



## Insufficient procedural safeguards against partiality in Armenian Supreme Judicial Council case

The case of [Suren Antonyan v. Armenia](#) (application no. 20140/23) concerned the dismissal of Mr Antonyan from his position as judge by the Supreme Judicial Council in January 2023. He had been appointed as a judge of the Civil and Administrative Chamber of the Court of Cassation in 2009, with tenure until the age of 65.

In today's **Chamber** judgment<sup>1</sup> in the case, the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 6 § 1** of the European Convention on Human Rights as regards the alleged lack of impartiality of the Chair of the Supreme Judicial Council, **and**

**no violation of Article 6 § 1 (right to a fair hearing)** as regards the alleged lack of independence of the Supreme Judicial Council and as regards Mr Antonyan's alleged lack of access to a court.

The Court found in particular that the way in which non-judicial members were appointed to the Supreme Judicial Council could not be said to have compromised its independence. In particular, the institutional and operational arrangements in place provided sufficient formal safeguards and the Supreme Judicial Council acted as a "court" for the purposes of Article 6 § 1. At the same time, the Court found that the Supreme Judicial Council had failed to dispel Mr Antonyan's justifiable doubts concerning the impartiality of its chair and that he had not been provided with sufficient procedural safeguards in that respect.

### Principal facts

The applicant, Suren Antonyan, is an Armenian national who was born in 1969 and lives in Yerevan.

In 2018 the Supreme Judicial Council (*Բարձրագույն դատական խորհուրդ*) – the SJC – was set up in Armenia with responsibility for deciding on disciplinary measures against judges, including dismissal. It 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.

In 2009 Mr Antonyan was appointed as a judge of the Civil and Administrative Chamber of the Court of Cassation with tenure until the age of 65. He was dismissed from that position by the Supreme Judicial Council in January 2023. This took place in the context of an investigation into the overturning by the Court of Cassation of a final judicial decision in a property dispute. That overturning had been the subject of [Amirkhanyan v. Armenia](#) (no. 22343/08), where the European Court had found a violation of Article 6 § 1 (right to a fair trial) and Article 1 of Protocol No. 1 (protection of property). In particular, the Court had held that by admitting another appeal lodged by the same party and subsequently granting it, the Court of Cassation had overturned a final

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

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. Mr Antonyan had sat on the adjudicating panel of that court.

On 30 November 2022 the then Acting Minister of Justice, G.M., decided to initiate disciplinary proceedings against Mr Antonyan and subsequently applied to the SJC to determine his disciplinary liability. On 18 January 2023, Mr Antonyan sought the withdrawal of the chair, K.A., from the panel of the SJC, submitting, in particular, that he was biased as he was friends and former colleagues with G.M. – prior to his appointment to the SJC, K.A. had held the post of Minister of Justice and had appointed G.M. as his deputy. He also argued that it was common knowledge that G.M. and K.A.'s wife had economic links, holding respectively 60% and 40% of the shares in a local law firm.

On 26 January 2023 the SJC allowed G.M.'s application and decided, unanimously, to terminate Mr Antonyan's term of office on account of a fundamental disciplinary violation under section 142(6)(1) of the Judicial Code. It rejected his application seeking the withdrawal of K.A., noting that 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. It held that the well-known facts pinpointed by Mr Antonyan were not sufficient of themselves to conclude that K.A. could be biased. The decision to terminate Mr Antonyan's term of office came into force immediately and was final, with no possibility of appeal.

## Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair hearing), Mr Antonyan complained that the Supreme Judicial Council was not 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. He also alleged that its chair was not impartial. Given the impossibility to appeal against his dismissal by the Supreme Judicial Council, Mr Antonyan also complained that he had been denied the right of access to court.

The application was lodged with the European Court of Human Rights on 16 May 2023.

Judgment was given by a Chamber of seven judges, composed as follows:

Mattias **Guyomar** (France), *President*,  
Armen **Harutyunyan** (Armenia),  
Stéphanie **Mourou-Vikström** (Monaco),  
Gilberto **Felici** (San Marino),  
Andreas **Zünd** (Switzerland),  
Kateřina **Šimáčková** (the Czech Republic),  
Mykola **Gnatovskyy** (Ukraine),

and also Victor **Soloveytchik**, *Section Registrar*.

## Decision of the Court

### Article 6 § 1

The Court noted that its task was not to decide on any possible issue stemming from the fact that Mr Antonyan had been dismissed for what he had decided as a judge. It had to examine whether the SJC complied with the requirements of an "independent and impartial tribunal".

The Court was satisfied that the SJC could be regarded as a "tribunal" within the meaning of Article 6 § 1 of the Convention. It had full jurisdiction to decide on Mr Antonyan's disciplinary liability

and the proceedings had followed a procedure prescribed by law. The decisions, which had to be reasoned, were final and binding.

In addressing the issue whether it was an “independent tribunal”, the Court agreed with Mr Antonyan that allowing all prospective candidates to apply for the post of non-judicial member of the SJC would benefit and further enhance the transparency of the nomination procedure. However, the Court considered that the manner of appointment of non-judicial members could not be said to have compromised the SJC’s independence. In particular, the institutional and operational arrangements in place provided safeguards against any undue influence of the legislature, and the process was both merit-based and transparent. Although non-involvement in politics for a reasonable period before appointment to the SJC would have been desirable, the fact that non-judicial members had held high-level posts in the executive just prior to their appointment, was not sufficient to say the SJC’s independence was compromised.

Although Mr Antonyan’s arguments, namely about the lack of involvement of the opposition in the process of selection of non-judicial members, raised some concerns with the requirements of Article 6 § 1 of the Convention, the Court could not conclude that the SJC lacked independence. No evidence had been submitted that the appointment of the non-judicial members sitting in Mr Antonyan’s case had been tainted by political influence. The Court saw no issue as regards the number of judicial versus non-judicial members, and was also satisfied by the strict institutional guarantees that were in place to ensure that the SJC was protected from both inside and outside pressure. As there was nothing to show that the safeguards in place were merely theoretical and did not operate in practice, the Court concluded that the SJC satisfied the formal requirements of an “independent tribunal” under Article 6 § 1 of the Convention.

With regard to Mr Antonyan’s complaint that he had been denied the right of access to a court because of his inability to appeal, the Court reiterated that the SJC acted as a “court” for the purposes of Article 6 § 1, and the lack of further review of its decisions before the ordinary courts did not raise an issue. Therefore, there had been no violation of Mr Antonyan’s rights on that account.

As regards whether the SJC had lacked impartiality owing to the participation of Chair K.A., the Court was of the view that the close relationship between G.M. and K.A. could well give rise to misgivings as to K.A.’s impartiality. The Court noted that K.A. had not brought his friendship and his wife’s business ties with G.M. to the immediate attention of the SJC, as he should have done. 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 K.A. to the possibility that his impartiality could be questioned. With that in mind, the SJC should have seriously examined Mr Antonyan’s request for K.A.’s recusal.

The Court was not persuaded by the SJC’s reasoning that a lack of impartiality of only one member of a judicial panel could not call into the question the impartiality of the whole body. Furthermore, K.A. was the Chair of the SJC and the *rapporteur* in Mr Antonyan’s case leading the discussions, which constituted an additional circumstance that was incompatible with the appearance of impartiality. Moreover, the SJC had only addressed Mr Antonyan’s arguments about the economic ties between K.A. and G.M.’s wife, without giving any reply to his 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. The withdrawal of K.A. would still have allowed the SJC to examine and rule on Mr Antonyan’s case, as the presence of only six of the eight members of the adjudicating SJC panel would have sufficed.

The Court found that the SJC had failed to dispel Mr Antonyan’s justifiable doubts concerning the impartiality of its chair and that he had not been provided with sufficient procedural safeguards in that respect. It was not necessary for the Court to rule whether, as argued by Mr Antonyan, K.A. had guided the composition of the SJC to take a particular stance in his case.

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

#### **Just satisfaction (Article 41)**

As regards pecuniary damage, the Court considered 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 Mr Antonyan so request.

The Court held that Armenia was to pay Mr Antonyan 3,600 euros (EUR) in respect of non-pecuniary damage and EUR 1,420 in respect of costs and expenses.

*The judgment is available only in English.*

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