CASE LAW REVIEW

This review is a continuation of the analysis of the Supreme Court's assessment of specific aspects of the cases considered by lower courts. The style and terminology of the court judgement is preserved.

Freedom of Expression

DAVID KERESELIDZE*

1. Legislative Framework

Article 24.1 of the Georgian Constitution grants an individual "the right to freely receive and impart information, express and impart ideas in oral, written or other forms", whereas Article 24.2 guarantees freedom of the media. According to Article 24.4 restriction of exercise of these rights and freedoms by the law is limited to the existence of circumstances which are exhaustively listed, including the protection of "others rights and dignity".

Article 1 of the Law on the Press and other Media of 28 October 1997 reinforces the media freedom and therefore points out that "Georgian citizens have the right to express, impart and defend their point of view via any media as well as obtain information on matters concerning social and public living".

The first sentence of Paragraph 2 of Article 18 of the Civil Code provides protection for an individual against encroachment of his honour, dignity, privacy, personal inviolability or business reputation and grants an individual the right to demand in court the retraction of such information.

The second sentence of Paragraph 2 of Article 18 of the Civil Code concerns the protection of a person's honour, dignity or business reputation in case of incomplete dissemination of facts. However such protection does not cover, for instance, the violation of privacy.

The first sentence of Paragraph 3 of Article 18 provides for the protection of a person's honour, dignity, business reputation and privacy if information is disseminated in the media.

Paragraph 4 of Article 18 of the Civil Code entitles a person, whose honour and dignity has been encroached by information disseminated in the media, with the right to disseminate information in response through the same media. However this does not include the respective right if, for instance, his business reputation is encroached.

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* Deputy Director for Legal Issues of GEPLAC.

Against this background, the view of the Supreme Court of Georgia with regard to freedom of expression gains particular significance and thus review of some relevant court decisions is interesting.

2. The View of the Supreme Court

In its Decision No.3k/1044 of 1 March 2002 the Chamber for Civil, Entrepreneurial and Bankruptcy Cases of the Georgian Supreme Court[1] interpreted that the right to freedom of expression and information is recognized by Article 24 of the Constitution and Article 10 of the European Convention on Human Rights. Article 10 of the Convention states that "the right to freedom of expression shall include freedom to have opinions and to receive and impart information and ideas..." These principles are particularly important for the press.

According to Article 19.1 of the Law on the Press and Other Media the Georgian citizens shall have the right to instantly receive information via the media with regard to the activity of state authorities, public-political associations and officials. Thus, if the press should not violate the fixed limits meant under "protection of other's honour, dignity and business reputation", it shall be imposed with an even more serious duty – to provide the public with ideas and information on matters occurring in the political arena. "The press has the right to publish information with regard to politicians and adequate public figures and officials that matter to assess their personality and in this regard criticism is permissible unless such criticism grossly violates their privacy".

The interpretation of the Chamber for Civil, Entrepreneurial and Bankruptcy Cases of the Supreme Court made in its Decision No.3k/376-01 of 18 July 2001[2] is also interesting. When reviewing questions that are of great public interest, "critical opinion, i.e. "limits of permissible criticism", expressed by political and public servants with regard to each other may be wider than in relation to an ordinary individual (citizen). On the basis of Article 10 of the European Convention on Human Rights, the European Court of Human Rights in the decision made with regard to the case *Castells v. Spain* stated that the facts of insult of the representatives of the government and of ordinary citizens should be assessed by applying different standards. It interpreted that "limits of permissible criticism are wider than in relation to ordinary citizens". Consequently, during debates held in the press and on television political officials and public servants should tolerate more criticism than might be normally permitted. In this case the interest of protection of reputation (honour, dignity) equals the public interest – to freely consider and receive information concerning political, economic and social matters".

[1] Decisions of the Supreme Court on Civil, Entrepreneurial and Bankruptcy Cases, 2002, No.5, 794.
[2] Decisions of the Supreme Court on Civil, Entrepreneurial and Bankruptcy Cases, 2001, No.10, 1172.

In the same decision the court stated that under “business reputation as referred to in Paragraph 2 of Article 18 of the Civil Code is meant assessment of a person’s professional or other business skills by the public. Profession means trade, business, specialty that needs certain training and by means of which the individual lives. Those who are engaged in commercial activities have business skills that are inherent for a business reputation. Consequently, encroachment of business reputation, as envisaged by Article 18 of the Civil Code, should be directed at business operations already (or to be) carried out. Such encroachment might cause financial damage to a person, in other words loss of profit, client etc. Thus, the definition of business reputation as reinforced by Article 18 of the Civil Code should not cover state political or public service officials. Defamation but not encroachment of business reputation might occur with regard to the business (work) of these persons”.

Finally in Decision No.3k/390-02 of 4 July 2002 the Chamber for Civil, Entrepreneurial and Bankruptcy Cases of the Supreme Court[3] stated that “It is inevitable for a political official and holding such a position per se means that his/her every word and action will become the subject of permanent and insistent analysis and criticism by journalists. A politician, thus, should show a high level of patience especially when he/she takes action that might cause severe criticism. During debates in the press and television public servants should tolerate criticism beyond the limits of permissibility... the greater the political official’s responsibility before state and society the wider are the limits of permissible criticism. Substantiated criticism voiced with his/her regard is more weighty in terms of protection of social, public and each citizen’s interests”.

In the same Decision the Court showed its position with regard to journalists’ liability. It explained that “harsh assessments of the actions of political officials deriving from the existing factual circumstances should not constitute the grounds for journalist’s liability”. Respectively, “journalistic assessments must be adequate to the facts available to the journalist... Implementation of the principle of freedom of expression is the objective of the Law on the Press and other Media. Pursuant to Article 21 of this Law, a journalist shall guide his/her work with the principles laid down by the International Federation of Journalists. A journalist is obliged to check the accuracy of the information obtained. A journalist must bear responsibility for his/her article. The editorial board should bear responsibility not to publish inaccurate and distorted information or information that intentionally aims at misleading society”.

[3] Decisions of the Supreme Court on Civil, Entrepreneurial and Bankruptcy Cases, 2002, No.10, 1758.

3. Comments

When analysing the view of the Supreme Court, first of all it should be welcomed the fact that in addition to the Constitution Article 10 of the European Convention on Human Rights and related case law of the European Court of Human Rights is taken into account. There is no doubt that this will ensure the incorporation of European standards in the Georgian reality.

In this respect we consider expedient to proceed with this approach and apply it for filling the legislative gaps that exist in Georgia. It is inadmissible when a Court uses incorrect terminology in the law on the Press and Other Media talks about the Georgian citizens' right to receive information via the media. The right to "express, impart and hold their point of view via any media as well as obtain information on matters concerning social and public living" is the right of an individual and not a citizen. Correspondingly, in the court decisions they should be considered as individual's and not citizen's rights.

In addition, there should be clarification about the group of persons for whom the court widens the limits of "permissible criticism". Application of wordings such as "politicians and adequate public figures and officials", "political and public servant" or "political officials", should be spelled out. It would be more reasonable to focus on, for instance, "public figure" in general, than leave it ambiguous who is a public figure and official adequate to the politician. The concept of "public figure" covers a politician as well as any other person who is particularly interesting for public. Consequently, it is admissible to set wider limits of "permissible criticism" for them.

However, the obligation imposed upon a public figure (because of his social status) to tolerate "criticism greater than permitted" should be clarified. It should be made clear what is "greater criticism", for what it should be greater and when this limit should be considered exceeded.

The clear restriction of the limits of "permissible criticism" by the court is welcome. "The press has the right to publish information with regard to politicians and equivalent public figures and officials, to assess their personality. In this regard criticism is permissible unless such criticism grossly violates their privacy". However, there should be some clarification about what is meant by "gross violation" of privacy. In terms of widened limits of "permissible criticism", any encroachment should cause the encroacher's liability whether it is gross or not.

The step made towards a clearer definition of the limits of "permissible criticism" is a criterion according to which "the greater the political official's responsibility before the state and society the wider are the limits of permissible criticism".