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

FIRST SECTION

DECISION

Application no. 4051/13
DOOEL ZLATEN EGEJ
against North Macedonia

The European Court of Human Rights (First Section), sitting on 17 November 2020 as a Committee composed of:

Krzysztof Wojtyczek, *President,*
Linos-Alexandre Sicilianos,
Tim Eicke, *judges,*

and Renata Degener, *Deputy Section Registrar*,

Having regard to the above application lodged on 4 January 2013,

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

1. The applicant, Dooel Zlaten Egej, is a single-member limited liability company ("the applicant company") registered in Delchevo, North Macedonia. It was represented before the Court by Mr D. Manevski and Mr J. Stojkov, lawyers practising in Delchevo.

2. The Government of North Macedonia ("the Government") were represented by their former Agent, Mr K. Bogdanov, succeeded by their present Agent, Ms D. Djonova.

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. The applicant company was engaged in the recycling of scrap metal. After the Waste Management Act (*Закон за управување со отпад*) came into force in 2004, the applicant company was required to obtain a licence for the storage and treatment of waste ("the licence").

5. On 16 July 2007 (or 8 May 2008 – the parties gave different dates) the applicant company requested that the Ministry of Environment and Spatial

Planning ("the Ministry") provide it with the licence. On 15 July 2009 the licence was issued and on 23 February 2010, it was delivered to the applicant company (after several alleged unsuccessful attempts owing to wrong information about the applicant company's seat).

6. On an unspecified date in 2010 (subsequent to the delivery of the licence) the applicant company brought a civil action against the Ministry seeking compensation for lost income between 16 July 2007 and 23 February 2010. It argued that the Ministry had delayed in issuing the licence and that as a consequence, the applicant company had not been able to operate on the market for some time.

7. By a judgment of 20 October 2010, the Kochani Court of First Instance dismissed (*одбива како неосновано*) the claim, holding that compensation could only be awarded if it had been established that an administrative body had unlawfully refused to take a required action in administrative proceedings. On 20 December 2010 the Shtip Court of Appeal dismissed the applicant company's subsequent appeal and upheld the judgment. Both courts relied on, *inter alia*, section 22 of the Administrative Disputes Act of 2006 according to which if the second-instance administrative body does not decide within 60 days, an interested party can ask the Administrative Court to decide in the same way as if his or her administrative appeal had been dismissed.

8. On 14 February 2011 the applicant company brought an action in the Administrative Court, seeking a finding that the Ministry had not complied with the statutory time-limits and an award of compensation.

9. Following a request by the Administrative Court, the applicant company specified (*прецизира*) that its intention had been to claim "protection from an unlawful action taken between 16 July 2007 and 23 February 2010" by the Ministry, in that it had failed to comply with the deadlines regarding the issuance of the licence.

10. On 27 October 2011 the Administrative Court dismissed the claim, finding, *inter alia*, that in accordance with section 58 of the Administrative Disputes Act (which concerned a claim against an action by an administrative body), such a claim could be lodged only while the impugned conduct on the part of the Ministry was ongoing. According to the court, the fact that the compensation proceedings had been of no avail for the applicant company had no bearing on its findings. On 8 October 2012 the Supreme Court, as the competent body at the material time, upheld that judgment. It further held that a judicial protection for failure to act on the part of administrative bodies was provided through the legal mechanism of an "administrative inactivity" (*молчење на администрацијата*) regulated under the Administrative Proceedings Act and the Administrative Disputes Act.

COMPLAINT

11. The applicant company complained under Article 6 of the Convention about the refusal of both the civil and administrative courts to examine its compensation claim on the merits.

THE LAW

12. The applicant company complained of a violation of its right of access to a court and relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

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

I. THE PARTIES' SUBMISSIONS

13. The Government submitted that the applicant company had not exhausted the domestic remedies, in that it had failed to lodge an appeal in the administrative proceedings concerning the licence under section 221(2) of the Administrative Proceedings Act, which in turn had prevented it from lodging, under section 22 of the Administrative Disputes Act, an action for administrative inactivity (*тужба за молчење на администрација*). It had also failed to request the administrative inspectorate (*Управен инспекторат*) to intervene in order to speed up the proceedings. The Government further argued that the applicant company had had access to the domestic courts, but it had failed to follow the appropriate procedure to obtain a decision on the merits, namely seeking to have the alleged delay in the proceedings concerning the licence declared unlawful in administrative proceedings when the alleged delays had been ongoing.

14. The applicant company did not provide any comments in reply.

II. THE COURT'S ASSESSMENT

15. The Court considers that it does not need to rule on the inadmissibility plea raised by the Government (see paragraph 13 above) as the application is inadmissible in any event for the following reasons.

16. The general principles relevant to the right of access to a court have been set out in *Lupeni Greek Catholic Parish and Others v. Romania* ([GC], no. 76943/11, §§ 84-90, ECHR 2016 (extracts)). They were recently reiterated in *Zubac v. Croatia* ([GC], no. 40160/12, §§ 76-79, 5 April 2018).

17. The Court notes that the Ministry issued the licence on 15 July 2009 and delivered it to the applicant company on 23 February 2010 (see paragraph 5 above). Subsequently, the applicant company initiated the compensation proceedings against the Ministry claiming damages (loss of

income) on the basis that the latter had delayed issuing the licence. The civil courts held that they could assess the applicant company's claim for compensation only if it had already been established in administrative proceedings that the Ministry had unlawfully refused to take the required action. That requirement does not appear to be by itself incompatible with Article 6 § 1.

18. The administrative courts, on the other hand, dismissed the applicant company's subsequent administrative claim, holding that a claim seeking to establish the unlawfulness of the Ministry's failure to act (provision of the licence) in good time, as specified by the applicant (see paragraph 9 above), could only be lodged while the impugned actions of the Ministry were ongoing as provided for in section 58 of the Administrative Disputes Act. They also added that, as argued by the Government (see paragraph 13 above), the applicant company had not availed itself of the remedies in the event of administrative inactivity (see paragraph 10 above). The Court has previously found these remedies effective for the acceleration of the proceedings in such circumstances (see *Taneva and Others v. the former Yugoslav Republic of Macedonia* (dec.), no. 11363/03, 10 November 2009, and *Jovevski v. the former Yugoslav Republic of Macedonia* (dec.), no. 45482/08, 27 May 2014).

19. The Court notes that the applicant company did not argue, or submit any example of domestic practice in this regard to support a conclusion that having the Ministry's delayed issuing the licence declared unlawful in administrative proceedings prior to being able to obtain compensation was a condition which ran contrary to domestic law or practice or that the limitation period in its case was unattainable or that its application was not foreseeable. The Court further notes that section 58 of the Administrative Disputes Act clearly states that such an administrative action could only be brought while the impugned actions of the administrative organ, in this case the Ministry, were ongoing (see paragraph 10 above). Bearing in mind that it is primarily for the domestic courts to interpret the relevant domestic law, and given that the above reasoning of the domestic courts does not appear arbitrary or manifestly unreasonable, the Court sees no reason to call their findings in the present case into question. Moreover, on the facts of the case as supplied by the parties, the Court finds that there was nothing to prevent the applicant – nor has it claimed otherwise – from seeking to accelerate the administrative proceedings or have the Ministry's actions declared unlawful within the applicable time-limit and thus obtaining access to a civil court subsequently (see *Baničevič v. Croatia* (dec.) no. 44252/10, §§ 34-35, 2 October 2012).

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

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 10 December 2020.

Renata Degener Deputy Registrar	Krzysztof Wojtyczek President