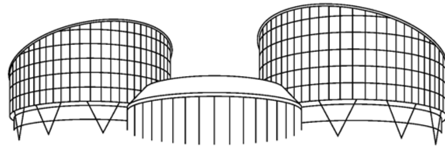

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF MITICHYAN v. ARMENIA

(Application no. 34787/12)

JUDGMENT

STRASBOURG

21 March 2023

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Mitichyan v. Armenia,

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

Anja Seibert-Fohr, *President*,
Armen Harutyunyan,
Ana Maria Guerra Martins, *judges*,
and Valentin Nicolescu, *Acting Deputy Section Registrar,*

Having regard to:

the application (no. 34787/12) 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") on 29 May 2012 by an Armenian national, Mr Gharib Mitichyan, born in 1950 and living in the village of Lernapat ("the applicant") who was represented by Ms L. Hakobyan and Mr T. Yegoryan, lawyers practising in Yerevan;

the decision to give notice of the application to the Armenian Government ("the Government"), represented by their Agent, Mr G. Kostanyan, and subsequently by Mr Y. Kirakosyan, Representative of the Republic of Armenia on International Legal Matters;

the parties' observations;

Having deliberated in private on 28 February 2023,

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

SUBJECT MATTER OF THE CASE

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

2. In March 2010 criminal proceedings were instituted against the mayor of Lernapat village, V.Y., who was charged with embezzlement, abuse of authority and official falsification, on the basis of collective complaints by more than 250 villagers. In the course of the investigation a number of villagers alleged, *inter alia*, that V.Y. had granted financial aid to his relatives; had exempted the latter from paying property tax; and had paid for his publications from the local budget. On 21 December 2011 the charges against V.Y. were dropped.

3. On 1 September 2010 article was published in a local newspaper featuring interviews with residents of Lernapat, including the applicant, critical of the mayor. The applicant's statements, in so far as relevant, read as follows:

> "*... The mayor himself allocated to my elder son a plot to build a house on, but asked for 500 dollars ... Then again he brought a complaint to the court saying that this was an illegal construction. We did not pay those 500 dollars since we knew what kind of a man he was. We thought we would try everything first and only then [statement A]*... I applied to the mayor many times when my grandchild was near death. Instead of 50,000 [Armenian drams (AMD)] he lent me [AMD] 15,000, but later – because of being short of money – wrote that I owed [AMD] 50,000. I am cancelling the

[AMD] 15,000 he said. *The other day I called my daughter-in-law and said: ‘My child, there is [a sum of financial aid]in your name as well’, and she said: ‘But, dad, I have not received any money’ [statement B].* There is [AMD] 50,000 [of financial aid] in my name, [another] [AMD] 50,000 on my son’s name, and also on my other son’s name, to whom he did not give anything at all, because he is a friend; he said: ‘Hovo, dear, bring that [AMD] 50,000, I need to buy petrol, I have expenses and I am in need’, but what need... He is always oppressing us. You go to get some paper from him; he is always rude to you, saying: ‘Go away. These are not my working hours’. You never know when his working hours are. *If I lose my mind a little, I will just slaughter [(կսատկացնեմ)] him [statement C]*. You cannot test someone’s patience forever ... We constantly live in an atmosphere of fear... *He did not even allow us to sow wheat [statement D]*. He said: ‘What do you need it for? Grow grass and sell it’...”

...

“...By the way, according to Mitichyan, *the mayor had hid and would not give the documents of [his son’s] house [statement E]...*”

4. The mayor instituted civil proceedings against the applicant for defamation and insult, with respect to some of his statements (identified under letters A to E in paragraph 3 above). He submitted, among other things, a document that the alleged financial aid had been extended not to the applicant’s daughter-in-law but to another village resident having the same name and surname as her. The mayor also submitted certificates issued by himself that he had never allocated land to the applicant or his sons and had never brought a complaint against any of them with respect to the purported land allocation. Rather, the applicant’s son’s property had been recognised as illegal construction and only later bought back from the community.

5. The applicant, relying on Article 10 of the Convention, objected to the mayor’s claim and submitted that as a local politician he should have displayed greater tolerance towards his criticism voiced in respect of his professional activities and following institution of a criminal case against him on charges of abuse of office. The applicant explained to the court that he had used the word “slaughter” to express his indignation with the mayor. He had further clarified that by statement A, the applicant had meant that the mayor had requested USD 500 to regularise his illegal construction, which the applicant had refused.

6. The domestic courts, relying on the material submitted by the mayor, allowed partly his claim, holding that statements A and B had been defamatory because they were statements of fact tarnishing the mayor’s honour and dignity and which the applicant had failed to substantiate with any evidence. As regards statement C, it was considered an insult because the word “slaughter” was not to be used in respect of humans, and did not pursue any paramount public interest. It further transpires from the appeal court judgment that the remaining statements were considered neither defamation nor an insult. The applicant was ordered to apologise publicly for the insult and retract the defamatory statements through declarations to be published in the same newspaper, as well as to pay a total of AMD 60,000, about 110 euros

(EUR) at the material time, in damages. As to the criminal case instituted against the mayor, the first-instance court noted that one should be presumed innocent until found guilty by a final court judgment, while the appeal court found that the allegations of misconduct by the mayor had had no relevance to the plaintiff's civil claim. In reply to the applicant's argument about his right to criticise the mayor, the domestic courts held that such a right could be restricted for the protection of reputation and rights of others.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

7. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

8. It is not in dispute between the parties that there was an interference with the applicant's right to freedom of expression, which was prescribed by law and pursued a legitimate aim of "the protection of the reputation or rights of others". It remains to be ascertained whether this interference was "necessary in a democratic society".

9. The general principles of the Court's case-law for assessing the necessity of an interference with the exercise of freedom of expression in the interest of the "protection of the reputation or rights of others" have been summarised in *Couderc and Hachette Filipacchi Associés v. France* ([GC], no. 40454/07, §§ 90-93, ECHR 2015 (extracts)).

10. The Court has to satisfy itself whether the relevant standards summarised above were applied in the present case. It notes that, when examining the defamation claim brought against the applicant, the domestic courts limited themselves to finding that the applicant's statements had tarnished the mayor's honour and dignity, and that – as regards statements A and B – the applicant had failed to prove their veracity. They failed to consider whether the impugned statements had been made in the context of a debate on a matter of public interest – which indisputably had been the case – or the plaintiff's position as an elected official, calling for wider limits of acceptable criticism (compare *Falzon v. Malta*, no. 45791/13, §§ 58-59, 20 March 2018). Also, no heed was paid to the form of the impugned statements, made orally and reported by a journalist thereby – presumably – reducing or eliminating the applicant's possibility of reformulating, perfecting or retracting them before publication (see, *mutatis mutandis*, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 48, ECHR 1999-VIII). They thus appear to have examined the applicant's statements detached from the general context and content of the article in question.

11. While mindful that a careful distinction needs to be drawn between facts and value judgments (*Cumpănă and Mazăre v. Romania* [GC],

no. 33348/96, § 98, ECHR 2004-XI), the Court also considers that such a distinction is of less significance in a case such as the present, where the impugned statements were made in the course of a lively political debate at local level.

12. While the Court notes that the domestic courts treated statements A and B unreservedly as assertions of facts not supported by any evidence, it observes that they never addressed the applicant's explanation offered in support of his statements (see paragraph 5 above), even in order to dismiss it.

13. The Court is not called upon to judge whether the applicant relied on sufficiently accurate and consistent information. Nor will it decide whether the nature and degree of the allegations he made were justified by the factual basis on which he relied – that was the task of the domestic courts (see *Braun v. Poland*, no. 30162/10, § 49, 4 November 2014, and *Kurski v. Poland*, no. 26115/10, § 55, 5 July 2016). It nonetheless considers that the domestic courts' failure to carry out the balancing exercise according to the Court's abovementioned criteria and the insufficient reasoning of their decisions whether the mayor's right to reputation justified, in the specific context, the interference with the applicant's right to freedom of expression, are problematic under Article 10 of the Convention (see, *mutatis mutandis*, *Nadtoka v. Russia*, no. 38010/05, § 47, 31 May 2016, and *Milisavljević v. Serbia*, no. 50123/06, § 38, 4 April 2017).

14. Lastly, regarding the expression qualified in statement C as "insult" by the domestic courts (see paragraph 6 above), the Court reiterates that offensive language may fall outside the protection of freedom of expression if it amounts to wanton denigration; but the use of vulgar phrases in itself is not decisive in the assessment of an offensive expression as it may well serve merely stylistic purposes (compare *Savva Terentyev v. Russia*, no. 10692/09, § 68, 28 August 2018). In the case at hand, the domestic courts found the word "slaughter" offensive relying only on its association with an animal, without envisaging – even in order to dismiss it – another informal, possibly colloquial, meaning of that word. They failed to analyse the impugned statement – made during a lively interview with a journalist – in the context of the narrative's progression. Nor did they establish the idea it sought to impart, which was rather the applicant's emotional reaction, verging on provocation and with the use of the conditional tense, to what he had regarded as long-term unfair treatment by the local politician (see the applicant's explanation in paragraph 5 above). The Court thus finds that, in respect of statement C, the domestic courts similarly failed to take account of all facts and relevant factors and therefore, the reasons adduced by them cannot be regarded as "relevant and sufficient" to justify the interference with the applicant's freedom of expression.

15. 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, 15 November 2016). 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 v. Switzerland* [GC], no. 27510/08, § 198, ECHR 2015 (extracts)). 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. 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. Nothing in the Government's submissions indicates otherwise. The Court concludes that the interference with the applicant's right to freedom of expression was not "necessary in a democratic society".

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

APPLICATION OF ARTICLE 41 OF THE CONVENTION

17. The applicant claimed EUR 5,000 in respect of non-pecuniary damage and EUR 1,377 in respect of his legal costs incurred before the Court.

18. The Government contested these claims.

19. The Court awards the applicant EUR 1,200 in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant.

20. Having regard to the documents in its possession, the Court also considers it reasonable to award EUR 1,000 covering costs for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

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, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

   (i) EUR 1,200 (one thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

   (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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's claim for just satisfaction.

Done in English, and notified in writing on 21 March 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Valentin Nicolescu	Anja Seibert-Fohr
Acting Deputy Registrar	President