



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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 31769/04  
by "ENERGIA" PRODUCERS' COOPERATIVE  
against Armenia

The European Court of Human Rights (Third Section), sitting on  
9 December 2004 as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President*,

Mr J. HEDIGAN,

Mr L. CAFLISCH,

Mr C. BİRSAN,

Mrs A. GYULUMYAN,

Ms R. JAEGER,

Mr E. MYJER, *judges*,

and Mr M. VILLIGER, *Deputy Section Registrar*,

Having regard to the above application lodged on 3 July 2004,

Having deliberated, decides as follows:

THE FACTS

The applicant, "Energia" Producers' Cooperative, is a private construction company that was founded in 1986 and has its registered office in Vedi, Armenia. The applicant company was represented before the Court by its manager, Mr Hamlet Hovsepyan.

### **A. The circumstances of the case**

The facts of the case, as submitted by the applicant company, may be summarised as follows.

On an unspecified date, the applicant company instituted proceedings against another private company, claiming that the latter had failed to comply with its contractual obligations and seeking damages.

On 1 April 2002 the Commercial Court (*ՀՀ Տնտեսական դատարանը*) rejected the applicant company's claims as unsubstantiated. This judgment was subject to appeal within fifteen days.

No appeal was lodged so the judgment entered into force.

On 26 April 2002 the Convention entered into force in respect of Armenia.

On 2 February 2004 an advocate holding a special licence lodged an appeal in cassation (*վճարելի բողոք*) with the Court of Cassation (*ՀՀ Վճարելի դատարանը*) on behalf of the applicant company, seeking to reopen the proceedings on the ground of newly discovered circumstances. As a newly discovered circumstance, the advocate submitted an independent expert opinion prepared on 17 September 2003.

On 27 February 2004 the Court of Cassation dismissed the appeal, finding that the piece of evidence adduced could not be regarded as a newly discovered circumstance having vital importance for the case.

### **B. Relevant domestic law**

Article 221.4 of the Code of Civil Procedure of 1999 (*ՀՀ քաղաքացիական դատավարության օրենսգիրքը*) provides that a judgment of the Commercial Court enters into force within 15 days from the date of its pronouncement.

According to Articles 222, 223 and 224, judgments of the Commercial Court, which have entered into force, may be reviewed through proceedings in cassation on the basis of an appeal lodged by the Prosecutor General of Armenia and his Deputies, or by advocates holding a special license and registered with the Court of Cassation. These appeals are examined by the Court of Cassation.

Article 225 provides that an appeal in cassation can be brought on points of law and procedure, or on the ground of newly discovered circumstances. There is no time-limit for lodging an appeal on the ground of newly discovered circumstances.

According to Article 228, the proceedings shall be reopened on the ground of newly discovered circumstances having vital importance for the case which the parties were not or could not be aware of or which the

parties were aware of but were unable to present them in court for valid reasons.

According to Articles 235 and 236, the Court of Cassation reviews the judgments within the grounds presented in the appeal. The Court can either dismiss the appeal, or otherwise quash the whole or part of the judgment and remit the case for a new examination.

## COMPLAINT

The applicant company complained under Article 6 of the Convention that the proceedings had been unfair as both the Commercial Court and the Court of Cassation failed to correctly evaluate the facts and evidence before them.

## THE LAW

The applicant company complains about unfair proceedings and invokes Article 6, which insofar as relevant, provides:

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

a) As regards the proceedings before the Commercial Court, the Court first deems it necessary to establish whether the decision of the Court of Cassation of 27 February 2004 can be regarded as the final decision in these proceedings within the meaning of Article 35 § 1. In this respect the Court recalls that an application for reopening of proceedings cannot, as a general rule, be taken into account for the purposes of Article 35 § 1 (see, e.g., *Ericsson v. Sweden*, no. 31721/96, Dec. 21.5.97). The Court does not find any special circumstances in the present case which would justify a departure from that general rule. Accordingly, the final judgment determining the applicant company's claims was the judgment of the Commercial Court of 1 April 2002.

In this connection the Court recalls that in accordance with the generally recognised rules of international law, the Convention only governs, for each Contracting Party, facts subsequent to its entry into force with regard to that Party (see, e.g., *Jovanović v. Croatia* (dec.), no. 59109/00, ECHR 2002-III). The Court observes that the Convention entered into force in respect of Armenia on 26 April 2002. Accordingly, the Court is not competent to examine the present application in so far as it refers to the judgment of the Commercial Court as this judgment was taken before that date.

It follows that this part of the application is incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

b) To the extent that the applicant company complains about the proceedings before the Court of Cassation, the Court recalls that there is no right under the Convention to have proceedings reopened and that Article 6 of the Convention does not apply to proceedings determining whether or not a case should be reopened (see, e.g., *Michalikova v. Slovakia*, no. 48818/99, Dec. 11.12.01). Even though in the Armenian domestic law an application for reopening is formally called an “appeal in cassation”, in its essence it is not in any way different from a common request for reopening.

It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court unanimously

*Declares* the application inadmissible.

Mark VILLIGER  
Deputy Registrar

Boštjan M. ZUPANČIČ  
President