



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

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FIFTH SECTION

Application no. 41089/20
Hovhannes GASPARYAN
against Armenia
lodged on 9 September 2020
communicated on 31 August 2026

SUBJECT MATTER OF THE CASE

On 1 January 2017 the applicant started working in a water supply company (“the Company”) as a Deputy Head of a Technical Directorate. On 29 March 2017 the Company notified the applicant that his employment contract in that position would be terminated, while offering him the position of the head of another division. The applicant marked “I agree” on that notice.

Pursuant to the Company’s order of 30 March 2017, the applicant was appointed to his new position, subject to a three-month probationary period.

On 20 June 2017 the Company notified the applicant that on 23 June 2017 an assessment of the results of the probationary period would take place.

On 28 June 2017 the Company notified the applicant that on 1 July 2017 his contract would be terminated on the basis of the assessment of the results of the probationary period and the performance indicators. The applicant required the audio and video recordings of the assessment that had taken place on 23 June 2017 as well as the questions put to him during that assessment, his answers, the protocol of the assessment and other relevant information. It appears that the Company did not provide the information sought by the applicant.

The applicant challenged his termination. On 11 May 2018 the First Instance Court of General Jurisdiction of Kentron and Nork-Marash Districts of Yerevan (“the District Court”) rejected the applicant’s application against the Company. The applicant appealed.

On 27 September 2018 the Civil Court of Appeal granted the applicant's appeal and remitted the case for a fresh examination. It found in particular that according to the Labour Code, the Company's order establishing a probationary period for the applicant was required to specify the conditions of such probation. However, no such conditions had been specified. Relying on the Court of Cassation's precedent no. 3-456 (VD) of 25 July 2008, the appellate court concluded that where an employment contract was terminated on the basis of the results of a probation, the employer was required to identify the specific requirements of the position which the employee had failed to meet and to indicate the facts established during the probation which had led it to conclude that the employee was unsuitable for the position. In other words, the employer's decision was required to be adequately reasoned. Moreover, the employer's internal acts were required to set out, in advance, all the criteria applicable to the position, of which the employee had to be made aware so as to understand that failure to meet those requirements could result in dismissal. The court further held that in the applicant's case it was not clear why his performance during the probation had been assessed negatively, what criteria had been applied, or what the applicant's results had been.

On 8 May 2019 the District Court granted the applicant's application upon fresh examination. The Company appealed.

On 1 October 2019 the Civil Court of Appeal granted the Company's appeal. Referring to the Court of Cassation's above precedent, the appeal court concluded that that neither the Labour Code nor the higher court's case-law established a requirement to set out criteria for assessing the results of a probation and for determining an employee's suitability for a given position. To the contrary, there were no particular procedure or requirements under the Labour Code concerning the assessment of the ongoing results of the probationary period.

The applicant lodged an appeal on points of law before the Court of Cassation. On 12 February 2020 the court declared the applicant's appeal inadmissible for lack of merit.

The applicant complains under Article 6 § 1 of the Convention that by giving conflicting interpretations to the provisions of the Labour Code and to the Court of Cassation's case-law in the same proceedings, the Civil Court of Appeal violated the principle of legal certainty.

QUESTION TO THE PARTIES

Has the applicant's right to have a fair trial guaranteed by Article 6 § 1 of the Convention been violated on account of the alleged breach of the principle of legal certainty by the Civil Court of Appeal (see *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, §§ 49-58, 20 October 2011; *Tudor Tudor v. Romania*, no. 21911/03, §§ 27-29, 24 March 2009; *Vusić v. Croatia*, no. 48101/07, § 44, 1 July 2010; *Balažoski v. the former Yugoslav Republic of Macedonia*, no. 45117/08, §§ 29- 30, 25 April 2013)?