



Tax proceedings brought against a regional television broadcasting company were unfair

In today's Chamber judgment¹ in the case of [Chap Ltd v. Armenia](#) (application no. 15485/09) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 § 1 read in conjunction with Article 6 § 3 (d) (right to a fair trial and right to obtain attendance and examination of witnesses) of the European Convention on Human Rights.

The case concerned tax evasion proceedings brought against a regional television broadcasting company. The company notably alleged that they had not been able to examine witnesses whose evidence had been used against it in the proceedings. The witnesses were the head of the National Television and Radio Commission and a number of businessmen.

The Court concluded that the restriction on the applicant company's right to examine these witnesses had been unreasonable. In particular, the courts had refused to grant the applicant company's request to summon these witnesses, finding their evidence irrelevant, despite the fact that the very same evidence had been considered decisive for imposing tax surcharges and fines on the applicant company in the proceedings against it.

Principal facts

Chap Ltd., the applicant, is a private Armenian company that was set up in 1999 and is based in Gyumri (Armenia). In 2005 it created a regional television channel, Gala TV, which broadcasted in Gyumri, the second largest town in Armenia. Gala TV was widely recognised as one of the few independent voices in television broadcasting in the country.

Following a tax inspection conducted on the applicant company's accounts in 2007, a report was issued finding the company liable for tax evasion. It was notably accused of hiding income earned from advertising. The report was based on documents requested from and subsequently submitted by the head of the National Television and Radio Commission ("the NTRC") as well as statements by businessmen who had placed advertisements on Gala TV. It was ordered to pay 51,000 euros (EUR), including surcharges and fines.

As the applicant company did not pay, the tax authorities brought proceedings in the domestic courts. In those proceedings the applicant company's lawyer challenged the tax inspection report and asked for the head of the NTRC as well as the relevant businessmen to be summoned to testify about the information they had provided/statements they had made. These applications were however rejected as the Administrative Court considered their evidence irrelevant.

Ultimately, in March 2008 the Administrative Court, relying among other things on the documents and statements in the tax report, granted the tax authorities' claim against the applicant company almost in its entirety and decided to levy a total charge of approximately EUR 50,000. The applicant company's appeal on points of law was declared inadmissible in September 2008.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Complaints, procedure and composition of the Court

Relying on Article 6 §§ 1 and 3 (d) (right to a fair trial and right to obtain attendance and examination of witnesses), the applicant company complained about the unfairness of the tax proceedings brought against it as it had not been able to examine witnesses whose evidence had been used against it in the proceedings.

The application was lodged with the European Court of Human Rights on 13 March 2009.

Judgment was given by a Chamber of seven judges, composed as follows:

Linos-Alexandre **Sicilianos** (Greece), *President*,
Kristina **Pardalos** (San Marino),
Aleš **Pejchal** (the Czech Republic),
Robert **Spano** (Iceland),
Armen **Harutyunyan** (Armenia),
Tim **Eicke** (the United Kingdom),
Jovan **Ilievski** (“the former Yugoslav Republic of Macedonia”),

and also Abel **Campos**, *Section Registrar*.

Decision of the Court

Unlike the businessmen, the head of the NTRC had not actually made any oral or written statements in the tax proceedings against the applicant company. However, the Court considered that he had also been a witness within the meaning of Article 6 § 3 (d) because the information contained in the documents he had provided constituted evidence for the tax authorities and the courts. Furthermore, when asking that the head of the NTRC be summoned, the applicant company’s lawyer had clearly stated his intention to only put questions to him about the documents and information he had provided.

The question of whether there had been good reasons for the head of the NTRC or the businessmen not appearing in court had not even arisen as the Administrative Court considered that their evidence was of no relevance. Yet the evidence of those same witnesses had been relied on by the Administrative Court when accepting the tax authorities’ calculations in their report following the inspection and when establishing the applicant company’s tax liability. The evidence of those witnesses could therefore be considered decisive for the imposition of tax surcharges on the applicant company in the proceedings against it. Moreover, there had been no procedural safeguards to compensate for the handicaps caused to the applicant company as a result of it not having been able to examine the witnesses in question.

The Court therefore concluded that the applicant company had been unreasonably restricted in its right to examine the head of the NTRC and the relevant businessman, in violation of Article 6 § 1 read in conjunction with Article 6 § 3 (d) of the Convention.

Just satisfaction (Article 41)

The Court held that Armenia was to pay the applicant company 2,400 euros (EUR) in respect of non-pecuniary damage and EUR 1,500 for costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.