

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

FIFTH SECTION

DECISION

Applications nos. 2512/15 and 31435/16
OTIAK CJSC
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 applications (nos. 2512/15 and 31435/16) 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 18 December 2014 and 18 May 2016 respectively, by Otiak CJSC ("the applicant company"), represented by A. Ghazaryan and M. Baghdasaryan, lawyers practising in Yerevan;

the decisions to give notice of the complaints concerning the alleged lack of access to court to the Armenian Government ("the Government") represented by their Agent, Mr G. Kostanyan, and subsequently by Mr Y. Kirakosyan, Representative of the Republic of Armenia on International Legal Matters, and the decision to declare inadmissible the remainder of the application no. 31435/16;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The issue in this case is whether there was a breach of the applicant company's right of access to court, as guaranteed by Article 6 § 1 of the Convention.

A. The first set of civil proceedings

2. In 2008 the applicant company paid in total 43,852,300 Armenian drams (AMD) in VAT and profit tax.

3. On 30 September 2010 the applicant company initiated civil proceedings against the Government before the Kentron and Nork-Marash District Court of Yerevan ("the District Court"), arguing that it had not had an obligation to pay those taxes and seeking their refund. It also sought payment of interest for the period of the allegedly unlawful retention of the amount paid, on the basis of Article 411 of the Civil Code.

4. On 17 March 2011 the District Court granted the applicant company's claim.

5. The Government appealed against that judgment.

6. On 30 June 2011 the Civil Court of Appeal dismissed the appeal.

7. The Government lodged an appeal on points of law.

8. On 23 March 2012 the Court of Cassation upheld the applicant company's position that it had not been liable to pay VAT and profit tax. Nevertheless, it decided to discontinue the case on the grounds that the subject matter was not within the jurisdiction of the District Court, which was only competent to examine civil disputes. Referring to Article 1 § 6 of the Civil Code and Sections 33-35 of the Taxes Act, it noted that the issue at hand was not regulated by the Civil Code but by the Taxes Act and that it was a tax dispute rather than a dispute of a civil nature.

B. The proceedings before the administrative courts

9. On 4 June 2012 the applicant company initiated proceedings before the Administrative Court, seeking a refund of the taxes paid, as well as payment of interest for the period of the allegedly unlawful retention of that amount on the basis of Article 411 of the Civil Code.

10. On 20 June 2013 the Administrative Court granted the applicant company's claim for the refund of taxes. As regards the claim for the payment of statutory interest pursuant to Article 411 of the Civil Code, it discontinued its examination for lack of jurisdiction, noting that the Civil Code was not applicable to the dispute and that the matter was regulated by Section 33 of the Taxes Act.

11. The applicant company lodged an appeal against the judgment in respect of the part concerning the discontinuation of its claim for payment of interest under Article 411 of the Civil Code.

12. On 19 December 2013 the Administrative Court of Appeal upheld the contested judgment.

13. The applicant company filed an appeal on points of law.

14. On 18 June 2014 the Court of Cassation declared the appeal on points of law inadmissible for lack of merit.

C. The second set of civil proceedings

15. On 19 August 2014 the applicant company lodged a claim with the District Court against the Ministry of Finance seeking the payment of statutory interest pursuant to Article 411 of the Civil Code for the period of the unlawful retention of its funds.

16. On 31 March 2015 the District Court partially granted the applicant company's claim.

17. The applicant company and the Ministry of Finance appealed against the District Court's judgment.

18. On 24 July 2015 the Civil Court of Appeal quashed and amended the judgment of 31 March 2015, dismissing the applicant company's claim. It held that the provisions of the Civil Code were not applicable to tax disputes, which were regulated by tax legislation. In particular, the Civil Court of Appeal reasoned that payment of interest on taxes paid was regulated by Section 33 § 2 of the Taxes Act and that the interest prescribed by Article 411 of the Civil Code could not be accrued in respect of paid taxes.

19. The applicant company appealed against that decision.

20. On 21 October 2015 the Court of Cassation declared the applicant company's appeal on points of law inadmissible for lack of merit.

THE COURT'S ASSESSMENT

A. Joinder of the applications

21. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision (Rule 42 § 1 of the Rules of Court).

B. Alleged violation of Article 6 § 1 of the Convention

22. The applicant company complained under Article 6 § 1 of the Convention that its right of access to a court was breached because it was deprived of the opportunity to obtain a judicial determination of its civil claim for the payment of interest pursuant to Article 411 of the Civil Code.

23. The Government submitted that the applicant company could no longer claim to be a victim because, in the second set of civil proceedings, the Civil Court of Appeal examined its claim on the merits and dismissed it.

24. The Court doubts whether the applicant company can no longer claim to be a victim, given that the Civil Court of Appeal eventually dismissed its claim on the grounds that Article 411 of the Civil Code was not applicable to the dispute, that is the same grounds on which the examination of the applicant company's claim had previously been discontinued without an examination on the merits (see paragraph 10 above). However, the Court does

not consider it necessary to answer this question definitively because the applications are in any event inadmissible for the reasons set out below. Nor does the Court consider it necessary – for the same reason – to rule on the question of the applicability of Article 6 § 1 of the Convention to the proceedings in question, which may be in doubt, taking into account that the proceedings appear to have been related to a tax dispute (see *Ferrazzini v. Italy* [GC], no. 44759/98, § 29, ECHR 2001-VII).

25. The general principles concerning access to a court, including the superior courts, have been summarised in *Zubac v. Croatia* ([GC], no. 40160/12, §§ 76-99, 5 April 2018).

26. Within the scope of the first set of civil proceedings, the Court of Cassation held that the applicant company's claim did not fall under the jurisdiction of the District Court and discontinued the proceedings. It noted in its reasoning that civil legislation was not applicable in tax disputes, which were regulated by tax legislation. Reference was made to Article 1 § 6 of the Civil Code which provides that civil legislation does not apply in tax disputes unless prescribed otherwise in the legislation. The Court of Cassation also noted that the refund of tax payments was regulated by Sections 33-35 of the Taxes Act (see paragraph 8 above).

27. Nevertheless, when the applicant company initiated new proceedings, this time before the Administrative Court, it again relied on Article 411 of the Civil Code as the legal basis for its claim for the payment of statutory interest. The Administrative Court, having granted the applicant company's main claim, discontinued the proceedings as regards statutory interest for unlawful retention of funds under Article 411 of the Civil Code. Like the Court of Cassation, it referred to Article 1 § 6 of the Civil Code and noted that the provisions of the Civil Code were not applicable. It further noted that the calculation of interest on tax payments was regulated by Section 33 of the Taxes Act (see paragraph 10 above).

28. Following unsuccessful appeals, the applicant company went on to initiate a new set of civil proceedings before the District Court, seeking payment of interest for unlawful retention of its funds. Yet again, it relied on Article 411 of the Civil Code as the legal basis for its claim. In dismissing the applicant company's claim, the Civil Court of Appeal noted that the Civil Code was not applicable to the dispute and that the interest prescribed by Article 411 of the Civil Code could not be accrued on overpaid taxes. The court based its conclusion on Article 1 § 6 of the Civil Code and Section 33 § 2 of the Taxes Act (see paragraph 18 above).

29. In all three decisions discussed above, the domestic courts held that civil legislation, on which the applicant company relied, was not applicable to the dispute. This conclusion is supported by Article 1 § 6 of the Civil Code and does not appear arbitrary or manifestly unreasonable. The applicant company did not raise any argument to challenge the applicability of the general rule prescribed by Article 1 § 6 of the Civil Code which provides that

civil legislation does not apply in tax disputes. The Court reiterates that it is in the first place for the national authorities, and notably the courts, to interpret and apply the domestic law. The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention. This applies in particular to the courts' interpretation of rules of a procedural nature (see *Fu Quan, s.r.o. v. the Czech Republic* [GC], no. 24827/14, § 120, 1 June 2023). The Court further reiterates that it should not act as a fourth instance and will not therefore question under Article 6 § 1 the judgment of the national courts, unless their findings can be regarded as arbitrary or manifestly unreasonable (see *Zubac*, cited above, § 79). Having regard to its role, the Court cannot but accept the conclusion that the applicant company repeatedly relied on an inapplicable provision as the legal basis for its claim.

30. The applicant company maintained that the Administrative Court was obliged to examine its civil claim under Article 411 of the Civil Code, arguing that it had jurisdiction to examine a subsidiary claim of a civil nature as long as it was interconnected with the main claim of an administrative nature. However, this argument is of no relevance because the Administrative Court did not discontinue the examination of the applicant company's claim concerning the payment of interest for lack of jurisdiction to examine it as a subsidiary civil claim within the scope of the administrative dispute: it did so because the applicant company had relied on an inapplicable legal provision.

31. The applicant company's argument concerning the Administrative Court's power to carry out an *ex officio* examination of the dispute and examine the merits of the claim of its own motion cannot be accepted because it is not based on any rules of administrative procedure. In contrast, the Court is satisfied with the Government's submissions, based on Article 6 of the Code of Administrative Procedure and the case-law of the Court of Cassation, that the Administrative Court's power to carry out an *ex officio* examination concerns exclusively the establishment of the facts and does not allow the Administrative Court to supplement the legal basis of a claim of its own motion, thereby going beyond the scope of the claim submitted.

32. Moreover, the applicant company did not argue in its appeals that the Administrative Court should have examined its claim *ex officio* under the applicable provisions of the Taxes Act but instead continued to argue that Article 411 of the Civil Code was applicable. In its observations before the Court, it took a different stance. The Court reiterates, however, that parties cannot validly put forward before the Court an argument which they never made before the domestic courts (see *Fu Quan, s.r.o.*, cited above, § 123). It follows that the decisions of the domestic courts did not undermine the very essence of the applicant company's right of access to a court; nor was the restriction on its access to a court disproportionate. The applicant company's complaint under Article 6 § 1 is therefore manifestly ill-founded.

33. Accordingly, the applications must be declared inadmissible in accordance with Article 35 §§ 3(a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

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

Martina Keller Deputy Registrar	Andreas Zünd President