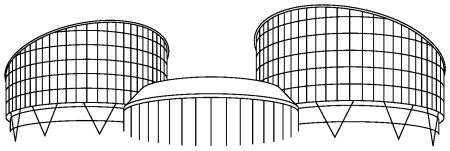

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF SAGHATELYAN v. ARMENIA

(Application no. 7984/06)

JUDGMENT

STRASBOURG

20 October 2015

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Saghatelyan v. Armenia,

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

Luis López Guerra, *President,*
Kristina Pardalos,
Johannes Silvis,
Iulia Antoanella Motoc,
Branko Lubarda,
Carlo Ranzoni,
Armen Harutyunyan, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 29 September 2015,

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

PROCEDURE

1. The case originated in an application (no. 7984/06) 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, Ms Anahit Saghatelyan ("the applicant"), on 8 February 2006.

2. The applicant was represented by Mr A. Ghazaryan, a non-practising lawyer, and Mr M. Danielyan. The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, Representative of the Republic of Armenia at the European Court of Human Rights.

3. The applicant, a former judge, alleged in particular that she was deprived of access to court to challenge her dismissal from the judiciary.

4. On 16 June 2009 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1959 and lives in Vardenis. She worked as a judge at Gegharkunik Regional Court.

6. On 17 February 2004 the Minister of Justice filed a motion with the Council of Justice seeking to have the applicant dismissed from her post under Section 30 (8) of the Law on the Status of a Judge. The motion stated

that the applicant had been severely reprimanded on three occasions, namely in 1997, 2000 and 2001, for various gross violations of the rules of criminal procedure and another set of disciplinary proceedings had been instituted against her on the same grounds in December 2003.

7. On 2 March 2004 the Council of Justice examined the motion and decided to form a three-member commission to examine the factual basis of the motion and to report back to the Council.

8. On 27 April 2004 the Council of Justice adopted a conclusion recommending to the President of Armenia that the applicant be dismissed.

9. On 30 April 2004 the President of Armenia issued a decree dismissing the applicant from her post.

10. On 15 March 2005 the applicant lodged a claim with the Kentron and Nork-Marash District Court of Yerevan, seeking to annul the President's Decree of 30 April 2004 as unlawful. She argued that her dismissal from work had been in violation of a number of provisions of domestic law and various European instruments relating to the status of a judge. In particular, the motion for dismissal filed by the Minister of Justice on 17 February 2004 had been based upon matters which had been the subject of earlier disciplinary proceedings and in respect of which penalties had already been imposed. The motion did not contain any reasoning and was not accompanied by any supporting documentation and was, therefore, unsubstantiated. She further argued that judicial decisions were not supposed to be subject to a review other than by way of an appeal procedure prescribed by law. Thus, the commission of gross violations of the law (the alleged grounds for her dismissal) could only have been found by a higher court (which had not happened in her case) and not by non-judicial bodies and officials, such as the Council of Justice or the Minister of Justice. Finally, she claimed that the question of her dismissal had been examined by the Council of Justice in her absence, in violation of the relevant rules.

11. On 26 May 2005 the Kentron and Nork-Marash District Court of Yerevan decided under Article 109 of the Code of Civil Procedure to terminate the proceedings on the ground that the applicant's claim was not subject to examination by the courts of general jurisdiction. In doing so, the District Court referred, *inter alia*, to Article 100 (1) of the Constitution, Article 15 § 2 of the Civil Code and Article 160 § 1 of the Code of Civil Procedure (the CCP).

12. On 7 June 2005 the applicant lodged an appeal.

13. On 13 July 2005 the Civil Court of Appeal examined and dismissed the applicant's claim as unsubstantiated.

14. On 5 August 2005 the applicant lodged an appeal on points of law.

15. On 23 September 2005 the Court of Cassation quashed the judgment of the Court of Appeal and decided to terminate the proceedings on the same grounds as the District Court.

16. On 16 November 2006, in proceedings unrelated to this case, the Constitutional Court found the second paragraph of Article 160 § 1 of the CCP to be unconstitutional.

II. RELEVANT DOMESTIC LAW

A. The Constitution of Armenia of 1995 (as in force at the material time)

17. The relevant provisions of the Constitution read as follows:

Article 38

"Everyone has the right to defend his rights and freedoms by any means not prohibited by law.

Everyone has the right to judicial protection of his rights and freedoms guaranteed by the Constitution and laws."

Article 39

"Everyone has the right to a public hearing of his case by an independent and impartial court within a reasonable time in conditions of equality and with respect for all fair trial requirements in order to have his violated rights restored, as well as the validity of the charge against him determined."

Article 94

"The guarantor of independence of the judicial authorities is the President of [Armenia]. He shall preside over the Council of Justice.

The Minister of Justice and the General Prosecutor shall be the vice-presidents of the Council.

The Council shall be also composed of fourteen members appointed by the President of [Armenia] for a period of five years, including two legal scholars, nine judges and three prosecutors. ..."

Article 95

"The Council of Justice shall: ... (6) submit a proposal approving the termination of the term of office of a judge..."

Article 100

"The Constitutional Court, in accordance with a procedure prescribed by law, shall: (1) decide on the conformity of laws, the resolutions of the National Assembly, the decrees and directives of the President of [Armenia] and the decrees of the Government with the Constitution; ..."

Article 101

"Applications to the Constitutional Court can be submitted by: (1) the President of [Armenia]; (2) at least one third of the deputies of the National Assembly;

(3) candidates for the office of the President of [Armenia] and for the National Assembly in connection with disputes related to election results; [and] (4) the Government...”

B. The Constitution of Armenia of 1995 (following the amendments introduced on 27 November 2005 with effect from 6 December 2005)

18. The former Articles 38 and 39 of the Constitution were transformed into Articles 18 and 19 and read as follows:

Article 18

“Everyone has the right to an effective remedy to have his rights and freedoms protected by the judicial and other public authorities.

Everyone has the right to defend his rights and freedoms by any means not prohibited by law. ...”

Article 19

“Everyone has the right to a public hearing of his case by an independent and impartial court within a reasonable time in conditions of equality and with respect for all fair trial requirements in order to have his violated rights restored, as well as the validity of the charge against him determined. ...”

As a result of the amendments, Article 101 reads as follows:

“In conformity with the procedure set forth in the Constitution and the law on the Constitutional Court, an application to the Constitutional Court may be filed by: ... (6) every person in a specific case when the final judicial act has been adopted, when the possibilities of judicial protection have been exhausted and when the constitutionality of a law provision applied by the act in question is being challenged...”

C. The Civil Code (in force from 1 January 1999)

19. The relevant provisions of the Civil Code read as follows:

Article 3: The principles of the civil law

“1. The civil legislation is based, *inter alia*, on the principle of freedom of contract.

2. Citizens and legal entities acquire and enforce civil rights of their own will and in their interests. They are free to determine their rights and obligations on the basis of a contract and stipulate any provision in a contract which is not incompatible with the law...”

Article 15: Annulment of unlawful acts of public authorities or local self-government bodies

“1. The acts of public authorities or local self-government bodies which are incompatible with laws or other legal acts and which violate the civil rights and lawful interests of a citizen or a legal person may be annulled by a court...

2. The Constitutional Court of Armenia shall, under Article 100 of the Constitution of Armenia, decide on the compatibility of laws, the resolutions of the National Assembly of Armenia, the decrees and directives of the President of Armenia, and the decrees of the Government of Armenia with the Constitution."

D. The Code of Civil Procedure (in force from 12 January 1999)

20. The relevant provisions of the Code of Civil Procedure, as in force at the material time, read as follows:

Article 109: Grounds for terminating the proceedings

"The court shall terminate the proceedings, if ... [*inter alia*] the dispute is not subject to be examined by the courts..."

Article 159: Grounds for annulling the unlawful acts of public authorities, local self-government bodies and their officials or for contesting their actions (inaction)

"Unlawful acts of public authorities, local self-government bodies and their officials can be annulled or their actions (inaction) can be contested (hereafter, annulling the unlawful act) if the act in question contradicts the law and if there is evidence that the applicant's rights and (or) freedoms guaranteed by the Armenian Constitution and laws have been violated. ..."

Article 160: An application seeking to annul unlawful acts of public authorities, local self-government bodies and their officials

"1. An application seeking to annul unlawful acts of public authorities, local self-government bodies and their officials shall be submitted to a court dealing with civil cases or the Commercial Court depending on their jurisdiction over cases.

The court cannot examine applications seeking to annul those acts, the determination of whose conformity with the Constitution of Armenia falls within the exclusive jurisdiction of the Constitutional Court.

2. The application may concern the unlawful act itself or any part of it. ..."

E. The Law on the Council of Justice (no longer in force from 18 May 2007)

21. The relevant provisions of the Law, as in force at the material time, read as follows:

Section 19

"The question of premature termination of the term of office of a judge shall be raised before the Council by the Minister of Justice...

The following may serve as grounds for premature termination of the term of office of a judge upon the Council's conclusion: (1) a gross violation of lawfulness; and (2) commission of an act incompatible with a judge's title.

The Minister of Justice ..., in cases envisaged by the first paragraph of this Section, shall submit to the Council the materials on which the proposal to terminate prematurely the term of office of a judge ... is based.

...

The Council, when examining the question of premature termination of the term of office of a judge, shall summon and hear the judge. ...”

Section 23

“The President of the Council shall summon the Council’s hearings.

The Council’s hearings shall be conducted by the President of the Council or, upon his instruction, the Minister of Justice or the General Prosecutor.

If the President of the Council is not present at the Council’s hearing, then the hearings, in which questions related to judges are examined, shall be conducted by the Minister of Justice, while [the hearings], in which questions related to prosecutors are examined, shall be conducted by the General Prosecutor.”

Section 25

“The Council, when performing its functions envisaged by ... [, *inter alia*, Article 19] of this Law, [shall adopt] conclusions.”

Section 26

“The Council’s ... conclusions are adopted by the majority of votes of those present at the hearing. ...

The Council’s conclusions are of a recommendatory nature. ...”

F. The Law on the Status of a Judge (no longer in force from 18 May 2007)

22. The relevant provisions of the Law, as in force at the material time, read as follows:

Section 30: Grounds for terminating the terms of office of a judge

“The term of office of a judge shall be terminated upon the proposal of the Council of Justice by the President of [Armenia] if: ... (8) [he or she] has committed a gross violation of the law when administering justice; ...”

G. The decision of the Constitutional Court of 16 November 2006 on the Conformity of Article 160 of the Code of Civil Procedure with the Constitution, adopted on the basis of applications lodged by citizens Sofik Gasparyan and Artak Zeynalyan

23. On the basis of applications lodged by individuals, not judges, following the Constitutional amendments of 2005 the Constitutional Court found the second paragraph of Article 160 § 1 of the CCP incompatible with Articles 18 and 19 of the Constitution, as amended on 27 November 2005, because it failed to guarantee a balance of power, created a serious gap in terms of judicial control of legal acts and endangered the implementation of

an individual's right to judicial protection of his rights and freedoms as guaranteed by paragraph 1 of Article 18 of the Constitution.

H. The Advocacy Act (in force from 22 January 2005)

24. According to Article 6, an advocate is entitled to receive remuneration for his services. The amount and mode of payment for legal services are decided by a written contract concluded between the advocate and the client in accordance with the Civil Code.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

25. The applicant complained under Articles 6 and 13 of the Convention that she was denied effective access to court to contest the early termination of her office of judge. The Court considers that this complaint essentially raises an issue of access to court and should therefore be examined from the standpoint of Article 6 § 1 of the Convention alone, which, in so far as relevant, reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

1. The parties' arguments

26. The Government contended that Article 6 did not apply in the present case. Relying on the Court's reasoning in its decision in the case of *Pitkevich* (*Pitkevich v. Russia*, no. 47936/99, 8 February 2001), they maintained that disputes relating to dismissal from the judiciary fall outside the scope of Article 6 of the Convention. The Government further argued that the applicant was expressly denied access to a court to challenge the President's decree on her dismissal from office and that this exclusion was justified, based on the State interest in ensuring the independence and impartiality of the judiciary.

27. The applicant contested the Government's contention that Article 6 did not apply. She argued, in particular, that the denial of access to court was not justified on any objective grounds.

2. The Court's assessment

28. The Court reiterates that, according to the principle established in the *Vilho Eskelinen and Others* judgment (*Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, §§ 61 and 62, ECHR 2007-II), in order for the respondent State to be able to rely before the Court on the applicant's status as a civil servant in excluding the protection embodied in Article 6, two conditions must be fulfilled. Firstly, the State in its national law must have expressly excluded access to a court for the post or category of staff in question. Secondly, the exclusion must be justified on objective grounds in the State's interest. The mere fact that the applicant is in a sector or department which participates in the exercise of power conferred by public law is not in itself decisive. In order for the exclusion to be justified, it is not enough for the State to establish that a civil servant participates in the exercise of public power or that there exists, to use the words of the Court in *Pellegrin* (*Pellegrin v. France* [GC], no. 28541/95, § 65, ECHR 1999-VIII), a "special bond of trust and loyalty" between the civil servant and the State, as employer. It is also for the State to show that the subject matter of the dispute in issue is related to the exercise of State power or that it has called into question the special bond. Thus, there can in principle be no justification for the exclusion from the guarantees of Article 6 of ordinary labour disputes, such as those relating to salaries, allowances or similar entitlements, on the basis of the special nature of the relationship between the particular civil servant and the State in question. There will, in effect, be a presumption that Article 6 applies. It will be for the Government to demonstrate, firstly, that a civil servant applicant does not have a right of access to a court under national law and, secondly, that the exclusion of the rights under Article 6 for the civil servant is justified.

29. The Court notes that in its decision on admissibility in the above-cited *Pitkevich* case the Court found that the judiciary, while not being part of the ordinary civil service, was nonetheless part of typical public service. A judge had specific responsibilities in the field of administration of justice, which was a sphere in which States exercised sovereign powers. Consequently, a judge participated directly in the exercise of powers conferred by public law and performed duties designated to safeguard the general interests of the State. The Court concluded that the dispute concerning the dismissal of a judge did not concern her "civil" rights or obligations within the meaning of Article 6 of the Convention.

30. The Court notes, however, that following its decision in *Pitkevich* and in the light of the findings made in the *Vilho Eskelinen* judgment, Article 6 was found to apply to proceedings concerning the dismissal of a judge (see, for instance, *Olujić v. Croatia*, no. 22330/05, §§ 31-45, 5 February 2009; *Oleksandr Volkov v. Ukraine*, no. 21722/11, §§ 87-91, ECHR 2013).

31. Thus, the *Vilho Eskelinen* judgment, which intended that a presumption of Article 6 protection should exist, encompasses cases of dismissal, unless the domestic system excludes access to court in that respect (see *Olujić*, cited above, § 34).

32. As to the present case, the applicant sought to challenge the legality of the President's Decree of 30 April 2004 concerning her dismissal from office and the courts eventually concluded that they did not have jurisdiction to examine a President's decree in accordance with Article 160 § 1 of the CCP, Article 15 § 2 of the Civil Code and Article 100 (1) of the Constitution.

33. The Court notes that the Government have not mentioned any provision of the law which would expressly rule out judicial protection in connection with disciplinary proceedings against judges (compare, *Olujić*, cited above, § 35).

34. The Court further notes that the applicant was unable to dispute the lawfulness of the President's Decree of 30 April 2004 concerning her dismissal because at the material time it was generally not open to individuals to challenge presidential decrees before the ordinary courts as a result of the application of the second paragraph of Article 160 § 1 of the CCP. Furthermore, at the material time it was not open to individuals to challenge presidential decrees before the Constitutional Court either. In such circumstances the applicant's access to court was restricted in the same way as in the case of any other individual seeking to dispute a presidential decree in court.

35. Against this background, the Court considers that the national law did not rule out access to court for the applicant based on her status as a holder of public power. Accordingly, the first condition of the *Vilho Eskelinen* test has not been fulfilled in the present case and therefore Article 6 applies under its civil head.

36. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

37. The applicant maintained that she had been deprived of access to court to challenge her dismissal from the judiciary since the courts did not examine the lawfulness of the President's decree concerning her dismissal relying on Article 160 § 1 of the CCP which the Constitutional Court later found to be unconstitutional. The applicant argued that the Council of Justice with its composition at the material time could not be considered as

an independent and impartial tribunal established by law which would satisfy the criteria under Article 6 § 1 of the Convention. In particular, before the major judicial reforms following the Constitutional amendments of 2005, the Council of Justice was presided over by the President of Armenia, the Prosecutor General and the Minister of Justice and was therefore fully dependent on the executive.

38. The Government argued that by its decision of 16 November 2006 the Constitutional Court found Article 160 § 1 of the CCP to be unconstitutional in so far as the practice of the courts of general jurisdiction was such that they refused to examine claims concerning the lawfulness of the acts of the President and the Government relying on the second paragraph of this provision. They maintained that this decision was not in any way concerned with claims concerning the compatibility of those acts with the Constitution, the determination of which is within the exclusive competence of the Constitutional Court and that at the material time individuals had no right of access to the Constitutional Court.

2. The Court's assessment

39. The Court reiterates that when disputes to which Article 6 is applicable are determined by organs other than courts, the Convention calls at least for one of the following systems: either the jurisdictional organs themselves comply with the requirements of Article 6 § 1 or they do not so comply but are subject to subsequent control by a judicial body that has full jurisdiction and does provide the guarantees of Article 6 § 1 (see *Albert and Le Compte v. Belgium*, 10 February 1983, § 29, Series A no. 58).

40. In the present instance, the applicant's case was examined and the resulting recommendation on her dismissal was submitted to the President of Armenia by the Council of Justice, which at the material time was presided over by the President, the Minister of Justice and the Prosecutor General.

41. Against this background, the Court must examine whether the Council of Justice could be considered an "independent and impartial tribunal" as required by Article 6 § 1.

42. The Court notes that in order to establish whether a tribunal can be considered "independent" within the meaning of Article 6 § 1, regard must be had, *inter alia*, to the manner of appointment of its members and their term of office, the existence of guarantees against outside pressures and the question of whether the body presents an appearance of independence. As to the question of "impartiality", there are two aspects to this requirement. Firstly, the tribunal must be subjectively free of personal prejudice or bias. Secondly, it must also be impartial from an objective viewpoint, that is, it must offer sufficient guarantees to exclude any legitimate doubt in this respect. The concepts of independence and objective impartiality are closely linked and the Court will often consider them together (see *Findlay*

v. the United Kingdom, 25 February 1997, § 73, Reports of Judgments and Decisions 1997-I; *Brudnicka and Others v. Poland*, no. 54723/00, § 38, ECHR 2005-II).

43. The Court further notes that the notion of the separation of powers between the executive and the judiciary has assumed growing importance in the case-law of the Court (see *Stafford v. the United Kingdom* [GC], no. 46295/99, § 78, ECHR 2002-IV and *Oleksandr Volkov*, cited above, § 103).

44. The Court finds it significant that at the time when the applicant's case was examined by the Council of Justice, it was presided over by the representatives of the executive. Accordingly, the Council of Justice, as it was composed at the material time, cannot be regarded as an independent and impartial tribunal capable of ensuring compliance with the requirement of fairness laid down by Article 6 of the Convention. It follows that the applicant should have had the benefit of subsequent control of the decision reached by the President upon the recommendation of the Council of Justice by a judicial authority meeting the requirements of Article 6.

45. The Court reiterates that the "right to a court", of which the right of access is one aspect, is not absolute; it is subject to limitations permitted by implication, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard. Nonetheless, the limitations applied must not restrict or reduce a person's access in such a way or to such an extent that the very essence of the right is impaired; lastly, such limitations will not be compatible with Article 6 § 1 if they do not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, among other authorities, *Levages Prestations Services v. France*, 23 October 1996, § 40, *Reports of Judgments and Decisions* 1996-V citing *Ashingdane v. the United Kingdom*, 28 May 1985, § 57, Series A no. 93; *Tolstoy Miloslavsky v. the United Kingdom*, 13 July 1995, § 59, Series A no. 316-B and *Stanev v. Bulgaria* [GC], no. 36760/06, § 230, ECHR 2012).

46. The Court observes that the applicant was unable to contest before the domestic courts the lawfulness of the President's Decree of 30 April 2004 dismissing her from her post within the judiciary, which was adopted on the basis of the recommendation of the Council of Justice. It further observes that although individuals enjoyed the right to seek the annulment of unlawful acts of public authorities in accordance with the provisions of Article 15 § 1 of the Civil Code and Article 159 of the CCP, because of the way the ordinary courts interpreted and applied the second sentence of the first paragraph of Article 160 of the CCP, it was their practice not to examine claims against the acts of certain public bodies and officials listed in Article 100 of the Constitution and Article 15 § 2 of the Civil Code, including the decrees of the President.

47. In line with this general practice which existed at the relevant time, the courts refused to examine the applicant's claim against the Presidential Decree of 30 April 2004, notwithstanding the fact that she sought to dispute its unlawfulness as distinct from its compliance with the Constitution, the determination of the latter issue being within the exclusive competence of the Constitutional Court to which, in any event, the applicant had no right of access.

48. In such circumstances, and given the lack of access to the Constitutional Court for individuals at the material time, the applicant was completely denied access to any court or to any other competent body satisfying the requirements of Article 6 of the Convention in order to dispute the Presidential Decree concerning the early termination of her term of office.

49. The Court finally notes that by its decision of 16 November 2006, the Constitutional Court found the second paragraph of Article 160 § 1 of the CCP to be unconstitutional since, due to the way it was interpreted and applied by the courts, namely that with reference to it the courts of general jurisdiction would systematically refuse to review the lawfulness of the acts of certain public bodies and officials, this provision endangered, *inter alia*, the implementation of an individual's right to judicial protection. This fact, however, does not have any bearing on the present case.

50. In view of the foregoing, the Court finds that the restriction imposed in the present case by the application of the second paragraph of Article 160 § 1 of the CCP, in limiting any judicial review of the Presidential Decree concerning the applicant's dismissal from office, impaired the very essence of her "right to a court". Having regard to this finding, the Court does not consider it necessary to examine whether the limitation of the applicant's right of access to court pursued a legitimate aim and whether it was proportionate to any such aim.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

52. Lastly, the applicant raised a number of other complaints under Article 6 of the Convention.

53. Having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. 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

55. The applicant claimed compensation for loss of income totalling 25,184,000 Armenian drams (AMD) (approximately 43,760 euros (EUR), including the salary of a judge, a salary premium and a supplemental allowance for working in a mountainous zone, in respect of pecuniary damage. She also claimed compensation for the distress and suffering caused by her unexpected dismissal from the judiciary which had heavily damaged her reputation and resulted in the deterioration of her health. The applicant left the determination of the amount of compensation for non-pecuniary damage to the discretion of the Court.

56. The Government claimed that there was no causal link between the violation alleged and the pecuniary and non-pecuniary damage claimed.

57. The Court does not discern any causal link between the violation found concerning the lack of access to a court and the pecuniary damage alleged. Consequently, there is no justification for making any award under this head. The Court accepts that the applicant has suffered non-pecuniary damage, such as distress and frustration, resulting from her inability to dispute the lawfulness of her dismissal, which is not sufficiently redressed by the finding of a violation of the Convention. Making its assessment on an equitable basis, the Court awards the applicant EUR 3,600 under this head.

B. Costs and expenses

58. The applicant also claimed AMD 1,260,400 (EUR 2,350 at the time of conclusion of the agreement between the applicant and her representative) in reimbursement of legal costs incurred before the Court. The applicant submitted a contract for provision of legal services whereby she was bound to pay this sum only in the event of the Court finding in her favour and awarding her an amount in just satisfaction. She also submitted a detailed timesheet of legal services provided by her representative in relation to her application lodged with the Court.

59. The Government submitted that the applicant had not yet paid any amount to her lawyer and therefore the expenses claimed could not be considered to have been actually incurred. They further submitted that the expenses claimed by the applicant were not reasonable as to quantum.

60. 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 have been actually and necessarily incurred and are reasonable as to quantum.

61. The Court notes that the applicant concluded an agreement with her representative concerning his fees which is comparable to a contingency fee agreement, an agreement whereby a lawyer's client agrees to pay the lawyer, in fees, a certain percentage of the sum, if any, awarded to the litigant by the court. Such agreements may show, if they are legally enforceable, that the sums claimed are actually payable by the applicant (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 55, ECHR 2000-XI; and *Kamasinski v. Austria*, 19 December 1989, § 115, Series A no. 168).

62. In the present case, the applicant agreed to pay her representative AMD 1,260,400 if the Court were to find a violation and award her just satisfaction. The Court notes that contingency agreements are enforceable under the Armenian law. In particular, the Advocacy Act does not set out any limitations on the type of agreement an advocate may enter into with his client, such agreements being regulated by the general provisions of the Civil Code, which states that the civil law is based, *inter alia*, on the principle of freedom of contract (see above, paragraphs 19 and 24). The Court, therefore, recognises the lawfulness of the arrangement entered into between the applicant and her representative, Mr Ghazaryan (contrast with *Dudgeon v. the United Kingdom* (Article 50), 24 February 1983, § 22, Series A no. 59).

63. In the light of the above, the Court finds that the legal costs before the Court have been necessarily incurred in order to afford redress for the violation found. The Court reiterates, however, that legal costs are only recoverable in so far as they relate to the violation found (see *Beyeler v. Italy* (just satisfaction) [GC], no. 33202/96, § 27, 28 May 2002). The Court notes that, in the present case, a violation of Article 6 was found only on one count, namely in respect of the lack of access to a court while the entirety of the written pleadings, including the initial application and the subsequent observations, concerned numerous other complaints under the same Article and also Article 13 of the Convention. Hence, the legal costs claimed by the applicant cannot be awarded in full as the Court has dismissed the applicant's complaints in part. 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 to cover the costs under this head.

C. Default interest

64. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning lack of access to a court admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *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 Armenian drams 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 1,300 (one thousand three hundred 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;

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

Done in English, and notified in writing on 20 October 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Luis López Guerra
President