and only in case of its insufficiency, can the court apply the measure of pecuniary compensation.

In this case, the Court of General Jurisdiction rightfully granted only the measure of non-pecuniary compensation. The rest of the claim was rejected. The decision was based on the fact that the plaintiff failed to substantiate in any way that the restoration of the damage caused to their business reputation was impossible through non-pecuniary compensation alone.

As mentioned, the court considered the following expression defamatory: “… Khachatur Sukiasyan, upon taking control of *RAN Oil* company, began to import low-quality fuel at an extremely low price, as a result of which the engines of customers' cars break down after a short time.” And this ground was also considered applicable in the cases of *Mega Trade Ltd. v. ARMDAYAM Ltd.* and *NewsAM Ltd*. However, the court missed the fact that the plaintiff was *Mega Trade Ltd.*, while a simple glance at the sentence indicates that the publication is about the import of fuel by Khachatur Sukiasyan. The court should have paid attention to the fact that it was the duty of the plaintiff to prove that the disputed expressions were attributed to them. However, the court failed to indicate how this fact was considered proven, nor did it clarify what facts led to the conclusion that the plaintiff was the addressee of the publication.

When determining the attorney's reasonable remuneration, a reference was made to the average price tag for attorney's fees set by the Council of the Chamber of Advocates, and the amount was set at 100 thousand AMD. However, according to the Paragraph 14 of the Chamber of Advocates Council’s July 29, 2021 pricelist, the protection of business reputation is estimated at 400,000 AMD. Hence, the court failed to address the issue of how the average pricelist is determined if a 4 times lower price was set.

On July 7, 2021, the Information Disputes Council published its opinion No. 71 “Khachatur Sukiasyan v. a number of media,” which also contained a reference to the lawsuits against the media filed by the very *Mega Trade* associated with Khachatur Sukiasyan, as the reason for the lawsuits was the same, so were the contested expressions. The Council urged the deputy to withdraw his lawsuits and use out-of-court mechanisms to resolve information disputes, by requesting an expert opinion from Media Ethics Observatory of Armenia, as well as by exercising the right to refutation or response. MEO, in its turn, published an expert opinion from the standpoint of journalistic ethics and revealed violations in the disputed publications.

In the *Mega Trade Ltd. v. News AM Ltd.* case, the court made a number of quite controversial legal interpretations. In particular, the court found that no evidence had been presented in the trial that could substantiate the information cited in the published article, which resulted in classifying the expressions as defamatory. While the court should have evaluated the expressions in order to identify whether they were defamatory or not, as the fact that the expressions are not true is not sufficient to consider them defamatory. Afterwards, the court drew conflicting conclusions: in particular, it stated that envisaging proprietary liability could be a disproportionate interference with the activities of the media, yet still setting pecuniary compensation. Furthermore, the methodology to determine the amount of compensation remained unclear, as it was not reasoned by the court.

Comparing the rulings in three cases, we can notice that both *ARMDAYAM Ltd.* and *News AM Ltd.* were held liable for articles with similar content, and in one case, *Mega Trade Ltd.* acted as a party whose rights were violated, while in the other case it was Khachatur Sukiasyan. It turns out that different judges attributed the disputed expressions to different entities: in one case, by a judicial act that entered into force, the rights of *Mega Trade Ltd.* were violated, and in the other case - those of Khachatur Sukiasyan. This situation creates a contradictory legal situation, first of all, because in one case the expressions in the judicial act do not lead to pecuniary compensation, while in the other case they do. All this indicates the non-uniform application of laws, which is an obstacle to the administration of justice.

**Khachatur Sukiasyan v. 168 Zham Ltd.
*(Court Case No. ED/16200/02/21)***

**1․ Procedural Background of the Case**

On April 19, 2021, businessman (now a deputy) Khachatur Sukiasyan filed a lawsuit against *168 Zham Ltd.*, demanding to publicly refute factual data considered defamatory and pay 2 million AMD as compensation. The lawsuit was caused by the March 25, 2021 article entitled “Khachatur Sukiasyan, “the oligarch of Pashinyan’s heart” is founding an airline: Mediaport,” published on *blog.168.am* website. The lawsuit was accepted for proceedings on May 3, 2021. The court decided to reject the motion to secure the claim. 2 preliminary court sessions and one trial were held on July 27, December 16, 2021, and February 8, 2022, respectively.

On March 1, 2022, the court ruled to partially uphold the claim and oblige the defendant to publish a refutation. The court rejected the rest of the claim, including the demand for compensation.
The defendant appealed the court’s March 1, 2022 judicial act with the Court of Appeal, which was rejected on July 29.

On August 26, the defendant appealed to the Court of Cassation.

**2.  Defamatory Nature of Information**

Plaintiff Khachatur Sukiasyan noted that the following phrases of the above-mentioned article served as a basis for turning to court: “... Khachatur Sukiasyan, an oligarch close to Nikol Pashinyan, is founding an airline, the government has commissioned to register the airline in an accelerated manner...,” “... Khachatur Sukiasyan has also acquired petrol and diesel sales company *Ranoil* and is seeking to establish a monopoly in the sector through tax terror against other companies...,” “...Khachatur Sukiasyan calls critics of Nikol Pashinyan and offers them a deal in exchange for silence...”

According to the plaintiff, the article contained specific, clear-cut information about his actions, and it is not abstract. In particular, the article contained false information about the plaintiff's behavior contradicting the ethics in public and political life, influence on journalists, attempts to silence through various means, the plaintiff’s ties with the Prime Minister, and the plaintiff's influence on the fuel market. The plaintiff believed that, the information was untrue, demeaned his honor and dignity in front of the public and could not be confirmed by any evidence.

Objecting to the claim, the defendant stated that the article was a bona fide reproduction of *Mediaport* Telegram channel’s piece, and consequently they could not be held liable. In the response to the lawsuit, it was also argued that the plaintiff had not used the right to settle the dispute in an out-of-court procedure, as stipulated by the RA Law “On Mass Communication,” based on which the lawsuit should not have been examined.

The judicial information system did not publish the decision to distribute the burden of proving the essential facts for the case either in the form of a separate act or within the final judicial act. That decision is important in determining what facts and evidence the court relied on when issuing the verdict.

In the part of legal substantiations of the judicial act, it was indicated that the goals of the entity that made the publication were important for evaluating the right to freedom of speech. Among these goals the promotion and protection of democracy were highlighted as the most important ones.

Referring to the defendant's arguments, the court noted that under the RA Law “On Mass Communication,” it is the party's right to appeal to the media with a demand for refutation, and the failure to do so does not imply a restriction of the right to appeal to the court. The court further emphasized that even if a refutation is published, it cannot exclude someone’s right to pursue legal action.

With regards to the source of the publication, the court noted that the Armenian legislation does not recognize *Telegram* as a media platform, and when referring to the article published there, the media should have at least identified the organization or the person posting pieces on *Mediaport*, including their address. Thus, the court did not determine the author of the piece on the Telegram channel. Added to that, the court did not accept the claim of the defendant that they were not the author of the piece in question. Meanwhile, the court should have referred to Paragraph 9 of Article 1087.1 of the Civil Code, which stipulates that if the author of a piece is unknown, the responsibility for compensation shall rest with the entity who published it.

Regarding the fact of the expressions being defamatory, the court noted that in the course of the trial no facts were presented that would prove Khachatur Sukiasyan's being an oligarch close to Nikol Pashinyan, government’s instruction to register the airline in an accelerated manner, Khachatur Sukiasyan's acquisition of *Ranoil* company, organizing tax terror against other companies to establish a monopoly in the petrol market, offering a deal to Nikol Pashinyan critics in exchange for silence.

Thus, the court ruled to oblige the defendant to refute the disputed statements as information defaming the plaintiff’s honor, dignity and business reputation.

In the complaint filed with the Court of Appeal on March 30, 2022, the defendant stated that the court had not relied on any evidence that confirmed the ownership of *blog.168.am* by the defendant. Added to that, according to the defendant, there was no evidence to suggest that the information provider had disgraced the plaintiff’s reputation, let alone intentionally. In the appeal, it was also highlighted that the court's verdict was not sufficiently substantiated and reasoned, in particular, it failed to include the facts accepted or rejected by the parties, as well as what should be proved by each of the parties. The media claimed that the disputed judicial act lacked the court's conclusion regarding the proof of facts and their assessment.

The plaintiff did not file a response to the appeal.

While rejecting the defendant's complaint, the Court of Appeal underlined that the representative of *AMNIC Hostmaster* had provided information that only the owner of *168.am* domain possesses the data of *blog.l68.am* domain. Therefore, the former is the owner of two domains. The appellate court further emphasized that the fact of *blog.168.am* domain belonging to them had also been accepted by the defendant through the position expressed by their representative.

The Court of Appeal stated that referring to a *Telegram* channel alone cannot be considered a reference to the source of information under Article 1087.1 of the RA Civil Code, since it is necessary to identify the specific person - author or news agency - which disseminated the information about Khachatur Sukiasyan through *Mediaport* Telegram channel.

**3. Amount of Compensation**

Taking into account that the defendant was a media, the defendant's overall conduct, as well as the financial situation, the court found that proprietary liability might be a disproportionate interference with the activities of the media. Therefore, the court rejected the claim for pecuniary compensation.

Rejecting the claim for pecuniary compensation is legitimate, as the case lacked any facts that would prove that non-pecuniary compensation could not be sufficient to restore the violations of the plaintiff's rights.

**4. Attorney’s Fee**

In consideration of various factors such as the volume of the attorneys’ work, the complexity of the case, the average price tag of legal services set by the Council of the Chamber of Advocates, the ratio of the amount subject to confiscation by the court act in relation to the required attorney’s fees, the fact that the claim was partially upheld, the litigation costs incurred by the plaintiff and the defendant resulting in full or partial exemption from the obligation to compensate the litigation costs incurred by the opposite party, the court ruled that 100,000 AMD was to be confiscated from the defendant in favor of the plaintiff as a reasonable remuneration for the attorney.

In the complaint filed with the Court of Appeal, the defendant stated that the court failed to substantiate how the cost of the attorney's services provided by the representatives had been calculated, and as a result, the amount of 100,000 AMD had been set as a reasonable attorney’s fee to be confiscated from the defendant in favor of the plaintiff.

It is clear from the verdicts made by the courts of general jurisdiction and appeals what circumstances they considered in awarding the attorney's fee, but neither instance indicated how these circumstances affected on determining the amount of the fee.

**5. Measure to Secure the Claim**

On May 3, 2021, the court ruled to reject the motion to put a lien on the property of the defendant in the amount of the claim.

We believe that securing the claim by using the property of the media on the part of the courts may undermine the media’s right to freedom of speech, since its activities will be restricted. Securing the claim may have severe consequences for the media, and hence, the rejection of such motions by the courts is appreciated.

**6. Conclusion**

Referring to the legal content of defamation, in its 2021 Decision DCC-997 the Constitutional Court emphasized that in the case of defamation, we deal with tarnishing a person's dignity by spreading false, untrue facts and factual data, and accusing him/her of a crime or a misdemeanor on the basis of untrue data.

In this case, the plaintiff referred to expressions considered defamatory by him. In the judicial act, the court should have addressed the defamatory nature of each quoted expression to reveal not only the authenticity of those expressions, but also the fact that they had tarnished the plaintiff's dignity.

While the court merely stated that in the course of the trial no facts were presented that would prove that the disputed expressions were true.

The falsity of information alone is not sufficient for the expression to be considered defamation, and the court's reasoning in this case is groundless. The court should have carried out certain procedural actions, including examining the expressions, assessing the evidence, taking into consideration the factual evidence of the case, the conduct of the trial participants, the motivation and intention behind the actions. And the court failed to do that.

In its final ruling the court did not address the distribution of the burden of proof, which cannot be considered a legitimate approach.

Noteworthy are also the court's analyses in the judicial act with regards to evaluating the right to freedom of speech. In this context, the court highlighted such key factors as the entity that made the publication, its purpose, the audience, the level of awareness of the audience and the time period.

The court further noted that any restrictions on freedom of speech were to be scrutinized and a careful examination of the circumstances related to each case was to be carried out. However, it failed to take the actions it considered vital or if it did, they were not reflected in the trial documents. We believe that legal principles have no value if they are not applied.

Regarding to the decision of the Court of Appeal, it is worth mentioning that the act issued by that court also lacks the reference to several important grounds of the complaint. In particular, the Court of Appeal bypassed the defendant's argument about the judicial act not being substantiated and reasoned.

The ruling of the Court of Appeal runs contrary to the legal interpretations given by the Court of Cassation in the court case ARD1/1163/02/15, where it was particularly noted that the appellate court must address all the grounds of the complaint and their substantiations, discussing each of them and drawing a conclusion on each of them. Thus, the appellate court's failure to address all the grounds of complaint is not legitimate.

On July 7, 2021, the Information Disputes Council published its opinion No. 71 “Khachatur Sukiasyan v. a number of media,” which is also related to *168 Zham Ltd.* The opinion draws attention to the fact that at the time of the publication of the piece, Khachatur Sukiasyan had not yet publicly announced about his aspiration to engage in political activity, while later he was elected a National Assembly deputy from the ruling faction, and in the new situation, the proceedings could be viewed differently, i.e., in the context of exerting pressure on the media by a state official. Therefore, the Council urged the deputy to withdraw his lawsuits and use out-of-court measures to settle the information disputes, by applying to Media Ethics Observatory of Armenia to obtain an expert opinion, as well as by using the right to refutation and response.

**Alen Simonyan v. Ani Gevorgyan
*(Court Case No.*** [***ED/21669/02/21***](http://datalex.am/?app=AppCaseSearch&case_id=45880421204154006)***)***

**1․ Procedural Background of the Case**

On May 1, 2021, Vice President (now President) of the National Assembly Alen Simonyan filed a lawsuit with the Court of General Jurisdiction of Yerevan against journalist Ani Gevorgyan, demanding to oblige her to publicly refute factual data considered defamatory. Later, the lawsuit was amended, as a result of which a claim for pecuniary compensation was also added, and *News.am* news website was involved as a third party. The lawsuit was triggered by the April 16, 2021 video published on *Hayeli.am* and *News.am*, where in the plaintiff’s opinion, Ani Gevorgyan, during a press conference held at *Hayeli* club, spread untrue information, tarnishing his honor and dignity.

The lawsuit was accepted for proceedings on May 27, 2021, 8 preparatory and 2 trial sessions were held on August 19, September 3, October 15, October 29, November 19, December 15, 2021, February 15, March 1, March 21 and April 26, 2022, respectively. On May 23, 2022, the court issued the judgment partially upholding the claim, and obliging the defendant to publish a refutation, pay compensation (150 thousand AMD instead of the claimed 2 million AMD) and the litigation costs.

On July 13, 2022, the defendant filed an appeal against the verdict, which was accepted for proceedings on August 12. On November 8, the Court of Appeal made a decision to review the case in written procedure and issued the ruling on November 15. In consequence, the complaint was partially upheld, a new refutation text without “I have accused” phrase was set, the first instance court's act remaining unchanged in all other aspects.

On December 19, the defendant filed a complaint against the appellate court’s ruling with the Court of Cassation.

**2.  Defamatory Nature of Information**

Plaintiff Alen Simonyan told the court that with the statements made at *Hayeli* club the defendant had tarnished his honor and dignity, in particular saying the following: “If they are officials, they should be ready to answer any questions, and there should also be respect towards journalists... I want to say that there is no need to speak too much about this cowardly behavior, these cowardly acts.”

Then she continued: “It’s obvious that, basically, a crime is being committed against me. My young kid was even targeted. If they (meaning the authorities - **CPFE**) have nothing to do with it, though I am sure they do... Moreover, I am sure that action was immediately ordered by Alen Simonyan, because this just followed the behavior of Alen Simonyan in the parliament. I am pretty sure of that.”

According to the plaintiff, referring to the crime committed against the defendant and the targeting of the latter's young child as an act ordered by him is defamation. However, Alen Simonyan did not provide sufficient arguments regarding the defamatory nature of the expressions.

The plaintiff petitioned the court to amend the subject of the lawsuit, formulating the claim as follows (original text is quoted):

“1. To oblige defendant Ani Gevorgyan to publicly refute the factual data contained in the video, which is viewed as defamation: to publish an announcement on *News.am* website, and in case it is impossible to, on the defendant’s personal Facebook page, so that it is accessible and visible to everyone, for a period of at least five working days, or via a press with a circulation of at least five thousand, under the following headline: “I, Ani Seyran Gevorgyan, have defamed Alen Robert Simonyan,” putting the text like this: “On 16.04.2021, I made an expression in a video published on YouTube website *hayeli am* channel, *news.am* and *hayeli.am* websites regarding Alen Simonyan, accusing him of having ordered a crime against me and the targeting of my young child. I declare that this is not true and I have defamed Mr. Simonyan.”

2. To confiscate 2 million AMD from defendant Ani Gevorgyan in favor of plaintiff Alen Simonyan as compensation for defamation.”

The journalist filed a response to the lawsuit, fully objecting to the claim, and stating that the expressions did not contain factual data, being merely value judgments. She requested the court to reject the lawsuit.

Ani Gevorgyan informed that on April 14, 2021 in the National Assembly, the plaintiff behaved quite aggressively towards her, accusing the journalist of carrying out a political order. Following the incident, she received a message on social media, containing offensive language and threats towards both her and her young child, after which she voiced her opinion that the persecution against her and her child was ordered by the plaintiff. And the expression “I'm sure” indicated a value judgment, as she pointed out in the video why she had come to such a conclusion.

By the way, on April 15, Ani Gevorgyan reported the incident of illegal behavior towards her and her child to the RA police, which was not followed up on.

The defendant also noted that she had expressed an opinion on the incident in the interviews to *Aravot.am*, *Medianews.am* and *168.am*, where she had highlighted that the information about the plaintiff was based on her founded suspicion and inner conviction. Added to that, she provided links from the Internet, substantiating the ties between the plaintiff and the unidentified persons who had sent her threats. According to the defendant, she had no intention to tarnish the honor and dignity of the plaintiff.

The journalist referred to the April 27, 2012 Ruling of the RA Court of Cassation in the civil case No. EKD/2293/02/10, which states that during the application of liability measures stipulated by Article 1087.1, Paragraph 8 of the RA Civil Code, and consequently during the interference with the right to freely express an opinion and impart information, the courts should take into consideration that the boundaries of criticism of politicians, civil servants, state and local self-government bodies are wider compared to private individuals. Nevertheless, such criticism can be considered acceptable if it is expressed with regards to the activities of these figures, not exceeding the restrictions set by the case law of the European Court. Otherwise, the restrictions of Article 10, Clause 2 of the Convention shall be fully applicable towards criticism of a politician as a private individual, and the fact of one’s being an official should not be taken into account when assessing the voiced opinion or imparted information as defamation.

The defendant also disagreed with the text of the refutation claimed by the plaintiff.

On December 15, 2021, the court issued a decision on the distribution of the burden of proof, acknowledging the following indisputable facts: the statement in question was made publicly by the defendant and was addressed to the plaintiff.

The court found that the plaintiff was to prove that: 1. there were factual data presented about a person, containing concrete, clear-cut information about a certain action or inaction and at the same time, there were not abstract; 2. the statement made by the defendant actually tarnished the person's honor, dignity or business reputation.

The defendant was to prove that: 1. the expressions made were based on sufficient factual evidence; 2. the plaintiff was linked to the accusations of targeting or organizing attacks on social platforms against the defendant and her young child.

The court stated that the accusation of using foul language and insults, ordering actions to target persons, including a young child, tarnished the plaintiff's honor, dignity and good reputation, as not only are such acts illegal, but they can also lead to negative public opinion.

Having examined the evidence provided by the defendant, the court concluded that the facts of interfering with the journalist's activities and organizing an attack against her were not substantiated. Added to that, the court did not find any extraordinary situation that would somehow be causally linked to Ani Gevorgyan’s controversial interview and the actions taken against her. The court did not accept the defendant's reasoning that she had expressed her opinion about what happened, since the phrase “I'm sure” had been used: specific actions were attributed to the plaintiff that could not be viewed as suspicion.

Noting that in this case the plaintiff was a public figure, and therefore, should tolerate a wider range of criticism than private individuals, nevertheless, the court also highlighted that the expressions should have factual grounds, as this was not about criticism, but rather certain actions taken against the defendant.

Referring to Article 8 of the RA Law “On Mass Communication,” the court rightfully underlined that the version of the refutation text proposed by the plaintiff was acceptable only in terms of the facts subject to refutation, while the phrase “I have defamed...” was irrelevant, as a refutation should refer only to untrue facts, rather than present qualifications. The headline of the proposed text was not considered acceptable either, as the legislative clearly defined that refutation shall be carried out under the headline “Refutation.”

In her complaint with the Court of Appeal, the journalist mentioned that the plaintiff had not presented the specific expressions that were considered defamatory, and the court, in its turn, failed to include them in the refutation text, which was illegal. In the appellate court, the defendant reiterated the arguments provided to the lower court regarding her evidence and value judgments. She believed that the judicial act was not properly substantiated and reasoned, while the facts to be proven failed to include the grounds for the necessity of pecuniary compensation and the calculation of the amount. According to the journalist, the disproportionality of the compensation could have a negative impact on her activity, and the court should have explored whether it was not possible to restore the violated rights solely through non-pecuniary compensation.

Upon rejecting the appeal, the Court of Appeal underscored in the reasoning part of its decision that the statement that was addressed to the plaintiff, and pointed to illegal acts committed against the defendant and her young child on Alen Simonyan’s instructions, constituted accusations that contained elements of a crime: however, these accusations were not substantiated.

Having analyzed the disputed expressions, the Court of Appeal concluded that they could not be value judgments as they attributed actions to a specific person. The argument that the expressions assessed as defamation were not singled out was not considered to be substantiated either. In this regard, the court suggested that they were apparent both in the lawsuit and in the final part of the judgment.

Meanwhile, the Court of Appeal noted that the phrase “I have accused” should not have been included into the refutation text, since only the presented factual data were subject to refutation as stipulated by Paragraph 8 of Article 1087.1 of the RA Civil Code. Accordingly, the use of the phrase “I have accused” in the refutation text was inappropriate. Based on this, the Court of Appeal found that the arguments of the complainant were well-reasoned in this regard.

Regarding the defendant's other argument that the plaintiff had not attempted to settle the dispute through an out-of-court procedure, the appellate court noted that “...on defamation cases, the law has not envisaged an out-of-court procedure (binding for the parties) for settling a dispute.” We will address this controversial position in the conclusion.

The Court of Appeal, referring to the coverage of Ani Gevorgyan's press conference and subsequent interviews by a number of media and the number of views, found that non-pecuniary compensation was unable to fully restore the violated rights.

**3. Amount of Compensation**

The plaintiff demanded a sum of 2 million AMD from the defendant as compensation for defamation. However, the defendant argued that this was not justified, and the possibility of restoring the alleged damage caused to the person's honor, dignity and business reputation through non-pecuniary compensation was not taken into consideration.

With regards to this issue, the court noted that the amount claimed by the plaintiff could have a chilling effect on the defendant's activities. Given that the court obliged the defendant to refute untrue information, it was decided that 150 thousand AMD was a proportionate sum to set as compensation.

Nevertheless, the court failed to provide sufficient justification for the need for pecuniary compensation and how it arrived at that specific amount.

**4.** **Attorney’s Fee**

Having examined the volume of work of the attorney, the complexity of the case, the amount of money commonly paid for the provision of legal services in similar cases and the price set by the contract, the court found that 100,000 AMD should be confiscated from the defendant as remuneration for the attorney. However, here the court did not mention either how the final price of the attorney’s work had been calculated.

**5․ Conclusion**

The court obliged the defendant to refute on *News.am* the factual data considered defamatory, and in case of impossibility, on her personal Facebook page, so that it was accessible and visible to everyone, for a period of at least five working days, or via a print media with a circulation of at least five thousand.

We believe that the judicial act’s point on the publication of the refutation text in the press with at circulation of at least five thousand is unfounded and unacceptable. Firstly, due to the development of information technologies, the print media has found itself in a deep crisis, and it is practically impossible to find a print media with a circulation of five thousand. And most importantly, the legislation does not entail any provision for publishing a refutation in a media that is not a party to the proceedings. Thus, the court did not sufficiently analyze the plaintiff’s claim for this type of refutation and granted it, even though pieces with similar content were published on other media as well, which could serve as a platform for refutation.

The court failed to adequately substantiate the decision to simultaneously apply both types of compensation in the case, nor did it indicate that non-pecuniary compensation was insufficient, merely setting the amount of pecuniary compensation. Throughout the current monitoring, we’ve repeatedly addressed this problem, which, in fact, has become a vicious trend in the examination of similar cases. The courts must pay attention to the compensation for the violation of non-property rights and set non-pecuniary compensation. Pecuniary compensation should only be applied if there are strong reasons to do so, taking into account the severity of the violation, the status of the parties involved, the defendant’s financial situation and other factors.

A study of the verdict clearly shows that it lacks proper substantiation that the disputed expressions were defamatory: the court contented itself with the analyses of its own reasoning. We believe that the right to fair competition of the parties involved in the case was not ensured, and the court independently, without any request, highlighted for the plaintiff the negative effects the defendant’s expressions could have (or already had) on the plaintiff.

The court ruling noted that upon the examination of the videos no data had been revealed that could prove the accuracy of the defendant's statements. The court, however, should not have assessed each piece of evidence separately to conclude whether the defendant's arguments were well-founded or not. Instead, the court should have examined all the presented facts and evidence as a whole, in their entirety. This is necessary, as a single piece of evidence may not be convincing, but when combined with a number of other pieces, it may be decisive. Therefore, we conclude that the court set an unjustifiably high threshold of proof in this case.

The court unfairly did not address the defendant's information that in her interviews following the incident, she had emphasized that her thoughts about the plaintiff constituted suspicions and inner conviction. The journalist's argument that she had no intention to defame was disregarded either. While according to accepted practice, intention is verified by examining the trial party’s behavior before and after the statement was made. Hence, had the court paid sufficient attention to the above issues, they might have had an impact on the content of the judicial act.

As for the ruling of the Civil Court of Appeal, we disagree with the position of that instance that on defamation cases the law did not envisage an out-of-court dispute settlement procedure. The RA Law “On Mass Communication” defines the right to refutation or response, and if this right is ensured, individuals can no longer seek judicial protection. This is enshrined in part 10 of Article 1087.1 of the RA Civil Code.

Thus, it is necessary to answer the following questions: is the dispute not resolved by the publication of a refutation or response in accordance with the RA law "On Mass Communication", and is the court the only way to resolve it? There is no doubt that with the publication of a refutation or a response by the media, the dispute may be exhausted and not reach the court, hence, in this case we consider the reasoning of the Court of Appeal to be unfounded.

Regarding the opinion of the appellate court that the phrase “I have accused” should not have been included in the refutation text, we consider it to be legitimate, as the legislation does not envisage the possibility of adding extra wording to the refutation text.

**Legal Successors of March 1 victims against Shark Ltd. (5th Channel TV Company) and Narek Mantashyan**

***(Court Case No.*** [***ED/26020/02/20***](http://datalex.am/?app=AppCaseSearch&case_id=45880421204063956)***)***

**1․ Procedural Background of the Case**

On September 2, 2020, Sargis Kloyan, Vachagan Farmanyan, Ruzanna Harutyunyan, Alla Hovhannisyan, Edik Harutyunyan, Mariam Hovhannisyan, Lilya Minasyan, Jemma Vardumyan, Varduhi Baghdasaryan, Gayaneh Hovhannisyan, the legal successors of the March 1, 2008 victims, filed a lawsuit with the Court of General Jurisdiction of Yerevan against *Shark Ltd. (founder of the 5th Channel TV company)* and Narek Mantashyan, demanding to oblige the latter to publicly refute untrue, defamatory information tarnishing the honor, dignity and good reputation of the plaintiffs and their relatives, as well as to apologize and provide the signed paper version of apology text to the plaintiffs.

The lawsuit was caused by the expressions used by Narek Mantashyan, co-chair of *Alternative NGO*, during the May 13, 2020 issue of *5th Channel’s* “Interview” program cycle, which according to the plaintiffs, were considered insult and defamation. On September 10 of the same year, the court returned the claim due to deficiencies in the document. It was re-submitted on October 1 and was accepted for proceedings by another judge on **June 10, 2021**. Four court hearings were scheduled on February 7, April 28, July 14 and October 31, 2022. On November 11, the court granted the motion of *Shark Ltd.*, the defendant in the case, to apply the statute of limitations, thus rejecting the lawsuit on the basis of the expiration of the statute of limitations.

**2.**  **Defamatory Nature of Information**

Defendant Narek Mantashyan, in the disputed interview aired on the *5th Channel* made the following statements: “He bought the voice of those people for thirty million in cash,” “He bought the Kloyans and the rest for thirty million, who today just unquestioningly obey the orders of the government in the court,” “They don’t have the integrity to demand a real resolution,” “He bought the graves of those people’s children.”

In its motion to apply the statute of limitations, submitted to the court, *Shark Ltd.* stated that the allegedly defamatory and insulting remarks of the interview in question had been made on May 13, 2020, but according to *Datalex.am* information system, the lawsuit had been filed on September 2, 2020, i.e. about 4 months later. On this ground, the representative of the media asked to reject the claim. Narek Mantashyan did not attend the court sessions and did not express any legal position.

The co-plaintiffs objected to the submitted motion, arguing that the lawsuit had initially been filed within the time limits, on June 15, 2020 (June 13 and 14 were non-business days), but due to the judge being on vacation, the case had been reassigned to another judge under a new number - ED/26020/02/20. According to the plaintiff party, they received the decision on its return on August 24, 2020 and met the three-day filing requirement. In other words, the statute of limitations was not violated.

The court found these arguments unfounded, as according to the available data, the legal notification on the civil case No. ED/17433/02/20 had been delivered to Tigran Yegoryan by the postal service on August 18, 2020, and as a direct result of the latter's failure to meet the three-day timeframe, the lawsuit was filed under a new number and could not be treated as a refiling of the original case. In fact, the court found that the two filed lawsuits were completely different cases, and that June 15 could not be considered the starting date of this case.

As a result, it was stated that the controversial statements were made on May 12, 2020 and a month later, June 13 and 14, were non-business days, and under that calculation, the deadline for filing a lawsuit expired on June 15, while the lawsuit was submitted to the postal service on August 27. Hence, the one-month statute of limitations was violated.

**3.** **State Duty**

As already mentioned, the co-plaintiffs posed three demands: 1) to oblige to publicly refute the defamatory information; 2) to apologize; 3) to provide the signed paper version of apology text to the plaintiffs. To have these claims reviewed, a state duty of 20 thousand AMD was paid. Subpoint “b” of Article 9 of the RA Law “On State Duty” stipulates that in case of filing a lawsuit with a non-pecuniary claim, the plaintiff shall pay four times the basic duty, which is 4 thousand AMD. In other words, the co-plaintiffs should have paid 12 thousand instead of 20 thousand AMD.

Regarding this issue, the court found that the plaintiff was obligated to pay 8,000 AMD as a state duty, and in the event of rejection of the lawsuit, the duty issue would be considered solved, and 12,000 AMD would be subject to return. At the same time, the court determined that there were only 2 claims in the lawsuit, and accordingly, the state duty was supposed to be 8,000 AMD. However, the judicial act lacks the reasoning as to why the number of the plaintiffs’ claims was counted as 2 rather than 3.

**4. Conclusion**

First of all, we consider the third demand (3. “to provide the signed paper version of apology text to the plaintiffs”) posed by the plaintiffs to be problematic: In particular, Paragraph 7 of Article 1087.1 of the RA Civil Code stipulates the following: “7. In case of insult, the person may require through judicial procedure the application of one or several of the following measures: 1) making a public apology: the form of apology shall be defined by court; 2) if the insult appeared in the information disseminated by an entity carrying out media activities, publication of the court judgment in full or partially through the given media. The manner and volume of publication shall be defined by court; 3) paying compensation in the amount of up to 1000-fold the defined minimum salary.”

The information given above indicates that for insult cases the legislator did not envisage a legal provision for providing the plaintiffs with a signed paper version of the apology text. In other words, the co-plaintiffs posed a demand that is not envisaged by the law. This is important because a special statute of limitations was applied to the case. The norm related to the latter reads as follows: “13. According to the procedure established by this article, a claim for protection of the right may be submitted to the court within one month after the person becomes aware of insult or defamation, but not later than within six months from the moment of insult or defamation.”

It can be seen that special terms are applied in cases when the claims are reviewed under Article 1087.1 of the Civil Code. And if the claim filed does not fall under this article, then the special statutes of limitation do not apply, and the general three-year limitation period is used instead. Thus, the court did not examine the mentioned issues and failed to assess the peculiarities of applying the statute of limitations for each of the co-plaintiffs’ claims.

We also find it necessary to note that Article 168 of the RA Civil Procedure Code defines the procedure for examining the motion to apply statute of limitations, where the Legislator obliged the court to adopt a protocol decision based on the request for the application of the statute of limitations and the objections raised against it. Hence, the scope of facts essential to the resolution of the motion should be defined, the burden of proof should be distributed, the issue of the timeframe for the submission of that evidence by the trial participants should be discussed, as well as other actions aimed at the efficient examination of the motion should be carried out.

The analysis of this case shows that the court failed to properly implement the requirements of the mentioned norms: in particular, the court failed to define the scope of facts essential to the resolution of the motion to apply the statute of limitations and failed to distribute the burden of proof. Added to that, the court did not take as a basis the fact that the plaintiffs had filed another lawsuit within the specified timeframe of the same dispute. And this is not a unique case.

We believe that when applying the statute of limitations, it is crucial for courts to pay attention to its purpose, which is to ensure the adversarial trial of the parties to a dispute. In this case, the co-plaintiffs filed their lawsuit within the specified timeframe, but due to some procedural problems (including as a result of returning the lawsuit twice), they were unable to exercise their right to legal protection. Although such a position of courts cannot be considered explicitly unlawful, nevertheless, we believe that the law should be more specific about how to regulate such situations related to the application of the statute of limitations.

By its March 10, 2016 Decision DCC-1257, the RA Constitutional Court, reaffirming the legal positions expressed in a number of previous decisions /in particular, DCC-1127, DCC-1190 and DCC-1222/ on the rights to a fair trial and access to court, stated that: “(...) No peculiarity or procedure can hinder or prevent the possibility of effective execution of the right to appeal to court, render meaningless the right to judicial protection guaranteed by the RA Constitution, or be an obstacle to its execution.” It was also emphasized that “...No procedural peculiarity can be interpreted as a justification for restricting the right to access to court guaranteed by the RA Constitution (...).”

We view these regulations as a good benchmark for legislative changes aimed at properly examining insult and defamation disputes.

**Suren Papikyan v. Media Plus Ltd.**

 ***(Court Case No.*** [***ED/27170/02/21***](http://datalex.am/?app=AppCaseSearch&case_id=45880421204169119)***)***

**1․ Procedural Background of the Case**

On June 17, 2021, former RA Minister of Territorial Administration and Infrastructure Suren Papikyan (now RA Defense Minister) filed a lawsuit with the Court of General Jurisdiction of Yerevan against *Media Plus Ltd.*, demanding to oblige the latter to publicly refute factual data considered defamatory and pay the court costs. The lawsuit was caused by the article “The new millionaires of Armenia: did Papikyan become a dollar millionaire with ASPHALT in 3 years?” published on June 11, 2021 on *Yerevan.today* news website, owned by the defendant. The lawsuit was accepted for proceedings on June 28, 2021, 4 preliminary court hearings and one trial were held on October 7, November 4, December 23, 2021, and March 16 and June 29, 2022, respectively.

On July 21, 2022, the court ruled to partially uphold the claim, obliging the defendant to publicly refute the information considered defamatory and compensate the court costs.

The judicial act was not appealed and entered into force.

**2.  Defamatory Nature of Information**

The plaintiff told the court that the article contained untrue information about him, which tarnished and demeaned his honor and dignity. In particular, the following expressions were presented: “Papikyan became a dollar millionaire with ASPHALT in 3 years. It turns out that this government paved the roads not for the people to drive on good roads, but for Suren Papikyan and others to make money. In fact, it turns out that Papikyan Suren already became a dollar millionaire in 2020.”

It is stated in the claim that the defendant failed to take any measures to verify the authenticity of the publicly presented data, acted in bad faith with the direct intention of tarnishing the plaintiff's honor and dignity. According to the plaintiff, this is also evidenced by the media's subsequent actions of continuously publishing different pieces about the same person, which again contained conclusions based on lies.

The defendant objected to the claim, noting that the author of the article was Aharon Hambardzumyan, and the media was only the publisher and bore no responsibility. Moreover, the piece was publicly circulated information based on certain factual data, previous findings, as well as relevant RA laws and Government decrees, which were not in any way challenged by the plaintiff. And the final part of the piece included the author's value judgments and analyses based on the aforementioned factual data. According to the defendant, the expressions were of public interest, as they referred to political and legal topics, a public figure and his activities, and they lacked any intention to tarnish Suren Papikyan's name and good reputation.

*Media Plus Ltd.* believed that the lawsuit filed in relation to the publication in question pursued a hidden goal of restricting the freedom of speech and “silencing” the media. The defendant also told the court that the plaintiff had not approached the editorial office with a demand to refute or remove the allegedly defamatory publications, but instead went straight to court, avoiding the possibility of resolving the dispute in an out-of-court procedure.

By highlighting the key facts of the case, the court first considered it indisputable that the publication in question referred to Suren Papikyan. Afterwards, based on Article 62 (1) of the Civil Procedure Code, the court placed on him the burden of proof to establish that the given publication contained non-abstract, clear-cut information about his particular action or inaction.

As a result, the court stated that the information on a specific fact published by the media was not abstract or hypothetical, despite the defendant’s argument that the author's remarks were value judgments.

Another important factor was the authenticity of the published factual data, regarding which the court noted that the defendant failed to provide evidence that the plaintiff had become a dollar millionaire, and that this had happened as a result of the increase in the price of technical control services. The court confirmed the fact that the disputed expressions were defamatory, since the published information referred to the illegal enrichment of a public official, and this could not but tarnish the honor and dignity of the person concerned.

As for the defendant's argument that the author of the publication was Aharon Hambardzumyan, and the website merely provided him a platform, the court found that mentioning the name and surname alone was not sufficient to identify a person, hence in this case, the media was responsible for defamation.

Referring to the other two claims of the defendant, i.e., the disputed piece pursued public interest, and the media had no intention to defame, the court concluded that the first one was not substantiated, and the intention was to a certain extent proven as there was no evidence of lack of intention in the case. Thus, the judicial act could be considered reasoned, as all the key issues had been addressed.

**3․ Attorney’s Fee**

Based on the fact that the case was heard through general proceedings, namely, by holding court hearings, the attorney's services included drafting and submitting the lawsuit, attending the court hearings, during which the active defense of the client's interests was ensured, evidence was collected and presented, and, added to that, the process took approximately a year, the court decided that 200 thousand AMD was a reasonable remuneration for an attorney. The defendant was ordered to pay this amount.

It is worth noting that although the amount set for the lawyer's reasonable remuneration was justified in the ruling, the court was not guided by the average price tag adopted by the Council of the Chamber of Advocates.

**4. Conclusion**

Article 1087.1 of the RA Civil Code reads that “a person is exempt from liability for insult or defamation, if the factual data expressed or communicated constitute the verbatim or good-faith reproduction of information disseminated by a media agency, as well as of information contained in another person’s public speech, official documents, other mass media or work of authorship, and if in the course of dissemination a reference has been made to the source (author) of information.”

During the trial, the defendant, in fact, attempted to use the mentioned norm, stating that the author of the piece published by the media was Aharon Hambardzumyan. However, there was considerable amount of evidence in the court case, including on the fact that neither the editorial office nor the law enforcement bodies identified Aharon Hambardzumyan as an author within the frames of the criminal case. The case was initiated when plaintiff Suren Papikyan reported publication in question to the law enforcement agencies, requesting an investigation into the mentioned facts.

It is noteworthy that the defendant, in fact, did not refuse to disclose the source of information, but rather claimed to have no knowledge of who Aharon Hambardzumyan was. That circumstance was also corroborated by the testimony of the media editor-in-chief Sevak Hakobyan, both during the preliminary investigation and in court. Thus, the court rightly applied Paragraph 6 of Article 1087.1 of the Civil Code and determined that there were no legal grounds for exemption from liability for defamation in this case.

The judicial act refers to the fact that even after the controversial publication, other pieces about Suren Papikyan were published, portraying him in a negative light. This fact was crucial in verifying the circumstance of intent and served as grounds for considering the media's intentions as proven.

The final part of the ruling stipulated that the refutation text should also include the phrase “... they are not true.” While through an analysis of the court case, we were able to find out that this exact phrase was not included in the plaintiff's original claim. This allows us to conclude that the court independently added this phrase to the refutation text, and if so, a question arises why the court did not justify this decision.

The study of the facts in the case makes it clear that Suren Papikyan did not approach the media with a demand for refutation prior to filing the lawsuit, i.e., he did not attempt to resolve the issue out of court. The media, in turn, did not verify the accuracy of their information with Suren Papikyan before publishing the article. These circumstances are crucial, as on the one hand, fact-checking would have improved the quality and reliability of the piece, and the publication would not have caused a legal dispute or, if it did, it would have been much easier to protect the rights of the media. On the other hand, it is vital that in the event of information disputes the protection of rights first of all be implemented outside of court, since it is a much faster and less expensive process compared to a legal proceeding. This approach can also help alleviate the burden on the courts, which is another crucial issue for our country.

**Alen Simonyan v. Anna Gevorgyan
*(Court Case No. ED/14591/02/20)***

**1․ Procedural Background of the Case**

On May 19, 2020, Vice President of the National Assembly (now President) Alen Simonyan filed a lawsuit with the Court of General Jurisdiction of Yerevan against Anna Gevorgyan, editor-in-chief of *Haykakan Zham* news website, seeking compensation for damages. The lawsuit was caused by the articles entitled “Did he pay for silence?” and “Alen as the patron of the Republicans” published on the website on April 20, 2020 and April 22, 2020, respectively. The lawsuit was accepted for proceedings on May 26, 2020, two sessions for the preparation of the case and one trial session were held, on November 27, 2020, March 29 and June 8, 2021, respectively. Due to the termination of the judge’s powers, the case was transferred to another judge of the same court who accepted the case for proceedings on June 22, 2021 and scheduled four preparatory sessions and one trial on October 26, 2021, February 7, April 4, May 31 and July 4, 2022, respectively. According to the judgment of July 25, 2022, the claim was partially upheld: the court obliged the defendant to publish a refutation and pay court costs. The judicial act was not appealed.

**2.  Defamatory Nature of Information**

One of the articles reported the following: “The other day, in a restaurant in Shengavit community of Yerevan, according to our reliable informant, Alen Simonyan, the son-in-law of *Hraparak* newspaper owner Armineh Ohanyan, due to alcohol abuse, staged a brawl, swore, smashed the table and dishes and swaggered that he was invincible, demonstrating to those present that he was responsible for shaping the agenda in the country. The revelry ended on a sour note. According to our informant, the next day, upon realizing the fallout from his actions and wary of Nikol, Alen Simonyan took a solid amount of money and gave it to the restaurant owner, in exchange for his silence.” Added to that, “it has been almost a month since rumors started circulating in Argavand community of Ararat Marz that “My Step” deputy Alen Simonyan has a close relationship with Samvel Naribekyan, RPA member, former head of the village, and his son. It's surprising, that Alen Simonyan harshly criticizes the Republicans on the one hand, and parties with them on the other hand, isn’t it? He reportedly helped Samvel's son secure a job with him. According to our sources, a month ago, the deputy participated in the joyful and lavish opening of Naribekyan's son's store, and in exchange, the Naribekyan family equipped Alen's apartment with expensive furniture.”

The plaintiff claimed that the specific actions attributed to him were untrue and tarnished his honor, dignity and business reputation.

The defendant in this case, Anna Gevorgyan did not submit a response to the lawsuit, and did not attend the court hearings either, in spite of being properly notified about the time and venue.

The court first reviewed the April 22, 2020 publication, rightly stating that it contained information on the relationship between Alen Simonyan, Samvel Naribekyan and his son, which could not be defamatory in this context.

As for the expression “in exchange, the Naribekyan family equipped Alen's apartment with expensive furniture” of the same article, in the court’s view, the author of the article attributed this circumstance to the possible close ties between Alen Simonyan and the Naribekyans, and even if it was not true, it could not be defamatory.

After reviewing the April 20, 2020 piece, the court found that the author failed to present any factual evidence regarding the committed acts, hence the stories about the plaintiff could not be considered value judgments. While according to the court, plaintiff Alen Simonyan was accused of engaging in obscene, morally repugnant, illegal behavior, moreover, the language used in the piece itself (staged a brawl, swaggered, etc.) demonstrated that the article was defamatory in nature.

The court also paid attention to two factors that are commonly overlooked: firstly, that there was no information about direct damage as a result of the actual data published, secondly, the plaintiff did not request a refutation from the media prior to going to court. These observations are particularly important in terms of encouraging out-of-court settlement of information disputes.

**3. Amount of Compensation**

Plaintiff Alen Simonyan requested the court to confiscate 2 million AMD from the defendant in his favor, which was rightfully rejected on the following grounds. First, the fact that the defendant carries out media activities was considered as a crucial starting point, and there was no information in the case on the defendant’s property status. Additionally, the court acknowledged that imposing a pecuniary liability measure might have a serious impact on the regular operation of the media managed by Anna Gevorgyan.

**4. Attorney’s Fee**

Regarding the attorney’s remuneration, the court acknowledged that according to the contract signed between *Davtyan and Partners* law firm and Alen Simonyan, the value of the services provided was 800 thousand AMD.

In this regard, the court referred to the civil case ruling No. EKD/1587/02/10 of the Court of Cassation, which outlines a set of factors to consider when determining the reasonableness of the attorney's remuneration, including the amount of work the attorney performed in the case, the complexity of the case, the typical amount paid for similar legal services, as well as the ratio between the amount to be confiscated by the judicial act and the requested attorney's fee.

Based on the above, the court decided that 200 thousand AMD was a reasonable remuneration for the attorney in this civil case. However, the court did not specify how this amount was arrived at.

**4. Measure to Secure the Claim**

Alen Simonyan also submitted a motion to the court to secure the claim, demanding to put a lien on the defendant's property and funds. The court rejected the motion, against which the plaintiff submitted a complaint to the Court of Appeal, which was also rejected due to the motion containing proper reasoning and being based on assumptions.

In fact, Alen Simonyan’s demand to secure the claim indeed lacked specificity, as from the study of the court case it is not clear why the plaintiff believed that the judicial act could not be executed without putting a lien on the defendant's property and funds.

**5․ Conclusion**

The court drew conflicting conclusions in its ruling: firstly, the court noted that “while emphasizing the fact that the plaintiff is the Vice President of the RA National Assembly... the court considers that from the standpoint of public perceptions, the actions attributed to the plaintiff are incompatible with his position, and if committed, on the one hand, there follows legal and/or disciplinary liability, and on the other hand - public reprimand and criticism.” Further, the court stated that the publication in question did not refer to Alen Simonyan's political or legislative activities, creating a clear inconsistency between these two positions.

In the legal analyses of the judgment, it was noted that the courts should pay great attention to the clarifications, approaches, and attitudes of a person who publicly presented factual data in order to find out whether the person had any intention to defame someone or whether he/she objectively expressed his value judgments, acting in good faith. However, these issues were not discussed in the judgment’s reasoning section.

As already mentioned, the court rightly rejected the plaintiff’s motion to put a lien on the property and funds of the defendant. The failure to highlight specific grounds in the motion indicates that it was filed and subsequently defended in the Civil Court of Appeal with the mere intent to impose certain restrictions on the defendant without any factual or legal need.

A study of the reasoning part of the judgment clearly shows that although the court in general acknowledged the fact that the expressions in question were defamatory, it failed to delve into their content, not drawing any conclusions about it. While such an analysis could further justify the defamatory nature of the expressions. In particular, a person “staging a brawl, swearing, smashing the table and dishes” in any facility under the influence of alcohol, as well as other actions described in the piece, may constitute a crime or misdemeanor. The big problem is how accurate this information is. At least, neither in the piece nor in court, the media did not refer to any concrete source or evidence that would substantiate the authenticity of the data. And the use of a vague reference such as “according to our reliable informant” does not inspire confidence. Such a “trick” is often used by the media, which, lacking any source of information to be published, want to create the impression of factual reporting.

The study of this case allows us to also conclude that the right to examine the lawsuit within a reasonable time was not ensured. In particular, the case was accepted for proceedings on May 26, 2020, while the verdict was not issued until July 25, 2022, resulting in an almost two-year examination. In spite of the change of the judge in that period, we believe it is not reasonable to examine the defamation court case for two years in the first instance alone.

**Hraparak Daily Ltd. v. Media Initiatives Center NGO**

***(Court Case No.*** [***ED/31882/02/21***](http://datalex.am/?app=AppCaseSearch&case_id=45880421204182199)***)***

**1․ Procedural Background of the Case**

On July 19, 2021, *Hraparak Daily Ltd.* filed a lawsuit with the Court of General Jurisdiction of Yerevan against Media Initiatives Center NGO, demanding to oblige the latter to publicly refute the information considered defamatory and pay 2 million AMD as compensation. The lawsuit was caused by the pieces “Fake news: Aliyev says he is ready to hand over two sheep for Pashinyan's son” and “Conspiracy theory: the US Central Intelligence Agency controls the post-revolutionary government of Armenia,” published on *factcheck.ge* website on June 16, 2021 and June 20, 2021, respectively. The pieces were prepared based on the data of the monitoring carried out by *Media Initiatives Center*. In the course of that study, among other pieces containing disinformation or fake news, two articles from *Hraparak.am* website, owned by *Hraparak Daily Ltd.*, were singled out. As it can be seen from the above headlines, one piece was qualified as "fake news,” and the other as “conspiracy theory.” The lawsuit was accepted for proceedings on July 28, 2 preliminary court sessions and 1 trial session were held on December 13, 2021, April 13 and June 21, 2022, respectively.

On July 6, 2022, the court ruled to partially uphold the claim, obliging the defendant to publish a refutation on *factcheck.ge* and pay the plaintiff 500,000 AMD as compensation.

On August 5, the defendant filed an appeal against the verdict, which was accepted for proceedings on November 4. On December 8, 2022, the upper court partially upheld the complaint, overturned the verdict of the court of first instance, sending the case for an entirely new examination.

**2.  Defamatory Nature of Information**

According to the plaintiff, it was the defendant to have published the articles on *factcheck.ge*, and the “fake news” tag distorted the facts and mislead the reader, tarnishing their name and business reputation earned over the years.

The defendant objected to the claim, arguing that the publication was on a website not owned by them. *Factcheck.ge* belongs to *Georgia’s Reforms Associates*, which, together with *Media Initiatives Center*, implements a project of public significance within the framework of the fight against disinformation on Facebook. According to the defendant, the expressions were value judgments and there was no intention to defame the plaintiff.

By its December 13, 2021 ruling, the court placed the entire burden of proving the facts on the plaintiff. In particular, the latter was to prove that the publications on *factcheck.ge* website had been made by *Media Initiatives Center*, and that they were addressed to them. Also, the plaintiff was to point out the disputed expressions and substantiate why they were considered defamation.

It was acknowledged that “the defendant made the publications on *facebook.ge* website of Facebook social media, presening factual data.” The court found that the phrase “Judgment: fake news” addressed to the plaintiff was defamation․ At the same time, the court put into circulation the term “lie,” classifying it as an insult, despite the fact that the plaintiff had not made any claim to that effect.

In particular, according to the court, false accusations of disseminating a “lie”, created at least a negative perception of the plaintiff in the readers’ mind. The court also noted that the defendant had failed to prove that the factual data were true. However, the court did not impose any burden of proof on the defendant.

As a result, the court ruled that the defendant was to publish the following refutation: “Dear readers, on 16.06.2021 and 20.06.2021 we published “judgments” on this website, which referred to *Hraparak Daily Ltd.* (submit links to both pieces). Hereby, we would like to draw the attention of our readers to the fact that the information previously published by us regarding *Hraparak* daily was not true. This is a result of our omission and misinterpretation, for which we apologize to the media. We declare that *Hraparak Daily* editorial office is a bona fide media, which carries out its professional activities with strict adherence to proper legal and ethical norms. We deem it necessary to state that the media did not publish any false information, distorting or misleading the reader in any way. The media simply presented the position of our fellow citizens, refraining from voicing its own judgments about it, which is a completely legitimate and normal phenomenon. Based on this, we once again apologize to *Hraparak* daily, meanwhile committing ourselves to henceforth be consistent and not to publish any inaccurate information, which could tarnish the name and business reputation of the media.”

Having examined the appeal against the ruling, the Court of Appeal found that in this case the procedural rules of determining the subject of proof and distributing the burden of proof had been violated by the Court of General Jurisdiction. In particular, the court had not initially placed on the defendant the burden to prove any fact, hence it could not be concluded in the ruling that the defendant had not fulfilled the duty. As a result, the subject of proof determined by the court was incomplete, did not derive from the claims/objections of either the plaintiff or the defendant and did not fully include the necessary factual basis applicable to this case. This resulted in a mistrial, and a new examination was required.

The appellate court also found that the lower court had failed to consider the evidence presented by the defendant, and as a result, had drawn a wrong conclusion with regard to one of the key arguments that the expressions in question were value judgments. Moreover, no evidence in the case proved that the publications had been made by a media or website belonging to the defendant. Thus, these facts were sufficient to carry out a new examination. And the Court of Appeal did not see the need to address the remaining grounds of the complaint.

**3.  Amount of Compensation**

Regarding the issue of compensation for damages, the court of first instance acknowledged that the defendant had not presented any evidence about the property situation. This allowed to conclude that the plaintiff’s pecuniary claim was not fully justified and was to be partially upheld: 500,000 AMD was to be confiscated from *Media Initiatives Center NGO* in favor of *Hraparak Daily*.

In the course of the current monitoring, we recorded a number of cases when pecuniary compensation was set without legal grounds, and referring to the Court of Cassation December 2, 2016 precedent Ruling No. EKD/1320/02/14, we noted that pecuniary compensation may only be awarded if it is decided that non-pecuniary compensation is not sufficient to restore the damage to honor, dignity and business reputation and the violated right.

In this case, the court did not indicate either why it considered that non-pecuniary compensation was not a sufficient measure.

**4. Conclusion**

On October 25, 2022, a number of journalistic organizations issued a statement where they expressed their concern about the July 6, 2022 ruling, expecting that it would be re-examined and brought to conformity with the interests of freedom of speech, quality journalism and the right of the public to receive accurate information.

Taking into consideration the fact that the judgment of the Court of General Jurisdiction was fully overturned by the decision of the Court of Appeal, let us refer only to the act issued by the appellate court. The fact that that the appellate court did not discuss an important issue could be considered an omission on the part of the latter: the judgment of the lower court does not contain a sufficient analysis of the expressions in question and reasoning of the conclusions drawn. In particular, the publications that triggered the lawsuit were not analyzed in order to assess whether they presented factual data or whether the disputed expressions were evaluative in nature.

The Court of Appeal found that there was no evidence that the articles had been published by the defendant, and that fact was not considered sufficient to modify the verdict instead of remanding the case. Whereas, if it is determined that the defendant is not the author of the publications, then it is possible to resolve the dispute within the appellate court.

Another concern is that the refutation claim must comply with the RA Law “On Mass Communication,” according to which a person has the right to request a refutation from the implementer of media activities regarding factual inaccuracies that violate his/her rights, provided the media fails to prove that those facts are true. While in this particular case, the refutation text approved by the court included phrases that have nothing to do with refutation requirements. In particular, the defendant is forced to apologize twice, to ascertain that the plaintiff carries out its professional activities in strict compliance with proper legal and ethical norms, to admit that the articles represent the position of fellow citizens, and also to commit themselves to be consistent and no longer publish inaccurate information that may tarnish the media's name and business reputation.

It is evident from the above that the lower court approved a refutation text, which, apart from being inconsistent with legal regulations, demeans the defendant and praises the plaintiff. And the Court of Appeal failed to address this issue, although the complaint also referred to it.

Neither the court of general jurisdiction nor the appellate court examined the defendant's arguments regarding the operation of fact-checking platforms, the policies of "Facebook" social network, and their public significance.

Furthermore, the Court of Appeal did not address the omission of the lower court, which set a condition for making an apology in the refutation text, while the plaintiff had not filed a claim regarding insult. In doing so, the Court of General Jurisdiction went beyond the boundaries of the claims, which is a gross violation of the law, and the appellate court should have provided an evaluation of this issue.

The Court of General Jurisdiction also committed other violations, which were not addressed by the appellate court, including referring to the term “lie” as an insult, even though the articles did not contain that wording. The ruling also stated that the publications were made on *facebook.ge* website of Facebook social media, which is not true either. This is the result of improper examination of the case.

**Samvel Kharazyan v. Zhoghovurd Newspaper Editorial Office Ltd.
*(Court Case No.*** [***ED/41539/02/21***](http://www.datalex.am/?app=AppCaseSearch&case_id=45880421204203343)***)***

 **1․ Procedural Background of the Case**

On September 16, 2021, healthcare expert Samvel Kharazyan filed a lawsuit with the Court of General Jurisdiction of Yerevan against Zhoghovurd Newspaper Editorial Office Ltd., demanding compensation for the damage caused to his honor and dignity. The lawsuit was caused by the August 10, 2021 article entitled “The government will give positions to the corrupt cadres left from the times of the “formers”: there is a lack of professionals”, published in *Zhoghovurd* daily and on *Armlur.am* website, owned by Zhoghovurd Newspaper Editorial Office Ltd. The lawsuit was accepted for proceedings on October 1, 2021, 3 preliminary court sessions and one court session/trial were held, on December 29, 2021, January 31, February 21 and March 23, 2022, respectively.

On April 13, 2022, the court ruled to partially uphold the claim, obliging the defendant to make a public apology for the insulting expressions made about the plaintiff. The judicial act was not appealed and entered into legal force.

**2.  Defamatory Nature of Information**

In the lawsuit, the plaintiff stated that the following phrases of the above-mentioned article constituted the basis for turning to court: 1. “According to the information we received from the healthcare system, for the position of Deputy Minister of Health the name of a certain Samvel Kharazyan is being circulated, who “under the formers” has for many years worked as head of department at the State Health Agency, notorious for corruption scandals, and what is most noteworthy, he even managed to get arrested with the then SHA head Saro Tsaturyan on the charge of abuse of office (*Zhoghovurd* has touched upon this topic several times); 2. “... The only hope of the revolutionary authorities are the cadres left from the “formers”, however, not the real professionals, but corrupt ones.”

The plaintiff stated that the expressions “he even managed to get arrested with the then SHA head Saro Tsaturyan on the charge of abuse of office; 2. “... the only hope of the revolutionary authorities are the cadres left from the “formers”, however, not the real professionals, but corrupt ones” used in the article, in the circumstances of general formulation and the inclusion of his photo, were perceived as characteristics attributed to him.

The media did not participate in the court sessions and did not submit a response to the lawsuit.

By its January 31, 2022 decision regarding the distribution of the burden of proof, the court established the following: the plaintiff was to prove that: 1. factual data referring to him were presented, that is, what was presented contained specific, clear-cut information about a certain action or inaction, and was not abstract; 2. factual data referring to him were presented publicly; 3. the expressions made referred to him and affected his honor, dignity or business reputation.

The defendant was to prove that: 1. the presented factual data were true; 2. appropriate measures taken prior to the publication enabled the latter to conclude that these factual data could be true; 3. the expressions published within the insult claim were based on a certain factual basis; 4. there was an overriding public interest.

In the reasoning section of the judgment, the court highlighted that the published topic was of public importance, but this alone was not sufficient to exempt the defendant from restrictions. The court came to such a conclusion as the defendant failed to substantiate in any way the authenticity of the published information or the presence of questionable facts.

The court, highlighting that the phrase in the disputed first element was offensive, added that the defendant attributed factual actions to the plaintiff, hence, the defendant was to prove that these facts were true: this, however, was not done. The court noted that these were not value judgments, but references to specific facts. Referring to the next expression of the publication, the court noted: The opinion that “... the only hope of the revolutionary authorities are the cadres left from the “formers” is a value judgment, but in order to express it, the defendant should have referred to or relied on a certain factual basis. The court finds that the expression “corrupt cadre” is also offensive and tarnishes a person's name, dignity and good reputation. According to the court, in the context of other expressions in the text, the quoted expression contained an insult, and no substantiation and evidence on its authenticity was presented to the court.

Based on the above-mentioned reasoning, the court found that the defendant was obliged to make a public apology to the plaintiff in the same manner as the article in question had been published and disseminated. As for providing the signed apology text to the plaintiff, the court found that the public apology was sufficient from the point of view of restoring the plaintiff's rights. As for the removal of the article, according to the court, the RA legislation does not envisage such a restoration of right.

**3.  Attorney’s Fee**

The court, having studied the attorney’s volume of work, the complexity of the case, the sum commonly paid for the provision of legal services in similar cases, the price set by the contract signed between the parties, found that 150 thousand AMD should be confiscated from the defendant in favor of the plaintiff as a reasonable remuneration for the attorney.

According to the court, the cost of legal services commonly paid for similar cases was also used as a basis for determining the attorney's remuneration, however it is not clear whether the court conducted an analysis of the relevant practices or relied on the attorney’s fees of other cases under its consideration.

**4. Conclusion**

In this case, the court rightfully granted only non-pecuniary compensation, which was a public apology to the plaintiff, and, in fact, rejected the claims to provide the text of the apology to the plaintiff and remove the article. The protection of the rights to honor and dignity is determined by legislation, and applying any other restriction beyond its scope may become a disproportionate measure.

Referring to the ruling of the first instance court, we deem it necessary to note that it does not contain sufficient analysis and reasoning regarding the expressions made: in particular, the court failed to address the burden of proof, the presence of evidence by the plaintiff confirming the fact of the expressions being defamatory. Additionally, the court failed to specify the reasoning process with regard to each expression and the conclusions deriving from such reasoning.

Although the court acknowledged that the expressions were offensive, it did not specify the facts or evidence based on which they were considered defamatory.

Examining the content of the disputed expressions, the plaintiff's arguments and the burden of proof distributed by the court, it is worth noting that the expressions pertain mainly to the legal category of defamation, rather than to insult. In particular, the court acknowledged that the expressions were factual data. Moreover, the court noted that the expressions were offensive, without, however, specifying the part that was defamatory.

Thus, we are faced with a situation where there are contradictory legal formulations in the reasoning part of the judicial act, which do not allow to understand the logical course of the court's rulings. In the verdict, on the one hand, it was mentioned that there were factual data, and on the other hand, that they contained insults. However, presenting factual data is characteristic of defamation, rather than of insult. This is backed by Paragraph 3 of Article 1087.1 of the RA Civil Code, according to which defamation is the public communication of such factual data relating to a person, which do not correspond to reality and tarnish the honor, dignity or business reputation thereof.

Based on the above, we believe that the mentioned facts would have been sufficient for the Civil Court of Appeal to re-examine the judicial act, however, the act was not appealed and entered into force.

**Sasun Khachatryan v. Zhoghovurd Newspaper Editorial Office Ltd.
*(Court Case No.*** [***ED/42823/02/21***](http://datalex.am/?app=AppCaseSearch&case_id=45880421204205270)***)***

**1․ Procedural Background of the Case**

On September 24, 2021, Sasun Khachatryan, former head of the Special Investigation Service (currently the chairman of the Anti-Corruption Committee) filed a lawsuit with the Court of General Jurisdiction of Yerevan against *Zhoghovurd Newspaper Editorial Office Ltd.*, demanding to publicly refute the defamatory information and to compensate for the damage caused to his honor and dignity. The lawsuit was caused by the September 11, 2021 article entitled “Sasun Khachatryan has an apartment in Moscow: he signed his indictment” published on *Zhoghovurd* daily and *Armlur.am* website, owned by the defendant. The lawsuit was accepted for proceedings on October 1, 2021, three preliminary court sessions and three court sessions/trials were held on December 15, 2021, January 21, March 11, April 25, June 26 and July 8, 2022, respectively.

On July 20, 2022, the court ruled to partially uphold the claim, obliging the defendant to publicly refute the information considered defamatory and to pay the plaintiff 200,000 AMD as pecuniary compensation, as well as 8,000 AMD as a state duty.

The defendant appealed the judicial act with the Court of Appeal.

**2. Defamatory Nature of Information**

Sasun Khachatryan told the court that the disputed article was defamation, as untrue information had been publicly presented about him, tarnishing his good reputation and dignity.

Objecting to the lawsuit, the defendant, through a rather unique tactics, demanded that it be proved in court that the publication referred to the plaintiff, as well as that *Armlur.am* website and *Zhoghovurd Newspaper Editorial Office Ltd.* legal entity actually existed. The defendant argued that the screenshot (electronic copy) of the publication in question submitted by the plaintiff as evidence was unacceptable and irrelevant, and requested that the lawsuit be rejected. Referring to the amount of pecuniary compensation, the defendant stated that it was not substantiated whether it was directly proportional to the extent of mental and other distress suffered as a result of the information.

By its January 21, 2022 decision, the court obliged the plaintiff to prove that factual data referring to him had been presented, which contained specific, clear-cut information about a certain action or inaction, they were not abstract, and that they had been presented publicly, tarnishing his honor and dignity. While defendant *Zhoghovurd Newspaper Editorial Office Ltd.* was obliged to prove that the presented data were true.

The court found that the existence of the defendant's Facebook page, *Zhoghovurd Newspaper Editorial Office Ltd., Armlur.am* website and the latter's belonging to the Ltd. were widely recognized facts.

Regarding the part of the article, which read “The Anti-Corruption Committee president candidate Sasun Khachatryan was bombarded with questions yesterday in the government to be elected president in the future. One could call the performance a comedy: it turned out that the head of the SIS did not serve in the Armenian army and had no experience, and during the war, he was busy initiating criminal cases against different persons and investigating, he managed to acquire military expertise in Nubarashen and participate in the war in the military posts with SIS investigators, some of whom got wounded. It is a secret in which part,” the court noted that these expressions did not damage the honor and dignity of the plaintiff, as they were not factual data.

The court found certain phrases in the article to be abstract, not containing specific, clear-cut information about the action or inaction by the plaintiff. For example: “It also turned out that Sasun Khachatryan does not have a car: in the last five years, he has been using the car of his wife's brother, which, according to Khachatryan, he rarely drives,” “It should be noted that in the SIS led by Khachatryan, charges are brought against people in connection with a number of crimes on grounds that certain property actually belongs to those accused, but is registered in the name of a son-in-law or other relative. Now, when Sasun Khachatryan drives his brother-in-law’s car, why wouldn’t it mean that the in fact the car belongs to him, but is registered in the brother-in-law’s name?”, “Added to that, it is rumored that there are lots of apartments, cars and other real estate registered in the names of Khachatryan's relatives, but yesterday they did not inquire whether that property actually belongs to Khachatryan, albeit in other’s name. Maybe they will be disclosed under the next government.”

The court then singled out specific expressions from the disputed article that were factual data, namely: “...Talking about the house he owns, he said: “I bought the apartment with a mortgage loan, it is mentioned in the income statement. I bought the apartment from *YSU Graduates NGO* within the framework of the state program, the difference in the apartment price from the market price is not too big.” Let's underline that in many cases, the SIS accuses various officials of having bought apartments at a price below market rate, arguing that they used their official position. It turns out that Sasun Khachatryan also used the position and bought an apartment cheaper than the market price.”

“It is also noteworthy that *Zhoghovurd* daily has learned that Sasun Khachatryan has an apartment in Moscow, but we do not know under whose name it is legally registered after being bought or received as a gift. We applied to the SIS, and received the following reply: “If you are able to provide solid evidence that Sasun Khachatryan has property in any other place, including in Moscow, other than what he has declared, then he is ready to donate it to the editorial office of *Zhoghovurd* daily.”

“So, we are presenting the photo of the building where he actually owns an apartment: the address is Mosfilmovsky 88, however, we are not publishing the apartment number and the name of the constructor yet. It remains for Khachatryan to fulfill his promise: looking forward to the keys. And finally, a question to Sasun Khachatryan, who claims to disclose the corrupt deals of all officials: “Your past and present are closely related to corruption: what else is that if not corruption?”

Having viewed the above-mentioned expressions in the context of the entire article, having also taken into account the article headline, the court found that the piece had presented factual data about the plaintiff. It was substantiated by the fact that the presented expressions contained specific, clear-cut information about the alleged concealment of the information that the plaintiff, being an official, was supposed to have declared. This act was mentioned as a type of crime in Article 314:3 of the RA Criminal Code, which was in force at the time of the publication of the information. Moreover, the mentioned data were not abstract, as the article clearly, without questioning stated that the plaintiff, for example, had an apartment at Mosfilmovsky Street 88, which he had not declared.

It was also noted that the factual data presented in the above two paragraphs indeed tarnished the honor and dignity of the plaintiff, since upon reading the mentioned expressions, one might assume that Sasun Khachatryan abused his official position, as head of the RA Special Investigation Service was hiding information subject to declaration, aspiring to the post of the chairman of the RA Anti-Corruption Committee.

According to the court, defaming the person at that moment holding the office of the chairman of the Special Investigation Service and aspiring to the post of the Anti-Corruption Committee chairman by accusing him of committing a corruption crime means discrediting both the Special Investigation Service and the Anti-Corruption Committee as law enforcement agencies, thereby demeaning both the merits of the plaintiff before the public, and the reputation of the state structure led by him. Nevertheless, it was not mentioned on what evidence or facts such a claim was made.

The ruling acknowledged that the defendant failed to prove the authenticity of the expressions made in public, therefore, according to the court, they were false, groundless and inaccurate. Furthermore, the defendant was supposed to be aware that the information was defamatory as they did not provide the source.

**3․ Amount of Compensation**

The plaintiff demanded 2 million AMD to be confiscated in his favor from *Zhoghovurd Newspaper Editorial Office Ltd.* as pecuniary compensation for defamation.

Referring to the liability envisaged by the judicial procedure in the case of defamation, the court noted that in this case it was not possible to restore the damage caused to the plaintiff's honor and dignity by setting non-pecuniary compensation, thus, both measures envisaged by Paragraph 8 of Article 1087.1 of the RA Civil Code should be applied, i.e., refutation of defamatory factual data and obligation to pay compensation. The court drew this conclusion, taking into account the facts that the defendant defamed the plaintiff accusing him of committing corruption crimes, which, according to the court, also discredited the Special Investigation Service and the Anti-Corruption Committee, and in addition, the defamation was carried out by a vast outreach media, which has around 321,000 followers. The court found that it was necessary to set a pecuniary compensation sum that would be proportional to the damage caused to the plaintiff's honor and dignity, and at the same time, would not impose unnecessary financial obligations on the defendant engaged in media activities and would not disrupt the latter's regular operation. Accordingly, the court set the amount of 200 thousand AMD.

The court did not substantiate how it had determined the proportionality between the damage caused to the plaintiff's honor and dignity and the compensation set, in other words, the appropriateness, necessity and moderation of the application of this pecuniary measure.

**4. Conclusion**

In its opinion No. 75, the Information Disputes Council addressed the court case of *Sasun Khachatryan v. Zhoghovurd Newspaper Editorial Office Ltd.* The Council noted that it was concerning that the plaintiff did not use out-of-court measures to settle the dispute: he did not demand a refutation or response from the media and, as a high-ranking official accountable to the public, provided no explanation or made no statement for his conduct.The Council also argued that the author of the publication did not take sufficient measures to verify the facts and present the piece in a balanced manner and in good faith. This is especially important given that the journalist raised questions about the incompatibility of the position and even the commission of criminal acts, which could lead to serious consequences for the official. And in this case, it is essential to use accurate information.

The study of the final part of the judicial act shows that the court granted both of compensation measures: refutation and pecuniary compensation in the amount of 200 thousand AMD. Moreover, when setting the amount, two circumstances were taken as a basis: firstly, defamation discredits both the plaintiff and the state institution led by him, and secondly, the defamation was carried out by a vast outreach media, which has around 321,000 followers.

First of all, the court's argument that defaming a person discredits immediately the state body he leads is controversial: the court does not have clear evidence about that. But even if there is such evidence, it cannot be considered legitimate, as no third party is involved in the proceedings of the given case, hence, the protection of his/her interests is beyond the boundaries of the court's review. Thus, invoking such a ground by the court cannot be considered legitimate.

Referring to the argument that the non-pecuniary compensation was not sufficient for the restoration of the violated right, since the defamation was committed by a media with vast outreach, we state that it is not well-reasoned, for the overwhelming majority of media running pages on social networks have large audience. In other words, in the court’s logic, any defamation and insult legal case against media must also be concluded with pecuniary compensation, which is unacceptable.

It is noteworthy that the defendant, objecting to the lawsuit, requested to recognize the screenshot (electronic copy of the article) submitted by the plaintiff as inadmissible or irrelevant evidence. The court did not properly address this argument in the judgment and did not reach an evidence-based conclusion regarding the defendant's request, despite being required to do so.

**Gevorg Harutyunyan v. Shark Ltd. (Founder of 5th Channel TV Company) and Larisa Harutyunyan
 *(Court Case No.*** [***ED/51484/02/21***](http://datalex.am/?app=AppCaseSearch&case_id=45880421204234794)***)***

**1․ Procedural Background of the Case**

On November 11, 2021, Gevorg Harutyunyan, father of soldier Harutyun Harutyunyan, who died in the 44-Day War, filed a lawsuit with the Court of General Jurisdiction of Yerevan against *Shark Ltd.* and citizen Larisa Harutyunyan, demanding to refute the information tarnishing the honor and dignity, make a public apology and pay 6 million AMD for defamation and 3 million AMD for insult. The lawsuit was caused by the October 16, 2021 video report entitled “She is making me mourn: the neighbor does not allow to install a khachkar dedicated to the heroes” published in the “News” section of *5tv.am* website, owned by *Shark Ltd.* According to the plaintiff, Larisa Harutyunyan made defamatory and offensive remarks against him. The lawsuit was accepted for proceedings on November 24, 2021. 3 preliminary court sessions and one trial were held on February 22, April 26, June 22 and October 17, 2022, respectively.

By a judgment issued on October 31, 2022, the court rejected the claim and ruled to confiscate 290,000 AMD from the plaintiff in favor of the state budget as a state duty for the claim. On December 1, 2022, the plaintiff filed an appeal against the verdict.

**2.** **Defamatory Nature of Information**

The plaintiff mentioned that the following defamatory expressions were revealed through the study of the video: “He is making me mourn (...),” “but they benefit from everything, they benefit from every earthly pleasure (...),” “He attacked me with a knife...,” “… He went to bring petrol to splash on me,” “(...) the lady says that Gevorg Harutyunyan damaged her sewer pipes (...).”

According to the plaintiff, there was intent in Larisa Harutyunyan's actions, which aimed to damage and demean his honor and dignity through insult and defamation. This was also evidenced by the fact that the video piece was aired on the *5th Channel,* was also made available throughout Armenia, as well as posted on *5tv.am* YouTube channel.

Gevorg Harutyunyan also noted that he was a law-abiding citizen, a person who enjoyed the respect of the society and those around him, while Larisa Harutyunyan with illegal actions called into question his reputation, ignoring even his severe emotional state, conditioned by the loss of his son.

*Shark Ltd.* did not show up in court, while Larisa Harutyunyan, in her response to the lawsuit, stated that there was no evidence in the case that the remarks referred to the plaintiff. At the same time, she told the court that on October 15, 2021 she had submitted a crime report to the Police, stating that Gevorg Harutyunyan had threatened her.

Larisa Harutyunyan also mentioned that the plaintiff's claim was groundless and was subject to rejection, and that the dispute between them had absolutely nothing to do with the khachkar installed to commemorate the fallen Armenian men.

Regarding the video, the court acknowledged that it was not clear to whom Larisa Harutyunyan’s complaints were addressed, there was no ground to conclude that the defendant's remarks referred to the plaintiff.

As a result, the court found that the defendant had no intention to insult the plaintiff, and the remarks could not be considered offensive. Added to that, it could be seen from the video piece that the journalist herself found out that two of the parents of the victims had been called to the police, from which the court concluded that the defendant had not disclosed personal information about any person. In other words, the defendant did not aim to defame or insult the plaintiff with any of her actions, otherwise she would have mentioned his name herself.

**3. State Duty**

In his lawsuit the plaintiff submitted two non-pecuniary and two pecuniary compensation claims. In addition, he filed a motion to set a privilege and delay the payment of the state duty, which was granted by the court. Taking into account that the claim was rejected, the court ruled that the plaintiff was obliged to repay the unpaid state duty at the time of applying to court, setting the amount at 290 thousand AMD.

Article 9 (1) of the RA Law “On State Duties” stipulates that the state duty for a pecuniary claim should be 2 percent of the claim value, and 4 thousand AMD for each non-pecuniary claim. Thus, the court required the plaintiff to pay a total of 188 thousand AMD (2 percent of 9 million AMD equals 180 thousand AMD, and the state duty for two non-pecuniary claims amounts to 8 thousand AMD). Thus, the court made an erroneous calculation when determining the amount of state duty.

**4.**  **Measure to Secure the Claim**

The plaintiff submitted a motion to secure the claim by imposing a lien on the property of Larisa Harutyunyan in the amount of 9 million AMD. On November 24, 2021, the court ruled to grant the motion, without providing a detailed justification as to how the failure to take such a measure could impede the execution of the judicial act, or cause significant harm to the plaintiff. Meanwhile, the court stated in the act that the person submitting a motion to secure the claim was to provide substantiations.

Whereas, when securing the claim, its necessity must be reasoned in detail. It was not substantiated either why the plaintiff used the maximum amounts of pecuniary compensation set for insult and defamation. At the very least, the court should have stated that, based on the principle of proportionality, the motion to put a lien on a person's property was groundless, especially in the event that neither the claim nor the grounds for submitting such a motion were sufficiently specified in the lawsuit. We deem it necessary to note that the courts must maintain the proportionality when securing claims in cases on insult and defamation, a principle that is lacking in this case.

**5.** **Conclusion**

The analysis of the case allows to conclude that the court overall issued a legitimate, well-reasoned judgment. Nevertheless, there are some conflicting elements that, in our view, need to be addressed.

Thus, defendant Larisa Harutyunyan, in her response to the lawsuit, in fact, admitted the existence of a civil dispute between her and the plaintiff, as well as in her crime report against the plaintiff, she referred to certain remarks that had been used by her in the video. She later claimed in court that her remarks were not addressed to the plaintiff. Hence, we believe that the court should have addressed these contradictory arguments and assessed them from the point of view of credibility.

Noteworthy are also the arguments mentioned in the claim. In particular, the plaintiff stated that the remarks contained defamation and insult, but did not specify why he believed that the defamation threshold had been crossed. In other words, each remark should have been examined, and it should have been mentioned why it could be considered defamatory.

In a Constitutional Court decision it is enshrined that the statement shall accuse the person of a crime or a misdemeanor, that is, the act attributed to a person shall be prohibited by the codes on criminal, customs or administrative offenses. And according to a decision of the Court of Cassation, “The information, containing data on violations of enforced legislation, manifestations of unfair behavior, violations of ethical requirements in private, public or political life by a natural or legal person and other information, not supported by evidence (not real), should be considered disgracing and demeaning a person's honor, dignity or business reputation.”

The study of both this and other similar court cases allows us to conclude that in insult and defamation cases the plaintiffs, turning to court, tend to merely point out the expressions, which they believe defame their honor, dignity or business reputation. While they should present a legal argument and factual substantiation to support their claim.

1. **The Project was implemented with the support of the Government of the Netherlands. The opinions and assessments contained in the Report belong to the CPFE and might not be consistent with the opinions and dispositions of the Government of the Netherlands.** [↑](#footnote-ref-1)
2. The previous studies are available here: [Monitoring 2019-2020](https://khosq.am/en/monitorings/court-cases-against-media-outlets-and-journalists-in-2019-2020-media-monitoring-report/) and [Monitoring 2010-2013](https://khosq.am/en/monitorings/monitoring-of-libel-and-insult-cases-against-the-media/) [↑](#footnote-ref-2)
3. December 17, 2004 judgment of the European Court of Human Rights on *Pedersen and Baadsgaard v. Denmark case, paragraph 76:* <https://hudoc.echr.coe.int/eng?i=001-67818> [↑](#footnote-ref-3)
4. The RA Constitutional Court November 15, 2011 Decision No. DCC-997 is available here: <https://www.arlis.am/documentview.aspx?docid=72335> [↑](#footnote-ref-4)
5. For example, Lilit Martirosyan v. *Irates.am* website founder *Tesaket Ltd.* (See Court Case No ED/14742/02/19) [↑](#footnote-ref-5)
6. The European Court of Human Rights 06.09.2005 Judgment on the case of *Salov v. Ukraine*, Paragraph 89, the European Court of Human Rights 21.01.1999 Judgment on the case of *Garcia Ruiz v. Spain*, Paragraph 26: available at <https://hudoc.echr.coe.int/eng?i=001-70096> [↑](#footnote-ref-6)
7. The Constitutional Court Decision is available here: <https://www.arlis.am/documentview.aspx?docID=33816> [↑](#footnote-ref-7)
8. The pricelist is available here: <https://advocates.am/images/library/gnacucak_29.07.2021.pdf> [↑](#footnote-ref-8)
9. The provision stipulates the following: “In order to determine a reasonable remuneration for the work of an advocate, including the compensation of costs by judicial bodies, the Board of the Chamber of Advocates can set an average pricelist of fees. This pricelist cannot be used for other purposes.” [↑](#footnote-ref-9)