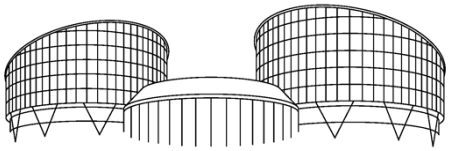

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF POGHOSYAN v. ARMENIA

(Application no. 37712/13)

JUDGMENT

STRASBOURG

26 March 2024

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

In the case of Poghosyan v. Armenia,

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

Tim Eicke, *President*,
Armen Harutyunyan,
Ana Maria Guerra Martins, *judges*,
and Valentin Nicolescu, *Acting Deputy Section Registrar*,

Having regard to:

the application (no. 37712/13) 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 3 June 2013 by an Armenian national, Ms Tamara Poghosyan ("the applicant"), who was born in 1949, lives in Yerevan and was represented by Mr E. Abelyan, a lawyer practising in Yerevan;

the decision to give notice of the complaint under Article 10 of the Convention 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, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 5 March 2024,

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. The applicant was the executive director of a fund called One Nation, One Culture ("the fund") at the material time.

3. On 19 April 2010 she had a meeting with the chief of staff of the Ministry of the Diaspora, F.Z., in his office. She alleged that F.Z. had informed her that the Ministry had been entrusted by a Government decree of 8 April 2010 with implementing a project involving four conferences; the preparatory work was to be carried out by the fund. He had further informed her that the first of the four conferences was to take place on 25-26 April 2010. Since there had been little time left before the launch of the first conference and the fund had been overburdened owing to other activities, most of the preparatory work had already been carried out by another entity, a private company, with which the fund was to sign a contract and which was also to implement the preparatory work for the remaining three conferences. F.Z. had then asked her to sign two contracts on behalf of the fund: one with the Ministry and another one with the private company, whereby the fund was to outsource the implementation of the preparatory work for all four conferences to the company. The applicant alleged that she had reacted by

saying "Excuse me, but do you understand what you are proposing here? This is a classic money-laundering scheme!" She also alleged that she had refused to sign the contracts but, in order to break the impasse, had agreed to receive them if accompanied by an official letter and to submit the fund's proposals and comments in reply. F.Z. had then given her the two contracts together with a letter signed by him and dated 19 April 2010 with the following content:

> "We present to you the draft contract envisaged by the project approved by [the Government decree of 8 April 2010] to be signed between the Ministry of the Diaspora and [the fund].
>
> You are kindly requested to submit your opinion (proposals and comments) concerning the contract within one day."

4. On 20 April 2010 the applicant addressed a letter to F.Z., containing her proposals and comments regarding "the two contracts and their annexes attached to [the letter of 19 April 2010]". She argued in her letter, *inter alia*, that the outsourcing of work to a third entity would create additional costs given that it was a commercial company. By another letter of 21 April 2010 the applicant proposed F.Z. to exclude the first conference from the contract, referring, among other things, to the fact that most of the preparatory work for it had actually been done and had refused to take any responsibility for it. On 22 April 2010 she asked F.Z. to provide information about the completed works for the first conference as of that day.

5. On 22 April 2010 the applicant signed a contract with the Ministry on behalf of the fund, undertaking to carry out the preparatory work for the four conferences in exchange for a grant. She alleged that this had been the result of three days of heated debates and that the fund had done the preparatory work for the first conference only in so far as it had not been already carried out by the private company.

6. On 27 April 2010 the applicant addressed a letter to the Minister of Diaspora in which, referring to her letter of 21 April 2010, she pointed out that annexes to the contract signed with the Ministry, in particular technical description of the preparatory work and cost estimates, did not comply with the Government decree of 8 April 2010. Thus, "[i]n order to ensure the implementation of the said contract", she asked the Minister to be provided with the relevant details of the private company which had carried out the preparatory work for the first conference, with an indication of the completed works. Upon receipt of those documents, the fund would conclude relevant contracts for the provision of services with the "companies" which had carried out the preparatory works.

7. On 9 November 2010 the applicant submitted an expense report to F.Z. with respect to the first conference. It could be understood from the said report that the fund had completed only some of the preparatory works for the first conference.

8. On 7 April 2011 the applicant gave an interview to Radio Liberty with the following content:

> "We were in the office of the chief of staff who said 'Ms Poghosyan, could you please sign these two contracts?' I said 'What are these contracts?' He said 'Ms Poghosyan, taking into account the time constraints and your being busy, we have already commissioned the implementation of that project, specifically the preparatory work for the conference, which has been done by another company and you have nothing left to do. Please sign this contract in order to delegate your functions related to the preparation of the conference to that company'. I said 'Excuse me, but do you understand what you are proposing here? This is a classic money-laundering scheme!' I am the responsible person under the Government decree. What right do I have not to implement a Government decree? I don't even have grounds for that. Why shouldn't I? If I had been informed in time, I would have said I would do it or not do it."

9. On 14 April 2011 F.Z. lodged a civil claim against the applicant with the Avan and Nor-Nork District Court of Yerevan ("the District Court"), claiming that her interview given to Radio Liberty had contained defamatory statements tarnishing his honour and dignity and seeking their retraction and payment of damages in the amount of 2,000,000 Armenian drams (AMD). He argued that he had never asked the applicant to sign two contracts as alleged by her and she had never made any statement concerning money laundering at their meeting.

10. On 19 May 2011 the applicant filed her observations in reply, insisting on her account of events and arguing that she had exercised her right to freedom of expression. In support of her claims, she submitted, among other things, her correspondence with F.Z. and the Minister of Diaspora (see paragraphs 4 and 6), the financial report of 9 November 2010, as well as two draft contracts allegedly sent to her by F.Z. on 19 April 2010, one to be signed between the Ministry and the fund, and another one between the fund and a certain private company whereby the latter was supposed to carry out all the works connected with the organisation of four conferences.

11. In their observations, the Government referred to the additional submissions of F.Z. lodged with the District Court, according to which, due to time constraints, some of the preparatory work for the first conference had been carried out through a sponsor but not a third company referred to by the applicant. F.Z. had also claimed that that the two contracts referred to in the applicant's letter of 20 April 2010 were simply two copies of the same contract provided to her by him and the reason behind her interview a year after their meeting was that her relationship with Ministry had deteriorated and her position at the fund was unstable.

12. On 29 June 2012 the District Court partially granted F.Z.'s claim, ordering the applicant to publish a retraction through Radio Liberty and to pay damages and legal costs in the amount of AMD 106,000 and dismissing the remainder of the claim for damages. The District Court found that the statement "Excuse me, but do you understand what you are proposing here? This is a classic money-laundering scheme!" had pursued the aim of

tarnishing F.Z.'s honour and dignity. In particular, the applicant's allegation that F.Z.'s letter of 19 April 2010 had been accompanied by two contracts instead of one, was unsubstantiated since that letter had mentioned only one contract to be signed between the Ministry and the fund. The plaintiff had been a public official and a representative of the executive, therefore the applicant's statements – which had not corresponded to reality – threatened his standing in society. The District Court also dismissed the applicant's argument that her statements had amounted to a value judgment.

13. On 5 December 2012 the Civil Court of Appeal dismissed the applicant's appeal lodged against the above judgment and endorsed the reasons given by the District Court. In particular, the Court of Appeal dismissed all the evidence submitted by the applicant as insufficient, noting that she had failed to prove the existence of the private company, mentioned in the contract submitted by her (see paragraph 10 above), which had allegedly been involved in the preparatory works for the conference, or a second contract whereby the fund was to outsource the implementation of the preparatory work for all four conferences to that company.

14. On 30 January 2013 the Court of Cassation declared the applicant's appeal on points of law inadmissible for lack of merit.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

15. 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.

16. 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 the interference was "necessary in a democratic society".

17. The general principles of the Court's case-law for assessing the necessity of an interference with the exercise of the right to freedom of expression have been summarised in *Bédat v. Switzerland* ([GC], no. 56925/08, §§ 48-49, 52 and 54, 29 March 2016), among many other authorities. The Court has to satisfy itself whether the relevant standards summarised above were applied in the present case.

18. Firstly, the Court observes that the domestic courts failed to determine the extent to which the statements in question could contribute to a debate of public interest, whereas this was crucial for striking a fair balance between, on the one hand, the applicant's right to freedom of expression, and, on the other hand, the plaintiff's right to respect for his private life (compare *Falzon v. Malta*, no. 45791/13, § 58, 20 March 2018).

19. Furthermore, the Court has consistently held that, in assessing whether there was a "pressing social need" capable of justifying interference with the exercise of freedom of expression, a careful distinction needs to be made between facts and value judgments (*Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 98, ECHR 2004-XI). However, the domestic courts failed to draw such a distinction and treated the applicant's statements unreservedly as assertions of fact, without providing any reasons for such a conclusion, and failed to address in a satisfying manner her arguments that the statement "Excuse me, but do you understand what you are proposing here? This is a classic money-laundering scheme!" had been an expression of her opinion. Rather, they merely assessed whether the expression used by her had been capable of causing damage to the plaintiff's personality rights and reputation. However, the role of the domestic courts in such proceedings does not include indicating to the defendant what style he should have adopted in exercising his right to criticism, however caustic the remarks in question may have been (see, *mutatis mutandis*, *Matalas v. Greece*, no. 1864/18, § 50, 25 March 2021).

20. The Court has held that the requirement to prove to a reasonable standard that a factual statement was substantially true does not contravene Article 10 of the Convention, and has held a lack of effort to make out that defence against applicants. However, it has also held that if an applicant is clearly involved in a public debate on an important issue he should not be required to fulfil a more demanding standard than that of due diligence. At the same time, where an utterance amounts to a value judgment, the proportionality of the interference may depend on whether or not there exists a sufficient factual basis for the impugned statement, since even a value judgment may be excessive if it has no factual basis to support it (see *Wojczuk v. Poland*, no. 52969/13, § 74, 9 December 2021, and *Azadliq and Zayidov v. Azerbaijan*, no. 20755/08, § 35, 30 June 2022). In the present case, the domestic courts appear to have placed the burden of proving the veracity of the impugned statements squarely on the applicant. In particular, the courts had relied exclusively on F.Z.'s letter of 19 April 2010, referring to one contract, and rejected all evidence submitted by the applicant as insufficient without, however, explaining why, even though in her correspondence she had indicated about the "two contracts", the presence of a third company, and the useless outsourcing of work to a commercial entity (see paragraphs 4 and 6 above).While the Court cannot assess the truthfulness of the applicant's allegations, as this was a task entrusted to the relevant domestic authorities, it nonetheless considers, in the light of the above, that the dismissal of the applicant's evidence and arguments was not justified by relevant and sufficient reasoning. Consequently, the applicant was not afforded an effective opportunity to argue her case and prove her allegations. What is more, none of the arguments raised by the plaintiff in his additional

submissions (see paragraph 11 above) featured in the domestic judgments when dismissing the applicant's evidence.

21. Also, the domestic courts failed to take into account and provide an analysis on other relevant considerations such as the plaintiff's status (compare *Falzon*, cited above, § 58). In particular, they underlined F.Z.'s status as a public official only to conclude that an attack on his reputation was even more serious. With regard to the latter, the Court notes that F.Z., the target of the disputed expressions and the then chief of staff of the Ministry, was a State official with important public functions. He thus could not be likened to an ordinary private individual but rather to a public figure. Nevertheless, the domestic courts failed to consider the public-figure status and degree of notoriety of the latter from this perspective and that, in accordance with the Court's case-law, the limits of acceptable criticism with regard to public figures such as F.Z. were wider than in relation to private individuals.

22. Having regard to all the above, the Court considers that the domestic courts failed to strike a fair balance between the applicant's freedom of expression and F.Z.'s rights and interests, to apply standards which were in conformity with the principles embodied in Article 10, to rely on an acceptable assessment of the relevant facts, and to base their decisions on relevant and sufficient reasons. Nothing in the Government's submissions indicates otherwise. The Court concludes that it has not been shown that the interference with the applicant's right to freedom of expression was "necessary in a democratic society".

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

APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage. She also claimed EUR 20,000 in respect of her costs and expenses incurred before the domestic courts and the Court.

25. The Government contested these claims.

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

27. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 986 covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning Article 10 of the Convention 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 986 (nine hundred and eighty-six 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 26 March 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Valentin Nicolescu	Tim Eicke
Acting Deputy Registrar	President