CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 37784/02
by NOYAN TAPAN LTD
against Armenia

The European Court of Human Rights (Third Section), sitting on 7 October 2008 as a Chamber composed of:

Josep Casadevall, *President*,
Elisabet Fura-Sandström,
Boštjan M. Zupančič,
Alvina Gyulumyan,
Ineta Ziemele,
Luis López Guerra,
Ann Power, *judges*,
and Stanley Naismith, *Deputy Section Registrar*,

Having regard to the above application lodged on 18 October 2002,

Having regard to the partial decision of 21 October 2004,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Noyan Tapan Ltd, is a private Armenian news agency and television company ("the applicant company") that was set up in 1991 and has its registered office in Yerevan. The applicant company was represented before the Court by Mr M. Muller, Mr T. Otty, Ms J. Gordon, Mr K. Yildiz, Ms A. Stock and Ms L. Claridge, lawyers practising in London, Mr T. Ter-Yesayan and Ms N. Gasparyan, lawyers practising in Yerevan, and

Mr A. Ghazaryan. 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.

A. The circumstances of the case

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

1. Background to the case

The applicant company was established in 1991 and initially operated as a news agency, with its own publishing house, newspaper and internet network.

According to the applicant company, since 1997 it had applied on several occasions to the relevant public authorities to obtain a broadcasting licence with the intention of getting involved in television broadcasting, but was repeatedly refused a licence.

On 1 November 1999 the applicant company entered into an agreement with another private company, the Lotus television company ("Lotus"), to jointly produce a set of the applicant company's television programmes, which included re-broadcasts of the TV6 Russian television channel and its own programmes, comprising news, political and economic analysis and constituting 25% of the whole content. Under the terms of the agreement, Lotus allowed the applicant company to broadcast over band 35, for which Lotus held a broadcasting licence due to expire on 22 January 2002.

In 2000-2001 legislative changes were introduced in the sphere of television and radio broadcasting.

The Television and Radio Broadcasting Act (*«Հեռուստատեսության և ռադիոյի մասին» ՀՀ օրենք* – "the Broadcasting Act"), passed in October 2000, established a new authority, the National Television and Radio Commission (*Հեռուստատեսության և ռադիոյի ազգային հանձնաժողով* – "the NTRC"), which was entrusted with regulating the licensing and monitoring the activities of private television and radio companies. The NTRC was a public body composed of nine members appointed by the President of Armenia. The Broadcasting Act also introduced a new licensing procedure, according to which a broadcasting licence was granted on the basis of a call for tenders conducted by the NTRC in respect of the list of available frequencies.

During 2001 all existing broadcasting licences were temporarily re-registered by the NTRC until the relevant calls for tenders were announced.

On an unspecified date in 2001 the NTRC decided to postpone the call for tenders for band 35 until the adoption of appropriate rules and

regulations and to permit Lotus to continue to operate on band 35 for an indefinite period of time until such call for tenders was issued.

2. The call for tenders for band 35

On 19 February 2002 the NTRC announced calls for tenders for various broadcasting frequencies, including band 35. The NTRC issued a notice in which it defined the conditions for participation in the call for tenders for band 35 and the information and documents to be submitted. The information required included data on the technical facilities, the financial sources, the staff and the programme policy of an applicant.

The applicant company and two other companies, Shoghakat and Yan TV, submitted bids for band 35. The applicant company alleged that Shoghakat was a company producing predominantly clerical programmes, while Yan TV focused mostly on entertainment programmes.

On 2 April 2002 the NTRC held a points-based vote and recognised Shoghakat as the winner of the call for tenders for band 35. The decision stated:

> "Based on [the relevant provisions the Broadcasting Act and other complementary legal acts], and taking into account the results of the call for tenders for television broadcasting on decimetric band 35 in the area of Yerevan, [the NTRC] decides (1) to recognise Shoghakat TV Company Ltd as the winner of the call for tenders for television broadcasting on decimetric band 35 in the area of Yerevan, and (2) to grant a television broadcasting licence to Shoghakat TV Company Ltd."

3. The court proceedings

On an unspecified date the manager of the applicant company, Mr T.H., lodged an application with the Commercial Court (*ՀՀ տնտեսական դատարան*), claiming that the tender procedure had been conducted with violations of the law and seeking to invalidate its results. In particular, he argued that the NTRC, by announcing separate calls for tenders for different bands as opposed to a single one for all bands, had restricted the applicant company's right to win a licence for any of the unoccupied bands. He further argued that the information required by the NTRC had not been consistent with the information to be contained in a bid for a broadcasting licence as defined by law. Moreover, the NTRC had not been authorised by law to define the information to be contained in a bid. Furthermore, he submitted that the NTRC had failed to inform the applicant company in writing about the reasons for the refusal of a licence.

On 24 May 2002 the Commercial Court examined the applicant company's application. The applicant company was represented at this hearing by three lawyers, A.D., T.T.-Y. and L.S., who made submissions on its behalf. The Commercial Court decided to dismiss the application, finding that the fact that the NTRC had announced separate calls for tenders as opposed to a single one did not contravene the law. Nothing had

precluded the applicant company from submitting bids for all these calls for tenders. The court further found that the NTRC had been authorised by law to define the procedures and conditions of the tender process and that it had acted in accordance with the law in doing so. Nothing in the information required by the NTRC in its notice issued following the announcement of the call for tenders on 19 February 2002 had conflicted with the requirements of the law. As to the requirement to provide a written notification of the reasons for the refusal of a licence, the court found that the NTRC, having recognised Shoghakat as the winner of the competition, had informed the applicant company about this in writing on 3 April 2002.

On an unspecified date Mr T.H. lodged an appeal on points of law with the Court of Cassation (*ՀՀ վճռաբեկ դատարան*). In his appeal, he raised the same arguments as before the Commercial Court, claiming that the latter had not correctly interpreted the law and evaluated the circumstances of the case.

On 28 June 2002 the Court of Cassation notified the applicant company that its hearing was scheduled for 12 July 2002 at 11 a.m.

On 10 July 2002 lawyer L.S. informed the Court of Cassation in writing that on 12 July 2002 at 12 noon he had to appear at another court hearing. In order to avoid an overlap between the two hearings, lawyer L.S. requested the Court of Cassation to notify him of the exact time when the applicant company's claim would be examined. It appears that no reply was received to this letter.

On 12 July 2002 at 11 a.m. Mr T.H., accompanied by lawyers L.S. and T.T.-Y., appeared at the Court of Cassation. The latter had 85 cases scheduled for that date with all the parties involved being notified to appear at the same hour. The hearings started at 11 a.m.

The applicant company alleged that at 11.30 a.m. lawyer L.S. requested the presiding judge to inform him as to when the hearing on the applicant company's claim would commence. The presiding judge replied that the hearing would commence “whenever the court found it necessary”. The lawyer repeated his request, explaining about the need to prevent any overlap between the two hearings, whereupon he was removed from the courtroom upon the instruction of the presiding judge for violating order in court. At 4 p.m. the Court of Cassation proceeded to examining the applicant company's case. The NTRC was represented at the hearing by three lawyers, while the applicant company was represented only by Mr T.H. since lawyer T.T.-Y. had not been instructed to represent the applicant company. The hearing lasted about five minutes. The parties were not asked any questions and did not make any submissions.

The Government contested this allegation, claiming that the applicant company's lawyer was never removed from the courtroom. The Court of Cassation had 85 cases scheduled to be examined on 12 July 2002, starting at 11 a.m. Priority was given to cases involving parties coming from distant

regions and women. Having found out about this order, the lawyer informed the court that he had another hearing to attend at 12 noon and requested that the applicant company's case be heard in a priority order. This request was refused so the lawyer voluntarily left the courtroom. The Government further alleged that the applicant company was represented by two other lawyers, while the NTRC had no representative.

The Court of Cassation rendered its decision in which it first examined the circumstances of the case and the findings of the Commercial Court, and concluded by dismissing the applicant company's appeal, finding that:

> "...the arguments put forward in the appeal concerning a violation by the Commercial Court of [the relevant legal acts] are groundless, as [the NTRC], acting within the authority vested in it by the above legal acts ... defined the tender procedure for licensing of television broadcasting, which contains the rules on the conditions, procedures and time-limits of a call for tenders, submission of bids, recognising the winner of the call for tenders and declaring the call for tenders void. On 19 February 2002 [the NTRC] ... announced separate calls for tenders for unoccupied frequencies and on 2 April 2002 in its decision no. 36 recognised Shoghakat Ltd as the winner, about which it informed [the applicant company in its letter] of 3 April 2002.
>
> ...Article 10 [of the Convention] guarantees the right to freedom of expression. This Article, however, does "not prevent States from requiring the licensing of broadcasting, television or cinema enterprises". The arguments [concerning a violation of Article 10] are also groundless, as the Commercial Court did not violate the requirements of [this Article].
>
> ...
>
> [As to the improper examination of the applicant company's claims by the Commercial Court, this argument is also groundless] ... as the [court] ... evaluated each piece of evidence of the case in a detailed, thorough and objective manner."

B. Relevant domestic law

1. The Code of Civil Procedure

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

Article 130: The adoption of a judgment

> "1. [The Commercial Court] shall adopt a judgment when deciding on the merits of a dispute."

Article 131: Questions to be determined when adopting a judgment

> "1. When adopting a judgment [the Commercial Court] shall: (1) assess the evidence; (2) determine which circumstances significant for the case have or have not been disclosed; (3) determine the laws and other legal acts applicable to the case; and (4) decide to fully or partially grant the claim or to dismiss it."

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: Application seeking to annul the unlawful acts of public authorities, local self-government bodies and their officials

"1. An application seeking to annul the 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, pursuant to their jurisdiction over the case.

...

3. The submission of an application to a court does not suspend the effect of the contested act..."

Article 225: Grounds for lodging an appeal on points of law

"An appeal on points of law can be lodged on ... the ground of a material or a procedural violation of the parties' rights..."

Article 233: Preparation of the case to be examined by the Court of Cassation

"1. The President of the Court of Cassation shall instruct one of the judges of the chambers of the Court of Cassation to study the appeal and the case file...

2. The judges of the Court of Cassation shall be entitled to get acquainted with the appeal and the case file."

Article 234: The procedure for the examination of a case in the Court of Cassation

"1. The examination of a case in the Court of Cassation shall start with the presentation by the judge rapporteur...

The judge rapporteur shall present the circumstances of the case, the substance of the [contested] judgment and the arguments raised in the appeal.

The judges of the Court of Cassation shall be entitled to ask questions to the judge rapporteur.

2. The appellant shall have the right to be present at the hearing before the Court of Cassation.

3. If explanations are necessary, the appellant and other parties may be summoned to the hearing ... Their failure to appear shall not preclude the examination of the case."

Article 235: The scope of the examination of a case in the Court of Cassation

"The chamber of the Court of Cassation shall review judgments and decisions within the grounds presented in the appeal."

Article 236: The powers of the Court of Cassation

"Having examined a case, the Court of Cassation has the right:

(1) to uphold the court judgment and to dismiss the appeal...;

(2) to quash the whole or part of the judgment and to remit the case for a new examination...;

(3) to terminate the proceedings or to leave the claim unexamined, if the grounds for [doing so] were disclosed during the proceedings in the court of first instance, the Commercial Court or the Court of Appeal."

Article 237: The procedure of adopting a decision by the Court of Cassation

"1. The Court of Cassation shall adopt a decision based on the results of the examination of the case.

...

3. The decision shall be adopted in the absence of the appellant and other persons summoned to the hearing to give explanations.

4. The Court of Cassation shall be competent to adopt a decision if the majority of judges of the chamber of the Court of Cassation are present.

5. The decision shall be adopted by an open vote.

The decision shall be considered adopted if the majority of the total number of judges present at the hearing voted for it.

...

7. The operative part of the Court of Cassation's decision shall be pronounced at the hearing."

Article 238: A decision of the Court of Cassation

"3. The Court of Cassation is not entitled to establish or consider as proven circumstances which have not been established by the judgment [of the Commercial Court] or have been rejected by it, to determine whether or not this or that piece of evidence is trustworthy, to resolve the issue as to which piece of evidence has more weight or the issue as to which norm of substantive law must be applied and what kind of judgment must be adopted upon the new examination of the case."

2. The Television and Radio Broadcasting Act

The relevant provisions of the Broadcasting Act, as in force at the material time, read as follows:

Section 7: Television and radio broadcasting and the procedure for their implementation

"In Armenia television and radio broadcasting shall be conducted on the basis of a licence."

Section 37: The National Television and Radio Commission

"The National Television and Radio Commission (hereafter, the National Commission) is an independent body with the status of a public agency whose activity

is regulated by this law, its regulations and the legislation of Armenia. The National Commission deals with licensing and monitoring of only private television and radio companies (television companies or radio companies).

The National Commission: (a) shall allocate broadcasting frequencies on a public and competitive basis and ensure the publication of complete information on the results of a call for tenders; ... (c) shall grant licences...”

Section 47: Licensing. Licence-holder

“A television and radio broadcasting licence shall be granted for a particular available frequency on the basis of a call for tenders...”

Section 50: Selection of a licence-holder

“When selecting the licence-holder, the National Commission shall take into account:

(a) the predominance of programmes produced in-house;

(b) the predominance of programmes produced in Armenia;

(c) the technical and financial capacity of the applicant; and

(d) the professional level of the staff.”

Section 51: Grounds for refusing a licence

“A licence shall not be granted if:

(a) the applicant cannot be a licence-holder pursuant to this law;

(b) the information contained in the bid is inaccurate; or

(c) the technical capacity for television and radio broadcasting is lacking or the declared technical capacity is insufficient.

An applicant shall be informed in writing of the reasons for the refusal of a licence within ten days from the date of the decision.

The refusal of a licence can be contested before the courts.”

3. The National Television and Radio Commission Regulations Act

The relevant provisions of the NTRC Regulations Act read as follows:

Section 61

“In order to grant a broadcasting licence, the Commission, at its meeting and within the period prescribed by the tendering rules, shall adopt a decision on the basis of the results of a call for tenders.”

COMPLAINTS

1. The applicant company complained under Article 6 of the Convention that the removal of its lawyer from the courtroom in the proceedings before

the Court of Cassation had deprived it of effective legal representation and violated the principle of equality of arms.

2. The applicant company complained under Article 10 of the Convention that the decision of the NTRC of 2 April 2002 had unlawfully interfered with its right to freedom of expression.

THE LAW

1. The applicant company complained that the proceedings before the Court of Cassation were unfair and invoked Article 6 of the Convention which, insofar as relevant, provides:

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

The Government claimed that the applicant company's lawyer left the courtroom voluntarily. They further claimed that, even assuming that the applicant company's lawyer was ordered to leave the courtroom, this did not breach the applicant company's rights guaranteed by Article 6. First of all, the applicant company was represented before the Court of Cassation by three lawyers and only one of them, L.S., was removed. Secondly, the NTRC itself had no representative. Furthermore, in accordance with Article 234 of the Code of Civil Procedure, the parties can be summoned to the hearing before the Court of Cassation if explanations are necessary. In the present case, there was no need to clarify any details and the court did not ask any questions to either of the parties. Finally, the hearing on the applicant company's case took place at 4 p.m. Between 11 a.m. and 4 p.m. the Court of Cassation deliberated on other appeals. In that period the applicant company's lawyers were present in the courtroom as members of the public rather than lawyers and were supposed to respect order in court, which lawyer L.S. failed to do. Moreover, nothing prevented the lawyer from coming back for the hearing at 4 p.m.

The applicant company contested the Government's submissions. It claimed that it had only had one representative before the Court of Cassation, lawyer L.S., who was ordered to leave the courtroom. Mr T.H. did not have legal qualifications, while lawyer T.T.-Y. was not instructed to represent the applicant company before the Court of Cassation. It was lawyer L.S. who had been instructed to act and who had prepared the facts and the arguments of the appeal. The applicant company was thereby deprived of effective legal representation, while the NTRC, contrary to what the Government claimed, was legally represented. Thus, the principle of equality of arms was not respected. Furthermore, lawyer L.S. intended to make oral submissions before the Court of Cassation and his absence deprived the applicant company of an opportunity to advance its case. The

lawyer's presence would also have had an impact upon the duration of the hearing, given his intention to make oral submissions, and may well have had an impact upon both the deliberations of the tribunal and the outcome of the case. Finally, there was nothing in the lawyer's actions which justified his removal. The lawyer merely sought clarification from the presiding judge as to an approximate time for the hearing of the applicant company's case, which was in compliance with the established procedure and common practice.

The Court reiterates that its task is to assess whether or not the proceedings taken as a whole were fair within the meaning of Article 6 § 1 having regard to all the relevant circumstances, including the nature of the dispute and the character of the proceedings in issue, the way in which the evidence was dealt with and whether the proceedings afforded the applicant company an opportunity to state its case under conditions which did not place it at a substantial disadvantage *vis-à-vis* its opponent (see, *mutatis mutandis*, *Dombo Beheer B.V. v. the Netherlands*, judgment of 27 October 1993, Series A no. 274, p. 19, § 33; and *Helle v. Finland*, judgment of 19 December 1997, *Reports of Judgments and Decisions* 1997-VIII, § 53).

The Court notes at the outset that the parties disagreed as to the circumstances surrounding the absence of lawyer L.S. from the hearing before the Court of Cassation. Since, according to the established practice, the hearings before the Court of Cassation were not recorded, this information was not reflected in any official document. The applicant company submitted a witness statement of a journalist who had been present at the hearing which confirmed the fact that lawyer L.S. had been ordered by the presiding judge to leave the courtroom following his attempt to inquire about the time of the hearing of the applicant company's case. The veracity of this statement cannot be, however, confirmed by any objective or more formal evidence. It is therefore not sufficient for the Court to make any conclusive findings about the circumstances of the hearing before the Court of Cassation.

In any event, even assuming that lawyer L.S. was ordered to leave the courtroom in the circumstances as alleged by the applicant company, the Court firstly notes that there does not appear to have been anything which prevented him from returning for the hearing on the applicant company's case which eventually took place at 4 p.m. Furthermore, the Court is not convinced by the applicant company's argument that the alleged removal of lawyer L.S. resulted in it being deprived of any legal representation. It is evident that one of the three lawyers who had been authorised to represent the applicant company and had done so before the Commercial Court, namely lawyer T.T.-Y., was also present at the hearing before the Court of Cassation. Nothing suggests that the applicant company had at any point dispensed with the services of lawyer T.T.-Y. On the contrary, it appears from the fact that lawyer T.T.-Y. had accompanied Mr T.H. to the hearing

before the Court of Cassation that he continued to represent the applicant company also before that court. The applicant company's allegation that it was specifically lawyer L.S. who had prepared the appeal is not supported by any evidence, as both its application to the courts and the appeal were introduced by Mr T.H. himself. In such circumstances, it appears that the applicant company's allegation that it had no legal representation before the Court of Cassation does not correspond to reality and its relevant complaint appears to be unfounded.

Nevertheless, even assuming that lawyer L.S. was the sole lawyer authorised to represent the applicant company before the Court of Cassation and he was precluded from doing so because of having been removed, what is decisive for the Court's determination is whether the lawyer's absence rendered the trial as a whole unfair. In this respect, the Court notes that, according to the law applicable at the material time, the scope of examination of cases in the Court of Cassation was limited to points of law and cases were examined only within the grounds of the submitted appeal. This took place in a simplified procedure whereby one of the judges, appointed as judge rapporteur, presented the case to the panel. The appellant was entitled to attend the hearing for the sake of publicity (Article 234 § 2 of the Code of Civil Procedure (CCP)), but oral submissions by the parties were possible only if the court found it necessary to ask for explanations (Article 234 § 3 of the CCP). Thus, the Court of Cassation conducted the examination of cases primarily on the basis of the case-file and the parties' written pleadings. The Court does not consider such a procedure to be in itself incompatible with the fair trial requirements of Article 6 (see, *mutatis mutandis*, *Ekbatani v. Sweden*, judgment of 26 May 1988, Series A no. 134, § 31; and *Harutyunyan v. Armenia* (dec.), no. 34334/04, 7 December 2006).

Turning to the particular circumstances of the present case, the Court notes that the applicant company appealed to the Court of Cassation on points of law alleging incorrect interpretation of the applicable laws and certain procedural defects at first instance. The applicant company was summoned to the hearing before the Court of Cassation. However, this hearing was among 85 other hearings scheduled for the same day in the Court of Cassation. It has not been disputed that this hearing lasted about five minutes and none of the parties were asked to provide explanations, even in the alleged absence of legal representation. Nothing therefore suggests that the panel examining the case had the intention of asking the parties to make any oral submissions and that it was the alleged absence of legal representation which prevented the applicant company from doing so. The applicant company's allegations that its lawyer's presence would have affected the length of the hearing and consequently the outcome of the case are of a speculative nature.

Based on the above, the Court concludes that the alleged removal of lawyer L.S. from the courtroom prior to the hearing before the Court of

Cassation did not place the applicant company at a substantial disadvantage vis-à-vis its opponent or otherwise render the trial as a whole unfair within the meaning of Article 6 § 1.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. The applicant company complained that the NTRC's decision of 2 April 2002 had unlawfully interfered with its right to freedom of expression guaranteed by Article 10 of the Convention, which provides:

> "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. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 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."

The Government submitted that this complaint fell outside the Court's competence *ratione temporis* since the NTRC's decision of 2 April 2002, which was an instantaneous act, had been taken prior to the date of the Convention's entry into force in respect of Armenia, namely 26 April 2002. The alleged interference with the applicant company's rights therefore occurred on 2 April 2002.

The applicant company submitted that the complaint under Article 10 fell within the Court's competence *ratione temporis* since the NTRC's decision of 2 April 2002 gave rise to a continuing situation. It further submitted that the interference with its rights guaranteed by Article 10 was not in compliance with the requirements of this Article.

The Court reiterates that, in accordance with the generally recognised rules of international law, the provisions of the Convention do not bind a Contracting Party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the Convention with respect to that Party (see, among other authorities, *Blečić v. Croatia* [GC], no. 59532/00, § 70, ECHR 2006-III).

The Court's temporal jurisdiction is to be determined in relation to the facts constitutive of the alleged interference. The subsequent failure of remedies aimed at redressing that interference cannot bring it within the Court's temporal jurisdiction. An applicant who considers that a State has violated his rights guaranteed under the Convention is usually expected to resort first to the means of redress available to him under domestic law. If domestic remedies prove unsuccessful and the applicant subsequently

applies to the Court, a possible violation of his rights under the Convention will not be caused by the refusal to remedy the interference, but by the interference itself. Therefore, in cases where the interference pre-dates ratification while the refusal to remedy it post-dates ratification, to retain the date of the latter act in determining the Court's temporal jurisdiction would result in the Convention being binding for that State in relation to a fact that had taken place before the Convention entered into force in respect of that State. However, this would be contrary to the general rule of non-retroactivity of treaties (ibid., §§ 77-79).

The Court observes that the Convention entered into force in respect of Armenia on 26 April 2002. The NTRC's decision to grant a broadcasting licence to a company other than the applicant company, thereby rejecting the latter's bid for a broadcasting licence, was taken on 2 April 2002. The applicant company thereafter instituted court proceedings seeking to annul this decision. In accordance with Article 160 of the Code of Civil Procedure, this did not, however, suspend the effect of that decision which was immediately enforceable. The final decision in those proceedings was taken by the Court of Cassation on 12 July 2002, that is after the Convention's entry into force in respect of Armenia.

The Court recalls that a similar set of facts and complaints has already been examined in the case of *Meltex Ltd v. Armenia*, where the Court found that the alleged interference with the applicant company's rights guaranteed by Article 10 had occurred on the date of the NTRC's decision, namely 2 April 2002, and the fact that the final judicial decision was taken after the date of the Convention's entry into force in respect of Armenia did not bring the alleged interference within the Court's temporal jurisdiction (see *Meltex Ltd. v. Armenia* (dec.), no. 37780/02, 27 May 2008). The Court further found that the NTRC's decision refusing a broadcasting licence was an instantaneous act and did not give rise to any continuing situation (ibid.). The Court sees no reason to depart from those findings in the present case.

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.

For these reasons, the Court unanimously

Declares inadmissible the remainder of the application.

Stanley Naismith
Deputy Registrar

Josep Casadevall
President