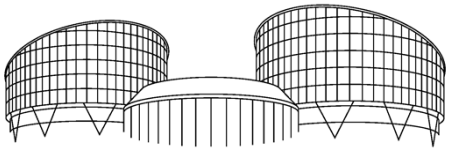

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ANEV AND NAJDOVSKI v. NORTH MACEDONIA

(Applications nos. 17807/15 and 17893/15)

JUDGMENT

STRASBOURG

3 September 2020

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

In the case of Anev and Najdovski v. North Macedonia,

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

Pere Pastor Vilanova, *President,*
Jovan Ilievski,
Raffaele Sabato, *judges,*
and Renata Degener, *Deputy Section Registrar,*

Having regard to:

the applications (nos. 17807/15 and 17893/15) against the Republic of North Macedonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Macedonians/citizens of the Republic of North Macedonia, Mr Vele Anev and Mr Borche Najdovski ("the applicants"), on 2 and 4 April 2015 respectively;

the decision to give notice to the Government of North Macedonia ("the Government") of the complaint concerning Article 1 of Protocol No. 1 and to declare inadmissible the remainder of the applications;

the decision to reject the Government's objection to examination of the application by a Committee;

the parties' observations;

Having deliberated in private on 7 July 2020,

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

INTRODUCTION

The applicants were found guilty of misdemeanours in separate sets of proceedings for not having the proper documents for the lumber that they had been transporting in their lorries. In addition to a fine, their lorries were confiscated in those proceedings, which allegedly violated their right to the peaceful enjoyment of their possessions, as protected under Article 1 of Protocol No. 1.

THE FACTS

1. The applicants were born in 1968 and 1965 and live in Veles and Demir Hisar respectively. They were represented by Mr O. Gashev and Mr T. Torov, lawyers practising in Veles and Shtip respectively. The Government were represented by their Agent, Ms D. Djonova.

2. The facts of the cases, as submitted by the parties, may be summarised as follows.

I. APPLICATION No. 17807/15

3. The applicant, Mr Anev, owned two lorries which he used to transport lumber. On 7 August 2013 he was stopped by the police, who summoned the forestry police. The forestry police determined that the information in the permit (*испратница*) for the transport of lumber presented by the applicant did not match the stamp (*жиг*) on the lumber and the vehicle. As a result, misdemeanour proceedings were instituted against him before the Veles Court of First Instance (*Основен суд Велес*) for not having a valid permit for the transport of lumber. The applicant's lorry, along with the lumber that he was transporting, was temporarily seized.

4. On 16 January 2014 the court found Mr Anev guilty of "transporting lumber without a proper stamp or permit", a misdemeanour provided for in section 104(1)11 of the Forests Act. He was fined 3,000 euros (EUR). By the same decision the applicant's lorry and the lumber were confiscated in accordance with section 104(3) of that Act and section 105 of the Misdemeanours Act (see paragraphs 12 and 14 below).

5. His subsequent appeal challenging the fine and confiscation order as unlawful and excessive was dismissed by the Skopje Court of Appeal (*Апелационен суд Скопје*), which upheld the lower court's judgment in full (finding that confiscation of the lorry and the lumber had been mandatory for the offence in question).

II. APPLICATION No. 17893/15

6. The applicant, Mr Najdovski, worked as a private transporter. He owned the lorry he used to transport lumber, which was registered in his name.

7. On 1 July 2014 he obtained a permit to transport some lumber. The permit specified that he had to transport the lumber between 11 a.m. and 5 p.m. on the same day, using his lorry.

8. He claims that he began transporting the lumber within the period specified in the permit but that his lorry broke down. He then parked it by the side of a road and left it there. The following morning he was stopped by the forestry police, who checked his permit and determined that it had expired in the meantime. As a result, his lorry and the lumber were temporarily seized and misdemeanour proceedings against him were initiated before the Bitola Court of First Instance (*Основен суд Битола*).

9. On 18 September 2014 the court found the applicant guilty of "transporting lumber without a proper stamp or permit" (see paragraph 4 above). It held that he had been stopped by the forestry police while transporting the lumber on 2 July 2014 outside the time frame specified in the permit. He was fined EUR 2,400. By the same decision the court confiscated the applicant's lorry and the lumber in accordance with

section 104(3) of the Forests Act and sections 41 and 105 of the Misdemeanours Act (see paragraphs 12-14 above).

10. The applicant's subsequent appeal challenging the fine and confiscation order was dismissed on 5 November 2014 by the Bitola Court of Appeal (*Апелационен суд Битола*), which upheld the lower court's findings in full.

RELEVANT LEGAL FRAMEWORK

I. THE FORESTS ACT (*ЗАКОН ЗА ШУМИТЕ*, OFFICIAL GAZETTE Nos. 64/09, 24/11, 53/11, 25/13, 79/13, 147/13, 43/14), AS APPLICABLE AT THE MATERIAL TIME

11. Section 104(1)11 of the Act provides that anyone found to be transporting lumber without a proper stamp or permit will be issued with a fine of between EUR 3,500 and EUR 4,000.

12. Section 104(3) of the Act provides that in cases of offences defined in section 104(1) the domestic courts are to order the confiscation of any objects used in the commission of the offence, as well as the lumber, in addition to the fine.

II. MISDEMEANOURS ACT (*ЗАКОН ЗА ПРЕКРШОЦИТЕ*, OFFICIAL GAZETTE Nos. 62/06, 51/11), AS APPLICABLE AT THE MATERIAL TIME

13. Section 41 of the Misdemeanours Act specifies that in cases involving the confiscation of goods in misdemeanour proceedings, the courts are to refer to sections 97 to 100-A of the Criminal Code.

14. Under section 105 of the Misdemeanours Act, after completion of proceedings temporarily seized objects are to be confiscated in accordance with the Criminal Proceedings Act.

III. CRIMINAL CODE (*КРИВИЧЕН ЗАКОНИК*, OFFICIAL GAZETTE Nos. 37/96, 80/99, 04/02, 43/03, 19/04, 81/05, 60/06, 73/06, 7/08, 139/08, 114/09, 51/11, 185/11, 142/12, 166/12, 55/13, 82/13, 14/14, 27/14, 28/14), AS APPLICABLE AT THE MATERIAL TIME

15. Section 100-A of the Criminal Code specifies that objects which were used, or were intended to be used, to commit an offence will be confiscated from the offender if the interests of general security, the health of other persons or reasons of morality so require.

THE LAW

I. JOINDER OF THE APPLICATIONS

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

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

17. The applicants complained that the confiscation of their lorries had violated their property rights under Article 1 of Protocol No. 1, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

18. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

19. The Government submitted that the confiscation orders imposed on the applicants had been lawful and in the public interest, as they had served the legitimate aim of the prevention of crime. Furthermore, as the applicants had been convicted in the misdemeanour proceedings, the confiscation orders had been necessary and proportionate.

20. The applicants submitted that the confiscation orders had not been lawful and had not served the public interest. This was because the measure of confiscating a transport vehicle could not reasonably be relied on to prevent crime. Furthermore, in addition to the confiscation, the applicants had been fined and the lumber confiscated. Given the combined effect of these measures, the confiscation had been disproportionate and forced the applicants to bear an excessive individual burden.

2. The Court's assessment

21. The relevant principles applicable to the instant case were recently reiterated in *G.I.E.M. S.R.L. and Others v. Italy* ([GC], nos. 1828/06 and 2 others, §§ 292-93, 28 June 2018).

22. The Court considers that the confiscation of the applicants' lorries undoubtedly constituted an interference with their possessions and a deprivation of property (see *Andonoski v. the former Yugoslav Republic of Macedonia*, no. 16225/08, § 30, 17 September 2015). The confiscation was also lawful, as it was based on provisions of the Forests Act and the Misdemeanours Act, and on section 100-A of the Criminal Code.

23. The Court accepts the Government's argument that the legitimate aim of the measures in question was the prevention of crime, which is in the public interest (see *Schmelzer v. Germany* (dec.), no. 45176/99, 12 December 2000). It therefore remains for the Court to examine whether there was a reasonable relationship of proportionality between the means used to safeguard the general interest, on the one hand, and to protect the applicants' fundamental right to respect for their property, on the other.

24. In this connection the Court notes that the confiscation orders were issued in addition to fines and the confiscation of the lumber which the applicants were transporting. The applicants' arguments challenging the outcome of the proceedings in the domestic courts, including the confiscation orders, were examined by the higher courts and dismissed.

25. The Court notes that the confiscation orders were mandatory under domestic law (see paragraphs 5, 12, 14 and 15 above, and *Vasilevski v. the former Yugoslav Republic of Macedonia*, no. 22653/08, § 57, 28 April 2016). This automatic confiscation deprived the applicants of any opportunity to argue their cases and of any prospect of success in the proceedings resulting in the confiscation, irrespective of their behaviour or degree of liability (compare *Andonoski*, cited above, § 37).

26. Furthermore, there was nothing to suggest that there was reason to fear that the lorries would be used again for the commission of similar offences (see *Vasilevski*, cited above, § 58). The Court also observes that the confiscation of the lorries was not undertaken for the purpose of obtaining pecuniary compensation for damage sustained (see *Jakimovski and Kari Prevoz v. North Macedonia*, no. 51599/11, § 50, 14 November 2019), but rather in order to deter and prevent crime, as argued by the Government (see paragraph 18 above).

27. The Court notes that the applicants were fined for the misdemeanours and that the goods that they were transporting were confiscated. It considers that it has not been convincingly shown that in the circumstances of the case those sanctions would not have been sufficient to achieve the desired deterrent effect and to prevent similar offences in the future. The confiscation of the lorries, as an additional sanction, was, in the Court's view, disproportionate in that it imposed an excessive burden on the

applicants (see, *mutatis mutandis*, *Grifhorst v. France*, no. 28336/02, § 105, 26 February 2009, and *Gabrić v. Croatia*, no. 9702/04, § 39, 5 February 2009).

28. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damage

29. 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."

1. The parties' submissions

30. Mr Anev claimed 10,000 euros (EUR) in respect of pecuniary damage, which corresponded to the value of his lorry on the date of confiscation as determined by an expert. The expert had also specified that after approximately four years in the hands of the State, the lorry had suffered significant deterioration and was now worth EUR 1,846. The applicant submitted that he would agree to the lorry being returned to him if he were paid the difference between what it was currently worth and what it had been worth when it had been confiscated. He also claimed EUR 14,400 in lost profits due to the confiscation of the lorry. He did not submit a claim in respect of non-pecuniary damage.

31. Mr Najdovski claimed EUR 6,038 in respect of pecuniary damage, which corresponded to the value of the lorry on the day it was confiscated. This claim was supported by an expert report. He also claimed EUR 24,150 in lost earnings and EUR 838 for the confiscated lumber. Lastly, he claimed EUR 2,400 in respect of the fine. He also claimed EUR 20,000 in respect of non-pecuniary damage.

32. The Government contested those claims as unsubstantiated and unrelated to the violation found.

2. The Court's assessment

33. The Court notes that the relevant principles with regard to pecuniary damage have been summarised in *Vasilevski v. the former Yugoslav Republic of Macedonia* (no. 22653/08, § 66, 28 April 2016). It accepts the applicants' claims in respect of pecuniary damage regarding the confiscation of their lorries and considers that returning the lorries, in the condition that they were in at the time of their confiscation, would place the applicants in the position in which they would have found themselves had

the violation not occurred (ibid., § 67). Alternatively, if returning the lorries is impossible, the Court awards Mr Anev EUR 3,000 and Mr Najdovski EUR 6,038 in compensation for their lorries.

34. As to the applicants' claims in respect of lost profits, the Court finds that, given that the lorries were used for the purposes of the applicants' economic activity, which is by its very nature subject to uncertainty and risk, the assessment of any gains that the applicants might have realised or losses they could have sustained is necessarily speculative. In such circumstances, the Court rejects the applicants' claims in this part. As to the claim for compensation for the confiscated lumber put forward by Mr Najdovski, the Court finds that this claim is unrelated to the violation found and should also be rejected.

35. In the absence of a claim in respect of non-pecuniary damage by Mr Anev, the Court does not make an award under this head. With regard to the claim by Mr Najdovski, the Court accepts that he did suffer some non-pecuniary damage. Making its assessment on an equitable basis, the Court awards Mr Najdovski EUR 3,000 under this head, plus any tax that may be chargeable.

B. Costs and expenses

36. Mr Anev claimed EUR 769 in respect of costs and expenses incurred before the Court. Mr Najdovski claimed EUR 495 in respect of costs and expenses incurred before the domestic courts and EUR 5,575 in respect of costs and expenses incurred before the Court.

37. The Government contested these amounts as excessive.

38. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see *Andonoski,* cited above, § 51). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award Mr Anev EUR 769, as claimed by him, and to award Mr Najdovski EUR 1,500 for the proceedings before the Court, plus any tax that may be chargeable to the applicants.

C. Default interest

39. 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. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

4. *Holds*
   (a) that the respondent State is to return to the applicants, within three months, the confiscated lorries in the condition that they were in at the time of their confiscation;
   (b) that, failing such restitution, the respondent State is to pay, within three months, EUR 3,000 (three thousand euros) to Mr Vele Anev and EUR 6,038 (six thousand and thirty eight euros) to Mr Borche Najdovski, plus any tax that may be chargeable, in respect of pecuniary damage;
   (c) that, in any event, the respondent State is to pay, within the same three-month period, the following amounts:
      (i) EUR 3,000 (three thousand euros) to Mr Borche Najdovski, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 769 (seven hundred and sixty-nine euros) to Mr Vele Anev and EUR 1,500 (one thousand five hundred euros) to Mr Borche Najdovski, plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
   (d) That the amounts in question are to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (e) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 3 September 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener	Pere Pastor Vilanova
Deputy Registrar	President

APPENDIX

Application nº 17807/15

No.	Applicant's Name	Birth date	Nationality	Place of residence
1.	Vele ANEV	1968	Macedonian/ citizen of the Republic of North Macedonia	Veles

Application nº 17893/15

No.	Applicant's Name	Birth date	Nationality	Place of residence
1.	Borche NAJDOVSKI	1965	Macedonian/ citizen of the Republic of North Macedonia	Demir Hisar