

**Violence,  
intimidation  
and legal cases  
against  
journalists  
and the media  
in Armenia  
2008-2009**

cases  
and analysis



Investigative  
Journalists  
NGO

Yerevan 2009

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# Preface

**E**very year on September 1, when I enter the classroom and welcome my first year students enrolled at the Department of Journalism, I usually start off by enumerating why this particular profession is so interesting and attractive. This year, however, I found myself suddenly speaking about the dangers reporters face on a daily basis, in particular the roadblocks hindering the work of journalists in Armenia today. Digging deeper, it turns out that the underlying root of the problem can be traced to the “war” that has been declared against reports and the press in Armenia during the past two years. In the past eighteen years since Armenian independence, this is the third such round, both prior to and after elections, that members of the press have been sacrificed at the altar of political and related power struggles. This was the case from 1995-1996, from 2003-2004 and again from 2008-2009.

*The manner in which such struggles have been resolved remains the same – physical and economic threat, in addition to the ever constant risk of being criminally persecuted on dubious “slander” charges. Particularly vulnerable are those reporters who stick their necks out and expose cases of corruption and abuses of government power. Sadly, violence is a prime component when such threats are acted upon - 8 cases in 2008 and 9 in 2009. The inability and/or lack of political will on the part of law enforcement to expose the perpetrators of such violence or those, behind the scene, who issue the orders, merely begets new acts of violence and gives a “green light” to those who prefer to resolve issues in such a manner.*

*The system of law enforcement in Armenia registers assaults against members of the press under the category of “complex crimes”. However, studies of some of the criminal cases that have been initiated show that the preliminary investigative bodies involved are either unable to conduct an exhaustive examination of the facts, leading to the identity of the perpetrators, or fail to do so by design. If the actual perpetrators of such crimes are never caught and brought to justice, it goes without saying that it is pointless to even talk about attempts to reveal those ordering such assaults; no such attempts exist.*

*Perhaps this was one of the reasons why the “Investigative Journalists” NGO recently decided to study the 2008-2009 court cases involving threats and violence against reporters and media outlets and those in which members of the press were indicted on ‘slander’ charges. The “Investigative Journalists” saw the need to publish a review of these cases that would include an expose of the efforts and results, or lack of same, by those agencies entrusted with the responsibility of investigating such cases and identifying those criminally responsible. Suffice it to say, we have not only exposed the true nature of such cases in our reportage but have also kept our eye on the judges and investigators, to make sure that they follow the letter of the law, especially when it comes to dealings with the press. We have pulled no punches in offering an objective assessment of their actions. These articles are previously published on the “Hetq” website during 2008-2009.*

*The first part of the book is comprised of articles dealing with physical attacks against reporters during 2008-2009. This list of assaults is in no way comprehensive, given that some of our colleagues preferred not to publicize their experiences. Many did so to avoid any contact and possible conflict with law enforcement.*

*The second section of the book, labeled “Reporters in Court”, includes articles of court cases that began in the same time period. In these cases, members of the press were both plaintiffs and defendants. The central charges filed against them include slander, personal insult and defamation of character and integrity. Despite the fact that various European organizations have repeatedly urged Armenia to decriminalize the charge of ‘slander’ or establish reasonable compensation parameters, Armenian authorities appear reluctant to make such changes. In this collection, the reader will come across cases where various government officials and politicians have demanded compensation from media outlets. This second section of the book is also noteworthy because it highlights a number of high-profile cases involving individual reporters and the press where the original court rulings are examined within the framework of the European Convention of Human Rights and the principles contained therein and taking into account the legal precedents of the European Court.*

*The examination of these cases in the tri-layer Armenian judicial system is still incomplete and these analyses will be instructive to the judges reviewing them, to the media and to those filing suit against the press, and to those individuals preparing to take their case to the European Court of Human Rights. Such analyses will be of particular benefit to judges who are obligated, via Armenia’s membership in the*

*European Council, to follow and implement precedent-setting legal practices in the European Court when it comes to the examination of such cases.*

*Our conclusion is that journalism is a profession that is becoming more dangerous with each passing day in Armenia and that authorities here will avoid taking the measures necessary to guarantee the safety and security of members of the press. We also conclude that government officials will remain averse, both today and in the future, to safeguard one's right to a free press and free speech. As a consequence, when it comes to the defense of our rights and freedoms, we must take the lead ourselves.*

**Liana Sayadyan**  
Project Director

**PART I**

**VIOLENCE**  
violence



Kristine Aghalaryan

## **Assailants Unknown: Investigation Surrounding Assault on Reporter Lusineh Barseghyan is Dropped**

**ON** August 11, 2008, a criminal case was initiated surrounding the assault on Lusineh Barseghyan, a reporter for the daily newspaper “Haykakan Zhamanak”. The case was halted exactly three months later, on November 11. The reporter’s assailants were never found despite the fact that the investigating body claimed that no stone was left unturned to uncover the truth.

“No gaffes were made in the case. Work was carried out according to procedure. You can criticize the police all you want. All angles were covered because the case was supervised by top officials,” stated Artashes Hovhannisyan, an investigator with the Police Department’s Nor Nork Investigative Unit, during a conversation with “Hetq”.

Our investigation of the matter gives us grounds to argue that the investigative body didn’t satisfactorily carry out its probe of the crime.

On August 11, 2008, at around 9:40 in the morning, “Haykakan Zhamanak” reporter Lusineh Barseghyan was assaulted by two unknown assailants. “When I had left the house to go to work I noticed that a car parked by a nearby house started its engine and started to follow me. I thought that they might be employees of the National Security Service, since at the time they were looking for Nikol (Nikol Pashinyan, editor of the paper on the run and being sought by law enforcement for March 1st events – KA). All of us at the paper were being followed. I didn’t pay the car any attention but was puzzled that this time their movements were quite apparent. I had reached the steps and was descending when I noticed that the car pulled up close by. They got out



of the car and proceeded to hit me. I yelled out and my screams attracted passersby. When my attackers saw a crowd forming, they fled the scene," recounts Lusineh.

Hearing Lusineh's screams, a worker at a nearby gas station and some passersby ran to help the reporter, but by the time they reached the scene her attackers had managed to flee.

Lusineh believes her assailants picked the staircase because it is usually desolate and presents an easy getaway. Lusineh also believes that there were two cars, not one. One of them was parked at the top of the stairs and the other at the bottom, making a getaway much easier. The entire incident happened so quickly that Lusineh couldn't make out where the assailants fled to upon hearing the noise made by the individuals who were running to her aid. She didn't even get a chance to see the faces of those hitting her. All she remembers is that they appeared to be in good physical shape and resembled skin-heads. "I was in shock. I hailed the first passing taxi with the intention of following the fleeing attackers. But they literally disappeared in a flash. This is why I believe that there was another car at the bottom of the stairs," Lusineh states. On the street, while waiting at a red traffic light, Lusineh spotted a white "Moskvich" with a license plate bearing the number 15LU393. In the car she eyed the driver, wearing a police uniform, and in the back a man with a shaven head that resembled her attacker, and another person. She remembers that these individuals seemed to be intently watching her.

Injured, Lusineh managed to get to the paper's office. They called an ambulance and she was taken to the Saint Grigor Lusavoritch Medical Center. The doctors examined her and diagnosed a hairline fracture to the head and hematoma. Investigators were able to find out that the Moskvich 21-41 vehicle with license plate #15 LU 393 belonged to Vahe Khachatryan, who resided at Apartment 111, Building 17, Nansen Street, Nor Nork First District, Yerevan. The car was being driven by his father Armen Khachatryan, a senior police officer at a Protection Directorate attached to the Central Division. The investigation revealed that on the evening of August 10, a day before the incident, Armen Khachatryan assumed his shift at the Triumph Coffee House on Isahakyan Street. He ended his shift the next morning at around 9:30. He then took Seyran Sargsyan, a worker at the coffee house, and Yuri Sargsyan, an electrical repairman, to Saryan Street in Yerevan. After dropping them off, Armen Khachatryan drove to the village of Akner in Lori Marz on personal business. No evidence implicating these three individuals in the assault case was ever uncovered.

Since Lusineh was registered as a resident at the family home in Avan, the criminal case was assumed by the Nor Nork police precinct in accordance

with Article 118 of the RoA Criminal Code (Beating or other forms of physical assault punishable by a minimum fine of one hundred times wages or a maximum imprisonment of two months). On August 12, the Nor Nork Investigative Unit officially launched their case. Investigator Artashes Hovhannisyan claims that the police were give special directives to set up an operational squad to uncover the identity of Lusineh's two attackers, but that all their efforts were fruitless.

A court forensics examination was appointed in the case. After being recognized as the aggrieved party, Lusineh was initially interviewed but never appeared to complete the forensic examination due to her busy schedule even though she was repeatedly requested to appear at the investigative unit. The investigator presented numerous notices to prove that Lusineh was informed, both by telephone and in writing, to appear before the court physician in order to arrive at a final assessment regarding the severity of the injuries she had sustained. "For a month they tried to convince me to go see the forensics doctor again. I explained to them that I didn't have the time and because up till then they were only examining me, I didn't see any sense in going back to the doctor again. As far as I could understand, they wanted me to go back to forensics and if there were no results it would be much easier for them to close the case," Lusineh explains.

Even though Lusineh didn't appear for a forensic examination the second time, on November 11, the court physician issued a conclusion based on his initial examination – "The bodily injuries sustained by Lusineh Barseghyan caused minor harm to her health of a temporary nature". Investigator Artashes Hovhannisyan states, "The case proceedings were halted despite the fact that operational intelligence activities continue till today."

"Naturally, they never found out who my assailants were, even though I provided them with details that would have made it easy to find them," Lusineh says. She says that the same car parked outside the entrance to her house at the time of the incident was seen surveilling the paper's offices for a few days. The car was a deep purple "Zhiguli 06" make. People visiting the offices even spotted the car parked outside. A few days before the assault an individual named Garen visited the "Haykakan Zhamanak" office and introduced himself as being from the "Sargis Tkhrouni" youth wing. He said he wanted to see Lusineh. Busy at the time, Lusineh asked that the man wait a few minutes. When she went outside Garen had already left. The same person also visited the home of Lusineh's parents. Norayr Barseghyan, Lusineh's father, recounted that the young man asked about Lusineh, stating that he wanted to work for "Haykakan Zhamanak". He was a man of about thirty-five with a round face and light hair. Mr. Barseghyan says, "I told the man to go to the paper's office if he wanted to work there and I asked him why he had come



to my house." The man replied that he had already gone to the newspaper and that they had sent him to the home of Lusineh's parents. Lusineh later found out that no such person as Garen existed in the "Sargis Tkhrouni" organization. She confidently states that, "They did their homework."

No composite sketch of Lusineh's assailants was ever made since the reporter only saw them from behind and the passersby who came to her rescue were unknown. The investigator complains that Lusineh was pretty aloof when it came to taking measures to crack the case; she never showed up at the investigative office and didn't assist in the examination. Lusineh argues that the police never intended to identify the culprits and that the whole investigative was merely a sham. "The same young man telephoned the newspaper office. I told the police the approximate time of the call. I they wanted to find out who he was they could have gone to the ArmenTel records. I could have described him as well," states the reporter.

According to the investigator, there was no need to come up with a composite sketch of the man calling himself Karen. "Karen wasn't one of the perpetrators. Lusineh ties him to the assault but Karen came on the scene a week before it happened. She doesn't know for sure, she's merely making a supposition. She should have come to us to examine any possible connection," says the investigator who adds that they explored all possible theories. What remains puzzling however is why the investigator is so convinced that this Karen character had no connection to the case. Even though many of them got a good look at Karen, Lusineh, "Haykakan Zhamanak" employees and Lusineh's parents, the investigator claims that Lusineh's recollection of Karen was spotty and that's why no artist's rendition was made. "We also interviewed the father and he wasn't able to give us a good description," states Investigator Khachatryan. Lusineh contradicts the claim and says that they never even interviewed members of the newspaper staff who saw the guy.

Artashes Khachatryan says that they couldn't come up with anything from the telephone records as well. "We tried to uncover his identity through the phone records but couldn't. We called up Lusineh to verify some of the numbers but she refused to assist us." We need to remind readers that Lusineh informed the police as to the approximate time that Karen called her at the office. It wouldn't have been difficult for the investigators to check the calls, even in her absence. Lusineh says this young man wasn't one of her attackers. Her assailants were guys with cleanly shaved heads while the man calling himself Karen had light colored hair. "With all these details any professional worth his weight in salt could have easily found these guys, but nothing of the sort happened. The case dragged on for some months and then they declared it closed," says Lusineh and adds, "They never kept me abreast of the case. I only heard by accident that the case had been closed on the

basis that there was no second witness and that evidence was insufficient. It was evident from the get-go that the case would never be solved because it was linked to my work as a reporter."

Prior to the incident the reporter had written a series of articles regarding the alleged misuse of office by certain government officials. Particularly noted in the articles were National Assembly Deputy Samvel Alexanyan, Erebuni district leader Mher Sedrakyan, and the activities of Hovik Abrahamyan, who at the time headed the staff of Serzh Sargsyan. The reporter unabashedly states that, "I even told them that the number one suspect in my book was Erebuni district leader Mher Sedrakyan and that others might be involved as well; Hovik Abrahamyan for example. Furthermore, since they were tapping our phone conversations they knew that an article on police abuse was in the works." (<http://www.hzh.am/Arkhib/2008/August/1308/13-08.html>, <http://www.hzh.am/Arkhib/2008/August/0108/01-08.html>)

According to Investigator Khachatryan there were many possible theories as to the assault and all were approached from the viewpoint of the reporter's professional activities. "She also gave us the name of National Assembly President Hovik Abrahamyan. Should we have paid him a visit and interrogated him," asks the investigator who verifies that they didn't question him. Investigator Khachatryan is quick to claim that all possible investigative procedures were carried out and stresses that, "by the way, the case was being directly supervised by the minister and even reached the personal staff of the president."

"Hetq" sent a written request to the RoA Prosecutor General to find out why a composite police sketch of the man called Karen was never made, why the phone records weren't checked, and why "Haykakan Zhamanak" staff weren't questioned. In response to our query, Mr. V. Shahinyan, Head of the Personal Assaults Division, stated, "...The RoA Deputy Prosecutor General forwarded a written directive to the Avan and Nor Nork District Prosecutor regarding the criminal case of bodily assault on Lusineh Barseghyan, instructing the district office to initiate an examination of the facts pertained therein."

"Hetq" sent a similar letter of inquiry to Chief of Police Alik Sargsyan. On April 8, we received a response from the Chief Investigative Department of the RoA Police signed by Lieutenant-Colonel S. Tzaghikyan. The response answered none of the questions we had raised. Below is an excerpt of the police statement.

"...Regarding the points raised in your letter that the crime committed against Lusineh Barseghyan wasn't solved due to the fact that a full and exhaustive preliminary examination wasn't carried out and due to



professional negligence, it is worth noting that a detailed review of the investigation executed by the Nor Nork investigative unit reveals that the entire matter was implemented adhering to the strict letter of the law according to the obligations as specified within the RoA Criminal Code of Jurisprudence, that all possible measures were taken to ensure an exhaustive and multi-faceted examination of the case and that all necessary juridical steps were taken during the preliminary investigation.“

**Lusineh Barseghyan:**  
***“I knew from the start that the case  
would never be solved ”***

**AFTER** “Hetq“ published the article and above response, an inspector and members of the police visited the offices of “Haykakan Zhamanak“ and again interrogated Lusineh Barseghyan and several other employees. Soon afterwards the police summoned everyone who called Mrs. Barseghyan on or about the day of the attack to clarify a call made to the reporter by a person calling himself Karen. “They apparently wanted to show that they were doing their job after the article was published. They could have at least jotted down the numbers that I received calls from rather than dragging everybody down to the police station,“ says Mrs. Barseghyan.

Lusineh’s father was also directed to show up and be interrogated once again but he refused. “I said all that I had to say. I described that person and I’d recognize him if I saw him,“ Mr. Barseghyan said.

“Hetq“ also received another letter dated June 30 signed by Senior Prosecutor A. Maroukhyan of the General Prosecutor’s Personal Assaults Division stating that, “The investigations into the criminal case of bodily assault on Lusineh Barseghyan directed by the RoA Deputy General Prosecutor that were carried out by the Avan and Nor-Nork investigations unit revealed nothing of a positive nature. It must be pointed out that L. Barseghyan, her father, N. Barseghyan and members of the “Haykakan Zhamanak“ editorial board refused to cooperate with the preliminary examination body and thus we weren’t able to form a composite sketch of the individual called ‘Karen’.“



*Photo by  
Gagik  
Shamshyan*

Mrs. Barseghyan believes that all this is pure show on the part of law enforcement. "I didn't go for further questioning because I am not convinced that a composite sketch would be made if I did go. It's pure theatrics. They never followed up on the leads I gave them and the facts I presented," Mrs. Barseghyan argues.

When the inspector went to the editorial offices of "Haykakan Zhamanak" for a second time, the staff didn't want to provide answers to the same questions as before. Lusineh Barseghyan says, "They come during working hours and take up pour time with senseless questions. Whatever I needed to tell them I did so right after the attack. I knew from the start that the case was a lost cause and that nothing would be revealed. But I went to the police and spent long hours answering their questions in detail."

Ararat Davtyan

## Mere Coincidence? Vardan Ayvazyan's Links to Baghdasaryan Assault

**WHILE** returning home from work on November 17, 2008, "Hetq" Editor-in-Chief Edik Baghdasaryan was attacked by three individuals as he approached his car. From the start, certain news outlets pointed the finger at Vardan Ayvazyan, the former Minister of Nature Protection who was in Moscow at the time of the incident, as the one who put out a "contract" on Baghdasaryan. Today, Mr. Ayvazyan is President of the National Assembly's Standing Committee on Economic Affairs.



*Photo by Gagik Shamshyan*

Three days before the incident, an article by Edik Baghdasaryan regarding an aspect of the business dealings of Vardan Ayvazyan was reprinted in the "168 Zham" newspaper (See: New Hrazdan Mine Fulfills the Dream of Former Environment Minister Vardan Ayvazyan) It must be pointed out that several other revealing articles regarding Ayvazyan had appeared in "Hetq" prior to this last reprinted one, in which Baghdasaryan uncovered how the former minister was able to get control of a portion of Armenia's raw material wealth, and in several cases gifting mines to his relatives and close acquaintances. In his very first press conference after the attack, Vardan Ayvazyan pointed to this series of articles and declared that, "If I harbored such an intention I would have done it long ago" and utterly denied any connection to the assault on Baghdasaryan.

In addition to the score of top government officials who condemned the attack, including Prime Minister Tigran Sargsyan who paid Baghdasaryan a visit in the hospital, President Serzh Sargsyan issued a stern directive to law enforcement – “Expose the authors of the attack as quickly as possible and call to account all guilty parties”. It was announced that the Police Chief himself would oversee the investigation and top ranking police brass claimed that based on their “gut beliefs” the case would soon be solved.

At the time, taking into account the modus operandi of the police, it was hard to understand how these “gut beliefs” were derived at. The police gave assurances that, “an investigative unit comprised of the department’s most experienced employees would carry out all required operational/investigatory measures”. Immediately after the assault, those “police experts” carried out an inspection of the crime scene and came up empty-handed. This, despite the fact that some 6 hours later, Edik Baghdasaryan’s son found his father’s car keys, photo camera and a spent gas cartridge fired by a random passer-by would witness the assault and sought to ward off the attackers.

Furthermore, Edik Baghdasaryan was able to get a partial look at the face of one of his assailants but law enforcement officials never paid the fact much attention. “During the fight, I hit one the guys and he fell back, some light hitting his face. I thought that if I saw the face again soon I would definitely recognize it. After a while that image faded from my memory,” says Baghdasaryan, adding that, “Law enforcement never followed up. Now I understand that they never needed to do so because they were looking for that guy, Karen Harutyunyan, from day one.”

Edik Baghdasaryan’s assailants continued to beat him even while unconscious and they only fled the scene when a passing supervisor from the police training academy fired a shot into the air. It was this supervisor, Norik Avetisyan, who recognized one of the assailants as a former resident of his courtyard. Based on the supervisor’s written testimony, a composite sketch of that resident, Karen Harutyunyan, was compiled and a search was launched to track him down.

In this case, the term “search” is applied rather loosely. Karen Harutyunyan’s defense lawyer, Vahagn Manoukyan, states that eight days after the incident his client was summoned to appear at police headquarters and was immediately arrested after arriving there. Karen’s mother, Marineh Markosyan, stated to one of the papers that on the very day of the incident she was in the Erebuni Hospital hooked up to an intravenous drip and that Karen was at her bedside the entire time. According to the “Aravot” newspaper, testimony corroborating this had been given by her doctor and nurse. Our information indicates that this alibi is bogus and that it has already been disproven during the





preliminary investigation. Furthermore, Karen Harutyunyan refused to offer testimony which is very surprising given the existence of an alibi. He merely declared that he had no connection to the assault.

At the preliminary inquest, it was recommended that Karen Harutyunyan be charged with "Causing medium degree bodily harm with intent either individually or by an organized group" (Criminal Code, Article 113, Section 2, Point 3). His lawyer, Vahagn Manoukyan states that no basis for such a charge exists, "given that the findings of the court medical examination are dated December 8. Thus, charges were recommended against an individual when it still wasn't clear if the injuries suffered by the victim were serious, medium or light in nature". For a few consecutive days we tried to arrange a meeting with attorney Vahagn Manoukyan in the hope of getting some clarification regarding certain outstanding issues. Claiming that he was busy, Mr. Manoukyan kept putting off any such meeting for the following day. Finally, on March 8, he chose a place and time for our meeting. The meeting never took place. As on prior occasions, we were only able to get in touch with him by calling from a phone number unknown to him. "You'll forgive me, but I had to take my grandmother to the hospital and couldn't make the meeting," he told us, promising to see us the following day. The next day he once again broke his promise.

The law periodical "Hetaknnutyun Iravunk" had written that in reality the investigators had purposefully issued an incorrect evaluation of Karen Harutyunyan's actions when in fact his actions totally corresponded to Section 2, Article 34-112, of the RoA Criminal Code – "Criminal attempt to cause serious premeditated physical injury", which was carried out with exceptional brutality by a group of individuals or an organized group (in this case the assailants would be facing a 5-10 jail sentence). Furthermore, the author of the article concluded that even though a search for K. Harutyunyan had been declared, "due to the intervention of a certain powerful individual the police didn't arrest him and allowed him to show-up voluntarily in order that in the future the court would issue a relatively light punishment for the charges now brought against him .

On February 27, 2009, Police Chief Alik Sargsyan noted that they had transferred the accused, Karen Harutyunyan, to the psychiatric ward for examination. "He previously had such documentation and the investigative body was obliged to send him for further testing. The case was proceeding and it appeared to be near completion. We were already preparing our indictment, but yesterday, on the instructions of the Chief Prosecutor, the case was transferred over to the Yerevan Department of Investigations.

It still remains unclear why the preliminary investigation conducted by the Kentron Police Department has failed to satisfy the Prosecutor's Office. "The

General Prosecutor, as the body supervising the preliminary investigation, while examining the case materials has deemed it expedient to transfer the case to the Yerevan Department of Investigations. I cannot say anything further," notes Sona Trouzyan, the General Prosecutor's Press Secretary.

During the above-mentioned press conference the police chief gave assurances that the preliminary investigation would be completed in a matter of 10-15 days and that the case would be sent to the courts. That deadline has come and went and it would appear that the case will actually appear before the courts in the near future, exposing neither the underlying motives of the crime nor the identities of the other two assailants or those who ordered the attack.

"If they don't find those who gave the orders for the attack I don't think it makes much sense to punish this guy. In the end, you'll always find someone to do your dirty work," says Edik Baghdasaryan and notes that while he wasn't giving the investigator the names of any suspects in the beginning, he now has grounds for doing so now. "Karen Harutyunyan and his mother are on intimate terms with the family of Vardan Ayvazyan. Karen's mother, Marineh Markosyan, just happened to be the private doctor to the son of the former Minister of Nature Protection and the two families are quite close. If Karen Harutyunyan is one of my assailants such a coincidence is more than unlikely. I don't rule out the possibility that Vardan Ayvazyan or his circle of guys is behind the group," says Edik Baghdasaryan.

We also tried to get some statement from Vardan Ayvazyan himself regarding these chance "coincidences". Getting clued in by his assistant and driver as to the topic of our desired discussion, he began to hem and haw. A bit earlier though, his driver had told us that, "Vardan Ayvazyan was sick in bed".

### ***Edik Baghdasaryan Assault Trial Gets Underway***

**ON** June 4 the trial got underway. Other than 20 year-old Karen Harutyunyan, law enforcement has yet been unable to identify the two other individuals who attacked Mr. Baghdasaryan as he left the Hetq offices in the evening on the day in question.

Karen Harutyunyan not only denied participating in the attack but refused to offer testimony. However, the preliminary investigative body substantiated the charges against Mr. Harutyunyan, premeditated assault by an individual or group resulting in medium level physical injury, and the case was sent to the Kentron Nork-Marash District Court.



Judge Martirosyan asked Mr. Baghdasaryan if he could offer any concrete evidence pointing to those responsible for organizing the attack. Mr. Baghdasaryan replied that after the attack Karen's mother came to his house and said that she is Vardan Ayvazyan's son's doctor and that the two boys regularly met each other. The "Hetq" editor said that this started him to think that the attack might be linked to a series of articles he had written regarding the business dealings of Vardan Ayvazyan. Judge Mnatsakanyan then asked if Mr. Baghdasaryan was preparing to ask for financial damages. "I haven't launched a civil case against the defendant. In general I find it meaningless to punish Karen Harutyunyan, even if he was one of the attackers, if those behind the assault are not to be exposed," said Mr. Baghdasaryan.

On June 10 session again Karen Harutyunyan claimed in court today that he had nothing to do with the crime. He answered all the questions asked of him. "I was at home at the time and I can prove it. At the police station they told me that I had done it and asked me how. I told them I hadn't and had nothing to say," the suspect declared in court.

During the interrogation of the suspect, Edik Baghdasaryan brought up the fact that he received three phone calls registered to Karen Harutyunyan's brother (the son of Karen's mother's second husband). "There are phone calls that the investigators must examine; calls made hours before and after the incident. I am convinced that one of the calls was made by Karen Harutyunyan himself. But the investigators aren't doing anything. It's too complicated for we journalists to do; it could take months," stated Mr. Baghdasaryan. When asked by the "Hetq" editor to respond, the suspect said, "I lost my cell phone card and went without one for about one month."

Before that the court interrogated Norayr Avetisyan, director of the police training academy, who was walking by when the assault took place. He said that he went to the Vernisage to play some pool at a club nearby when he saw Karen Harutyunyan, whom he recognized as a former resident of his courtyard, and two other unfamiliar men walking towards the fountains. "I stopped the car to take a better look at them. About 50 meters away I saw that a fight was ensuing. I ran towards the spot, shouting that I was a police officer and to stop fighting. They didn't listen to my call so I fired my gas pistol into the air. With that, they took off," stated Mr. Avetisyan in court. Mr. Avetisyan said that he started to chase after them but stopped because he was more concerned with the victim. He recognized Karen Harutyunyan when he spotted the assailants later on. The witness said that two of the assailants were beating Edik Baghdasaryan with their fists and feet from in front while the third was striking the victim with what appeared to be a heavy object from behind. He said that Mr. Baghdasaryan tried to get up but the blows were coming from all sides and he couldn't.

"It's a lie. That man (Norayr Avetisyan) is an enemy of mine. That's why he's saying all these things," blurted out Mr. Harutyunyan. The suspect went on to say that Avetisyan had been in love with his sister (the daughter of Karen's mother's second husband – Hetq) and that later on the girl had a boyfriend who told Avetisyan to forget about the girl.

The suspect said that between 3 and 4 pm on the day of the assault he was busy taking his mother home from the Erebuni Medical Center where she had been operated on. He said that his mother's doctor, Lusineh Tovmasyan, and nurse, Nayira Muradyan, could vouch for him. Nurse Muradyan is a close friend of the suspect's mother, Marineh Markosyan.

Defense attorney Vahagn Manoukyan motioned the court to interrogate these three individuals but Judge Mnatsakan Martirosyan denied the request arguing that Marineh Markosyan and Nayira Muradyan had a stake in the outcome of the trial and that they were present throughout the trial in any case. Judge Martirosyan stated, "Lusineh Tovmasyan gave testimony during the preliminary examination that Karen Harutyunyan was at home on the day of the incident until around 7:00 p.m. This neither refutes nor substantiates whether he committed or didn't commit the act he is charges with that took place at approximately 7:50 pm."

Prosecutor Hayk Balyan stated that the charges of "hooliganism" brought against the defendant were fully founded and called for a sentence of 5 1/2 years.

On June 23 Karen Harutyunyan, one of the three suspects charged with brutally assaulting "Hetq" Chief Editor Edik Baghdasaryan last November 17, was sentenced to five years imprisonment by the Kentron and Nork-Marsh District Court, Judge Mnatsakan Martirosyan presiding.

Defense attorney Vahagn Manoukyan, in his summation, argued that various violations had occurred during the pre-trial investigation and motioned the court that his client should be released.

Edik Baghdasaryan commented that, "Yes, the pre-trial investigation wasn't perfect. I too wish to be convinced that he (Karen Harutyunyan) actually committed the crime. But we exposed the fact that the defendant made some false statements. He declared that on the day on the attack he was at the hospital, at his mother's bedside, while he actually at home and dialed up the internet." Mr. Baghdasaryan stated that the pre-trial investigative body overlooked the essential fact that between 10:00 and 11:00 pm on the day of the incident, Mr. Harutyunyan made several telephone calls from home to Vardan Ayvazyan, the former RoA Environment Minister, who was in



Moscow at the time. “Mr. Ayvazyan, who has links to the Harutyunyan family, was questioned, but the investigator failed to inquire about these calls,” Mr. Baghdasaryan stated, adding that, “The day six more call were made but their frequency dropped in the time up to Mr. Harutyunyan’s arrest.”

Prosecutor Hayk Balyan continued to assert that the guilt of the defendant had been overwhelmingly substantiated by the pre-trial investigation and during the trial itself.

Meanwhile, Karen Harutyunyan continued to claim his innocence. “I plead not guilty to the charges and am not afraid of the 5 1/2 years demanded by the prosecutor. Let him seek 7 years if he wishes to. It’s all the same to me. I am not guilty,” the defendant stated in court.

According to a statement circulated by the RoA General Prosecutor’s Office, the Assistant General Prosecutor has issued a directive to the RoA Police to intensify their efforts aimed at identifying the other individuals who assaulted “Hetq” Chief Editor Edik Baghdasaryan last November. The statement specifically calls on law enforcement to seek out other eye witnesses to the brutal assault and to review speculations made by Mr. Baghdasaryan and the press regarding possible motives for the attack and those behind it. It also urges the police to take a closer look at the circle of friends and acquaintances of Karen Harutyunyan, the only one since charged and found guilty of participating in the assault.

Ararat Davtyan

## Photo-Journalist's Attackers Pardoned; Criminal Proceedings Dropped



*Photos by Hasmik Smbatyan*

**ON** March 13, 2008, Gagik Shamshyan, a photo-journalist for the "Aravot" and "Chorrod Ishkhanutyun" was physically assaulted and taken in an immobile state to hospital. Gagik Shamshyan was dragged to the ground and beaten by the security staff at the Bryusov Linguistics Institute where he had gone to cover a student protest. He received blows to his private parts but the doctors stated at the time that his injuries weren't serious. They stated that he had trouble urinating but that there was nothing to worry about.

Mr. Shamshyan recounts the details of what happened that day:

The students were staging a demonstration against corruption at the school and marched to the Bryusov Linguistics Institute to map out their next move in one of the classrooms. When the students entered the school, I followed behind them. We went upstairs and I started to take photographs."

Even though the reporter from Armenian Public T.V. showed his press badge to the three school guards, requesting that they let him pass, one of the security staff said that nobody would be let through and that he was acting on government orders. From above, I asked the guard why the government has to hinder the work of reporters by issuing directives to the



institute. The guard looked up in amazement and called out, 'Hey you, how did you get inside?' I told him not to speak to me in that familiar tone and that he shouldn't try and prevent reporters from doing their work.

At that moment, one of the guards, who was bald-headed, climbed upstairs yelling profanities, and started to kick me very hard in my private parts. I fell to the floor and they jumped on me. I used my legs to defend myself as best I could and returned their profanities. The other reporters intervened and an argument broke out that lasted about twenty minutes.

A young man walked up and I asked who he was. He said his name was Gago Shamshtyan and ordered me to leave. (I later found out he was the pro-rector). Soon afterwards the rector, Suren Zolyan, showed up and we all left the institute.

The institute's chief of security approached and said that it was all a misunderstanding. I said to forget it because I don't carry a grudge. We were conducting a peaceful interview but I could feel that my feet were wet. In all truth, I thought I had urinated due to the blows I had received. I went to the office of Radio Liberty nearby. In the bathroom, I saw that I was bleeding.

According to the official police report, G. Shamshtyan received physical injuries in the Bryusov Linguistics Institute building and that the security staff and that chief of security, 33 year-old Karen Mirijanyan and guards Aram Gevorgyan, 41 years-old, and Edgar Papoyan, 28, had prevented him from carrying out his professional duties. All three were summoned to appear before the police but were subsequently released.

Based on RoA Criminal Code Article 164 (Hindrance of a reporter's professional legal activity) and Article 118 (Assault), a criminal case was launched by the Kentron Police Division. During the pre-trial investigation, all three security staff members acknowledged the charges in the indictment. However, Mirijanyan, Gevorgyan and Papoyan, were pardoned according to the General Amnesty adopted by the RoA National Assembly on June 19, and the criminal case against them was dropped.



Ararat Davtyan

## Assault on Argishti Kiviryan is Attempted Murder

***Attackers Leave "Clues"  
but Crime Remains Unsolved***



*Photos by Gagik Shamshyan*

**AT** five in the night of April 30, 2009, Argishti Kiviryan, coordinator of the "Armenia Today" and "Bagin info" websites, was brutally attacked at the entrance to his house at #9 Nalbandyan Street. Mr. Kiviryan was rushed to the Erebuni Medical Center's Resuscitation Division where he was diagnosed with multiple traumas.

Different theories as to who was behind the assault soon circulated in the Armenian press. Some organizations, the Armenian Aryan Union in particular, issued a statement regarding the assault on Argishti Kiviryan alleging that the attack most likely is due his professional activities. The Aryan Union statement points a finger at what it describes as the "traitorous" and Armenian "Georgian lackeys" that might be behind the assault because the website portrayed these individuals for what they are. The Aryan Union says it can't be ruled out that the Georgian puppet masters of these individuals ordered the attack.

Certain media outlets also linked the attack to Kiviryan's wife, attorney Lusineh Sahakyan. She was involved in several high profile trials of opposition activists at the time and served as defense lawyer for former military prosecutor Gagik Jhangiryan.





Avetik Ishkhanyan, President of the Helsinki Rights Committee in Armenia, stated that the April 30 attack on journalist and attorney Argishti Kiviryan was a case of “attempted murder“. It is Ishkhanyan’s belief that Kiviryan’s attackers had no personal enmity towards the man – “Most likely, it was a contract hit, probably political.“

Kiviryan’s wife, not ruling out any scenario, specifically stressed that no one should get the impression that they can stop their work by resorting to such violence. “We will continue to work from an even greater position of principle,“ she stated. Nevertheless, she is inclined to believe that the assault was linked to her husband’s professional activities.

“The incident is not linked to my legal work as an attorney...I too am convinced that they attempted to murder Argishti Kiviryan. I even heard somewhere that one of the perpetrators called out, ‘no matter, we will come back and kill you’, as he was fleeing the scene,“ Lusineh Sahakyan stated.

Kiviryan’s attackers left many traces at the sight of the assault including a wooden stick, that that used to beat him, and empty bullet cartridges. But law enforcement officials, during their on-site investigation, failed to spot those same cartridges. Furthermore, one of the officers even tried to convince Kiviryan’s relatives that they had been mistaken and that no bullets had been fired. He kicked the door with his foot and said that they had heard a similar noise and thought it sounded like gunfire.

About a half hour after the attack, photo-journalist Gagik Shamshtyan arrived on the scene. Pictures taken by the photo-journalist clearly show bullet casings on the ground in addition to the stick. Later on Kiviryan himself claimed that he heard shots fired, arguing that he was lucky enough to knock the gun away with his hand and that the shots went wild.

At first, Argishti Kiviryan refused to cooperate with the police; especially when it came to giving testimony.

“A criminal case was first launched on the charge of “Premeditated attempt to cause light bodily harm“, while in fact it was a case of





attempted murder. Secondly, the spent cartridges disappeared from the crime scene. Third, the police stated that they had received an emergency call from the "Erebuni Medical Center" whilst my husband was first taken to an emergency hospital where the police were waiting. The fact is that the emergency call had been placed," explains Kiviryan's wife. "All of this leads us to believe that the investigation isn't being properly conducted and we have no hope to think that an objective examination will take place. Thus, Argishti is refusing to give testimony. He figures that it makes no sense to get involved in a process that is doomed to failure from the start."



Ruben Sahakyan, President of the Council of Advocates, was undecided whether to label the work of law enforcement as pre-meditated or legal incompetence. Mr. Sahakyan noted that according to Article 117 of the RoA Criminal Code, a criminal case can only be initiated if the injured party files a complaint and that this isn't a

"public indictment but a specific complaint."

"If you find that the individual has sustained minor physical injury, then why have you launched a criminal case when the aggrieved party hasn't even filed a complaint?" asks Ruben Sahakyan. "It's as easy as ABC. Could the investigator who launched the case not have been aware of this? What about the chief of the investigative unit and the head of the divisional police? In addition to the fact that they are obligated to serve the public, this is their job, their bread and butter. Let them be good enough to earn their bread in the proper way."

The President of the Council of Advocates also believes that is impossible for the prosecutor not to have known the simple facts, since the investigator had to have sent him a copy after launching a criminal case.

"How can a person who calls himself a professional fail to understand that someone's head is a vital life organ, that it's comprised of flesh and bone, that it contains the brain and grey cells. Only a person lacking



grey cells could ever think that the head isn't a vital body part," stated Mr. Sahakyan, adding that regarding the attack against Argishti Kiviryan, a criminal case of "attempted murder" must be initiated according to Article 102, Part 2, of the RoA Criminal Code.

On May 7, the case was then handed over to the National Security Service (NSS). To date there has been no explanation as to how the spent bullet casings suddenly "disappeared, especially when police investigators arrived on the scene immediately after photo-journalist Shamshyan.

"Our investigation showed no such casings. If anyone picked them up and is holding them they should hand them over," declared Chief Hovhannes Tamamyán of the Police Department's Division of Criminal Investigations a few days after the assault.

The NSS also questioned Gagik Shamshyan. In his testimony, the photo-journalist described the unprofessional manner in which the police on the scene carried out their investigation of physical evidence. He noted that one officer, hands in his pockets, had used his foot to kick a blood-stained club evidently used by the attackers.

On May 21, the NSS Press Center reported that the case involving lawyer-reporter Kiviryan had been upgraded to "Attempted murder by a group", according to Article 34-104, Part 2, Point 7, of the Criminal Code.

On July 16, the Kentron and Nork-Marsh District Court issued an arrest warrant and that two individuals had been taken into custody. The NSS has informed "Hetq" that their detention deadline had been renewed several times and that it was now in force till January, 2010.

The NSS has not issued the names of those in custody in the interests of the pre-trial investigation. However, the press has already revealed their identities – Vladik Serobyán and Gurgen Kilikyan.

Argishti Kiviryan has stated that he has no illusions that the police or the NSS will ever get to the bottom of the case and that he is conduct-



ing his own investigation. He has promised to reveal what he has come up with after his inquiries are completed.

His wife, Lusineh Sahakyan, says that the couple has been followed since the assault took place. Mr. Kiviryan told one of the papers that the surveillance is on-going.

“You get a sense of it in many different ways, especially when you are familiar with the techniques used in such surveillance. As to who is behind it or for what purpose, I still don’t know,” Argishti Kiviryan said.

Kristine Aghalaryan

## Six Reporters Assaulted During Yerevan Municipal Elections

**FIVE** cases of physical violence against reporters were registered in the May 31 Yerevan municipal elections, as well as incidents designed to prevent them from carrying out their professional duties.

### **1. At 10:45 am,**

physical violence was employed against “Chorrord Ishkhanutyun” newspaper reporter Gohar Veziryan, “Hayk” reporter Tatev Mesrobyan and “Zhamanak Yerevan” reporter Marineh Kharatyan. The incidents took place at the 9/1 polling station. Parliamentary Deputy Levon Sargsyan was at the 9/1 polling station located in the M. Nalbandyan School in the “Medaks” neighborhood.

“We went to the 9/1 polling station at around 10:45 am and saw that Lyova Sargsyan had already voted. There were some 15 people milling about. I asked him if he had voted here and he responded that he had 25 houses and that he could vote wherever he pleased. I replied that I hoped he didn’t cast a vote in all 25,” states Marineh Kharatyan. Then, Gohar Veziryan came and invited the deputy outside. “Who are you to speak to me like that and call me outside,” the deputy said and proceeded to call Gohar Veziryan a “fool” and “lazy-bones”. Gohar responded by calling the deputy a “fool”, to which the deputy replied with a list of expletives like, “your mother...”

Gohar Veziryan then answered back with her another choice expression. Marineh Kharatyan claims that the deputy started the cursing and that everything is clearly audible on the tape recording of the incident.

Levon Sargsyan then ordered his bodyguards to clear the polling station of all reporters. With that, one of the bodyguards slapped Gohar Veziryan. According to Marineh Kharatyan the slap can be heard on the tape. Three bodyguards then assaulted Gohar, twisting her arms and hitting her. “One was holding my arms and another slapped me twice in the face. One struck my head and the metal hair pin and it shattered in my head. Another bodyguard kicked me in the stomach and I got short of breath and went dizzy,” Gohar Veziryan said.

"I didn't have a chance to see a doctor yesterday, but my abdomen hurts. Maybe an organ or muscle was damaged. I'll definitely get a check-up tomorrow for some piece of mind," Gohar Veziryan said.

Marineh Kharatyan wasn't physically assaulted but the curses rained down on her as well. "During that period Lyova Sargsyan was mouthing some pretty nasty stuff at me and no one intervened; not members of the district electoral commission nor the police. Misha Samvelyan, president of the district commission, was probably encouraged by the presence of Sargsyan and acted in a foul manner. When Sargsyan was cursing at me, Samvelyan snatched my tape recorder. I'm emotionally stressed out. It was horrible. If I dared to respond to the verbal assault against me possibly another murder would have taken place," says Marineh Kharatyan.

"They twisted my arm and punched me in the shoulder. They took my phone," says Tatev Mesrobyan, adding that, "then one of the guys keeping an eye on the street returned it to me. Perhaps they checked it for photos and then decided to give it back."

Deputy Sargsyan and his entourage of bodyguards then left the polling station. The local electoral commission president responded to all questions by saying that such an incident never took place. "We can do nothing. You must go to the Erebuni police station," was the answer of the police present at the scene.

Tatev continues, "The other members of the electoral commission joined in with the cursing. We still hadn't registered but it clearly wasn't in their best interests that we hang around."

The reporters left the site after the incident but Tatev remained at the polling station. After 5:00 pm she witnessed a series of violations and ballot box stuffing. She also saw a group of about thirty young men vote several times.

## **2. At around 5:00 pm**

at the Malatya 8/05 polling station physical force was employed against Armineh Avetyan, a reporter for "168 Zham", and Lilit Tadevosyan, a reporter for the "Tert.am" website wasn't allowed to carry out her professional duties.

Lilit wasn't physically abused but she was not allowed to approach the ballot box. Lilit saw that they were stuffing the ballot box and she tried to intervene. "They jostled and pushed me and didn't let me get close to the box." "I was at the 8/06 polling station at the same location. I heard voices and went to the 8/5 station to take some pictures. One of the people yelling threatened me by saying, 'I'll break your head and the camera if you take any photos'," says Lilit Tadevosyan. She confirms that they twisted the arms of Armineh Avetyan and Sona Ayvazyan, an observer with Transparency International, and forced them against the wall so that they couldn't approach.



“About twenty thick-necked guys encircled us and took us aside. They hit us with their hands. My pen stuck into my hand and I started to bleed,” added Armineh Avetyan. Local electoral commission members and its president, Petros Avetisyan, failed to register either the ballot stuffing or the assault on the reporters.

### **3. Nelli Grigoryan, a reporter for the daily “Aravot”**

was physically abused at around 5:30 pm at the Malatya 7/25 polling precinct. The reporter and HAK (Armenian National Congress) representatives witnessed a well-built man shove a HAK woman proxy against the wall and try and forcibly remove her from the precinct. “When I saw what was happening I immediately got my camera ready and started shooting. The members of the local commission were present as well as the proxies, but no one intervened. When I started to take pictures, an unidentified young man who later turned out to be Bokon from Noragyugh, turned around and started to shove me, screaming ‘who let you take photos’. For a moment there I was confused but later gathered my wits about me and told him that he was preventing me from carrying out my professional work as a reporter,” recounts Nelli Grigoryan.

A few minutes later Bokon snatched the reporter’s camera and went outside. They returned it five minutes later but the memory card had been removed. “A white-haired woman commission member started telling me to behave and asked who I was and why I was yelling. I told her who I was and what my function as a reporter was. At the time, the abuse was choking me. Some seedy looking guys the proceeded to assault two women, to settle a score of some kind. The respectable looking individuals on the commission didn’t lift a finger in the defense of the two women. They just sat by, seemingly uninterested,” the reporter says.

There were no police at the polling precinct. The incident was reported on the spot but the commission president refused to enter it into the official log. “He said he didn’t see anything. In fact, he didn’t see it because he was outside at the time. But the proxies and monitors saw it. He saw that the proxies were HAK monitors and didn’t register the incident in the log. We wrote up another report and sent it to the district electoral committee.”

### **4. Reporters and cameramen from Radio Liberty and “A1+”**

were prevented from carrying out their work at the 13/9 polling precinct located in Erebuni P.S. 120. Jirayr Ayvazyan, president of the district commission forbade any pictures of the election ballot to be taken and told the cameramen to leave the premises. “They didn’t allow us to take photos but there was no physical abuse,” said Radio Liberty reporter Tigran Avetisyan.

## **5. At the 8/01**

polling precinct, violence was used against Artur Hovakimyan, a freelance reporter for the "Haykakan Zhamanak" daily. The reporter had noticed that a group of young men were attempting to stuff the ballot boxes and started to film the incident. The group came over, grabbed the reporter's press badge and threatened to take his camera, promising to return it once the tape had been destroyed.

The RoA Police website reports that, "The Erebuni Police Station called Gegham Nazaryan, the editor of "Hayk" to say that bodyguards belonging to Deputy Levon Sargsyan beat one of its reporters at the 9/1 polling precinct located in Nalbandyan School."

Gohar Veziryan hasn't reported the incident to the police. However, H, Galoyan, the personal bodyguard of National Assembly Deputy Levon Sargsyan stated to the Erebuni police that, "At around 10:30 am, at the 9/1 polling precinct, "Chorrord Ishkhanutyun" reporter Gohar Veziryan attacked them when L. Sargsyan was casting his vote and that she proceeded to verbally abuse them, disrupting the public order in the process."

Gohar wrote the police saying, "exercising her constitutional right, she refuses to make any comments" since her lawyer, Hovik Arsenyan, wasn't with her at the time. However, the reporter states that the information circulated by the police is an absolute lie. "Let them start a criminal case against me. Let's all testify in open court about what really happened. Gohar Veziryan is not about to step back and she has no problem with lodging a complaint," the reporter said.

On May 31 "168 Zham" reporter Armineh Avetyan made a statement. On June 1 the Special Investigative Agency sent him a notice but the reporter never went down to the office due to lack of time. As of December 11, the Police Department's Public Affairs Division had issued no information regarding the sections of the case related to Armineh Avetyan and Lilit Tadevosyan

The criminal case of Gohar Veziryan, Marineh Kharatyan and Tatev Mesropyan was reduced based on Article 35, Part 1, Point 2, of the RoA Criminal Code; i.e. lack of corpus delicti.

Nelli Grigoryan was summoned to the Malatya-Sepastia police station for questioning. However, the following evening, some neighbourhood guys called her husband to come down to the street and the incident turned into a "settling of scores". District Leader Davit Ohanyan approached the husband with his entourage of bodyguards and urged him to convince his wife to withdraw her statements.

"Since my family and relatives were already panicked and not wanting to exacerbate the situation, I went to the police station and signed an affidavit that the cops had found my memory card and had returned it to me. In fact, the chip was never found or returned," recounted Nelli Grigoryan.





Kristine Aghalaryan

## Reporters Prevented From Covering the Story: SMEJA Officials Disagree

**ON** August 27, 2008, a special squad from the Service of Mandatory Execution of Judicial Acts (SMEJA), dismantled and moved ten “tnak” (temporary huts), from Vardanants and Spandaryan Streets in the town of Vanadzor. The eviction of these residents was observed by Larisa Paremouzyan, a reporter for “Hetq” and “Aravot”. Residents told her that SMEJA employees used force in the performance of their duties

“They requested that I show up in my capacity as a reporter. When I reached the town from Alaverdi, I saw that the SMEJA guys were roughing up the women. I approached them and asked why they were treating the women in such a way and if they couldn’t calm down a bit. Later, I began to photograph the scene. They grabbed the camera and erased the film. They then grabbed my tape recorder and began shoving me. I told them I was a reporter and showed my press badge. They returned the camera and recorder. There were about one hundred police at the scene and 50-60 SMEJA employees. How could I, the only women reporter on the scene, have ever prevented them from carrying out their assignment?” recounts Larisa Paremouzyan.

In the meantime, the SMEJA had issued the following statement asserting that the reporter had indeed hampered the efforts of the SMEJA employees:

“The activities had been carried out based on the ruling of the RoA Lori Marz Court of First Instance regarding the petitions filed by the Vanadzor Municipality. The huts had been moved to the Fifth “Tnak” District on St. Petersburg Street in Vanadzor. All the property and belongings of the residents was collected, safeguarded and transferred to the new site intact. Everything had been progressing without incident until the SMEJA workers came to the hut of Anahit Margaryan. This individual attempted to assault the workers with various sharp instruments but was prevented from doing so.

Taking into account A. Margaryan's psychological state at that moment the police and SMEJA workers decided to temporarily back off. However the "Aravot" and hetq.am reporter, who had arrived from Alaverdi, intervened in the actions of the SMEJA workers. When one of the workers ordered her to show some I.D., Paremouzyan disregarded the demand and proceeded to verbally insult the workers. We should note that beside L. Paremouzyan there were many other reporters on the scene who witnessed the actions of law enforcement and carried out their professional journalistic responsibilities without incident. The SMEJA regards the behavior of L. Paremouzyan as unacceptable and a provocation."

On September 5, Larisa Paremouzyan was summoned to the Department of Investigations and was questioned for some three hours by Investigator Gor Hovakimyan regarding the incident.

The RoA Human Rights Ombudsman requested that the Minister of Justice launch an administrative inquiry into the matter based on the information given by reporter Paremouzyan and that, if required, those responsible should be held to account. The "Hetq" and "Aravot" reporter was soon summoned and interrogated.

"I provided them with 15 photos clearly showing SMEJA using force. I declared that I witnessed the abuses being perpetrated against Anahit Margaryan and that I carried out my duties as a reporter throughout the entire "tnak" district. I told them that residents, as one voice, protested against the force being employed," recounts Larisa Paremouzyan. "However, what I found quite comical was the fact that the preliminary investigative body, rather than asking me important questions, was more interested to find out how I knew that the SMEJA had shown up on the scene, when I arrived in Vanadzor and with whom..."

As to the SMEJA statement claiming that there were many other reporters at the scene of the incident as well, Paremouzyan noted, "Other than myself, there were no other reporters. I worked alone. Then a girl named Mariam arrived from the Vanadzor office of the Helsinki Association. She also began to take pictures and protest the brutality of the SMEJA workers. I'm hard pressed to say where the case will wind up."

Yeranouhi Tumanyan, an analyst with the office of the Human Rights Defender, informed "Hetq" that the Justice Ministry had refuted that any such incident ever took place. This prompted the Ombudsman to petition the Special Investigative Service in writing. As of December 12, the SIS has failed to respond. "We also sent a follow-up letter to the SIS. They haven't acknowledged that either. If they don't respond with one week and inform us as to the status of the case, we will write to the Prosecutor General," she said.



Ararat Davtyan

## **T.V. Anchor Nver Mnatsakanyan Assaulted: Perpetrators Never Identified**

**ON** May 7 “Shant” TV anchor Nver Mnatsakanyan was assaulted and beaten by two unknown individuals outside the entrance to his home on Margaryan Street just minutes after midnight. Mr. Mnatsakanyan was able to telephone for emergency help and was taken to the Armenia Medical Center. After receiving medical treatment, he returned home.

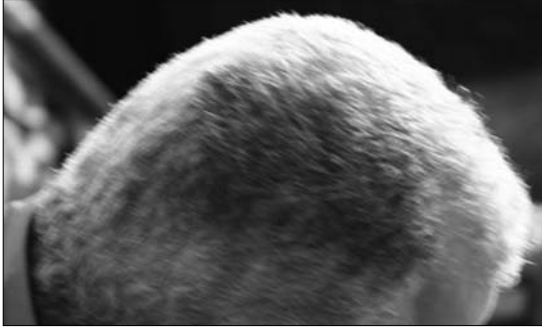
The Mashtots Police Department got a call about the assault at 12:15 am, just minutes after the attack took place. The police report that a forensic examination has been assigned and that a preliminary investigation is presently underway.

Today, August 21, RoA Police Chief Alik Sargsyan stated today that beating of popular “Shant” TV host Nver Mnatsakanyan was a case of mistaken identity and not a result of his professional work as a journalist.

“Let me say that two men met with Nver Mnatsakanyan’s son, one was a university student, and actually pointed out the site of the attack and gave details of the incident. I know Mr. Mnatsakanyan personally and hold him in great respect. I always doubted that the attack was somehow linked to his work on



*Photos by Gagik Shamshyan*



TV. It turns out that, absurd as it might sound, that the attackers mistook Nver Mnatsakanyan for somebody's father.

Police Chief Sargsyan also denied rumours that Hrant Vardanyan and his son were somehow mixed up in the case

Never Mnatsakanyan is of another opinion entirely. The anchor even went on T.V. and requested that the police not follow-up on the case since, "I am stating one story and the police are saying something else."



In this regard, Hunan Poghosyan, who heads the Police Department's Organized Crime Division (Department #6), stated that the police were only repeating what the injured party had presented and the limits placed on them by the confidentiality of the pre-trial investigation. "If he is demanded that none of us engage in the case, it is not sufficient. We will continue our activities, regardless of whether he wants us to or not. It would behoove him to display a more

positive attitude towards solving the case, rather than hindering it," Mr. Poghosyan declared at an October 27 press conference, noting that by a directive issued by the Police Chief the case was placed under his daily supervision.

However, the assault against Never Mnatsakanyan has remained unsolved. The Police Department's Press Division informed "Hetq" that the case against the two individuals mentioned by the Police Chief never stood up in court. Thus, the criminal proceeding was closed since the identity or identities of the perpetrators remained a mystery.



## PART II

# JOURNALISTS AND MEDIA

Journalists and Media  
**IN THE COURTS**  
in the Courts



Իրազրույցներ  
N-17C 19  
ԵՄ 210-6



Պատժարանում



Kristine Aghalaryan

## Mayor of Ijevan v Investigative Journalists: Plaintiff to Appeal Lower Court Decision

*Ijevan Mayor Varuzhan Nersisyan is unhappy with a lower court's decision that found in favor of the "Investigative Journalists NGO", the defendant in a slander case initiated by the Ijevan Municipality. Mayor Nersisyan plans to appeal to a higher court.*

### ***Why is Ijevan Mayor Nersisyan so upset?***

**I**n its May 5, 2008 edition, "Hetq" published an article written by Tavush correspondent Voskan Sargsyan entitled "Who is Pocketing the Profits of the Sand Mine?" In the article, Mr. Sargsyan described the illegal sand mining operation taking place at the "White Water" reservoir on the Aghstev River along the southern entrance to Ijevan. The article was also published in an "Azg" newspaper insert on May 20, 2008.

The reporter checked his facts on site and photographed the mining operation and trucks transporting the sand. Mr. Sargsyan spoke with workers at the sand mine and attempted to get answers in writing from operation management.

According to a 1997 government decision, "White Water" was designated Ijevan public property. However, the Ijevan Municipality, tasked with overseeing the property, failed to respond to a written inquiry sent back on October 27, 2007. The RoA Ministry of Nature Protection had stated that "the right to utilize the reservoir's sand hadn't been granted to any physical or legal entity given that a resource study of the area hadn't been carried out and a licensing agreement hadn't been issued." The General Prosecutor's Office, instead of verifying the evidence presented in the article, questioned the municipality and reported that only river silt had been transported out of the reservoir; effectively refuting evidence to the contrary. In the meanwhile, the reporter traveled to Dilijan, uncovering the fact that "White Water" sand was being trucked in for use during construction work on the amphitheater in June.



Based on the ample evidence before him, the “Hetq” reporter concluded that the illegal sand mining was being carried out with the full knowledge and permission of Ijevan Mayor Varuzhan Nersisyan. This conclusion didn’t meet with the approval of the mayor.

In the suit brought by the Ijevan Municipality to the Court of First Instance, Gevorg Davtyan, attorney for the plaintiff, claimed that, “...The information published by the defendant in the newspaper and website is baseless and contains slander that not only blemishes the honor of the mayor but his dignity and good name as well and harms the legal activities of the municipality.”

On June 19, attorney Davtyan initiated a suit at the Yerevan Civil Court demanding that the court compel the “Investigative Journalists NGO” to publish a retraction of the baseless information and slander defaming the honor and dignity of Mayor Nersisyan and to fine the “Investigative Journalists” in the amount of 930,000 to compensate the municipality for legal fees incurred.

On May 23, the Ijevan Municipal Council voted to allocate 930,000 AMD from the budget for legal fees aimed at “bringing the author of the slanderous article to account before the law”. At the session, Councilman Vahe Ghalumyan asked whether it was correct to allocate such an amount from the municipal budget. Mayor Varuzhan Nersisyan responded that an attorney with special credentials was needed to initiate such a case and promised that the 930,000 AMD would be returned to the budget.

The “Investigative Journalists” wrote to the Ijevan mayor, requesting that it make the minutes of the council session available along with the decision permitting 930,000 AMD to be spent from the municipal budget for legal fees for a suit against it seeking redress of the slanderous charges. Mayor Varuzhan Nersisyan refused to hand over the documents, arguing that he wished to “avoid any possible manipulation of the documents”, saying that they would be made available after court proceedings had ended.

### ***“Investigative Journalists” counter-sue***

**THE** “Investigative Journalists” then counter-sued, demanding that the mayor make the documents in question available. On November 26, the RoA Administrative Court partially found in favor of the “Investigative Journalists” counter-suit against the Ijevan mayor. The court demanded that the Ijevan mayor hand over copies of the decisions passed by the council to the “Investigative Journalists” within a five day period; that is by December 1, 2008. The countersuit brought by the “Investigative Journalists” NGO had also

sought 114,000 drams in damages and legal expenses from the Ljevan Mayor. In addition, the Court decided to have 8,000 drams appropriated from the Ljevan Municipality's budget to go to the Investigative Journalists NGO as compensation. The additional 106,000 drams sought by the "IJ" was rejected by the Court.

The Ljevan Municipality never acted on the court's decision, prompting the "Investigative Journalists" to petition the Compulsory Enforcement Service of Judicial Decrees. This proved fruitless as well.

### ***Court throws out Ljevan slander suit as baseless***

Simultaneously, the suit brought by the Ljevan Municipality against the "Investigative Journalists" continued at the Kentron and Nork-Marash District Court, Judge Ruben Apinyan presiding. During the hearing, the plaintiff was not able to specify what information contained in the original article was unfounded, slanderous and had defamed the good name of the mayor. The plaintiff merely cited two articles that had appeared as complete defamation of the mayor; "Who is Pocketing the Profits from the Sand Mine?" and "Mayor of Ljevan Seeks to Sue Reporter Over Slander in Illegal Sand Mine article".

In an attempt to refute the evidence contained in these articles, the plaintiff's suit claimed that the Ljevan Municipality had always been interested in exposing illegal mining operations and that it had petitioned T. Baghdasaryan and S. Galstyan, heads of the Ljevan Internal Affairs Division, on numerous occasions with this objective in mind.

The "Investigative Journalists" made the counter-claim that illegal mining of sand from the lake bed had taken place and that the accompanying photos were proof of same.

Voskan Sargsyan, the article's author, was called as a primary witness and a representative from the newspaper "Azg" was called in as a third-party. As a result of the motion of attorney Karen Mezhlumyan, who represented the "Investigative Journalists", Ljevan Mayor Nersisyan was also subpoenaed and questioned by the court.

In court, reporter Sargsyan proved that all the evidence and facts listed in his article were based on responses to written inquiries he had addressed to "responsible" parties and on his own investigative work. He added that based on the evidence he had amassed, he went ahead and expressed a set of observations and opinions in the article and that he had the right to do so as a journalist.



On July 10, 2009, Judge Ruben Apinyan threw out the slander suit filed by the Ljevan Municipality charging the “Investigative Journalists NGO” with slander and publishing false information, arguing that the article in question contained nothing that defamed the working reputation of the Ljevan Municipality and thus there was no justification to demand a retraction. The court also recognized the fact that the photos offered in evidence verified the allegations made by the “Investigative Journalists”, in particular, that sand was being removed from the “White Water” reservoir located on the Aghstev River.

Furthermore, the court found that reports contained in the article that the sand mining operation was conducted under the supervision of Ljevan Mayor Varuzhan Nersisyan were never presented as “fact”, but rather that “certain information exists that the reporter attempted to verify and made written inquiries to government bodies”.

On August 7, the Ljevan Municipality and Ljevan Mayor Nersisyan filed a protest appeal to the Civil Court of Appeals, demanding that the decision of the Kentron and Nork-Marash District Court be overturned and that their original slander suit demands be sustained.

The plaintiff, in its appeals petition, notes that the following sentence in the reporter’s article is particularly offensive and a direct insult to the mayor – The scores of Ljevan cabbies who ply their trade along the pot-holed roads of the regional district center always have a few “choice words” to remember the Mayor by.

On November 11 the “Hetq” editorial offices received a notice from the Civil Appeals Court, stating that on November 13 it has decided in favour of the Ljevan Mayor Varuzhan Nersisyan and has overturned a July 10, 2009 verdict of the Yerevan Civil Court.

The lower court’s decision had rejected a slander suit brought by the Ljevan mayor and the town’s municipality regarding a May 5, 2008 article that appeared in “Hetq” exposing an illegal sand mining operation at the White Water Reservoir on the Aghstev River. Ljevan Mayor Nersisyan filed a defamation suit against “Hetq” in the court and demanded 930,000 AMD in compensation for legal fees incurred and a official retraction of the article.

On July 10, 2009, Judge Ruben Apinyan rejected the claims made by the Ljevan mayor, arguing that the article in question contained nothing of a defamatory nature. As a result of the new ruling by the Appeals Court, the case has been sent back to the Kentron and Nork-Marash Administrative Court for reprocessing.

A. Simonyan

## **Municipality of Ijevan v The Investigative Journalists: The Case Law of the European Court of Human Rights is like a Voice in the Desert...**

**ON** 25 January 2001, the Republic of Armenia became a full member of the Council of Europe, which, among other things, implied a number of obligations before this organization, including the signing of the European Convention on Human Rights (ECHR) at the time of being granted membership and ratification of the ECHR within one year of membership. Armenia ratified the ECHR on 26 April 2002. In conformity with Article 46(1) of the ECHR, the High Contracting Parties undertake to implement the final judgments of the European Court of Human Rights (ECtHR) on cases in which they are a party.

In addition to this, Paragraph 3 of Rec(2004)5 of the Committee of Ministers of the Council of Europe recommends that States 'give effect to the Convention in their legal order, in the light of the case-law of the Court.' To implement this recommendation, Article 15(4) of the RA Judicial Code and Article 8(4) of the RA Criminal Procedure Code stipulate, 'The reasons stated in a judicial act of the Court of Cassation or the European Court of Human Rights with regard to a case with specific factual circumstances, including judicial interpretations of a law are binding on the court during the examination of a case with similar factual circumstances, except for cases where the court adduces serious arguments to justify their inapplicability to the factual circumstances in question.'

It should be noted that the overwhelming majority of courts in the Republic of Armenia continue to ignore the provisions of the European Convention on Human Rights and innumerable important principles that the European Court of Human Rights has established with a view to interpreting these provisions<sup>1</sup>. The judgment of the Court of General Jurisdiction of Kentron and

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<sup>1</sup> American Bar Association, *Rule of Law Initiative, Judicial Reform Index for Armenia, Volume III, January 2008.*

Nork-Marash communities in Yerevan in the case of The Municipality of Ijevan v The Investigative Journalists and the decision of the Civil Court of Appeal in the same case. Although the Court of General Jurisdiction of Kentron and Nork-Marash communities in Yerevan invoked everyone's right to freedom of expression as guaranteed by Article 10(1) of the European Convention on Human Rights, it does not make any reference whatsoever to Article 10(2). Meanwhile, it is Article 10(2) that sets the conditions, which have to be met if the human right to freedom of expression is to be restricted. The decision of the RA Civil Court of Appeal does not make any reference to the ECHR or to the general principles of the ECtHR in the area of freedom of expression.

The facts of the case show that on 20 May 2008, Azg daily published Voskan Sargsyan's article entitled "Who is pocketing the profits of the Sand mine", which, in particular, described, 'The driver that transports sand for the construction in the town of Dilijan testified that the payment for one track of sand from the lake is 8.000, while a track of larger capacity earns for up to 20.000 AMD. Who are those that benefit from the wealth of the reservoir who under the pretext of cleansing the lake from mud receive illicit tax-free income?

According to the information that we have, this business is controlled by Varouzhan Nersisyan, Mayor of Ijevan. To verify this information, we have made an inquiry to the Prosecutor's Office in Tavoush Marz... On 26 May 2008, information on this topic was also posted at [www.hetq.am](http://www.hetq.am). The Municipality of Ijevan filed a complaint following the publication demanding that the court made the Investigative Journalists refute the information undermining the business reputation of the Municipality of Ijevan and the honour, dignity and business reputation of Varouzhan Nersisyan and pay damages.

It is not hard for anyone who has read the articles to see that they contain no direct or indirect reference to the Municipality of Ijevan. Therefore, the claim cannot relate to the undermining of the business reputation of the Municipality of Ijevan. As to the question of undermining the honour, dignity and business reputation of Mayor Varouzhan Nersisyan, I will try to discuss this question in the light of Article 10 ECHR and the general principles established by the ECtHR with a view to interpreting this Article.

In conformity with Article 10 ECHR.

*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. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*

*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 and 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.*

Paragraph 2 of Article 10 ECHR makes it clear that the human right to freedom of expression may be restricted if the interference is 'prescribed by law,' serves one of the 'legitimate aims' enumerated in the Article, in this case 'the protection of the reputation' of a particular person and is 'necessary in a democratic society.' This last condition requires the ECtHR to decide whether the interference stems from a 'pressing social need,' whether it is proportionate to the 'legitimate aim' pursued and whether the reasons adduced by the authorities to justify the interference are 'relevant and sufficient'.<sup>2</sup> As a rule, the restrictions on freedom of expression that the ECtHR has held to be in violation of Article 10, fail to meet this last condition and, I believe, that this claim is also faulty in this part.

The ECtHR has time and again stressed that, 'Freedom of expression constitutes one of the essential foundations of a society, one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of Article 10, it is applicable not only to 'information and ideas' that are favourably received or regarded as inoffensive but also to those that offend, shock or disturb the state or any sector of the population. Such are the demands of pluralism, tolerance and broad mindedness without which there is no 'democratic society'.<sup>3</sup> Next, restrictions on political speech and debates on matters of public concern have to be narrowly interpreted.<sup>4</sup> Furthermore, politicians and public figures, who, according to the ECtHR also include heads of communities, have to be more tolerant towards criticism than private individuals, inasmuch as a public figure 'knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large,

<sup>2</sup> *Sunday Times v. the United Kingdom* (no. 1), § 62 <http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbk&action=html&highlight=Sunday%20%7C%20Times&sessionid=38628289&skin=hudoc-en>

<sup>3</sup> *Handyside v UK*, No 5493/72, § 49, <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=695376&portal=hbk&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

<sup>4</sup> *Sürek v Turkey*, No 26682/95, § 61, <http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbk&action=html&highlight=S%FCrek%20%7C%20v%20%7C%20Turkey&sessionid=38438978&skin=hudoc-en>

and must consequently display a greater degree of tolerance'.<sup>5</sup> Another important ECtHR principle maintains that journalistic freedom implies a measure of exaggeration and even provocation.<sup>6</sup> When examining cases related to violations of freedom of expression the ECtHR has always granted more protection to value judgments rather than factual allegations expressed in a particular media, since in view of the Court, it is wrong to assume that a value judgment can be justified by anything more than minimal factual basis.<sup>7</sup>

In the course of its lifetime, the ECtHR has examined several cases with similar factual circumstances, and the principles that it has established with regard to them are applicable to this case as well. These cases include *Filipovi? v Serbia*, *Sokolowski v Poland*, *Lombardo and Others v Malta*, *Dabrowski v Poland*, etc. Of these cases, mention should be made of *Filipovi? v Serbia*,<sup>8</sup> in which the ECtHR examined an application lodged by a tax inspector who in the course of a public gathering announced that the Mayor of Babušnica 'was not the right person' for his job since he had 'embezzled 500,000 German Marks,' despite the fact that the domestic courts had not convicted the mayor of any crime. In finding a violation of the tax inspector's right to freedom of expression, the ECtHR relied on a number of principles, including the fact that the target of the applicant's criticism was the mayor who was a public figure, that the amount of compensation was equal to the six-month pay of the applicant, that the applicant clearly had reason to suspect the mayor of tax-evasion and that the criticism was not a groundless personal attack on the mayor.

Of interest is also the case of *Sokolowski v Poland*, which concerned a restriction on a Polish national's right to freedom of expression. He was accused of distributing a political leaflet, which contained sharp criticism directed at the members of Wodzislaw Municipal Council who, by secret ballot, had elected themselves to local electoral commissions. The author of the leaflet again did not invoke any source or evidence. One of the councilors had accused the author of defamation and the domestic courts upheld the judgment. The ECtHR, however, acknowledged a violation of the applicant's right by considering that the leaflet concerned matters of public interest, i.e. certain impermissible acts committed by the members of the Council in discharging their responsibilities.

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<sup>5</sup> *Lingens v Austria*, No 9815/82, § 42,  
<http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=38438978&skin=hudoc-en&action=request>

<sup>6</sup> *Prager and Oberschlick v Austria*, § 38,  
<http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=38438978&skin=hudoc-en&action=request>

<sup>7</sup> *Schwabe v Austria*, No 13704/88, *De Haes v Belgium Application no. 19983/92*, *Lingens v Austria no. 103*, p. 28, § 46.

<sup>8</sup> *Filipovi? v Serbia*, No 27935/05,  
<http://cmiskp.echr.coe.int/tkp197/view.asp?item=8&portal=hbkm&action=html&highlight=10%20%7C%20mayor%20%7C%20defamation&sessionId=38553586&skin=hudoc-en>

In the light of this and other cases the above article published in Azg daily and the information posted at [www.hetq.am](http://www.hetq.am) cannot be deemed defamatory for a number of reasons. Firstly, the parties do not dispute that the extraction of sand from the lake is illicit. In the court the plaintiff stated that he had sent letters to ljevan Police informing the relevant bodies about the fact of illicit extraction of sand from Lake Spitak. The main thrust of the article, therefore, was the discussion of a matter of public concern, that of illicit extraction of sand, rather than accusing somebody. If the extraction of sand is illicit, then, clearly this benefits certain individuals or organizations but not the community or the State. The title of the article and the article itself, accordingly, pose questions. 'Whose pocket does the money from the sand mine go into?' and 'Who are those that benefit from the wealth of the reservoir who under the pretext of cleansing the lake from mud receive illicit tax-free income?' The statement that the 'business is controlled by Varouzhan Nersisyan, Mayor of ljevan' should be regarded as a value judgment rather than a factual allegation. In any case it is not devoid of sufficient factual basis, including the information provided by the driver, the inquiry made to the Prosecutor's Office in Tavoush, the geographical position of Lake Spitak within the administrative boundaries of the town of ljevan, as well as the continuous nature of illicit sand-extraction during Mayor Varouzhan Nersisyan's term of office.

Finally, decisive in this case is also the fact that the information was disseminated by 2 media. The ECtHR has mentioned time and again that its principles apply to any expression. However, they should be observed more stringently in relation to media and their workers, who perform the function of a 'public watchdog'<sup>9</sup> by imparting information on any matter of public interest.<sup>10</sup>

In the light of the aforementioned, I think that the claim must be dismissed.

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<sup>9</sup> *Goodwin v UK*, No 544, Ú 39.

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Goodwin&sessionid=38628963&skin=hudoc-en>

<sup>10</sup> *Jersild v Denmark*, No 15890/89, Ú 35.

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Jersild%20%7C%2010&sessionid=38629172&skin=hudoc-en>

Kristine Aghalaryan  
Ararat Davtyan

## **Photo-Journalist Gagik Shamshyan Found Guilty of “ Disrespecting Court ” ; Declares His Innocence**

**ON** April 17, Gagik Shamshyan was found guilty by the Kentron and Nork-Marash Court of First Instance, Judge Armen Khachatryan presiding, for verbally assaulting and ignoring the directives of Judge Gagik Avetisyan on August 5, 2008, during the court case of Smbat Ayvazyan. Gagik Shamshyan is a photo-journalist who works for the “Aravot” and “Chorrord Ishkhanutyun” newspapers.

The court found that the specific charge of showing “disrespect towards the court” on August 5, 2008, when Mr. Shamshyan failed to heed the directive of the judge to stop photographing the proceedings, had been proven.

“At the beginning of the trial session Judge Gagik Avetisyan allowed the assembled reporters to tape record and photograph for only five minutes. But Gagik Shamshyan failed to heed the directive. Moreover, he verbally abused the court and called presiding Judge Gagik Avetisyan a “calf” and a “dolt”, his conduct disrupted court proceedings, and thus he removed from the courtroom on the orders of the judge,” noted Kentron and Nork-Marash Chief Court Officer Artur Pilosyan during his testimony during the preliminary investigation. The other court officers, Rafael Stepanyan, Shahen Ohanyan, and court secretary Hasmik Jalalyan, literally noted the same in their testimony as well.

During the six month preliminary investigation of the case it was the testimony of these four individuals that lead to an indictment and the case going to

a court trial. “Both the European Council and other authoritative bodies have urged our country on many occasions not to solely use the testimony of police officials. Now, the same has happened in this case. They’ve only taken the testimony of court officers and have created a criminal case,” says attorney Hovik Arsenyan. Mr. Arsenyan was present when the incident took place, as an eye witness, and recounts what happened.

“That day, upon entering the courtroom, Judge Gagik Avetisyan immediately told Gagik Shamshyan – don’t photograph me. Shamshyan answered that he wasn’t photographing but rather tape recording the judge. Perhaps not knowing that the equipment could also record and thinking that he was being ridiculed, the judge slapped a sanction on the reporter and ordered him to be removed. “They can check my video camera and see that I was only tape recording,” adds Gagik Shamshyan and notes that a few days before the incident, also during the Smbad Ayvazyan trial, Judge Gagik Avetisyan also ordered him to be removed from the courtroom.

“Judge Avetisyan really has it in for me because I have shots of him sleeping or picking his nose,” says Shamshyan and says, “On that day I left the court voluntarily. But the second time, on the day of the incident in question, I refused to follow the judge’s illegal directive and demanded a copy of the court sanction. But this only further enraged Avetisyan and the court officers fell on me and removed me by force. They illegally held me for about one to one and a half hours under the first floor stairs. Then Deputy Chief Arayik Petrosyan of the Kentron police department came and took me to the station by taxi.”

“This was a direct assault on freedom of speech. I can offer no other interpretation,” states Mikayel Danielyan, President of Armenia’s Helsinki Association. He was also in the courtroom on the day of the incident and stresses that he didn’t hear Shamshyan utter any verbal abuse towards the court.

Investigator Gayaneh Yeritsyan, the case investigator, took testimony from Mikayel Danielyan and a few other eye witness reporters during her preliminary examination. However, the only witnesses called during the trial were the court officers and the secretary. Mikayel Danielyan notes, “This was done so they could only record testimony conducive to the court. Those individuals who gave factual testimony during the pre-trial hearings or testimony that ran counter to their aims were never subpoenaed to testify.”

Prosecutor Levon Charkhifalakyian, who defended the indictment in court, refused to answer questions posed by “Hetq”. Hovik Arsenyan, who defended the interests of Gagik Shamshyan, notes that in theory he can present a



motion to have a criminal proceedings filed against Levon Charkhifalakyán since, “From a legal point of view there is no such right to take a selective approach when it comes to witnesses. But my possibility to make a motion is theoretical because I’m realistic and will thus not present such a motion because such a situation in the Prosecutor General’s Office is endemic, when, in the absence of the *corpus delicti*, the case is taken to trial. The objective of all this already falls outside the legal field.”

What’s noteworthy is that in addition to the testimony of the court officer eye witnesses, the preliminary examining body also sustained the charges against Shamshyan based on the trial session tape recordings. These recordings are in the possession of the case, but the insulting words “calf” and “dolt” aren’t heard in the tapes.

During the trial Prosecutor Levon Charkhifalakyán presented a document according to which Gagik Shamshyan was, up until August 8, 2008, under the charge of the court and that his probation hadn’t terminated; in other words up until the time he manifested “disrespect towards the court” (August 5, 2008).

Let us remind readers that on July 16, 2007, the verdict against Shamshyan went into legal force, according to which he was found guilty of injuring one’s dignity and blackmail. The sentence of imprisonment was conditionally never executed and one month’s probation was substituted instead.

“Prosecutor Charkhifalakyán was convinced during the trial that they weren’t going to be able to prove that I called the judge a “calf” or “dolt”. Furthermore, the tape recording of the court sessions also failed to prove this. Thus he resorted to other measures,” stated Mr. Shamshyan in court. His defense lawyer called the “premeditated appearance” of this document to be a threat and pressure tactic. “Shamshyan, shut up and accept your guilt, otherwise we’ll treat you more harshly because your punishment hadn’t been served and that will be viewed as a punitive factor. This was their whole aim and it’s a complete shame,” commented Hovik Arsenyan. He filed a court motion and requested that the court call in other witnesses “that were present at the August 5th trial of Smbad Ayvazyan and who, by their testimony, would give the court the opportunity to conduct a well-rounded examination and arrive at the actual truth of the matter.”

However, Judge Armen Khachatryan overturned the motion, arguing that the defense never supplied the court with the addresses of these individuals and thus deprived the court of the possibility of sending them subpoenas to appear.

Gagik Shamshtyan motioned the court to call Judge Gagik Avetisyan in as a witness "since he is at the center of this case and that I'm supposed to have insulted him." Judge Khachatryan stated, "You should have also included the name of Gagik Avetisyan in your motion. Since you failed to do so, the court will not review the matter, as an untimely intervention." Defense lawyer Hovik Arsenyan commented, "The judges are in a tag-team race to see who will break more laws and violate justice. This is a huge tragedy when there are eye witnesses and we motion for them to be questioned but they illegally refuse to do so even when we state that we are able to call them in."

During the prosecution's statement Prosecutor Levon Charkhifalakyian motioned the court to fine Shamshtyan no less than five hundred times his salary. Gagik Shamshtyan comments that, "This was the greatest surprise of the entire trial for me. I really believed that before the elections they'd send me on extended vacation for at least three months. The regime would have gotten rid of me and I from them." "It is not enough that fabricated charges are being used to carry out a criminal prosecution but that they also have the nerve to file a motion regarding imprisonment as a penalty," said defense attorney Hovik Arsenyan, adding that, "The incident took place in my presence. It now comes down to the fact that I shouldn't believe in what I saw. In the name of the Republic of Armenia are convincing me that the kettle is black."

"Prosecutor Charkhifalakyian believes that the preliminary investigative body gave an accurate assessment and that it has been proven that I called Judge Gagik Avetisyan a "calf" and a "dolt". I find it incomprehensible that the prosecutor doesn't view the conclusion given by the panel of experts (regarding the playback of the court tapes of that day) which disproves these ridiculous charges. Is the panel lying? If so, why do taxpayer monies continue to fund the operation of such an institution?" asks Mr. Shamshtyan

In his statement for the defense, Hovik Arsenyan noted that it was necessary to halt "the false and illegal criminal persecution of the reporter". Shamshtyan joined the motion and refused to make any closing statement in his own defense.

In a statement to the court Mr. Shamshtyan noted, "All I wish to say is that I carried out my professional duties and that Judge Gagik Avetisyan not only hindered my work but the work of all the assembled reporters at the trial." He went on to state that due to the machinations of Judge Avetisyan many other similar incidents have taken place and that as a result of these intrigues those in charge of the courts give false testimony. "I would like to quote from the great philosopher Chesterfield who stated that the last refuge of fools and cowards rests in falsehood and perfidy."

On April 17, Judge Armen Khachatryan handed down his sentence in the case, “Gagik Shamshyan is found guilty of the charges and fined for an amount 350 times his minimum salary”. Mr. Shamshyan said, “I’d rather see the money go to fund child orphanages. I am not ready to pay a fine for something I didn’t to, even if it’s just one dram. Thus, we’ll appeal the verdict.” The reporter stated that if the Court of Appeals doesn’t overrule the verdict he will definitely take the case to the European Court of Human Rights.

### ***Photo-Journalist Shamshyan Pardoned; Against His Will***

**ON** July 15 the RoA Appeals Court upheld the prior sentence but since the charge fell under the provisions of the June 19th general amnesty, the court was obliged to issue a new ruling. Thus, the RoA Appeals Court issued a pardon for “Chorrord Ishkhanutyun” and “Aravot” photo-journalist Gagik Shamshyan and lifted the 350,000 fine that had been levied against him.

During the trial, Mr. Shamshyan declared that he was innocent and thus wasn’t in need of any pardon. “It’s not me that should be pardoned but Judge Gagik Avetisyan, for using false testimony to charge people,” Mr. Shamshyan said during a conversation with “Hetq”.

Mr. Shamshyan wrote an open letter to the Justice Minister, General Prosecutor and Court of Cassation President, arguing that the amnesty granted by the Appeals Court was illegal given that he had already been granted a pardon in another criminal case.

“What’s interesting is that the court actually didn’t have the right to execute the pardon since I was already pardoned for a past offence. They told me that we’re doing you a favor; don’t raise a fuss. No, I want the law to operate. We should uphold the law,” the photo-journalist said. He also expressed the hope that these top officials would take steps to discipline the judges in violation of court procedure and ethics.

However, as a result of his open letter, the General Prosecutor petitioned the Cassation Court with an appeal and the court overturned the amnesty granted by the Appeals Court. This left stand the ruling of the lower court and the fine of 350,000 AMD.

“Even though I have declared my innocence and argued that the ruling is unjust, to take the matter to the European Court I need a receipt showing that

I've paid the 350,000 fine. This is why I have decided to comply with the court's ruling," Gagik Shamshyan stated.

He has paid 200,000 AMD and has agreed to pay the 150,000 balance over the course of one year. However, Karen Khachatryan, head of the Kanaker-Zeytoun branch of the Ministry of Justice's Department of Alternative Punishment has motioned the court to allow Shamshyan to perform community work rather than paying the balance.

Karen Khachatryan explained that his department was obliged to present such a motion providing for community work if the entire fine is not paid within a seven day period.

However, before the actual case examination began, Shamshyan paid off the 150,000 balance of the fine during the continuing court postponements. Judge Mkhitar Papoyan took this into account and cut the charges.

A. Symonyan

## **The Principles of The European Convention of Human Rights v The Judgment in Gagik Shamshyan's Case**

**THE** 17 April 2009 judgment of the Court of General Jurisdiction of Kentron and Nork Marash in the case of Gagik Shamshyan<sup>1</sup>, a photojournalist of the daily newspapers Aravot and Chorrord Ishkhanutyun (Fourth Estate) is clearly contrary to a number of principles established by the case law of the European Court of Human Rights (ECtHR) with regard to Articles 10 and 6 of the European Convention on Human Rights (ECHR).

Paragraph 1 of Article 10, ECHR, guarantees everybody's right to freedom of expression 'without interference by public authority and regardless of frontiers.' This right, however, is not absolute and Paragraph 2 of Article 10 stipulates the grounds on which it may be restricted:

...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 and 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.

As the analysis of the above article and the ECtHR case law demonstrates, the interference with the right to freedom of expression is regarded lawful when it satisfies simultaneously all the 3 conditions laid down in Article 10. The first of these conditions is that any interference must be 'prescribed by

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1. <http://hetq.am/en/society/gagik-shamshyan-5/>

law' as required by the principle of legal certainty to enable the individual either by himself or, if necessary, with the help of his legal counsel, to foresee the form and size of liability established for any act to be committed by him.

The second condition requires that the interference by a public authority complies with at least one of the 'legitimate aims' laid down by the Paragraph 2 of Article 10. And, the third and the most important condition is that the interference must be 'necessary in a democratic society.' To determine the State's compliance with this last condition, the ECtHR has set up 2 more legal categories: the interference must stem from a 'pressing social need' and be 'proportionate.' Furthermore, the necessity for interference must be 'convincingly' established. In other words, the State's arguments in support of the necessity of interference must be 'relevant and sufficient.' Any interference, whose aim could have been achieved by 'less restrictive means,' is considered to be disproportionate.

It is this last condition that the judgment issued in Gagik Shamshyan's case for the crime stipulated by paragraph 3, Article 343 of the RA Criminal Code falls short of. Obviously, convicting Gagik Shamshyan for the legitimate aim of 'protecting the reputation and rights' of Judge Gagik Avetisyan and 'maintaining the authority and impartiality of the judiciary' in his person violates the condition of necessity in a democratic society for a number of reasons.

First, as has consistently been noted by the ECtHR, 'Freedom of expression constitutes one of the essential foundations of a society, one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of Article 10, it is applicable not only to 'information and ideas' that are favourably received or regarded as inoffensive but also to those that offend, shock or disturb the state or any sector of the population. Such are the demands of pluralism, tolerance and broad mindedness without which there is no 'democratic society'.<sup>2</sup>

These principles relate to any expression. However, they should be more strictly observed with regard to the media and their representatives who perform the function of 'public watchdogs'<sup>3</sup> disseminating information to the society on any issue of 'public interest'.<sup>4</sup>

While performing this duty, journalists are free to resort to a certain measure of exaggeration or even provocation<sup>5</sup>. Corresponding to this duty of journalists' is the right of the public to be informed.

The ECtHR has admitted that journalists' function of a 'public watchdog' also implies raising questions that are related to the administration of justice. The

2. *Handyside v UK* (1976) 1 EHRR 737, para. 49.

3. *Goodwin v UK* (1996) 22 EHRR 123.

4. *Jersild v Denmark* (1994) 19 EHRR 1, para. 31.

5. *Prager and Oberschlick v Austria* (1995) 21 EHRR 1, para. 38.

media are the institute that enables both politicians and society at large to see whether or not judges perform their heavy responsibilities properly.<sup>6</sup>

Clearly, it is incumbent on judges as representatives of the judicial branch of power of the State to be tolerant towards any offensive, shocking and disturbing information or ideas. On the other hand, the court, according to the ECtHR is endowed with special functions and, therefore, it 'must enjoy public confidence.' It may therefore prove necessary to protect such confidence against destructive attacks that are essentially unfounded, especially in view of the fact that judges who have been criticised are subject to a duty of discretion that precludes them from replying.<sup>7</sup>

American judges adopt a totally different approach in this regard. They are extremely self-confident and they reject the argument that public confidence in their reputation and the administration of justice may be undermined by hostile comments of any kind.<sup>8</sup>

Further, according to the ECtHR, normally it is up to the domestic authorities to determine whether a particular interference with the exercise of freedom of expression is necessary. Nevertheless, their discretionary powers are subject to European supervision embracing both the legislation and the decisions applying it, even those given by an independent court.<sup>9</sup>

Going back to the first constituent of the 'necessity in a democratic society' – the 'pressing social need' of the interference – it should be noted that the ECtHR's approach takes account of 2 important elements. The interference is unlawful if the expression contains factual statements or value judgments which, however, must not be devoid of a certain factual basis.

Understandably, Gagik Shamshyan or any other person will have difficulties in providing the court with a factual basis supporting the truth or at least the likelihood of truth of the words "calf," "idiot" or other offensive words' that were allegedly addressed to Judge Gagik Avetisyan when the fact of such expression itself is contested. A number of people that were present during the court seating insist that they heard no such words.

This is exactly where the journalist's right to fair trial guaranteed by Article 6 of the ECHR was violated in view of the fact that the court refused to hear the defence witnesses<sup>10</sup> providing justifications that do not stand any reason. This has resulted in the violation of the principle of equality of arms and the adversarial character of criminal procedure law.

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6. *Ibid.*, para. 34.

7. *Ibid.*, para. 34-35

8. E. Barendt, *Freedom of Speech*, Oxford University Press, 2007, p. 321.

9. *Prager and Oberschlick v Austria* (1995) 21 EHRR 1, para. 34-35.

10. *De Haes v Gijssels* (1997) 25 EHRR 1, para 50.

The court's reasoning that when inviting the witnesses the defence failed to mention their addresses which deprived the court of the opportunity to send notices to them again testifies to the fact that the court was not serious in performing its duties, whereas paragraph 4, Article 340 of the RA Criminal Procedure Code makes it clear that the court may call witnesses on its own initiative. In the context of what has been said, hardly will the ECtHR consider that the reasons adduced by the court in support of its interference were 'relevant and sufficient' and that the court judgment was based on an 'acceptable assessment of the relevant facts'.<sup>11</sup>

The last problem that is necessary to consider in relation to this case is the second constituent of the condition of necessity in a democratic society – the proportionality of interference. In the case of *Tolstoy Miloslavski v UK*<sup>12</sup> the ECtHR considered the interference disproportionate simply because the British court had made a damages award of 1.5 GBP.

If our courts believe that the fine to be paid by Gagik Shamshyan is incomparable with the above case, they may be offered to familiarize themselves with the case of *Amihalachioaie v Moldova*<sup>13</sup>, where the ECtHR ruled that, 'although the fine of 360 lei (equivalent to 36 euros) imposed on the applicant is a seemingly modest sum, it nevertheless has symbolic value and is indicative of the Constitutional Court's desire to inflict severe punishment on the applicant, as it is close to the maximum that could be imposed under the legislation.' There is no denying that the fine amounting to 350 x minimum monthly salary in Gagik Shamshyan's case, which is equivalent to 700 Euro, is again far from proportionality.

P.S. Paragraph 4, Article 7 of the Criminal Procedure Code of the Republic of Armenia, 'the reasons stated in a judicial act of the Court of Cassation or the European Court of Human Rights with regard to a case with specific factual circumstances, including judicial interpretations of a law are binding on the court during the examination of a case with similar factual circumstances, except for cases where the court adduces serious arguments to justify their inapplicability to the factual circumstances in question.'

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11. *Chauvy v France*, para. 70.

12. *Tolstoy Miloslavski v UK (1995) 20 EHRR 442*.

13. *Amihalachioaie v Moldova Application N 60115/00*, para 38.



Ararat Davtyan

## **Reporter Gohar Veziryan was Tried Solely on the Testimony of Court Officers**

**“IF** found guilty of the charges against her, “Chorrord Ishkhanutyun“ (CI) newspaper reporter Gohar Veziryan faces a fine of 300-500 times her minimum salary or two-three months in jail. Her trial began on March 31, 2009, at the Kentron and Nork-Marash District Court, Judge Gagik Poghosyan presiding.

Both she and CI photo-journalist Gagik Shamshtyan are charged with “behavior disrespectful to the court“. The incident in question took place on August 6, 2008, during the trial of Smbad Ayvazyan and the alleged verbal abuse was directed at Judge Gagik Avetisyan.

The indictment is based on the testimony of the same people with the only difference being that the number of bailiffs testifying as witnesses has increased by one.

Chief Court Officer Artur Pilosyan, Bailiffs Rafael Stepanyan, Shahen Ohanyan, Murat Grigoryan and Court Stenographer Hasmik Jalalyan, all claim that, “Gohar Veziryan, failed to obey court regulations regarding ceasing all sort of photography and recordings and continued to visibly tape record the court session. The judge ordered her to leave the courtroom for not following court procedure. G. Veziryan refused to comply and began to verbally abuse Judge Gagik Avetisyan, calling him ‘schizophrenic’ and a ‘lackey’. Her behavior was in violation of court regulations and as such the judge ordered her detained and removed from the court and handed over to the police.“

“It’s an absolute lie. The judge has no right to issue an order halting tape recordings in court and no such order was issued. What are they talking about? It is not filming court sessions and all the other reporters were freely tape recording,” states Gohar Veziryan’s attorney, Smbat Ayvazyan.

Gohar Veziryan remembers that the crowds assembled by the court house during those hot summer days were chanting slogans like “Freedom to all political prisoners”. To drown out the chanting from the street, all windows in the courtroom were shut. “So many people showed up for the trial that we were scrunched like sardines inside. The court bailiffs had taken up positions next to me that were quite uncomfortable. I asked if they couldn’t possibly move a bit further away, since I found it hard to breathe. Moreover, they were standing right in my line of vision and I couldn’t carry on with my work properly. Right at that moment, Judge Gagik Avetisyan strode into the courtroom and ordered me to stand. I asked why and his reply was, ‘So are you disregarding a court directive?’ I couldn’t answer yes or no, so I was forced to answer with a question of my own – ‘What do you think?’ recounts Veziryan, adding that the order to leave the courtroom quickly followed. “The bailiffs wanted to approach, so I told them ‘Not to touch me; I’ll leave on my own accord’. And I leisurely walked out.”

Following on the example of Gagik Shamshyan, in this case too, the pre-trial investigative body found that the charges were substantiated by the accompanying tape recording. Contrary to the testimony of the bailiffs, the insults “schizophrenic” and “lackey” didn’t appear on the recording.

“They simply lifted those words from my newspaper article published that day. I used those terms in my description of Gagik Shamshyan’s trial the day before. I called the bailiffs ‘court lackeys’ because they assaulted Gagik at the order of the judge,” says reporter Veziryan. She claims that it was because of this article that the bailiffs were so angry at her; so much so that they began to hit her in the hallway after leaving. “They held me in the court for two hours with the other criminals behind bars. Even they were yelling at the bailiffs to stop treating me so rudely,” states Gohar Veziryan.

Even though the police gave her the court physician’s form three days later, the specialist still recorded the injuries she had suffered to various parts of her body at the hands of the court officers. The court physician failed to mention, however, the severity of her injuries.

Hovik Arsenyan notes, “, Case Inspector Gayaneh Yeritsyan found that the conduct of the court officers was justified and proper. She saw no evidence of a criminal group in the assault, so these charges were dropped.”

According to Gohar Veziryan, regardless of the dates when criminal cases were filed against her and Gagik Shamshyan, they were in response to the protestations of “Chorrord Ishkhanutyun”. “Our editorial board sent protests to all the appropriate agencies regarding the improper behavior of Judge Gagik Avetisyan towards reporters. That’s why they filed criminal charges against us,” she says.

Defense attorney Hovik Arsenyan called for Prosecutor Levon Charkhifalakyán to recuse himself because he substantiated an indictment solely on the testimony of the court officers and stenographer; just as he did in the indictment against Gagik Shamshyan. “He did this when there were many other eye-witnesses in the court. There was no attempt made to question those participating in the case; at least the prosecutor and the reporters present. This directly goes to prove that the aim to reach the objective truth was lacking,” stated Arsenyan.

The court rejected the motion for recusal as unsubstantiated. As in the trial of Shamshyan, the court merely relied on the testimony of the court officers who claim that Judge Avetisyan ordered Gohar Veziryan removed from the courtroom because she didn’t obey the order to stop recording. Court bailiff Shahen Ohanyan recounted that, “All the reporters obeyed the judge’s directive, but Veziryan continued to visibly record. Judge Avetisyan told her to stand but she refused and got into an argument with the judge, saying ‘Who are you that I should stand. I’ve already stood up once.’ This witness claimed that the reporter called the judge ‘schizophrenic’, ‘lackey’ and a ‘flunky’.

Defense attorney Hovik Arsenyan asked why then do such phrases not show up in the court recordings. “I don’t know what the technology is but there were words that Veziryan shouted out, so that all could hear. But she also spoke some words very softly. Perhaps this is why they weren’t recorded,” stated Chief Court Officer A. Pilosyan and added, “But me and my guys heard what she said.” After his testimony, defense attorney Arsenyan gave up on cross-examining the other two witnesses because “the pre-trial testimony of the bailiffs was not only the same word for word but that even the punctuation marks corresponded.”

### ***Judge Only Allows Testimony of Bailiffs in Gohar Veziryan Trial***

**ON** May 5, Gohar Veziryan was scheduled to testify. But she refused not only to provide testimony but to answer any questions, as was her right. “It’s because the charges were fabricated. All the evidence in the criminal case proves that I didn’t utter any insults towards the court,” the reporter stated.

Then, defense attorney Hovik Arsenyan filed a motion that at least three individuals be summoned and interrogated by the court – Helsinki Association President Mikayel Danielyan, “Hayk” newspaper reporter Artak Yeghiazaryan and Radio Liberty correspondent Hovhannes Shoghikyan. “These individu-

als were questioned during the pre-trial examination but for some inexplicable reason they were never subpoenaed," explained the attorney.

The Prosecutor objected to the motion, stressing that "the testimony provided by these individuals during the pre-trial examination didn't relate to the indictment and had no evidentiary significance, and thus there was no need to interrogate them in court."

Judge Gagik Poghosyan inquired if the defense could supply the addresses of these people to the court so that they could be summoned. Attorney Arsenyan replied, "Their addresses are in the case file on your table." The court denied the motion however arguing that "the defense failed to note the addresses of the individuals and failed to explain what specific circumstances of the case would be revealed as a result of their interrogation."

On May 14, Judge Gagik Poghosyan of the Kentron and Nork-Marash District Court passed sentence in the case of "Chorrord Ishkhanutyun" newspaper reporter Gohar Veziryan. She was found guilty of "behavior disrespectful to the court" and fined 350,000 drams.

Defense attorney Hovik Arsenyan, pointing to the evidence examined in the case, declared that there was no 'corpus delicti' in the actions of Gohar Veziryan and that there hadn't been one since the beginning. He motioned the court to stop the criminal proceedings against his client, to drop the charges and issue a ruling finding her innocent.

Gohar Veziryan launched her defense statement on August 6 of last year by reading her article that appeared in "Chorrord Ishkhanutyun" out loud in court. "Yesterday, the trial of Republican Party member Smbat Ayvazyan was scheduled to take place at the Yerevan Kentron and Nork-Marash District Court. It never took place because Judge Gagik Avetisyan disrupted the court session by a series of malicious moves. From the very first session of this case, we have recorded the fact that Judge Gagik Avetisyan, who served as the State Prosecutor in the October 27th case, has appeared in a state of psychological imbalance and has constantly sought to foment an artificial atmosphere of tension within the courtroom..."

The judge interrupted the reporter and stated that the parties in the case only had the right to base their arguments on evidence examined during the course of the trial. The article being read by Veziryan had not been entered as evidence.

The reporter motioned that the trial be started anew and that the article in question be presented as evidence. "In that article I wrote that Judge Gagik Avetisyan was schizophrenic and requested that the psychiatric hospital

present an affidavit to that effect to the appropriate bodies. At the same time, I wrote that the court bailiffs should not get annoyed because they are trained dogs and lackeys," Ms. Veziryan said. She directly linked the incident in court with this article since the quotes of the witnesses' false testimony were taken from this publication; a fact proven by deciphering the stenographer's notations in the courtroom. "She stated that, "Neither the word 'schizophrenic' or 'lackeys' appeared in the recording. The investigator, when he was dictating the testimony for those people to jot down, placed the paper in front of them and said – copy it (because it had been copied word for word)," she said.

The court threw out the reporter's motion, finding it to be unsubstantiated. Gohar Veziryan declared that she had long given up on the Armenian justice system

In addition to fining her, the court decided not to alter Veziryan's pre-trial mode of detention, signing a pledge not to abscond, until the court ruling went into legal effect.

The defense team was preparing to file an appeals protest. But on July 7 "Chorrord Ishkhanutyun" reporter Gohar Veziryan agreed to be released under the provisions of the recently declared general amnesty in Armenia. However, in order to be eligible, she had to accept the verdict of the court that found her guilty of "disrespectful behavior towards the court". "I still proclaim my innocence of the charges but I agreed to be released under the amnesty provisions," she stated in a conversation with "Hetq".

Arman Gharibyan

## **MP Zaruhi Postanjyan v. “Azatamtutyun” Newspaper: Opposition Politician Claims Slander**

**I**N a conversation with “Hetq”, Heritage Party Deputy Zaruhi Postanjyan said that she is preparing a statement to be sent to the police on July 7, 2009, regarding an article and accompanying collage that appeared in the paper “Azatamtutyun”, claiming defamation of character and slander.

Deputy Postanjyan has been the target of widespread criticism, mostly appearing in the pro-government press regarding the steps she took at the Council of Europe to enlist the backing of Azerbaijani and Turkish representatives to demand the release of all Armenian opposition members remaining in jail. She has sent her protest to the police only regarding the article that appeared in the paper “Azatamtutyun”. The “Azatamtutyun” collage is a photo of the deputy’s head superimposed on the body of a woman who can only be described as a prostitute. “Even my children saw the picture. The paper must be held responsible,” Deputy Postanjyan said.

“Azatamtutyun” Chief Editor Artyom Khachatryan learnt from “Hetq” that the deputy was preparing such a statement to the police. He told “Hetq” that the article contained no slander but might be considered offensive. “There are some people that need to be offended,” Mr. Khachatryan said.

On July 28, based on the statement provided by National Assembly Deputy Zaruhi Postanjyan, the Kentron Police Department of Investigations launched a criminal case based on Article 136, Part 1, (personal defamation) of the RoA Criminal Code.

Slander is a criminal offense according to Article 135 of the RoA Criminal Code and punishable by a fine of from 100 to 500 times ones

salary (100,000 to 500,000 drams). Personal injury is punishable by a fine of 100 to 400 times ones salary (100,000 to 400,000 drams). If the same news outlet slanders a deputy twice or more there is the possibility of a one year jail sentence.

However, on December 21, the Central Investigative Unit of the Yerevan Department of Investigation dropped the criminal case against the paper "Azatamtutyun". Investigator A. Mkhitarian, from the Department of Investigation, while confirming that what appeared in the paper improperly defamed the honor and dignity of Deputy Postanjyan, taking into account the statements of the authors that they do not know Zaruhi Postanjyan, that they have no enmity towards her, and were not predisposed to defame her, found that the actions of these persons lacked the characteristics implied in Article 136 of the RoA Criminal Code, and thus decided to drop the case.

MP Zaruhi Postanjyan has protested the dropping of the case to Aghvan Hovsepyan, the RoA Chief Prosecutor.

In her protest MP Postanjyan writes, "I find that the decision in question, starting from the title and ending with the legal analyses and evaluations contained therein, is lacking in competency, merit and legality. The investigator has failed to compare the testimony of these individuals with the content of the materials they published, and has not taken into account the fact that by publishing such material they directly intended to defame me. In addition, the investigator failed to take into account that Article 136 of the RoA Criminal Code presupposes that a crime can take place via direct, as well as indirect premeditation."

She has demanded that the decision to drop the case be reversed and that those responsible be held accountable for their actions.

Kristine Aghalaryan

## **Levon Kocharyan v “ Haykakan Zhamanak ” : Newspaper Ordered to Pay 3 Million in Damages in Slander Case Involving Son of Former President**

**ON** June 5, 2009, the Kentron and Nork-Marash District Court, Judge A. Melkonyan presiding, partially found in favor of a suit filed by Levon Kocharyan, the younger son of former RoA President Robert Kocharyan, vs. the newspaper “Haykakan Zhamanak”, ordering the paper to retract its previous report and fined it 3.620 million drams in damages in favor of the former president’s son.

On February 6, 2009, the daily “Haykakan Zhamanak” had published a front page story with the following – “Just a few days before New Year’s, local Dubai police arrested Robert Kocharyan’s younger son, Levon Kocharyan, while in a drunken stupor. According to credible witnesses, arrested along with the younger Kocharyan was the son of well-known Moscow lawyer Gena and two others. While many attempts to mediate on behalf of Kocharyan were made, local law enforcement only released him after four days in custody and with the demand of supplying proper documentation. According to our sources, Levon Kocharyan was arrested for disorderly conduct.”

That very same day, Viktor Soghomonyan, who manages Robert Kocharyan’s office, refuted the news, noting that the last time Levon Kocharyan was in Dubai was in December 2007.

Levon Kocharyan applied to the court on March 25, 2009, demanding that “Haykakan Zhamanak” retract the news slandering his honor and reputation and recompense him for material and moral injury. The petition read, “The information published in the article in question doesn’t correspond to reality and blemish the good name and reputation of the plaintiff...The plaintiff was in the RoA both at New Years and days before, particularly from December





15-30, thus he couldn't have been in Dubai at the same time, a few days before New Years, in a drunken state and furthermore arrested by the Dubai police. Thus, the information doesn't correspond to reality; they are misrepresentations and aren't credible."

Arpineh Melikbekyan, Levon Kocharyan's defense lawyer, provided a copy of the plaintiff's passport and his diplomatic passport. There were no stamps in either attesting to the fact that he had been in the United Arab Emirates (UAE) during the time period mentioned by "Haykakan Zhamanak" or that he crossed the border of that country. The lawyer also offered into court the response issued by the UAE Foreign Ministry at the request of the plaintiff according to which UAE officials had checked their files and could come up with no record of Levon Kocharyan ever having been taken into custody or pursued by law enforcement.



*Photo by Gagik Shanshyan*

According to the lawyer, the "Haykakan Zhamanak" article was baseless and a figment of one's imagination and not credibly substantiated. Neither were the sources noted, stated the lawyer, which leads one to infer that the article was based on rumor, not checked for accuracy, and thus was a means for sensationalist journalism used to sell more copies and make a profit.

Such news allegedly caused financial injury to Levon Kocharyan. In the suit, it is calculated that 8,000 copies of "Haykakan Zhamanak" were printed on that day at a newsstand price of 100 drams a piece. In other words, the paper raked in revenues of 80,000 drams. This is the figure that was written in the suit. (K.A. – In fact the figure should have read 800,000 drams). "In addition, this article leads to false information regarding the plaintiff to be spread by other news outlets for which the defendant also received payment. Today, for one news outlet to purchase an article from another costs 10,000 drams. Thus, if we take into account that the "Haykakan Zhamanak" issue of that day was distributed to six and more media outlets ("Day.az", "Tert.am", "Armtown.com", "Arminfo.info", "News.ru", "Trend.az", "Newsmegainfo.ru"), we can argue that the plaintiff received an average of 60,000 drams in payment," noted the suit.

According to the prosecution, each of the other news outlets each received an average of 80,000 drams based on the fact that they carried the sensa-

tional story and that their papers sold. Accordingly, Levon Kocharyan suffered damages to the tune of 620,000 drams. The legal fees incurred by Levon Kocharyan were assessed at 3 million drams, resulting in a total damages amount of 3,620,000 drams. The suit also reads, "The plaintiff also suffered moral damage since the news has been circulated and published in the foreign press and internet and was used for political purposes. The baseless and inaccurate news spread by "Haykakan Zhamanak" served as a basis to use the name of Levon Kocharyan, the son of Robert Kocharyan, the second President of the RoA, to disparage and slander the good name of the Republic of Armenia and to portray Armenians as 'hooligans' and 'criminals' before world public opinion. Such vilification also tacitly impacts the public interests of the Republic of Armenia." On this basis the suit sought moral damages of 12.5 million drams.

The prosecution demanded that the court compel "Haykakan Zhamanak" to refute the slanderous and disparaging news it had published and recompense the plaintiff for financial and moral damage suffered in the amount of 16,120,000 drams.

Tigran Atanesyan, who defended "Haykakan Zhamanak" in court, believes that, "In the list of the absurd and incomprehensible is the claim of the plaintiff that the defendant is selling that news at 10,000 drams a pop to other news outlets. It's a baseless claim, since the defendant knows of no such cases when a news outlet has ever paid for using the reportage of another when a proper attribution is made. It is nothing more than totally baseless conjecture on behalf of the plaintiff's counsel." Tigran Atanesyan also argues that, "Attached to the plaintiff's suit was a copy of his RoA citizen passport. Upon examination it turns out that the passport's validity to travel overseas expired on February 5, 2007. Thus, we are to conclude that the plaintiff hasn't left the territory of Armenia from February 5, 2007 till today. However, Viktor Soghomonyan, the director of the second president's office, declared in a statement regarding the news in question that the last time the plaintiff was in Dubai was in December, 2007. In other words, according to Mr. Soghomonyan, the plaintiff travelled to Dubai at least ten months after his passport expired."

In the opinion of the defense team the plaintiff possesses at least two diplomatic passports. "This is substantiated on the basis of the well-known fact that the plaintiff was in the Serbian capital of Belgrade in 2008 to attend the Eurovision performance of the noted singer Sirousho." Tigran Atanesyan also motioned the court to demand a notice from the National Security Service (NSS) stating how many times Levon Kocharyan has travelled outside of Armenia as of January 1, 2007 and the dates involved. The lawyer says that he personally requested the information from the NSS but that they answered that such information related to the personal and family life of Levon Kocharyan. In any event, the court rejected the lawyer's motion.

The court also rejected the other motion of Tigran Atanesyan – to grant a recess of two months to allow for the receipt of an answer to their inquiry directed to the UAE’s justice organs via the RoA Ministry of Justice.

On June 5, 2009, Judge A. Melkonyan passed sentence in the case of Levon Kocharyan v. “Haykakan Zhamanak” (owned by Dareskizb Ltd) centering on the February 6, 2009 article that appeared in the daily newspaper. Judge Melkonyan partially found in favor of the plaintiff and set a sum of 3,620,000 drams as compensation for material damage suffered by Levon Kocharyan, rejecting the 12.5 million in moral damages sought by the plaintiff. The court decided to compel “Haykakan Zhamanak” to retract the news published on February 6, 2009, slandering the good name and reputation of Levon Robert Kocharyan by publishing a “retraction notice” of equal prominence to the original article. The court rejected the plaintiff’s demand of 12.5 million drams in moral damages, finding that suitable grounds for moral damage were absent. The court also decided that 72,400 drams were to be paid by the paper into the state budget.

Lawyer Tigran Atanesyan, the paper’s attorney, stated, “This is a serious blow to the freedom of speech in Armenia. The suit was totally baseless and the evidence examined during the trial was no foundation for the judge to pass such a sentence. However, if we are sincere and realize what country we live in and the conditions that exist, it probably took some effort to allow the judge the right to reject part of the suit.”

Arpineh Melikbekyan, Levon Kocharyan’s lawyer, refused to comment on the ruling when asked by reporters.

On July 4, the “Haykakan Zhamanak” daily newspaper, in the person of “Dareskizb Ltd”, submitted a petition to the Appeals Court. On October 2, the Civil Court of Appeals, Judge Taron Nazaryan presiding, partially sustained the paper’s appeal. The suit of Levon Kocharyan, demanding the seizure of 620,000 AMD from the paper in compensatory damages, was rejected. The rest of the lower court’s ruling remained unchanged. In its review of the 620,000 AMD demand, the Appeals Court noted, “The claims made by the “Haykakan Zhamanak” representative have merit and that Levon Kocharyan has offered no proof as to the sum of the sustained loss, i.e. that the newspaper in fact received the revenue, in addition to not proving what loss he in fact sustained.

As regards the 3 million AMD, the cost to the plaintiff in the defense of his legal rights, the Appeals Court sustained the lower court’s ruling in favor of the demand. Moreover, no documentation was presented in the general district court regarding that part of the case relating to the services rendered to Levon Kocharyan, and it was only during an examination of the case at the Appeals Court that Levon Kocharyan’s attorney presented the final work

expense report, drafted on July 8, that clearly shows that he rendered services amounting to 2,250,000 AMD just in the Court of First Instance.

“The plaintiff wasn’t able to provide this document during the course of the trial since it was drawn up on July 8, 2009, whilst the case examination concluded on June 5, 2009. In other words, despite the fact that proof was presented to the Appeals Court that hadn’t been made available to the Court of First Instance, this is not sufficient basis to overturn a judicial act given that, although without sufficient evidence, the court was correct in annulling the 3 million AMD demand. And a judicial act is not subject to reversal according to formal consideration, taking into account the interests of judicial efficiency and the principle that a case must be examined within a reasonable time-frame,” the Court of Appeals asserted.

“The 3 million AMD is clearly an unsubstantiated amount. I’m a lawyer myself and I know that such a fee for services of that quality and scope in the market just doesn’t exist. The court, in the end, is making it into a precedent. If that small amount of work, done by Levon Kocharyan’s lawyers, is appraised at such a figure, it is my humble opinion that I should have been a millionaire by now. But for some inexplicable reason, I haven’t become one. In the near future, we lawyers will decide to use this as a precedent,” stated attorney Tigran Atanesyan.

In the meantime, the Appeals Court proved that the demand of the plaintiff to impound 3 million AMD in compensation from the defendant in assessed legal expenses, stems from the legal relations of services rendered between the plaintiff and his legal representatives, from the operable business transaction customs in this sector, from the commonsense principle applied to the amount paid to the legal representatives and from the specifics of the case in question.

“It is necessary to point out that the “operable business custom” must not only be regarded on the level of what a lawyer in the RoA is paid in general, but by taking into account the amount of fees arrived at in cases with similar unique features,” the Appeals Court claimed in its decision.

Attorney Tigran Atanesyan assured “Hetq” that they would definitely petition the Court of Cassation in the matter. “We have been deprived of all possibilities to present evidence regarding that part of the case dealing with a retraction. Thus, the demand that the paper issue a retraction was sustained on the basis that there was a violation of the legal procedure,” stated the attorney.

Attorney Atanesyan presented the petition to the Court of Cassation on October 27. Neither has the defendant nor the defense team received any response as to its acceptance or rejection despite the fact that the one month deadline for doing so has passed.

Kristine Aghalaryan

## **Gind Printing v “Chorrord Ishkhanutyun”**

### ***A Case of Unpaid Debt or a Politically Motivated Attempt to Silence an Opposition Newspaper?***

**AS** of November 10, the “Chorrord Ishkhanutyun” (Fourth Estate) newspaper was being published by “Koghmaki Andzanc M” Ltd., but this time under the new name of Chorrord Inknishkhanutyun” (Fourth Self-Rule) to avoid a court order that it halt publication while awaiting a court decision in a financial dispute.

On August 12, 2009, “Gind” Printing House Co. Ltd. filed a suit in the courts against “Chorrord Ishkhanutyun’s” parent company “Ogostos Ltd.” (an independent press dissemination agency), over alleged unpaid bills totaling some 5 million drams. “Gind” also demanded that its work contract with “Ogostos” be nullified. On the same day the court also ruled to freeze the assets of “Ogostos” and prohibited the publication of the newspaper at another printing house.

The court also recognized “Koghmaki Andzanc M, Ltd” as the legal successor of “Ogostos”, a secondary defendant, and the company was also dragged into the law suit. According to the November 5 ruling of Yerevan’s Kentron and Nork-Marash District Court, “Chorrord Ishkhanutyun” was prohibited from being published by “Koghmaki Andzanc M, Ltd” or by any other company and at any printing house. The plaintiff’s legal representative, Tigran Poghosyan, told the court that “Gind Printing” had, on numerous occasions, requested both verbally and in writing, that defendant “Ogostos Ltd” take care of the unpaid bills and that the company had promised, but failed, to do so.

According to the contracts signed between “Gind Printing” and “Ogostos”, the newspaper owed the printing house 3 million AMD by the end of 2008. The court also read a January 2009 document of the “Ogostos” CEO according to which he was obligated to pay the 3 million by February 1. He failed to do so. Then, there were the 2009 debts

to be added. In the end, the total owed “Gind Printing”, according to the contract signed for 2008 and 2009, amounted to a little over 4 million AMD plus some 1.3 million in penalties; some 5.5 million overall.

Without any warning, “Ogostos” abruptly stopped the printing of the newspaper at “Gind” on June 20, 2009. “Chorrord Ishkhanutyun” was taken to another printing house. Its publisher and editor-in-chief, Shogher Matevosyan told “Hetq” that they were now printing the paper at their printers. In court, Tigran Poghosyan asserted that, “According to Point 4 of the printing services agreement signed on January 13, 2009, until the end of the contract term and fulfillment of obligations, the client does not have the right to have this journal be printed, either in its current form or with a name change, at any other printing house.”

“Ogostos” has already paid-off about 2.8 million, so now the debt amounts to some 2.6 million AMD. Meanwhile, “Chorrord Ishkhanutyun’s” representatives claim that they have no debt or obligations to the printer and that they have paid everything owed for the printer’s services. “Ogostos” representative Edgar Hovhannisyian asserts that “Gind Printing” has presented no proof to serve as a basis for alleged financial obligations by “Ogostos”. “The plaintiff has presented bills and invoices for services rendered for the period December 2, 2008 to June 6, 2009, amounting to 30,625,350 AMD.”

“The plaintiff also presented paid invoices, noting the payments made by “Ogostos”. Adding up these payments, the total paid to the plaintiff amounted to some 2.9 million AMD, in addition to the 2.9 million paid on August 6, 2009. In other words, the evidence presented shows that “Ogostos” had paid even more; about 2 million more,” asserts “Ogostos” representative Edgar Hovhannisyian.

“Koghmnaki Andzanc M” representative Hovik Arsenyan regards the suit is legally baseless and believes that it is totally political in nature. “Solely based on the arithmetic computations of The 131 invoices presented by the plaintiff, it becomes clear that “Ogostos” has conscientiously fulfilled its contractual obligations and that it has paid 2.2 million over and above what was owed.”

Hovik Arsenyan motioned the court to reject the suit altogether and to also to restore operational functions to “Koghmnaki Andzanc”, since there are no outstanding issues linked to the company. The court postponed any decision on the motion until its final ruling on the overall case.

Judge Gagik Khandanyan ruled that the suit was to be sustained in part. The court found that due to the negligent fulfilling of its assumed obligations for printing services rendered, which is a base for the nullification of the contract,

a debt of some 2.6 million AMD accrued in the period of 2008 and 2009, together with applicable penalties, and that this amount is subject to seizure from “Ogostos” in favor of the printer. That section of the case dealing with the seizure of 21,000 AMD was overruled and thrown out.

As to the claim by the representatives of “Ogostos” that the company owes nothing to “Gind Publishing” and that it has even paid more than 2.2 million extra, the court rejected the assertion as baseless. “The defendant presented no evidence to the court that “Gind Printing” owes 2.2 million to “Ogostos”. The court also sought to prove that the two companies in question had for years been working together on the basis of invoices, that transfers and calculations had been based on those invoices, and that the defendant had never questioned the legitimacy of the document nor presented any objections.”

The court found, after an examination of the motion made by the defendants’ representative Hovik Arsenyan to remove “Koghmnaki Andzanc” from the case, that the motion was without merit since, based on the contracts signed by the parties involved, after the court ruled to incorporate and after prohibiting “Ogostos” from publishing the “Chorrord Ishkhanutyun” newspaper, the firm of “Koghmnaki Andzanc Ltd.”, disregarded the court ruling and assumed that responsibility and, as a result, the court’s ruling was never executed.

The Kentron and Nork-Marash District Court left unchanged the rulings prohibiting the printing of the paper until the court’s decision was implemented; i.e. until payment of funds.

The paper’s Chief Editor, Shogher Matevosyan, pledged that their next step would be to take the case to the Appeals Court and then to the Court of Cassation if the ruling was sustained. If need be, she promised to take the case all the way to the European Court. “I assert that this was a ruling handed down on the orders of the authorities and that the judge merely signed off on the ruling,” Shogher Matevosyan stated.

When asked if they would pay the debt as obligated by Officials from the Service of Mandatory Execution of Judicial Acts (SMEJA), Mrs. Matevosyan answered with a question of her own – “Where the heck will I get the money to pay?” Karen Avetyan, Director of “Gind Printing” argues that, “Funny, but that same paper has the money to get its printing done elsewhere but refuses to pay us what it owes.”

Poghos Terzlyan, another “Gind” representative, ruled out any talk of political motivations for the closing of “Chorrord Ishkhanutyun”. “Let them pay what they owe us. They can then print three editions every day if they want. Who’s stopping them?” Mr. Terzlyan said.

On November 17, "Chorrord Ishkhanutyun" received another notice from the SMEJA, stating that an investigation would be launched regarding the activities of Davit Matevosyan, Director of "Koghmnaki Andzanc Ltd." In its November 18 edition, "Chorrord Ishkhanutyun" wrote that, "Koghmnaki Andzanc Ltd.' and this paper has no quarrel or debt with "Gind Printing" or any other printer. Thus, it is incomprehensible how Mihran Poghosyan (who heads SMEJA) can declare "Koghmnaki Andzanc" Director Davit Matevosyan to be a 'debtor' and to launch an investigation of him."

"Gind Printing's" Director Karen Avetyan argues that the hue and cry raised by "Chorrord Ishkhanutyun" is merely for show and that it seeks to attract more readers through such sensationalizing. "If a man has in his possession documents that he has signed, proving that he owes me a certain amount of money, how can that man now turn around and deny that he owes me anything? This company has been providing printing services to newspapers for fifteen years. "Chorrord Ishkhanutyun" was born here and now the paper's editor is trying to cheat "Gind". That paper has been around for twelve years, right? So why hasn't there been a political directive from on high to shut it done before, when there were many more heated debates and developments in the country? Let them come and pay what's owed. Afterwards, if "Gind" continues not to print the paper only then they can claim that there's a political motive afoot. For example, why haven't I sued the papers 'Hayk', 'Hraparak', 'Taregir' or 'Haykakan Zhamanak'? How come nobody writes about this side of the story?" asks the printing house director.

The printing house director believes that by removing the newspaper from under the legal jurisdiction of "Ogostos", the editor is consciously seeking to bankrupt the paper; to empty its accounts and office in order to avert paying its debts. "The editor was well aware that the court would find in my favor and obligate it to pay me. So she went and created another legal corporation to assume the paper's publication. That's exactly the reason why the court recognized the new corporation as the legal successor of "Ogostos". Thus, the new corporation is mandated to pay me all the debts owed by the prior company," states the director of "Gind Printing".

Karen Avetyan is convinced that how ever much this ruling by the court is contested, all future rulings will be in their favor as well. When we asked him if, nonetheless, the paper wasn't financially able to pay him anything, what his next move would be, Mr. Avetyan kept his future options close to his chest. "Don't you worry. You'll see how they pay what they owe us. It'll serve as a lesson to all."

Attorney Hovik Arsenyan regarded the court's ruling to be politically motivated and claimed that it was a brazen attempt to shut down an opposition newspaper. He is preparing to take the case to the Court of Appeals.



Arman Gharibyan

## **“Radio Hye ” Sues Heritage Party MP Stepan Safaryan for Slander**

### ***Karabakh Conflict Debate Winds Up In the Courts***

“**OUR** views and demands regarding this broadcast have already been presented to readers through the two open letters the Heritage Party has sent to the Radio Hye editorial staff. For the first part, we expect an apology from Serzh Sargsyan for the two-part radio program resulting from the lies of the Deputy President of the Armenian Republican Party and the directive issued from the presidential palace. And we haven't presented all the tragicomic nuances of the matter to the public.”

This was the portion of the article penned by Heritage Party MP Stepan Safaryan that prompted “Radio Hye” to file a suit in the courts on August 26, 2009, demanding that he issue a retraction of information circulated in the mass media defaming the working integrity of the radio station. “Radio Hye” has petitioned the Avan and Nor-Nork District Court to obligate MP Stepan Safaryan to retract his allegation that the station prepared and broadcast two programs in the “Armenian Reflections” series on July 30 and 31 upon the directive of either President Serzh Sargsyan himself or one issued from his office. The plaintiff demanded that Safaryan's retraction appear on page 5 of the “Hraparak” daily, the same page on which the original article appeared.

The crux of this public squabble pitting Heritage Party MP's and the radio station were the July 30 and 31 broadcasts of the “Armenian Reflections” radio series, where there was an on-air call in debate between Republican Party official Galust Sahakyan and Heritage Party MP Stepan Safaryan. Andreas Ghukasyan, an independent analyst, moderated the debate. During the program Mr. Ghukasyan noted that by ratifying the treaty establishing the CIS and Helsinki Accords (The Final Act of the Conference on Security and Cooperation in Europe) during 1991-1992, Armenia had implicitly recognized the territorial integrity of Azerbaijan and that, as a result, Armenia has to date not been able to recognize the independence of the

NKR. (Readers will remember that at the time Raffi Hovhannisyian, the founder of the Heritage Party, was the RoA foreign Minister.)

“They deceived the people. The crowds had gathered and were shouting ‘Union with Karabakh’ and all the time Levon Ter-Petrosyan and Raffi Hovhannisyian were signing documents recognizing the territorial integrity of Azerbaijan according to the old borders of Soviet Azerbaijan. After that, how was Karabakh supposed to be joined with Armenia?” analyst Andreas Ghukasyan stated in an interview with “Hetq”.

“Rather than recognizing the territorial integrity of Azerbaijan, we simply ratified a document agreeing that we should follow the “Helsinki Final Act” and the 10 principles enumerated within. One of them deals with the territorial integrity of states, and another refers to equal rights and the self-determination of peoples. It also talks about border modifications through peaceful means and that all these principles have equal weight,” Stepan Safaryan told “Hetq”. “If we pass a law stating that all big businessmen must be taxed that doesn’t as yet signify that we have passed a law stating that businessman Samvel Aleksanyan must be taxed. Let me cite a simple example. If we had indeed recognized Azerbaijan’s territorial integrity, than that nation wouldn’t have expended all that time and effort in the United Nations to have Armenia confirm its territorial integrity.”

Andreas Ghukasyan believes that the signed documents have been concealed for years and haven’t been paid appropriate attention. “In this country, people are loathe to read. This is why so many don’t have a clue about these documents.”

Stepan Safaryan, on the other hand, argues that the CIS treaty and the Helsinki Accords have been published in various formats and are available on the web.

As to the question, if Levon Ter-Petrosyan has actually signed a document that has doomed the recognition of the NKR to failure, why doesn’t the present government play that fact up, Andreas Ghukasyan gave the following reply. “If the present regime were to play up that fact, it would mean that the government would have to correct Ter-Petrosyan’s mistakes. This would also mean that the government would have to recognize the CIS treaty as null and void, which translates into damaging relations with Russia. This is something that the Armenian government would never do.” According to the analyst the CIS treaty and the Helsinki Accords have no legal force for the former member states of the Soviet Union since they were signed according to a non-legal process. “The member states would have had to first secede from the Soviet Union before having the legal right or status to independently sign off on such documents and to be admitted into international organizations,” argues Andreas Ghukasyan.

This debate between Stepan Safaryan and Andreas Ghukasyan quickly moved to the pages of the press. As a result, the radio station launched a suit against the Heritage Party MP. In court, Mr. Safaryan is obligated to prove the veracity of his claim, i.e. that the radio program was in fact broadcast at the express request of the president.

We asked the MP if he indeed had proof to back up his allegation. "I will only speak about the evidence I have in court. I'll see you in court," was his reply.

The case which began on September 24 at the Avan and Nor-Nork District Court has been moving along at a snail's pace. Presiding Judge Mazmanyanyan left for a one month vacation right after the first court session and the trial was recessed till December 10.

On that day, MP Safaryan was scheduled to present corroborating evidence of his claim. Due to Judge Mazmanyanyan's ill health, however, the trial was pushed back till December 23.

Such delays are in contravention of Article 6 of the European Convention of Human Rights, which declares that all individuals are "entitled to the right to a fair trial, including the right to a public hearing before an independent and impartial tribunal within reasonable time..."

On January 14, 2010, at the Avan and Nor-Nork Administrative District Court, the preliminary trial session of the case "Radio Hye v MP Stepan Safaryan", who heads the Heritage Party parliamentary faction, continued and came to a close. During the session the sides presented their arguments and evidence. On January 25, the actual trial of the case was supposed to get underway in the same court, but it was postponed due to the absence of the defendant, MP Safaryan. His lawyer told the court that MP Safaryan wasn't in Yerevan given that he had traveled to Tavush Marz the day before and wasn't able to return in time. The lawyer motioned the court to postpone the trial, arguing that the all the case materials were in the possession of MP Safaryan and that it would be pointless to start the trial without them.

Andreas Ghukasyan, legal representative for the radio station (plaintiff), opposed any postponement, arguing that any such delay would only damage the interests of Radio Hye. The court decided to sustain the motion presented by MP Safaryan's lawyer and postponed the trial till February 1.

We telephoned MP Safaryan to ask why he had traveled to Tavush Marz. The man who answered the phone told us that the MP could not talk to us right now. The man also said that the MP still hadn't returned to Yerevan.

