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

SECOND SECTION

DECISION

Application no. 13208/20
Dushko MAGDELINIKJ against North Macedonia
and 4 other applications
(see list appended)

The European Court of Human Rights (Second Section), sitting on 26 March 2024 as a Committee composed of:

Lorraine Schembri Orland*, President*,
Jovan Ilievski,
Diana Sârcu*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar*,

Having regard to the above applications lodged on the various dates indicated in the appended table,

Having regard to the declaration submitted by the respondent Government on 6 October 2023 requesting the Court to strike the applications out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. A list of the applications, lodged by the same applicant, is set out in the appendix.

2. The Government of North Macedonia ("the Government") were represented by their Agent, Ms D. Djonova.

3. The applicant complained under Article 1 of Protocol No. 1 to the Convention about the impossibility to recover allegedly overpaid custom duties paid by his single-owner limited liability company, given that the administrative proceedings were either stayed or the domestic administrative courts rejected the administrative dispute claims in five separate proceedings, on account of the fact that the company had ceased to exist.

4. The applications had been communicated to the Government.

THE LAW

5. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision.

6. After the failure of attempts to reach a friendly settlement, by a letter of 6 October 2023 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the applications. They further requested the Court to strike out the applications in accordance with Article 37 of the Convention.

The relevant part of the declaration provided as follows:

> "1. The Government notes that the efforts with a view to securing a friendly settlement of the cases have been unsuccessful.
>
> 2. In this situation, the Government would hereby like to express – by way of a unilateral declaration – its acknowledgment that the impugned proceedings did not fulfil the requirements of the applicant's right protected by Article 1 of Protocol No. 1 of the Convention.
>
> 3. Consequently, the Government is prepared to pay, a sum of 3,465 EUR to the applicant to cover any and all non-pecuniary damage, as well as costs and expenses, plus any tax that may be chargeable. In its view, this amount would constitute adequate redress and sufficient compensation for the violation of Article 1 of Protocol No. 1 of the Convention.
>
> 4. The sum will be converted into national currency at the rate applicable on the date of payment and will be payable within three months from the date of the notification of the Court decision pursuant to Article 37 § 1 (c) of the Convention."

7. By a letter of 6 November 2023, the applicant indicated that he was not satisfied with the terms of the unilateral declaration and the amount proposed by the Government.

8. The Court reiterates that Article 37 § 1 (c) of the Convention enables it to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

9. It also reiterates that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

10. To this end, the Court has examined the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Sp. z o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.), no. 28953/03, 18 September 2007).

11. The Court has established case-law concerning the procedural obligations under Article 1 of Protocol No. 1 to the Convention (see, for example, *G.I.E.M. S.r.l. and Others v. Italy* [GC], nos. 1828/06 and 2 others,

§ 302, 28 June 2018; see also *mutatis mutandis*, *Katona and Závarský v. Slovakia*, nos. 43932/19 and 43995/19, § 60, 9 February 2023; *Korporativna Targovska Banka AD v. Bulgaria*, nos. 46564/15 and 68140/16, §§ 184-190, 30 August 2022; see also, in the context of an access to court-complaint under Article 6, *Centre for the Development of Analytical Psychology v. the former Yugoslav Republic of Macedonia*, nos. 29545/10 and 32961/10, §§ 43-45, 15 June 2017).

12. As regards the applicant's argument concerning the pecuniary damage suffered by him, the Court considers that it cannot speculate as to the outcome of the proceedings should the domestic authorities have entertained the case on the merits (see, *mutatis mutandis*, *Centre for the Development of Analytical Psychology*, cited above, §§ 50 and 55). It further notes that in May 2019 a new Administrative Disputes Act (Official Gazette no. 96/2019) entered into force which explicitly provides for reopening of proceedings on the basis, *inter alia*, of "a decision (by the Court) based on a unilateral declaration by the State acknowledging a violation of the Convention" (section 82(1)2 of the Act).

13. Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of the applications (Article 37 § 1 (c)).

14. Moreover, in light of the above considerations, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the applications (Article 37 § 1 *in fine*).

15. The Court further considers that in the event of failure to settle within the above three-month period, simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank plus three percentage points.

16. Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the applications could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

17. In view of the above, it is appropriate to strike the cases out of the list.

For these reasons, the Court, unanimously,

Decides to join the applications;

Takes note of the terms of the respondent Government's declaration under Article 1 of Protocol No. 1 to the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the applications out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Done in English and notified in writing on 25 April 2024.

Dorothee von Arnim Deputy Registrar	Lorraine Schembri Orland President

Appendix

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
1.	13208/20	Magdelinikj v. North Macedonia	04/03/2020	**Dushko MAGDELINIKJ** 1962 Shtip Montenegrin	Trajche TOROV
2.	54208/20		16/11/2020		
3.	54414/20		16/11/2020		
4.	55865/20		07/12/2020		
5.	9786/21		26/01/2021		