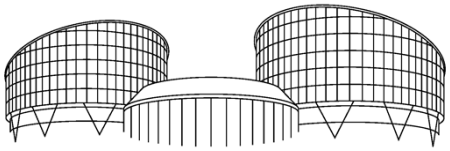

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF INVESTIGATIVE JOURNALISTS v. ARMENIA

(Application no. 64023/11)

JUDGMENT

STRASBOURG

18 May 2021

This judgment is final but it may be subject to editorial revision.

In the case of Investigative Journalists v. Armenia,

The European Court of Human Rights (Fourth Section), sitting as a Committee composed of:

Jolien Schukking, *President,*
Armen Harutyunyan,
Ana Maria Guerra Martins, *judges,*
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to:

the application (no. 64023/11) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Armenian organisation, Investigative Journalists ("the applicant organisation"), on 3 October 2011;

the decision to give notice to the Armenian Government ("the Government") of the complaint concerning an alleged breach of the applicant organisation's right to freedom of expression and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 13 April 2021,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns defamation proceedings against the applicant organisation and raises issues under Article 10 of the Convention.

THE FACTS

2. The applicant organisation is a non-governmental organisation which is based in Yerevan. The applicant organisation was represented by Mr V. Grigoryan, Mr P. Leach, Mr J. Clifford, Ms K. Levine, Ms J. Gavron and Ms J. Sawyer of the European Human Rights Advocacy Centre (EHRAC) based in London, and Ms L. Hakobyan, a lawyer practising in Yerevan.

3. The Government were represented by their Agent, Mr G. Kostanyan, and subsequently by Mr Y. Kirakosyan, Representative of the Republic of Armenia to the European Court of Human Rights.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. The applicant organisation is a non-profit organisation whose aims are to promote and strengthen investigative journalism in Armenia. Since 2001 it has run a news website devoted primarily to investigative journalism publications. The applicant organisation also commissions independent journalists to write investigative articles.

6. On 20 May 2008 one such article written by an investigative journalist was published by the applicant organisation in *Azg* newspaper as an insert. The article read as follows:

"*Who Is Pocketing Money from the Sand Mine?*

About 20 years ago a reservoir called White Water was put into operation on the river Aghstev at the southern entrance of the town of Ijevan. Very soon local poets and journalists named the artificial lake 'the Beauty of the Aghstev valley'. The artificial reservoir has a capacity of four million cubic metres. During spring flooding the Aghstev brings large amounts of sand and pebbles. About half of the unruffled surface of the White Water lake has dried up. Small artificial peninsulas and islets have been formed by the accumulation of sand brought by flooding. According to the most modest calculations, the accumulated sand and pebbles equal two million cubic metres.

The highway to Yerevan passes alongside the lake and thousands of passengers witness the extraction of sand from the lake every day. For several years, powerful excavators and cranes have operated in there. There is at present a construction boom in the administrative districts of Ijevan and Dilijan and there is high demand for sand. The driver transporting sand from there for construction in the town of Dilijan testified that 8,000 [Armenian] drams [(AMD)] was paid for one lorry of sand. The price of loading a bigger lorry could go up to [AMD] 20,000. Who are those who benefit from the wealth of this reservoir and who receive large illegal and untaxed profits on the pretext of cleansing the lake of mud?

According to our knowledge, this business is under the control of the Mayor of Ijevan, [V.N.]. To verify officially this information in October 2007 I sent an inquiry to the Tavush Regional Prosecutor's Office concerning the extraction of sand from the lake. The reply received from the Senior Prosecutor of the Tavush Regional Prosecutor's Office, [V.A.], on 22 October [2007] reads as follows: 'The Tavush Regional Prosecutor's Office has carried out an inquiry in respect of your letter concerning the illegal use of sand from the White Water artificial reservoir by the Ijevan Mayor's Office, as a result of which it has been revealed that a renovation and construction project is being implemented in the town park area and included in the list of works is the levelling of a 2-hectare green area of the park with mud, with a view to planting couch grass. As is stated in the letter received from the Mayor's Office, only mud has been transported from the above lake for the purpose of levelling the municipality's park and no sand has been or will be used. If there is reliable information on the illegal use of sand by the Mayor's Office, you can report this to the Ijevan police or the regional prosecutor's office'.

It is first of all worth paying attention to the wording suggesting that the Ijevan town park does not belong to the local community but rather to the Mayor's Office. Tavush Regional Prosecutor's Office has failed to check the process taking place every day only a few kilometres away from its seat and relied on the assurances of the Mayor's Office. However, those assurances can be rebutted by the official information received from the Mayor's Office itself. In what follows we present information on the levelling of the 2-hectare green area of the park with mud. Shortly before the Ijevan Mayor's election of 16 December 2007 the Ijevan Mayor's Office published the promotional pre-election issue of its Ijevan newspaper. It says the following about the construction project in the town park: 'The park lawns, earth fill and Dutch grass have been planted by the joint efforts of World Vision and the Mayor's Office. The overall cost of the project amounted to [AMD] 7,166,000, of which the contribution of the Mayor's Office was [AMD] 2,028,000 in the form of salaries. 1,500 cubic metres

of soil has been imported and spread, and grass has been planted over an area of 4,000 square metres'.

Even those who had an "F" in mathematics at school can figure out that 4,000 square metres is 5 times less than 2 hectares. But let us forget about the troubled 2 hectares; the river can also bring mud along with sand. However, hundreds of tons of sand are being extracted in this area on a daily basis, which you cannot mask with mud. Furthermore, it is obvious from the published pictures that sand is being extracted not only from the White Water reservoir but also from the banks of the Aghstev river itself.

On whose balance-sheet are Ijevan's White Water artificial reservoir and its surrounding territory? Is the right to use the sand from the reservoir granted to any physical or legal person, and are taxes from its use being paid to the State budget? Relying on the Freedom of Information Act, I sent a letter with these questions to the Mayor of Ijevan, [V.N.], the Tavush Regional Governor, [A.G.], and the Tavush Regional Department of the State Environmental Inspectorate. Although 20 days have passed, neither the Regional Governor nor the Mayor of Ijevan has deigned to reply to my letter.

The head of the Tavush Regional Department of the State Environmental Inspectorate, [Z.S.], advised, in writing, to apply to the Ministry of Environment of Armenia. However, no answer has been so far provided to the inquiry submitted to the Ministry either. In the meantime, an official having close ties with the Tavush Regional Department of the State Environmental Inspectorate, who did not wish to disclose his name, said that last year the State Environmental Inspectorate had carried out comprehensive checks in respect of illegal sand extraction from the White Water reservoir, as a result of which Ijevan Mayor's Office had received a hefty fine. The Mayor of Ijevan [V.N.] was on leave at the time and the signature of the Deputy Mayor, [K.O.], who was the Acting Mayor, had featured under the acts.

The State Environmental Inspectorate has filed a claim with the Sevan Administrative Court in this regard. However, Mayor [V.N.] is not someone who gives up easily. It has been revealed in retrospect that instead of his deputy he appointed the Secretary of the Mayor's Office, [B.T.], as the acting mayor. Taking this into account the court did not accept the submitted administrative acts imposing fines as a valid ground and dismissed the claim.

The leaders of Armenia speak about the need for rule of law, filling holes in the State budget and fighting against shadow economy, while the plundering of sand from Ijevan's White Water takes place in front of everyone's eyes. It is so obvious that it cannot even be regarded as being in the shadow. One just needs to open one's eyes, if there is such a desire at all."

7. On 26 May 2008 the same article was posted on the applicant organisation's news website.

8. On 19 June 2008 the Ijevan Mayor's Office filed a civil claim against the applicant organisation, seeking to oblige it to publish a retraction of the information contained in the publications of 20 and 26 May 2008 and to pay pecuniary damages. It argued, with reference to, *inter alia*, Article 19 of the Civil Code (CC) that the article "Who Is Pocketing the Money from the Sand Mine?", published in *Azg* newspaper upon the applicant organisation's initiative and then republished on their website, contained defamatory statements, namely untrue information concerning the Mayor's Office and

damaging to its work, as well as information tarnishing the Mayor's honour, dignity and business reputation.

9. On 9 July 2008 another article written by the same journalist was published by the applicant organisation in *Azg* newspaper, entitled "Will the Three Commissions 'Notice' the Illegal Use of the Reservoir Sand?", which was later also posted on the applicant organisation's website. It included the following passage:

> "A commission has been set up also by the Tavush Regional Governor, [A.G.], to examine the information contained in the 'Who Is Pocketing the Money from the Sand Mine?' article. The head of the Tavush Regional Department of the State Environmental Inspectorate, [Z.S.], is convinced that the sand is being extracted illegally from the Ijevan lake. According to him, the contract entered into by the Ijevan Mayor's Office with three individuals for the purpose of "cleansing" the lake is illegal, because the Ministry of Environment has not carried out a study of the reservoir's resources and has not given such authorisation. Along with sand and mud the river could also bring hazardous waste, whose use without an appropriate environmental expert opinion could have negative consequences. A question arises: if the lake is being cleansed, where are the hundreds of thousands of tons of mud being dumped, considering that an authorisation by the Environmental Inspectorate was required for its removal; otherwise the community should have awarded a philanthropist's title to those illegally extracting the sand for cleansing the lake at their own expense. Thus, large amounts of sand have already been extracted for 4 or 5 years under the pretext of 'cleansing'."

10. Referring further to the money allocated by the local council for the purposes of the lawsuit against the applicant organisation, it was stated:

> "To what extent is it lawful or expedient to spend more than three thousand dollars from the community's tight budget to 'vindicate' the Mayor when there are thousands of unresolved issues in the town? For example, the Mayor could have spent that money on renovating the poorly maintained road leading to his house. Dozens of Ijevan's taxi drivers, driving every day on the ruined roads of the region's capital have only 'kind words' for the Mayor."

11. On 13 October 2008 the court dealing with the case held a preliminary hearing and concluded that the Mayor's Office was not the proper plaintiff in so far as Mayor V.N.'s honour, dignity and business reputation were concerned. It recognised V.N. as the proper plaintiff in that respect and involved him in the case.

12. On 7 July 2009 the Kentron and Nork-Marash District Court of Yerevan dismissed the claim. The District Court found, firstly, that the Mayor's Office was not a legal person and could therefore not benefit from the rights guaranteed by Article 19 of the CC which applied only to physical and legal persons. Secondly, the published article did not contain any information tarnishing the business reputation of the Mayor's Office. It did not allege that it was the Mayor's Office which performed the illegal extraction of sand but rather posed a question as to who was responsible and indicated that, according to their knowledge, it was the Mayor. As regards specifically the Mayor's claims of tarnished honour, dignity and business

reputation, these were to be dismissed on the following grounds. The fact that sand was being illegally extracted from the reservoir was confirmed by the evidence in the case, as well as admitted by the Mayor's Office itself, which had on several occasions complained to the relevant authorities about that fact. It is true that the article had imparted information about the Mayor, in particular, to the effect that it was he who controlled that illegal business. However, this was not presented as a proved fact but rather that there was certain information to that effect which, moreover, the respondent had tried to verify by applying to various authorities. As to the nature of that statement, it could not be considered as "tarnishing" because the respondent had simply posed a question and made attempts to find the answer. In any case, no conclusions tarnishing the Mayor's honour, dignity and business reputation were made in the article. The District Court relied on, *inter alia*, Article 27 of the Constitution and Article 10 of the Convention.

13. On an unspecified date the Mayor and the Mayor's Office lodged an appeal.

14. On 13 November 2009 the Civil Court of Appeal allowed the appeal and remitted the case for a fresh examination. The Court of Appeal found, firstly, that the Mayor's Office was a legal person and therefore had the right to demand a retraction under Section 8 of the Mass Media Act. Furthermore, the District Court had failed to examine properly the article in question in its entirety and focused only on the statement that the illegal business was controlled by the Mayor. Its finding that the imparted information did not tarnish the Mayor's honour, dignity and business reputation was unfounded, because the District Court had failed to verify whether there was any evidence in the case confirming that the information contained in the article corresponded to reality. Article 19 of the CC placed the obligation of proving the veracity of the tarnishing information on those who imparted it, but the District Court had failed to examine any evidence to that effect.

15. On 9 July 2010 the Kentron and Nork-Marash District Court of Yerevan examined the claim anew and allowed it. The District Court stated that under Article 19 of the CC it was necessary to determine (a) whether the information in question was tarnishing and (b) whether it corresponded to reality. It went on to conclude that the information contained in the articles of 20 May and 9 July 2008 tarnished the business reputation of the Mayor's Office and the Mayor's honour and dignity. Furthermore, the applicant organisation had failed to submit any evidence proving that the information in question corresponded to reality, which meant that it was fictitious. This was also confirmed by the fact that the Mayor had, on numerous occasions, complained to the relevant authorities about the illegal extraction of sand from the reservoir by third persons. The District Court ordered the applicant organisation to publish a retraction in *Azg* newspaper

and on its website and to pay a total of AMD 952,600 for costs and expenses, including legal and court fees.

16. On an unspecified date the applicant organisation lodged an appeal arguing, *inter alia*, that the judgment interfered with its freedom of expression in breach of Article 27 of the Constitution and Article 10 of the Convention. It argued in detail that the interference did not pursue a legitimate aim and was not necessary in a democratic society.

17. On 27 December 2010 the Civil Court of Appeal dismissed the appeal. The Court of Appeal stressed at the outset the importance of the right to have one's honour, dignity and business reputation protected as one of the highest values in the society. It further found it to be established, with reference to, *inter alia*, Article 19 of the CC, that the article "Who Is Pocketing the Money from the Sand Mine?" had tarnished the Mayor's honour, dignity and business reputation. As regards the Mayor's Office, the Court of Appeal found that, firstly, it was representing the community which was a legal person and, secondly, since the article concerned the Mayor of Ijevan it also directly concerned the community of Ijevan and the Mayor's Office which acted on behalf of the community. The Court of Appeal lastly decided to decrease the amount of the award for costs and expenses to AMD 472,600.

18. On 31 January 2011 the applicant organisation lodged an appeal on points of law.

19. On 2 March 2011 the Court of Cassation decided to declare the applicant organisation's appeal on points of law inadmissible for lack of merit.

20. It appears that the pecuniary award made by the domestic courts was never paid by the applicant organisation as, according to the Government, the plaintiff did not wish to pursue its enforcement.

RELEVANT LEGAL FRAMEWORK

I. CONSTITUTION (1995 WITH AMENDMENTS OF 2005)

21. Article 27, as in force at the material time, prescribed that everyone had the right to express freely his opinion. It was prohibited to force anyone to give up or to change his opinion. Everyone had the right to freedom of speech, including the right to seek, receive and impart information and ideas through any information medium and regardless of frontiers. The freedom of news and other information media was guaranteed.

II. CIVIL CODE (1999)

22. Article 19, as in force until 3 July 2010, prescribed that a citizen had the right to demand through court proceedings that information tarnishing

his honour, dignity or business reputation be retracted, if the person who had imparted such information failed to prove that it corresponded to reality. If the information tarnishing a citizen's honour, dignity and business reputation had been imparted by mass media, then it had to be retracted through the same mass media. The rules contained in this Article regulating the protection of business reputation of a citizen equally applied to the protection of business reputation of a legal person.

23. Article 1087.1, in force from 3 July 2010, provides that a person whose honour, dignity or business reputation has been tarnished through insult or defamation may institute court proceedings against the person who made the insulting or defamatory statement. Defamation is public statements of fact about a person which do not correspond to reality and tarnish his or her honour, dignity or business reputation. In defamation cases the burden of proof as to the existence or absence of the relevant facts is placed on the defendant. This burden will be shifted on the plaintiff if presenting such proof requires the defendant to perform unreasonable actions or efforts, whereas the plaintiff possesses the necessary evidence.

III. MASS MEDIA ACT

24. Section 8 § 1 prescribes that a person has the right to demand a retraction from a media outlet of factual inaccuracies which violate his rights and are contained in the information disseminated by the media outlet, if the latter cannot prove that those facts correspond to reality.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

25. The applicant organisation complained that its right to freedom of expression had been breached. It relied on Article 10 of the Convention, which, in so far as relevant, reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. The parties' submissions

1. The applicant organisation

26. The applicant organisation submitted that the interference with its right to freedom of expression had not been prescribed by law. Firstly, Article 19 of the CC was amended on 3 July 2010 and a new provision regulating matters of defamation, Article 1087.1 of the CC, was introduced on that date. However, the domestic courts had continued to rely on old Article 19 in their decisions. Secondly, Article 19 had lacked precision and foreseeability since it failed to make a distinction between statements of fact and value judgments. While admitting that it had not raised these issues in its appeals, the applicant organisation argued that none of the courts had been vested with authority to resolve the systemic issues related to the lack of a legal basis.

27. The applicant organisation accepted that the interference had pursued the legitimate aim of protecting the reputation and rights of others, in so far as the Mayor's claim was concerned, but argued that no such legitimate aim could exist under Article 10 § 2 of the Convention as the protection of the business reputation of public or municipal authorities, in this case the Mayor's Office.

28. The applicant organisation lastly submitted that the interference had not been necessary in a democratic society. The domestic courts had failed to carry out a detailed examination of the question of necessity of the interference. In particular, they had not taken into account the subject-matter of the publication, the requirement of enhanced protection of the press and NGOs, the position of the person who had been the target of criticism, the wording of the article, including whether it contained "statements of fact" or "value judgments", and the amount of damages sought by the plaintiffs. The article had raised serious matters of public interest and the right of the public to be informed outweighed any reputational damage allegedly suffered by the Mayor. The article had contained value judgments based on the facts researched by the author and, even assuming that it had contained statements of fact, these had been made in good faith and in line with the standards of ethical and responsible journalism. The courts had failed to uphold the requirement of greater tolerance of criticism by politicians, including heads of local communities, and the important role by played by the press and NGOs.

2. The Government

29. The Government submitted that there had been no violation of Article 10 of the Convention. Firstly, the applicant organisation had failed to raise its arguments regarding the interference not being prescribed by law in its appeals and therefore had not exhausted the available domestic

remedies. In any event, the interference had been prescribed by law, namely Article 19 of the CC. The wording of that Article was not sufficient to conclude that it had been unforeseeable since the Court had not reached such a conclusion in cases against other countries where the domestic law was worded in a similar manner. As to the argument that Article 19 had been no longer in force when the courts decided the dispute, the rules of civil law prohibited retroactivity of laws and the law in force at the material time had been the applicable one.

30. The Government further submitted that the interference had pursued a legitimate aim, namely the protection of reputation of the Mayor of Ijevan and maintaining the authority and protecting business reputation of the Mayor's Office.

31. The Government lastly submitted that the interference had been necessary in a democratic society. In particular, the article in question had indicated the Mayor of Ijevan as the person responsible of the illicit sand mining. However, there had been nothing in the case file adjudicated in the domestic proceedings to give reasons to the applicant organisation to make such suggestions and the applicant organisation had failed to submit any evidence or a factual circumstance in support of that allegation. The information contained in the article had not been a value judgment but a serious accusation amounting to an administrative and possibly a criminal offence. Even assuming that the publication amounted to value judgments it was still required to have a sufficient factual basis. While the article had raised a matter of public concern and the Mayor, as a public figure, had been subject of wider limits of acceptable criticism, this did not mean, however, that politicians should not be given an opportunity to defend themselves when they considered that publications about them were erroneous and capable of misleading the public. As for the damages awarded, the amount had never been paid by the applicant organisation since the Mayor had declined to receive it.

B. The Court's assessment

1. Admissibility

32. As regards the Government's objection of non-exhaustion, the Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges those seeking to bring a case against the State before an international judicial body to use first the remedies provided by the national legal system, thus dispensing States from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal systems. The obligation to exhaust domestic remedies requires an applicant to make normal use of remedies that are available and sufficient in respect of his or her Convention grievances. Article 35 § 1 also requires that the complaints

intended to be made subsequently in Strasbourg should have been made to the appropriate domestic body, at least in substance (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 70-72, 25 March 2014).

33. The Court notes that the applicant organisation indeed did not raise any arguments regarding the lack of a proper legal basis for the interference in its appeals against the judgment of the Kentron and Nork-Marash District Court of Yerevan of 9 July 2010. It does not find convincing the applicant organisation's argument suggesting that this remedy was not effective. The Court therefore declares this part of the applicant organisation's complaint under Article 10 of the Convention inadmissible for failure to exhaust the domestic remedies.

34. The Court notes otherwise that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

2. Merits

35. The Court notes that it is common ground between the parties that the District Court's judgment of 9 July 2010 as upheld by the Civil Court of Appeal on 27 December 2010 (see paragraphs 15 and 17 above) constituted an interference with the applicant organisation's right to freedom of expression guaranteed by Article 10 § 1 of the Convention. The Court has no grounds to conclude (see paragraph 33 above) that the interference was not "prescribed by law", in this case Article 19 of the CC. As regards the existence of a legitimate aim, the parties agreed that the interference had pursued the aim of protecting the reputation and rights of others as far as the Mayor's claim was concerned. As for "the protection of the reputation" of the Mayor's Office, referred to by the Government, the Court notes that it has previously been prepared exceptionally to assume that this aim may be relied on in respect of elected local bodies (see *Lombardo and Others v. Malta*, no. 7333/06, § 50, 24 April 2007, and *Margulev v. Russia*, no. 15449/09, § 45, 8 October 2019). The present case, however, does not concern an elected local body but rather the Mayor's Office, namely an administrative body. In any event, the Court does not consider it necessary to determine this question conclusively in view of its findings below concerning the necessity of the interference. It reiterates in this respect that any interference with the right to freedom of expression must be "necessary in a democratic society" to be justified under Article 10 § 2 (see *Perinçek v. Switzerland* [GC], no. 27510/08, § 124, ECHR 2015 (extracts)).

36. The Court emphasises that the applicant organisation, being a non-governmental organisation whose aim is to promote and strengthen investigative journalism, was held civilly liable for an article it published in a newspaper and on its website. The interference must therefore be seen in the context of the essential role of a free press in ensuring the proper

functioning of a democratic society (see, among many other authorities, *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 62, ECHR 2007-IV).

37. The general principles concerning the necessity of an interference with freedom of expression frequently reiterated by the Court have been summarised in *Bédat v. Switzerland* ([GC], no. 56925/08, § 48, ECHR 2016), among many other authorities. The general principles concerning Article 10 and press freedom have recently been summarised in *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* ([GC], no. 931/13, §§ 124-28, 27 June 2017).

38. The Court considers that the following standards established in its case-law − which an interference with the exercise of press freedom must meet in order to satisfy the necessity requirement of Article 10 § 2 of the Convention − are pertinent in the present case.

39. By virtue of the essential function the press fulfils in a democracy (see *Delfi AS v. Estonia* [GC], no. 64569/09, § 132, ECHR 2015), Article 10 of the Convention affords journalists protection, with the proviso that they act in good faith in order to provide accurate and reliable information in accordance with the tenets of responsible journalism (see *Pentikäinen v. Finland* [GC], no. 11882/10, § 90, ECHR 2015). The same considerations would apply to an NGO assuming a social watchdog function (see *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 159, 8 November 2016). A high level of protection of freedom of expression, with the authorities therefore having a particularly narrow margin of appreciation, is normally accorded where the remarks concern a matter of public interest (see *Bédat*, cited above, § 49). Politicians and civil servants acting in an official capacity are subject to wider limits of acceptable criticism than private individuals (see *Thoma v. Luxembourg*, no. 38432/97, § 47, ECHR 2001-III, and *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 80, ECHR 2004-XI). Moreover, a careful distinction needs to be drawn between facts and value judgments. The existence of facts can be demonstrated, whereas the truth of value judgments is not susceptible of proof (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 98, ECHR 2004-XI, and *Morice v. France* ([GC], no. 29369/10, § 126, ECHR 2015). When examining whether there is a need for an interference with freedom of expression in a democratic society in the interests of "protecting the reputation ... of others", domestic authorities must strike a fair balance when protecting two conflicting values that are guaranteed by the Convention, namely, on the one hand, the right to freedom of expression protected by Article 10 and, on the other, the right to respect for private life enshrined in Article 8 (see, among many other authorities, *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], no. 17224/11, § 77, 27 June 2017).

40. The Court further reiterates that, when analysing an interference with the right to freedom of expression, it must, *inter alia*, determine whether the reasons adduced by the national authorities to justify it were relevant and sufficient. In doing so, the Court has to satisfy itself that these authorities applied standards which were in conformity with the principles embodied in Article 10 and relied on an acceptable assessment of the relevant facts (see *Perinçek*, cited above, § 196).

41. The Court has already found a violation of Article 10 of the Convention in a number of cases because the domestic courts did not apply standards that were in conformity with the standards of its case-law concerning press freedom (see, for example, *Terentyev v. Russia*, no. 25147/09, §§ 22-24, 26 January 2017; *Skudayeva v. Russia*, no. 24014/07, §§ 36-39, 5 March 2019; and *Margulev*, cited above, §§ 51-54). It now has to satisfy itself whether the relevant standards summarised in paragraph 39 above were applied in the defamation proceedings against the applicant organisation.

42. The Court notes that, similarly to the above-mentioned cases, the domestic courts limited themselves to finding that the impugned publication had tarnished the plaintiffs' honour, dignity and business reputation, and that the applicant organisation had failed to prove its veracity (see paragraphs 15 and 17 above). They did not take account of the following elements: the applicant organisation's position as an investigative journalism NGO and the presence or absence of good faith on its part; the positions of the plaintiffs as an elected official and a public authority; the aim pursued by the applicant organisation in publishing the article; the existence of a matter of public interest or general concern in the impugned article; and the relevance of information regarding the Mayor's allegedly corrupt practices. By omitting any analysis of such elements, the domestic courts failed to pay heed to the essential function that the press fulfils in a democratic society.

43. Nor did the domestic courts make any attempt to draw a distinction between statements of fact and value judgments. Thus, without examining the question of whether the statements contained in the impugned article could be considered value judgments, the courts proceeded on the assumption that they were susceptible to proof which was incumbent on the applicant organisation. This appears to have been due to the deficiency in the Armenian law on defamation at the material time, namely Article 19 of the CC, which referred uniformly to "information" and, regardless of the actual content of such "information", posited the assumption – as the present case illustrates – that any such "information" was amenable to proof in civil proceedings (compare with, for example, *Grinberg v. Russia*, no. 23472/03, § 29, 21 July 2005; *Gorelishvili v. Georgia*, no. 12979/04, § 38, 5 June 2007; *Dyuldin and Kislov v. Russia*, no. 25968/02, § 47, 31 July 2007; and *Terentyev*, cited above, § 23).

44. Furthermore, there is no evidence in the domestic judgments that the courts performed a balancing exercise between the need to protect the plaintiffs' reputation and the right of the press to impart information on issues of general interest. They failed to weigh the two competing interests and confined their analysis to the discussion of the damage to the plaintiffs' reputation, their position apparently being that interests relating to the protection of "the honour and dignity of others", in particular of those vested with public powers, prevail over freedom of expression in all circumstances (see *Romanenko and Others v. Russia*, no. 11751/03, § 42, 8 October 2009; *Skudayeva*, cited above, § 38, 5 March 2019; and *Margulev*, cited above, § 53).

45. The above elements lead the Court to conclude that the reasons that the domestic courts adduced to justify the interference with the applicant organisation's Article 10 rights were not "relevant and sufficient". The Court is mindful of the fundamentally subsidiary role of the Convention system (see *Dubská and Krejzová v. the Czech Republic* [GC], nos. 28859/11 and 28473/12, § 175, ECHR 2016). Indeed, if the balancing exercise had been carried out by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for theirs (see *Perinçek*, cited above, § 198). However, in the absence of such a balancing exercise at national level, it is not incumbent on the Court to perform a full proportionality analysis (see *Margulev*, cited above, § 54). Faced with the domestic courts' failure to provide relevant and sufficient reasons to justify the interference in question, the Court finds that they cannot be said to have "applied standards which were in conformity with the principles embodied in Article 10 of the Convention" or to have "based themselves on an acceptable assessment of the relevant facts" (see, with further references, *Terentyev*, cited above, § 24). The Court concludes that the interference with the applicant organisation's right to freedom of expression was not "necessary in a democratic society".

46. There has accordingly been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

48. The applicant organisation claimed the sum of the costs and expenses that it had been ordered to pay by the judgment of 27 December 2010, namely AMD 450,000 (see paragraph 17 above), in respect of pecuniary damage. The applicant organisation admitted that this part of the judgment had not been enforced and no sum of money had been paid by it for that purpose, but argued that it was still under a legal obligation to do so. It did not claim any non-pecuniary damage, stating that finding of a violation would be sufficient satisfaction.

49. The Government submitted, as regards the claim for pecuniary damage, that the Mayor's Office had missed the one-year time limit for submitting the writ of execution for enforcement. Therefore, the judgment in question was no longer enforceable.

50. The Court notes that the award of the costs and expenses made by the judgment of 27 December 2010 was never paid by the applicant organisation and therefore rejects its claim for pecuniary damage. Furthermore, in view of the fact that the applicant organisation did not claim any non-pecuniary damage, the Court considers that there is no call to award it any sum on that account either.

B. Costs and expenses

51. The applicant organisation claimed a total of 3,003.52 pounds sterling (GBP) in respect of legal, administrative and translation costs and expenses.

52. The Government submitted that the claim was not properly substantiated and that part of the alleged costs had not been necessarily incurred.

53. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court considers that the applicant organisation failed to show that all the costs claimed had been necessarily and reasonably incurred. Regard being had to the documents in its possession and the above criteria, the Court awards the applicant organisation EUR 1,500 in respect of costs and expenses, plus any tax that may be chargeable to the applicant organisation, to be paid in GBP into its representatives' bank account in the United Kingdom.

C. Default interest

54. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant organisation, within three months, EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant organisation, in respect of costs and expenses, to be converted into pounds sterling at the rate applicable on the date of settlement and to be paid into its representatives' bank account in the United Kingdom;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant organisation's claim for just satisfaction.

Done in English, and notified in writing on 18 May 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Deputy Registrar	Jolien Schukking President