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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
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DRAFT LAW

**ON MAKING AMENDMENTS
TO THE CIVIL CODE**

OF THE REPUBLIC OF ARMENIA

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**EXTRACT OF THE CIVIL CODE
OF THE REPUBLIC OF ARMENIA**

Article 19. Protection of Honor, Dignity and Business Reputation

1. A citizen has the right to demand in court the retraction of communications impugning on his honor, dignity, or business reputation, unless the person who disseminated such communications proves that they correspond to reality.

On demand of interested persons, the protection of honor and dignity of a citizen is allowed also after his death.

2. If the communications impugning the honor, dignity, or business reputation of a citizen were distributed in media of mass information, they must be retracted in the same media of mass information.

If the aforementioned communications are contained in a document emanating from an organization, such a document is subject to replacement or recall.

The procedure for retraction in other cases shall be established by the court.

3. A citizen with respect to whom a medium of mass information has published communications infringing on his rights or interests protected by statute has the right to publication of his answer in the same medium of mass information.

4. A citizen with respect to whom communications have been disseminated impugning his honor, dignity, or business reputation, has the right together with the retraction of such information also to demand compensation for losses caused by their dissemination.

5. If it is impossible to identify the person who disseminated communications impugning the honor, dignity, or business reputation of a citizen, the person with respect to whom such communications was disseminated has the right to apply to court with a request for the recognition of the communications that were disseminated as not corresponding to reality.

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

DRAFT LAW

**ON AMENDING THE CIVIL CODE
OF THE REPUBLIC OF ARMENIA (RA)**

First version of 30 March 2009

Article 1 : To set forth the following wording for Article 19 of the RA Civil Code (May 5, 1998)

“Article 19: Protection of Honor, Dignity, and Business Reputation”

1. The honor, dignity, or business reputation of an individual will be subject to protection from insulting value judgment and factual statement of defaming nature made by the third person(s) in cases and by the procedure set forth in the present Code and other legal acts of the RA.

2. An insulting value judgment in the context of the present Code be deemed to be public statement disseminated by any means (speech, image, voice, sign, etc.) addressed to a definite person, aimed to insult that person, and includes libel(s), nickname(s), swearing and sign(s) implying swearing.

3. A factual statement of defaming in the context of the present Code will be deemed to be any publicly disseminated statement addressed to a definite person, which can discredit or anyhow hurt the reputation of that person, and when the truthfulness of the information implied there will not be proved by the person having expressed that statement; and in case the information is disseminated by any mean(s) of mass media, the truthfulness of the information implied there will not be proved by the media organization, which is the initial source of information.

4. The factual statement or the value judgment in the context of the present Code will be deemed as publicly disseminated, if the person has wished or within reasonable limits could have foreseen that the statement spread by him will be available or communicated to more than fifty people.

5. The individual with respect to whom statement humiliating his/her honor, dignity, or business reputation is disseminated will have the right, within the procedures of the RA legislation, including in court, to protect his/her honor, dignity, or business reputation by the following means:

- a. To demand the refutation of the factual statement(s) of defaming nature. Moreover if the information impugning the honor, dignity, or business reputation of and individual has been distributed by mean(s) of mass media, they shall be retracted by the same mean(s) of mass media. If the aforementioned information is contained in a document emanating from an organization, such a document is subject to replacement or recall. The procedure for retraction in other cases shall be established by the court;
- b. To demand one-off compensation together with the claim relief on the refutation of the factual statement(s) of defaming nature in the amount of 1500 times minimal salaries;
- c. To demand for the dissemination of the insulting value judgment as a moral compensation in the amount of 1000 times minimal salaries;
- d. Together with the claim relief by the actions envisaged in points “a”, “b” and “c” of part 5 of the present Article also to demand compensation for losses caused by the dissemination of the factual statement(s) of defaming nature and/or insulting value judgment, including the losses for the restoration of the infringed rights;

- e. If it is impossible to identify the person who disseminated information impugning the honor, dignity, or business reputation of an individual, the person with respect to whom such communications was disseminated has the right to apply to court with a request for the recognition of the information that was disseminated as false.
6. On demand of appropriate interested persons, the protection of honor and dignity of an individual by the means and procedures envisaged in part 5 if the present Article is allowed also after the death of the individual in a period of fifty years.
7. If the information impugning the honor, dignity, or business reputation of an individual is disseminated by a mean of mass media, then the media organization shall pay the double amount of the one-off compensation envisaged in points "b" and "c" of part 4 of the present Article accordingly.
8. The persons holding political offices, public and political figures shall be more tolerant to the value judgments, at the same time, this general principle does not limit the rights of the latter on the use of the protective actions envisaged under the present Article against the insulting value judgments.
9. While applying point "b" of part 5 of the present Article the court shall consider the necessity to restrict the right to freedom of expression of the individual in the democratic society.
10. The court will not apply part 7 of the present Article and instead will accordingly apply the compensation mentioned in points "b" and "c" of part 4 of the present Article, based on the principle of proportionality of the penalty for the abuse of the right to freedom of expression.
11. In cases when the person has repeated by any mean the factual statement of defaming nature that previously has been publicly disseminated by any mean, including mean(s) of mass media, and that have not been refuted within three years after their dissemination, that person will be relieved of responsibility defined under the present Article.
12. In any case the person who repeated by any mean or with any purpose the insulting value judgment, irrespective of the period of its dissemination, will not be relieved of responsibility defined under the present Article.
13. The rules of the present Article on the protection of the business reputation of an individual shall be applied correspondingly to the protection of the business reputation of any legal person.

Article 2: Transitional provisions

This Law enters into force on the tenth day after its publication. The provisions of this Law are not applicable to the public statement made before the present Law becomes effective.

**DRAFT LAW
ON AMENDING THE CIVIL CODE OF THE REPUBLIC OF ARMENIA**

Second version of 15 April 2009

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

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

The honor, dignity and business reputation of a citizen is subject to protection from the insult and defamation manifested by other person (persons) in the cases and order set forth under this code and other laws.3”.

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

“§ 2. The Order and Terms of Compensation for Harm Caused to the Honor, Dignity and Business Reputation;3

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

1. The honor, dignity and business reputation of a person is subject to protection from insult and defamation.

2. (the following 2 options proposed for point 2)

Option 1: In the context of this code insult is deemed to be the expression or the act performed with the intention to humiliate the person by means of speech, picture, voice and sign or any other way.

Option: 2 In the context of the present code insult is deemed to be public statement disseminated by any means (speech, image, voice, sign, etc.) addressed to a definite person, aimed to insult that person, and includes label(s), nickname(s), swearing and sign(s) implying swearing.

3. In the context of this code defamation is deemed to be the dissemination of information in regard to the person, which is not in accord with reality and impugn his/her honor, dignity or business reputation and smear or damage the reputation of that person in any way.

4. In case of insult the person has the right to demand in court the protection of his/her honor, dignity and business reputation via the following means:

- a) demand an apology from the person having insulted him/her;
- b) as an indemnity for the moral harm demand from the person, who has insulted him/her, a lump-sum payment of the compensation in the amount of 150-250 times the minimum monthly salary.

5. In case of defamation the person has the right to demand in court the protection of his/her honor, dignity and business reputation via the following means:

- a) demand the retraction of information deemed as defamation in the order envisaged under law.

b) as an indemnity for the moral harm demand from the person, who has disseminated information deemed as defamation, a lump-sum payment of the compensation in the amount of 250-500 times the minimum monthly salary.

6. The person has the right together with the obtaining of satisfaction by the means set forth under points 4 and 5 of the present article also to demand compensation for the harm caused by the insult and defamation, including the court expenses and the expenses made by him/her for recovering the infringed rights.

7. If the person is insulted and defamed in public, then the person disseminating it pays correspondingly 500-1000 times the minimum monthly salary in case of defamation, and 250-500 times the minimum monthly salary in case of insult.

The insult or defamation in the context of this code is deemed as disseminated in public, if the person has wished or could have reasonably predicted that the expression made by him/her would be available or obvious to public, excluding the cases envisaged under point 8 of the present article.

8. If the information insulting and defaming the person have been disseminated via mass media, excluding the cases envisaged by law, as well as when the similar information have been disseminated via live broadcasting by TV and radio, then the media agency pays correspondingly 1000-2000 times the minimum monthly salary in case of defamation, and 500-1000 times the minimum monthly salary in case of insult.

9. If the communications insulting and defaming the person are disseminated via live broadcasting by TV and radio, then the terms set forth under point 8 of the present article are administered with respect to the person having expressed the information containing insult and defamation.

10. A claim for the protection of the right under the order specified by the present article can be submitted to the court within three months from the moment the person becomes aware of the dissemination of the insult and defamation.

11. (the following 2 options proposed for point 11)

Option 1: The person, who has repeated in any way the defaming information in public, as well as expressed via mass media, which have not been retracted, can be exempt from responsibility set forth under the present article.

Option 2: In cases when the person has repeated by any mean the factual statement of defaming nature that previously has been publicly disseminated by any mean, including mean(s) of mass media, and that have not been refuted within three years after their dissemination, that person will be relieved of responsibility defined under the present Article.

12. The person, who has in some way or with some intention repeated the insult expressed by another person, irrespective of the means and period of its dissemination, can not be exempt in any case from responsibility set forth under the present article.

13. (the following 2 options proposed for point 13)

Option 1: The court can reduce the minimal amount of the compensation for harm under the present article, considering the property status of the respondent.

Option 2: While applying point 8 of the present Article the court shall consider the necessity to restrict the right to freedom of expression of the individual in the democratic society.

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

Article 3. Concluding Provisions

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

EXPLANATORY NOTE
on the draft amendment to Article 19
of the Civil Code of Armenia

The reform of media legislation started back in 1993 and has passed through several stages, including the adoption of Law on Mass Media and creation of legislation on Television and Radio. Throughout the last 15 years Armenia has changed its laws in order to comply with the European standards and to decrease the legislative burden on journalists and media organizations. However, the process of legislative reform remains an ongoing process. Currently there is a need to fully decriminalize the defamation and insult (135 and 136 Articles of Criminal Code of Armenia).

At the same time negative tendencies have developed in the media environment, which gave rise to slander and libel damaging the dignity and reputation of an individual, regardless of the status and profession of the later. There is an increasing misbalance between the protection of freedom of expression on the one hand, and respect for the reputation of an individual, on the other. Improved standards for the realization of the right to freedom of speech are required. In the past several attempts have been made by media organizations and professional journalists to create self-regulatory mechanisms, however to no avail. Most of the media organizations and journalists do not follow any ethical rules of conduct and violate international standards of professional journalism in their daily work.

Another specific feature of the Armenian reality is that the Armenian courts do not practice the civil law that prescribes monetary restitution of moral damages through civil procedures. Regrettably, the Armenian courts do not have the professional capacity and public trust to have discretion to define the amount of fair compensation in cases of moral damages.

Under such circumstances, individuals who have been subjected to expression of false information or insulting labels do not have any other legal remedy then to apply to the criminal procedures and to the criminal code. However, in Armenia there is no wide practice of criminal charges against journalists, in spite of the fact that the legal provisions allowing such charges are still in place.

In order to comply with international standards while protecting the right to freedom of expression and at the same time to establish appropriate legal frameworks for such individuals to protect their honor and reputation in civil courts, the following conceptual changes are proposed in the Civil Code of Armenia:

1. New definition for “defamation” and for “insult”;
2. Opportunity for an individual to apply to civil court for claiming moral damages;
3. Some fixed amounts for compensation of moral damages within some flexible limits of discretion allowed to the courts;
4. Power of the court to decrease the amounts claimed from media outlets based on the principles of “necessity in the democratic society” and “proportionality”.

As soon as the draft amendments to the Civil Code pass international expertise and before presenting those to the Parliament, the complete withdrawal of Articles 135 and 136 from the Criminal Code will be added to the package of amendments and proposed as a single legal initiative.