

IN THE NAME OF THE REPUBLIC OF ARMENIA

DECISION

OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF ARMENIA

**ON THE CASE CONCERNING THE DETERMINATION OF THE ISSUE REGARDING
THE CONFORMITY OF ARTICLE 1087.1 OF THE CIVIL CODE OF THE REPUBLIC
OF ARMENIA WITH ARTICLE 14, PARTS 1, 2 AND 3 OF ARTICLE 27 AND
ARTICLE 43 OF THE CONSTITUTION OF THE REPUBLIC OF ARMENIA ON THE
BASIS OF THE APPLICATION OF THE HUMAN RIGHTS DEFENDER OF THE
REPUBLIC OF ARMENIA**

Yerevan

15 November, 2011

The Constitutional Court of the Republic of Armenia composed of G. Harutyunyan (the Chairman), K. Balayan, F. Tokhyan, M. Topuzyan, A. Khachatryan, V. Hovhannisyan, H. Nazaryan (Rapporteur), A. Petrosyan, V. Poghosyan,

with the participation of

the applicant K. Andreasyan, the Human Rights Defender of the Republic of Armenia, G. Petrosyan and N. Adamyan from the Staff of the Human Rights Defender of the Republic of Armenia,

being named the respondent A. Mkhitarian, the official representative of the National Assembly of the Republic of Armenia, senior specialist of the legal expertise division of the legal department of the Staff of the National Assembly of the Republic of Armenia,

in accordance with Point 1, Article 100, Point 8, Part 1, Article 101 of the Constitution of the Republic of Armenia, Articles 25, 38 and 68 of the RA Law on “The Constitutional Court”

reviewed the case in public in a verbal procedure “Concerning the determination of the issue regarding the conformity of Article 1087.1 of the Civil Code of the Republic of Armenia with Article 14, Parts 1, 2 and 3 of Article 27 and Article 43 of the Constitution of the Republic of Armenia on the basis of the application of the Human Rights Defender of the Republic of Armenia.

The cause of case review was the application of the Human Rights Defender lodged with the Constitutional Court of the Republic of Armenia on October 13, 2011.

Hearing the report of the Case Rapporteur, explanations of the applicant and the respondent, examining the Civil Code of the Republic of Armenia, other legal acts, international judicial and legal practice on the legal regulation of the issue in dispute, undertaken international obligations of the Republic of Armenia, as well as other documents of this case, the Constitutional Court of the Republic of Armenia FINDS:

1. The Civil Code of the RA was adopted by the RA National Assembly on May 5, 1998, was signed by the RA President on July 28, 1998 and entered into force from January 1, 1999.

The impugned Article 1087.1 of the Code under this case titled “The order and terms of compensation for harm caused to the honor, dignity and business reputation” states as follows:

“1. The person whose honor, dignity or business reputation has been abused by means of insult or defamation can file a lawsuit against the person who has insulted or defamed.

2. In the context of this Code, an insult is deemed to be a public expression made by means of speech, picture, voice, sign or by any other form with the intention to abuse the honor, dignity or business reputation.

In the context of this Code, a public expression in the given situation and by its content may not be deemed to be an insult if it is based on accurate facts (except of natural flaws) or is justified by an overriding public interest.

3. In the context of this Code, defamation is deemed to be public dissemination of such statement of facts in regard to a person, which do not correspond to the reality and abuse his/her honor, dignity or business reputation.

4. The burden of proof of the availability or absence of the necessary factual circumstances under the cases of defamation lies with the defendant. It will devolve upon the plaintiff if the burden of proof requires unreasonable actions or efforts on the part of the defendant, while the plaintiff possesses the necessary proofs.

5. Public dissemination of statement of facts envisioned in Part 3 of this Article shall not be considered as defamation, if:

1) It took place during the prejudicial or judicial proceedings in the expression made or evidences presented by a participant of the proceedings about the circumstances of the case under hearing,

2) In the given situation and by its content it is justified by an overriding public interest, and if the person, who has publicly disseminated the statement of facts, proves, that in the reasonable limits he/she has undertaken measures to find out their truthfulness and substantiality, as well as has presented these facts in a balanced manner and in a good faith,

3) It follows from the defamed person's or his/her representative's public speech or response or the documents coming from them.

6. The person shall be exempted from the liability for insult or defamation, if the statement of facts expressed or provided by him/her is the literary or faithful reproduction of the information disseminated by news agency, as well as information presented in a public speech of another person, contained in official documentation, materials of other means of publication and works of authorship, and a reference to the source (author) of information is provided while disseminating it.

7. In the case of insult the person has the right to demand judicially application of one or several of the measures listed below:

1) Public apology. The manner of apologizing shall be determined by court.

2) If the insult took place in the information disseminated by a person implementing media activities, partial or complete publication of the court's decision

through the same media. The method and volume of the publication shall be determined by court.

3) Compensation to be paid in the amount of up to 1000-fold of the established minimal salary.

8. In the case of defamation a person has the right to demand judicially application of one or several of the measures listed below:

1) If the defamation took place in the information disseminated by a person implementing media activities, a public refutation of defamatory facts through that media and (or) to publish his/her response to those facts. The manner of the refutation and the response shall be determined by court in compliance with the RA Law on "Mass media".

2) Compensation to be paid in the amount of up to 2000-fold of the established minimal salary.

9. If no reference has been provided to the source of information (author) while insulting or defaming, or the source (author) of the information is unknown, or a person implementing the media activities does not disclose the name of the author based on his/her right of not disclosing the source of information, then the obligation to compensate is on the one who has publicly caused insult or defamation, and if it has been presented in the information disseminated by a person implementing media activities, then that person shall be responsible for compensation.

10. A person shall not use remedies defined in Parts 7 and 8 of this Article, if before applying to the court he/she has demanded refutation and (or) publication of his/her response in accordance with the RA Law on "Mass Media", and the person implementing media activities has fulfilled that requirement.

11. While determining the amount of compensation envisioned in Parts 7 and 8 of this Article, court shall take into account peculiarities of a specific case, including:

- 1) The method and scope of dissemination of insult or defamation,
- 2) Property status of a person that caused insult or defamation.

While determining the amount of compensation for the cases envisioned in Parts 7 and 8 of this Article, court shall not take into account property damage caused as a consequence of insult or defamation.

12. Together with the exercise of the remedies envisioned in Parts 7 and 8 of this Article a person has the right to demand judicially application of compensation for property damages caused by insult or defamation from the person that caused insult or defamation, including reasonable court expenses and reasonable expenses made by him/her for restoring his/her violated rights.

13. A claim for protection of the right under this Article shall be submitted to the court within one month from the moment the person becomes aware of the insult or defamation, but no later than within six months from the moment of insult or defamation.”

2. The applicant finds that the provisions of the impugned Article cause legal uncertainty and create conditions for arbitrary and broad interpretation and application of the impugned Article, do not reveal the content of “insult”, “defamation”, “publicly”, “overriding public interest”, “in a balanced manner and in a good faith” and of other terms, which in its turn endanger the realization of the constitutional principles of the rights’ restrictions, puts the Article in contradiction with the Constitution violating the provisions of Articles 14 and 27 (Parts 1, 2 and 3). Besides, it is derived from the impugned Article that in order an expression to be considered “insult” and dissemination of statement of facts to be considered “defamation”, the expression should be made publicly; facts that do not correspond to the reality should be stated publicly, too. Thus, abusing the honor, dignity or business reputation not publicly, as well as dissemination of statement of facts in regard to a person, which do not correspond to the reality and abuse his/her honor, dignity or business reputation not publicly, are deemed to be actions that have no consequences. So, according to the applicant, the impugned Article puts into unequal situation those, whose honor, dignity or business reputation has been abused publicly and those, whose honor, dignity or business reputation has been abused not publicly thus being discriminatory in the legal attitude towards them, as well as depriving a person whose honor, dignity or business reputation has been abused not publicly from legal remedies and on this bases violates the provisions of Article 14.1 of the Constitution.

The applicant also finds that in case of insult and defamation the right to demand judicially application of compensation and compensation for property damages caused as a result of insult and defamation, among other measures, envisioned in the same Article are in systematic interrelation with the definitions of insult and defamation envisioned in Article 1087.1 of the RA Civil Code. The applicant considers that the impugned Article does not enough precisely reveal the purpose of the compensation and the principles of the application of the compensation. The purpose of demanding compensation should be limited with the necessity to compensate harm caused to a person's honor as a result of insult or defamation. The compensation that seeks any other purpose restricts the right to freedom of expression which cannot be deemed necessary in the democratic society. According to the applicant the amount set by the court as compensation should be proportionate to the harm caused to a person's honor, the judicial control over the amount of compensation should foresee equivalent and efficient safeguards against non-proportional high amounts and the demand to pay compensation, regardless its amounts, is an interference with the right to freedom of expression. It should apply only in those cases, where harm caused to a person's honor cannot be redressed by other means. The compensation should be proportionate to the harm caused to a person's honor. It should not be used as a judicial lever to restrict freedom of expression. Only by clearly stating these principles it is possible to eliminate the possible arbitrary interpretations of the impugned Article and provide its proportionate and equal application.

3. The respondent finds that the impugned Article of the RA Civil Code from the normative point of view cannot be deemed as unconstitutional. It complies with international, European standards, in particular "the impugned Article of the RA Civil Code provides the physical persons with an opportunity to get in accordance with civil procedures restoration of his/her honor and dignity, violated rights and (or) publication of his/her response, as well as pecuniary compensation". Likewise legal entities in accordance with the procedures and ways prescribed above can defend their business reputation from defaming expressions. A person's dignity and business reputation is

being protected not only from physical person's but also from mass media's false or insulting expressions. According to the responding party the impugned Article stating civil responsibility for insult and defamation does not aim at restricting the freedom of expression in the RA, it first of all aims at defending person's dignity, which being absolute value demands not only internal freedom from any kind of physical violence, but also, being everyone's unique internal essence, freedom from moral violence, which cannot be guaranteed in the case of permissiveness.

The responding party also considers that the fact, which also confirms the above-mentioned purpose of the impugned Article, is that civil responsibility is envisaged only for those kinds of public expressions which intent to abuse one's honor, dignity or business reputation in case of insult and only for public dissemination of statement of facts that do not correspond to the reality and at the same time abuse one's honor, dignity or business reputation.

According to the responding party the legislator taking as a basis the peculiarities of journalists' work, freedom to make statements on the cases of public interest, the urgency to disseminate information, if otherwise it may reduce the urgency of disseminated information, provides with the opportunity to exempt from the responsibility even for false information, if it does not persuade obviously malicious intentions, the person has undertaken all necessary measures to find out the truthfulness and substantiality of those facts. According to the responding party the impugned Article in the context of Article 14.1 of the Constitution of the Republic of Armenia, does not constitute discrimination.

The responding party also finds that the legal regulation stipulated by the impugned Article excludes the claim of compensation for other purposes. The pecuniary compensation is not the main method of defending the honor, dignity or business reputation. Only in case if it is impossible to defend the honor, dignity or business reputation by the mentioned way, the court is competent to implement other defending methods stipulated by the law. At the same time, considering certain and concrete circumstances, the court reserves the right to provide softer responsibility for the individuals disseminating public statements and non accurate information.

Concerning the content of the following terms used in the impugned Article (“public”, “overriding public interest”, “in a balanced manner”, “in a good faith”) the responding party finds, that all those terms are well known and popular and cannot be diversely used by the court. The content of these terms should be viewed in the context of this Article.

4. In the framework of this case the Constitutional Court considers necessary to find out:

- the guaranteeing of realization of the right to freedom of speech and freedom of expression as an important precondition for the democracy in the framework of possible and legitimate limitations of this right in the context of legal regulations of Article 14 and 27 of the RA Constitution, as well as Articles 43 and 47 (Part 1), considering also the universal international legal norms and principles,

- constitutional legal content of the actions (insult or defamation) abusing the honor, dignity or business reputation of the person, considering the legal logic of the provisions of the impugned Article, as well as their perceptions existing in the international legal practice,

- constitutional legal content of guaranteeing within the legal regulations of the disputed norms the right to receive proportional compensation in a judicial manner for the direct harm received in the result of actions abusing the honor, dignity or business reputation of the person.

At the same time the Constitutional Court finds that for revealing the constitutional legal content of the provisions of the impugned Article of the case and evaluating their constitutionality the following points have principal importance:

- revealing the main tendencies of legislative developments in the frameworks of RA international responsibilities,

- specification of the nature of the examined legal regulation and legal content from the point of view of valuable approaches of the RA Constitution,

- revealing the legitimate balance of the purpose, means of the legal regulation and the results of the legal norm’s implementation.

5. The Constitutional Court records, that the Parliamentary Assembly of the Council of Europe on October 4, 2007 adopted Resolution 1577(2007) towards decriminalization of defamation. Stressing that anti-defamation laws pursue the legitimate aim of protecting the reputation and rights of others, nonetheless the Assembly urges member states to apply these laws with the utmost restraint **since they can seriously infringe freedom of expression.**

The Assembly consequently takes the view that prison sentences for defamation **should be abolished without further delay.** The Assembly accordingly calls on the member states to:

- abolish prison sentences for defamation without delay,
- set **reasonable and proportionate maxima** for awards for damages and interest in defamation cases so **that the viability of a defendant media organ is not placed at risk,**
- provide appropriate legal guarantees against awards for damages and interest that are disproportionate to the actual injury.

The Resolution also highlighted that the statements or allegations which are made in the public interest, even if they prove to be inaccurate, should not be punishable provided that they were made without knowledge of their inaccuracy, without intention to cause harm, and their truthfulness was checked with proper diligence.

After the adoption of this Resolution about ten CoE member countries, including Armenia, initiated corresponding legislative reform towards the decriminalization of insult and defamation (on May 18, 2010 according to the Law HO-98-N Articles 135 and 136 of the RA Criminal Code were recognized void, and according to the Law HO-97-N adopted on the same date the RA Civil Code was supplemented by the disputed 1087.1 Article).

At the same time, the Committee of Ministers of the Council of Europe has adopted a series of recommendations on the legal regulation of the disputed issue and the reasonable balance of the interests and rights. In the Recommendation Rec(2003)13 of the CoE Committee of Ministers is particularly recognized **the right of**

correction or right of reply, taking into consideration that the incorrect information for example can harm the presumption of innocence.

From one side the CoE Committee of Ministers has taken into account that the right to freedom of expression includes the right to receive and disseminate information and ideas without the intervention of public authorities and irrespective of borders as guaranteed by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms; from the other side the Committee has meant that the implementation of that freedom includes responsibility and obligation, particularly connected with the rights and honor of others. Thus, the CoE Committee of Ministers finds that it's desirable to provide the person with corresponding remedies:

- against the publication containing incorrect information about the person,
- against the information interfering into his private life or slandering his honor or dignity, including facts and opinions and irrespective of the fact whether the information was disseminated through the printed media, radio, TV or other periodic public media means.

In addition, according to the CoE Committee of Ministers' Resolution (74) 26 "On the right of reply - position of the individual in relation to the press" adopted on July 2, 1974 member states were recommended that the individual's status in relation to media should be at least in accordance with the following principles:

- In relation to information concerning individuals published in any medium, the individual concerned shall have an effective possibility for the correction, without undue delay, of incorrect facts relating to him which he has a justified interest in having corrected, such corrections being given, as far as possible, the same prominence as the original,
- The individual concerned shall have an effective remedy against the publication of facts and opinions which constitute:
 - a/ an interference with his privacy except where this is justified by a **overriding public interest**, where the individual has expressly or tacitly consented to the publication or where publication is in the circumstances a generally accepted practice and not inconsistent with law;

b / an attack upon his dignity, honour or reputation, unless the information is published with the express or tacit consent of the individual concerned or is justified by an overriding, legitimate public interest and is a fair criticism based on accurate facts.

In their turn, the different structures of the Council of Europe have repeatedly stressed the necessity to follow the European Court of Human Rights case-law on the subject matter. This court has expressed clear legal positions within the cases related to “insult” and “defamation”, in particular, on “defamation” laws’ certainty, proportionality of liability for “defamation”, grounds for exempting from the obligation to prove the truthfulness of the facts or defending “reasonable publication” conceptual approach, guaranteeing the fulfillment of the requirements of the Article 10 of the Convention.

In *Busuioc against Moldova* (*Busuioc v. Moldova*) decision, December 21, 2004, in particular, the European Court found that one of the requirements flowing from the expression “prescribed by law” is the predictability of the measure concerned. A norm cannot be regarded as a “law” unless it is formulated with sufficient precision to enable the person to regulate his or her conduct: he or she must be able to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Those consequences need not be foreseeable with absolute certainty. Whilst certainty in the law is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws **are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice**. At the same time, the European Court noted, that defamation laws, with their emphasis on honor and reputation, **inevitably involve a degree of vagueness**. However this does not remove their “legal” character for purposes of Article 10 of the Convention. It falls to the national authorities to apply and to interpret domestic law.

Concerning the need to separate the value judgments and the facts the European Court in a number of its judgments presented the requirement, that **a clear distinction should be made between statement of facts and value judgments**. This was especially underlined by the Venice Commission of the Council of Europe while submitting expert conclusions on a number of legislative amendments done by a

number of countries. In particular, while reviewing the RA Draft Law on Article 1087.1 of the RA Civil Code the Commission in its Interim Report CDL-AD (2009) 037, June 23, 2009 has expressed an opinion that the application of the terms “insult” and “defamation” used in Article in practice by Armenian courts will have to take into account the Case-law established by the European Court of Human Rights in relation to the right to freedom of expression, in particular, the requirement that there should be a distinction between statement of facts and value judgments.

Thus taking into account this requirement the Commission suggested in compliance with the European Court Case-law to distinguish more clearly and precisely these two terms in question in the draft: insult and defamation, as well as clarify the burden of proof deriving from it. Based on this proposal some amendments were made to the draft.

Thus, the RA Constitutional Court derives from the above-mentioned approaches formulated in the European Court of Human Rights Case-law in order to assess the applicant’s arguments regarding **legal uncertainty** of the impugned norms. The Constitutional Court finds that peculiarities of the legal relations regulated by these norms (including variety of circumstances subject to assessment) define some discretionary freedom which the legislator grants to the courts while making decisions on the implementation of the impugned norms. The Constitutional Court also finds that the judicial discretion especially in such cases, when the subject matter under review is the restriction of the right to freedom of expression guaranteed by Article 27 of the RA Constitution, **should be guided not only by the requirement to apply the norms of the law according to the interpretation based on their constitutional-legal content, but also by the international practice and especially by the European Court of Human Rights Case-law.**

The analyse of above-mentioned and a number of other international legal documents on the subject matter (including General comment No. 34 adopted by the UN Human Rights Committee in Geneva on July 11-29, approaches developed by “ARTICLE 19”, etc.) shows that in accordance with current European legal developments:

- In case of claims brought for the protection of the honor and dignity of a person there is a collision between the right to freedom of expression and the dignity of a person, and solutions must be found within their balance,

- Abusing one's honor, dignity or business reputation by press is considered **as offence, but not criminally punishable action,**

- This offence presumes proportionate compensation, which is necessary to recover the honor, dignity or business reputation of the person,

- This compensation should not be confused with caused property damage,

- This compensation should not be viewed as a penalty or fine towards the media, otherwise the decriminalization of defamation would be senseless,

- The respondent on defamation cases should only bear the obligation to prove the truthfulness of the facts published by him/her,

- The protection of "reasonable publication" should be provided and guaranteed,

- Taking into consideration the key role of the media in dissemination of information on the issues of public concern in the democratic society, the largest protection should be provided for those publications, which are the part of debates on the issues of public concern.

Considering the above-mentioned the Constitutional Court states that the main logic of legislative reforms and new legal regulations concerning the decriminalization of defamation made during the last years not only in our country, but in many European countries is not based on the presumption of guilt (to assure penalty for the deed), but on the presumption of innocence (to guarantee the innocence of the person recovering his honor, dignity and business reputation). When the defamation of the person's honor and dignity is a result of premeditation, malicious action, is continuous and concerns the media, then the issue is transferred into another sphere of legal regulation and the case can be examined from the point of view of the implementation of the requirements of the RA Law on "Mass Media". International legal approaches are based on the presumption that the most important mission of the media is to tell only the truth and check the facts in good faith. Infidelity to this mission, intended or venal denouncement of a person with false facts, damaging his presumption of innocence or interfering into his/her private life

should receive corresponding legal assessment. In its turn the right to freedom of speech and freedom of expression should be protected and the vitality of the responsible media should not be endangered.

6. The Constitutional Court finds, that, the interrelation between the freedom of expression and dissemination of information, on one hand, and the right to respect for one's reputation, on the other hand, must be examined in the light of respect and protection of human dignity defined by Article 14 of the RA Constitution and, defined by Article 27 of the Constitution - a right of freedom of expression and dissemination of information, which is an integral element of political pluralism in the democratic state.

Besides, within the legal regulation of the Article subject to discussion the necessity to guarantee a number of other constitutional fundamental principles must be taken into consideration. Particularly, Article 3 of the RA Constitution defines:

"The human being, his or her dignity, fundamental rights and freedoms are the highest values.

The State shall ensure the protection of fundamental human and citizen's rights and freedoms, in conformity with the principles and norms of international law.

The State shall be bound by fundamental human and citizen's rights and freedoms as directly applicable law".

According to Article 14 of the Constitution: "Dignity of a person shall be respected and protected by the State as an inherent foundation for his or her rights and freedoms". And the Constitution's Article 23 defines: "Everyone shall have the right to respect for his or her private and family life".

At the same time, according to Article 27 of the Constitution: "Everyone shall have the right to freely express his or her opinion. It shall be prohibited to force a person to renounce his or her opinion or to change it.

Everyone shall have the right to freedom of speech, including freedom to seek, receive and impart information and ideas via media, regardless of state frontiers.

Freedom of media and other means of information shall be guaranteed".

From the combined analysis of the above-mentioned Articles, as well as Articles 43 and 47 (Part 1) of the RA Constitution follows, that the rights and freedoms, deriving from human dignity-including honor, good reputation and private life, as an absolute right, can justify limitation of freedom of expression in practice only in **legitimate frameworks**. That approach is laid in the bases of Article 10.2 of the Human Rights European Convention, Articles 17 and 19.3 of the International Covenant on Civil and Political Rights and Article 12 of the Human Rights Universal Declaration.

This issue has been widely rebounded also by the international practice of constitutional jurisdiction. For example, Polish Constitutional Tribunal has expressed the following legal position in the decision adopted on 30.10.2006: “Freedom of the press and other means of social communication may not constitute per se a reason to limit other constitutional rights and freedoms. Limitations upon rights and freedoms that could result in the infringement of human dignity cannot be allowed. The closer the relationship between a particular right or freedom with the essence of the human dignity, the better it should be protected by public authorities. Simultaneously, the principles of the State's constitutional system should be realised in such a way to avoid the violation of human dignity.”

The following legal position expressed in the Slovenian Constitutional Court's decision dated 10.09.2009 regarding this issue is also noteworthy: “In weighing freedom of expression on the one hand and the right to personal dignity on the other, the courts did not determine the relation between the above-mentioned constitutional rights in such a way that freedom of expression was excessively limited. In carrying out their work, journalists enjoy a broad scope of protection of the right to freedom of expression, which is a result of their important role in society. If, however, journalists overstep the boundaries of the debate or issue which they are reporting by means of statements which encroach upon an injured party's personality rights to such an extent that it can no longer be claimed that they are in any way contributing to the open public discussion of matters important to society, they cannot argue that the role they are fulfilling in society means that their freedom of expression outweighs the interference with the injured party's personality rights. The Constitutional Court held that the freedom of

expression of journalists is protected, provided they act within the framework of performing their "mission".

The RA Constitutional Court with a number of its decisions has also referred to the issue of revealing the constitutional content of perception of human dignity as a highest value (Constitutional Court Decision-834, Constitutional Court Decision-913, etc.), underlying, that this right has a primary importance in free and guaranteed implementation of human and citizen's basic rights and freedoms, which "...also deems implementation of certain actions and will by a person within constitutionally permissible frameworks, as well as an corresponding obligation of the State to protect them." At the same time, the RA Constitutional Court, stating in its Decision-278 that the Convention on Protection of Human Rights and Fundamental Freedoms of 1950, the International Covenant on Civil and Political Rights of 1966 and other relevant international documents, affirming everyone's freedom of expression, including freedom to have his/her own opinion, to receive and disseminate information and ideas, consider the exclusion of the State bodies' interference as an essential guarantee of its implementation, has expressed a legal position, that the possible restrictions provided by law "...should be proportional and emanate from the nature of democratic principles of international law and national legislation; and shouldn't endanger basic contents of the human rights."

The comparative analysis of the mentioned positions, as well as of legal positions of other courts of European countries, proves, that:

a/ Constitutional Courts first of all approach the issue from the point of permissiveness of rights' restriction. In this regard, Article 14 of the RA Constitution, unlike Article 27, is not subject to restriction on the basis of Article 43 of the RA Constitution,

b/ highlighting the guarantee of right to freedom of expression for democratic society, it can not be disproportionately restricted, endangering freedom to have an own opinion and to receive and disseminate information and ideas,

c/ the right to freedom of expression, as much as it is connected with obligations and responsibilities in the sense of Article 10 of the Convention for the Protection of

Human Rights and Fundamental Freedoms, may be conditioned with restrictions and sanctions defined by law, which, in particular, are necessary for protection of other persons' rights and reputation,

d/ the practical matter is not principally to provide for legitimate restrictions and sanctions by law, but concerns the guarantee of their proportionality in the a judicial practice as a State's direct obligation. The latter should rely on the basic principle that from the point of view of supremacy of public interest the preventive and counterbalancing role of media overweighs the necessity of correction of mistakes by pecuniary means. This circumstance has found its concrete reflection in the legal regulation of paragraph 2, Part 2 and point 2, Part 5 of the impugned Article, and should be correspondingly taken into consideration in the judicial practice.

These fundamental constitutional provisions have absolute value within the legal relations under consideration not only for legislative but also for the law-implementer and the participants of those relations. From the compared analysis of those provisions it is seen that they are reflected basically in the structural organic contact in the legal amendment frameworks of the Article 1087.1 of the RA Civil Code, and ensure legitimate balance between law and its protection guarantees, public and private interests, legal and moral criteria. Law has laid right constitutional criteria on the basis of legal regulation of this issue. **Its adequate comprehension, legitimate application, structural identification of legal truth in every concrete case is a matter of judicial practice.**

While assessing the constitutionality of impugned norms of this case the Constitutional Court proceeds from the reality that in the Republic of Armenia person's honor, dignity or business reputation is protected from defaming actions of other persons exclusively by means of civil regulation. Relations of that sphere are regulated not only by this impugned Article of the RA Civil Code, but by the legislative acts in the sphere of legal regulation of freedom of information and mass media (Law "On Freedom of Information" adopted on September 23, 2003, Law "On Mass Media" adopted on December 13, 2003, etc.).

At the same time, making the matter of balance between the above-mentioned freedoms and other interests protected by law a subject of examination, the Constitutional Court finds that the mentioned freedoms must always prevail in case if revealing information hasn't been baseless, has pursued legitimate aim and the information concerns state cases and persons of public interest.

7. The Constitutional Court finds, that revealing of constitutional legal content of concepts "defamation" and "insult" has a basic importance for examination of this case.

Organization for Security and Cooperation in Europe referring to interpretation of those concepts in 2005, has segregated 3 phrases- defamation, a written phrase which libels a person, as well as announcement or activity which has been said or done with the **aim of insulting** another person. Defamation, being general characteristics of the phenomenon- from the point of view of legal clarity - requires specification of its manifestations – the transient or permanent nature, the form of expression, the existence of intention and a false fact and etc., which is important in regard of reimbursement regulation.

International legal practice research proves, that in this case RA legislative amendments have been made with a logic of setting possible thorough formulations.

It follows from Part 3, Article 1087.1 of the RA Civil Code, that **"defamation" is deemed to be public dissemination of such statement of facts in regard to a person, which do not correspond to the reality and abuse his/her honor, dignity or business reputation.** From this statement it emanates that the features, specific to defamation, are:

- a/ They are **statements of facts**,
- b/ They **do not correspond to the reality**,
- c/ **Have been submitted publicly**,
- d/ They **defame** one's honor, dignity, business reputation,
- e/ They **do not concern only statement of facts, presented via media.**

It is clear, that it refers to a fact, some concrete data, which cannot be abstract, hypothetical and has concrete subjective expression. In case of absence of such

statement of facts “defamation”- as it is, does not exist in the sense of the article under consideration.

Various countries’ legal practice analysis proves, that **intentional and sensible** dissemination of unreliable facts(or statements of facts) which insult one’s dignity, are also typical for that concept. It more specifies this concept.

Structural analysis of the provisions of Article 1087.1 of the RA Civil Code proves, that such logic is also laid in basis of legal regulation of this Article. Especially, it is defined by the impugned Article’s Point 2, Part 5, that public dissemination of the statements of fact, envisaged by the Part 3 of Article, is not concerned as a **defamation**, in case one, who has publically disseminated the statements of fact, **proves, that, within reasonable limits, he/she has taken measures to find out its truthfulness and substantiality**, as well as has presented these facts in a balanced manner and in a good faith. In other words, **intent presumption doesn’t exist**.

Constitutional Court states, that the mentioned provision of the disputable article reflects principle of defence of “reasonable publications”, formed in international practice, according to which one is released of liability for dissemination of information which is considered a defamation, in case one has acted in a good faith **without presumption to insult one’s reputation and honor**.

Part 10 of Article 1087.1 is built on the same logic, which even deprives a person of opportunity to claim material compensation, in case before appealing to court, he has claimed a denial and (or) publication of his response- in accordance with the procedure defined by the RA law on “Mass media”, and media activity implementer has complied that demand.

In part 2 of the impugned Article insult is distinguished as: “... a public expression made by means of speech, picture, voice, sign or by any other form with the intention to abuse the honor, dignity or business reputation.”

The main difference of evaluations of words “insult” and “defamation” in international legal practice, is that in case of defamation it refers to defaming one’s dignity through intentional dissemination of false facts, statement of facts which are not in accord with reality, accusing one’s of a crime or delinquency on the basis of facts not

in accord with reality, and insult **deems intentional and premeditated derogation of a person**. This logic is also laid in the basis of distinguishing concepts of the impugned Article.

The existing definition of insult cannot deem that any negative opinion **or value judgment having some factual basis, which insults one's reputation**, is not protected by law. Expression of a negative opinion is protected by the European Court's legal positions, to the extent that it is based on a confirmed and accepted fact and has been done with fair intentions. **At the same time, for expression of value judgment arguments aren't requested**. Critique which is directed to one's activity in the political, business, science, art and other public spheres, as well as in regard with public position, social statues and obviously doesn't exceed legitimate limits, cannot be considered as an insult in the sense of the disputable Article.

It emanates from the legal content of the disputable article's Part 2, that an expression which has some factual basis cannot be qualified as an insult. Namely, not a value judgment must be considered as an insult, but a public expression performed with the **intention to humiliate** the persons honor, dignity or business reputation. In this case, the proper perception of the legal sense of the expression "defamatory" is also important. In this context it **deems presumption, premeditated action, inroad** towards person's dignity. Whereas, value judgment is a conclusion made in the result of factual circumstances analysis, which is not only a journalist's right, but an obligation.

8. According to the applicant the content of the term "public" is not determined, nor any possible legal consequences of "not public" actions causing abuse of honor, dignity or business reputation of the person, are defined.

The RA Constitutional Court finds that in each case the clarification of the fact and the circumstances of the publicity of the action, is a matter of legal practice. It can not be perceived spatially, as in Parts 2 and 3 of the impugned Article the legislator clarified normative-descriptive features of "insulting" and/or "defaming" a person - specific purposeful activities - from which it is definitely derives that these actions should be done in a way of disseminating **statement of facts** which do not correspond

to the reality or by **public** expression made by means of speech, picture, voice, sign or by any other form with the intention to abuse the honor, dignity or business reputation including spreading it through the media. It is obvious that the legal regulation of the impugned Article refers to overcoming the consequences of defaming **person in front of the public, at least in the presence of a third person**. Despite its importance, regulation of private-legal relations is beyond the legal frameworks of the disputable article. However, the RA Constitutional Court finds that it is a general legal gap, but not the RA Civil Code's, and to overcome it the National Assembly of the Republic of Armenia, within its jurisdiction, shall make a subject of separate discussion the matter of legal regulation of protection from non-public insult.

So, the Constitutional Court states, that, from the point of view of the assessment of constitutionality of the above mentioned norms of the RA Civil Code's disputable Article, they- in correspondence with their general legal-regulatory content and meaning, pursue an aim of sensible restriction of use of freedom of expression – guaranteed in Article 27 of the RA Constitution, in the frameworks, that emanate from the requirements of Articles 43 and 47 of the RA Constitution. But it is the task of law implementation to qualify this or that action as a “defamation” or “insult” in the frameworks of such normative-descriptive characters, that are defined in the above mentioned norms of Article 1087.1 of the RA Civil Code and emanate from the case law requirements of the European Court of Human Rights in each particular case.

Coming out from the necessity of revealing of constitutional content of the norms of the disputable Article and their uniform perception in the law enforcement practice, the RA Constitutional Court highlights not only the interpretation of “defamation” and “insult” according to their normative characteristics, but also true (in accord with their legal manifestation) assessment of **measures and ways** of implementation of such actions. Particularly, according to Parts 2, 3, 5 and 6 of Article 1087.1 of the RA Civil Code, **statement of facts, ways of their dissemination** (publicly or not), assessment of its justification in any case of protection of a person's honor, dignity or business reputation, has a particular legal importance to determine if the requirements of Part 1 of Article 47 of the RA Constitution have been violated in the result of some actions, and

if it is necessary in the framework of Article 43 of the RA Constitution to apply the norms of responsibilities stipulated in the disputable Article.

In this regard the Constitutional Court finds it necessary to underline one more time, that the European Court of Human Rights, in its practice, has made a **clear distinction between the value judgments and statement of facts**. The definite requirement of the European Court's case law is that legal regulation concerning defamation **should make a clear distinction between the value judgments and statement of facts**, in order to exclude the adoption of decisions contradicting to the Article 10 of the Convention.

Coming out from the content of the above mentioned international legal criteria regarding assessment of actions as "defamation" and "insult" in the disputable norms, and the necessity to use them properly, the Constitutional Court finds, that in law enforcement practice courts- in examination of facts of a case regarding such actions which insult one's honor, dignity or business reputation, should not apply such contemplative freedom of normative interpretation, in result of which the statement of fact and value judgment are not distinguished identically, otherwise, each restriction of freedom of expression cannot be considered fair, valid and legal from constitutional point of view with appliance of the norms of the disputable Article.

The Constitutional Court finds, that, though the right of protection emanating from the normative requirement of Part 1 of Article 47 of the RA Constitution is unconditionally applicable towards everyone, including public officials, nevertheless, those persons, as well as the RA courts should accept the legal position of the European Court of Human Rights, according to which, the personal rights of public officials are objectively subjected to more risk of violation, than the rights of private persons. The Article 10 of the European Convention stipulates little scope for restrictions on political speech or debates on questions of public interest. **The limit of acceptable criticism is wider with regard to a politician acting in his public capacity than in relation to a private individual**. Unlike the latter, the activity of public and political officials is more public, hence, it requires more tolerance. It also emanates from the general constitutional content of Articles 1, 2 and 5 of the RA Constitution, as democracy is also implemented

through public service, and those persons' public and private behavior, who carry that service, may objectively become a subject of public discussion.

The research of international constitutional justice practice also states that a publication of a material containing "defamation" toward public officials, cannot be considered sensible and legitimate, with the exception of the cases, when:

1. The existence of sensible basis to trust to information substance is proved
2. It is proved, that all necessary steps towards checking the information substance have been carried out; complete limits of possibility of checking the information have been represented,
3. A person, who has published the defaming material, had a basis to trust the substance of the information,

The publication of such material cannot be qualified sensible or legitimate, if one who has disseminated that information, hasn't checked its substance by making an inquiry to the interested person, and has avoided to publish that person's position, except the cases, when it has been impossible or obvious that there is no need to do it.

Hence, the Constitutional Court finds, that the examination of motives of publication of the information has a great importance in assessment of legitimacy of the published information and legal qualification of the relevant action in each concrete case. The action can not be considered legitimate if from the start it has the intention to harm the person or the person disseminating the information neglected the necessity to check their truthfulness.

From the point of view of assessment of the disputable Article's constitutionality it is also important to reveal- in the frameworks of relations regulated in it, the certainty of **circumstances, excluding person's legal responsibility**, as well as of possible **legal consequences** in case of absence of such conditions.

Parts 5 and 6, Article 1087.1 of the RA Civil Code stipulate provisions that exclude civil responsibility within the framework of the Article. It is derived from the analysis of their legal content that the legislator does not consider as "insult" and "defamation" those facts that:

- It took place during the prejudicial or judicial proceedings in the expression made or evidences presented by a participant of the proceedings about the circumstances of the case under hearing,

- In the given situation and by its content it is justified by an overriding public interest, and if the person, who has publicly disseminated the statement of facts, proves, that in the reasonable limits he/she has undertaken measures to find out their truthfulness and substantiality, as well as has presented these facts in a balanced manner and in a good faith,

- It follows from the defamed person's or his/her representative's public speech or response or the documents coming from them.

At the same time, according to Part 6 of the above-mentioned article, the person shall be exempted from the liability for insult or defamation, if the statement of facts expressed or provided by him/her is the literary or faithful reproduction of the information disseminated by news agency, as well as information presented in a public speech of another person, contained in official documentation, materials of other means of publication and works of authorship.

The content analysis of the above-mentioned legal conditions proves that outcoming from the circumstances of the given case and facts, responsibility for defamation and (or) insult of a person is excluded. By their nature they do not provoke any issue of constitutionality, nonetheless in the law enforcement practice they require a thorough revision and evaluation as such.

Referring to the issue of legal certainty of the terms "overriding public interest" and "presenting statements in a balanced manner and in good faith", Constitutional Court finds that in every specific case, depending on the circumstances of the case, it should be decided whether the interest of public to be informed was prevailing over the obligation and responsibility of the person providing the information. In accordance with the case law of the European Court of Human Rights, in such cases the margin of appreciation of domestic authorities is restricted with the democratic society interest, that is- the press is allowed to play its role of "public watchdog" and disseminate information on the serious issues of public interest. Pursuant to the position of the

Court, first of all the fact of such a “pressing social need” should be assessed in the law enforcement practice, which can justify that interference in a balanced manner and in good faith without malicious, defaming intention.

9. The liability for insult or defamation, regardless of its nature and size, **is an interference with freedom of expression**. Proportionality between responsibility for insult and defamation and harm caused to the honor and dignity of a person is the factor, among others, that conditions a fair balance between the interference with freedom of expression in above-mentioned way and legitimate aim pursued by that interference (in this case the aim of protecting one’s honor and dignity). To this respect the European Court of Human Rights case law requires that compensation for insult or defamation should have reasonable proportionality to the harm caused to person’s reputation. The material compensation for defamatory statement should be distinguished from the property harm caused to defamed person. Any other implementation of compensation for harm will have inadmissible restrictive influence on the right to freedom of expression, that cannot be assessed as justified necessity in the democratic society.

The requirement of proportionality between compensation for insult and defamation and the harm to the honor and dignity of a person equally refers both to the legislator and the law implementer. This requirement demands from the legislator to establish legal guarantees for insuring the proportionality. The RA Constitutional Court states that the impugned Article includes some provisions which aim at solving this problem. In particular the legislator transferred to another legal relations’ dimension the issue of the **property damage** for insult and defamation and brought before the courts compulsory requirement: **do not take it into account while determining the amount of compensation for the cases envisioned in Parts 7 and 8 of this Article (Part 11)**. It is clear logics of the legal regulation that on one hand compensation for defaming person’s honor, dignity and business reputation in legal practice **should not be confused with property damage**, on the other hand, **that compensation should not**

be considered punishment in the form of fine or penalty. Otherwise, as it was mentioned, the whole idea of decriminalization of defamation will become senseless.

Legislator demands from the law implementer under Points 1 and 2, Part 11 of the impugned article to take into account the method and scope of the dissemination of insult and defamation, as well as property status of the person who caused insult or defamation while determining the amount of the compensation. The Constitutional Court considers necessary to state, that the requirement of consideration of property status foresees:

- Take into account the respondent's income level,
- Do not allow disproportionate high material burden for the defendant, which will have negative decisive financial impact on his/her activities.

For this purpose, the legislator defined not the strict amount of the compensation, but defined **up to** some margin in order taking into account the peculiarities of the case court can determine precise amount of the compensation to be applied.

Thus, providing civil responsibility for damages caused to a person's honor, dignity and business reputation the legislator clearly distinguishes the institutions of "compensation" and "property damage". It has principle importance for revealing constitutional-legal content of impugned regulation taking into account also the arguments of the applicant.

From the systematic analysis of the norms regulating compensation and property damage stipulated in the impugned Article 1087.1 of the RA Civil Code follows that:

- A requirement for judicially application of **compensation** is a measure prescribed by law to be protected from actions which abuse one's honor, dignity and business reputation,

- **Property damage** is material damage of a person, including court expenses, reasonable expenses made for the restoration of violated rights, which are subject to justification in the court on the basis of relevant facts and restoration,

- **The amount of compensation** is determined by court, based on the specifics of the case, including the method and scope of insult or defamation, the property status of the person who caused insult or defamation,

- The court reviews the issue of **compensation**, and **property damage** only on the demand of the person whose honor, dignity or business reputation has been insulted or defamed,

- **In determining the amount of compensation** the court does not take into consideration the property damage caused to the person as a result of insult or defamation.

Thus, the subject, principles and purposes of legal regulation are different in the cases of compensation and property damage. Those are clear and pursued legitimate and constitutionally fair purposes to protect one's rights and freedoms guaranteed by Articles 14, 27 and 47 of the Constitution of the Republic of Armenia from unlawful actions and to restore them.

Constitutional Court considers that an important guarantee for ensuring proportionality of the amount of the compensation is the absence of the minimal amount of compensation and the presence of the maximum amount of compensation. It is more important that Parts 7 and 8 of the impugned Article in addition to the material compensation stipulate also non material compensation.

As for the maximum amount of the compensation defined by the article in question the Constitutional Court underlines that setting up of a concrete amount is within discretion of the legislator. At the same time taking into account the suggestion of the PACE October 4, 2007 resolution N. 1577 (2007) on the decriminalization of defamation to set reasonable and proportionate maxima for awards for damages and interest in defamation cases so that the viability of a defendant media organ is not placed at risk, the Constitutional Court **considers reasonable for the legislator to discuss reviewing the maxima for awards for damages with a tendency for decrease in order to practically eliminate disproportionate limitation of freedom of expression.** Such a conclusion is conditioned not only by the tendencies in law-enforcement practice, but also by the reality that in the Republic of Armenia the correlation between maxima for awards for damages and gross domestic product per capita is higher than in some of the Council of Europe member states that adopted decriminalization of insult and defamation. Among other things in those countries out of

practical experience new legislative clarifications are put on the agenda. In particular, Bulgaria tries to correlate awards for damages with a certain scale of incomes. Further improvements of the Civil Code article in question should also attach importance to the necessity of possible greater clarification of the criteria for setting awards for damages within judicial discretion, to produce normative demand for presenting arguments justifying the amount of awards for non-pecuniary damage and to take into consideration current international trends regarding legal regulation of the mentioned issue.

Referring to constitutional legal certainty of subjecting a person to legal responsibility and of the legal consequences of it within the scope of relations set up by the article in question the Constitutional Court states that the above-mentioned conditions pursue a reasonable and constitutional legal aim, as they are called to ensure:

- Inevitability of liability in cases of non-legitimate abuse of freedom of expression;
- Within the scope of judicial examination obligate to take into consideration the circumstances of the action subject to legal assessment, its way of implementation, property situation of the guilty as well as nature and amount of the damage inflicted as a result of the action;

At the same time the Court finds that in application of the provisions of the Part 11 of the article in question the scope of the discretion of the Court handling the case is not absolute and is limited by the following preconditions:

- If a person has been defamed or insulted by using a media outlet, the legal solution of the issue must be ensured within the limits of the legitimate realization of the freedom of expression;
- Awards for damages for defamation and insult must be reasonably proportionate to the damage to a persons' honor, dignity or business reputation;
- Proceeding from concrete property situation of the defaming or insulting when setting in judicial order the amount for material award for damages the following circumstance must be taken into consideration: award for damages must not be so high that can lead to bankruptcy of the guilty or substantially impede its viability.

10. The RA Constitutional Court finds that with the aim to appropriately understand the constitutional legal content of the article in question and to ensure application of the norms contained in it complying with their constitutional legal content and international obligations undertaken by the Republic of Armenia in the judicial practice of the Republic of Armenia one must follow also the requirement set out in the Part 4 of Article 15 of the RA Judicial Code: “The reasoning of a judicial act of the Cassation Court or the European Court of Human Rights in a case with certain factual circumstances (including the interpretation of the law) is binding on a court in the examination of a case with identical/similar factual circumstances, unless the latter court, by indicating solid arguments, justifies that such reasoning is not applicable to the factual circumstances at hand”.

On this issue the RA international obligations in respect of the recognition of the jurisdiction of the European Court of Human Rights proceeding from the requirements of Article 46 of the European Convention for the Protection of Human Rights and Fundamental Freedoms are seen as central.

Taking into account the above-mentioned and again attaching importance to the plentiful practice of the European Court of Human Rights on the issue in question the RA Constitutional Court regards as principal in particular the below - mentioned case-law of the ECHR, which, in case of being consequentially taken into consideration in law-enforcement practice, will ensure the application of the provisions of the article in question corresponding to their constitutional legal content.

Namely,

- “The Court recalls that freedom of expression constitutes one of the essential foundations of a democratic society; subject to paragraph 2 of Article 10 (art. 10-2), it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Freedom of expression, is subject to a number of exceptions which, however, must be narrowly interpreted and the necessity for any restrictions must be convincingly

established” (Case of Thorgier Thorgeirson v. Iceland. Judgment of 28 May, 1992, § 63).

- “...whilst the mass media must not overstep the bounds imposed in the interests of the protection of the reputation of private individuals, it is incumbent on them to impart information and ideas concerning matters of public interest. Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them. Consequently, in order to determine whether the interference was based on sufficient reasons which rendered it “necessary”, regard must be had to the public-interest aspect of the case” (Case of Bladet Tromso and Stensaas v. Norway, Judgment of 20 May, 1999, § 62).

- “Article 10 of the Convention does not, however, guarantee a wholly unrestricted freedom of expression even with respect to press coverage of matters of serious public concern. Under the terms of paragraph 2 of the Article the exercise of this freedom carries with it “duties and responsibilities”, which also apply to the press. By reason of the “duties and responsibilities” inherent in the exercise of the freedom of expression, the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism (Case of Bladet Tromso and Stensaas v. Norway, Judgment of 20 May, 1999, § 65).

- “In the Court's view, a careful distinction needs to be made between facts and value-judgments. The existence of facts can be demonstrated, whereas the truth of value-judgments is not susceptible of proof. (Case of Lingens v. Austria, Judgment of 8 July, 1986, § 46). “The requirement to prove the truth of a value judgment is impossible to fulfill and infringes freedom of opinion itself. However, even where a statement amounts to a value judgment, the proportionality of an interference may depend on whether there exists a sufficient factual basis for the impugned statement, since even a value judgment without any factual basis to support it may be excessive (**Case of Busuioc v. Moldova, Judgment of 21 December, 2004, § 61**).

- “The critical assessment of facts ... cannot serve as a basis for allowing compensation claims for moral damage. However, if the right to a good reputation of a

person is violated, even though a defamatory statement was a value judgment, the courts can award compensation for non-pecuniary damage (case of Ukrainian Media Group v. Ukraine, Judgment of March 29, § 61).

– “... under the Convention, an award of damages for defamation must bear a reasonable relationship of proportionality to the injury to reputation suffered (Steel and Morris v. United Kingdom, Judgment of February 15, 2005, § 96).

– “...it was not in principle incompatible with Article 10 to place on a defendant in libel proceedings the onus of proving to the civil standard the truth of defamatory statements. ... special grounds were required before a newspaper could be dispensed from its ordinary obligation to verify factual statements (**Steel and Morris v. United Kingdom, Judgment of February 15, 2005, § 93**).

11. The Constitutional Court of the Republic of Armenia finds, that, from the combined analysis of Articles 14, 27, 43 and 47 (Part 1) of the Constitution, case law formed on the basis of the mentioned and a number of other judgments of the European Court of Human Rights, the Articles 19 and 1087.1 of the RA Civil Code, RA Laws “On Mass Media” and “On Freedom of Information”, it follows: for the guarantee of application of the provisions of Articles 19 and 1087.1 of the RA Civil Code, corresponding to their constitutional content, it is necessary to take into consideration the following international legal approaches in law enforcement practice:

- Taking into consideration, that regarding cases of defamation, a problem of evaluation of applying restrictions towards the right of freedom of expression occurs, law implementers are obliged to take into consideration that **any restriction of the right of freedom of expression must be defined by law, serve to the aim of protecting legitimate interest and be necessary for ensuring the given interest,**

- In the sense of the disputable Article – person’s honor, dignity and business reputation is protected from other persons’ defaming actions exclusively through civil regulation means, and the expression “person” doesn’t concern to state bodies as legal entities,

- Terms “defamation” and “insult” must be considered in the context of existence of intention and an aim of defamation of a person.

- Material compensation cannot be defined for value judgments, which will restrict the fundamental right of freedom of speech in an unnecessary and disproportionate way, as the role of media is more than reporting just facts: it is obliged to interpret facts and events for informing society and promote to discussions on issues important for society.

- The circumstance that media representatives are respondents cannot be considered as a factor for defining more severe responsibility,

- Domestic bodies’ decision must be based on acceptable assessment of facts-important for the case.

- One must apply approach with particular reservation while applying material compensation for insult, taking into consideration the fact that European Court has repeatedly mentioned, that tolerance and wide views are in the basis of democracy and the right of freedom of expression protects not only generally acceptable speech, but the expressions, which someone may concern thrilling, offensive and shocking,

- While indicating material compensation its restricting influence on the freedom of expression, as well as possibility of legitimate protection of reputation through other available means should be properly taken into consideration,

- In the result of defaming expressions (actions), as a priority, non material compensation must be applied towards the caused damage. Material compensation must be restricted by reimbursing the immediate damage caused to a defamed person’s honor, dignity or business reputation, and it should be applied in cases when non material compensation is not enough for reimbursing the damage,

- While deciding the legitimacy of compensation the respondent’s limited measures should be considered as a factor, his/her profit should be taken into consideration, a disproportionate heavy financial burden shouldn’t be defined for the respondent, which will make a crucial negative financial influence on his/her activity,

- An applicant, who requires material compensation for non material damage, should prove the existence of that damage,

- The maximum amount of compensation defined by law is applicable only in cases of existence of more serious and solid bases,

- Just critical assessment of facts, which doesn't contain factual context, the falseness of which is possible to prove, cannot be a basis of compensation requirement. But, if a person's good reputation is violated, even if the incorrect information has been a value judgment, non material compensation may be defined,

- While defining a compensation such factors should be taken into consideration as damage caused to feelings, absence of readiness of apologizing,

- The circumstance of using the right of not discovering journalist's confidential sources of information of public interest cannot be interpreted to the detriment of respondent while deciding the amount of compensation.

- Taking into consideration that in cases of politicians and people who hold public positions, publications regarding matters of public interest has a maximum protection, while deciding the amount of compensation, applicant's such status cannot be interpreted to the detriment of the respondent,

- It should be taken into consideration, if extrajudicial forms of compensation, including volunteer or self-regulating mechanisms, have been supplicated and used for mitigating the damage caused to applicant's honor and reputation,

- The parties should be compulsory offered to come to peace and a contribution should be made in this case. While estimating the damage, decision of conciliation should be observed as a mitigating circumstance,

- The right of protecting the truth, the right of protecting the opinion and the right of transmitting other persons' speech should be publicly recognized.

The RA Constitutional Court also finds, that this approaches emanate from the constitutional content of the provisions of Article 1087.1 of the RA Civil Code. They must be taken into consideration with consistent and systematic embrace in law enforcement practice, as well as be set in basis of further legislative trends.

Based on the results of consideration of the case and in accordance with Point 1, Article 100, Article 102 of the Constitution of the Republic of Armenia, Articles 63, 64

and 68 of the Law of the Republic of Armenia “On the Constitutional Court”- the Constitutional Court of the Republic of Armenia **DECIDED:**

1. Article 1087.1 of the Civil Code of the Republic of Armenia is in conformity with the Constitution of the Republic of Armenia within the constitutional-legal content emanating from the legal positions expressed in the given decision, and international commitments undertaken by the Republic of Armenia.
2. According to Part 2 of Article 102 of the Constitution of the Republic of Armenia this decision is final and enters into force from the moment of publication.

Chairman

G.Harutyunyan

15 November, 2011

DCC-997