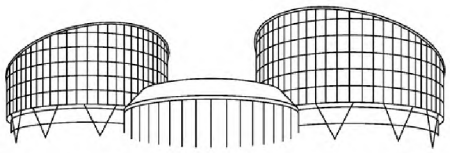

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF SUREN ANTONYAN v. ARMENIA

(Application no. 20140/23)

JUDGMENT

Art 6 § 1 (civil) • Independent tribunal • Dismissal of judge following disciplinary proceedings before the Supreme Judicial Council ("SJC") established after constitutional amendments • SJC satisfied Art 6 § 1 "tribunal" requirements • Manner of appointment of the SJC's non-judicial members in case-circumstances did not compromise its independence • Institutional and operational arrangements provided safeguards against undue influence or unfettered discretion of the legislature • No evidence safeguards were theoretical and did not operate in practice • Appointment process was merit-based and transparent • Mere fact two non-judicial members previously held high-level posts in the executive insufficient to conclude lack of independence • No evidence appointment of non-judicial members sitting in applicant's case were tainted by political influence • Not demonstrated that non-judicial members had any material, hierarchical and administrative dependence on either executive or legislature endangering their independence and impartiality • No issue in respect of parity between the SJC's judicial and non-judicial members
Art 6 § 1 (civil) • Access to court • SJC qualified as a "court" to which the applicant had access • No issue due to lack of further review of the SJC's decisions before the ordinary courts
Art 6 § 1 (civil) • Impartial tribunal • Applicant's doubts as to the impartiality of the SJC's Chair, stemming from the Chair's close relationship with the Minister of Justice who had brought the disciplinary proceedings against him, objectively justified • Relationship, which had some financial and political implications, transcended mere friendship as former colleagues and was capable of raising legitimate fears as to the Chair's impartiality • SJC's failure to dispel the applicant's fears • Lack of sufficient procedural safeguards

Prepared by the Registry. Does not bind the Court.

STRASBOURG

23 January 2025

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Suren Antonyan v. Armenia,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Mattias Guyomar, *President*,
Armen Harutyunyan,
Stéphanie Mourou-Vikström,
Gilberto Felici,
Andreas Zünd,
Kateřina Šimáčková,
Mykola Gnatovskyy, *judges*,
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 20140/23) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Armenian national, Mr Suren Antonyan ("the applicant"), on 16 May 2023;

the decision to give notice to the Armenian Government ("the Government") of the complaints under Article 6 of the Convention concerning the alleged denial of the applicant's right of access to an independent and impartial tribunal to contest his premature dismissal from the post of judge, and to declare inadmissible the remainder of the application;

the decision to grant priority to the case under Rule 41 of the Rules of Court;

the parties' observations;

Having deliberated in private on 17 December 2024,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns the alleged denial to the applicant of access to an independent and impartial tribunal within the meaning of Article 6 of the Convention regarding his premature dismissal from the post of judge.

THE FACTS

2. The applicant was born in 1969 and lives in Yerevan. He was represented by Mr A. Zrvandyan, a lawyer practising in Yerevan.

3. The Government were represented by their Agent, Mr Y. Kirakosyan, Representative of the Republic of Armenia on International Legal Matters.

4. The facts of the case may be summarised as follows.

I. ESTABLISHMENT OF THE SUPREME JUDICIAL COUNCIL AND ITS COMPOSITION

5. Following constitutional amendments in 2015, significant changes were made to the provisions on the judicial career of judges. Notably, in 2018 a *sui generis* body, namely the Supreme Judicial Council (*Բարձրագույն դատական խորհուրդ* – "the SJC") was set up with exclusive competence to decide on disciplinary measures against judges including dismissal. Under the Constitution, the SJC is composed of five judicial and five non-judicial members, appointed for a five-year non-renewable term. The judicial members are elected by the General Assembly of Judges, that is by their peers, while non-judicial members are nominated by political groups and elected by the National Assembly by a qualified majority of votes (see Articles 173-175 of the Constitution quoted in paragraph 20 below; see also paragraph 54 below).

6. Non-judicial members V.K., K.A., E.T. and H.K. of the SJC were nominated by political groups predominantly composed of deputies ("MPs") from the ruling party, and elected by the National Assembly where that party held a constitutional majority. In their election by the National Assembly, non-judicial members V.K. and H.K. also received votes from MPs belonging to opposition parties, while those parties did not take part in the nomination and election of K.A. and E.T.

7. Between 3 August 2021 and 5 October 2022, that is prior to his appointment to the SJC on 6 October 2022, K.A. held the post of Minister of Justice. During that time, G.M. was K.A.'s deputy. Following K.A.'s appointment to the SJC, G.M. was Acting Minister of Justice and on 26 December 2022 he was appointed to the post of Minister of Justice. Prior to her appointment as non-judicial member, E.T. was also K.A.'s deputy at the Ministry of Justice.

Between July and September 2022 K.A. was a member of the ruling political party.

8. According to the Government, prior to her appointment to the SJC, the Commission for the Prevention of Corruption ("CPC") carried out a good character check in respect of E.T. and found, among other things, that the fact of her previously being a deputy Minister could not cast doubt on her integrity if elected as a non-judicial member of the SJC.

9. On 7 October 2022 the SJC elected K.A. as Chair of the SJC for a period of two years and six months.

10. In 2024 both G.M. and K.A. resigned from their respective posts.

II. DISCIPLINARY PROCEEDINGS AGAINST THE APPLICANT

11. From 2009 the applicant was a judge of the Civil and Administrative Chamber of the Court of Cassation and was entitled under the law to serve

until his retirement at the age of 65 (see Article 166 § 8 of the Constitution quoted in paragraph 20, as well as paragraph 22 below).

12. On 3 December 2015 the Court found a violation of Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention in the case of *Amirkhanyan v. Armenia* (no. 22343/08, §§ 40 and 48, 3 December 2015). In particular, the Court held that by admitting another appeal lodged by the same party and subsequently granting it, the Court of Cassation (the applicant had sat on the adjudicating panel of that court) had overturned a final judgment issued in Mr Amirkhanyan's favour in a property dispute and had thereby breached the principle of *res judicata* and had unlawfully deprived Mr Amirkhanyan of his possessions (§§ 39-40 and 46-48 thereof).

13. On 8 September 2022 the Ministry of Justice requested that the Judicial Department transfer the case file pertaining to Mr Amirkhanyan's case (see paragraph 12 above) to it for examination; the Judicial Department did so on 23 September 2022. On 30 November 2022 the then Acting Minister of Justice, G.M., following a report submitted by the Head of the Supervision Division of the Ministry from 28 November 2022, decided to initiate disciplinary proceedings against the applicant under section 146(1)(4) of the Constitutional Act on the Judicial Code ("the Judicial Code"; see paragraph 42 below). Then, on 26 December 2022 he applied to the SJC to determine the applicant's disciplinary liability. Notably, referring to the Court's judgment in *Amirkhanyan* (cited above), G.M. submitted that the Court of Cassation had breached the relevant domestic and Convention provisions by overturning a final judicial decision.

14. On 18 January 2023 the applicant, relying on, *inter alia*, section 71(2)(1) and (5) of the Judicial Code (see paragraph 24 below), sought the withdrawal of K.A. from the panel of the SJC. In support of his application, he submitted, in particular, that following a government session of 27 January 2022, K.A. had given an interview to journalists, during which he had stated that "G.M. is indeed my friend and we were also business partners. Since the post of Deputy Minister of Justice, like that of other ministerial deputies, is a political post, [this] attests to the fact and is indeed the ground on which you choose [as your deputy] not only a good but also a trustworthy specialist, who shares your ideas. In this sense, Mr G.M. meets [these] requirements. As far as his previous political views are concerned, I can only confirm that his political views and ideas, my own and those of others coincide".

15. The applicant claimed that it was obvious from K.A.'s statement that he was biased given his relationship with G.M. He also argued that it was common knowledge that G.M. and K.A.'s wife held respectively sixty and forty percent of the shares in a local law firm. Thus, K.A. or his wife also had economic links with G.M. within the meaning of section 71(2)(5) of the Code.

16. When deciding on the applicant's case the panel of the SJC was composed of eight members – four professional judges and four non-judicial

members, namely V.K., E.T. and H.G. and Chair K.A. who was also the rapporteur in the case.

17. During the hearing of his case, the applicant requested the SJC to decide whether section 146(1)(4) of the Judicial Code was applicable to his case. K.A. asked his colleagues "[C]ould we decide on this [application] on the spot, or if there are any concerns, we could go to the deliberation room?" It appears from the video recording that the other members of the SJC did not object to K.A.'s proposal. The latter then concluded "[G]reat, so we have discussed [the application] on the spot and, our colleagues also agreed, [the other members nodding] that the application should be dismissed. We will address it in the final decision." Turning to his colleagues, K.A. asked "[I] understood it correctly, didn't I?" The other members nodded in reply. The applicant then stated that if the SJC was rejecting his request, then he would wish to supplement his earlier application in which he had asked the SJC to stay the proceedings and apply to the Constitutional Court in order to determine the constitutionality of the relevant provision. K.A. asked his colleagues "[S]hould we decide this on the spot or does anyone wish to discuss it separately? Are there any doubts that this application should be dismissed [so] that we could proceed to the next stage?" None of the members expressed a wish to go to the deliberation room. K.A. then added that "If there are no doubts, having discussed [the application] on the spot, the [SJC] decided to dismiss [it] as well. And now we move to the closing arguments." The applicant's lawyer then submitted that if his motion seeking to supplement his earlier application was rejected, then he would like the SJC to examine that very application (to apply to the Constitutional Court). K.A. replied that it was being rejected too, and the applicant would see the reasoning for the refusal in the decision. It appears that the SJC had previously examined a similar application and therefore there was no need to discuss the applicant's application in the deliberation room.

18. On 26 January 2023 the SJC allowed G.M.'s application and decided, by a unanimous vote, to terminate the applicant's term of office on account of a fundamental disciplinary violation under section 142(6)(1) of the Judicial Code (see paragraph 39 below). As regards the applicant's application seeking the withdrawal of K.A., the SJC noted that section 71(2)(5) of the Judicial Code aimed to rule out situations where, during decision-making, a judge was constrained by actions or inactions of one of the parties which could cause for him or her financial consequences. The presence of an economic interest thus implied a situation where, in his or her private capacity, a judge or his or her relative had such an interest which could influence the proper discharge of a judge's duties. Thus in terms of section 71(2)(5) an economic interest could be present only when one of the parties had a substantial leverage directly impacting upon the judge's, or his or her close relative's, financial interests. The SJC observed that G.M. had transferred his shares to fiduciary management and thus, having no control

over the property at issue under section 31(11.2) of the Public Service Act (see paragraph 56 below), could in no way influence K.A. in the exercise of his duties as Chair of the SJC. The SJC held that the well-known facts pinpointed by the applicant were therefore not sufficient of themselves to conclude that K.A. could be biased. The SJC concluded that the applicant's application for K.A.'s withdrawal had to be rejected quoting the Court's case-law (specifically, *Rustavi 2 Broadcasting Company Ltd and Others v. Georgia*, no. 16812/17, § 363, 18 July 2019; *Fazlı Aslaner v. Turkey*, no. 36073/04, § 36, 4 March 2014; *Stoimenovikj and Miloshevikj v. North Macedonia*, no. 59842/14, §§ 39-41, 25 March 2021; and *Karrar v. Belgium*, no. 61344/16, § 36, 31 August 2021).

19. The decision of the SJC entered into force from the moment of its pronouncement and was final. No appeal lay against this decision before the ordinary courts.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. The Constitution of the Republic of Armenia (following the amendments introduced on 6 December 2015)

20. The relevant provisions of the Armenian Constitution read as follows:

Article 61 § 1

"Everyone has the right to effective judicial protection of his or her rights and freedoms."

Article 63 § 1

"Everyone has the right to a fair and public hearing of his or her case, within a reasonable time, by an independent and impartial court."

Article 164

"...

8. The powers of a judge shall cease upon the expiry of the term of those powers, in the case of the loss of citizenship of the Republic of Armenia or the acquisition of citizenship of another State, when a criminal conviction takes effect against him or her, when a criminal prosecution against him or her is discontinued on grounds for non-acquittal, when a civil judgment takes effect declaring him or her to have no active legal capacity, or to be missing or dead, or in the case of his or her resignation or death.

9. Where a judge breaches the conditions of incompatibility, engages in political activities, is unable to hold office for health reasons, or commits a fundamental disciplinary violation, his or her powers shall be terminated, in the case of Constitutional Court judges by a decision of the Constitutional Court, and in the case of other judges by a decision of the Supreme Judicial Council."

Article 166 § 8

"A judge shall hold office until the age of sixty-five..."

Article 173

"The Supreme Judicial Council is an independent State body that guarantees the independence of the courts and the judges of those courts."

Article 174

"1. The Supreme Judicial Council shall be composed of ten members.

2. Five members of the Supreme Judicial Council shall be elected by the General Assembly of Judges, from among judges having at least ten years of experience as a judge. Judges from all levels of court must be included in the Supreme Judicial Council. A member elected by the General Assembly of Judges may not act as chairperson of a court or chairperson of a chamber of the Court of Cassation.

3. Five members of the Supreme Judicial Council shall be elected by the National Assembly, by at least three fifths of votes of the total number of Deputies, from among legal scholars and other distinguished lawyers holding citizenship of only the Republic of Armenia, having the right of suffrage, with high professional qualities and at least fifteen years of professional work experience. The member elected by the National Assembly may not be a judge.

4. Members of the Supreme Judicial Council shall be elected for a term of five years, without the right to be re-elected.

...

7. The Supreme Judicial Council shall, within the time limits and under the procedure prescribed by the Judicial Code, elect a Chairperson of the Council, successively from among the members elected by the General Assembly of Judges and the National Assembly.

8. Detailed provisions on the composition of the Supreme Judicial Council shall be laid down in the Judicial Code."

Article 175

"The Supreme Judicial Council shall:

(1) draw up and approve the lists of candidates for judges' posts, including candidates subject to promotion;

(2) propose to the President of the Republic the candidates for judges' posts subject to appointment, including those subject to appointment by way of promotion;

(3) propose to the President of the Republic the candidates for chairpersons of courts and the candidates for chairpersons of chambers of the Court of Cassation, subject to appointment;

(4) propose to the National Assembly the candidates for judges' posts and for Chairperson of the Court of Cassation;

(5) decide on the issue of secondment of judges to another court;

(6) decide on giving consent for initiating criminal prosecution against a judge or depriving him or her of liberty with respect to the exercise of his or her powers;

(7) decide on the issue of determining a judge's disciplinary liability;

(8) decide on the issue of terminating the powers of judges;

(9) approve its estimate of expenditures as well as those of the courts, and submit them to the government, in order to include them in the Draft State Budget as prescribed by law;

(10) constitute its staff in accordance with law.

2. Where it examines the issue of determining a judge's disciplinary liability, as well as in other cases prescribed by the Judicial Code, the Supreme Judicial Council shall act as a court."

B. Constitutional Act on the Judicial Code ("the Judicial Code") (2018; as in force at the material time)

21. Sections 4(1), 5(1) and 83(1) of the Judicial Code lay down similar incompatibility requirements for judges and non-judicial members of the Supreme Judicial Council. In particular, they may not engage in political activities, hold any position in State or local self-governing bodies (and in the case of a judge, any position in State or local self-governing bodies not related to his or her status), any position in commercial organisations, or engage in entrepreneurial activities or perform other paid work, except for scientific, educational and creative work.

22. Section 56, headed "Irremovability of a judge", provides that a judge holds office until the age of sixty-five.

23. Section 66(2) provides that the rules of conduct for judges are mandatory for, *inter alios*, the members of the SJC elected by the National Assembly.

24. Section 71(1) provides that a judge must withdraw if he or she is aware of such circumstances which, from the standpoint of an objective observer, could cast reasonable doubt on his or her impartiality in the case. Section 71(2) lays down the grounds for withdrawal which, *inter alia*, include situations where (1) the judge is biased against the party to the case, his or her representative, attorney, or other participants in the proceedings, or (5) the judge knows or ought reasonably to have known that he or she or his or her next of kin has an economic interest related to the nature of the dispute or with one of the parties. Section 71(5) provides that a judge is not obliged to submit a self-recusal application or accept a recusal request if no other tribunal could be constituted to deliver a judicial act.

25. Sections 79 and 80 contain provisions similar to Articles 173 and 174 of the Constitution.

26. Section 80(6) specifies that professional work experience in respect of non-judicial members refers to professional activity in the field of law. Section 80(7) provides that a candidate for a non-judicial member's post is entitled to submit material to show that he or she is a distinguished lawyer.

27. Section 81(2) provides that the National Assembly elects non-judicial members of the SJC pursuant to Article 174 § 3 of the Constitution and in the manner prescribed by the Constitutional Act on "Rules of Procedure of the National Assembly".

28. Section 83(2) provides that the salary of a member of the SJC is prescribed by law and cannot be less than that of a judge of a Court of Cassation. Section 83(5) provides that sections 51 (immunity of the judge), 53 (informing the SJC about investigatory actions with the participation of a judge who is not the subject of criminal prosecution), 54 (exemption of a judge from drafting and military training), 55 (maintenance of guarantees of judicial immunity during martial law or emergency), 57 (judge's salary and social guarantees), 58 (judge's leave), 59 (right of the judge to participate in training), 60 (judge's personal file), 62 (service certificate of the judge), 63 (judge's security and personal protection means), 64 (expenses related to judge's business trips and out-of-court hearings) and the rules of Chapter 21 (Examination by the SJC of the issue of allowing a judge to face criminal prosecution in connection with the discharge of his/her duties or to be deprived of his/her liberty) of the Code shall apply ("*mutatis mutandis*") to members of the SJC elected by the National Assembly to the extent applicable and unless otherwise specified in the Code.

29. Section 84(9) provides that the chair of the SJC is elected for a period of two years and six months, but no longer than until the end of his or her term of office at the SJC, without a right of re-election. Section 84(11) provides that the chair of the SJC, *inter alia*, convenes and leads the sessions of the SJC, signs the decisions thereof, represents the SJC in relations with other bodies, and discharges other tasks related to the proper functioning of the SJC.

30. Section 85(1) provides that the SJC must determine the disciplinary liability of one of its members for breaching rules of conduct laid down in the Code in respect of judges except for the rule prescribed by section 69(1)(11) of the Code (the judge shall observe restrictions prescribed by the Code on accepting a gift). Section 85(2) provides that the issue of the disciplinary liability of a member of the SJC must be examined upon the application of at least three members of the SJC. In cases prescribed by the Code, the CPC brings disciplinary proceedings against the member of the SJC by applying to the SJC to have its member's disciplinary liability determined.

31. Section 86(1) lists cases where the powers of an SJC member cease, in particular (1) upon expiry of his or her term of office; (2) in the case of the loss of Armenian citizenship or acquisition of citizenship of another country; (3) upon entry into force of a guilty verdict or the termination of criminal prosecution against him or her owing to grounds for non-acquittal; or (4) taking of effect of a court judgment declaring him/her lacking in legal capacity or having limited legal capacity, a missing person or dead, or (5) in the event of his/her resignation or (6) death; (7) for judicial members, also the

termination or cessation of their term of office. Section 86(3) provides that the powers of an SJC member are terminated if he or she (1) breaches incompatibility requirements; (2) engages in political activities; (3) is unable to perform his or her official duties owing to temporary incapacity lasting over four subsequent months, or over six months in a calendar year, except for the reasons of maternity/paternity leave, or child adoption leave, or where after being elected he or she acquires a physical impediment, or an illness, hindering his or her appointment to the position; (4) has committed a fundamental disciplinary violation; (5) has not, without a good reason, participated in the sessions of the SJC at least twice within a year; (6) has refused to vote or abstained from voting at least once, except where, as provided for by the Code, his or her participation in the vote is excluded; (7) fails, at least once, to notify any circumstances excluding his or her participation in the session of the SJC.

32. Section 87(2) provides that a failure by the chair of the SJC to discharge his or her duties will constitute grounds on which to terminate his or her powers by means of a decision passed by a two-thirds majority of votes of SJC members.

33. Section 88(1) provides that a member of the SJC has only one vote, unless otherwise provided by the Code. Section 88(2) provides that a member of the SJC may not participate in the discussion of the issue and decision-making, where there is a ground for self-recusal of a judge with regard to that issue. Section 88(3) provides that a member of the SJC must submit an application for self-recusal to the SJC immediately upon becoming aware of the grounds for self-recusal, specifying the circumstances serving as the grounds for self-recusal. Section 88(4) provides that a member of the SJC and a party to the proceedings may raise the issue of the recusal of a member of the SJC. Section 88(5) and (6) provides that the person presiding over the session of the SJC must initiate a discussion of the issue of self-recusal or recusal, which will be discussed with the participation of the member of the SJC having recused himself or herself or whose recusal is being sought. As a result of the discussion of the issue, the SJC will render a decision. The member of the SJC having recused himself or herself or whose recusal is being sought, as well as the member having sought the recusal, cannot participate in the vote on self-recusal or recusal. Section 88(7) provides that where the self-recusal or recusal is accepted, the member in question cannot participate in the examination of, or any decision-making on, the issue giving rise to a ground for recusal.

34. Section 90(2) provides that, when deciding on the matter of, *inter alia*, determining a judge's disciplinary liability or terminating his or her term of office, the SJC acts as a court. Section 90(3) provides that the chair convenes the sessions of the SJC of his or her own motion, upon a request of at least three members of the SJC or the president of a court. Section 90(6) provides that, when acting as a court, the sessions of the SJC are public unless the SJC,

upon an application of its member or a participant in the proceedings, takes a well-reasoned decision to hold a closed session, in the interests of the right to respect for private life of a participant in the proceedings or of justice, or for the protection of State security, public order or morals.

35. Section 92(3) provides that, when acting as a court, a session of the SJC shall have a quorum if more than half of the total number of its members are present.

36. Section 93(1) provides that the members of the SJC participate in its sessions. Section 93(2) provides that the chair of the SJC or his or her substitute leads the sessions of the SJC. Section 93(3) provides that the member leading the session opens it and puts the approval of the agenda to a vote, then announces what question will be discussed and who will report on the issue, if necessary submitting to a discussion the sequence of the discussion of items on the agenda. Section 93(4) and (5) provides that the session of the SJC starts with the report by the chair or another member of the SJC, upon the chair's assignment. The members of the SJC have a right to make a speech in respect of each issue discussed at the session, ask questions, or make proposals or objections.

37. Section 94(6) provides that the decisions of the SJC concerning the issue of, *inter alia*, determining a judge's disciplinary liability or terminating his or her term of office, will be taken in a deliberation room and with an open ballot by a majority of the votes of the members present at the session, provided that at least half of the members of the SJC vote for the decision. If the SJC does not adopt a decision due to the lack of a sufficient number of votes, then the decision to reject the relevant application is considered adopted, and the decision is drawn up and signed by the members of the SJC who voted against the application. Section 94(7) provides that, except for the case provided for in part 6 of this section, the decisions taken by the SJC as a court are signed by all members present at the session. A member of the SJC may issue a separate opinion on the reasoning or final part of a decision of the SJC as a court. If a member of the SJC has a separate opinion, it is noted with his or her signature in the decision of the SJC, and the separate opinion is attached to the decision with his or her signature.

38. Section 141(2) provides that disciplinary proceedings are to be conducted on the basis of the principles of lawfulness, non-interference with judicial activities, respect for the independence and reputation of judges and courts, proportionality of the disciplinary penalty imposed on a judge, and prohibition of arbitrariness and discrimination.

39. Section 142(1) provides that a judge's disciplinary liability may be engaged for (1) a violation of provisions of substantive or procedural law while administering justice or discharging other duties as a court, committed with intent or gross negligence, and (2) a gross violation by the judge of the rules of judicial conduct prescribed by this Code, committed with intent or gross negligence, except for the rule prescribed by section 69(1)(11) of the

Code (the judge shall observe restrictions prescribed by the Code on accepting a gift). Section 142(6) defines a fundamental disciplinary violation as, *inter alia*, (1) the violation specified under section 142(1)(1) which has resulted in a fundamental breach of human rights and (or) freedoms enshrined in the Constitution or international treaties ratified by Armenia or has dishonoured the judiciary.

40. Section 143(1) and (2) provides that the duty to prove the existence of grounds for disciplinary liability is vested in the body instituting disciplinary proceedings against a judge. The judge concerned is presumed innocent until his or her guilt is determined by the decision of the SJC to establish his or her disciplinary liability in the manner prescribed by the Code. Any doubt as to the commission of a disciplinary offence should benefit the judge.

41. Section 145(1) specifies the bodies authorised to bring disciplinary proceedings against judges, in particular: (1) the Commission for Ethics and Disciplinary Matters; (2) the competent body [Ministry of Justice]; and (3) the CPC.

42. Section 146(1) provides that reasons for bringing disciplinary proceedings against a judge include, *inter alia*, (4) detection by the competent body of an act containing *prima facie* elements of a disciplinary violation following examination of a judgment rendered by the European Court of Human Rights.

43. Section 147(5) provides that, having examined the matter, the body that brought disciplinary proceedings either takes a decision to terminate the proceedings or submits an application to the SJC to determine the judge's disciplinary liability.

44. Under section 149(1) the SJC, having determined a judge's disciplinary liability, may impose one of the following disciplinary measures: (1) a warning; (2) a reprimand; (3) a strict reprimand; (3.1) ban on inclusion in the list of promotions for a period of one year; (3.2) dismissal from the post of chair of the court or chair of a chamber of the Court of Cassation; or (4) termination of his or her term of office on account of a fundamental disciplinary violation.

45. Section 151(1) provides that the examination of the issue of a judge's disciplinary liability starts with the reporting by the body which had instituted disciplinary proceedings before the SJC. Section 151(3) provides that after reporting by the above-mentioned body, the SJC hears the judge against whom the disciplinary proceedings have been instituted or his/her representative. The members of the SJC and the representative of the body having instituted the proceedings may address questions to the judge to which the latter may answer or refuse to answer. After hearing the judge or his/her representative, the SJC proceeds with the examination of materials of the case. Section 151(4) provides that, having determined the scope of the facts relevant to the case, the SJC may: (1) upon the motion of the judge, the body having instituted disciplinary proceedings or upon its own initiative, require

from the judge, the body having instituted disciplinary proceedings, State and local self-government bodies (their officials), as well as natural persons and legal entities, the submission of evidence relevant for the examination of the issue and falling within the scope of influence of those persons, setting a time-limit for submitting it to the SJC; (2) upon the motion of the judge, the body having instituted disciplinary proceedings or upon its own initiative, summon witnesses; (3) upon the motion of the judge, the body that had instituted disciplinary proceedings or upon its own initiative, order an expert report in order to clarify the issues relevant for the examination of the case before it. Section 151(9) provides that, having examined the materials of the case, the SJC hears the closing arguments of the participants in the session, whereafter the examination of the case is declared closed. At the end of the proceedings, the chair of the session announces the date, place and time of the delivery of the decision. Section 151(10) provides that, at the end of the proceedings, the SJC retires to take a decision.

46. Section 153(1) provides that in disciplinary proceedings, a judge has the right to: (1) acquaint himself/herself with the case material, make extracts and receive copies thereof; (2) put questions to the speakers, file objections, give explanations and file applications; (3) submit evidence and participate in the examination thereof; (4) participate in the hearing acting in person, or through a representative; and (5) receive reimbursement for legal costs if his or her disciplinary liability has not been established. Section 153 (2) provides that when examining the matter of imposing disciplinary measures on a judge by the SJC, the judge must be afforded the safeguards enshrined in Articles 61 and 63 of the Constitution.

47. Section 155(1) and (4) lays down a set of requirements that a decision of the SJC when acting as a court should satisfy: it should have a preamble, facts and reasoning and an operative part. Section 155(3) provides, in particular, that the facts and reasoning should include: the essential circumstances pertinent to the case; the position of the body that initiated the proceedings; the explanations and position of the judge concerned; the explanation and testimony of individuals summoned by the SJC; the SJC's conclusions about the disciplinary violation and attributes of the judge's personality. The decision should also set out the evidence relied upon, arguments regarding the reliability of certain evidence, the legal norms guiding the SJC's decision, and its reasons regarding the positions of the parties involved. Section 155(7) provides that a decision establishing a judge's disciplinary liability takes effect from the moment of its pronouncement.

48. Section 156.1(1) provides that the SJC examines, *inter alia*, appeals against a decision to establish a judge's disciplinary liability if there is evidence or a circumstance which the appealing party did not submit beforehand for objective reasons and which could have reasonably affected the outcome of the proceedings.

49. Section 157 provides for a possibility of reopening the proceedings before the SJC in the event of new or newly discovered circumstances.

50. Section 157(3)(2) provides that new circumstances are grounds for reconsidering a decision regarding the disciplinary liability of a judge by the SJC, if a judicial act of an international court with the participation of the Republic of Armenia, which has entered into force, has established a violation of the judge's right ensured by an international treaty. Section 157(4) provides that an application to reopen the proceedings based on, *inter alia*, new circumstances, may be submitted within three months from the date when the grounds specified in section 157(3)(2) become known, but no later than twenty years after the decision of the SJC entered into force.

51. Sections 159(2) and 160(1) contain provisions similar to Article 164 §§ 8 and 9 of the Constitution.

C. Act no. HO-335-N to amend the Constitutional Act on the Judicial Code

52. In November 2023 the Judicial Code was amended, introducing a possibility of appeal within the SJC in disciplinary proceedings against judges. In particular, according to the amendments, the SJC was to have a "first-instance" panel, composed of its four members, determining the disciplinary liability of judges and a second-instance panel examining appeals against the decisions rendered by the former. According to the relevant transitional provisions of Act no. HO-335-N, the amendments would become effective upon enactment by the SJC of a secondary legal act establishing the formation of the "first-instance" panel of the SJC, but apparently that act has not been forthcoming to date. The transitional provisions further provided that the regulations in effect prior to the entry into force of the amendments in question would apply to disciplinary proceedings initiated before the entry into force of the amendments, including completed disciplinary proceedings and any decisions made as a result of those proceedings.

D. Constitutional Act on Rules of Procedure of the National Assembly ("the Rules of Procedure", 2017; as in force at the material time)

53. Section 135 provides that issues on election or appointment to a post are debated at a sitting of the National Assembly in accordance with the following general procedure:

> "...
>
> (1) up to ten-minute speeches shall be delivered by persons who have the power to present the candidates – in accordance with the alphabetical sequence of the names of candidates;
>
> (2) up to twenty-minute speeches shall be delivered by candidates;

(3) the person presenting the candidate and the candidate shall take the floor in sequence;

(4) after the speech, the person presenting the candidate and the candidate may be asked questions;

(5) exchange of opinions;

(6) with concluding speeches up to ten minutes, the candidates shall take the floor in the same sequence.

3. Unless otherwise envisaged by the Rules of Procedure, the issues of election or appointment shall be subject to mandatory debate at the forthcoming regular sittings of the National Assembly or may be debated at extraordinary sessions or sittings of the National Assembly in the following cases:

(1) after the expiry of the deadline for the nomination of candidates, if two or more bodies are eligible to nominate a candidate for an appropriate office and at least one candidate has been nominated;

(2) after the nomination of a candidate, if one body is eligible to nominate a candidate for an appropriate position.

4. The person elected by the National Assembly in the cases established by the Constitution or a law, shall take up office by swearing in at a sitting of the National Assembly."

54. Section 144 provides that (2) the right to nominate one candidate for membership of the SJC belongs to political groups. The candidate is nominated by a decision of a group. The first and the last names of the candidate for SJC membership and a representative of the group entitled to nominate him/her must be indicated in the decision. Documents certifying compliance with the requirements established by the Constitution and the law, together with the questionnaire[1] filled in by the candidate regarding issues of good character, must be attached to the decision. In case of non-compliance with the requirements of the Constitution or the law, the Speaker of the National Assembly, within two working days, will return the decision and the attached documents to the group, indicating the reasons. In the event that the requirements of the Constitution and laws are met, the Speaker of the National Assembly, within one working day, will submit the completed questionnaire regarding good character issues to the CPC in order to receive an advisory conclusion on it within ten days[2]. (6) The election of a member of the SJC is debated at a sitting of the National Assembly in accordance with the procedure established by section 135 of the Rules of Procedure, in a time-frame ensuring receipt of the consultative conclusion from the CPC, as prescribed by subsection 2 of this section regarding candidates for membership of the SJC. (7) A member of the SJC is elected by secret ballot by at least three-fifths of the total number of MPs. (8) If two or more candidates participate in the ballot and none of them is elected, then a

[1] This requirement was introduced on 25 March 2020.
[2] Idem.

second round of elections is held in which the two candidates with the largest number of votes in the first round may participate. (9) If a candidate is not elected, then within ten days following the vote a new candidate for membership of the SJC may be nominated by political groups for the vacant office.

55. Section 53 provides that sittings of the National Assembly are public.

E. Public Service Act (2018)

56. Section 31(11.2) of the Public Service Act provides that public officials and public servants are prohibited from influencing the fiduciary manager or interfering with the fiduciary management in any manner.

F. Decision of the SJC on establishing its Rules of Procedure (BDKH-68-N-15; 2020)

57. Paragraph 93 of the above document provides that when examining the issue of a judge's disciplinary liability the SJC is guided by the Judicial Code or the Code of Administrative Procedure in the event that a given procedural issue is not governed by the Judicial Code.

G. Decision of the Constitutional Court of 15 November 2019 on the conformity of sections 142(6)(2) and 155(7) of the Constitutional Act on the Judicial Code with the Constitution

58. In this decision the Constitutional Court held that, by virtue of Article 175 of the Constitution, the SJC had exclusive competence to decide on the issue of disciplining a judge. The Constitutional Court held that, in the context of the existing constitutional and legal regulations, there was no legal opportunity to appeal against decisions of the SJC to establish a judge's disciplinary liability before any of the courts operating in the Republic of Armenia, as it would be incompatible with the status of the SJC as an independent constitutional body. Besides, a review of the decisions, thereby resolving the issue of a judge's disciplinary liability, fell outside the framework of the constitutional functions of courts of the Republic of Armenia. The Constitutional Court thus found that when deciding the issue of a judge's disciplinary liability the SJC acted as a court, and in accordance with the Constitution and other laws, the procedural safeguards such as examination of the case within a reasonable time, equality before the law and courts, publicity of the judicial proceedings and the binding nature of judicial acts were generally aimed at ensuring the exercise of the rights provided for under Articles 61 and 63 of the Constitution. Thus, the Constitutional Court concluded that the lack of opportunity to seek judicial review of the decisions of the SJC on disciplining a judge followed from the existing constitutional

legal regulations and did not violate the person's right to judicial defence and fair trial.

H. Decision of the Constitutional Court of 17 January 2024 on the conformity with the Constitution of section 145(1)(2) of the Constitutional Act on the Judicial Code

59. In the above decision the Constitutional Court, among other things, stated that, by virtue of Article 175 § 1(7) of the Constitution, the SJC is the only body which decides on the issue of a judge's disciplinary liability. In this manner, the Constitution insulated the judiciary from interference by other public authorities and officials, entrusting the duty to discipline judges only to the SJC, whose constitutional mission is to ensure the independence of the judiciary.

II. INTERNATIONAL AND COUNCIL OF EUROPE MATERIALS

60. The relevant international law and practice is cited in *Baka v. Hungary* ([GC], no. 20261/12, §§ 72-87, 23 June 2016); *Oleksandr Volkov v. Ukraine* (no. 21722/11, §§ 78-80, ECHR 2013); and *Rustavi 2 Broadcasting Company Ltd and Others* (cited above, § 224).

A. Bangalore Principles of Judicial Conduct

61. The Bangalore Draft Code of Judicial Conduct 2001 (hereinafter "the Bangalore Principles") was adopted by the Judicial Group on Strengthening Judicial Integrity, and was revised at the Round Table Meeting of Chief Justices held in The Hague in November 2002. In 2006 the United Nations Economic and Social Council (ECOSOC) adopted Resolution 2006/23 "Strengthening Basic Principles of Judicial Conduct", by which it endorsed the Bangalore principles. The relevant principles contained therein read as follows:

> **"VALUE 2: IMPARTIALITY**
>
> Principle: Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.
>
> Application:
>
> 2.5 A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially ... [p]rovided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice. ..."

62. In March 2007 the Judicial Group on Strengthening Judicial Integrity adopted the Commentary on the Bangalore Principles. Its relevant parts read as follows:

> "90. Depending on the circumstances, a reasonable apprehension of bias might be thought to arise (a) if there is personal friendship or animosity between the judge and any member of the public involved in the case; ..."

B. Council of Europe materials

1. The European Charter on the Statute of Judges

63. The relevant extracts from the European Charter on the Statute for Judges of 8 to 10 July 1998[3] read as follows:

> "1.3. In respect of every decision affecting the selection, recruitment, appointment, career progress or termination of office of a judge, the statute envisages the intervention of an authority independent of the executive and legislative powers within which at least one half of those who sit are judges elected by their peers following methods guaranteeing the widest representation of the judiciary.
>
> ...
>
> 5.1. The dereliction by a judge of one of the duties expressly defined by the statute, may only give rise to a sanction upon the decision, following the proposal, the recommendation, or with the agreement of a tribunal or authority composed at least as to one half of elected judges, within the framework of proceedings of a character involving the full hearing of the parties, in which the judge proceeded against must be entitled to representation. The scale of sanctions which may be imposed is set out in the statute, and their imposition is subject to the principle of proportionality. The decision of an executive authority, of a tribunal, or of an authority pronouncing a sanction, as envisaged herein, is open to an appeal to a higher judicial authority".

2. Committee of Ministers

64. The relevant parts of Recommendation CM/Rec(2010)12 of the Committee of Ministers to member States on judges: independence, efficiency and responsibilities (adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies) read as follows:

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[3] Adopted by participants from European countries and two international associations for judges at a meeting held in Strasbourg on 8 to 10 July 1998 (organised under the auspices of the Council of Europe). The Charter was endorsed by the meeting of the Presidents of the Supreme Courts of Central and Eastern European countries in Kyiv on 12 to 14 October 1998, and again by judges and representatives from ministries of justice of twenty-five European countries at a meeting held in Lisbon on 8 to 10 April 1999.

"*Chapter IV – Councils for the judiciary*

...

27. Not less than half the members of such councils should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary.

...

Chapter VI – Status of the judge

Selection and career

...

46. The authority taking decisions on the selection and career of judges should be independent of the executive and legislative powers. With a view to guaranteeing its independence, at least half of the members of the authority should be judges chosen by their peers.

47. However, where the constitutional or other legal provisions prescribe that the head of state, the government or the legislative power take decisions concerning the selection and career of judges, an independent and competent authority drawn in substantial part from the judiciary (without prejudice to the rules applicable to councils for the judiciary contained in Chapter IV) should be authorised to make recommendations or express opinions which the relevant appointing authority follows in practice.

48. The membership of the independent authorities referred to in paragraphs 46 and 47 should ensure the widest possible representation. Their procedures should be transparent with reasons for decisions being made available to applicants on request. ...

Chapter VII – Duties and responsibilities

...

Liability and disciplinary proceedings

...

69. Disciplinary proceedings may follow where judges fail to carry out their duties in an efficient and proper manner. Such proceedings should be conducted by an independent authority or a court with all the guarantees of a fair trial and provide the judge with the right to challenge the decision and sanction."

3. *European Commission for Democracy through Law (Venice Commission)*

65. The compilation of Venice Commission opinions and reports concerning courts and judges (CDL-PI (2023)020), under "Council of Justice", reads as follows (footnotes omitted):

"**IV. Councils of Justice**

'...While respecting this variety of legal systems, the Venice Commission recommends that states which have not yet done so consider the establishment of an independent judicial council or similar body. In all cases the council should have a pluralistic composition with a substantial part, if not the majority, of members being judges. With the exception of ex-officio members these judges should be elected or appointed by their peers.'

CDL-AD(2010)004, Report on the Independence of the Judicial System Part I: The Independence of Judges, §32

...

'... Involving only judges carries the risk of raising a perception of self-protection, self-interest and cronyism. As concerns the composition of the judicial council, both politicisation and corporatism must be avoided. An appropriate balance should be found between judges and non-judicial members. The involvement of other branches of government must not pose threats of undue pressure on the members of the Council and the whole judiciary.'

CDL-AD(2016)007, Rule of Law Checklist, §82

...

'... [P]oliticisation can be avoided if Parliament is solely required to confirm appointments made by the judges.'

CDL-AD(2002)021, Supplementary Opinion on the Revision of the Constitution of Romania, §22

...

'...[A] substantial element or a majority of the members of the Judicial Council should be elected by the Judiciary itself. In order to provide for democratic legitimacy of the Judicial Council, other members should be elected by Parliament among persons with appropriate legal qualification taking into account possible conflicts of interest.'

CDL-AD(2007)028, Report on Judicial Appointments by the Venice Commission, §29

...

4.2.2 Judicial members of the Council and lay members: search of appropriate balance

'... The primary role of judicial councils is to be independent guarantors of judicial independence. However, this does not mean that such councils are bodies of judicial 'self-government'. In order to avoid corporatism and politicisation, there is a need to monitor the judiciary through non-judicial members of the judicial council. Only a balanced method of appointment of the SCM members can guarantee the independence of the judiciary. Corporatism should be counterbalanced by membership of other legal professions, the 'users' of the judicial system, e.g. attorneys, prosecutors, notaries, academics, civil society.'

CDL-AD(2018)003, Opinion on the Law on amending and supplementing the Constitution (Judiciary) of the Republic of Moldova, §56

...

'Under current international standards, there is no uniform model for the composition of judicial and/or prosecutorial councils. ...

Several international instruments, however, provide that when a judicial council is established, a substantial part of its members should be recruited from among judges ...'

CDL-AD(2014)008, Opinion on the draft Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, §§27, 28

...

'The [High Judicial Council] would thus have 11 judges among its 15 members. This proportion seems even too high and could lead to inefficient disciplinary procedures. While calling for an appeal to a court against disciplinary decisions of judicial councils is required, the Venice Commission insists that the non-judicial component of a judicial council is crucial for the efficient exercise of the disciplinary powers of the council.'

CDL-AD(2013)034, Opinion on proposals amending the draft law on the amendments to the constitution to strengthen the independence of judges of Ukraine, §41

...

4.2.3 Lay members: importance of having the civil society represented

'... The management of the administrative organisation of the judiciary should not necessarily be entirely in the hands of judges. In fact, as a general rule, the composition of a Council foresees the presence of members who are not part of the judiciary, who represent other State powers or the academic or professional sectors of society. This representation is justified since a Council's objectives relate not only to the interests of the members of the judiciary, but especially to general interests. The control of quality and impartiality of justice is a role that reaches beyond the interests of a particular judge. The Council's performance of this control will cause citizens' confidence in the administration of justice to be raised. Furthermore, in a system guided by democratic principles, it seems reasonable that the Council of Justice should be linked to the representation of the will of the people, as expressed by Parliament.'

CDL-AD(2014)008, Opinion on the draft Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, §§32 and 35

...

'... It is common practice that 'judicial councils include also members who are not part of the judiciary and represent other branches of power or the academic or professional sector' and the Venice Commission even recommends that a substantial part of the members be non-judicial ...'

CDL-AD(2014)008, Opinion on the draft Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, §§30, 31

...

'... It is advisable for judicial councils to include members who are not themselves representatives of the judicial branch. But, such members should preferably be appointed by the legislative branch instead of by the executive ...'

CDL-AD(2010)042, Interim Opinion on the Draft Law on the High Council for judges and Prosecutors (of 27 September 2010) of Turkey, §34

'In the Venice Commission's view, this composition of an equal number of judges and non-judicial members would ensure inclusiveness of the society and would avoid both politicisation and autocratic government...'

CDL-AD(2011)010, Opinion on the Draft Amendments to the Constitution of Montenegro, as well as on the Draft Amendments to the Law on Courts, the Law on the State Prosecutor's Office and the Law on the Judicial Council of Montenegro, §§20-22

'With the proposed new composition of the Judicial Council, a parity between judicial and non-judicial members is sought to be achieved. The Venice Commission welcomes

this new composition, which would avoid both the risk of politicisation and the risk of self-perpetuating government of judges ...'

CDL-AD(2012)024, Opinion on two Sets of draft Amendments to the Constitutional Provisions relating to the Judiciary of Montenegro, §§20, 21

...

4.3 Procedural aspects of appointment/elections of the members of the Council of Justice

...

'As to the lay members, the process of their *nomination* is as important as the method of their election. Their detachment from politics may be ensured through a transparent and open nomination process, at the initiative of autonomous nominating bodies (universities, NGOs, bar associations, etc.) and completed by the Judicial Appointments Council, which is composed of the members of the judiciary. Such nomination process should ensure that the Parliament has to make a selection amongst the most qualified candidates, and not political appointees.'

CDL-AD(2016)009, Final Opinion on the revised draft constitutional amendments on the Judiciary (15 January 2016) of Albania, §16

'The provision in draft Article 127 that the candidates for non-judicial members should be selected on the basis of a public call for candidatures is welcome, as it enhances the transparency of the procedure, hence the public trust in the High Judicial Council.'

CDL-AD(2013)028, Opinion on the Draft Amendments to three Constitutional Provisions relating to the Constitutional Court, the Supreme State Prosecutor and the Judicial Council of Montenegro, §13

...

'... [W]ell-established professional association of lawyers, law schools, etc. should be formally involved in the process of nomination of non-judicial members of the SJC; ...'

CDL-AD(2017)018, Opinion on the Judicial System Act of Bulgaria, §113

..."

66. The relevant part of the Opinion of the Venice Commission on the draft Judicial Code, adopted by the Venice Commission at its 112th plenary session (Venice, 6-7 October 2017, CDL-AD(2017)019), reads as follows:

"...

10. Chapters 14 and 15 (the Supreme Judicial Council: composition and powers)

a. Composition

88. The SJC has ten members (Article 77) and is composed in equal parts of judges elected by their peers and of non-judicial members ('lay members') elected by Parliament from amongst the 'prominent lawyers' of the country, by a qualified majority of votes. The composition of the SJC is therefore quite balanced.

89. Article 79 § 7 stipulates that the five non-judicial members are elected by the National Assembly with the qualified majority of three fifths; they are proposed by the Bar, by the higher education institutions and 'professional NGOs'. Detailed provisions on the election on the non-judicial members shall be established by the constitutional

law 'Rules of Procedure of the National Assembly' (§ 8). It is not excluded that the procedure of nomination of candidates may be regulated in the Draft Code. Anyway, the process of nomination should ensure that diverse professional categories of non-judicial members be represented. The notion of 'professional' NGOs should be clarified: if interpreted too narrowly it may excessively reduce the number of nominating organisations and the pool of good candidates ..."

67. The Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the amendments to the Judicial Code and some other laws, adopted by the Venice commission at its 120th plenary session (Venice, 11-12 October 2019, CDL-AD(2019)024), reads as follows:

"....

D. The Supreme Judicial Council

31. As proclaimed by Article 175 (2) of the Constitution, in the disciplinary field the SJC 'acts as a court'. The JC develops this constitutional provision further: it ensures the adversarial nature of the disciplinary procedures and guarantees procedural rights to the judge concerned (see Chapter 19, in particular Article 151 of the JC). Furthermore, members of the SJC enjoy some basic guarantees of their independence (see the rules on their appointment, tenure, etc. in Chapter 14). Thus, the role of the SJC in the disciplinary matters is generally compatible with Recommendation CM/Rec(2010)12 (p. 9) which indicates that disciplinary proceedings 'should be conducted by an independent authority or a court with all the guarantees of a fair trial ...', and with CCJE Opinion no. 21, which recommends that 'disciplinary proceedings should always be carried out essentially by judicial bodies (such as a disciplinary commission or court, or a branch of the high judicial council)'. One issue remains, however, unresolved – it is the absence of an appeal to a court of law against decisions of the SJC in disciplinary matters.

a. Appeals against the decisions of the Supreme Judicial Council in disciplinary matters

32. The proposed amendments contain a new provision on 'appealing' decisions of the SJC (see new Article 156-1). However, this mechanism can hardly be characterised as a proper 'appeal'. It rather resembles a re-opening by the same body (the SJC) of a previously decided case on newly discovered circumstances. The very notion of 'appeal' implies the control by another body of the legality and merits of the decision based on the same (and not newly discovered) facts and evidence. So, the proposed mechanism cannot replace an appeal in the proper sense of this word.

33. This issue has been already discussed in the October 2017 Opinion. [The authorities argue that the Constitution does not allow such an appeal, which would at any rate be unnecessary because in disciplinary matters the SJC is acting as a court, both from procedural and institutional points of view, and the judge concerned may enjoy all the guarantees of 'fair trial' before the SJC itself.

34. In the opinion of the Venice Commission, there are several reasons to seriously consider introducing an appeal against the decisions of the SJC. First, Article 6 of the European Convention on Human Rights (ECHR) guarantees, implicitly, the right of access to court. Assuming that a disciplinary sanction against a judge affects his or her civil rights and obligations, this judge must be given such access. The question is whether the Armenian SJC qualifies as a 'court'. In the case of

Ramos Nunes de Carvalho e Sá v. Portugal the Grand Chamber of the European Court of Human Rights (ECtHR) concluded that since the Portuguese High Council of the Judiciary was an administrative body, Article 6 would require 'subsequent control by a judicial body that has full jurisdiction' (§ 132), i.e. full appeal. In other words, if the ECtHR finds that the SJC does not satisfy the requirements of a judicial body (contrary to what is proclaimed in Article 175 (2) of the Constitution), the necessity to have an appeal to a court of law would stem from the requirements of the European Convention.

35. Secondly, even if no question under Article 6 arises, the need to have an appeal to a court of law in disciplinary matters stems from a number of European documents, such as, for example, Opinion no. 10 by the CCJE. P. 39 of Opinion no. 10 says that 'some decisions' of the JC such as 'the decisions in relation to ... discipline and dismissal of judges' should be 'subject to the possibility of a judicial review'. The standards of the Committee of Ministers are more flexible: Recommendation CM(2010)12, in p. 69, says that disciplinary proceedings 'should be conducted by an independent authority or a court with all the guarantees of a fair trial and provide the judge with the right to challenge the decision and sanction.' So, the CM Recommendation will be complied with if there is a possibility to challenge the sanction – but it is not specified whether the body hearing an appeal needs to be a court of law. In any event, the CM requires a second degree of jurisdiction in those matters, which is absent in the Armenian system.

36. Finally, the Venice Commission itself on several occasions recommended having an appeal against the decisions of the judicial councils in disciplinary matters, although acknowledging that this appeal may be of a limited scope. Thus, in an opinion on North Macedonia the Venice Commission recommended that 'the Appeal Council should be able to annul decisions of the JC only in cases of gross errors in the application of procedural and substantive law', and in an opinion on the Bosnia and Herzegovina it noted that the appeal to a court of law against the decisions of the HJPC was required 'at least for cases where a serious penalty was imposed'. In the October 2017 opinion, the Venice Commission stressed that 'in exercising its appellate review the appellate body should act with deference to the [Judicial Council] as regards the establishment of the factual circumstances and interpretation of the relevant rules of conduct'.

37. The possibility of appeals against the decisions of the SJC was omitted from the Constitution, and the Armenian authorities refrained from introducing it at the legislative level. The Venice Commission takes the arguments of the Armenian authorities about the meaning of the constitutional text very seriously, even though, in its opinion, the Constitution may be construed differently. Nevertheless, if a constitutional reform is envisaged, it invites the authorities to consider introducing a possibility of an appeal against decisions of the SJC in disciplinary matters, even if of a limited scope. ..."

68. The Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft amendments to the Judicial Code, adopted by the Venice commission at its 133rd plenary session (Venice, 16-17 December 2022, CDL-AD(2022)044), reads as follows:

"...

19. Under the Constitution and the law, the SJC in disciplinary matters acts as a court. It ultimately belongs to the ECtHR do [*sic*] decide whether the Armenian SJC qualifies as a 'court' within the meaning of Article 6 (see para. 34 of the 2019 Opinion), but for

the Venice Commission this question can be answered in the affirmative, since the SJC possesses all main characteristics of a judicial body, both institutional and procedural.

20. In sum, in the opinion of the Venice Commission, the absence of an appeal to a court of law against decisions of the SJC in disciplinary matters does not raise an issue from the ECHR perspective. However, even if the current system is not in conflict with Article 6 of the ECHR, it might still fall short of other Council of Europe standards ..."

4. Consultative Council of European Judges

69. Opinion no. 10(2007) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the "Council for the Judiciary at the service of society" adopted on 23 November 2007 reads, in so far as relevant:

"...

III. A. A Council for the Judiciary composed by a majority of judges

...

17. When the Council for the Judiciary is composed solely of judges, the CCJE is of the opinion that these should be judges elected by their peers.

18. When there is a mixed composition (judges and non-judges), the CCJE considers that, in order to prevent any manipulation or undue pressure, a substantial majority of the members should be judges elected by their peers.

19. In the CCJE's view, such a mixed composition would present the advantages both of avoiding the perception of self-interest, self-protection and cronyism and of reflecting the different viewpoints within society, thus providing the judiciary with an additional source of legitimacy. However, even when membership is mixed, the functioning of the Council for the Judiciary shall allow no concession at all to the interplay of parliamentary majorities and pressure from the executive, and be free from any subordination to political party consideration, so that it may safeguard the values and fundamental principles of justice."

...

IV. B. Decisions of the Council for the Judiciary

39. Some decisions of the Council for the Judiciary in relation to the management and administration of the justice system, as well as the decisions in relation to the appointment, mobility, promotion, discipline and dismissal of judges (if it has any of these powers) should contain an explanation of their grounds, have binding force, subject to the possibility of a judicial review. Indeed, the independence of the Council for the Judiciary does not mean that it is outside the law and exempt from judicial supervision."

70. The Magna Carta of Judges (Fundamental Principles) was adopted by the CCJE in November 2010. The relevant section reads as follows:

"Body in charge of guaranteeing independence

13. To ensure independence of judges, each State shall create a Council for the Judiciary or another specific body, itself independent from legislative and executive powers, endowed with broad competences for all questions concerning their status as well as the organisation, the functioning and the image of judicial institutions. The

Council shall be composed either of judges exclusively or of a substantial majority of judges elected by their peers. The Council for the Judiciary shall be accountable for its activities and decisions."

5. *Group of States against Corruption*

71. The report of the Group of States against Corruption ("GRECO") – Corruption prevention in respect of members of parliament, judges and prosecutors (Evaluation Report – Republic of Armenia, 78th Plenary Meeting 4-8 December 2017) is also of relevance.

In the chapter entitled "Corruption prevention in respect of judges" it was stated as follows:

"**Recommendation v.**

30. *GRECO recommended that the reform of judicial self-governance be continued, with a view to strengthening the independence of the judiciary, securing an adequate representation of judges of all levels in self-governing bodies and reducing the role of court chairs, in particular the chair of the Court of Cassation.*

31. The authorities report that the 2015 constitutional amendments have led to several changes in the justice sector. The Constitution (Article 173) now provides that the Supreme Judicial Council is an independent state body that is to guarantee the independence of courts and judges. It is composed of 10 members, including five judges of all levels, with at least 10 years' experience, elected by the General Assembly of Judges; as well as five members from among academic lawyers and other prominent lawyers, elected by the National Assembly by at least three fifths of votes of the total number of Deputies. The members of the Supreme Judicial Council are elected for a term of five years, without the right to be re-elected. The Judicial Council elects its chair among its members.

32. The Supreme Judicial Council is tasked to select and propose candidate judges for appointment and promotion; to decide on secondment of judges to another court; to give consent for initiating criminal proceedings against a judge, to decide on disciplinary sanctions and to terminate the powers of a judge; to prepare and submit budget proposals to the Government etc. Furthermore, the authorities specify that a new Judicial Code is being drafted by a working group to implement the new constitutional requirements. The draft Code indicates that the selfgoverning bodies include the Supreme Judicial Council and the General Assembly of Judges.

33. GRECO welcomes the constitutional amendments that have reformed judicial selfgovernance in Armenia by creating the Supreme Judicial Council. GRECO notes that half of the members of the Supreme Judicial Council are composed of judges of all levels – elected by their peers – by the General Assembly of Judges. Moreover, the role of court chairs has been reduced, as requested in the recommendation. In conclusion, it would appear that the establishment of the Supreme Judicial Council is an important reform that goes in the right direction.

34. GRECO concludes that recommendation v has been implemented satisfactorily.

...

46. As to part (ii) of the recommendation, GRECO notes that the revised Constitution provides that the Supreme Judicial Council is now competent for deciding on disciplinary liability in respect of judges (Article 175 1(7)). This is to be welcomed as a form of procedural safeguard, considering the composition of this body (see

recommendation v.). Moreover, the principle that a judge cannot be held liable for the opinions expressed or judicial acts rendered in the administration of justice (Article 164 of the Constitution) is another safeguard. GRECO appreciates also that the new Constitution indicates that the termination of powers of a judge is a penalty only for serious disciplinary violations (Article 164 para 9). However, GRECO is concerned that it does not appear to be possible to challenge a disciplinary decision before a court, more than in respect of its constitutionality before the Constitutional Court. It follows that this part of the recommendation has been partly implemented."

72. The relevant part of the GRECO report on Corruption prevention in respect of members of parliament, judges and prosecutors (Evaluation Report – Armenia, 84th Plenary Meeting 2-6 December 2019) reads as follows:

"...

41. As for the pending second part of the recommendation, GRECO notes that, with the adoption of the new Judicial Code, decisions of the Supreme Judicial Council to refuse an application to a qualification examination or to a promotion list, can be appealed to the Administrative Court. However, it appears that there is currently no possibility to appeal the decisions on dismissal of judges. GRECO notes that further amendments of the Judicial Code are foreseen, which *inter alia* would provide for challenging written qualification examinations an appeal commission first (as a filter) and subsequently in court. This goes in the right direction. It would also appear that the decisions of the Supreme Judicial Council on disciplinary matters can be challenged, but this mechanism can hardly be considered as a proper appeal mechanism, but rather a possibility to re-open a case by the SJC. This is not satisfactory. GRECO underlines that the appeal mechanisms should be provided for the decisions on recruitment, promotion and dismissal as required by the recommendation.

42. GRECO concludes that recommendation vii remains partly implemented.

..."

73. The relevant part of the GRECO report on Corruption prevention in respect of members of parliament, judges and prosecutors (Interim Evaluation Report – Armenia, 93rd Plenary Meeting 20-24 March 2023) reads as follows:

"**Recommendation vii**

33. GRECO recommended reforming the procedures for the recruitment, promotion and dismissal of judges, including by i) strengthening the role of the judiciary in those procedures and reducing the role of the President of the Republic and requiring him to give written motivations for his decisions and ii) ensuring that any decisions in those procedures can be appealed to a court.

...

36. GRECO notes that, as far as the remaining part (ii) is concerned, new draft amendments to the Constitutional Law on the Judicial Code introduce an appeal mechanism against decisions of the Supreme Judicial Council in disciplinary matters regarding judges. GRECO notes that the new system of appeal against the decisions of the SJC in disciplinary matters consists of a second-instance panel that is to be created within the SJC itself. While an appeal to a court would be a better option, as stated in the recommendation, GRECO notes that this would require amending the Constitution and that the creation of an appellate instance within the SJC was found to be an

acceptable compromise by the Venice Commission. However, these amendments have yet to be finalised and adopted. Therefore, this part of the recommendation cannot be considered as fulfilled yet..."

C. Organisation for Economic Co-operation and Development (OECD)

74. In 2018 the OECD recommended that the Armenian authorities "establish [an] open, transparent and competitive procedure of election of non-judicial members of the SJC and specify criteria for the election of its members by the National Assembly"[4].

D. European Network of Councils for the Judiciary

75. The European Network of Councils for the Judiciary ("the ENCJ"), adopted the Compendium on Councils for the Judiciary adopted at Extraordinary General Assembly in Vilnius in October 2021, the relevant parts of which read as follows:

"...

C. Composition and Structure

The Council can be composed either exclusively of members of the judiciary or members and non-members of the judiciary. The most successful models appear to be those with representation from a combination of judges elected by their peers and members elected /or appointed from the ranks of legal, academic or civil society, with broad powers sufficient to promote both judicial independence and accountability. This is seen as the most appropriate pathway to promoting and guaranteeing the real independence of the Judiciary by rendering the Council free from any political interference and serves to reinforce its autonomy.

In addition, the membership of non-judicial members reinforces the accountability and openness to civil society of Councils.

When the composition is mixed, the Council should be composed of a majority of members of the judiciary, but not less than 50 %

In any case (whether there is a mixed composition or not) the judicial members of the Council (however appointed) must act as the representatives of the entire judiciary.

In the composition of all panels of the Council, a majority of judicial members should be guaranteed.

...

Non-judicial members

The composition of Councils for the Judiciary and equivalent bodies should include nonjudicial members, reflecting the diversity of society;

The process of selection, election or appointment of non-judicial members should be merit based and transparent. Where non-judicial members are appointed by

[4]Anti-corruption reforms in Armenia OECD, p. 79.

parliamentary bodies, it is desirable that their selection be subject to the achievement of particular qualified majorities, in order to avoid political influence.

Non-judicial members should meet the same standards of integrity, independence and impartiality as judges, but non-judicial members should not be politicians or include the Minister of Justice. Non-judicial members of Judicial Councils and other relevant bodies should not be involved in politics for a reasonable period of time before and after their mandate as member of a Judicial Council or other relevant body."

E. Other international material

76. The relevant parts of the Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia: Judicial Administration, Selection and Accountability, 2010, of the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE), provide as follows:

"*Composition of Judicial Councils*

7. ... Apart from a substantial number of judicial members elected by the judges, the Judicial Council should comprise law professors and preferably a member of the bar, to promote greater inclusiveness and transparency.

...

Membership of Bodies Deciding on Discipline

9. Bodies competent to hear a disciplinary case and to take a decision on disciplinary measures (see para 5, b) shall not exclusively be composed of judges, but require representation including members from outside the judicial profession.

...

Independent Body Deciding on Discipline

26. There shall be a special independent body (court, commission or council) to adjudicate cases of judicial discipline (see para 9)".

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION

77. The applicant complained that the SJC did not satisfy the requirements of an "independent and impartial tribunal" because its non-judicial members were nominated and elected through a procedure which was neither merit-based nor transparent and was allegedly politicised. Given the impossibility to appeal against his dismissal by the SJC, he had been denied the right of access to court. Lastly, he complained that the then Chair of the SJC, namely K.A., had lacked impartiality because he had close ties with the then Minister of Justice G.M., who had initiated disciplinary proceedings against the applicant. He relied on Article 6 § 1 of the Convention, which reads as follows:

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

A. Admissibility

1. Applicability of Article 6 § 1 of the Convention

(a) The parties' submissions

78. The Government conceded that Article 6 § 1 of the Convention applied under its civil limb. They submitted in particular that the applicant was entitled under Armenian law to serve as a judge until his retirement at the age of 65 save for exceptions provided for by the relevant provisions of the Constitution and the Judicial Code (Article 164 §§ 8 and 9 of the Constitution cited in paragraph 20 above, as well as paragraph 51 above). Thus in the present case there was a genuine and serious dispute over a "right" which the applicant could claim on arguable grounds under domestic law. Referring to the principles established by the Court in the case of *Vilho Eskelinen and Others v. Finland* ([GC], no. 63235/00, § 62, ECHR 2007-II; "the *Eskelinen* test"), they argued that the national law did not expressly exclude access to a court for the post or category of staff in question. In particular, even though the SJC was not part of the ordinary judicial machinery and no appeal lay against its decisions before the ordinary courts, by contrast with the previously existing Council of Justice (see *Mnatsakanyan v. Armenia*, no. 2463/12, §§ 51-54, 6 December 2022), it had exclusive competence over disciplinary matters against judges and as such acted as a "court" during those proceedings, which was also noted by the Venice Commission (§ 19 of the relevant opinion cited in paragraph 68 above).

79. The applicant also maintained that Article 6 § 1 applied under its civil limb. He contended however that the SJC did not satisfy the requirements of an "independent and impartial tribunal" under that Article. He thus claimed that he had been deprived of the right of access to a court, whereas the respondent Government had failed to submit any argument to show that such exclusion had been justified on any objective grounds as required under the second condition of the *Eskelinen* test.

(b) The Court's assessment

80. The Court notes, at the outset, that neither party argued that Article 6 § 1 of the Convention was applicable under its criminal limb. For its part, the Court also considers that the circumstances of the present case do not allow it to reach a different conclusion (compare *Catană v. the Republic of Moldova*, no. 43237/13, § 41, 21 February 2023; *Denisov v. Ukraine* [GC], no. 76639/11, § 43, 25 September 2018; and *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, §§ 122-27, 6 November 2018). Indeed, there is nothing to suggest that the criteria commonly known as the

"Engel criteria" (see *Engel and Others v. the Netherlands*, 8 June 1976, § 82, Series A no. 22) were satisfied so that to be concluded that the disciplinary proceedings against the applicant concerned the determination of a criminal charge within the meaning of Article 6 of the Convention.

81. The parties did not contest the applicability of Article 6 § 1 of the Convention under its civil limb. The Court reiterates that Article 6 § 1 of the Convention applies under its civil head to a dispute ("*contestation*" in the French text) over a "civil right" which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether it is also protected under the Convention. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. The result of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (see *Micallef v. Malta* [GC], no. 17056/06, § 74, ECHR 2009, and *Gyulumyan and Others v. Armenia* (dec.), no. 25240/20, § 64, 21 November 2023).

82. The Court observes that the applicant, who was 54 years old at the material time, had an entitlement under Armenian law to serve as a judge until the age of 65 (see Article 166 § 8 of the Constitution quoted in paragraph 20 above; see also paragraph 22 above). Furthermore, his powers could cease or could be prematurely terminated only in exceptional circumstances set by the Constitution and the Judicial Code (see Article 164 §§ 8 and 9 of the Constitution quoted in paragraph 20 above; see also paragraph 51 above). The Court therefore finds that, as argued by the Government, in the present case there was a genuine and serious dispute over a "right" which the applicant could claim on arguable grounds under domestic law (compare *Mnatsakanyan*, cited above, § 48, and the references cited therein). It remains to be determined whether the nature of the right in question was civil.

83. In this connection, the Court reiterates the principles established by the Grand Chamber in the above-mentioned *Vilho Eskelinen* case, as summarised in *Grzęda v. Poland* ([GC], no. 43572/18, §§ 257-64, 15 March 2022), according to which labour disputes between civil servants and the State may fall outside the civil limb of Article 6 provided that two cumulative conditions are fulfilled. In the first place, the State in its national law must have excluded access to the courts for the post or category of staff in question. Secondly, the exclusion must be justified on objective grounds in the State's interest (ibid., § 261). There will in effect be a presumption that Article 6 applies. These principles have been applied to disputes involving civil servants and also to disputes involving judges, including proceedings concerning dismissal from judicial office (ibid., § 263, and the authorities cited therein).

84. The Court observes that under the national law the decisions of the SJC taken during the disciplinary proceedings against judges are final and are not subject to appeal before ordinary courts (see section 155(7) of the Judicial

Code cited in paragraph 47 above). Even though it is possible to apply for a reopening of the case, this is an extraordinary appeal before the same body (see paragraphs 48 and 49 above) and thus does not amount to an ordinary appeal procedure against the decisions of the SJC. The SJC is therefore the first and sole instance at which the disciplinary liability of judges could be established. However, the Court has held that the mere fact that a further judicial review of the relevant disciplinary body's decision was not possible does not necessarily mean that an applicant did not have access to a court for the purposes of the *Eskelinen* test provided that the disciplinary authority in question qualified as a "court" for the purposes of the test (compare *Bilgen v. Turkey*, no. 1571/07, § 71, 9 March 2021). To that end the Court looks at whether the disciplinary authority performed a judicial function and at the nature of the proceedings before it (see *Kamenos v. Cyprus*, no. 147/07, §§ 84-85, 31 October 2017). Therefore, the Court must examine whether the SJC can be considered to be a "tribunal" fulfilling a judicial function. Since this issue is closely linked to the applicability of Article 6 § 1 of the Convention under its civil head, the latter must be joined to the merits of the applicant's complaint about the alleged lack of access to a court (see paragraphs 101-119 and 124 below).

2. *Exhaustion of domestic remedies regarding the alleged lack of institutional independence of the SJC in view of the nomination and election of its non-judicial members*

(a) The parties' submissions

85. The Government argued that the applicant had failed to raise domestically his complaints regarding the nomination and election of the non-judicial members of the SJC and that body's alleged lack of independence from the executive and legislature. In particular, referring to sections 71 and 88(4) of the Judicial Code (see paragraphs 24 and 33 above), they argued that the applicant could have submitted an application for recusal (*ինքնաբացարկի միջնորդություն*) in respect of all four non-judicial members sitting in his case, instead of lodging such an application only in respect of the Chair K.A.

86. The applicant noted in reply that his complaint about the independence of the SJC concerned systemic issues, relating to the nomination and election of the non-judicial members of the SJC, for which no domestic remedies existed. Sections 71 and 88(4) of the Judicial Code relied on by the Government concerned the possibility of challenging the impartiality of an SJC member rather than the institutional independence of that body. Moreover, the Government had not produced any evidence to prove the effectiveness of the said remedy in so far as his complaint about the lack of independence of that body was concerned.

(b) The Court's assessment

87. The Court reiterates that the only remedies which Article 35 § 1 requires to be exhausted are those that relate to the breach alleged and are capable of redressing the alleged violation. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness: it falls to the respondent State to establish that these conditions are satisfied (see *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, §§ 139 and 143, 27 November 2023, and the authorities cited therein).

88. Turning to the present case, the Court observes at the outset that the composition of the SJC and the manner of election of its members were established by the Constitution. The Government have failed to show that the institutional independence of the SJC from the executive and legislative branches of power could have been challenged by means of an application for recusal under the Judicial Code and that such an application could have had any prospect of success. The Court notes that, during disciplinary proceedings against judges, the SJC had a quorum only where more than half of the total number of its members were present at the session (see paragraph 35 above). Even assuming that recusal of half of the members of the SJC could be requested, this would clearly have made it impossible for the SJC to decide on the applicant's case. In fact, it follows from the wording of section 71(5) that the SJC would reject such an application (see paragraph 24 above). What is more, the Government did not specify that, in such a case, there was a legal mechanism enabling the recused members of the SJC to be substituted. The Court also observes that the Government have not referred to any relevant domestic case-law in support of their argument (see, for similar approach, *Catană*, cited above, § 49). Accordingly, the Government's objection of non-exhaustion of domestic remedies must be dismissed.

3. Conclusion on admissibility

89. In view of the aforementioned, the Court considers that the applicant's complaints (see paragraph 77 above) are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. Whether the SJC was an "independent and impartial tribunal"

(a) The parties' submissions

(i) The applicant

90. The applicant submitted that the composition of the SJC did not satisfy the requirements of an "independent and impartial tribunal", and argued that the procedure of nominating non-judicial member candidates for election to the SJC had not been merit-based and transparent (reference was made to the 2018 OECD recommendation and the Compendium on Councils for the Judiciary adopted by the ENCJ cited in paragraphs 74 and 75 above). He maintained that no vacancy notice was published for the posts of non-judicial members of the SJC and their nomination and selection was left to the absolute discretion of the ruling political group, without prior discussion with the opposition. Since that group held a constitutional majority in the National Assembly, any attempt by the opposition group to suggest a candidate would have been to no avail. The procedure therefore allowed the ruling power to select and appoint non-judicial members based on their political loyalty. That had been the case with all four non-judicial members of the SJC sitting in his case.

91. Therefore, the non-judicial members of the SJC, comprising half of the total members of that body, lacked independence not only from the legislative branch but also from the executive given that the party having majority seats in the National Assembly formed the Government. In that connection, he pointed to the nomination and appointment of K.A. and E.T. to the post of non-judicial members immediately after they had left their posts as Minister and Deputy Minister of Justice respectively. In addition, the applicant complained that a substantial representation of judges, which according to him meant more than one half, in the composition of the SJC was not ensured, contrary to the applicable standards.

(ii) The Government

92. The Government, referring to the domestic provisions on nomination and election of the members of the SJC (Articles 173-174 of the Constitution cited in paragraph 20 above, as well as the relevant provisions of the Judicial Code and the Rules of Procedure cited in paragraphs 25, 27, 53 and 54 above), submitted that the independence of the SJC was ensured by its institutional design. Referring to the relevant Opinion adopted by the Venice Commission in respect of Armenia (paragraph 66 above), they claimed that the composition of the SJC was balanced and compliant with the existing international and European standards, composed of an equal number of judicial and non-judicial members, thus judges representing a "substantial element" of its members. The parity between judicial and non-judicial

members was aimed to avoid both the risk of politisation and negative effects of corporatism and peer protection within the judiciary. As part of the balance sought, the Constitution guaranteed the representation of judges from different levels and courts. The judicial members were elected by the General Assembly of Judges, that is by their peers (Article 174 § 2 of the Constitution cited in paragraph 20 above). In so far as non-judicial members were concerned, the National Assembly elected them by a qualified majority of votes upon nomination of a candidate by political groups – including the opposition – thus eliminating the decisive influence of the ruling party (Article 174 § 3 of the Constitution cited in paragraph 20 above, as well as the relevant provisions of the Judicial Code and the Rules of Procedure cited in paragraphs 25, 27, 53 and 54). The election of non-judicial members was consonant with the position of the Venice Commission that the parliamentary component of a judicial council be elected by a qualified majority.

93. The Government contended that the procedure was merit-based and transparent. The domestic law set strict eligibility criteria for the prospective candidates (ibid., and paragraph 26), and each political group, together with a relevant decision to nominate a candidate, must produce evidence showing the compliance of the candidate with the said criteria (paragraph 54 above). Moreover, the proceedings for the election of a non-judicial member were public (paragraph 55 above), during which the candidate made a speech and the MPs put questions to him or her to verify his or her suitability to the post (paragraph 53 above).

In addition, the members of the SJC had stability of tenure – they were elected for a fixed term of five years and their powers could be terminated only in exceptional circumstances set by law – were subject to strict incompatibility requirements, and could not be engaged in any paid work other than scientific, educational or creative activities (paragraphs 20, 21 and 31 above). As regards in particular the non-judicial members, they received good salary, which could not be less than that of a Court of Cassation judge (paragraph 28 above).

94. The SJC decided the merits of each case independently, without any intervention by the executive or the legislature. Each member of the SJC had the right to one vote and could issue a separate opinion with respect to the decisions of the SJC when acting as a court (paragraph 37 above). As regards the Chair of the SJC, the latter was elected by his peers among both judicial and non-judicial members, and, as Chair, he or she had chiefly administrative functions, with no right to a casting vote during disciplinary proceedings (paragraph 29 above).

95. As regards the non-judicial members sitting in the applicant's case, the opposition political groups had not proposed any candidates during the nomination and election of those members – a right which they enjoyed under the law. In fact, some of the members of the opposition voted in favour of non-judicial members V.K. and H.G. (paragraph 6 above). As to K.A. and

E.T., the opposition did not participate in the process of their appointment (ibid.). They thus did not avail themselves of their right to put questions to the candidates and exchange opinions on their competence. The mere fact that the aforementioned non-judicial members had been nominated by the ruling political group had no bearing on the independence of the SJC, and the applicant had failed to submit any proof that their appointment was otherwise flawed or politicised. Nor was there any evidence to show that the non-judicial members of the SJC were materially, hierarchically or administratively dependent on the ruling party. The fact that K.A. and E.T. held positions respectively as Minister and Deputy Minister of Justice did not detract from this finding because they had been nominated and appointed to the SJC based on their professional background and once appointed, their functions as former representatives of the executive branch had ceased and the relevant guarantees established for a non-judicial member of the SJC ensured their independence. What is more, the CPC carried out a good character check in respect of E.T. and found, among other things, that the fact of her previously being a deputy Minister could not cast doubt on her integrity if elected as a non-judicial member of the SJC (paragraph 8 above). Lastly, both K.A. and E.T. had been appointed to the SJC before any disciplinary proceedings were brought against the applicant by the Minister of Justice (paragraph 6 above) and K.A. as Chair had no right to a casting vote by which he could have influenced the decision of the SJC in the applicant's case (paragraph 37 above).

(b) The Court's assessment

(i) General principles

(α) "Tribunal"

96. The Court reiterates that for the purposes of Article 6 § 1 of the Convention, a tribunal need not be a court integrated within the standard judicial machinery (see *Rolf Gustafson v. Sweden*, 1 July 1997, § 45, *Reports of Judgments and Decisions* 1997-IV; *Di Giovanni v. Italy*, no. 51160/06, § 52, 9 July 2013; *Eminağaoğlu v. Turkey*, no. 76521/12, § 90, 9 March 2021; and *Cotora v. Romania*, no. 30745/18, § 36, 17 January 2023), since the tribunal, within the meaning of Article 6 § 1, is characterised, in the substantive sense of the term by its judicial function, that is to say, to determine matters within its competence on the basis of rules of law and after proceedings conducted in a prescribed manner (see *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, § 219, 1 December 2020). A power of decision is inherent in the very notion of "tribunal". The procedure before it must ensure the "determination of the merits in dispute" as required by Article 6 § 1 (see *Benthem v. the Netherlands*, 23 October 1985, § 40, Series A no. 97; *Bilgen*, cited above, § 73; and *Eminağaoğlu*, cited above, § 90). In addition, only an institution that has full jurisdiction and satisfies a

number of requirements, such as independence from the executive and also from the parties, merits the designation "tribunal" within the meaning of Article 6 § 1 of the Convention (ibid.; *Olujić v. Croatia*, no. 22330/05, § 37, 5 February 2009; and *Guðmundur Andri Ástráðsson*, cited above, § 219).

(β) "Independent and impartial"

97. The concepts of "independence" and "impartiality" are closely linked and, depending on the circumstances, may require joint examination (see *Ramos Nunes de Carvalho e Sá*, cited above, §§ 150 and 152; see also, as regards their close interrelationship, §§ 153-56). The Court has held that "independence" refers to the necessary personal and institutional independence that is required for impartial decision-making, and it is thus a prerequisite for impartiality. It characterises both a state of mind which denotes a judge's imperviousness to external pressure as a matter of moral integrity, and a set of institutional and operational arrangements – involving both a procedure by which judges can be appointed in a manner that ensures their independence and selection criteria based on merit – which must provide safeguards against undue influence and/or unfettered discretion of the other State powers, both at the initial stage of the appointment of a judge and during the performance of his or her duties (see *Guðmundur Andri Ástráðsson*, cited above, § 234). Compliance with this requirement is assessed, in particular, on the basis of statutory criteria, such as the manner of appointment of the members of the tribunal and the duration of their term of office, or the existence of sufficient safeguards against the risk of outside pressures. The question whether the body presents an appearance of independence is also of relevance (see *Ramos Nunes de Carvalho e Sá*, cited above, § 144; *Oleksandr Volkov,* cited above, § 103; and *Grace Gatt v. Malta*, no. 46466/16, § 85, 8 October 2019).

98. It should be reiterated that the principles established in the Court's case-law concerning independence and impartiality are to be applied to lay judges in the same way as to professional judges (see, *mutatis mutandis, Cooper v. the United Kingdom* [GC], no. 48843/99, § 123, ECHR 2003-XII; *Holm v. Sweden*, 25 November 1993, § 30, Series A no. 279-A; and *Bellizzi v. Malta*, no. 46575/09, § 51, 21 June 2011, and the references cited therein).

99. The Court also refers to the criteria it has used to assess the independence and impartiality of the High Council of the Judiciary (see *Oleksandr Volkov*, cited above, §§ 109-15, and *Denisov*, cited above, §§ 68-69).

(ii) Application of the above principles to the present case

100. The Court observes, at the outset, that in the present case it is not called upon to decide on any possible issue stemming from the fact that the applicant was dismissed for what he had decided as a judge. It has to examine

whether the SJC complied with the requirements of an "independent and impartial tribunal".

(α) Whether the SJC can be regarded as a "tribunal" within the meaning of Article 6 § 1 of the Convention

101. It is not disputed between the parties that the SJC was established by law, namely the Constitution, the quality of which – in terms of its accessibility and foreseeability has not been contested by the applicant.

102. The Court further observes that, under the domestic law, the SJC has exclusive competence and full jurisdiction to determine matters pertaining to the disciplinary liability of judges and during those proceedings it is acting as a "court" (see Article 175 § 2 of the Constitution and section 90(2) of the Judicial Code cited in paragraphs 20 and 34 above, and contrast *Mnatsakanyan*, cited above, § 52). The procedure to be followed in disciplinary proceedings against judges is set out in detail in the Judicial Code and, where relevant the Code of Administrative Procedure, and the decisions of the SJC have to be reasoned (see paragraphs 45, 47 and 57 above). The proceedings before the SJC are public, except for cases provided by the Judicial Code, and are adversarial in nature (see paragraphs 34, 40 and 45 above). The Judicial Code secures for the judge concerned a set of procedural rights and makes reference to the relevant Articles of the Constitution providing for a right to a fair trial and containing equivalent safeguards to those of Article 6 §§ 1, 2 and 3 of the Convention (see paragraphs 40, 45 and 46 above). The judge concerned is entitled to be heard and present his case to it either by himself or through legal representation. The SJC holds hearings, summons and hears witnesses, assesses evidence and decides the question before it with reference to legal principles (see paragraphs 38, 45 and 57 above). In its decision of 15 November 2019 the Constitutional Court, having analysed the applicable domestic provisions and the procedure before the SJC, held that, in so far as disciplinary matters against judges were concerned, the SJC exercised judicial functions and qualified as a "court" (see paragraph 58 above). Furthermore, the Court refers to the joint opinion of the Venice Commission and the Directorate of Human Rights and Rule of Law (DGI) of the Council of Europe, according to which the SJC possessed all the main characteristics of a judicial body, both institutional and procedural (see § 19 of the relevant opinion cited in paragraph 68 above).

103. In the case at hand, even though no appeal lay against the disciplinary decisions of the SJC, in determining the applicant's case and taking a binding decision, the SJC was performing a judicial function: it had full jurisdiction to decide on the applicant's disciplinary liability and the proceedings before, which were adversarial in nature, followed a procedure prescribed by law (compare *Cotora*, cited above, § 37). Finally, the decision of the SJC, which had to be reasoned, was final and binding on the applicant (see paragraphs 19 and 47 above).

104. The Court is therefore satisfied that the SJC can be regarded as a "tribunal" within the meaning of Article 6 § 1 of the Convention. It will now address the issue whether the SJC is an "independent tribunal" within the meaning of that Article, regard being had to the above-cited general principles.

(β) The requirement of "independence" of the SJC

– *The manner of appointment of the SJC members*

105. The Court reiterates that the inclusion of non-judicial members in a disciplinary body does not, as such, call into doubt the independence of that body as a tribunal within the meaning of Article 6 § 1 of the Convention (see *Le Compte, Van Leuven and De Meyere v. Belgium*, 23 June 1981, §§ 57-58, Series A no. 43). It must therefore assess whether the manner in which the SJC was set up, particularly as regards its non-judicial members, might have produced results that were incompatible with the above object and purpose of the Convention right to an "independent tribunal".

106. The Court observes in this connection that the SJC was composed of an equal number of judicial and non-judicial members. The judicial members were elected by the General Assembly of Judges from among their peers (contrast *Oleksandr Volkov*, cited above, § 111), ensuring equal representation of different judicial bodies. The applicant did not contest the appointment procedure in respect of the judicial members of the SJC and, on the face of it, the Court does not see any problem in this respect.

107. As regards non-judicial members, they were elected by the National Assembly by a qualified majority of votes upon the nomination of political groups. That the procedure for their appointment was not merit-based, as alleged by the applicant, does not find support in the available material. The Constitution and the Judicial Code laid down specific requirements relating to, *inter alia*, the competence and expertise of prospective non-judicial candidates (see the relevant provisions of the Constitution and the Judicial Code cited paragraphs 20 and 26). Notably, a non-judicial candidate should either be a legal scholar or a distinguished lawyer with high professional qualities and at least fifteen years of professional experience (compare *Di Giovanni*, cited above, § 19, and contrast *Catană*, cited above, § 80).

108. The selection and nomination of the candidates to the post of non-judicial member was vested in the political groups of the National Assembly. The Court notes that, contrary to the recommendation of the OECD (see paragraphs 74 and 90 above), there was no competition or any vacancies announced for the prospective candidates, rather their nomination was left to the discretion of political groups. In this connection, the Court refers to a relevant Venice Commission opinion (see paragraph 65 above, in particular CDL-AD(2016)009, Final Opinion on the revised draft constitutional amendments on the Judiciary (15 January 2016) of Albania,

§16), in which it noted that "detachment from politics [could] be ensured through a transparent and open nomination process, at the initiative of autonomous nominating bodies (universities, NGOs, bar associations, etc.) [, and that s]uch nomination process should ensure that the Parliament [had] to make a selection amongst the most qualified candidates, and not political appointees". Whereas the Armenian authorities initially opted to vest the nomination of non-judicial members of the SJC in "the Bar, higher education institutions and professional NGOs" (see paragraph 66 above), no information was submitted to the Court why that mechanism was later abandoned.

109. The Court is mindful that entrusting the nomination of non-judicial members to political groups represented in the National Assembly might carry a risk of politicisation of the process. It is so because notwithstanding the eligibility requirements, there are no specific rules under the domestic law governing candidate selection by the political groups. However, the domestic law provided certain formal safeguards ensuring that nominees did satisfy the statutory eligibility requirements. In particular, when nominating a candidate, a political group had to submit proof attesting that the candidate met those requirements, otherwise the Speaker of the National Assembly would return the nomination, indicating the reasons (see paragraph 54 above). Furthermore, albeit in force since 2020 and applied in respect of non-judicial member E.T., noteworthy was the submission of the nominees' file to the CPC – whose independence the applicant did not contest – for a good character check (see paragraphs 8 and 54 above). Before voting, both the representative of the nominating political group and the nominee had to make a speech, as regards the latter's suitability for the post of non-judicial member, and the MPs had the right to put questions to them (see paragraph 53 above). The appointment proceedings were moreover public (see paragraph 55 above). Lastly, the National Assembly could elect a non-judicial member only by three fifths of votes (contrast *Catană*, cited above, § 79).

110. The Court's task is not to indicate to the Contracting State which model is the most suitable for the establishment of disciplinary bodies for the judiciary. Indeed, there are a variety of different systems across Europe rather than a standard model that a democratic country is bound to follow in setting up such a council. Its task is rather to ascertain whether the manner of appointment chosen by the Contracting State compromised the independence of the SJC. In this connection, the Court reiterates that, although the notion of the separation of powers between the political organs of government and the judiciary has assumed growing importance in its case-law, the election or appointment of judges, by the executive or the legislature is permissible under the Convention, provided that, once elected or appointed, they are free from influence or pressure and exercise their judicial activity with complete independence (see *Sacilor-Lormines v. France*, no. 65411/01, § 67,

ECHR 2006-XIII; *Flux v. Moldova (no. 2)*, no. 31001/03, § 27, 3 July 2007; *Thiam v. France*, no. 80018/12, § 80, 18 October 2018; and *Guðmundur Andri Ástráðsson*, cited above, § 207). The Court agrees with the applicant that allowing all prospective candidates to apply for the post of a non-judicial member of the SJC – for example through an open competition – would benefit and would further enhance the transparency of the nomination procedure. Moreover, involving members of civil society or academic institutions in the nomination procedure would also contribute to that aim. However, the Court considers that, in the circumstances of the present case, the manner of appointment of non-judicial members to the SJC could not be said to have compromised the independence of that body. In particular, the institutional and operational arrangements in place provided safeguards against any undue influence or unfettered discretion of the legislature and the process was both merit-based and transparent.

111. Although non-involvement in politics for a reasonable period of time before appointment to the SJC would have been desirable (see paragraph 75 above), the mere fact that, prior to their appointment to the SJC, non-judicial members K.A. and E.T. held high-level posts in the executive, respectively as Minister and Deputy Minister of Justice, is not sufficient in this respect because once appointed to the SJC, they no longer belonged to the Government. The Court takes note of the applicant's argument about the lack of involvement of the opposition in the process of selection of non-judicial members of the SJC. Even though this element raises some concerns with the requirements of Article 6 § 1 of the Convention, it does not suffice to conclude that the SJC lacked independence. The applicant, for his part, failed to submit any evidence that the appointment of the non-judicial members sitting in his case had in any way been tainted by political influence. While the Court does not rule out circumstances where such evidence might be forthcoming, with the potential to affect its present conclusion, that scenario does not obtain in the present case.

– *Duration of the appointment of the SJC members*

112. As regards the duration of the appointment to the SJC, both the judicial and non-judicial members were appointed for a fixed term of five years (compare *Di Giovanni*, cited above, § 19), during which their irremovability was guaranteed by law (compare *Guðmundur Andri Ástráðsson*, cited above, § 239).

– *The existence of guarantees against outside pressure*

113. As regards the existence of guarantees against outside pressure, strict incompatibility requirements applied to the members of the SJC, who had to be apolitical and could not be engaged in any paid work other than scientific, educational or creative activities (see paragraph 21 above). Furthermore, the

rules of conduct for judges were mandatory for non-judicial members of the SJC (see paragraph 23 above). Hence, it has not been shown that non-judicial members of the SJC had any material, hierarchical and administrative dependence on either executive or legislature which would endanger their independence and impartiality (contrast *Oleksandr Volkov*, cited above, § 113).

114. The Court further emphasises the importance of the guarantees laid down in the domestic legislation, namely that the SJC has complete discretion in deciding on its organisational structure and personnel; it does not take instructions or directions from the executive or legislature. In addition, it approves its estimate of expenditures and submits them to the government in order to include them in the Draft State Budget (see Article 175 §§ 9 and 10 of the Constitution cited in paragraph 20 above).

115. In so far as the internal independence of the SJC was concerned, under the domestic law, the post of Chairman was predominantly one of an administrative nature and all the relevant decisions regarding the SJC, including as to the disciplinary liability of its members, were to be taken by the SJC itself. Each member of the SJC had the right to one vote and could issue a separate opinion if he or she did not agree with the SJC when the latter was acting as a court (see paragraphs 33 and 37 above). What is more, non-judicial members of the SJC enjoyed social guarantees applicable to judges (see paragraph 28 above).

116. Therefore the institutional guarantees in place at the material time were aimed at insulating the SJC from both inside and outside pressure.

– *Appearance of independence*

117. Lastly, the Court has to decide if the SJC had the appearance of independence because even appearances may be of importance or, in other words, "justice must not only be done, it must also be seen to be done". What is at stake is the confidence which the courts in a democratic society must inspire in the public (see *Ramos Nunes de Carvalho e Sá*, cited above, § 149).

118. Turning to the present case, the Court will address the applicant's argument that the lack of substantial representation of judges in the SJC, which according to him meant more than one half, compromised its independence (see paragraph 91 above). In this connection, it reiterates that, with regard to disciplinary proceedings against judges, it has always underlined the need for substantial representation of judges within a judicial council (see *Oleksandr Volkov*, cited above, § 109; *Denisov*, cited above, §§ 68-69; *Xhoxhaj v. Albania*, no. 15227/19, § 299, 9 February 2021; *Grzęda*, cited above, § 305; and *Catană*, cited above, § 68). This need is all the more important in ordinary disciplinary proceedings against judges (compare *Xhoxhaj*, cited above, § 299). However, the term "substantial" was never meant by the Court to be understood as more than one half, contrary to the applicant's submission. In particular, in the case of *Oleksandr Volkov* (cited

above, § 109) it held that where at least half of the membership of a tribunal was composed of judges, including the chairman with a casting vote, this would be a strong indicator of impartiality (see also *Le Compte, Van Leuven and De Meyere*, cited above, § 58). Although the Court is mindful of the fact that, under the recommendation of the CCJE the desired proportion in judicial councils is that a substantial majority of their composition should be judges (see paragraphs 69 and 70 above), the existing minimum European standard is that at least one half of its members should be judges (see paragraphs 63, 64, 65 and 75 above). The Armenian system opted for parity between judicial and non-judicial members, which the Venice Commission also considered to be "quite balanced" (see the relevant Opinion of the Venice Commission in respect of Armenia cited in paragraph 66 above). The Court, for its part, does not see any issue in this respect (compare and contrast *Oleksandr Volkov*, cited above, 110-12; *Denisov*, cited above, § 70).

(γ) Conclusion

119. In view of the foregoing, and notwithstanding the deficiencies noted in paragraph 110 above, the Court is not in a position to call into question the effectiveness of those safeguards, all the more so as the applicant failed to submit any evidence that they were merely theoretical and did not operate in practice. Therefore, it concludes that the SJC satisfied the formal requirements of an "independent tribunal" under Article 6 § 1 of the Convention. Accordingly, there has been no violation on that account.

2. Whether the applicant was denied the right of access to a court

(a) The parties' submissions

120. The applicant complained that should the Court find that the SJC satisfied the requirements of an independent and impartial tribunal under Article 6 § 1 of the Convention, he was denied the right of access to a court owing to his inability to appeal against his dismissal before ordinary courts (reference was made to the Council of Europe and other material on judicial independence, as well as the specific recommendations by the Venice Commission and GRECO in respect of Armenia, paragraphs 63, 64, 67, 69, 73 and 76 above).

121. The Government submitted in reply that the applicant's right of access to a court had not been impaired because the SJC satisfied the requirements of an independent and impartial tribunal.

(b) The Courts' assessment

(i) The general principles

122. The general principles regarding the right of access to a court have been summarised in *Grzęda* (cited above, § 342), and *Zubac v. Croatia* ([GC], no. 40160/12, § 76, 5 April 2018).

123. This access to a court is not necessarily to be understood as access to a court of law of the classic kind, integrated within the standard judicial machinery of the country; thus, the "tribunal" may be a body set up to determine a limited number of specific issues, provided always that it offers the appropriate guarantees (see the relevant case-law cited in paragraph 96 above; see also *Beg S.p.a. v. Italy*, no. 5312/11, § 126, 20 May 2021; and *Donev v. Bulgaria*, no. 72437/11, § 83, 26 October 2021). The Court has further held that a judicial body which does not satisfy the requirements of independence – in particular from the executive – and of impartiality may not even be characterised as a "tribunal" for the purposes of Article 6 § 1 (*Guðmundur Andri Ástráðsson*, cited above, § 232).

(ii) The application of the above principles to the present case

124. As already established in paragraphs 101-119 above, even though the SJC does not form part of the standard judicial machinery of Armenia, it satisfies the requirements of a "tribunal" within the meaning of Article 6 § 1 of the Convention: it is established by law and has full jurisdiction to determine the disciplinary liability of judges, including to dismiss them, following a procedure prescribed by law. Its decisions have to be reasoned and are binding on the judge concerned. Lastly, the SJC is an "independent" tribunal in an institutional sense. Therefore, during the disciplinary proceedings against the applicant, the SJC acted as a "court", for the purposes of Article 6 § 1 of the Convention, to which the applicant had access.

125. As regards the applicant's complaint that, even if the SJC were to satisfy the institutional requirements of an "independent tribunal", a judge whose disciplinary liability had been determined should in any event be entitled to a right of appeal against such a decision before the ordinary courts (see paragraph 120 above), the Court notes that no right of appeal can be derived from Article 6 § 1 of the Convention, in particular as regards civil proceedings (see, among many other authorities, *Tolstoy Miloslavsky v. the United Kingdom*, 13 July 1995, § 59, Series A no. 316-B; *Franek v. Slovakia*, no. 14090/10, § 42, 11 February 2014; and *Durisotto v. Italy* (dec.), no. 62804/13, § 53, 6 May 2014). It reiterates that the latter Article does not compel the Contracting States to set up courts of appeal or of cassation (see *Grosam v. the Czech Republic* [GC], no. 19750/13, § 136, 1 June 2023, and *Cotora*, cited above, § 45).

126. The Court is mindful of the fact that both the Venice Commission and GRECO recommended that the Armenian authorities set up an appeal

procedure against the decisions of the SJC subjecting a judge to disciplinary liability (see paragraphs 67, 68, 71 and 73 above). Moreover, the Council of Europe and other international material cited in paragraphs 63-69 and 76 above, recommend a right of appeal or a second degree of jurisdiction in disciplinary matters against judges.

127. The Court notes that after the circumstances of the present case, in October 2023 draft amendments to the Judicial Code introducing an appellate review procedure within the SJC were presented to the National Assembly (see paragraph 73 above). Although the amendments in question have been adopted, the parties did not specify if they had entered into force (see paragraph 52 above). Be that as it may, as already established in paragraphs 101-119 and 124 above, the SJC qualified as a "court" to which the applicant had access for the purposes of Article 6 § 1 of the Convention. Therefore, regard being had to the above-mentioned considerations, the lack of further review of its decisions before the ordinary courts does not raise an issue under 6 § 1 of the Convention.

128. In view of the foregoing, the Court concludes that the applicant had access to a "court" under Article 6 § 1 of the Convention, which is found to have applied under its civil head.

129. Accordingly, there has been no violation of the applicant's right on that account.

3. Whether the SJC lacked the requisite impartiality under Article 6 § 1 of the Convention owing to the participation of Chair K.A.

(a) The parties' submissions

130. The applicant complained in particular that prior to his election to the post of non-judicial member and Chair of the SJC, K.A. had held the position of Minister of Justice, whereas the Minister of Justice, G.M. – who had brought disciplinary proceedings against the applicant – was his deputy, "friend" and "former business partner", as he had put it during his interview as the then Minister of Justice (see paragraph 14 above). Moreover, K.A.'s wife and G.M. held respectively forty and sixty percent of shares in a local law firm (ibid.). According to the applicant, although G.M. had transferred his shares to fiduciary management, he still continued receiving profits from the running of the law firm as its owner. The applicant alleged that K.A. had also guided the composition of the SJC to take a particular stance in his case (paragraph 17 above). At the same time, he argued, that even in the absence of such guidance, K.A.'s impartiality compromised the whole composition of the SJC given his professional, personal and economic ties with G.M. According to the applicant, the case of *Rustavi 2 Broadcasting Company Ltd and Others* (cited above) relied on by the SJC in its decision, was different from his case, whereas the other case-law referred to by the SJC had in fact supported his arguments.

131. The Government submitted in reply that the domestic law provided sufficient guarantees to ensure both subjective and objective impartiality of an SJC member (paragraphs 24 and 33 above). It had not been argued that K.A. held any personal bias against the applicant. As regards his alleged economic ties with G.M., the disciplinary proceedings in question or its outcome had no effect on K.A.'s or G.M.'s economic interests. Moreover, G.M. had handed over his shares in the business with K.A.'s wife to fiduciary management and, under the law, had no right to influence the management of his shares. The Government once again stressed that the functions of the Chair were purely administrative and he was not entitled to a casting vote in the event of a tie. Nor did the applicant submit any proof that K.A. had in any way influenced the SJC panel sitting in his case. What is more, in a number of cases instituted upon applications of G.M., K.A. had withdrawn because there had been grounds that could put in doubt his objective impartiality. In particular, three of those cases concerned disciplinary proceedings in which K.A. had been involved in his former capacity as Minister of Justice, while in the fourth case he had withdrawn because he had had some discussion with the judge whose disciplinary liability was in issue, apparently compromising his objective impartiality in that case. The Government thus concluded that the applicant's doubts in that respect were not sufficient to call K.A.'s impartiality into question and during the disciplinary proceedings against the applicant K.A. and G.M. were simply discharging their duties. Lastly, the Government submitted that the principles in the case of *Rustavi 2 Broadcasting Company Ltd and Others* (cited above) applied likewise in the applicant's case, all the more so as the decision against the applicant had been taken unanimously (paragraph 18 above). They further referred to the Bangalore Principles to the effect that "disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case" (paragraph 61 above). They argued that such challenges against K.A. would artificially change the composition of the SJC in each and every case brought by Minister of Justice G.M.

(b) The Court's assessment

(i) General principles regarding impartiality

132. Impartiality normally denotes the absence of prejudice or bias and its existence or otherwise can be tested in various ways. According to the Court's settled case-law, the existence of impartiality for the purposes of Article 6 § 1 must be determined according to (i) a subjective test, where regard must be had to the personal conviction and behaviour of a particular judge, that is, whether the judge held any personal prejudice or bias in a given case; and (ii) an objective test, that is to say by ascertaining whether the tribunal itself and, among other aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality (see,

for example, *Kyprianou v. Cyprus* [GC], no. 73797/01, § 118, ECHR 2005-XIII; *Micallef,* cited above, § 93; and *Morice v. France* ([GC], no. 29369/10, §§ 73-78, ECHR 2015).

133. However, there is no watertight division between subjective and objective impartiality, as the conduct of a judge may not only prompt objectively held misgivings as to the tribunal's impartiality from the point of view of the external observer (the objective test), but may also go to the issue of the judge's personal conviction (the subjective test) (see *Kyprianou*, cited above, § 119). In some cases where it may be difficult to obtain evidence with which to rebut the presumption of the judge's subjective impartiality, the requirement of objective impartiality provides a further important guarantee (see *Pullar v. the United Kingdom*, 10 June 1996, § 32, *Reports of Judgments and Decisions* 1996-III, and *Otegi Mondragon v. Spain*, nos. 4184/15 and 4 others, § 54, 6 November 2018).

134. While appearances have a certain importance, they are not decisive in themselves. One must frequently look beyond appearances and concentrate on the realities of the situation (see *Parlov-Tkalčić v. Croatia*, no. 24810/06, § 83, 22 December 2009). Therefore, in order to establish whether the applicant's alleged fears as to partiality were objectively justified, appearances have to be tested against the objective reality behind them (see *Tadić v. Croatia*, no. 25551/18, § 61, 28 November 2023).

(ii) Application of the above principles to the present case

135. In the present case the Court does not consider there to be any issue of subjective impartiality. It will therefore address the question of the impartiality of Chair K.A. in the light of the objective test.

136. It is not disputed between the parties that the then Minister of Justice, G.M., who had brought disciplinary proceedings against the applicant before the SJC and was therefore to be regarded a party to those proceedings, was Deputy Minister of K.A., while the latter was Minister of Justice between 3 August 2021 and 5 October 2022 (see paragraph 7 above). Furthermore, the Government did not contest that they were also friends, as stated by K.A., and that G.M. and K.A.'s wife had a shared business interest in a law firm. The Court takes note of the fact that G.M. had transferred his shares in the law firm to fiduciary management and, as noted in the decision of the SJC, was no longer involved in the running of the business. Moreover, the dispute before the SJC bore no relevance to the economic interests of G.M. or of K.A.'s wife for that matter (compare and contrast *Croatian Golf Federation v. Croatia*, no. 66994/14, §§ 129-33, 17 December 2020). However, the fact remained that K.A. and G.M. were friends and, as alleged by the applicant and not contested by the Government, their families appear to have had a common source of income because, even though G.M. no longer retained any influence in the business with K.A.'s wife, he was still the owner of his shares (see paragraph 56 above) and accordingly a "business partner" to K.A., albeit

through the law firm of K.A.'s wife (see paragraph 14 above). It would further appear from K.A.'s interview that the proximity of his friendship with G.M. had led him to appoint the latter as his deputy in his former capacity as Minister of Justice (ibid.). All these facts point to a very close relationship between K.A. and G.M., which went beyond a professional relationship as former colleagues (compare and contrast *Steck-Risch and Others v. Liechtenstein*, no. 63151/00, § 48, 19 May 2005). Therefore, in the Court's view, the proximity of the relationship between G.M. (a party to the case) and K.A. (the member of the body exercising judicial functions) was of such a nature that could give rise to misgivings as to K.A.'s impartiality (compare *Micallef*, cited above, § 102, and *Koulias v. Cyprus*, no. 48781/12, § 61, 26 May 2020). In this connection, the Court also refers to the Commentary on Bangalore Principles, and in particular paragraph 90 thereof, according to which, "a reasonable apprehension of bias might be thought to arise if there is personal friendship between the judge and any member of the public involved in the case" (see paragraph 62 above). Given the importance of appearances when such a situation (which can give rise to a suggestion or appearance of bias) arises, that situation should be disclosed at the outset of the proceedings and an assessment should be made, taking into account the various factors involved in order to determine whether disqualification is actually necessitated in the case. This is an important procedural safeguard which is necessary in order to provide adequate guarantees in respect of both objective and subjective impartiality (see *Koulias*, cited above, § 63). In addition, the Court observes that the impugned disciplinary proceedings were opened against the applicant in less than two months following K.A.'s departure from the Ministry of Justice, where he was at the pinnacle of what appears to have been, as most government ministries, a hierarchical structure (compare *Ugulava v. Georgia* (no. 2), no. 22431/20, § 60, 1 February 2024), and one of his tasks was precisely to bring disciplinary proceedings against judges. Although the impugned disciplinary proceedings were brought against the applicant when K.A. was no longer Minister of Justice, the Ministry requested the case file pertaining to the *Amirkhanyan* case for examination and received it from the Judicial Department while K.A. was still in office as Minister (see paragraphs 12-13 above). This, coupled with the short passage of time between K.A.'s departure from the Ministry of Justice and G.M.'s taking over his duties and bringing disciplinary proceedings against the applicant, may well give doubts in the mind of an objective observer that K.A. would have been inclined to allow his former subordinate's and friend's application (compare, ibid. § 62).

137. The Court notes that K.A. did not bring his friendship and his wife's business ties with G.M. to the immediate attention of the SJC, as required by sections 71 and 88 of the Judicial Code, for the purposes of the decision as to whether he should be excluded. Even in the absence of any direct financial link between K.A. and G.M., the fact that they were friends and that K.A.'s

wife and G.M. had shared business interests should have alerted him to the possibility that his impartiality might appear to be under doubt, and should have brought about a notice under section 71(1) (compare *Nikolov v. the former Yugoslav Republic of Macedonia*, no. 41195/02, § 25, 20 December 2007).

138. The Court recognises that the facts referred to by the applicant in support of his claim concerning the then Chair, K.A., raised an arguable claim about a lack of impartiality. With this in mind, the SJC, having received the relevant application for recusal of its Chair, had to subject it to stringent scrutiny. In its decision the SJC referred to the fact that G.M. had handed over his shares to fiduciary management and that, under the Court's case-law, a lack of impartiality of only one member of a judicial panel could not call into question the impartiality of the whole body. For the Court, however, this reasoning is not persuasive and, moreover, was not capable of dissipating the applicant's fears regarding K.A.'s impartiality. In particular, the SJC only addressed the applicant's contention about the economic ties between K.A. and G.M.'s wife, without giving any reply to the applicant's specific arguments about K.A.'s and G.M.'s close personal relationship and its potential to influence K.A.'s decision-making in his case.

139. As to the argument that K.A. was only one member of an eight-member panel of the SJC which had decided the merits of the applicant's case by a unanimous vote (see paragraphs 18 and 131), the Court observes the following. It has previously found that the argument that a member, which might lack impartiality, sits on a multi-member bench was not decisive for the objective impartiality issue under Article 6 § 1 of the Convention because in view of the secrecy of the deliberations, it was impossible to ascertain the actual influence of the judge concerned on the decision of the panel (see *Morice*, cited above, § 89; *Fazlı Aslaner*, cited above, § 41; *Sigríður Elín Sigfúsdóttir v. Iceland*, no. 41382/17, § 57, 25 February 2020; *Stoimenovikj and Miloshevikj*, cited above, § 39; and *Karrar*, cited above, § 36; see, similarly, *Mitrinovski v. the former Yugoslav Republic of Macedonia*, no. 6899/12, § 46, 30 April 2015). In the present case, K.A. was the Chair of the SJC and the rapporteur in the applicant's case leading the discussions (see paragraph 16 above), which constitutes an additional circumstance that is incompatible with the appearance of impartiality (compare *Fazlı Aslaner*, cited above, § 41).

140. The Court is mindful of the fact that in the case of *Rustavi 2 Broadcasting Company Ltd and Others* (cited above, § 363), relied on by the SJC and the Government (see paragraphs 18 and 131 above), it found that the applicants' challenge to the President of the Supreme Court could not be said, from the standpoint of an objective observer, to have tainted the enlarged bench of that court composed of nine members, especially when that judicial formation had decided on the case by a unanimous vote. However, in that case, the Court took into account, *inter alia*, the fact that the applicants'

request seeking recusal of the President of the Supreme Court had been seriously examined by that court with reference to the requirements of Article 6 § 1 of the Convention (*Rustavi 2 Broadcasting Company Ltd and Others*, cited above, § 363), unlike in the present case.

141. Finally, the Government referred to the Bangalore Principles (see paragraph 131 above), and the Court notes in this connection that, under the domestic law, as in force at the time, the SJC could proceed if more than half of its members (that is, at least six members) were present at its session and a decision on a judge's disciplinary liability was to be taken by a simple majority. Therefore, the disqualification of K.A. would still have allowed the SJC to examine and rule on the applicant's case. The Government have not referred to any difficulties in the operation of the SJC due to K.A.'s withdrawal in cases brought by G.M. (see paragraph 131 above). Moreover, the Court emphasises the importance of appearances for the purpose of ensuring objective impartiality and, therefore, confidence in the justice system.

142. In the present case, the close relationship between the then Chair K.A. and Minister of Justice G.A. (with some financial and political implications) transcended mere friendship as former colleagues and was capable of raising legitimate fears as to K.A.'s impartiality when sitting on the bench of the SJC. However, the SJC failed to dispel the applicant's doubts concerning the impartiality of its chair. The Court therefore finds that the applicant's doubts regarding the impartiality of Chair K.A. were objectively justified and that he was not provided with sufficient procedural safeguards in this respect. In view of the aforementioned, it is not necessary for the Court to rule on the question whether, as argued by the applicant, K.A. guided the composition of the SJC to take a particular stance in his case (see paragraphs 17 and 130 above).

143. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

144. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

145. The applicant claimed 351,335,076 Armenian drams (AMD) in respect of pecuniary damage, comprising his loss of salary until his

retirement, together with loss of pension as a result of his dismissal. He also claimed 40,000 euros (EUR) in respect of non-pecuniary damage.

146. The Government contested these claims.

147. The Court observes that an award of just satisfaction can only be based on the fact that the applicant did not have the benefit of all the guarantees of Article 6 § 1 of the Convention. However, the Court cannot speculate as to what the outcome of proceedings compatible with Article 6 § 1 of the Convention would have been had the violations not been found. In the present case, the Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim (see *Mitrov v. the former Yugoslav Republic of Macedonia*, no. 45959/09, § 62, 2 June 2016, and *Mitrinovski*, cited above, § 56).

148. That being said, the Court reiterates that the most appropriate form of redress for a violation of Article 6 § 1 would be to ensure that the applicant, as far as possible, is put in the position in which he or she would have been had this provision not been disregarded. The Court finds that this principle applies in the present case as well (ibid., § 59). Consequently, it considers that the most appropriate form of redress would be the reopening of the proceedings in accordance with the requirements of Article 6 § 1 of the Convention should the applicant so request under section 157(3)(2) of the Judicial Code (see paragraph 50 above). At the same time, ruling on an equitable basis, it awards the applicant EUR 3,600 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

149. The applicant also claimed EUR 5,132 for his legal representation in the proceedings before the Court, which, according to him, was equivalent of AMD 2,150,000. The applicant also claimed AMD 52,708 for the postal expenses incurred in these proceedings.

150. The Government disputed the applicant's claims for his legal representation as excessive. They further submitted that the applicant had also failed to provide sufficient information about the work done by his lawyer, namely the number of hours and the hourly rate. As regards the postal expenses, they argued that the applicant had failed to prove that the amount claimed related to the present case.

151. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum (see *Ramos Nunes de Carvalho e Sá*, cited above, § 227, *in limine*). The Court finds that the legal costs before the Court have been necessarily incurred in order to afford redress for the violation found and are substantiated by retainer agreements and copies of payment receipts submitted by the applicant. It reiterates, however, that legal costs are only recoverable in so far as they

relate to the violation found. Hence, the legal costs claimed by the applicant cannot be awarded in full as the Court has dismissed the applicant's complaints in part (see, *mutatis mutandis*, *Saghatelyan v. Armenia*, no. 7984/06, § 63, 20 October 2015, and *Mnatsakanyan*, cited above, § 102). Therefore, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,300 for the applicant's legal representation before it, plus any tax that may be chargeable to the applicant. As regards the postal expenses, it is clear from the relevant invoice that the amount claimed concerned the submission of the applicant's application and the supporting documents in the present case. Thus the Court also awards the applicant the sum of EUR 120, plus any tax that may be chargeable.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides to* join the issue of the applicability of Article 6 § 1 of the Convention to the merits of the applicant's complaint that he lacked access to a court and *finds* that it applies under its civil limb;

2. *Declares* the application admissible;

3. *Holds* that there has been no violation of Article 6 § 1 of the Convention as regards the alleged lack of independence of the Supreme Judicial Council;

4. *Holds* that there has been no violation of Article 6 § 1 of the Convention as regards the alleged lack of access to a court;

5. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the alleged lack of impartiality of K.A.;

6. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 3,600 (three thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,420 (one thousand four hundred and twenty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 23 January 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar	Mattias Guyomar President