



Strasbourg, 4 December 2009

Opinion no. 533/2009

CDL(2009)173rev

Eng. only

Mis en forme : Couleur de police : Automatique

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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

Mis en forme : Anglais
États-Unis

REVISED DRAFT LAW (*)
ON AMENDING THE CIVIL CODE

OF ARMENIA

(*) New proposed amendments are highlighted in the texte as track changes

Mis en forme : Gauche

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Italique, Police de script
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Draft

Law of the Republic of Armenia
on amending the Civil Code of the Republic of Armenia

Article 1. State Article 19 of the Civil Code of the Republic of Armenia (as of May 5, 1998) in the following wording:

“Article 19. Protection of Honor, Dignity and Business Reputation

The honor, dignity and business reputation of a citizen is subject to protection from insult and defamation manifested by another person (other persons) in the cases and order set forth under this code and other laws.

Article 2. Supplement Chapter 60 with a new 2.1 paragraph containing the following:

“§ 2.1 The Order and Terms of Compensation for Harm Caused to the Honor, Dignity and Business Reputation

Article 1087.1. The Order and Terms of Compensation for Harm Caused to the Honor, Dignity and Business Reputation

1. The citizen, who is of the opinion that his/her honor, dignity or business reputation has publicly been infringed by way of insult or defamation, can file a lawsuit against the person, who took part in the alleged infringement.

2. In the sense of this code insult is deemed to be a public expression (opinion and/or value judgment) by means of speech, picture, voice, sign or by any other form of publicity with the intention or the effect of humiliating another person. Within the meaning of this Article, the expression so made is deemed not humiliating if it is justified in terms of both occasion and content by an overriding public or legitimate private¹ interest.

3. In the sense of this code defamation is deemed to be the public dissemination of false facts, in regard to a person, which infringe his/her honor, dignity or business reputation.

4. The burden of proof of the necessary facts (circumstances) for the case lies with the defendant.² It will devolve upon the plaintiff if it would require unreasonable efforts on the part of the defendant to prove the truth, while the plaintiff has access to the relevant facts.

5. The facts within the meaning of part 3 of this Article shall not be considered as defamation if it was made

- a) in the course of a speech made at hearings and sessions of the legislative body;
- b) in the course of declarations made during the hearings at the permanent or temporary committees of the legislative body as long as declarations so made concern the problem being discussed;
- c) by a person directly involved in judicial proceeding as long as the statement was made in the course of this proceeding and was connected to it;
- d) as a contribution to a scientific debate or a debate on a matter of public concern provided that its author has made reasonable efforts to find out the truth and/or substantiate the allegations and has presented it in balanced manner and in good faith.

6. The aggrieved party has the right to demand in court from the person having insulted him/her:

- e) a public apology;
- f) a rectification, if appropriate taking into account the substance of the expression(s) so made;
- g) a lump-sum payment of compensation in the amount of up to 250 times the minimum monthly salary. The amount so payable shall be determined by the court, taking into account the specific circumstances of the individual case.

7. The aggrieved party has the right to demand in court from the person having defamed him/her:

¹ The expression of “private interest” is deleted because of concerns that the reputation of a person may be infringed for the pursuit of private interest. In particular, the ordered defamation by the means of mass media is widely spread in the Republic of Armenia.

² The following paragraph is deleted as the RA Civil Procedure Code has alike provision stipulating “The facts previously confirmed by the judgements in force rendered by the RA courts are not liable to re-proving in proceedings envisaged by this article.”

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a. the public retraction or rectification of the information deemed as defamation.

b. a lump-sum payment of compensation in the amount of up to 500 times the minimum monthly salary. ~~The amount so payable shall be determined by the court, taking into account the specific circumstances of the individual case.~~

8. The aggrieved party has the right together with obtaining satisfaction by the means set forth under paragraphs 6 and 7 of the present article also to demand in court from the person having defamed or insulted him/her compensation for the harm caused by the insult or defamation, including the court expenses and the necessary expenses for recovering the infringed rights, to be determined by the court.

9. If the author of an insulting or defaming expression has intentionally or by gross negligence misconceived that the impugned expression would be disseminated via mass media³, he/she shall be liable to pay a lumps-sum payment of compensation for moral harm of correspondingly up to 1000 times the minimum monthly salary in case of defamation, and up to 500 times the minimum monthly salary in case of insult. The amount so payable shall be determined by the court, taking into account the specific circumstances of the individual case.

10. If the insulting or defaming expression has been disseminated via mass media, excluding the cases when the similar information has been disseminated via live broadcasting by TV and/or radio, the aggrieved party has the right to demand from the person disseminating mass information,

a. to publish a reply;

b. to correct a false statement;

c. to publish a court judgment, which finds a statement to be false;

d. to pay a compensation as specified under point 11.⁴

11. If the means envisaged under point 10 to this article, are not sufficient to restore the infringed rights, the court may order the person disseminating mass information, to pay correspondingly up to 2000 times the minimum monthly salary in case of defamation, and up to 1000 times the minimum monthly salary in case of insult. When considering the amount of compensation, the court has to take into account whether

a. the person disseminating mass information, did offer to publish a reply or a correction;

b. the impugned expression has been presented in a balanced manner;

c. the dissemination referred to matters of general public interest and was aimed at serving the public interest.

12. The person may be relieved from the liability under this article if a defaming expression so made is the repetition of a previously and publicly disseminated defaming expression, which has not been retracted at the manner and time prescribed by law⁵ on Mass Media.

13. In case a person has repeated an insult that has previously been expressed by another person, irrespective of the means and period of its dissemination, he/she may not be exempt from the responsibility set forth under the present article.

14. When fixing the amount of the compensation for harm under the present article, the court has to take into account the property status of the respondent.

15. A claim under the present article shall be submitted to the court within one year from the moment the person becomes aware of the dissemination of the insult or defamation.

16. The rules of the present article on the protection of the business reputation of a person shall be applied correspondingly to the protection of the business reputation of a legal person.

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- Supprimé : In case a person repeats
- Supprimé : in public, which has previously been publicly disseminated and has not been
- Supprimé : , the expression was made, he/she may be exempt from responsibility set forth under the present article. An expression in this context is not deemed to be retracted, unless the retraction was published in such a way that it cannot be overlooked without negligence.
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³ The words “such as radio, TV or the press” are deleted as the RA law “On Mass Media” concretely defines the means of mass media and the words so deleted are included in the stipulation.

⁴ The paragraphs 2 to 5 to this article regulating the procedure of the reply are deleted as the RA law “On Mass Media” thoroughly regulates the same relations.

⁵ “An expression in this context is not deemed to be retracted, unless the retraction was published in such a way that it cannot be overlooked without negligence.” This formulation is unacceptable as it is uncertain and vague as to the cases when the expression is deemed to be retracted.

Article 3. Concluding Provisions

The present law comes into force on the tenth day after the official publication.

Page 2: [1] Supprimé	CHARTER	19/08/2009 5:52
especially by undertaking adequate research to substantiate the allegation		
Page 2: [2] Supprimé	CHARTER	19/08/2009 5:55
a reasonably balanced manner		
Page 2: [3] Supprimé	CHARTER	19/08/2009 5:57
as an indemnity for the moral harm		
Page 3: [4] Mis en forme	CHARTER	19/08/2009 6:39
Non Surlignage		