CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 37780/02
by MELTEX LTD
against Armenia

The European Court of Human Rights (Third Section), sitting on 27 May 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 Santiago Quesada, *Section Registrar*,

Having regard to the above application lodged on 17 October 2002,

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

Having deliberated, decides as follows:

THE FACTS

The applicant, Meltex Ltd, is a private Armenian broadcasting company ("the applicant company") that was set up in 1995 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

(a) The applicant company's involvement in television broadcasting

In 1995 the applicant company established the A1+ television company within its structure, with the intention of getting involved in television broadcasting.

On 1 January 1996, in preparation for broadcasting, the applicant company opened a school to train personnel, such as journalists, cameramen and technicians who were later employed by the applicant company.

On 25 August 1996 the applicant company started television broadcasting through its A1+ channel, first sharing capacity and content with Moscow "REN" TV, a Russian television company. Over time, the volume of the content produced by the applicant company increased significantly.

On 22 January 1997 the applicant company was granted a license by the then Ministry of Communication (*ՀՀ կապի նախարարություն*) permitting it to install a television transmitter in Yerevan and to broadcast within the decimetric wave band. The license was granted for a period of five years.

In September 1999 the applicant company established "Hamaspyur", a network of nine private licensed regional television companies, broadcasting 24 hours a day.

The content of the A1+ television channel included international and domestic news analysis (30%), advertising (32%) and various entertainment programmes. The applicant company submitted that the A1+ television channel was widely recognised as one of the few independent voices in television broadcasting in Armenia.

(b) Legislative changes and resulting provisional measures

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 license 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 licenses were temporarily re-registered by the NTRC until the relevant calls for tenders were announced.

On 3 September 2001 the NTRC replaced the applicant company's license with a new license. The new license was granted for band 37 and was due to expire on 22 January 2002.

On 23 November 2001 the NTRC decided to postpone the call for tenders for band 37 until the adoption of appropriate rules and regulations and to permit the applicant company to continue to operate in band 37 for an indefinite period of time until such call for tenders was put out.

2. The call for tenders for band 37 and its effects

(a) The tender process and related court proceedings

On 19 February 2002 the NTRC announced calls for tenders for various broadcasting frequencies, including band 37.

The applicant company and two other companies, Sharm Ltd and Dofin TV Ltd, submitted bids for band 37. The applicant company alleged that Sharm Ltd had never previously operated in the field of television broadcasting and its main focus had been as the organiser of entertainment shows for young people and students. None of its employees had a background in professional journalism and the company had no premises, equipment and financial or technical infrastructure to commence broadcasting at the time of its bid. It further alleged that Dofin TV Ltd had been registered less than a month before the tender process took place and had had no previous experience of any sort in the field of broadcasting.

On 1 April 2002, before the winners of the tender process were announced, the applicant company instituted proceedings against the NTRC before the Commercial Court (*ՀՀ տնտեսական դատարան*). In its application to the court, the applicant company argued that the NTRC had unlawfully postponed the call for tenders for band 37, that the NTRC had violated the law and restricted the applicant company's opportunities by announcing separate calls for tenders for different bands as opposed to a single one for all bands and that the NTRC had exceeded its authority when defining the terms and conditions of the tendering procedure.

On 2 April 2002 the NTRC held a points-based vote and recognised Sharm Ltd as the winner of the call for tenders for band 37. The decision stated:

> "Based on sections 37 and 50 of [the Broadcasting Act], sections 30, 31 and 63 of [the NTRC] Regulations Act and Paragraph 19 of Decision no. 4 of [the NTRC] of 24 January 2002 Approving the Tendering Rules for Television and Radio Broadcasting Licences, and taking into account the results of the call for tenders for television broadcasting on decimetric band 37 in the area of Yerevan, [the NTRC] decides (1) to recognise Sharm Ltd as the winner of the call for tenders for television broadcasting on decimetric band 37 in the area of Yerevan, and (2) to grant a television broadcasting license to Sharm Ltd."

On 16 April 2002 the applicant company lodged an additional application with the Commercial Court seeking, *inter alia*, to annul the decision of 2 April 2002. The applicant company also alleged that it had unsuccessfully requested the court to oblige the NTRC to present the minutes of their meeting which provided basis for this decision.

On 25 April 2002 the Commercial Court rejected the applicant company's applications. The court found that, even though the NTRC should have announced the call for tenders two months prior to the expiration of the applicant company's license, this had not been done as certain legal acts, which were necessary for the proper conduct of the tender process, had not been adopted by that time. The court further found that the fact that the NTRC had announced separate calls for tenders instead of a single one did not contradict the law. The applicant company had not been precluded from submitting bids for all these calls for tenders. The court finally stated that the NTRC had been authorised under the law to define the terms and conditions of the tendering procedure and it had not exceeded its authority in doing so.

The applicant company lodged an appeal on points of law with the Court of Cassation (*ՀՀ վճռաբեկ դատարան*). In its appeal, the applicant company raised the same arguments as before the Commercial Court, claiming that the latter had not interpreted the law correctly. It further complained about the court's rejection of its request concerning the minutes of the NTRC's meeting.

On 14 June 2002 the Court of Cassation adopted a decision on the applicant company's appeal. In doing so, the Court of Cassation first examined the circumstances of the case, the findings of the Commercial Court and the relevant law, and concluded by rejecting the appeal as unsubstantiated, finding, *inter alia*, 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 tendering rules 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 a call for tenders and declaring a 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. 37 recognised the winner of the call for tenders.

...

The applicant's representative submitted a motion in court requesting that '[the NTRC] present the minutes of decision no. 37'. [The Commercial Court], stating that the dispute concerned the lawfulness of [NTRC's] decision no. 37 and not the decision's minutes, justly dismissed this motion.

...a well-founded dismissal of a motion which is not relevant for the resolution of the dispute has nothing to do with ... the requirements of Article 6 of [the Convention].

...the judgment of the Commercial Court contains the clarified circumstances of the case, the evidence on which the court based its findings, and the laws on which the court relied upon in reaching its judgment. ”

(b) Termination of the applicant company's broadcast

On the same day as the announcement of the license winner, the NTRC issued a memorandum to the Ministry of Transport and Communication (*ՀՀ տրանսպորտի և կապի նախարարություն*) requesting it to terminate broadcasts by the A1+ television channel.

On 3 April 2002, at 00h01, the Television Network of Armenia State-owned CJSC (*«Հայաստանի հեռուստատեսային ցանց» ՊՓԲԸ* – “the TNA”), with whom the applicant company had earlier entered into a lease agreement to temporarily rent industrial premises for the purpose of installing transmitter equipment, cut the electricity supply of the applicant company's transmitter and the A1+ television channel ceased to broadcast.

The applicant company contested the actions of the TNA before the Commercial Court claiming that they had been unlawful and in violation of the lease agreement.

On 17 May 2002 the Commercial Court rejected the applicant company's claim, finding that the actions of the TNA had been lawful and that the applicant company should have ceased broadcasting voluntarily as it was no longer licensed.

The applicant company lodged an appeal on points of law with the Court of Cassation.

On 28 June 2002 the Court of Cassation dismissed the applicant company's appeal as unsubstantiated.

3. The subsequent calls for tenders

On 15 October 2002 the NTRC announced a new call for tenders for five other bands.

The applicant company submitted bids for three of the five bands, namely bands 31, 39 and 51.

On 27 May 2003 the NTRC announced another call for tenders for band 25.

The applicant company submitted its bid.

On 11 June 2003 the NTRC recognised the winner of the call for tenders for band 25. The applicant company was again refused a license.

On 18 July 2003 the NTRC recognised the winners of the call for tenders for bands 31, 39 and 51. The applicant company was again refused a license.

On an unspecified date, the NTRC announced a call for tenders for bands 3 and 63.

The applicant company submitted bids for both bands.

On 13 October 2003 the NTRC recognised the winners of the call for tenders. The applicant company was again refused a license.

On 19 November 2003 the NTRC announced a call for tenders for the last vacant band, namely band 56.

The applicant company submitted its bid.

On 29 December 2003 the NTRC recognised the winner of the call for tenders. The applicant company was again refused a license.

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 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 225: Grounds for lodging an appeal on points of law

"An appeal on points of law can be lodged on: (1) the ground of a material or a procedural violation of the parties' rights; [and] (2) the ground of newly discovered circumstances."

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 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 39: The composition of the National Commission

"The National Commission shall have nine members appointed by the President of Armenia for a term of six years, with the exception of the first composition..."

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."

Section 54: Validity period of a licence

"...

A licence to broadcast television and radio programmes or to produce and broadcast [such programmes] shall be granted to television and radio companies: (a) ...; (b) for a period of five years for on-air television and radio broadcasting."

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."

Section 63

"Following the consideration of a bid, the Commission shall adopt one of the following decisions: (a) to grant a licence; or (b) to refuse a licence."

Section 67

"A copy of the decision granting or refusing a licence shall be duly sent to the applicant within ten days from its adoption."

COMPLAINTS

1. 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. It claimed that the NTRC's decision resulted in a continuous violation as the applicant company was since precluded from broadcasting.

2. The applicant company complained under Article 6 of the Convention about the proceedings before the Court of Cassation that terminated with its decision of 14 June 2002. In particular, the applicant company claimed that

this decision was not sufficiently reasoned as the Court of Cassation failed to properly address the arguments raised by the applicant company in its appeal. It further claimed that the Court of Cassation in its decision had unlawfully upheld the Commercial Court's rejection of the applicant company's request concerning the minutes of the NTRC's meeting.

3. The applicant company complained that the unlawful actions of the NTRC were the result of distrust by the Armenian Government towards the political content of the applicant company's broadcasts. The applicant company claimed that the overarching objective of the NTRC and the domestic courts was political in nature and influenced by the Government's intentions to suppress the voice of independent media companies. It invoked Article 14 of the Convention in conjunction with Article 6 as far as the decision of the Court of Cassation of 14 June 2002 was concerned and in conjunction with Article 10 regarding the NTRC's decision of 2 April 2002.

4. The applicant company complained under Article 1 of Protocol No. 1 that the decision of the NTRC of 2 April 2002 had unlawfully interfered with its right to peaceful enjoyment of its possessions. It claimed that it enjoyed a possession in the broadcasting license which had been granted to it and which had not been extended due to an unlawful tender process. The applicant company further complained under Article 1 of Protocol No. 1 that the decision of the TNA to cut the electricity supply to its transmitter on 3 April 2002 was in breach of its rights guaranteed by this Article.

THE LAW

1. The applicant company complained about the NTRC's decision of 2 April 2002 and invoked 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 had been taken prior to the date of the Convention's entry into force in respect of Armenia, namely 26 April 2002. The domestic courts, in deciding upon the

applicant company's appeal against this decision, had no jurisdiction to review its substance, to study and compare the various competitive bids or to decide on the winner of the call for tenders. In accordance with Article 159 of the Code of Civil Procedure, the courts could only examine whether the NTRC's decision had been taken in compliance with the law. The Government further argued that the above decision was an instantaneous act and did not give rise to any continuing situation. It concerned the right to perform an activity specifically on band 37 and did not restrict the applicant company's right to apply for other bands or to broadcast in general. The applicant company in fact availed itself of this right and took part in the subsequent calls for tenders. Furthermore, it continued to carry out activities in the sphere of information and was also offered to show some of its programmes on the public television, an offer which the applicant company refused.

As to the merits of the complaint, the Government submitted that the procedure of licensing of broadcasting activity, which was based on a competitive selection by an independent body such as the NTRC, was compatible with the requirements of Article 10. The applicant company was not recognised as the winner of the call for tenders for band 37 since it had failed to present the best bid.

The applicant company submitted that it had been discriminated against for political reasons because of its willingness to have open political debate between various political parties on its television programmes. By referring to the calls for tenders for bands 3, 25, 31, 39, 51, 56 and 63, the applicant company submitted that the political discrimination and the breach of its right to freedom of expression continued as the NTRC had consistently refused to grant it a broadcasting licence and had granted a number of such licences in a manner which breached domestic law. Thus, the application fell within the Court's competence *ratione temporis* since the applicant company was a victim of a continuing violation of Article 10 which went on from the NTRC's consideration of the tender for band 37. On each and every occasion, the NTRC was not willing to give reasons for its decision to award broadcasting licences to the applicant company's competitors. Contrary to what the Government claimed, the applicant company's attempts to carry out activities in other spheres of information had also encountered numerous obstacles created by the authorities and the only offer made by the public television was declarative in nature.

As to the merits of the complaint, the applicant company submitted that the composition and the procedures of the NTRC were not compatible with the requirements of Article 10. The NTRC was not an independent body since all its nine members were appointed by the President of Armenia.

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-...).

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. The final decision in those proceedings was taken by the Court of Cassation on 14 June 2002, that is after the Convention's entry into force in respect of Armenia. The Court notes, however, that the applicant company's bid for a broadcasting licence was refused by the decision of the NTRC and not in the course of the subsequent court proceedings. The NTRC was the sole authority vested with power to examine the applicant company's bid for a broadcasting licence and to decide to grant or refuse such a licence. In accordance with the then Article 159 of the Code of Civil Procedure, the domestic courts could review the legality of this decision but not examine the competitive bids and decide which company was to be granted a licence. The alleged interference with the applicant company's rights guaranteed by Article 10 of the Convention therefore took place on the date of the NTRC's decision, namely 2 April 2002, which preceded the date of the Convention's entry into force in respect of Armenia. The fact that the final judicial decision was taken after that date does not bring the alleged interference within the Court's temporal jurisdiction (see, *mutatis mutandis*, *K. v. Turkey*, no. 14206/88, Commission decision of 11 July 1989, Decisions and Reports (DR) 62, pp. 306-308; *Kefalas and Others v. Greece*, judgment of 8 June 1995, Series A no. 318-A, § 45; *Kadikis v. Latvia* (dec.), no. 47634/99, 29 June 2000; *Veeber v. Estonia (no. 1)*,

no. 37571/97, § 55, 7 November 2002; *Jovanović v. Croatia* (dec.), no. 59109/00, ECHR 2002-III; *Litovchenko v. Russia* (dec.), no. 69580/01, 18 April 2002; and *Blečić*, cited above). It therefore remains to be determined whether the NTRC's decision of 2 April 2002 gave rise to a continuing situation of an alleged violation of the Convention.

The Court recalls that the concept of a "continuing situation" refers to a state of affairs which operates by continuous activities by or on the part of the State to render the applicant a victim (see, among other authorities, *Posti and Rahko v. Finland*, no. 27824/95, § 39, ECHR 2002-VII). In the present case, however, the applicant company complains about a specific event which occurred on an identifiable date, namely the NTRC's decision of 2 April 2002. The fact that this decision had enduring effects does not give a rise to a "continuing situation" (see *X v. the United Kingdom*, no. 7379/76, 10 December 1976, DR 8, pp. 211-213). Furthermore, this decision concerned only the entitlement to conduct broadcasting on band 37 and did not amount to a general prohibition on the applicant company's right to conduct broadcasting as such (see, by contrast, *De Becker v. Belgium* judgment of 27 March 1962, Series A no. 4, p. 11, § 8). Nor was the applicant company prevented from applying for other available bands, which it did by submitting its bids in the calls for tenders for a number of other bands, namely bands 3, 25, 31, 39, 51, 56, and 63. The fact that the NTRC consecutively rejected all the applicant company's bids within a certain period of time does not imply that the decision of 2 April 2002 gave rise to a continuing situation which the applicant company was enduring throughout that period. All the NTRC's decisions adopted in respect of the subsequent calls for tenders were similarly specific events which occurred on identifiable dates. The Court further notes that the applicant company's complaints concerning the conduct of these tendering procedures are examined in substance in a separate application lodged by the applicant company on 27 August 2004 and registered under no. 32283/04. Insofar as the call for tenders for band 37 is concerned, which is the object of the present application, the NTRC's decision taken in that tender process was an instantaneous act which, despite its ensuing effects, did not in itself give rise to any possible continuing situation.

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.

2. The applicant company complained that the Court of Cassation had not sufficiently reasoned its decision of 14 June 2002 and that it had unlawfully upheld the dismissal of its request. It invoked Article 6 § 1 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..."

a) As to the reasoning of the Court of Cassation's decision of 14 June 2002, the Court recalls that Article 6 § 1 obliges the courts to give reasons for their judgments, but cannot be understood as requiring a detailed answer to every argument. The extent to which this duty to give reasons applies may vary according to the nature of the decision. It is moreover necessary to take into account, *inter alia*, the diversity of the submissions that a litigant may bring before the court and the difference existing in the Contracting States with regard to statutory provisions, customary rules, legal opinion and the presentation and drafting of judgments. That is why the question whether a court has failed to fulfil the obligation to state reasons can only be determined in the light of the circumstances of the case (see *Hiro Balani v. Spain*, judgment of 9 December 1994, Series A no. 303-B, pp. 29-30, § 27).

In the present case, the applicant company, as plaintiff, raised a number of arguments in its application to the Commercial Court in support of its allegations that the decision of the NTRC of 2 April 2002 had been unlawful. The Commercial Court examined in detail the applicant company's arguments and found them to be ill-founded. The applicant company raised the same arguments in its appeal on points of law to the Court of Cassation. The latter, having examined the circumstances of the case and the findings of the Commercial Court, found that the Commercial Court had correctly interpreted the law and had come to correct conclusions. The fact that the Court of Cassation endorsed the findings of the Commercial Court does not suggest that it failed to adopt a reasoned decision (see, *mutatis mutandis*, *Helle v. Finland*, judgment of 19 December 1997, *Reports of Judgments and Decisions* 1997-VIII, §§ 59-60; *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I; and *Hirvisaari v. Finland*, no. 49684/99, § 30, 27 September 2001). Having regard to the Court of Cassation's reasoning in its decision of 14 June 2002, the Court finds no indication that the Court of Cassation failed to fulfil its obligation to state reasons.

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.

b) As to the dismissal of the applicant company's request, the Court reiterates that it is the domestic courts which are best placed to assess the relevance of evidence to the issues in the case (see, among other authorities, *Vidal v. Belgium*, judgment of 22 April 1992, Series A no. 235-B, § 33; and *Wierzbicki v. Poland*, no. 24541/94, § 45, 18 June 2002). In the present case, the Court is satisfied that the Court of Cassation examined the applicant company's complaint against the dismissal of its request and gave reasons as to why this dismissal had been lawful, which, in the Court's view, were not tainted with arbitrariness. For these reasons, the refusal to take evidence proposed by the applicant company did not amount to a

disproportionate restriction on its ability to present arguments in support of its case in the proceedings.

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.

3. The applicant company complained that the decision of the NTRC of 2 April 2002 and the decision of the Court of Cassation of 14 June 2002 had been politically motivated. It invoked Article 14 in conjunction with Articles 6 and 10 of the Convention which, insofar as relevant, provides:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as ... political or other opinion ..."

As to the NTRC's decision, the Court recalls its finding above that it lacks competence *ratione temporis* to examine this decision. Therefore, the complaint under Article 14 of the Convention concerning this decision similarly falls outside the Court's competence *ratione temporis*.

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.

As to the decision of the Court of Cassation, having considered the materials in its possession, the Court finds that there is no evidence to substantiate the applicant company's allegation that the Court of Cassation was being influenced by political considerations when deciding on the applicant company's application.

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

4. The applicant company complained about the NTRC's decision of 2 April 2002 and the TNA's decision of 3 April 2002 to cut the electricity supply to its transmitter. It invoked Article 1 of Protocol No. 1 to the Convention which, insofar as relevant, provides:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."

The Court observes that Protocol No. 1 entered into force in respect of Armenia also on 26 April 2002. Accordingly, the Court similarly lacks competence *ratione temporis* to examine the complaints under Article 1 of this Protocol insofar as they concern the decisions of 2 and 3 April 2002.

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 by a majority

Declares the application inadmissible.

Santiago Quesada
Registrar

Josep Casadevall
President