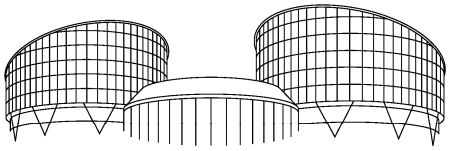

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SCHOLZ AG v. ARMENIA

(Application no. 16528/10)

JUDGMENT

STRASBOURG

24 January 2019

This judgment is final but it may be subject to editorial revision.

In the case of Scholz AG v. Armenia,

The European Court of Human Rights (First Section), sitting as a Committee composed of:

Ksenija Turković, *President,*
Armen Harutyunyan,
Pauliine Koskelo, *judges,*
and Renata Degener, *Deputy Section Registrar,*

Having deliberated in private on 18 December 2018,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 16528/10) 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") by a German corporation, Scholz AG ("the applicant company"), on 19 March 2010.

2. The applicant company was represented by Mr T. Atanesyan and Mr D. Abgaryan, lawyers practising in Yerevan. The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, Representative of the Government of Armenia to the European Court of Human Rights.

3. On 10 March 2016 the complaint concerning access to a court was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant company has its registered office in Essingen, Germany.

5. From the 1990s onwards the applicant company regularly purchased scrap metal from A. Safaryan and Associates LLC, a limited liability company registered in Armenia ("the LLC").

6. On 8 February 1999, 10 April 2000 and 2 April 2003 the applicant company and KBKS (another German company owned by the applicant company) concluded three contracts with the LLC, under which KBKS and the applicant company were to make advance payments to the LLC in return for scrap metal. The contract of 2 April 2003 contained the following dispute resolution clause:

> "...
>
> 7. Arbitration
>
> 7.1 The parties agree that any disputes and differences arising out of the performance of this contract shall be resolved through negotiations in order to reach a mutually beneficial resolution.
>
> 7.2 If it is not possible to settle such disputes amicably, these matters shall, with the exception of those falling within the jurisdiction of the ordinary courts, be referred to the Arbitration Tribunal of the Chamber of Commerce of the country of the respondent.
>
> ..."

7. It appears that the contracts of 8 February 1999 and 10 April 2000 contained a similar clause.

8. On 8 April 2002 KBKS and the applicant company concluded an assignment agreement whereby KBKS transferred all its contractual rights, including those towards the LLC, to the applicant company.

9. On 8 November 2002 the applicant company provided the LLC with a loan in the amount of 100,000 euros (EUR), which was due to be repaid by 31 January 2003. The purpose of the loan was to assist the LLC in paying off a bank loan. It appears that it was not paid back to the applicant company.

10. It further appears that the LLC failed to meet its contractual obligations *vis-à-vis* the applicant company, in that it supplied less scrap metal than the advance payments that it had already received.

11. On 28 October 2005 representatives of the applicant company and the LLC made a calculation of their liabilities as at that date and it was revealed that the LLC owed 1,213,824 US dollars (USD) to the applicant company. As a result of negotiations, the applicant company agreed to provide debt relief in the amount of USD 613,824 on the condition that the LLC paid off the rest of the debt, namely USD 600,000, in accordance with a debt repayment schedule which was set up in a separate agreement signed on the same day by the directors of both companies. According to this agreement, the LLC undertook to repay the debt in five

instalments, with the first payment due by 15 December 2005. If the LLC failed to meet its obligations as set out in the repayment schedule, it would be immediately liable to repay the entire debt, and any disputes with regard to repayment would be resolved through litigation.

12. On the same day the parties concluded another agreement, setting out a repayment schedule in respect of the loan of EUR 100,000 and arrears in the amount of EUR 10,000. It also stated that an additional 6% would be payable in the event of failure to respect the repayment schedule.

13. It appears that the LLC missed the required payments. In subsequent correspondence, the director of the LLC acknowledged the debt but deferred its repayment, each time providing different reasons.

14. On 15 January 2007 the applicant company lodged a claim with the Commercial Court against the LLC, seeking to recover USD 10,000 from the initial debt of USD 1,213,824.

15. On 2 October 2007 the applicant company amended its initial claim, seeking to recover a total of USD 1,516,442 and EUR 116,600 from the LLC, including the principal debt, the loan and interest on both. It also requested a waiver of the court fees.

16. On 4 October 2007 the LLC filed a counterclaim, contesting the applicant company's claims. The director of the LLC requested the annulment of the two documents dated 28 October 2005, arguing that, having no command of German, he had been unaware of their content and had signed them as a result of fraud.

17. On 15 October 2007 the applicant filed a response to the counterclaim, arguing, *inter alia*, that the director of the LLC had been personally present during the negotiations in Germany when a recalculation of liabilities between the companies had been carried out. Since the director of the LLC was fluent in Russian, the negotiations had been conducted in Russian and there had also been a copy in Russian of the documents signed. Moreover, the fact that the director of the LLC had been fully aware of the content of the documents he had signed of his own free will was confirmed by his numerous letters, where he had provided justification for having failed to transfer the amounts due in a timely manner.

18. On 7 November 2007 the LLC requested the Commercial Court to leave the applicant company's claim unexamined on the grounds that the contracts of 8 February 1999, 10 April 2000 and 2 April 2003 contained a

dispute resolution clause whereby disputes concerning their performance would be resolved by the Arbitration Tribunal of the Chamber of Commerce of the country of the respondent. The LLC therefore claimed that, it being the respondent, resolution of the dispute was within the jurisdiction of the Arbitration Tribunal of the Chamber of Commerce and Industry of Armenia ("the Arbitration Tribunal").

19. On 16 November 2007 the Commercial Court granted the request and decided to leave the applicant company's claim and the counterclaim lodged by the LLC unexamined. In doing so, it referred to Article 103 § 3 of the Code of Civil Procedure and found that the resolution of the dispute fell within the jurisdiction of the Arbitration Tribunal. It found that, as the contract of 2 April 2003 contained an arbitration clause, the agreement of 28 October 2005 was also subject to arbitration. The decision was amenable to appeal before a three-judge bench of the Commercial Court within three days of receipt by the party.

20. On 23 November 2007 the applicant company lodged a complaint concerning the decision to leave the claim and counterclaim unexamined. It argued, *inter alia*, that the agreements signed on 28 October 2005, which had succeeded the contracts of 8 February 1999, 10 April 2000 and 2 April 2003, provided that disputes concerning the failure of the LLC to respect the repayment schedules set out in them would be determined by the courts. It further argued that, subsequent to the agreements of 28 October 2005, no other arrangements concerning dispute resolution had been concluded between the parties. Relying on section 8(1) of the Commercial Arbitration Act, the applicant company also argued that, contrary to its requirements, the court had decided to leave the claim unexamined, even though the LLC had submitted the relevant request several months after the litigation had started and had already made its submissions on the merits of the claim. Lastly, the applicant company argued that its claim in the part relating to the recovery of the amount of the loan of EUR 100,000 was not connected in any way to the contracts of 8 February 1999, 10 April 2000 and 2 April 2003. However, the court had decided that the entirety of its claims were to be determined through arbitration.

21. On 10 December 2007 a three-judge bench of the Commercial Court rejected the complaint submitted by the applicant company. The decision stated that, *inter alia*, the claims concerning the debt and the loan were interconnected and stemmed from the commercial

relationships between the parties based on the contract for the supply of scrap metal.

22. On 23 July 2008 the applicant company's representative sent a request for information to the President of the Arbitration Tribunal, asking whether the arbitration clause contained in the contracts concluded between the parties was sufficient for the tribunal to accept the claim for examination, and whether the decisions of the Commercial Court to leave the claim unexamined on the grounds that the determination of the dispute fell within the jurisdiction of a commercial arbitration court provided sufficient grounds for accepting the claim. Translations into Armenian of extracts of the contracts containing the arbitration clause and copies of the two decisions of the Commercial Court were enclosed with the letter.

23. On 1 August 2008 the President of the Arbitration Tribunal replied that the question of whether the arbitration clause stipulated in the contracts concluded between the parties was sufficient for it to accept the claim for examination could only be determined once the claim had been lodged.

24. At the same time, the registrar of the Arbitration Tribunal submitted to the representative of the applicant company a draft arbitration agreement to be concluded with the LLC. According to the applicant company, its representative told the registrar that the conclusion with the LLC of this type of new agreement was at that point impossible and unreasonable, since the Commercial Court had already found that the arbitration clause contained in the contracts was sufficient to start arbitration proceedings.

25. On 17 September 2008 the applicant company lodged a claim with the Arbitration Tribunal, seeking to recover EUR 116,600, the amount of the loan and interest. A copy of the promissory note signed on 8 November 2002 on providing a loan to the LLC in the amount of EUR 100,000, together with other documents, was attached to the claim. In addition, it was stated in the claim that the decisions of the Commercial Court and extracts of the contracts containing the arbitration clause had already been submitted to the President of the Arbitration Tribunal with the letter of 23 July 2008.

26. On 7 October 2008 the President of the Arbitration Tribunal informed the applicant company that its request to start arbitration

proceedings would not be granted. The relevant parts of the letter read as follows:

> "... The promissory note of 8 November 2002 and the agreement of 28 October 2005, on which your claim was based, do not contain an arbitration clause and, moreover, the parties have not concluded any agreement to submit the disputes arising out of the performance of the above-mentioned promissory note and the agreement to the permanent arbitration institution of the Chamber of Commerce and Industry of Armenia for determination. Consequently, in the absence of an arbitration agreement between the parties, the [Arbitration Tribunal] cannot start arbitration proceedings."

27. In view of the fact that the Commercial Court had been abolished by that time, on 17 October 2008 the applicant company lodged a claim with the Yerevan Civil Court, seeking to recover EUR 116,600 from the LLC, representing the amount of the loan and interest. It submitted that the Arbitration Tribunal had refused to accept the claim for examination even though the Commercial Court had already found that the determination of the dispute fell within the tribunal's jurisdiction. In such circumstances, the applicant company's right of access to a court had been violated. The applicant company also applied for a freezing injunction in respect of the respondent's assets in the amount of the claim.

28. On 12 November 2008 the Yerevan Civil Court accepted the applicant company's claim for examination and scheduled a preparatory hearing. On the same day it allowed the applicant company's interlocutory application for a freezing injunction in respect of the property of the LLC in the amount of the claim.

29. On 27 February 2009 the Yerevan Civil Court transferred the case to the Kentron and Nork-Marash District Court of Yerevan ("the District Court") based on territorial jurisdiction, in view of the fact that on 1 March 2009 the Yerevan Civil Court would be abolished.

30. On 13 March 2009 the District Court accepted the case for examination.

31. On 12 June 2009 the LLC, relying on the decision of the Commercial Court of 16 November 2007, requested the District Court to leave the applicant company's claim unexamined. It submitted, in particular, that the applicant company had failed to substantiate that the grounds for leaving its claim unexamined no longer existed.

32. The applicant company contested the arguments put forward by the LLC, arguing that the possibility of applying to the Arbitration

Tribunal no longer existed since, by a letter of 7 October 2008, examination of the claim had been refused.

33. On 16 June 2009 the District Court decided to leave the claim lodged by the applicant company unexamined, finding that the refusal to start arbitration proceedings stated in the letter of 7 October 2008 did not substantiate the fact that there was no possibility of applying to the Arbitration Tribunal. The District Court further referred to the previous findings of the Commercial Court to conclude that the claim should be left unexamined.

34. On 25 June 2009 the applicant company lodged an appeal. It argued, in particular, that the Arbitration Tribunal had been provided with the decisions of the Commercial Court and the contracts concluded between the parties. Having examined them, it had concluded that it had no jurisdiction to determine the dispute. In such circumstances, the rationale for considering that the dispute should be determined by the tribunal was incomprehensible.

35. In its reply to the applicant company's appeal, the LLC submitted, *inter alia*, that the applicant company had failed to provide the Arbitration Tribunal with copies of the relevant extracts of the contracts that contained the arbitration clause and the relevant decisions of the Commercial Court. Therefore, the tribunal had refused to accept the claim.

36. On 21 July 2009 the Civil Court of Appeal upheld the decision of 16 June 2009. In doing so, it stated, in particular, that the applicant company had failed to submit to the Arbitration Tribunal extracts of the contracts containing the arbitration clause, as a result of which its claim had not been accepted.

37. On 4 August 2009 the applicant company lodged an appeal on points of law. It argued, in particular, that the Civil Court of Appeal had upheld the lower court's decision, despite the fact that there was no possibility of applying to the Arbitration Tribunal. The applicant company further pointed out that the argument that it had failed to submit the relevant extracts of the contracts to the tribunal was groundless since, in its claim lodged with that institution, it had expressly mentioned that copies of the decisions of the Commercial Court and extracts of the contracts in question had already been submitted with the letter of 23 July 2008.

38. On 23 September 2009 the Court of Cassation declared the applicant company's appeal on points of law inadmissible. In doing so, it stated the following:

> "... As for the letter of the President of the Arbitration Tribunal of the Chamber of Commerce of 7 October 2008 concerning non-acceptance of the claim lodged by [the applicant company], it was based on the grounds that [the applicant company] had not submitted the original arbitration agreement or a certified copy, as required by the Commercial Arbitration Act and [the provisions contained therein], in the absence of which arbitration proceedings could not be started.
>
> The Court of Cassation finds that, taking into account the failure to submit to the Arbitration Tribunal of the Chamber of Commerce and Industry the original arbitration agreement or a certified copy ... and non-examination of [the applicant company's] claim, [the applicant company] is not deprived of judicial protection in accordance with the general provisions of the Code of Civil Procedure ..."

II. RELEVANT DOMESTIC LAW

A. Code of Civil Procedure (as in force at the material time)

39. Article 14 provided that a final judicial decision was binding on all State agencies, local self-government bodies, their officials, legal entities and citizens and was enforceable throughout the entire territory of the Republic of Armenia.

40. Article 103 § 3 provided that a court could leave a claim or request unexamined if there was an agreement between the parties to the proceedings to submit the dispute for determination by an arbitration tribunal, and the possibility of applying to an arbitration tribunal had not been eliminated.

41. Article 104 § 4 provided that the claimant or the respondent had the right to reapply to the court once the circumstances based on which the claim or complaint had been left unexamined no longer existed.

B. Law on Commercial Arbitration (adopted on 25 December 2006 and in force from 10 February 2007 – "the Commercial Arbitration Act")

42. Section 8(1) provides that a court to which a claim has been lodged with regard to a dispute concerning which there is an arbitration agreement, has an obligation to leave the claim unexamined based on the request of one of the parties lodged no later than the submission by that

party of its first statement on the merits of the dispute, except when it finds that the agreement is void, no longer valid or cannot be performed.

43. Section 8(2) provides that, in the event of a claim under section 8(1), arbitration proceedings may be started or continued and a judgment reached while the claim is still before the court.

C. Rules of the Permanent Arbitration Tribunal of the Chamber of Commerce and Industry of the Republic of Armenia (adopted on 3 April 2007)

44. Article 10 sets out the requirements regarding the content of a claim to the Arbitration Tribunal and the documents to be attached to it. Article 10 § 1 (b) provides that a claim lodged with the Arbitration Tribunal should contain a reference to the arbitration agreement, of which the original or a certified copy should be attached to the claim.

45. Article 12 § 1 provides that, if it is established that the claim lodged with the Arbitration Tribunal does not comply with the requirements of Article 10, the registrar of the Arbitration Tribunal must propose that the claimant rectify the errors in the claim within a reasonable time-limit.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

46. The applicant company complained under Article 6 § 1 of the Convention that it had been denied access to a court as a result of the refusal of the ordinary courts and the Arbitration Tribunal to examine its claims.

47. Article 6 § 1 of the Convention reads in relevant parts as follows:

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

48. The Government contested that argument.

A. Admissibility

49. The Government argued that the applicant company had failed to exhaust the effective domestic remedies. They noted that the three contracts concluded on 8 February 1999, 10 April 2000 and 2 April 2003 contained an arbitration clause. The applicant company had failed to attach the originals or a certified copy of these contracts to its application to the Arbitration Tribunal, which had then consequently declined to start arbitration proceedings. The Arbitration Tribunal had not refused to examine the case because of a lack of competence to examine the case, but because the application lodged with it had not been supported by the necessary documents. The applicant company had been solely responsible for not lodging an appropriate and complete claim with the Arbitration Tribunal, which had had the jurisdiction to examine it. The Government therefore claimed that the applicant company had failed to exhaust the effective domestic remedies and that, consequently, the application should be declared inadmissible.

50. The applicant company contested the Government's allegation. It argued that it clearly appeared from the domestic courts' judgments that the contracts in question had been presented to the Arbitration Tribunal. The applicant company had thus exhausted the effective domestic remedies.

51. The Court notes that on 17 September 2008 the applicant company lodged a claim with the Arbitration Tribunal in the amount of EUR 116,600, seeking to recover the loan. A copy of the promissory note signed on 8 November 2002 on providing a loan to the LLC in the amount of EUR 100,000, the agreement of 28 October 2005 and other documents were attached to the claim. Also, it was stated in the claim that the decisions of the Commercial Court and extracts of the contracts containing the arbitration clause had already been submitted to the President of the Arbitration Tribunal (see paragraph 25 above).

52. On the basis of this information, it is clear for the Court that the applicant company submitted to the Arbitration Tribunal both the documents on which its claim for EUR 116,600 was based as well as the three contracts containing the arbitration clause. It cannot therefore be said that the applicant company failed to exhaust the effective domestic remedies by not submitting the documents in question. The applicant company's application is thus not inadmissible on this ground and,

consequently, the Government's preliminary objection must be dismissed.

53. The Court finds that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

54. The applicant company noted that the fact that the Government had not presented any arguments other than the preliminary objection in the case showed that they had implicitly accepted the applicant company's submissions.

55. The Government considered that there had been no violation of Article 6 § 1 as the applicant company had not been deprived of effective access to a court.

2. The Court's assessment

(a) General principles

56. The Court reiterates that Article 6 § 1 of the Convention embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect (see *Golder v. the United Kingdom*, 21 February 1975, § 36, Series A no. 18). This right to a court extends only to "disputes" (*contestations* in the French text) over "civil rights and obligations" which can be said, at least on arguable grounds, to be recognised under domestic law. The "dispute" must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. The outcome of the proceedings must be directly decisive for the right in question (see *Athanassoglou and Others v. Switzerland* [GC], no. 27644/95, § 43, ECHR 2000-IV).

57. The Court reiterates that the "right to a court" is not absolute. It is subject to limitations permitted by implication, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard. Nonetheless, the limitations applied must not restrict or reduce a person's access in such a way or to such an extent

that the very essence of the right is impaired. Lastly, such limitations will not be compatible with Article 6 § 1 if they do not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, among other authorities, *Levages Prestations Services v. France*, 23 October 1996, § 40, *Reports of Judgments and Decisions* 1996-V citing *Ashingdane v. the United Kingdom*, 28 May 1985, § 57, Series A no. 93; *Tolstoy Miloslavsky v. the United Kingdom*, 13 July 1995, § 59, Series A no. 316-B; and *Stanev v. Bulgaria* [GC], no. 36760/06, § 230, ECHR 2012).

58. It is not the Court's task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts of appeal and of first instance, to resolve problems of interpretation of domestic legislation (see *Miragall Escolano and Others v.* Spain, nos. 38366/97, 38688/97, 40777/98, 40843/98, 41015/98, 41400/98, 41446/98, 41484/98, 41487/98 and 41509/98, § 33, ECHR 2000-I, and *Domazyan v. Armenia*, no. 22558/07, § 37, 25 February 2016). The role of the Court is limited to verifying whether the effects of such interpretation are compatible with the Convention. This applies in particular to interpretation by courts of rules of a procedural nature (see, among many other authorities, *Nowiński v. Poland*, no. 25924/06, § 32, 20 October 2009).

(b) Application of these principles to the present case

59. The Court notes firstly that the applicant company's claim clearly concerned a civil matter, namely a civil claim in order to recover the principal debt and interest or the loan and interest from the LLC. It is equally clear that the case concerned a "dispute" over "civil rights and obligations" which was, at least on arguable grounds, to be recognised under domestic law. The "dispute" was genuine and serious, and the outcome of the proceedings was directly decisive for the right in question.

60. The Court observes that the applicant company tried to lodge its claim with three different courts or tribunals and that none of them accepted the case for examination. The applicant company was thus completely denied access to any court or tribunal in respect of its civil claim against the LLC (see *Saghatelyan v. Armenia*, no. 7984/06, § 48, 20 October 2015).

61. The applicant company first lodged a claim with the Commercial Court, in order to recover a total of USD 1,516,442 and EUR 116,600 from the LLC, including the principal debt, the loan and interest on both. On 16 November 2007 that court decided to leave the applicant company's claim unexamined and found that the resolution of the dispute fell within the jurisdiction of the Arbitration Tribunal. Even though the debt repayment agreement of 28 October 2005 did not contain an arbitration clause, the Commercial Court decided that the entirety of the applicant company's claims were to be determined through arbitration (see paragraph 20 above).

62. Subsequently, the applicant company lodged a claim with the Arbitration Tribunal in the amount of EUR 116,600. On 7 October 2008 its President informed the applicant company that, in the absence of any arbitration agreement between the parties, the Arbitration Tribunal could not start any arbitration proceedings.

63. Lastly, the applicant company lodged a claim with the Civil Court, seeking to recover EUR 116,600 from the LLC, that is, the amount of the loan and interest. On 16 June 2009 the District Court, to which the case had meanwhile been transferred from the Civil Court, decided to leave the applicant company's claim unexamined, finding that the refusal to start arbitration proceedings did not substantiate the fact that there was no possibility of applying to the Arbitration Tribunal. The District Court further referred to the previous findings of the Commercial Court to conclude that the claim should be left unexamined (see paragraph 33 above). On appeal, the Civil Court of Appeal and the Court of Cassation found that the applicant company had failed to submit to the Arbitration Tribunal extracts of the contracts containing an arbitration clause, as a result of which its claim had not been accepted (see paragraphs 37 and 39 above).

64. The Court reiterates that it is primarily for the national authorities to resolve any problems of jurisdiction. In the present case, the applicant company's access to a court was denied by all of the domestic courts and tribunals with which the applicant company lodged its claim. Although the Commercial Court's initial decision that the Arbitration Tribunal was competent may very well have been justified, the following decisions by the Arbitration Tribunal and the District Court refusing the applicant company access to a court were clearly disproportionate. There was no reasonable relationship of

proportionality between the means employed and the aim sought to be achieved, when examining the case as a whole.

65. The Court finds it particularly difficult to accept the District Court's reasoning. Firstly, the applicant company's claim before the District Court only concerned the loan and interest which were based on the promissory note of 8 November 2002 and the agreement of 28 October 2005, neither of which contained an arbitration clause. If the Arbitration Tribunal was not competent to examine the very same claim because of the lack of an arbitration clause, then the District Court would have had competence. Moreover, as the applicant company's claim no longer related to the entirety of its claims, as before the Commercial Court, but only to those related to the loan arrangements, the District Court could hardly rely on the same reasoning as the Commercial Court when leaving the applicant company's claim unexamined. It is difficult to see how the applicant company's claim concerning only the loan could be regarded as forming a part of a whole together with the contracts of 8 February 1999, 10 April 2000 and 2 April 2003, when the latter contracts were in no manner even invoked before the District Court. Moreover, it is noteworthy that the District Court left the applicant company's claim unexamined after having already accepted the case for examination (see paragraph 31 above). The Court also finds it difficult to accept that the Civil Court of Appeal and the Court of Cassation went on, in their decisions, to interpret why the Arbitration Tribunal, which is a completely independent body, rejected the applicant company's claim.

66. The foregoing considerations are sufficient to enable the Court to conclude that the domestic courts' failure to examine the case constituted for the applicant company a limitation of the right of access to a court which did not pursue a legitimate aim and which was not proportionate. By leaving the applicant company's claim unexamined, the domestic courts undermined the very essence of the applicant company's right to a court guaranteed under Article 6 § 1 of the Convention.

67. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

69. The applicant claimed USD 1,213,824 and EUR 116,000 plus interest in respect of pecuniary damage, and EUR 100,000 in respect of non-pecuniary damage.

70. The Government considered that the claim for pecuniary damage should be rejected, as there was no causal link between the alleged violation and the pecuniary damage claimed by the applicant company. They also submitted that it was not for the Court to speculate about the actual outcome of the domestic proceedings or any pecuniary damage the applicant company might have sustained in that connection. As to the claim for non-pecuniary damage, the Government considered the amount exaggerated in the light of the Court's case-law and considered that it should be completely rejected. However, if the Court were to award compensation for non-pecuniary damage, the amount claimed should be reduced.

71. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant company EUR 3,600 in respect of non-pecuniary damage.

B. Costs and expenses

72. The applicant company did not claim any costs and expenses.

C. Default interest

73. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant company, within three months, EUR 3,600 (three thousand six hundred euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 January 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener	Ksenija Turković
Deputy Registrar	President