



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

FOURTH SECTION

CASE OF TAMARYAN v. ARMENIA

(Application no. 37096/12)

JUDGMENT

STRASBOURG

21 March 2023

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

In the case of Tamaryan 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. 37096/12) 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 6 June 2012 by an Armenian national, Mr Kamsar Tamaryan, born in 1965 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 an 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:

“I am the most well-off person in our village. I have watched our village being wiped out. *In our village someone has even died of hunger [statement A]*. I do not want to use his real name, because it sounds rude, but two years ago I told this very [V.Y.] ... that no Turk had ever set his foot into our village. He had an argument with me and I stood up to him. My grandfathers killed Turks in this village and did not allow them to conquer it, whereas *he has obliterated this village [statement B]*... The village has split into two. *Nobody is able to work because he is bribing them 5,000 [Armenian drams*

(AMD)] [statement C]. Hunger is a bad thing and poverty is the worst thing in the world. These people think that if [V.Y.] stays as the village mayor their benefits will be cut off. Today I am asking for an inspection from Yerevan to be sent here. There is an inhabitant in our village called [A.M.]. He is going to have his third child. His wife ... is not educated. *She was deceived at the Mayor's Office by [V.Y.'s] two sisters and [head of staff M.M.] who made her write that her husband was employed [statement D].* The guy helps everyone. He has helped me, he has helped [B.A.], but he is not employed. He lives in a shack, his mother is disabled, he is in a very bad situation and they don't give him any benefits. We have to ask [President] Serzh Sargsyan again to send an inspection to the Mayor's Office to see that today [V.Y.'s] sister and granddaughter receive benefits [statement E], that his sister works in the Mayor's Office and his nephew is involved in big business in Moscow, today we all ask the government, we beg the government, we are all [supporters of the Republican Party]... enough is enough, they need to stop this corruption, have pity on this people... The bus that the village received as a gift from MP [A.H.] in order to transport children from the old village to the new one, [V.Y.] tried to sell it through the *Vanadzor Mosaic [newspaper]* and we returned it... [statement F]. Today we still have a problem with drinking water. We simply want the government to find out *what the mayor is going to do with the two double beds which are at the Mayor's Office [statement G].* How come [V.Y.'s] father received [AMD] 630,000 in financial aid and [V.Y.'s] nephew received [AMD] 1,100,000 in financial aid, while there are hungry people in the village who received nothing? ... *He was told to repair the road to the cemetery and he said 'What do I care?' [statement H]* Had he lost somebody [in the earthquake], he would have been compassionate. I am asking the government, our village is a village with a capital letter, the only village where no Turk has ever set his foot, and *today we have a Turk born from among us. We are asking that this Turk be removed from among us [statement I].*"

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 I in paragraph 3 above). He submitted, *inter alia*, that he had in fact implemented a number of projects aimed at improving and developing the village, including the repairment of the road to the cemetery; that statement C had made no sense and there had been no such thing in the village as bribing; that his sister had never received any benefits; and that by his statement I the applicant had both insulted and defamed him.

5. The applicant objected to the claim and submitted that he enjoyed the right to have an opinion and to impart information under Article 10 of the Convention, especially on such subjects of public concern as the mayor's professional activities. He further clarified before the court that the mayor's sister and granddaughter were one household, whereas the granddaughter had received benefits. The mayor had not repaired the road to the cemetery but had simply laid clay. By statement C he meant that the villagers had been reluctant to complain against the mayor as the latter had been "bribing" them by extending financial aid. Moreover, a witness testified in court that the mayor's next of kin had offered him money to withdraw his complaint.

6. The domestic courts partly allowed the mayor's claim, holding that statements B, C, E, H and I had been defamatory because they had been statements of fact tarnishing the mayor's honour and dignity and which the

applicant had failed to substantiate with any evidence. As to the remaining statements, they had been considered to be expressions of the applicant's subjective opinion, and statement D had not compromised the plaintiff's rights. The courts also dismissed the applicant's objection about his right to criticise the mayor holding that such right was not unlimited and could be restricted for the reputation and rights of others. As to the criminal case instituted against the mayor, it was noted that one should be presumed innocent until found guilty by a final court judgment. The applicant was ordered to retract the defamatory statements through declarations to be published in the same newspaper, as well as to pay a total of AMD 200,000, about 385 euros (EUR) at the material time, in damages.

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 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). The domestic courts thus appear to have examined

the applicant's statements detached from the general context and content of the article at issue.

11. While mindful that a careful distinction needs to be drawn between facts and value judgments (*Cumpăună 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. The Court observes that, while the domestic courts drew such a distinction between facts and value judgments with regard to some of the applicant's statements, they did not consider carefully his arguments regarding his remaining statements, namely that, in his interview, he had expressed his personal, subjective opinion, which had been based on what he had perceived as "true facts" and never addressed his explanation offered in support of his statements, or the witness testimony for that matter (see paragraph 5 above). Accordingly, the Court cannot but note that the domestic courts did not apply rigorously one of the key standards established in its practice regarding the right to freedom of expression.

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. 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".

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

APPLICATION OF ARTICLE 41 OF THE CONVENTION

16. 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.

17. The Government contested these claims.

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

19. Having regard to the documents in its possession, the Court 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 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.

TAMARYAN v. ARMENIA JUDGMENT

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
Acting Deputy Registrar

Anja Seibert-Fohr
President