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

FIFTH SECTION

DECISION

Application no. 17964/14
HASAR LTD
against Armenia

The European Court of Human Rights (Fifth Section), sitting on 6 February 2025 as a Committee composed of:

Andreas Zünd, *President*,
Armen Harutyunyan,
Mykola Gnatovskyy, *judges*,
and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the application (no. 17964/14) 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") on 15 February 2014 by an Armenian company, Hasar Ltd ("the applicant company"), which was represented by Ms M. Ghulyan, a lawyer practising in Yerevan;

the decision to give notice of the complaint concerning the alleged breach of the principles of adversarial hearing and equality of arms to the Armenian Government ("the Government"), represented by their Agent, Mr Y. Kirakosyan, Representative of the Republic of Armenia on International Legal Matters, and to declare the remainder of the application inadmissible;

the observations submitted by the Government;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the alleged breach of the principles of adversarial hearing and of equality of arms in the civil proceedings concerning the applicant company's claim for damages from the provider of natural gas. The applicant company relied on Article 6 § 1 of the Convention.

2. In 2006 the applicant company concluded a contract for the supply of natural gas to the greenhouse which it operated ("the contract").

3. Between 10 October and 11 November 2008 the supply of gas to the greenhouse was cut off further to the applicant company's failure to pay the bills.

4. In August 2011 the applicant company filed a civil claim with the Arabkir and Kanaker-Zeytun District Court of Yerevan ("the District Court") against the gas supply company ("the opposing party") seeking compensation for the damage caused to the greenhouse because of the absence of heating. The opposing party lodged a counterclaim arguing that the applicant company had repeatedly failed to pay for its services and that in any event its claim was unsubstantiated.

5. By its judgment of 6 March 2013 the District Court granted the applicant company's claim and rejected the opposing party's counterclaim.

6. The opposing party submitted an appeal arguing, among other things, that in accordance with the schedule set out in Annex 2 to the contract gas was to be supplied to the applicant company from January to March and from November to December. Thus, the opposing party was under no obligation to supply gas in October.

7. In its response to the opposing party's appeal, the applicant company submitted, *inter alia*, that the opposing party had failed to explain the reason for not resuming the supply of gas from 1 November which would be in line with the schedule set out in Annex 2 to the contract referred to by the opposing party.

8. On 24 May 2013 the Civil Court of Appeal ("the Court of Appeal") overturned the District Court's judgment of 6 March 2013 (see paragraph 5 above). In doing so, the Court of Appeal referred, among other things, to the absence of a contract concerning the use of the given premises by the applicant company for the purpose of operation of a greenhouse and the applicant company's, in its view, failure to substantiate the opposing party's fault in the damage allegedly sustained as a result of the absence of heating. The Court of Appeal also questioned the validity of the expert evidence submitted by the applicant company in the proceedings before the District Court. As for the contract (contained in volume 1 of the case file), the Court of Appeal stated that it only proved the fact that the applicant company was a customer of the opposing party but that this fact alone was not sufficient to grant its claim.

9. The applicant company lodged an appeal on points of law arguing, *inter alia*, that the Court of Appeal had accepted new evidence from the opposing party (a new version of Annex no. 2 to the contract which it claimed was forged) that its lawyer had not had the opportunity to examine and comment on during the appellate proceedings.

10. In reply, the opposing party argued, *inter alia*, that the contract and its Annex 2 had been submitted before the District Court during the preparatory

stage back in November 2011 and that the applicant company had never submitted any objections in its respect. The same copies of the contract (along with its Annex 2) had been also submitted to courts in other disputes with the applicant company (the opposing party provided the Court of Cassation with copies of the documents in question obtained from those courts).

11. On 7 August 2013 the Court of Cassation declared the applicant company's appeal on points of law inadmissible for lack of merit.

THE COURT'S ASSESSMENT

12. The applicant company complained under Article 6 § 1 of the Convention that its right to adversarial proceedings and the principle of equality of arms were breached on account of the Court of Appeal having accepted new documentary evidence (a different copy of Annex 2 to the contract) on which it had not had an opportunity to comment.

13. The general principles relating to the adversarial principle and the principle of equality of arms have been set out in *Regner v. the Czech Republic* ([GC], no. 35289/11, §§ 146-47, 19 September 2017).

14. The Court reiterates that its sole task in connection with Article 6 of the Convention is to examine applications alleging that the domestic courts have failed to observe specific procedural safeguards laid down in that Article or that the conduct of the proceedings as a whole did not guarantee the applicant a fair hearing (see, among many other authorities, *Donadze v. Georgia*, no. 74644/01, §§ 30-31, 7 March 2006).

15. The applicant argued that the Court of Appeal had admitted new evidence from the opposing party, namely another (amended) version of Annex 2 to the contract (see paragraph 2 above), of which it had not been aware with the result that its lawyer had been deprived of the opportunity to comment on the document in question. Furthermore, having established the facts on the basis of that newly-submitted document (particularly the fact that according to the schedule set out in Annex 2 the applicant company's greenhouse was not to be supplied with gas between March and October), the Court of Appeal had overturned the District Court's judgment of 6 March 2013 (see paragraphs 5, 8, 9 and 12 above).

16. The Court observes, however, that in its appeal against the District Court's judgment of 6 March 2013 (see paragraph 5 above) the opposing party had already argued, with reference to Annex 2 to the contract, that it had been under no obligation to supply gas to the applicant company's greenhouse between March and November (see paragraph 6 above).

17. The applicant company had the opportunity to reply to the opposing party's arguments raised in its appeal of which opportunity it availed itself (see paragraph 7 above). In its response, the applicant company neither disputed the opposing party's argument that it had no obligation to supply gas to the greenhouse in October nor did it question the authenticity of the content

of Annex 2 to the contract as referred to in the opposing party's appeal. In fact, the applicant company argued that the opposing party had failed to provide the reasons for not having resumed the supply gas as from 1 November (ibid.).

18. Against this background, it is not clear on what grounds the applicant company claimed that the Court of Appeal had based itself on "new" evidence which it, moreover, had no opportunity to comment on.

19. In any event, the Court reiterates that, while Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way in which evidence should be assessed, these being primarily matters for regulation by national law and the national courts. In principle, issues such as the weight attached by the national courts to particular items of evidence or to findings or assessments submitted to them for consideration are not for the Court to review. The Court should not act as a fourth-instance body and will therefore not question under Article 6 § 1 the national courts' assessment, unless their findings can be regarded as arbitrary or manifestly unreasonable (see, among many other authorities, *De Tommaso v. Italy* [GC], no. 43395/09, § 170, 23 February 2017, with further references).

20. In the instant case, the proceedings were conducted in accordance with the requirements of a fair hearing. As noted in paragraph 17 above, the applicant was able to challenge the arguments raised by the opposing party and the factual and legal reasons for the impugned decision (see paragraph 8 above) were set out at length by the Court of Appeal (see *García Ruiz v. Spain* [GC], no. 30544/96, § 29, ECHR 1999-I).

21. In view of the foregoing, the Court sees no reason to find that the principle of equality of arms and the right to adversarial proceedings were not respected in the impugned proceedings.

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

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 6 March 2025.

Martina Keller Deputy Registrar	Andreas Zünd President