

PRELIMINARY LEGAL OPINION

On actions taken towards Gagik Shamshyan, reporter of the Chorrord Ishkhanutyun (The Fourth Power) newspaper, by associates of the Investigative Division of the Erebuni and Nubarashen Communities Department of the ROA Police

Introduction

This legal opinion refers to the actions taken towards Gagik Shamshyan, reporter of the Chorrord Ishkhanutyun (The Fourth Power) newspaper, by associates of the Investigative Division of the Erebuni and Nubarashen Communities Department of the ROA Police. The actions were followed by a number of publications made by the journalist. The publications highlighted members of the family of the Leader of the Nubarashen community. And the journalist became a target: mass-meetings with participation of the Nubarashen population were organized against him, his apartment was searched and a criminal case was developed against him. For more information visit the www.media.am website of the Internews and the www.ypc.am one of the Yerevan Press Club, as well as refer to the print press.

This initial legal opinion, developed by the Internews Attorney, is based on interviews conducted with Gagik Shamshyan, reporter of the Chorrord Ishkhanutyun newspaper, Naira Mamikonyan, journalist of the Aravot newspaper and Mikayel Danielyan, Chairman of the Helsinki Association of Armenia NGO.

With this document we would like to draw the attention of relevant structures on the actions of the right protecting bodies, with the aim of prescribing a respective qualification and stopping the pressure against the journalist.

1. On August 4, Vardan Mesropyan, Deputy Head of the Investigative Division of the Erebuni and Nubarashen Communities Department of the ROA Police, requested a meeting with the reporter of the Chorrord Ishkhanutyun newspaper Gagik Shamshyan. He informed Gagik Shamshyan about a criminal case developed against the reporter.

However,

- **he didn't mention neither the basis, on which the case was developed, nor the article, according to which the case was developed.**

Meanwhile, in case of a cause and a basis for developing a case, the attorney, investigator, the investigative body make a decision on developing a criminal case. The decision should state the case and the basis for developing the case, the article, according to which the case is developed and the further proceedings of the case.” (Article 182 of the ROA Criminal Procedures Code, Point 2).

2. As stated by Gagik Shamshyan, Vardan Mesropyan, in his office,

- **didn't inform about the reporter's status in the developed criminal case.**

The fact, that Gagik Shamshyan was called to the Division as a suspect, was only disclosed at the entrance of his apartment, after returning from the Investigative Division.

Meanwhile, the suspect's rights and obligations are clearly mentioned in the Chapter 8 of the ROA Criminal Procedures Code. Being an associate of a right protecting body, Vardan Mesropyan was obliged to know, that, according to the Article 63 of the Code, the suspect first of all has the right

to

“know the reason of being suspected, be informed about the content of the suspicion, the factual aspect of the crime he suspected in and the legal ground...”

3. The next action, made by violation of the provisions of the ROA Criminal Procedures Code, is the search of Gagik Shamshyan’s hired apartment. According to the Point 3 of the Article 225, “the search is carried out only by the decision of the court.”

According to the Point 3 of the Article 227 of the same Code, “While carrying out a search and seizure the presence of an adult member of the person and his family should be ensured. In case their presence is not possible, a representative of a housing operation or local self governing body is invited.”

- **As stated by Mr. Shamshyan, the search of the apartment and the seizure of some of his personal belongings were carried out without his presence, since he was not allowed to remain in the apartment. In addition, Mr. Shamshyan didn’t see the court’s decision on the search.**

The procedure of carrying out a seizure and search is prescribed by the Article 228 of the Code. According to the Point 2 of the mentioned Article, “before carrying out a search or seizure, the investigator should familiarize the person, in whose apartment the search or seizure are carried out, with the decision. With this regard, his signature is taken.”

4. The State regards entering a person’s apartment, against his will, as a crime. “Infringing the Inviolability of the Home” undergoes criminal punishment, according to the Article 147 of the ROA Criminal Code. According the Part 3 of the mentioned Article, “The deed, envisioned by the Part 1 or the Part 2 of this Article and made by using the official standing, is punished by a fine from two hundred to four hundred times the amount of the minimum salary rate, or by depriving of the right of holding definite offices or being involved in definite activities, for a period between two and five years, or by an arrest for a period between one and two months, or by an imprisonment for maximum three years.”

Internews Media Support NGO

The legal opinion was prepared by the Internews Attorney Olga Safaryan