

## **RESPONSE BY THE REPUBLIC OF ARMENIA**

### **Draft list of questions for CDMSI members on the implementation of Council of Europe standards related to safety of journalists and other media actors**

#### **1. Which are the existing mechanisms to ensure investigation and prosecution of attacks against journalists and other media actors?**

While there is no specifically designed mechanism that will ensure investigation and prosecution of attacks against journalists and other media actors, the general rules for prosecuting the crimes defined in the Criminal Code of the Republic of Armenia are applicable. According to the Criminal Procedure Code of the Republic of Armenia, the criminal prosecution is performed publicly or privately depending on the nature and gravity of the crime.

The only article ensuring special protection for the journalists is the Article 164 of the Criminal Code of the Republic of Armenia. It is aimed at punishing any hindrance to the legal professional activities of journalists or forcing the journalist to disseminate or not to disseminate information. These offences committed by use of force which constitutes danger for the journalist's or his close relatives' life or health are punished with imprisonment of 3 to 7 years. The criminal prosecution of the offence of hindering the journalist's legal professional activities shall be performed publicly (*ex officio*).

#### **2. Are there any non-judicial mechanisms, such as parliamentary or other public inquiries, ombudspersons, independent commissions, as useful complementary procedures to the domestic judicial remedies guaranteed under the ECHR, specifically dealing with threats and crimes targeting journalists and other media actors?**

**The Standing Committee on Protection of Human Rights and Public Affairs of the Republic of Armenia Parliament** (Standing Committee), *inter alia*, acts as information gathering and spreading mechanism. More specifically, in view of providing, obtaining and exchanging information among parliamentarians, executive, experts, stakeholders with the ultimate goal of producing more effective and sounder legislation and achieving its proper implementation it organises parliamentary hearings on issues conferred on it by law; examines and replies to the proposals and requests submitted by the citizens.

While carrying out its activities the Standing Committee is guided by the principles of ensuring the supremacy of the Republic of Armenia Constitution and laws, the primacy of human and citizen rights and freedoms; political pluralism, free discussion of issues and finding of collective solutions; ensuring publicity and access to information.

**The Human Rights Defender**, as a national preventive mechanism, has a mission of ensuring protection of human rights and freedoms violated as a result of the state officials' acts or omissions. The journalists and other media actors when need to can address the Human Rights Defender.

With the Human Rights Defender initiative, the **Information Dispute Resolution Council** was established in 2011. The Council, among other, pursues a main goal of protecting freedom of expression, access to information, as well as person's dignity and the right to private life. It issued advisory opinions with a view of preventing the further development of the adverse judicial practice regarding the journalist and other actors of the media.

### **3. Is the confidentiality of journalists' sources of information protected in both law and practice?**

The Constitution of the Republic of Armenia ensures the protection of freedom of expression, including freedom to seek, receive and disseminate information and ideas by any means of information regardless of the state frontiers. An identical provision is stipulated in the Law on Mass Media of the Republic of Armenia (Article 5). Furthermore, the mentioned Law enshrines the journalists' and other media actors' right not to disclose the sources of their information.

The Law provides for an exception to this right. The disclosure of the sources of the information is obligatory for journalists and other media actors when **ordered on the occasion of a criminal case, by the court's decision, for the purpose of uncovering grave crimes or crimes of a particular gravity, if the necessity of protecting public interest outweighs the public interest in the non-disclosure and alternative measures of protecting public interest to the disclosure have been exhausted.**

For the obligation to disclose the source of information to be considered as a legitimate one, it should simultaneously meet all enumerated-above requirements.

As to civil proceedings, the Civil Procedure Code of the Republic of Armenia stipulates that the media actors who participate in proceedings as witnesses, have a right not to disclose information on factual circumstances of the case given that it will result in disclosure of the sources of their information (Article 44<sup>1</sup>).

The Constitutional Court of the Republic of Armenia, making reference to Committee of Ministers' Recommendation CM/REC(2000)7 and its Explanatory Memorandum, in its recent decision of 20.10.2015 has reiterated the above-mentioned cumulative criteria for disclosing the sources of information.

It has ruled that the criteria shall be applied bearing in mind that the legitimate interest in the disclosure shall outweigh the public interest in the non-disclosure when disclosure of the source of information is necessary for protecting one's life; or for preventing grave crime; or for ensuring judicial protection of a person who is accused of having committed a grave crime; i.e., in order for the requirement to disclose the source of information to be justified, it must meet one of the mentioned legitimate aims.

**4. Does the domestic legislation in your country regarding defamation/libel include criminal law provisions?**

Defamation (slander) has been decriminalised in the Republic of Armenia in May 2010.

**5. What are the procedural guarantees (the right to defence, the periods of limitation applicable to defamation suits, *exceptio veritatis* (defence of truth) and the burden of proof, presumption of good faith etc.) included in the civil and/or criminal legislation related to defamation?**

First of all, it should be noted that Armenian legislation provides for two mechanisms for examining the defamation cases: non-judicial (Law on Mass Media, Article 8) and judicial (Civil Code, Article 1087.1).

Non-judicial examination of defamation claims is effectuated prior to filing a lawsuit. The mechanism is put into action when addressing the information disseminator with a request to refute the published inaccurate information that violates his rights (**refutation claim**) or/and publish the concerned person's response to that information (**right of the response**). Both requests (either jointly or each separately) shall be presented in **one month period** calculated from the moment of the dissemination of the above-mentioned information.

The media representative is obliged to respond to the request in one week period. When the request(s) is (are) satisfied and complied with, the person concerned can no longer file a lawsuit and seek pecuniary compensation.

**Defamation lawsuit** can be filled at the outset or following the media representative's denial to grant the request(s). The period of limitation constitutes **one month** calculated from the moment that the person became aware of defaming information **but not later than within 6-month-period** following the alleged defamation itself.

The Civil legislation envisages cases when public communication of statement of facts cannot be qualified as defamation:

1. the statement of facts appeared in the statement made or evidence submitted during the pre-trial or trial proceedings by the participant of the proceedings with regard to circumstances of the case under examination;
2. the public communication, in the given situation and by virtue of its content, is **conditioned by overriding public interest**, and where the person having publicly communicated factual data proves that he or she has undertaken **measures to a reasonable extent in order to ascertain the accuracy and justification** of communicated data, and has submitted information in a balanced manner and in **good faith**;
3. it derives from the public speech or response of the person who claims to be defamed or his representative, or the documents communicated in that respect.

As to the **burden of proof**, given the adversarial nature of the proceedings, the onus of proving the allegations lies with the party who has made the particular allegation.<sup>1</sup>

Apart from general rules, civil legislation as well as established case-law of national courts, provides for specific cases when the defendant or the plaintiff shall bear the burden of proof. For instance, the burden of proof in respect of the availability or absence of necessary factual circumstances lies with the defendant. However, it shall be transferred to the plaintiff, where the burden of proof requires from the defendant unreasonable actions or efforts, whereas the plaintiff possesses all the necessary evidence.

According to Republic of Armenia Court of Cassation decision of 08.05.2014, plaintiff shall prove the fact that the expressions claimed were defamatory as to establish whether the latter were objectively defamatory or the plaintiff perceived them as such.

It should be mentioned that in order for the above-mentioned second exception to apply, the defendant must prove that the public communication of the data in question is conditioned by overriding public interest, that he has undertaken measures to a reasonable extent in order to ascertain the accuracy and justification of communicated data, and has submitted information in a balanced manner and in good faith. Furthermore, the Court of Cassation in its decision of 04.07.2013 has specified that the requirement of proving the accuracy and justification of the effectuated communication cannot be deemed satisfied for media representatives if the defendant has complied with it only formally.

Along with the mentioned-above means of protection the person shall have the right to require to compensate the property damage caused due to defamation including the reasonable judicial expenses and the reasonable expenses incurred for the restoration of violated rights. Nevertheless, the amount of compensation shall be determined taking into consideration the form and scope of dissemination of defamatory information, the property status of the plaintiff. The court shall not take into consideration the property damage caused due to alleged defamation.

**6. In the domestic legal framework, are state officials protected against criticism and insult at a higher level than ordinary people, for instance through penal laws that carry a higher penalty?**

Yes, Armenian legislation provides for higher protection for state officials subjected to defamation. Although defamation has been decriminalised, the Criminal Code still provides for criminal liability in some specific cases of defaming (slandering) state officials. For instance, Article 344, which reads as follows:

1. *Slandering the prosecutor, the investigator or the person in charge of inquiry or The compulsory enforcement officer of the judicial acts in relation to conduct of preliminary investigation, execution of court sentence,*

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<sup>1</sup> For example, the party invoking the period of limitation is charged with the burden of proving that the period of limitation has been violated or vice versa.

*judgment or another court act, is punished with a fine in the amount of 100 to 300-fold of the defined minimum salary, or with arrest for the term of 1-3 months, or imprisonment for up to 2 years.*

2. *The same action committed in relation to a judge in the framework of examining the case or case materials in court, is punished with a fine the amount of 300 to 500-fold of the defined minimum salary, or with arrest for the term of 1-3 months, or with imprisonment for the term of up to 3 years.*
3. *The actions envisaged in parts 1 or 2 of this Article, which were accompanied with accusing the person of a grave crime or a crime of a particular gravity, is punished with imprisonment for the term of up to 4 years.*

Article 151 provides for higher penalty for disseminating libelous information about a candidate, a party (association of parties) during elections in order to mislead the voters. Such acts are punished with a fine in the amount of 600 to 800-fold of the defined minimum salary, or with imprisonment for the term of 2 to 5 years.

## **7. Do laws on the protection of public order, national security or anti-terrorism have safeguards for the right to freedom of expression? What are these safeguards?**

As it has been mentioned above, article 27 of the Republic of Armenia Constitution stipulates that everyone shall have the right to **freely express his opinion**. Furthermore, it enshrines that everyone shall have **the right to freedom of speech**, including freedom to seek, receive and impart information and ideas through any media, regardless of state frontiers. It also guarantees **freedom of media and other means of information**.

Nevertheless, these rights are not absolute and the Armenian legislation envisages cases when they shall be limited. The Law on Mass Media, Article 8 enumerates those cases. Accordingly, the freedom to receive information is limited when the requested information:

1. relates to state, office, bank or commercial secret;
2. violates person's right to family and private life;
3. contains information related to pre-trial investigation that shall not be disclosed;
4. contains information that pre-conditioned by professional activities requires limited access (medical, notary, attorney secret);
5. violates person's copyright or other related rights.

The request for information cannot be denied if:

1. the information relates to emergency cases threatening the safety and health of citizens;

2. the information presents the overall economic picture of the Republic of Armenia, as well as the state of beings in the sphere of nature and environment protection, culture, education, commerce;
3. the denial of information will affect adversely the conduct of socio-economic, SciTech, spiritual and cultural state projects.

The Constitutional Court of the Republic of Armenia in its decision of 06.03.2012 has examined the following legal issues:

- whether the implementation of legislatively prescribed power to classify the information as state or official secret by executive body within its competence implies restriction of right to receive information;
- whether the **ciphering** and the **non-public nature** of expanded departmental lists of cipherable information are justified.

The Constitutional Court has established that right to freedom of expression, more specifically the right to seek and receive information can be restricted exclusively by law and the executive bodies are authorised to implement the limitations provided by law.

Furthermore, referring to and guided by the Council of Europe Parliamentary Assembly Resolution 1551 (2007), as well as the three basic approaches on the legislation of state secret mentioned in European Court of Human Rights judgment *Stoll v. Switzerland* (no. 69698/01, final on 10 December 2007, §44), the Constitutional Court has ruled that **ciphering of departmental lists** in accordance with the existing at that time procedure was out of scope of general logics of **information ciphering** expressed in national legislation and the **non-public nature of the latter** in so far as it did not concern **any cipherable information** did not follow legitimate aim of protection of interests of state security and caused problems in the domain of protection of human rights.

**8. Are the following instruments translated into the national language and disseminated widely, in particular brought to the attention of judicial authorities and police services? Are these made available to representative organisations of lawyers and media professionals?**

- *Recommendation CM/Rec(2011)7 of the Committee of Ministers to member states on a new notion of media, 21 September 2011.*
- *Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations (2011)*
- *Recommendation 1876 (2009) of the Parliamentary Assembly on the state of human rights in Europe: the need to eradicate impunity*
- *Guidelines of the Committee of Ministers of the Council of Europe on protecting freedom of expression and information in times of crisis, adopted on 26 September 2007*

- *Recommendation CM/Rec(2004)16 of the Committee of Ministers to member States on the right to reply in the new media environment*
- *Recommendation CM/Rec(2000)7 of the Committee of Ministers to member states on the right of journalists not to disclose their sources of information.*
- *Recommendation CM/Rec(2007)15 of the Committee of Ministers to member states on measures concerning media coverage of election campaigns*
- *Recommendation CM/Rec(2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content*
- *Recommendation No. R (2003) 13 on the provision of information through the media in relation to criminal proceedings*
- *Belgrade Conference of Ministers Resolution n° 3 Safety of Journalists*

The mentioned-above documents have not been translated into Armenian, yet but they are widely used by the judiciary, prosecutors, and media representatives.