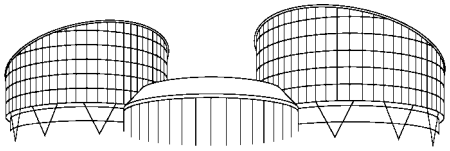

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF AGHAJANYAN v. ARMENIA

(Application no. 41675/12)

JUDGMENT

Art 10 • Positive obligations • Freedom of expression • Dismissal without notice of a senior researcher at a private chemical factory after disclosing sensitive information concerning his employer in an interview with a journalist • Domestic courts' failure to adduce relevant and sufficient reasons • Key elements for assessing the proportionality of such a serious measure not addressed • Failure to strike a fair balance in the light of the Court's case-law criteria between competing interests at stake

Prepared by the Registry. Does not bind the Court.

STRASBOURG

8 October 2024

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 Aghajanyan v. Armenia,

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

Gabriele Kucsko-Stadlmayer, *President*,
Tim Eicke,
Faris Vehabović,
Armen Harutyunyan,
Anja Seibert-Fohr,
Ana Maria Guerra Martins,
Anne Louise Bormann, *judges*,
and Simeon Petrovski, *Deputy Section Registrar*,

Having regard to:

the application (no. 41675/12) 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 Ishkhan Aghajanyan ("the applicant"), on 20 June 2012;

the decision to give notice to the Armenian Government ("the Government") of the complaint under Article 10 of the Convention and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 17 September 2024,

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

INTRODUCTION

1. The case concerns the applicant's dismissal from his employment in a private factory on the grounds that he had disclosed sensitive information concerning his employer in an interview with a journalist. The applicant relied on Article 10 of the Convention.

THE FACTS

2. The applicant was born in 1951 and lives in Yerevan. He was represented by Ms H. Harutyunyan and Ms M. Ghazaryan, legal experts of the non-governmental organisation Protection of Rights without Borders (PRWB), based in Yerevan, as well as by Ms A. Melkonyan, president and lawyer of the PRWB.

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.

5. Since 2003 the applicant had been working as a senior researcher at the Nairit factory ("the factory"), which produced various chemical products. Ownership of the factory was split between a private company,

which held 90% of the shares, and the Government, which owned the remaining 10%.

6. According to an order issued by the factory on 9 July 2007, information about salary levels of its employees was considered a fundamental commercial secret. A specific clause on the duty of confidentiality regarding the level of salaries was to be added to each employee's contract of employment.

7. In 2008 the applicant secured a permanent contract of employment. Clause 2.1.11 of his contract prohibited publication of information containing State, professional or commercial secrets relating to the factory.

8. On 1 July 2008 the applicant and the factory signed a declaration, as part of his contract of employment, in relation to the duty of confidentiality concerning his salary. The declaration made reference to Article 221 § 2 (2) of the Labour Code (see paragraph 26 below).

9. On 9 January 2009 the factory adopted internal regulations concerning its commercial secrets. Regulation 2.1 of the regulations defined a commercial secret as information that had commercial value because it was not known to third parties, the dissemination of which could adversely impact the operation of the factory. Under regulation 2.3 of the regulations, information concerning, among other things, the factory's production capacity, the nature of scientific work, ongoing experiments, storage of raw material, and technological processes that were being developed and implemented could be considered a commercial secret.

10. On several occasions between 2006 and 2010 the applicant filed reports with his management about the need to properly handle chemical waste, namely lacquer with ethynol solvent (*լաք էթինոլ* – "lacquer") which was stored in the factory's plants. In his report of 14 June 2006 the applicant and his colleague submitted a proposal to produce a water-dispersion paint from a mixture of lacquer and chloroprene rubber latex, which could be used to coat the pipes and equipment of the factory to protect them against corrosion. In 2007 this proposal was tested but, according to the minutes of the experiment, the results had not been satisfactory. The applicant twice complained to his management that the experiment had not been carried out properly and therefore the results had not been accurate. He proposed that the works be continued in a more responsible manner.

11. It appears that in November 2009, managing director V.M. allowed the applicant's request and instructed him to carry out an experiment for the production of between 25 kg and 30 kg paint from lacquer.

12. On 4 December 2009 the deputy managing director and head of the production department, R.S. gave instructions to the applicant and E.V., the head of scientific department, for 10 to 15 kg of paint to be produced.

13. On 5 February 2010 the applicant reported to V.M. that, following his return from a business trip, E.V. had told him to refrain from carrying out the experiment as instructed by V.M. (see 11 paragraph above),

threatening him with dismissal or demotion. The applicant complained that R.S., who had been in favour of the experiment, had eventually sided with E.V. Moreover, he had never received the necessary material to carry out R.S.'s instruction (see paragraph 12 above). The applicant drew V.M.'s attention to the fact that the problem related to lacquer called for a comprehensive approach.

14. On 24 and 26 February 2010 experiments were carried out based on R.S.'s instruction of 4 December 2009 (see paragraph 12 above), and a proposal was made to continue the works in order to improve the quality of the paint.

15. On 26 March 2010 the applicant filed another report with his management noting the lack of proper handling of chemical waste and accusing the factory's management of a lack of responsibility and care.

16. On 22 April 2010 an article was published in a local newspaper, featuring an interview with the applicant in which he discussed certain shortcomings in the running of the factory. It read as follows:

> "[A]s is well known, Nairit chemicals factory is not functioning because of [a] debt in the amount of one billion drams to the Electric Network of Armenia. In Soviet times the factory used to produce about one hundred thousand tons of rubber, but in the past five years it has produced only five thousand tons of rubber. That's why the company is not making a profit and is unable to pay for gas or heating. In addition, it turns out that there is literally a burning situation on the premises of Armenia's vast chemicals factory. The problem is that during the processing of rubber, another chemical substance – namely [lacquer] – is produced, which in the past used to be exported to Russia.
>
> Currently, owing to the lack of any buyers, the [lacquer] remains stored in the factory. It should be noted that the non-usage of this by-product for an extended period of time may result in it burning, causing serious harm to both the environment and human health. This situation in the factory is due to indifference and the lack of responsibility on the part of the management, as well as the toxic environment [between managers and personnel]. This has been put forward by the factory's senior researcher, a candidate of chemical sciences, [the applicant]. Back in 2006 he had offered the factory a solution which would solve the problem of storage of dangerous chemical waste. The researcher had proposed producing paint from the chemical waste, which could then be used both at the factory and elsewhere. A year later 600 kg of paint had been received in order to carry out experiments and for later organising the production of paint. According to [the applicant], the experiment had not taken place because of a lack of oversight and an irresponsible attitude. Years later, in 2009, when the new managing director had learnt about the work, he was presented with a report as if the paint had been tested in the workshops. According to [the applicant], that did not correspond to reality. No experiments had taken place and what should have been important work had been abandoned.
>
> According to [the applicant], he had only learnt about the false report by accident, because he had been on forced leave. 'I had been on leave because I was not part of the in-crowd; a leading vocational college, an academic title and work for the benefit of the factory were of no value. Here, education and good performance do not count. What matters is having good connections.' The researcher sent two reports to the managing director of the factory, stating that no experiments had been carried out at

the factory, but the reports remained unanswered. Upon [the applicant's] return from forced leave, the managing director of the factory had instructed him to organise the production of between 25 kg and 30 kg of paint on the basis of [lacquer] and to carry out new experiments. 'Two days after the instruction, E.V., the head of the scientific department, returned from a business trip and told me earnestly to refrain from carrying out the managing director's instruction, otherwise they would fire me,' our interlocutor told us. When the head of the production department tried to find out why the work had been delayed, instead of punishing the person responsible and solving the problem, he had sided with him, and – together with E.V. and in [the applicant's] presence – had decided to tell the managing director that his instruction had been impossible to fulfil. Only after [the applicant] had threatened that he would take his complaint all the way up to the President of the Republic had they given up.

This year, too, the head of the production department gave formal instructions for 10 kg of paint to be produced. However, to date, the researcher has not yet received the necessary material. And this in circumstances when 1,000 tons of [lacquer] stored in the factory could ignite at any moment and cause a serious threat, whereas the researcher's proposal would not only prevent such a threat, but could serve as an additional source of revenue. 'Nairit is a zoo! The right hand doesn't know what the left hand is doing. The ghost of 1937 wanders around the factory, when speaking the plain truth was considered an act of heroism,' he adds. Losing all hope in the factory, [the applicant] this February acquired, at his own expense, 12 kg of new samples of paint, which the committee tested on 1 March. 'The president of the committee, with his blatantly obstructive attitude, uses every possible tactic not to let the other members of the committee express a positive conclusion, whereas the paint to be produced will firstly be used to coat the pipes and equipment of the factory to protect them against corrosion. It is they who will have to carry out that work, which they consider an additional burden. The situation is still uncertain, whereas there is an opportunity to alleviate the factory's problems,' states the senior researcher in frustration.

He submitted another invention concerning the production of chloroprene rubber for testing, but he has not received any response for a year now. 'I did not receive any material support from the factory to carry out that task. I did everything by myself. I set up a laboratory, even though the factory owns millions. They do nothing and deprive specialists of the basic possibility of working. These are just two examples of the factory's irresponsible work, when in fact there are countless others ...'

Mr Aghajanyan was also frustrated by the fact that an experienced expert with the degree of candidate of sciences earned only 85,000 Armenian drams (AMD) monthly, while each of the factory's twelve deputy directors earned between AMD 3 million and AMD 4 million.

According to the researcher, the reason for the indifference towards his inventions was because the factory's management had brought about so much unfairness and had so many secrets that, out of self-preservation, it did not wish anyone to poke his or her nose in [the factory's] business. 'As if we did not live in a State but in a disorganised territory, where violence and arbitrariness prevail. Nairit is a reflection of our country, its pretence, corruption and lack of care,' reports the factory employee."

17. On 19 May 2010 the managing director of the factory dismissed the applicant from his job without notice. In his decision, the director noted that on 22 April 2010 a newspaper article had been published about the factory based on the applicant's unfounded statements. In particular, the applicant

had disseminated false information about scientific work and experiments, as well as about the salaries of employees in the factory, thereby breaching Article 221 § 2 of the Labour Code (quoted in paragraph 26 below) and clause 2.1.11 of his contract of employment (see paragraph 7 above). The director concluded that this had been sufficient for the factory to lose its trust in the applicant as an employee and to terminate his contract of employment on that basis, as prescribed under Article 113 § 1 (7) of the Labour Code (quoted in paragraph 26 below).

18. The applicant challenged his dismissal in the civil courts. He submitted, among other things, that the order for his dismissal had been unlawful because it had not indicated which subparagraph of Article 221 § 2 of the Labour Code he had breached. As regards the alleged breach of clause 2.1.11 of his contract of employment, he had never been made aware of the definition of State, professional or commercial secrets relating to the factory.

Following a reply by the factory in which it argued, among other things, that during his interview the applicant had disclosed commercial secrets in breach of the factory's internal regulations and his contractual duties, the applicant supplemented his civil action. He contested the suggestion that he had ever been made aware of the factory's internal regulations concerning its commercial secrets (see paragraph 9 above) which, as alleged by the factory during the court proceedings, had been published on its online platform. The truth was that he had learnt of the regulations only in the course of the civil proceedings in question, when the factory had submitted them to the court. Moreover, the information disclosed during his interview could not be considered a commercial secret. It had concerned issues such as the protection of the environment, damage to human health, and workplace safety. As regards the information about the level of salaries, the applicant alleged that the employer could not make such information a commercial secret and, in any event, according to his dismissal order, the information he had disclosed were false and unfounded. Besides, in order to dismiss him for loss of trust under Article 113 § 1 (7) of the Labour Code, the factory should have substantiated that he had committed any of the acts listed in Article 122 of the Labour Code (see paragraph 26 below), but this had not been done in his case.

19. On 23 September 2010 the Shengavit District Court of Yerevan ("the District Court") allowed the applicant's appeal and declared his dismissal order invalid. It essentially upheld the arguments raised by the applicant and found that his dismissal had been unlawful. The District Court pointed out that there had been no information about the damage allegedly suffered by the factory as a result of the applicant's interview. As regards the information about the salaries of the factory employees, the District Court also noted that, as submitted by the factory, that information had not been

accurate and thus could not be regarded as a commercial secret. The factory therefore had not had any grounds to dismiss the applicant.

20. On 7 October 2010 the factory lodged an appeal.

21. On 17 February 2011 the Civil Court of Appeal quashed the judgment of 23 September 2010 and remitted the case to the District Court on the grounds that the applicant's interview had contained information falling under the definition of "commercial secret", as defined in the factory's internal order and regulations (see paragraphs 6 and 9 above). Moreover, despite being bound by the duty of confidentiality regarding salaries, the applicant had disseminated information about the level of salaries of the factory's employees. The Court of Appeal also noted that, according to the factory, its business reputation had been undermined, as a consequence of which it could suffer damage, including loss of clientele or trust among its consumers. An appeal on points of law lodged by the applicant against that judgment was declared inadmissible by the Court of Cassation on 13 April 2011.

22. On 19 September 2011, during the second round of the proceedings, the District Court rejected the applicant's application. In particular, it noted that under the relevant order and internal regulations issued by the factory's management (see paragraphs 6 and 9 above), information concerning, among other things, the production capacities of the factory, the nature of its scientific work, ongoing experiments, storage of raw material, product types and technological processes that were being developed and implemented, as well the salary of employees, had been regarded as a commercial secret. The court went on to conclude the following:

> "[I]n the present case [the applicant], being employed as a senior researcher at [the factory] ..., having signed [a declaration on his duty of confidentiality concerning his salary] on 01.07.2008, undertook not to publish official or commercial secrets of the [factory]; however, by giving information to the media outlet about the production capacities, storage of raw material and substances and product types at the [factory], as well as the level of salaries of employees, he did not comply with his duties, [thereby] breaching the provisions of the above-mentioned internal regulations and of the [declaration on his duty of confidentiality] signed on 01.07.2008. [The applicant's] arguments that the information in question did not constitute a [commercial] secret and that his constitutional rights and freedoms were restricted by the above-mentioned acts are unsubstantiated ..."

23. The applicant lodged an appeal relying on, *inter alia*, his right to freedom of expression. He reiterated the arguments he had raised before the District Court (see paragraph 18 above). He further submitted that he had attempted to bring the issues reported during his interview to the attention of his superiors on numerous occasions but in vain. The applicant reiterated that the information he had disclosed during his interview concerned issues such as the protection of the environment, workplace safety, and damage to human health. Therefore, there was not only a right but also a duty to make such information public given that the employer had taken no preventive

measures. He further contended that the court had not specified the damage sustained by the factory as a result of the publication of the newspaper article. In so far as the interview concerned the level of salaries, he had learnt of the factory's internal order of 9 July 2007 (see paragraph 6 above) only in the course of the civil proceedings in question. The applicant also submitted that he had never breached his contractual duties because he had not revealed his own salary, which had actually been AMD 100,050 and not AMD 85,000 as indicated in his interview. Referring to an interview of a senior employee of the factory, who had presented in general terms the average salaries of the factory's employees, the applicant submitted that such information had in any event been public and available on the factory's website. Furthermore, the factory's website contained information about its future projects, product types, production capacities and experiments. He had therefore not revealed information which could be regarded as a commercial secret.

24. On 1 December 2011 the Civil Court of Appeal dismissed the applicant's appeal as unsubstantiated and endorsed the judgment of the lower court. In particular, having cited the provisions of the internal order and regulations issued by the factory's management, clause 2.1.11 of the applicant's contract of employment and the declaration on his duty of confidentiality (see paragraphs 6-9 above), the Court of Appeal held the following:

> "[I]t transpires from the examination of ... the [article] that [the applicant] provided certain information regarding the production capacities [of the factory], the nature of [its] scientific work, ongoing experiments, storage of raw material and substances, [and the] technological processes that were being developed and implemented. An examination of the [article] shows that the [applicant] also provided information about the level of salaries of employees, which in the present case is regarded as a breach of the contract of employment. The Court of Appeal notes that the [applicant], having abused the trust of his employer, disclosed information that was considered secret regarding the latter's activities, thereby breaching both the provisions laid down in the [factory's] internal legal instruments, and also his contractual duties. Therefore, ... [the dismissal order] was given in the manner and within the limits prescribed by law ... The Court of Appeal finds that in the present civil case the [District Court], in compliance with the [relevant provision] of the Code of Civil Procedure, properly examined and assessed all the evidence in the case and ... justifiably [dismissed] the applicant's civil claim ..."

An appeal on points of law by the applicant was declared inadmissible for lack of merit by the Court of Cassation on 8 February 2012.

25. According to news articles submitted by the applicant, on 28 August 2017 an explosion and fire had occurred on the premises of the factory, in a facility where lacquer had been stored. The articles claimed that a similar explosion had previously taken place twice in 2006. The former managing director of the factory told the reporting journalist that the explosion had not been so harmful to the environment and had possibly occurred on account of hot weather.

RELEVANT LEGAL FRAMEWORK

26. The relevant provisions of the Labour Code, as in force at the material time, read as follows:

Article 113 – Termination of the contract of employment on the initiative of the employer

"1. An employer may terminate a permanent contract of employment or a fixed-term contract prior to its expiry:

...

(7) in the event of loss of trust in the employee;

..."

Article 121 – Termination of the contract of employment on account of non-fulfilment or improper performance by an employee of his or her duties

"...

2. An employer shall have the right to terminate the contract of employment if an employee has at least once committed a gross violation of labour discipline as provided for by paragraph 2 of Article 221 of this Code.

..."

Article 122 – Termination of the contract of employment on account of loss of trust in the employee

"1. The employer shall have the right to terminate the contract of employment with an employee in whom trust has been lost as provided for by point 7 of paragraph 1 of Article 113 of this Code if the employee has:

(1) spoiled, damaged or lost the property of the employer, or committed theft in the workplace;

(2) exposed the protection of the property of the employer to danger; or

(3) caused mistrust among consumers, customers or partners of the employer, as a result of which the employer has borne or may have borne losses."

Article 221 – Gross violation of labour discipline

"1. A gross violation of labour discipline shall be considered to entail a serious breach of the provisions of labour legislation and other normative legal acts which regulate labour law, or the prescribed work regulations.

2. The following may be considered to be a gross violation of labour discipline:

(1) acts which violate a person's constitutional rights;

(2) disclosure of State, professional, commercial or technological secrets or their transmission to a competitor entity;

(3) taking advantage of one's position to obtain an unlawful gain for oneself or other individuals or for some other personal purposes, or arbitrary behaviour;

(4) a violation of the equal rights of men and women or sexual harassment of colleagues, subordinates or beneficiaries;

(5) where, during working time, the employee is under the influence of alcohol, drugs or psychedelics;

(6) absence from work throughout the entire working day/shift without any substantial reason;

(7) refusal to undergo a mandatory medical examination."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

27. The applicant complained that his dismissal, as a result of his interview published in the newspaper article of 22 April 2010, had breached his right to freedom of expression as provided for in Article 10 of the Convention, which reads as follows:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Admissibility

28. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

(a) The applicant

29. The applicant complained that his dismissal, following publication of the newspaper article of 22 April 2010, had constituted an unlawful and unnecessary interference with his right to freedom of expression, as guaranteed under Article 10 of the Convention, had not pursued any legitimate aim and had in any event been disproportionate. According to his dismissal order, he had committed a gross violation of labour discipline as defined in Article 221 § 2 of the Labour Code, which had resulted in his

employer's loss of trust in him under Article 113 § 1 (7) of the Code. Whereas these were two distinct grounds to terminate a contract of employment, neither had been substantiated in his case. The domestic courts had not even specified which passages of his interview had divulged a commercial secret but instead they had simply cited the definition of commercial secrets, as found in the company's regulations, and concluded that his interview had contained such information. The applicant essentially reiterated his arguments, as summarised in his appeals before the domestic courts (see paragraphs 18 and 23 above).

30. The applicant further argued that he had acted as a "whistle-blower", whereas the domestic law did not provide sufficient guarantees for the protection of whistle-blowers. He had gone public only after attempts to bring the attention of his management to the question of the storage of lacquer on the factory's premises had proved futile. He had not acted out of any personal grievance but had aimed to address serious ecological issues and had even come up with a proposal to take measures for grappling with the problem. He had thus acted in good faith. During his interview, he had pointed to the dangers related to the explosion of the lacquer stored in the factory. The information imparted had been in the public interest, given that it had concerned potential damage to the environment and to human health. The applicant maintained that that information had been accurate: he was a chemist and had worked as a senior researcher at the factory for several years. As a matter of fact, none of the reports he had filed with the factory had been dismissed by it as unfounded. Moreover, in 2017 there had been an explosion and fire at the factory, in a facility where lacquer had been stored. A similar incident had occurred in 2006. As regards any possible damage caused to his employer by the disclosure of the information in question, the applicant submitted that neither the domestic courts nor the Government had substantiated the damage suffered by the factory. In such circumstances his dismissal, as upheld by the domestic courts, had been an extremely severe measure and had thus been disproportionate. Lastly, even if the Court were to find that the disclosure of his salary had amounted to a breach of his contractual duties, there had been no countervailing interest in dismissing him for imparting information about the potential damage to the environment and risk to human health.

(b) The Government

31. Without disputing the interference with the applicant's right to freedom of expression, the Government submitted that his dismissal had complied with the requirements of Article 10. In particular, the applicant had been dismissed in accordance with the law, namely on account of his employer's loss of trust in him and his gross violation of labour discipline – in the present case, the disclosure of a commercial secret. In that connection, they pointed out that under Article 121 of the Labour Code, an

employer had the right to dismiss an employee for even a single serious breach of labour discipline (see paragraph 26 above). In the Government's submissions, the applicant had been well aware of the factory's internal regulations of 9 January 2009, in which its commercial secrets were defined; furthermore, clause 2.1.11 of his contract of employment had prohibited in unequivocal terms the disclosure of commercial secrets relating to the factory (see paragraphs 7 and 9 above). In addition, information about salary levels of the factory's employees was considered a fundamental commercial secret and the applicant had signed a non-disclosure agreement regarding his salary (see paragraphs 6 and 8 above), yet by giving an interview to a journalist he had failed to comply with any of his contractual duties. Regard being had to the content of the applicant's interview, there could be no doubt that he had disclosed information which was a commercial secret under both the factory's regulations and his contract of employment, and the factory had thus had ample grounds to dismiss him. The Government argued that the interference with the applicant's freedom of expression had pursued the legitimate aims of the protection of the reputation and interests of the factory, and the prevention of the disclosure of information received in confidence.

32. They argued that the applicant's interview could not constitute "whistle-blowing", because the applicant had failed to substantiate the information disclosed by any evidence, had not acted in good faith and, in any event, the divulgence of information about the salaries of employees had not been justified. Referring to the last paragraph of the newspaper article (see paragraph 16 above), they argued that the statements made in that passage were defamatory, accusing the factory of corruption. The Government concluded that since the applicant had made defamatory allegations, which moreover he had failed to prove, the sanction of dismissal had been proportionate.

2. The Court's assessment

(a) General principles

33. The general principles developed in the Court's case-law in matters of freedom of expression have been summarised in *Palomo Sánchez and Others v. Spain* ([GC], nos. 28955/06 and 3 others, §§ 53-55, ECHR 2011).

34. When considering disputes involving freedom of expression in the context of professional relationships, the Court has found that the protection of Article 10 of the Convention extends to the workplace in general. It has also pointed out that that Article is not only binding in the relations between an employer and an employee when those relations are governed by public law but may also apply when they are governed by private law (see *Fuentes Bobo v. Spain*, no. 39293/98, § 38, 29 February 2000, and *Heinisch v. Germany*, no. 28274/08, § 44, ECHR 2011). Indeed, genuine and

effective exercise of freedom of expression does not depend merely on the State's duty not to interfere, but may require positive measures of protection, even in the sphere of relations between individuals. In certain cases, the State has a positive obligation to protect the right to freedom of expression, even against interference by private individuals (see *Halet v. Luxembourg* [GC], no. 21884/18, § 111, 14 February 2023; *Palomo Sánchez and Others*, cited above, § 59; and *Herbai v. Hungary*, no. 11608/15, § 37, 5 November 2019).

35. The responsibility of the authorities would be engaged if the facts complained of stemmed from a failure on their part to secure to the applicants the enjoyment of the right enshrined in Article 10 of the Convention. While the boundary between the State's positive and negative obligations under the Convention does not lend itself to precise definition, the applicable principles are, nonetheless, similar. In both contexts regard must be had in particular to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole, subject in any event to the margin of appreciation enjoyed by the State (*Palomo Sánchez and Others*, §§ 60 and 62, and *Herbai*, § 37, both cited above).

36. The Court further reiterates that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law in a manner that gives full effect to the Convention. It emphasises the subsidiary nature of its review and observes that insufficient reasoning or shortcomings in the domestic courts' reasoning have also led it to find a violation of Article 10, where those omissions prevented it from effectively exercising its scrutiny as to whether the domestic authorities had correctly applied the standards established in its case-law (see *Halet*, cited above, §§ 159-62).

(b) Application of the above principles

37. In the present case, while the Government did not contest that there had been an interference with the applicant's right to freedom of expression (see paragraph 31 above), the decision to dismiss the applicant was not taken by a State authority, but by a private company. As noted above, Article 10 of the Convention also applies when relations between employer and employee are governed, as in the instant case, by private law and that the State has a positive obligation to protect the right to freedom of expression even in the sphere of relations between individuals (see the case-law cited in paragraph 34 above). In such circumstances, the Court finds it appropriate to examine the present case in terms of the State's positive obligations under Article 10 of the Convention (see *Palomo Sánchez and Others*, cited above, §§ 60-62). The Court will therefore ascertain whether the Armenian judicial authorities, in dismissing the applicant's claim, adequately secured his right to freedom of expression in the context of labour relations.

38. At the outset, the Court needs to examine whether the national courts applied the principles of the Convention as interpreted in the light of its case-law in a satisfactory manner. In this connection it observes that the domestic judgments in the present case contain very little reasoning (see paragraphs 22 and 24 above). Firstly, even though the applicant submitted detailed arguments contesting the lawfulness of his dismissal as a result of his interview, the domestic courts failed to address any of his arguments made in that respect. In particular, they failed to establish if the conditions listed under Article 122 of the Labour Code had been met in order to warrant the applicant's dismissal for loss of the employer's trust in him under Article 113 § 1 (7) of the Code. Rather, having cited verbatim the factory's relevant internal documents defining a commercial secret, they essentially found that the applicant's dismissal – on the grounds that his employer had lost trust in him – was justified because he had disclosed information falling within the definition of a commercial secret, thus breaching his contractual duties. As regards the Government's reference to Article 121 of the Labour Code as a grounds for the applicant's dismissal (see paragraph 31 above), this Article did not even feature in the applicant's dismissal order.

39. Furthermore, although according to the dismissal order and the courts' judgments, the applicant had breached the Labour Code and employment discipline by disclosing commercial secrets, the dismissal order itself stated in unambiguous terms that the applicant had divulged "unfounded" and "false" information (see paragraph 17 above). In the Court's view, the approach of the domestic courts in describing the applicant's statements as a "commercial secret", whereas according to his dismissal order, the information was "false and unfounded", is contradictory (compare *Goryaynova v. Ukraine*, no. 41752/09, § 59, 8 October 2020). However, neither the domestic courts nor the Government addressed this contradiction even though the applicant had highlighted it both before the national authorities and in his application to the Court (see paragraphs 18 and 29 above).

40. More importantly, the domestic courts failed to assess the case before them in the light of the principles defined in its case-law under Article 10 of the Convention. In fact, neither the applicant's dismissal order nor the domestic court judgments specified which of the applicant's statements published in the newspaper were found to be inaccurate or defamatory as seemingly argued by the Government (see paragraph 31 above). They never analysed the applicant's arguments about his repeated attempts to raise his concerns with his superiors (see paragraphs 10, 13, 15 and 23 above). The courts also failed to verify the applicant's motive and, notwithstanding the Government's argument, there is no mention in the domestic judgments that the applicant had acted in bad faith (see paragraph 32 above).

41. The Court reiterates the importance of the duty of loyalty and discretion of employees to their employers, which requires that the dissemination of even accurate information be carried out with moderation and propriety. However, this duty may be overridden by the interest which the public may have in particular information (see, *mutatis mutandis*, *Goryaynova*, cited above, § 61). In his interview the applicant raised a very sensitive and important matter of public interest (see paragraphs 16 and 25 above) concerning, as submitted in the impugned proceedings, the protection of the environment, damage to human health and workplace safety (see paragraphs 18 and 23 above). However, the relationship between the applicant's duty of loyalty and the public interest in being informed about environmental issues and perceived wrongdoing in Armenia's vast chemicals factory was not examined by the domestic courts at all.

42. In addition, the domestic judgments, in upholding the applicant's dismissal, contained no mention of any harm sustained by the factory as a result of the applicant's interview (conversely, *Palomo Sánchez and Others*, cited above, §§ 65-66).

43. Lastly, as regards the severity of the measure imposed on the applicant, the Court notes that it was the heaviest one possible, without any assessment of the appropriateness of a less severe measure (see, *mutatis mutandis*, *Herbai*, cited above, § 49).

44. The Court considers that when assessing the proportionality of a serious measure such as dismissal without notice, the domestic courts had to take into account and give a comprehensive analysis of such key elements of the case as the nature and veracity of the statements made by the applicant, his motives for giving the interview and the possibility of effectively raising his point before his superiors, as well as the damage caused to the factory as a result of the applicant's interview (compare, *Goryaynova*, cited above, § 65). However, as can be seen from the Court's analysis in the preceding paragraphs, the domestic courts failed to address any of those issues.

45. Having regard to the foregoing, the Court considers that in the circumstances of the present case, the national courts failed to strike a fair balance in the light of the criteria established in its case-law between the competing interests at stake and adduce "relevant and sufficient" reasons for their decisions.

46. There has accordingly been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

48. The applicant claimed 15,970 euros (EUR) in respect of pecuniary damage, comprising his lost salary from the date of his dismissal until he had reached retirement age on 10 September 2016, and EUR 10,000 in respect of non-pecuniary damage.

49. The Government contested those claims.

50. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim (compare *Herbai*, cited above, §§ 50-51 and 56). At the same time, making its assessment on an equitable basis, it awards the applicant EUR 4,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

51. The applicant also claimed EUR 2,080 for the costs and expenses incurred before the Court. He asked that that amount be paid into PRWB's bank account (see paragraph 2 above).

52. The Government contested those claims on the grounds that the present case was not so complex as to require involvement of three representatives.

53. 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 *Magyar Kétfarkú Kutya Párt v. Hungary* [GC], no. 201/17, § 125, 20 January 2020). Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,600 covering costs for the proceedings before it, to be paid to PRWB's bank account, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds*

(a) that the respondent State is to pay, 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 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be paid to the applicant;

(ii) EUR 1,600 (one thousand six hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid to PRWB's bank account;

(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 8 October 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Simeon Petrovski	Gabriele Kucsko-Stadlmayer
Deputy Registrar	President