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

SECOND SECTION

DECISION

Application no. 40234/16
AMIS TELEKOM DOO
against Serbia

The European Court of Human Rights (Second Section), sitting on 17 May 2022 as a Committee composed of:

Jovan Ilievski, *President,*
Branko Lubarda,
Diana Sârcu, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to:

the application (no. 40234/16) against the Republic of Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 24 June 2016 by a Serbian company, Amis Telekom doo ("the applicant company"), which was represented before the Court by Mr D. Ninković, a lawyer practising in Belgrade;

the decision to give notice of the application to the Serbian Government ("the Government"), represented by their Agent, Ms Z. Jadrijević Mladar;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The applicant company complained of an interference with its right to freedom of expression and property rights, notably in that it had not been granted a licence to set up a wireless network for rebroadcasting cable television and radio programmes and bringing Internet services to subscribers in Belgrade, and of the lack of an effective domestic remedy in that regard. It also complained about the length of the administrative proceedings in respect of the licence.

2. On 4 March 2005 the applicant company applied to the Ministry for Capital Investments, which at the time was competent in this sphere

(hereinafter "the Ministry"), seeking a licence for the installation and operation of a network of transmitters in a specific range of frequencies. The Ministry did not make a formal decision on the application.

3. On 27 August 2005 a new legislation entered into force, establishing, *inter alia*, the Regulatory Agency for Electronic Communications and Postal Services (hereinafter "the Agency") as the competent body to deal with such matters. It also introduced a new licensing system, under which an individual licence would be granted on the basis of a call for tenders in respect of scarce frequencies and a general licence would be granted on the basis of standard conditions. Since the Agency also failed to give any formal decision on the applicant company's application, on 4 July 2007 the applicant company lodged an appeal for failure to respond. On 8 November 2012 the Administrative Court allowed the appeal and ordered the Agency to decide within thirty days on the application of 4 March 2005. In the ensuing proceedings, the Agency decided twice to reject the applicant company's application. In its decisions, it found that the licence in question had included a range of frequencies which could be purchased only through a public tendering procedure, whereas such a procedure had not been held. Notwithstanding that finding, the Agency went on to conclude that it did not have competence to deal with the applicant company's application submitted to the Ministry. Both of those decisions were set aside by the Administrative Court. Meanwhile, on 28 December 2015, in the context of a constitutional appeal lodged by the applicant company, the Constitutional Court found a violation of the applicant company's right to a trial within a reasonable time, awarded it 500 euros in respect of non-pecuniary damage and rejected the remainder of the appeal as premature. On 7 June 2021 the Agency rejected the application of 4 March 2005, holding that pursuant to the relevant frequency distribution plans, the requested range of frequencies was not available for the applicant company's intended activities. The proceedings in respect of the applicant company's subsequent appeal against that decision are currently pending before the Administrative Court.

4. The applicant company complained of a violation of its rights under Articles 6, 10 and 13 of the Convention and Article 1 of Protocol No. 1.

THE COURT'S ASSESSMENT

5. As regards the complaint under Article 10 about the alleged violation of the applicant company's right to impart information and ideas, the Government challenged its admissibility on a number of grounds related to non-exhaustion of domestic remedies. The Court finds it unnecessary to deal with these objections in detail since this complaint is in any event inadmissible for the following reasons.

6. The general principles concerning pluralism in the audiovisual sector have been recapitulated in *Centro Europa 7 S.r.l. and Di Stefano v. Italy*

([GC], no. 38433/09, §§ 129-35, ECHR 2012). The Court has already held that the existence of a viable alternative in organising broadcasting could render the restrictions imposed by law in this field compatible with Article 10 of the Convention (see *Tele 1 Privatfernsehgesellschaft mbH v. Austria*, no. 32240/96, § 40, 21 September 2000 concerning the impossibility of obtaining a licence for private terrestrial broadcasting).

7. The Government submitted that the restriction, resulting from changes in the law, on the use of the frequencies sought by the applicant company for its wireless network had not been disproportionate since the applicant company had been able at all times to provide its services by using other technologies under the general licensing regime. Moreover, as of 2012, under the new regulations, a certain range of frequencies had been made available for use by wireless networks on the basis of an individual licence issued on request and without a public tendering procedure.

8. The applicant company made no comments in response to those arguments.

9. The Court notes that the new legislation regulating the telecommunications sector in Serbia entered into force a little more than five months following the applicant company's application to the Ministry and before the Ministry made any formal decision in respect of that application. The applicant company has not submitted an application for a licence under the new legislation and the Court is not called upon to examine in the abstract whether this legislation is compatible with the Convention (see *Tele 1 Privatfernsehgesellschaft mbH*, cited above, § 42). In view of the information provided by the Government and the lack of any explanation on the part of the applicant company to refute it, the Court finds that the complaint regarding the interference with the applicant company's right to impart information and ideas is unsubstantiated. It must therefore be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

10. As regards the complaint under Article 1 of Protocol No. 1, the Court notes that the applicant company has never been granted the licence in question and therefore cannot be regarded as having any property interest, within the meaning of that provision, associated with its exploitation (contrast *Centro Europa 7 S.r.l. and Di Stefano*, cited above, §§ 178-79). In view of the information available in the case file, there is also nothing to suggest that the mere application for the licence gave rise to financial rights and interests which could be considered to constitute "possessions" for the purposes of Article 1 of Protocol No. 1; nor did the applicant company raise such an argument (contrast *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, §§ 76-78, ECHR 2007-I).

11. It follows that the complaint under Article 1 of Protocol No. 1 is incompatible *ratione materiae* with the provisions of the Convention within

the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

12. Since the applicant company's substantive complaints under Article 10 of the Convention and Article 1 of Protocol No. 1 have been declared inadmissible, there is no "arguable" claim under Article 13 of the Convention (see, for example, *De Tommaso v. Italy* [GC], no. 43395/09, § 180, 23 February 2017). The applicant company's complaint under Article 13 is thus manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

13. As regards the complaint under Article 6 about the length of the administrative proceedings concerning the licence, the Court firstly observes that the proceedings were instituted on 4 March 2005. However, the period to be taken into consideration began only on 4 October 2007, when the applicant company lodged its appeal for failure to respond. It was then that a "dispute" within the meaning of Article 6 § 1 arose (see, *mutatis mutandis*, *Živaljević v. Montenegro*, no. 17229/04, § 75, 8 March 2011). The period in question has not yet ended.

14. The Court further observes that the applicant company obtained adequate redress in respect of its complaint concerning the length of proceedings. In particular, the Constitutional Court held that the length of the proceedings was clearly excessive and awarded the applicant company 500 euros. That sum corresponds to 33% of the award which the Court would make in respect of non-pecuniary damage, in accordance with its practice under Article 41 of the Convention, for the period starting on 4 October 2007 and ending on 8 November 2012 – that being the date when the Administrative Court ordered the Agency to proceed with the applicant company's case without any further delay (compare *Becová v. Slovakia* (dec.), no. 23788/06, 18 September 2007). As to the period covered by the Constitutional Court's judgment, the applicant company can therefore no longer claim to be a "victim" within the meaning of Article 34 of the Convention. As to the subsequent period, when its case was transferred to the Agency, the applicant company should have again sought redress before the Constitutional Court (ibid.).

15. It follows that this complaint must be rejected in accordance with Article 35 §§ 1, 3 and 4 of the Convention as being manifestly ill-founded and for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 9 June 2022.

Hasan Bakırcı Registrar	Jovan Ilievski President