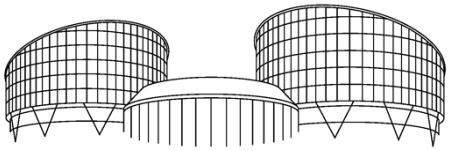

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF HRACHYA HARUTYUNYAN v. ARMENIA

(Application no. 15028/16)

JUDGMENT

Art 10 • Freedom of expression • Applicant ordered to pay damages in civil proceedings brought against him after he had reported alleged corrupt activities by his former colleague in private correspondence with the latter's hierarchy • Protection regime for freedom of expression of whistle-blowers should not automatically cease to apply because work-based relationship has ended • General criteria and principles established in *Guja v. Moldova* [GC] and reaffirmed in *Halet v. Luxembourg* [GC] applied • Domestic courts' failure to consider overall context, in particular applicant's use of internal reporting mechanism meant to be strictly confidential • Formalistic approach adopted could have chilling effect • Failure to address applicant's public-interest arguments • Failure to explain why alleged reputational damage to former colleague outweighed general interest • Substantial award of damages, resulting in applicant's flat and car being seized, disproportionately affecting him • Interference not "necessary in a democratic society"

Prepared by the Registry. Does not bind the Court.

STRASBOURG

27 August 2024

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Hrachya Harutyunyan v. Armenia,

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

Gabriele Kucsko-Stadlmayer*, President*,
Tim Eicke,
Faris Vehabović,
Branko Lubarda,
Armen Harutyunyan,
Anja Seibert-Fohr,
Anne Louise Bormann*, judges*,
and Simeon Petrovski, *Deputy Section Registrar,*

Having regard to:

the application (no. 15028/16) 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 national, Mr Hrachya Harutyunyan ("the applicant"), on 4 March 2016;

the decision to give notice to the Armenian Government ("the Government") of the complaint under Article 10 of the Convention concerning the alleged violation of the applicant's right to freedom of expression and to declare inadmissible the remainder of the application;

the parties' observations and the decision not to admit to the case file the Government's belated reply to the applicant's observations and just satisfaction claims;

Having deliberated in private on 25 June 2024,

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

INTRODUCTION

1. The case concerns alleged violation of the applicant's right to freedom of expression under Article 10 of the Convention in relation to insult and defamation proceedings brought against him after he had reported alleged corrupt activities by his former colleague in private correspondence with the latter's hierarchy.

THE FACTS

2. The applicant was born in 1953 and lives in Yerevan. He was represented by Mr A. Ghazaryan and Ms M. Baghdasaryan, lawyers practising in Yerevan.

3. The Government were represented by their Agent, Mr Y. Kirakosyan, Representative of the Republic of Armenia on International Legal Matters.

4. The facts of the case may be summarised as follows.

5. Between 2002 and 2011 the applicant worked for the Electric Networks of Armenia Closed Joint-Stock Company ("the ENA"), at the material time the sole electricity supplier in Armenia, based in Yerevan. It is undisputed by the parties that, at the material time, the ENA was owned by the Russian company Inter RAO EES ("the company"). From 2008 until his departure in October 2011, the applicant was Head of the Security and Administration Department.

6. On an unspecified date the company published an announcement entitled "Let's Fight Together Against Corruption" on its website, under the section "Fight Against Corruption", calling on anyone with information about corrupt practices at the company, including any actions which had caused or could cause pecuniary damage, to report such information using the dedicated email address. The company promised to carry out an independent investigation and guaranteed that all reports would remain anonymous and confidential. As announced, the reports would be forwarded to the Internal Audit Unit, which was accountable only to the Board of Directors of the company. It was desirable to indicate a contact person and the preferred means of correspondence for any further enquiries. The information, if confirmed, would be sent to the relevant security team and the directorate of the company for appropriate measures to be taken.

7. On 26 March 2012 the applicant sent an unsigned report from his private email address to the dedicated email address in the announcement.

8. His report – which mentioned full names of the persons concerned – in so far as relevant, reads as follows:

> "1. *[V.].B. was known in certain circles in the country for embezzlement of 10 million US dollars provided by Russia for the safe operation of the Armenian AEM, while he was Director General of the AAEM-Power Engineering International Corporation CJSC. This was covered by the Armenian mass media. According to a former MP of the Armenian Parliament, V.B. and his deputy, a certain M.I., a Georgian citizen, were involved in a transnational criminal group. The latter was suspected of being in contact with the foreign intelligence services in Georgia and Turkey. According to the same information, V.B. was suspected of stealing radioactive substances from AAEM with a view to selling [them].*
>
> 2. *During his employment in the ENA's Security Directorate, V.B. was able to form a group and use it to serve his own interests*. This is evidenced by the decisions on structural changes in the Security Directorate [and] the dismissal of more than 16 employees of the Directorate on the initiative of V.B. on the fabricated pretext of reducing [the number of] positions and hiring his own people, including his relatives, in their place. The number of [employees in] the Directorate steadily increased after the above-mentioned dismissals due to the recruitment of new employees. *On V.B.'s initiative, the Technical Control Department, which dealt with information security issues, was dissolved and instead the Department for the Protection of Interests, Rights and Legal Assistance was created, headed by V.B.'s cousin ...* A.Kh., an employee of the Financial and Economic Department, which is responsible for the control of payments and transfers of goods and material values at the ENA, is V.B.'s cousin. The Head of the ENA's Department for the Protection of Interests, B.A., and the former

Head of the Financial and Economic Department, K.M., are cousins, and the clerk, G.T., is their relative.

3. *Below are some facts that could indicate abuse of office by V.B. prompted by personal motives. They mainly refer to the period when V.B. was acting Security Director and cover a narrow field of the ENA's economic activity. Other material is under review and will be made available to you once the work has been completed.*

4. *On 24 October 2007 contract no. A-1085/07 was signed between the ENA and Uniforma LLC in the amount of 3,263,400 [Armenian drams (AMD)] for the sewing of 110 winter uniforms for the company's security guards. Clause 2.3 of the contract provided for a substantial down payment of 70% (the reasonable limit is no more than 30% of the contract price). However, the entire amount of AMD 3,263,400 was transferred to the account of Uniforma LLC. The contract did not specify the deadlines for fulfilment of the contractor's obligations.*

The ENA's Department for the Protection of Interests, headed by me, carried out an audit of the business reputation of the potential contractor. It was established that L.M., the Director of Uniforma LLC, was born in 1986, and that her mother, M.M., who was the unofficial head of the company, did not have a permanent place of residence and lived in Yerevan on a rental basis. Their own flat, situated at 45/20 Artashisyan Street, Yerevan, had been transferred to the ownership of the lessor to pay a debt. Uniforma LLC had no production base or staff. L.M. showed the inspectors of the Department a production workshop located in a rented basement, which at the time of the inspection contained only two old sewing machines, unfit for use. There was no three-phase power supply in the area and, according to the electronic customer database, the so-called workshop had not used electricity since 2006.

Based on the audit results, a well-founded report was drawn up and provided to V.B., pointing to the inadmissibility of any transaction with Uniforma LLC. As an alternative to Uniforma, I proposed to V.B. the candidacy of the Kanaker Sewing Factory, which is known in the Republic for sewing unforms for the Ministry of Defence, law enforcement agencies and non-governmental guard services. However, my proposal was dismissed by V.B. without any valid explanation.

As expected, Uniforma LLC did not fulfil its contractual obligations. In this connection, I advised V.B. to report Uniforma LLC to the law enforcement authorities. However, V.B. delayed the resolution of the issue on the pretext that he was having preventive talks with the Director of Uniforma LLC in order to convince her to fulfil her contractual obligations. After my persistent demands, on 24 March 2008 the Security Directorate sent letter DBK-74 to the Yerevan police with a request for appropriate measures to be taken against Uniforma LLC. In July of the same year, the Investigative Department of the police decided to open a criminal case against Uniforma LLC under Article 178 of the Criminal Code of the Republic of Armenia (fraud). On 16.07.2008, having learnt of this from me, V.B. signed and sent letter DBK-204 to the Investigative Department of the police with a request to withdraw our complaint about Uniforma LLC. The police allowed the request.

V.B.'s actions were prompted by the fact that in the event of a criminal case against L.M., the Director of Uniforma LLC, her mother, M.M., who was the de facto head of that company and had close relations with V.B., could testify against him that he had been an initiator of a fake contract.

Despite the fact that evidence of the contractor's actual intention to not fulfil its obligations had been unequivocally disclosed, V.B. did not prevent the real threat to the ENA's economic security but, by abusing his position, fraudulently contributed to

its materialisation. He prevented the detection of fraud committed against the ENA and the prosecution of those responsible.

Later, the material was transferred to the legal partnership Ter-Tajatyan, Grigoryan and Vahanyan to recover the amount of AMD 3,263,400 through court proceedings.

ENA's loss in the amount of AMD 3,263,400 has not yet been recovered.

5. *In 2007, through the mediation of V.B., H.A. was hired as Head of the Information and Analytical Department of the Security Directorate. Later, H.A.'s son-in-law, V.Ch., was also hired as an expert in that Department*.

6. *[H.]A. was the founder of Sekans LLC, a contractor of our company. V.B. should have known about this because he was friends with him. Besides, Sekans LLC participated in and won tenders from the ENA, and V.B. was on the tenders board and lobbied for its interests. By hiring H.A., V.B. breached the instructions of the Security Department of the headquarters of INTER RAO ENA on excluding affiliation with contractors.*

...

Special attention should be paid to the fact that AMD 5 million was transferred to the account of Sekans LLC, more than the amount payable under contract no. A-552 dated [9 October 2006]. After V.B.'s business relations with Sekans LLC became the subject of discussion by the ENA, H.A. resigned. The latter refused to return to the ENA the additional amount paid over the value of the contract and announced the bankruptcy of Sekans LLC. The internal control service, managed by V.B., carried out the control of outgoing payments by accessing the accounting software complex from the personal computer of the employee responsible for this control, and the latter could overlook the transfer of the above-mentioned amount that did not correspond to the contract. Transactions with Sekans LLC were accompanied by fraud, as a result of which the ENA suffered losses.

7. *In January 2007 operational information was received that S., the Director of the Ghars branch,* of the ENA *with V.B.'s support, had decided to purchase the two-storey administrative building of the branch at 1 Sharatalyan Street in Gyumri in order to convert it into a hotel. Upon verification of the above information, it was found that, indeed, a certain resident of Yerevan, G.M., had applied to the ENA requesting the removal and sale of the administrative building for AMD 5,300,00[0]. According to the official data of real estate agencies in Gyumri, the price of a one-room flat in the city centre during that period was AMD 4 to 5 million, that is, the price of a two-storey administrative building was equivalent to the price of a one-room flat. It is obvious that this transaction was not in the ENA's economic interests. I informed V.B. of my awareness of the transaction, without hinting at his participation in it, and suggested that he take measures to annul it or, in the worst-case scenario, revise the prices. As justification, I pointed to the data on real estate prices in Gyumri. V.B. assured me that he would treat my proposal as he should. Later, I learned that the [Armenian] Public Services Regulatory Commission had satisfied the relevant request of the ENA. The renovated two-storey building was sold in good condition for AMD 5,300,000, not to G.M., but to a certain N.P., a resident of Yerevan, because G.M. had relinquished his right to purchase the administrative building. It turned out that N.P. was the wife of the Director of the Ghars branch, S. V.B. had all the powers to suspend the transaction during the examination of G.M.'s application on behalf of the company's Director General, or at least to revise the price of the building in order to increase it. However, V.B. did not do anything, because he was a participant in that shady deal and, prompted*

by selfish motives, was interested in its realisation to the detriment of the ENA's economic interests.

8. *In May 2008, on the order of its Director S., 300 10kW insulators were released from the warehouse of the Ghars branch (the balance sheet value of one insulator is [AMD 25-35,000]) and sent by a private truck to the Aragatsotn region, where V.B.'s small hydroelectric station was being constructed. The branch director, S., had instructed the heads of 3-4 electricity networks of the branch (Akhuryan, Artik, Ashotsk, Amasia) to fill out false performance sheets for the installation of insulators. His illegal order had been carried out. However, in the logbook of the operational-dispatch service of the branch and electricity networks, no records were made of the disconnection of the 10kW lines on which the insulators were allegedly replaced. Without the disconnection of these lines, it was impossible to replace the old insulators with new ones under voltage. If we compare the performance sheets from May-November 2008 with the outage schedule for that period, we will get evidence of the theft of the insulators.*

In this instance, there is not only a simple theft of the ENA's property by V.B. with the prior agreement of the branch director, but also the involvement of a number of employees of the branch in the commission of the crime.

In 2009 the small hydroelectric station, owned by V.B. and his brother, was put into operation by signing a contract with the ENA.

V.B. and his brother are affiliated contractors and ultimate beneficiaries. V.B. holds an important position in the Security Directorate of the ENA CJSC, and his position is contrary to the spirit of the recent decisions of the President and Prime Minister of the Russian Federation on additional measures to combat corruption and abuses in the energy sector, which also fully refer to foreign assets.

9. *Contracts were signed with ARSB ZVEZDA LLC on 'Delivery, installation, assembly, programming, commissioning and regulation works and putting into operation the security system':*

- No. 82/07 dated 02.03.2007 with a total value of AMD 4,461,120;

- No. 120/07 dated 05.03.2007 with a total value of AMD 2,960,000;

- No. 142/07 dated 13.03.2007 with a total value of AMD 2,268,600.

According to the contracts, an amount equal to 50% of the value of each contract was transferred to the account of the contractor as a down payment. The agreements lacked objective justification for their necessity. In particular:

- agreement no. Ф-398/07 dated 05.06.2007 to contract no. 82/07 from 02.03.2007, set the contract price equal to AMD 6,560,520;

- agreement no. Ф -393/07 dated 05.06.2007 to contract no. 120/07 from 05.03.2007, set the contract price equal to AMD 4,378,800;

- agreement no. Ф-397/07 dated 05.06.2007 to contract no. 142/07 from 13.03.2007, set the contract price equal to AMD 2,726,400.

In the Armenian market, there are 5 firms specialising in the installation of technical means of security. According to my monitoring data, the prices of other firms providing similar services and works were much lower.

In December 2008 I conducted monitoring of these firms to find out their price proposals for installing a barrier [similar to that] installed by ARSB ZVEZDA LLC for the ENA CJSC.

Ellipse GA, AMD 1,000,000 (excluding VAT);

DS systems, AMD 1,014,000 (excluding VAT);

Security service, AMD 1,512,000 (excluding VAT);

Microroll, AMD 898,000 (excluding VAT);

ARSB ZVEZDA, AMD 2,890,000 (excluding VAT).

The result does not call for comments; in any case, the price was inflated by the initiator of the transactions, a.k.a. V.B., in order to receive 'kickbacks'. It should be noted that, based on technical parameters, the barrier installed by ARSB ZVEZDA did not outperform similar barriers proposed by other firms. Rather, it was the opposite. After its installation, the barrier did not work until April 2009 and we only signed the performance sheet in June 2009, after the serious defects had been eliminated.

10. *In accordance with Directive no. DBK-26 of 10.02.2009, a committee composed of a number of employees of the Security and Control Directorate was formed for the inventory of property numbers (barcodes) and selector input system cards. I was appointed head of the committee. At the time of the inspection, it was revealed that as of 10.02.2009, according to a document signed by, among others, V.B., the ENA's Information System Department had transferred 662,716 inventory numbers to the Security and Control Directorate. At the time of the inspection, the deficit of the inventory numbers was 54,034.*

The inspection of the Department revealed that the lost numbers had not been transferred to the Department by V.B. Besides, it was found out that V.B., by his unauthorised verbal instruction, had transferred the responsibility for the recording of property numbers and their provision to branches of the Technical Control (Provision of Information Security) Department, which contradicted Decree no. 6 of 02.10.2007 of Director General of the ENA on the instruction.

I proposed to the Directorate to carry out inspection measures to establish the circumstances of the loss of property numbers and their location, but the proposal was refused. Later I found that V.B. had inserted an additional clause into the electronic version of the official instructions of the Head of the Technical Control Department, which stated among the duties of the head of the department the duty of control over the legal transfer of goods and material values, which implied the provision of barcodes to branch representatives. This responsibility had been assigned to the Financial and Economic Department of the Security Directorate. Therefore, V.B. had committed a falsification in order to avoid responsibility for the lack of property numbers and had shifted it to the head of the department.

11. *At the end of 2006 a decision was made to separate the responsibilities of the ENA's physical security facilities as a separate legal entity. The only bidder in the tender, Saiga private security company [PSC] had made a convincing bid and contracts were signed with it at different times in the amount of AMD 71,490,000 (A-802/07 dated 30.11.2007, A-407/07 dated 02.07.2008, A-1186/09 dated 02.11.2009). Staff of the ENA's departmental guard [and] service dogs were transferred to Saiga PSC. Later, the company bought mobile phones for personal communication and 60 torches for the employees of the PSC.*

From 2008 until 2010 the above-mentioned fixed amount sometimes exceeded AMD 100 million for the provision of additional services. In order to make sure that V.B. received 'kickbacks' from Saiga PSC, it suffices to check the contracts signed with it from the perspective of the potential for corruption. As a proof of receiving

'kickbacks', one can cite the example of how V.B. misled the ENA's Director General E.B. when providing information about the market prices of guard services in Yerevan.

Below is an extract from the reference given to E.B. in February 2011:

'One guard post of Saiga PSC costs our company about [AMD] 634,920, including VAT.

Our monitoring of the security services market has shown that in the absence of a law on private security and investigation services in the Republic, there is a monopoly of 2-3 players in the market, including Saiga PSC and the State Guard Service Department of the Armenian police, which have the relevant licences, professional staff and logistical base. A comparative analysis of the costs of the physical guarding of the area through the installation of a guard post shows that the conditions of Saiga PSC are more acceptable for our company from an economic perspective and taking into account the quality point of the services provided. In particular:

State Guard Service Department of the Armenian police: the cost of one round-the-clock guard post service is AMD 552,296 excluding VAT.

Armobil PSC: the cost of one round-the-clock guard post service is AMD 620,000 excluding VAT.

Rusal Armenal departmental security service: the cost of one round-the-clock guard post service is AMD 957,000.'

From this fragment of the text, it appears that there was no significant imbalance between the prices of the security services provided by the firms, with the exception of Rusal, which should not have been included in this list because it was not a security service provider. The lie was that the value of Saiga PSC's services was reduced by [AMD] 30-40,000, and the services of the State Guard Service Department of the Armenian police were exaggerated by [AMD] 120,000, and that of Armobil PSC [by] AMD 180,000. In addition, no mention was made of the provision by the two organisations at their own expense of guards with uniforms, military and traumatic weapons, special personal protective gear, communication and night patrols with their own forces, which is also associated with high costs. V.B.'s misleading of the Director General was aimed at justifying the high costs of the guard service.

12. *As of May 2011, 120 electricity meters of customers were stolen from the Abovyan electricity network of the Geghama branch* of the ENA *at different times (mainly in the previous 3 years) exceeding the total number of meters stolen from all branches in the previous 10 years). Three or four episodes were reported to the regional police department. The results of our studies and the police inspection gave us serious grounds to believe that the electricity meters were stolen by the electricians of the Abovyan electricity network in order to cover up the electricity thefts. In May 2011, at the time of the inspection of the warehouse of the Geghama branch in connection with the theft that had taken place, I found in one of the closed facilities a large number of electricity meters reset to zero with fresh State-standard stamps.*

[A photograph beneath showed the applicant in a room with a number of electricity meters].

I reported the find to V.B. and offered to make an inventory to determine their origin and search for the stolen electricity meters among them, as well as to send a summary report to the police on all cases of theft of electricity meters of customers of the Abovyan electricity network of the Geghama branch. V.B. agreed and promised to return to the matter later. Later I learned that that pile of electricity meters had been quickly

removed from the premises of the branch. This only reinforced the view that V.B. was supporting the Geghama branch, and not without selfish considerations. ...

13. *In 2007 the Security Directorate had at its disposal accurate information about the mass overcharging of electricity customers of the Echmiadzin electricity network. At that time, by order of the Director General of the company, the responsibility for the sale of electricity of the Echmiadzin electricity network was placed on the ENA's sales director, that is, he was personally responsible for the overcharges. On that occasion, reports addressed to the Director General were prepared. The manager's attention was drawn to the fact that, in certain circumstances, the dissatisfaction of those customers whose electricity bills were increased could turn into mass protests if no measures were taken to correct the situation. In order to protect the Sales Director from responsibility, V.B. did not report this information to the Director General. In April 2011 the situation escalated dramatically. Customers in the village of Guy made public complaints against the company, which had a widespread reaction in society and undermined the company's reputation. V.B.'s inactivity was explained by the fact that he had hired his son – a student at the time – in the Sales Department. It should be noted that since 2008, the Directorate has stopped carrying out permanent work to detect and prevent electricity thefts. V.B. blocked the implementation of two orders of the Director General relating to the monitoring of energy-consuming facilities and the drawing up of a profile of the facility according to the realisation of the site. These measures helped to effectively monitor the consumption and timely prevention of electricity thefts.*

14. *On 3 August 2009 the ENA transferred about AMD 75-80 million to the account of the Manas company, and on 5 August 2009 it signed contract A-756 with the same company on construction work at 9 Grigor Lusavorich [Street], Yerevan. However, the fact is that at the time the contract was signed, the work had already been completed by a different company (Renko, I'm not sure). The security service did not record this and the threat to the economic security of the company, either at the stage of controlling the payment orders, during the negotiation of the transaction or during the tendering process. It is not the result of V.B.'s immaturity, but of his mingling with controlled units and, as a result, the impossibility of an adequate response to the threat. Perhaps the most striking assessment of the activities of the Security and Control Directorate is the results of the continuous inspections by the Investigative Department of the Armenian State Revenue Committee at the ENA CJSC and the prospect of a fine in the amount of AMD 10 billion.*

Please check the facts stated and inform me of the results. If necessary, I'll do my best to help you.

Enc.: three files"

9. On 11 July 2012 the Head of Economic Security and Administration of Internal Security Directorate of the company, Y.M., held a meeting with the applicant and showed him the report, asking him whether he had written it. After the applicant confirmed that he had, Y.M. asked him to sign a copy of it, which the applicant did.

10. On 18 July 2012 the applicant's report was forwarded, marked "confidential", to the Head of the ENA's Security and Control Directorate, G.Ma., who was asked to verify the information. The following day G.Ma. presented the applicant's report to V.B., who was asked to provide an explanation.

11. According to an internal investigation carried out at the ENA (in so far as summarised in the decisions of the domestic courts), H.A., the Head of the Information and Analytical Department of the Security Directorate, refuted statement no. 5. In particular, when he had been hired as an expert at the ENA, V.Ch. had not yet been his son-in-law. Moreover, as regards statement no. 6, V.B. had not been on the tenders board at the material time and, even if that had been the case, he would not have been able to influence its decision. As to statement no. 8, H.A. admitted that insulators had been taken from the Ghars branch and sent to the village of Aragats, where a small hydroelectric station was being constructed, of which he was a co-founder, but V.B. had had nothing to do with that station. As to the amount of AMD 4,978,099 mistakenly transferred to the account of Sekans LLC by the ENA's Financial and Economic Department, the latter had filed a claim against Sekans LLC, and in 2009 the court had made a decision on the compensation of the above-mentioned amount. The amount had to be returned to the ENA, and failure to do so had led to the bankruptcy of Sekans LLC.

12. Moreover, the internal investigation established that the information provided by the applicant about market prices had been incorrect. Furthermore, as regards statement no. 7, the Director of the Ghars branch had asked the ENA to sell the two-storey building in Gyumri to N.P. because a certain M.M. had refused to buy it, and the Public Services Regulatory Commission had granted the ENA's request to sell it. In addition, as regards statement no. 11, the Director of Saiga PSC informed an ENA official that the amount of money for services provided to the ENA had never exceeded AMD 100 million, as alleged by the applicant. Additional services had been provided for up to AMD 78 million.

13. Two other ENA officials dismissed statement no. 12 as untrue. One of them, the Director of the Geghama branch, submitted that the allegedly stolen electricity meters shown on the photograph in the applicant's report had been single-phase induction type energy meters, which had been replaced by electronic meters. In particular, a large number of single-phase induction type energy meters had been submitted to the laboratory of the Geghama branch for revamping.

14. On 16 August 2012 V.B. brought proceedings against the applicant for insult and defamation, seeking an apology and compensation.

15. On 15 July 2013 the Shirak Regional Court ("the Regional Court") dismissed V.B.'s claim. The court held that the applicant's statements were not "public" within the meaning of Article 1087.1 of the Civil Code (see paragraph 24 below), as they had been submitted in strict confidence.

16. On 12 August 2013 V.B. lodged an appeal.

17. On 20 November 2013 the Civil Court of Appeal quashed the judgment of 15 July 2013 and remitted the case on the grounds that the Regional Court had misinterpreted what constituted a "public statement".

Referring to decisions by the Court of Cassation taken in 2012 (see paragraph 26 below), it held that the term "third person" meant a person to whom information was provided other than the claimant or respondent, whereas the Regional Court had not considered Y.M. to be a "third person". An appeal on points of law lodged by the applicant against that judgment was declared inadmissible by the Court of Cassation on 15 January 2014.

18. On 3 March 2015, during the second round of the proceedings, the Regional Court partly allowed V.B.'s claim. It held that the applicant's report constituted a public statement within the meaning of Article 1087.1 of the Civil Code. In particular, he had submitted his report five months after the termination of his contract and, by submitting his report to Y.M., he had made his statements in public, that is, to a person other than the defamer and the defamed. In addition, a committee had been set up to verify his submissions and its members had also become aware of the content of the report. Therefore, the applicant had shared his report with one "third person", Y.M. and had thus failed to take adequate measures to ensure the confidentiality of the information so that it did not become available to others. It also did not admit in evidence the company's online announcement because it had been submitted as a screenshot copy.

The Regional Court then referred to the results of the internal investigation, which had established that the information contained in the applicant's report were not truthful (see paragraphs 11-13 above). The court thus found that statement no. 1 constituted an insult because it had had no factual basis. As regards the other statements (in italics), which the applicant had failed to prove, they had been defamatory, debasing and insulting to V.B.'s honour, dignity and business reputation. In particular, the applicant had failed to prove that he had taken all measures to ensure the confidentiality of his report, that his actions had been aimed at investigating, exposing and preventing corruption at the ENA, and that he had not intended to defame V.B. In particular, he had no longer worked at the ENA and the verification of those facts had not been within his remit. The applicant's argument that he had not intended to defame V.B. was untrue because he had failed to prove the veracity of his statements. In any event, even if he had not had such an intention, he had not shown good faith in presenting his value judgments in relation to the information imparted. The court noted, however, that his statements could not be considered value judgments because they had had no factual basis. Besides, he had failed to prove that his statements had been motivated by an overriding public interest. In particular, the duty to impart information on areas or issues of public interest was placed upon the mass media and not on a private individual.

The applicant was ordered to make a public apology "in the same manner as [he] had published the [impugned statements]" and to pay AMD 2,000,000 in compensation for insult and defamation. He was further ordered to pay legal and other costs in the amount of AMD 492,128.

19. On 25 March 2015 the applicant lodged an appeal, alleging a violation of Article 10 of the Convention, relying, *inter alia*, on *Zakharov v. Russia* (no. 14881/03, 5 October 2006) and *Kazakov v. Russia* (no. 1758/02, 18 December 2008). In particular, he contested that his statements had been made in public, but that he had submitted his report using his private email and in strict confidence, as assured by the company, whereas the Regional Court took no heed of that fact and dismissed the company's online announcement as inadmissible (see paragraph 18 above). Furthermore, it had not taken heed of the fact that he had filed his report in response to the company's call to report corrupt activities. His aim had been to expose and have investigated what he had considered to be corruption at the ENA, a matter of public interest. He had had no opportunity to verify his statements other than by bringing them to the attention of the claimant's hierarchy. As regards his first statement, he had simply reported what he had come across in the local media. However, the court rejected the printouts of the relevant news articles as they had not been original documents. Also, the ENA had refused to submit to the court the three files attached to his report, which represented analyses drawn up upon official documents of the ENA and were capable of proving the veracity of his allegations. The Regional Court had also failed to obtain that evidence from the ENA through judicial enforcement services. Moreover, in order to substantiate the statements made in his report, he had requested the Regional Court to require the ENA to submit certain pieces of evidence, but the court had not even considered his request. It had thus deprived him of any opportunity to present his defence. Lastly, he argued that the sanction imposed on him by the court was disproportionate, given that neither he nor his wife were employed and the only way he could pay the damages would be to sell their flat.

20. On 19 June 2015 the Civil Court of Appeal dismissed the applicant's appeal and upheld the judgment of the Regional Court. The appellate court held, *inter alia*, that the fact that the applicant had submitted his report in strict confidence and to a person responsible for dealing with it had no bearing on the determination of the case given that it had been submitted to a "third person", namely Y.M. Moreover, the applicant had failed to cite the source of his information when filing his report, arguing that he had reported what he had come across in the news, and that no proof had been submitted in support of his statements. As regards the amount of compensation, the court considered it to be fair and not financially burdensome for the applicant.

21. On 20 July 2015 the applicant lodged an appeal on points of law, which was declared inadmissible by the Court of Cassation on 19 August 2015. A copy of that decision was served on him on 4 September 2015.

22. On 29 August 2016 an official of the Department for the Enforcement of Judicial Acts ("the DEJA") decided to seize the applicant's car. In order to recover the amount of damages imposed on the applicant by the Regional Court, the relevant officials of the DEJA decided on 16 February 2017 and

16 October 2018 respectively, that the applicant's car and flat be sold by public auction. The car had an estimated value of AMD 1,340,000 and the starting price was set at AMD 1,005,000. As regards the flat, it had an estimated value of AMD 5,000,000 and the starting price was set at AMD 3,750,000.

No information was provided whether the DEJA sold the applicant's car and flat.

23. The applicant submitted that the alleged corruption at the ENA had resulted in electricity price hike in 2015, which triggered mass protests in the Armenian capital. The Government did not contest these allegations.

RELEVANT NATIONAL AND INTERNATIONAL LEGAL FRAMEWORK

I. RELEVANT DOMESTIC LAW AND PRACTICE

A. Civil Code (1999, as in force at the material time)

24. Article 1087.1 of the Civil Code provides that a person whose honour, dignity or business reputation has been tarnished through insult or defamation can bring court proceedings against the person who made the insulting or defamatory statement. An insult is a public statement made through words, images, sounds, signs or other means with the aim of tarnishing someone's honour, dignity or business reputation. A public statement may not be considered an insult if it is based on precise facts (except congenital defects) or pursues an overriding public interest. Defamation is a public statement of fact about a person which does not correspond to reality and tarnishes his or her honour, dignity or business reputation. In cases of defamation, the burden of proof in respect of the existence or absence of the relevant facts is on the defendant. It shifts to the claimant if presenting such proof requires the defendant to undertake unreasonable actions or efforts, whereas the claimant possesses the necessary evidence. A person is exempt from liability for defamation or insult if the statements of fact made or presented by him or her are a verbatim or bona fide reproduction of information disseminated by a media outlet or information contained in a public speech, official documents, other mass media or any creative work, and he or she makes reference to the source (that is to say, the author).

B. Law on the whistle-blowing system ("the Whistle-blowing Act", in force since 2017)

25. Section 2(1)(1) defines whistle-blowing as reporting, in writing or verbally, to a competent person or body under the Act, of information about a case of corruption or a conflict of interest or a violation of rules of ethics or

conditions of incompatibility or other restrictions or breaches related to the declaration of revenue, or any other damage or threat of damage to the public interest in State or local self-governing bodies, State institutions and organisations, as well as in organisations of public importance. Section 2(1)(2) defines a whistle-blower as a natural or legal person who, in accordance with the procedure prescribed by the Act, discloses in good faith information about a case of corruption or a conflict of interest or a violation of rules of ethics or conditions of incompatibility or other restrictions or breaches related to the declaration of revenue, or any other damage or threat of damage to the public interest, involving an official, an institution, an organisation or an employee of the organisation with whom he or she is or has been in an employment, civil, administrative or other work-based relationship, or to whom he or she has applied for the purpose of providing services, or who has been mistakenly perceived as a whistle-blower.

C. Decisions of the Court of Cassation of 27 April 2012 (nos. LD/0749/02/10 and EKD/2293/02/10)

26. In the above decisions the Court of Cassation interpreted the term "public statement" contained in Article 1087.1 of the Civil Code as a statement made in the presence of at least one third person. It held, in particular, that a public statement or public presentation could be made by printing, broadcasting by radio or television, mass media, dissemination on the internet or other means of telecommunication, by public speech, or by communicating the statement or presentation even to one third person by using "any other means". The presentation of such expressions to the addressee cannot be considered public if the person making them has taken sufficient measures to ensure their confidentiality so that they do not become available to other persons.

Cases in which a statement was made non-publicly (the person insulted the victim without the presence of third parties) are outside the scope of the relevant Article.

II. INTERNATIONAL AND EUROPEAN LEGAL FRAMEWORK

27. The relevant international and European law is cited in *Halet v. Luxembourg* ([GC], no. 21884/18, §§ 54-58, 14 February 2023).

28. In his report A/70/361 of 8 September 2015, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression addressed the protection of sources of information and of whistle-blowers. In his argument, "whistle-blowers who, based on a reasonable belief, report information that turns out not to be correct should nonetheless be protected against retaliation".

29. On 30 April 2014 the Committee of Ministers adopted Recommendation CM/Rec (2014)7 on the protection of whistleblowers, which states as follows:

"...

Recognising that individuals who report or disclose information on threats or harm to the public interest ('whistleblowers') can contribute to strengthening transparency and democratic accountability;

...

For the purposes of this recommendation and its principles:

... 'whistleblower' means any person who reports or discloses information on a threat or harm to the public interest in the context of their work-based relationship, whether it be in the public or private sector;

...

II. Personal scope

3. The personal scope of the national framework should cover all individuals working in either the public or private sectors, irrespective of the nature of their working relationship and whether they are paid or not.

4. The national framework should also include individuals whose work-based relationship has ended and, possibly, where it is yet to begin in cases where information concerning a threat or harm to the public interest has been acquired during the recruitment process or other pre-contractual negotiation stage.

...

21. Whistleblowers should be protected against retaliation of any form, whether directly or indirectly, by their employer and by persons working for or acting on behalf of the employer. Forms of such retaliation might include dismissal, suspension, demotion, loss of promotion opportunities, punitive transfers and reductions in or deductions of wages, harassment or other punitive or discriminatory treatment.

22. Protection should not be lost solely on the basis that the individual making the report or disclosure was mistaken as to its import or that the perceived threat to the public interest has not materialised, provided he or she had reasonable grounds to believe in its accuracy.

..."

The Explanatory memorandum to the Recommendation states:

"...

31. It is the *de facto* working relationship of the whistleblower, rather than his or her specific legal status (such as employee) that gives a person privileged access to knowledge about the threat or harm to the public interest. Moreover, between member States, the legal description of individuals in employment or in work can vary and likewise their consequent rights and obligations. Furthermore, it was considered preferable to encourage member States to adopt an expansive approach to the personal scope of the recommendation. For these reasons it was decided to describe the personal scope by reference to the person's 'work-based relationship'...

...

Appendix – The 29 Principles

...

Principle 22

85. Research shows that individuals raise concerns not only when wrongdoing has already occurred and damage has already been done but also, and more often, in order to avert further harm and damage. Even where an individual may have grounds to believe that there is a problem which could be serious, they are rarely in a position to know the full picture. It is inevitable, therefore, in both situations that the subsequent investigation of the report or disclosure may show the whistleblower to have been mistaken. Principle 22 makes it clear that protection should not be lost in such circumstances. Moreover, the principle has been drafted in such a way as to preclude either the motive of the whistleblower in making the report or disclosure or of his or her good faith in so doing as being relevant to the question of whether or not the whistle-blower is to be protected. Principle 10 protects the position of anyone who suffers loss or injury as a result of someone who deliberately and knowingly reports or discloses false information. Also, a person who makes such reports or disclosures should not be protected by the law'.

..."

30. Directive 2019/1937/EU of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law required Member States to bring into force the laws, regulations and administrative provisions necessary to comply with it by 17 December 2021.

The relevant provisions of the Directive, defining its personal scope, read as follows:

Article 4

Personal scope

"1. This Directive shall apply to reporting persons working in the private or public sector who acquired information on breaches in a work-related context including, at least, the following:

(a) persons having the status of worker, within the meaning of Article 45(1) TFEU, including civil servants;

(b) persons having self-employed status, within the meaning of Article 49 TFEU;

(c) shareholders and persons belonging to the administrative, management or supervisory body of an undertaking, including non-executive members, as well as volunteers and paid or unpaid trainees;

(d) any persons working under the supervision and direction of contractors, subcontractors and suppliers.

2. This Directive shall also apply to reporting persons where they report or publicly disclose information on breaches acquired in a work-based relationship which has since ended.

3. This Directive shall also apply to reporting persons whose work-based relationship is yet to begin in cases where information on breaches has been acquired during the recruitment process or other pre-contractual negotiations."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

31. The applicant complained that the civil judgment against him for insult and defamation had violated his right to impart information under Article 10 of the Convention. He also relied on Article 6 § 1 of the Convention alleging violation of his defence rights in view of the domestic courts' refusal to order the ENA to submit certain evidence in its possession that the applicant had considered relevant for his allegations in respect of V.B.

32. The Court, being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018) considers that the above complaints fall to be examined solely under Article 10 of the Convention, which 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. Admissibility

33. The Court notes 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.

B. Merits

1. The parties' submissions

(a) The applicant

34. The applicant submitted that he had become aware of the relevant information during his employment with the ENA as Head of the Security and Administration Department and that he had reported it in order to alert the company to the alleged corrupt activities of V.B. He should therefore benefit from the protection afforded to whistle-blowers notwithstanding that he had no longer been employed at the ENA at the time of his reporting (the applicant referred to the Court's case-law and Recommendation No. CM/Rec(2014)7 on the protection of whistleblowers adopted by the

Committee of Ministers of the Council of Europe, cited in paragraph 29 above).

35. He argued that the interference with his right to freedom of expression had not been prescribed by law, as his reporting had not satisfied the "public" requirement specified in Article 1087.1 of the Civil Code, as interpreted by the Court of Cassation (paragraphs 24 and 26 above). The domestic courts, however, had interpreted that term broadly, applying it to any statement of which a third party had been made aware. When he had responded to the company's call for people to come forward with information pertaining to corrupt practices or any other harmful actions for the company, he could not have anticipated that he would later be sued for information imparted in private correspondence, the confidentiality of which had been promised by the company. Later, he had signed his report, as requested by, and only in the presence of Y.M. Therefore he had never made any statements "in public", as found by the domestic courts. It was obvious that his report was to be forwarded for investigation because that was the purpose of the procedure put in place by the company. He had never gone public but had chosen the least harmful channel of reporting, which was supposed to be confidential. The domestic courts had failed to take due account of the public-interest nature of the information shared and had treated the case as a simple defamation case because of the absence, at the material time, of any legal framework to protect whistle-blowers, which was in itself problematic under Article 10. They had failed to strike a fair balance between the competing interests at stake. Lastly, the amount of damages he had been ordered to pay was excessive – as a result, his only flat and car had been taken by the DEJA to be sold by public auction.

(b) The Government

36. The Government submitted that the applicant could not rely on the protection afforded to "whistle-blowers" which had only been introduced into domestic law in 2017, namely after the circumstances of the present case. Moreover, at the time of making the impugned statements he had no longer been an employee of the ENA and his case thus differed from the Court's case-law concerning whistle-blowers.

In any event, the interference with the applicant's right to freedom of expression had been "prescribed by law" because the notion of "public statement" referred to any statement made to a third person other than the defamer and the defamed. Once his report had been handed over to Y.M. on 11 July 2012, he could no longer expect his correspondence to remain confidential, as it would have been shared with other employees of the company in charge of investigating his allegations. Furthermore, the information had targeted V.B., accusing him of criminal conduct, which the company had thoroughly examined and dismissed as unsubstantiated. It had not concerned the ENA, as alleged by the applicant, but only V.B., and had been motivated by personal animosity rather than any public concern. In fact,

the applicant had failed to prove the truthfulness of his statements by any evidence whatsoever, even though the accusations made by him had been of a serious nature and could have even led to V.B.'s criminal prosecution. Lastly, the amount of compensation imposed on him had been necessary in the circumstances, given the seriousness of his allegations tarnishing V.B.'s honour and reputation in the eyes of his colleagues.

2. The Court's assessment

37. It is common ground between the parties that the civil courts' judgments against the applicant amounted to an "interference by public authority" with his right to freedom of expression. It must therefore be determined whether the interference was "prescribed by law", pursued one or more of the legitimate aims set out in Article 10 § 2 and was "necessary in a democratic society" in order to achieve them (see *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], no. 17224/11, § 67, 27 June 2017, and *Gaspari v. Armenia (no. 2)*, no. 67783/13, § 21, 11 July 2023).

(a) Whether the interference was prescribed by law

38. The Court notes that the domestic courts based their decisions on Article 1087.1 of the Civil Code (see paragraphs 18, 20 and 24 above). Accordingly, the interference in question had a legal basis. The parties disagreed whether it was sufficiently precise to enable the applicant to foresee, to a degree that was reasonable in the circumstances, that his statements shared in private correspondence through a confidential procedure, would be regarded "public" within the meaning of that provision. The Court will address this aspect in the context of the reasons given by the domestic courts justifying the interference complained of (see paragraphs 51-53 below).

(b) Whether the interference pursued a legitimate aim

39. The impugned interference could be regarded as pursuing the legitimate aim of protecting the "reputation or rights of others", namely that of V.B., who, at the material time, was the Deputy Director of Security and Control of the ENA.

(c) Whether it was "necessary in a democratic society"

(i) General principles

40. The general principles for assessing the necessity of an interference with the exercise of freedom of expression were summarised in *Bédat v. Switzerland* ([GC], no. 56925/08, § 48, 29 March 2016) and, more recently, in *Halet* (cited above, § 110).

41. In instances, such as the present, where the interests of the "protection of the reputation or rights of others" bring Article 8 into play, the Court may be required to verify whether the domestic authorities struck a fair balance when protecting the two values guaranteed by the Convention – namely, on the one hand, freedom of expression (as protected by Article 10) and, on the other, the right to respect for private life, as enshrined in Article 8. The general principles applicable to the balancing of these rights, as well as the appropriate approach, were summarised in *Medžlis Islamske Zajednice Brčko and Others* (cited above, §§ 77 and 78).

(ii) Approach to be adopted in the present case

(α) Whether the Article 10 right is to be balanced against the Article 8 right

42. The accusations made by the applicant about V.B. were quite serious and therefore attained the requisite level of seriousness to harm V.B.'s rights under Article 8 of the Convention (compare *White v. Sweden*, no. 42435/02, § 25, 19 September 2006; *Pfeifer v. Austria*, no. 12556/03, §§ 47-48, 15 November 2007; and *A. v. Norway*, no. 28070/06, § 73, 9 April 2009). The Court must therefore ascertain whether the domestic authorities struck a fair balance between the two values guaranteed by the Convention – namely, on the one hand, the applicant's freedom of expression, as protected by Article 10, and, on the other, V.B.'s right to respect for his reputation under Article 8 (see *Axel Springer AG v. Germany* [GC], no. 39954/08, § 84, 7 February 2012).

43. Where national jurisdictions have carried out a balancing exercise in relation to those rights, the Court has to examine whether, during their assessment, they applied the criteria established in its case-law on the subject and whether the reasons that led them to take the impugned decisions were sufficient and relevant such as to justify the interference with the right to freedom of expression (see *Cicad v. Switzerland*, no. 17676/09, § 52, 7 June 2016). In this connection it needs at the outset to establish whether the applicant's reporting could, as argued by him, be regarded as whistle-blowing within the meaning of its case-law.

(β) Relevance of the Court's case-law concerning the protection afforded to whistle-blowers

44. The Court reiterates that the protection regime for the freedom of expression of whistle-blowers is likely to be applied where the employee or civil servant concerned is the only person, or part of a small category of persons, aware of what is happening at work and is thus best placed to act in the public interest by alerting the employer or the public at large (see *Guja v. Moldova* [GC], no. 14277/04, § 72, ECHR 2008). Nonetheless, employees owe to their employer a duty of loyalty, reserve and discretion, which means that regard must be had, in the search for a fair balance, to the limits on the

right to freedom of expression and the reciprocal rights and obligations specific to employment contracts and the professional environment (see *Halet*, cited above, § 116).

45. So far, the cases examined by the Court on whistle-blowing have concerned disclosure to an outside authority or the public at large of in-house information which an employee obtained in the course of his or her work-based relationship (see ibid.; *Guja*, cited above, § 72; *Marchenko v. Ukraine*, no. 4063/04, 19 February 2009; *Heinisch v. Germany*, no. 28274/08, ECHR 2011 (extracts); *Bucur and Toma v. Romania*, no 40238/02, 8 January 2013; *Matúz v. Hungary*, no. 73571/10, 21 October 2014; and *Gawlik v. Liechtenstein*, no. 23922/19, 16 February 2021). In *Halet*, the Court held that the protection enjoyed by whistle-blowers under Article 10 of the Convention is based on the need to take account of characteristics specific to the existence of a work-based relationship: on the one hand, the duty of loyalty, reserve and discretion inherent in the subordinate relationship entailed by it and, where appropriate, the obligation to comply with a statutory duty of secrecy; on the other, the position of economic vulnerability *vis-à-vis* the person, public institution or enterprise on which they depend for employment and the risk of suffering retaliation from the latter (see *Halet*, cited above, § 119).

46. In the present case, by contrast, the Court is called upon to rule on the applicability of the protection regime for the freedom of expression of whistleblowers to a situation where reporting of information on acts and omissions at work that allegedly represented a threat or harm to the public interest took place after the end of the work-based relationship. Furthermore, the peculiarity of the present case also lies in the fact that the applicant never went public, but used only internal channels of reporting following a call from the hierarchy of his former employer to report any information about corrupt practices at the company (see paragraphs 6 and 7 above). The Court must therefore take into consideration the specific circumstances of the present case, which distinguish it from the case-law mentioned in paragraph 45 above.

In this context, the Court observes that the current European approach is that the end of employment is not a bar to whistle-blower protection. Indeed, both the Committee of Ministers' Recommendation CM/Rec (2014)7 (Principle 4, see paragraph 29 above) and Directive 2019/1937/EU (Article 4, see paragraph 30 above) – although the latter is not binding for Armenia because it is not an EU member State – extend the protection of freedom of expression of whistle-blowers to former employees. A similar approach was taken in the Whistle-blowing Act, which was introduced into domestic law after the events in the present case took place (see paragraph 25 above). The Explanatory memorandum to the above-mentioned Recommendation (paragraph 31 thereof) states that it is the *de facto* working relationship of the whistle-blower, rather than his or her specific legal status (such as employee)

that gives a person privileged access to knowledge about the threat or harm to the public interest.

Having regard to its approach described in paragraph 45 above, the Court considers that, in circumstances such as in the present case, where the reporting of alleged professional misconduct takes place after the end of employment, the protection regime for the freedom of expression of whistle-blowers should not automatically cease to apply simply because the work-based relationship ended. Rather, such protection can, in principle, apply provided that public-interest information was obtained while the "whistle-blower" had privileged access to it by virtue of his or her work-based relationship. In such cases where work-based relationship ended, there could be no question of repercussions at work, but retaliation measures against the former employee could take other forms. What is of importance is whether the detriment suffered by the former employee was the direct consequence of the protected disclosure.

47. Unlike in the cases referred to in paragraph 45 above, the applicant in the present case submitted his report when he was no longer employed at the ENA. He did not suffer any repercussions at work, because his work-based relationship had since ended. However, his report was mainly based on information that he had acquired during his employment with the ENA. Save for statement no. 1, the source of which was domestic media and a statement of a former MP, the applicant reported to the ENA specific acts of misconduct allegedly committed by V.B. on the basis of information that he had obtained at work while he had privileged access to it as the then Head of the Security and Administration Department of the ENA. Accordingly, he can be considered as "the only person, or part of a small category of persons, aware of what [wa]s happening at work and [wa]s thus best placed to act in the public interest by alerting the employer or the public at large" (contrast *Wojczuk v. Poland*, no. 52969/13, § 85, 9 December 2021, where the applicant denounced, by poison-pen letters, to competent authorities financial and employment-related shortcomings on the part of his employer, without having any access to the latter's financial documents or any knowledge of incidents involving mismanagement or inappropriate activity on the part of his colleagues). Moreover, he was subject to civil liability as a direct consequence of his reporting. Therefore, despite the specific context of the present case, the Court will, in so far as appropriate, apply the general criteria and principles as established in *Guja* (§§ 72-78) and reaffirmed in *Halet* (§§ 121-54), which include an assessment of:

(a) whether or not alternative channels for the disclosure were available;
(b) the public interest in the disclosed information;
(c) the authenticity of the disclosed information;
(d) the detriment to the employer;
(e) whether the whistle-blower acted in good faith;
(f) the severity of the sanction.

48. The Court also notes that the approach to whistle-blowers and the above criteria have been established in its case-law prior to the events of the present case. Therefore, the mere fact that the protection regime afforded to whistle-blowers was introduced into domestic law only after the events in the present case took place, did not exempt the domestic courts from their obligation to weigh up the rights or interests concerned in accordance with the procedures defined by the Court and in conformity with the criteria it has laid down (compare *Halet*, cited above, § 162), as seemingly argued by the Government (see paragraph 36 above).

(iii) Application of the above principles to the present case

49. The Court firstly observes that the domestic courts treated the present case as an ordinary defamation dispute and never applied the principles referred to above. It is true that the applicant did not specifically rely on the protection of freedom of expression afforded to whistle-blowers, but rather referred to the Court's case-law about the reporting of irregularities in the conduct of State officials. However, he raised a number of arguments pertaining to the criteria applicable in whistle-blower cases and thus gave the national courts an opportunity to rule on his case from that perspective (see paragraph 19 above).

50. The Court will therefore assess the manner in which the domestic courts responded to the applicant's arguments and rule on its compatibility with the principles and criteria referred to in paragraph 47 above and, if necessary, apply them itself in the present case (compare *Halet*, cited above, § 158).

(α) Internal channels for the reporting

51. Unlike in the cases previously examined by the Court (see paragraph 45 above), the applicant in the present case did not report the alleged acts of misconduct to competent State authorities or the press. Rather, he opted for the internal channels of reporting and submitted his report to the hierarchy of his former employer following the latter's call for people to come forward with such information. Moreover, the company promised that all reports submitted in that respect would remain anonymous and confidential. The applicant pointed out before the domestic courts that he had used the procedure set up by the company to investigate possible professional misconduct and had sent his report by his private email to the body entrusted with the task of examining such reports as part of a confidential procedure. However, the Regional Court did not admit in evidence the copy of the company's online announcement and rejected the applicant's arguments holding that it was outside his remit to report on such matters after his employment with the ENA had ended (see paragraph 18 above). The Court of Appeal, for its part, simply noted that the applicant had disclosed the

impugned information to a "third person" within the meaning of Article 1087.1 of the Civil Code and had thus made it "in public" (see paragraph 20 above).

52. In the Court's view, by dismissing the applicant's above arguments, the domestic courts took no heed of the overall context of the case. In particular, as stated above, the peculiarity of the present case lies in the fact that the applicant did not resort to public disclosure but confined himself to making use of the internal reporting mechanism that was closest to the source of the problem, most able to investigate and with powers to remedy it, and which was, moreover, meant to be strictly confidential. It was precisely the purpose of the internal investigation to confirm or lay to rest his allegations. As mentioned in paragraph 46 above, the protection of freedom of expression for whistle-blowers for denouncing alleged wrongdoing at workplace could not be denied to former employees solely on the grounds that their work-based relationship had ended. The Court emphasises the leading role that whistle-blowers are liable to play by bringing to light information that is in the public interest (see *Halet*, cited above, § 120), thereby ensuring accountability for the alleged misconduct and identification of those who may be liable for any damage caused.

53. Furthermore, it is difficult for the Court to see how the domestic courts found that the applicant's reporting to Y.M., the company's Head of Economic Security and Administration, who, as it transpires from the decision of the appellate court, was responsible for dealing with complaints submitted in the context of the internal enquiry (see paragraph 20 above), could be considered to have been made "in public". What is more, while reproaching the applicant for not taking all measures to ensure the confidentiality of his report (see paragraph 18 above), the Regional Court did not identify what measures the applicant was supposed to take knowing that the confidentiality of his report had been promised by the company. Such a formalistic approach not only compromised his defence rights but could also have a chilling effect on any former or current employee who decides to report to an employer professional misconduct by one of its actual employees.

(β) Public interest in the information reported

54. Turning to the content of the applicant's report, the Court observes that it mainly concerned instances of abuse of office, improper conduct and corruption by V.B., a senior ENA official at the time. The Court has previously found that information concerning unlawful acts or practices is undeniably of particularly strong public interest (see *Halet,* cited above, §§ 134-35 and 141), even when it concerns the accountability of the directors of private companies (see *Petro Carbo Chem S.E. v. Romania*, no. 21768/12, § 43, 30 June 2020) or non-compliance with tax obligations by a public-interest organisation (see *Público - Comunicação Social, S.A. and Others v. Portugal*, no. 39324/07, § 47, 7 December 2010). In this connection,

it is noteworthy that the ENA was not an ordinary private company: it was the main electricity supplier in Armenia and it appears that some of its decisions were subject to prior governmental approval (see statement no. 7 of the applicant's report cited in paragraph 8, which the Government did not contest; see also paragraph 23 above). As such, the ENA and its employees were subject to a wider level of public scrutiny and the investigation of any allegations of abuse of office and acts of corruption by its officials was undoubtedly in the public interest (compare the case-law referred to in *Halet*, cited above, § 134).

55. The domestic courts, however, failed to address the applicant's arguments that his reporting had been made in public interest in any meaningful manner (compare *Bucur and Toma*, cited above, § 104). The Regional Court, in particular, dismissed it on the grounds that disclosure for reasons of "an overriding public interest" was for media representatives and not ordinary citizens such as the applicant, while the Court of Appeal simply endorsed this finding (see paragraphs 18 and 20 above). The domestic courts thus omitted to examine the content of the applicant's report from the perspective of it being made in the public interest and, moreover, essentially limited the scope of protection of the right to freedom of expression on matters of public interest, which, according to the Court's well-settled case-law, is not limited to the media but is enjoyed by the public at large.

(γ) Detrimental effects of the reporting

56. The Court reiterates that disclosures could be prejudicial to the professional reputation and business interests of companies, their commercial success and viability for the benefit of shareholders and employees, but also for the wider economic good (see, *mutatis mutandis, Heinisch*, cited above, §§ 88 and 89). In the present case, this issue was not addressed by the domestic courts. Nor was it argued before the Court that the applicant's former employer suffered any prejudice. In such circumstances, the Court need not to examine this issue of its own motion. As regards the detrimental effects of the applicant's reporting to V.B. (see paragraph 42 above), the Court reiterates that the applicant filed his report using an internal reporting procedure and any impact on V.B.'s reputation was thus limited in scope. There is nothing to suggest that the internal investigation triggered by the applicant's report caused excessive prejudice to V.B.'s reputation. The domestic courts did not explain why such damage, the nature and scope of which, moreover, had not been determined, outweighed the general interest in the internal reporting of alleged acts of professional misconduct, the purpose of which was to ensure accountability at the ENA (compare and contrast *Medžlis Islamske Zajednice Brčko and Others*, cited above, §§ 105-106, where the reporting by the applicant NGO had been later leaked to the press, thus compounding its detrimental effects on the subject of the reporting).

(δ) Authenticity of the disclosed information and good faith

57. As to the authenticity of the information, the domestic courts, referring to the results of the internal investigation carried out at the ENA, found that the applicant had failed to prove the veracity of his report (see paragraphs 18 and 20 above). In this connection, the Court has already accepted that, under certain circumstances, the information disclosed by whistle-blowers may be covered by the right to freedom of expression, even where the information in question has subsequently been proved to be false or could not be proved to be correct. For this to apply, however, the whistle-blower must have carefully verified that the information was accurate and reliable. Whistle-blowers who wish to be granted the protection of Article 10 of the Convention are thus required to behave responsibly by seeking to verify, in so far as possible, that the information they seek to disclose is authentic before making it public (see *Halet*, cited above, § 127).

58. The Court also refers to the principle laid down in the Explanatory memorandum to Recommendation (2014)7 (see paragraph 29 above), to the effect that "[e]ven where an individual may have grounds to believe that there is a problem which could be serious, they are rarely in a position to know the full picture. It is inevitable, therefore, ... that the subsequent investigation of the report or disclosure may show the whistleblower to have been mistaken" (see Explanatory memorandum, Appendix, § 85 thereof). Equally, it recognises, as stated by the UN Special Rapporteur, that "[w]histle-blowers who, based on a reasonable belief, report information that turns out not to be correct should nonetheless be protected against retaliation" (see paragraph 28 above). In such circumstances, it appears desirable that the individual concerned should not lose the benefit of the protection granted to whistle-blowers, subject to compliance with the other requirements for claiming entitlement to such protection (see *Halet*, cited above, § 125).

59. Turning to the present case, the Court firstly observes that, as indicated in the applicant's report, statement no. 1 had emanated from domestic media and a statement of a former MP (see paragraph 8 above), which the applicant had apparently provided to the domestic courts (compare and contrast *Medžlis Islamske Zajednice Brčko and Others*, cited above, § 100). The courts, however, firstly dismissed the evidence submitted in support of that statement, and subsequently reproached the applicant for not indicating in the report the source of that statement (see paragraphs 18, 19 and 20 above), thus essentially holding the applicant to be the origin of that statement. As regards the remaining statements, the Court observes that the applicant had previously held the post of Head of the Security and Administration Department of the ENA and, as claimed by him, had based his report on information he had acquired as a former senior employee of the ENA, responsible for investigating acts of misconduct at work (see paragraphs 5, 8, 19 and 34 above above). Although the Court has not been provided with the results of the company's internal investigation, in so far as

it has been summarised in the domestic judgments, some of the applicant's statements were found not to be completely groundless (see paragraphs 11 and 12 above). At the same time, even though the applicant had submitted certain material in evidence to the company together with his report (see statement 3 and the last paragraph of the applicant's report cited in paragraph 8 above), he could not subsequently verify it as he was no longer employed at the ENA (contrast *Gawlik*, cited above, §§ 77-78). His request to the Regional Court to require the ENA to submit certain pieces of evidence which he could not obtain himself, as well as his subsequent appeals in that regard, were to no avail (see paragraphs 18, 19 and 20 above).

60. As regards his good faith, the Court notes that there is nothing in the case file to suggest that the thrust of the impugned statements was primarily to accuse V.B. The Government's allegations that he had made his report out of personal animosity, was not discussed, let alone confirmed by the domestic courts. It is noteworthy that in his report the applicant specifically asked the company to "check the facts stated" and, as submitted in his appeal in the impugned proceedings, his aim was that the company investigate the information reported (see paragraphs 8 and 19 above). He therefore notified the competent internal authority of conduct which to him appeared irregular or unlawful (contrast *Medžlis Islamske Zajednice Brčko and Others*, cited above, §§ 102-103). In this context, the addressees of the disclosure are also an element in assessing the applicant's good faith (see *Halet*, cited above, § 128, and contrast *Balenović v. Croatia* (dec.), no. 28369/07, 30 September 2010). As stated above, the applicant did not have recourse to the media or any other external investigative body, but attempted to remedy the situation complained of within the company itself (see paragraphs 51 and 52 above).

(ε) Severity of the sanction

61. Lastly, as regards the severity of the measure imposed on the applicant as a result of the civil judgment against him, the domestic courts ordered him to issue a "public apology" and imposed a substantial sum of damages on him.

62. There is no information if the applicant made a public apology or not. Be that as it may, the Court considers that the award of damages was in any event substantial, as it resulted in the applicant's flat and car being seized by the DEJA to be sold at public auction. Notwithstanding the absence of any information whether the applicant's property was sold, the Court is satisfied that it was capable of affecting disproportionately the applicant.

(στ) Conclusion

63. The Court, having weighed up all the interests involved, concludes that the interference with the applicant's right to freedom of expression was not "necessary in a democratic society".

64. There has therefore been a violation of Article 10 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. 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

1. Pecuniary damage

66. The applicant claimed 10,928 euros (EUR), which, according to him, was the equivalent of 6,034,000 Armenian drams (AMD) – the amount estimated by experts for the public auction of his car and flat to cover the amount of damages imposed on him by the Regional Court. The above amount was calculated using the exchange rate on the date of the DEJA's decisions (see paragraphs 22 above). He also claimed EUR 170 (equivalent of AMD 92,128) in respect of enforcement fees to be recovered from the sale of his property.

67. The Court observes that notwithstanding the fact that the relevant decisions taken by the DEJA for the sale of the applicant's property by public auction are enforceable, no information was submitted whether his property had been sold, let alone any enforcement fees recovered from the sale of that property. Having regard to the lack of information concerning the amount of pecuniary damage actually sustained by the applicant, the Court considers that the question of the application of Article 41 in respect of pecuniary damage is not ready for decision. It is therefore necessary to reserve the matter, due regard being had to the possibility of an agreement between the respondent State and the applicant (Rule 75 §§ 1 and 4 of the Rules of Court).

2. Non-pecuniary damage

68. The applicant claimed EUR 7,000 in respect of non-pecuniary damage.

69. Making its assessment on an equitable basis, the Court awards the applicant EUR 4,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

70. 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 were actually and necessarily incurred and are reasonable as to quantum

(see *Magyar Kétfarkú Kutya Párt v. Hungary* [GC], no. 201/17, § 125, 20 January 2020).

71. The applicant claimed EUR 554 (equivalent of AMD 200,000) in respect of court fees before the Court of Appeal and the Court of Cassation. He also claimed EUR 1,250 (equivalent of AMD 650,000) for his legal representation before the domestic courts and AMD 720,000 for his legal costs incurred before the Court. As regards the former, he submitted a retainer contract under which he was bound to pay his lawyer only in the event of a positive outcome of the case at first instance, and as to the latter, he submitted a contract for legal services whereby he was under a duty to pay AMD 720,000 in the event of the Court finding in his favour.

72. The Court observes that the applicant substantiated the payment of court fees. As regards his claim for fees for his legal representation before the domestic courts, the Court does not consider that the applicant was under an obligation, pursuant to the retainer contract, to pay his lawyer for the services provided domestically. On the other hand, it awards the full amount claimed for his legal representation before the Court (see *Mnatsakanyan v. Armenia*, no. 2463/12, § 101, 6 December 2022, and the authorities cited therein).

73. Accordingly, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,000 covering costs under this head, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 10 of the Convention admissible;

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

3. *Holds* that the question of pecuniary damage under Article 41 of the Convention is not ready for decision, and accordingly:
   (a) *reserves* the said question in whole;
   (b) *invites* the parties to submit, within six months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
   (c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be

converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,000 (two 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;

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

Done in English, and notified in writing on 27 August 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Simeon Petrovski	Gabriele Kucsko-Stadlmayer
Deputy Registrar	President