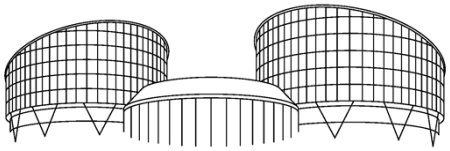

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF TRANSKOP AD BITOLA v. NORTH MACEDONIA

(Application no. 48057/12)

JUDGMENT

STRASBOURG

1 April 2021

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

In the case of Transkop Ad Bitola v. North Macedonia,

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

Mārtiņš Mits, *President,*
Jovan Ilievski,
Ivana Jelić, *judges,*
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 48057/12) 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 Transkop Ad Bitola, a company registered in Bitola, North Macedonia ("the applicant company"), on 24 July 2012;

the decision to give notice to the Government of North Macedonia ("the Government") of the complaints concerning Articles 6 and 7 of the Convention and Article 1 of Protocol No. 1 to the Convention and to declare the remainder of the application inadmissible;

the parties' observations;

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

Having deliberated in private on 11 March 2021,

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

INTRODUCTION

1. The case concerns mainly Article 6 complaints regarding proceedings in which a bus belonging to the applicant company was confiscated based on the finding that its chassis number had been forged.

THE FACTS

2. The applicant company was represented by Mr G. Donovski, a lawyer practising in Skopje.

3. The Government were represented by their former Agent, Mr K. Bogdanov, succeeded by their present Agent, Ms D. Djonova.

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

5. The applicant company specialises in bus passenger transport.

6. On 27 June 2008 one of its buses ("the bus") was temporarily seized by the Ministry of the Interior on account of forgery of a document (*фалсификување исправа*).

7. On 4 December 2008 an investigating judge (*истражен судија*) opened an investigation against the applicant company and the driver of the bus on suspicion of forgery punishable under the Criminal Code. It was

suspected that the original chassis number of the bus had been mechanically altered. The investigating judge commissioned two expert reports concerning the chassis number, one by the Forensic Bureau (*Биро за судски вештачења*) at the Ministry of Justice and the other by the Criminal Investigations Bureau (*Оддел за криминалистичка техника*) of the Ministry of the Interior.

8. On 17 May 2010 at the request of the public prosecutor, the investigative judge discontinued the investigation due to insufficient evidence that the applicant company had altered the chassis number of the bus. The public prosecutor did not appeal and the decision became final.

9. In the meantime, namely on 14 May 2010, the public prosecutor requested that the Bitola Court of First Instance (*Основен суд Битола)* confiscate the bus, arguing that since its chassis number had been altered, it could not be subject to legal transactions (*не може да биде во правен промет*).

10. The first-instance court granted the request, but the case was remitted on three occasions by the Bitola Court of Appeal *(Апелационен Суд Битола)*, each time ordering the lower court to commission a fresh expert report with regard to the chassis. It further held that it could not make a decision on the request for confiscation relying on expert reports made within the framework of the investigation (see paragraph 7 above), since that had been a separate set of proceedings. No hearing was held before either the first or the second-instance court, notwithstanding the applicant company's written requests in that respect.

11. On 6 December 2011 the Forensic Bureau provided a fresh expert report ("the 2011 expert report") in which it established that the chassis number of the bus had been altered.

12. At a hearing held in private on 26 December 2011 (in the absence of the applicant company) the first-instance court again ordered the confiscation of the bus, relying, *inter alia*, on the 2011 expert report. It based its decision on Article 100-A §§ 1 and 4 of the Criminal Code.

13. The applicant company appealed, arguing that the chassis number had not been forged and that it had never been established that the bus in question had been either used or intended to be used for the commission of an offence. It stated that it had not been served with the 2011 expert report and the other expert reports had been inconclusive.

14. On 24 January 2012, relying on Article 100-A of the Criminal Code, the Court of Appeal dismissed the applicant company's appeal, finding that on the basis of the 2011 expert report, the first-instance court had correctly established that the bus's chassis number had been altered. In making its decision, the first-instance court had been aware that the applicant company had not been indicted. The relevant part of the appellate court's decision reads as follows:

> "In line with section 532 of the Criminal Proceedings Act, objects which have to be confiscated under the Criminal Code shall be confiscated even in absence of a finding of guilt. In view of the fact that this vehicle's chassis number has been forged, it cannot remain in the possession of [the applicant company], nor can it be subject to transactions, as that would result in consequences for possible future owners."

RELEVANT LEGAL FRAMEWORK

15. The relevant provisions of the Criminal Code and the Criminal Proceedings Act have been summarised in the cases of *Sulejmani v. the former Yugoslav Republic of Macedonia* (no. 74681/11, § 17, 28 April 2016), and *Mitrov v. the former Yugoslav Republic of Macedonia* (no. 45959/09, §§ 33 and 34, 2 June 2016), respectively.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

16. The applicant company complained under Article 6 that the proceedings that had resulted in the confiscation of its bus had been unfair. In particular, there had been no oral hearing before the domestic courts and the 2011 expert report had not been communicated to the applicant company. Article 6 § 1 of the Convention, in so far as relevant, reads as follows:

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

A. Admissibility

17. The Government did not submit any objection as to the admissibility of this complaint.

18. Notwithstanding the absence of an objection by the Government, the Court would like to address the issue of the applicability of Article 6 of the Convention (see, for example, *Gerovska Popčevska v. the former Yugoslav Republic of Macedonia*, no. 48783/07, § 38, 7 January 2016, with further references).

19. The Court observes that the applicant company alleged unfairness of the proceedings before the domestic courts which resulted in the loss of its property as a direct consequence of the confiscation order.

20. Those proceedings were initiated by the public prosecutor, but were separate from the investigation into the applicant company, which was abandoned on account of lack of evidence (see paragraph 8 above). This finds support in the domestic courts' refusal to rely on evidence gathered during the investigation (see paragraph 10 above). Accordingly, this case is to be distinguished from *G.I.E.M. S.R.L. and Others v. Italy* (merits) [GC],

nos. 1828/06 and 2 others, 28 June 2018) in which the applicants were indicted and either relieved of any responsibility by final judgments or on the basis of the application of statutory limitations. The proceedings in the instant case therefore did not involve the determination of a criminal charge against the applicant company (see *Air Canada v. the United Kingdom*, 5 May 1995, §§ 53-54, Series A no. 316-A, and *AGOSI v. the United Kingdom*, 24 October 1986, § 65, Series A no. 108).

21. The Court further observes that a confiscation measure, such as in the instant case, nonetheless affected in an adverse manner the property rights of the applicant company. Since property rights are civil rights within the meaning of Article 6 § 1 of the Convention, that Article, under its civil head, is applicable in the instant case (see *Rummi v. Estonia*, no. 63362/09, § 64, 15 January 2015; *Silickienė v. Lithuania*, no. 20496/02, §§ 45 and 46, 10 April 2012; *Dimitar Krastev v. Bulgaria*, no. 26524/04, § 57, 12 February 2013; and *Saccoccia v. Austria*, (dec.) no. 69917/01, 5 July 2007).

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

B. Merits

1. The parties' submissions

(a) The applicant company

23. The applicant company submitted that the first-instance court had never decided on its written requests for an oral hearing. It further submitted that due to the lack of an oral hearing, it had been unable to effectively participate in the proceedings and contest the prosecution's evidence that the chassis had been forged.

24. The applicant company reiterated that the 2011 expert report had not been served on it and as a consequence, it had been put at a disadvantage compared with the prosecution.

(b) The Government

25. The Government conceded that the entire proceedings had been held in private and exclusively in writing, in the absence of either party. None the less, the applicant company had failed to explain how the possibility to present the case orally would have strengthened its position. Besides the need to establish the forgery of the chassis number, the case had concerned exclusively issues of law, and therefore written submissions had been sufficient to satisfy the criteria laid out in Article 6 § 1 of the Convention.

Lastly, as evident from the written submissions and appeals of the applicant company, it had been able to effectively participate in the proceedings.

26. The Government further submitted that the 2011 expert report had not been submitted to either party in the proceedings. Furthermore, two other expert reports had been drawn up during the investigation and had been made available to the applicant company. Since all those reports concerned the chassis number forgery, the applicant company had had sufficient opportunity to present its case.

2. The Court's assessment

(a) General principles

27. The Court reiterates at the outset that the entitlement to a "public hearing" in Article 6 § 1 necessarily implies a right to an "oral hearing". Accordingly, unless there are exceptional circumstances which justify dispensing with a hearing, the right to a public hearing under Article 6 § 1 implies a right to an oral hearing at least before one instance. A hearing may not be necessary, for example, when the case raises no questions of fact or law which cannot be adequately resolved on the basis of the case file and the parties' written observations (see *Jussila v. Finland* [GC], no. 73053/01, §§ 41-43, ECHR 2006-XIV, and more recently, *Bektashi Community and Others v. the former Yugoslav Republic of Macedonia,* nos. 48044/10 and 2 others, § 80, 12 April 2018, with further references).

28. According to the Court's case-law, the concept of a fair hearing implies the right to adversarial proceedings, in accordance with which the parties must have the opportunity not only to adduce evidence in support of their claims, but also to have knowledge of, and comment on, all evidence or observations filed, with a view to influencing the court's decision (see, among other authorities, *Duraliyski v. Bulgaria*, no. 45519/06, § 30, 4 March 2014, and *Naumoski v. the former Yugoslav Republic of Macedonia*, no. 25248/05, § 25, 27 November 2012, with further references). This principle is valid in respect of submissions made by the parties, just as much as it is in respect of submissions made by an independent member of the national legal service (see *Kress v. France* [GC], no. 39594/98, § 65, ECHR 2001-VI), by representatives of the national administration (see *Krčmář and Others v. the Czech Republic*, no. 35376/97, §§ 38-46, 3 March 2000), or any submission made with a view to influencing the court's decision, including information and opinions obtained by the court on its own initiative (see *Juričić v. Croatia*, no. 58222/09, § 74, 26 July 2011, and *Zagrebačka banka d.d. v. Croatia*, no. 39544/05, § 201, 12 December 2013). This position is not altered when the observations are neutral on the issue to be decided by the court or when, in the opinion of the court concerned, they do not present any fact or

argument which has not already appeared in the impugned decision (*ibid.*, cited above, § 197).

(b) Application of the above principles to the present case

(i) As to the lack of an oral hearing

29. It is undisputed by the parties that no oral hearing was held at any stage of the proceedings, notwithstanding the applicant company's explicit request in that respect (see paragraph 10 above).

30. The Court is not convinced that the disputed fact – whether the chassis number of the bus had been forged – as the core issue of the case, could have been dealt with better in writing than in oral argument. That issue was neither technical, nor purely legal (see, *mutatis mutandis*, *Karajanov v. the former Yugoslav Republic of Macedonia*, no. 2229/15, § 60, 6 April 2017, and conversely, *Bektashi Community and Others,* cited above, §§ 81-83).

31. Accordingly, there have been no exceptional circumstances in the instant case to justify dispensing with an oral hearing (compare *Karajanov,* cited above, §§ 60-61, with further references; *Bektashi Community and Others,* cited above, §§ 83-84; and *Mitkova v. the former Yugoslav Republic of Macedonia*, no. 48386/09, §§ 61-63, 15 October 2015).

(ii) As to the non-disclosure of the 2011 expert report

32. The Court notes that it is common ground between the parties that the 2011 expert report was not communicated to the applicant company.

33. It is irrelevant that the earlier expert reports obtained in the investigation had been communicated to the applicant company (see paragraph 27 above) since, as established by the Court of Appeal (see paragraph 10 above), they could not have been used in evidence in the impugned proceedings. Accordingly, the 2011 expert report was the only expert evidence relied on by the domestic courts in finding that the chassis number of the bus had been forged (see paragraph 12 above). It was therefore paramount for the determination of the facts of the case (compare *Colloredo Mannsfeld v. the Czech Republic*, nos. 15275/11 and 76058/12, §§ 30-31, 15 December 2016, with further references). Since no oral hearing was held during the proceedings, the applicant company was unable to familiarise itself with the contents of that report (ibid. §§ 42-43). It was therefore deprived of any opportunity to effectively argue its case and have a reasonable prospect of success before the domestic courts.

34. In view of the above considerations, the Court finds that in the present case, respect for the right to a fair hearing, guaranteed by Article 6 § 1, required that the applicant company be given the opportunity to comment on the expert report of 2011 commissioned by the first-instance court (see, for example, *Zagrebačka banka d.d.,* cited above, § 204).

(iii) Conclusion

35. In view of the foregoing, the Court finds that there has been a violation of Article 6 § 1 of the Convention on account of the failure of the domestic courts to hold an oral hearing, and a violation of the principle of adversarial proceedings.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

A. Article 7 and Article 1 of Protocol No. 1 to the Convention

36. The applicant company complained under Article 7 that the confiscation order had been made in the absence of a judgment establishing its guilt. Furthermore, the confiscation and the procedural shortcomings in the impugned proceedings had violated its property rights under Article 1 of Protocol No. 1 to the Convention. These Articles read as follows:

Article 7

> No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed."

Article 1 of Protocol No. 1

> 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."

37. The Government did not raise any objections as to the admissibility of these complaints.

38. As to the merits, the applicant company reiterated its arguments that the confiscation order had violated its rights under this head.

39. The Government submitted that the confiscation of the bus did not constitute "penalty" within the meaning of Article 7 of the Convention. They further argued that the confiscation had been lawful, it had aimed at securing the safety of the general public and had not been disproportionate.

40. Having regard to the facts of the case, the submissions of the parties and its above findings under Article 6 § 1 of the Convention, the Court considers that it has examined the main legal questions raised in the present application and that there is no need to give a separate ruling on the admissibility and merits of these complaints, which are closely linked to the

main complaints (see, *mutatis mutandis*, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania [GC],* no. 47848/08, § 156, ECHR 2014).

B. Article 4 of Protocol No.7 to the Convention

41. In the pleadings of 7 December 2015 submitted in reply to the Government's observations, the applicant company complained for the first time that it had been acquitted of the same offence in 2004 in a separate, unrelated set of proceedings.

42. Since the starting date in respect of the six-month rule is 24 January 2012 (see paragraph 14 above), the Court finds that this complaint was lodged outside the six-month time-limit and must, accordingly, be rejected as inadmissible in accordance with Article 35 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicant company made several claims in respect of pecuniary damage: 90,000 euros (EUR), being the value of the bus at the date of confiscation; EUR 76,643, being the price of a bus that the applicant company had bought to replace the confiscated bus; and EUR 288,627 for loss of profit from the date of confiscation until October 2015, when the expert opinion was delivered. In support, it submitted two expert assessments. The applicant company did not make a claim in respect of non-pecuniary damage.

45. The Government contested the amount claimed by the applicant company in respect of pecuniary damage as excessive and unsubstantiated.

46. As regards the applicant company's claim for pecuniary damage, the Court refers to its findings in paragraph 40 above that the applicant company's allegations of a violation of its property rights are closely linked to its findings of a violation of Article 6 of the Convention, which deprived it of the opportunity to effectively argue its case before the domestic courts (see paragraph 33 above). Accordingly, it cannot speculate as to what the outcome of the proceedings would have been if the violation of Article 6 § 1 of the Convention had not occurred (see, *mutatis mutandis*, *Mitrov*, cited above, § 62). The Court therefore rejects this claim.

47. The Court also notes that the Criminal Proceedings Act provides for the possibility of proceedings being reopened where the Court concludes in a judgment that a court's decision or proceedings prior to it were in breach of the fundamental human rights or freedoms of the party (see paragraph 15 above). Having regard to its findings on the applicant company's grievances, taken as a whole, the Court considers that the most appropriate form of redress would be the reopening of the proceedings, if requested.

48. The Court notes that the applicant company did not make any claim in respect of non-pecuniary damage (see paragraph 44 above). Accordingly, it makes no award on that account.

B. Costs and expenses

49. The applicant company did not make any claim as regards costs and expenses. Accordingly, it makes no award on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 6 § 1 of the Convention admissible and the complaint under Article 4 of Protocol No. 7 to the Convention inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the failure of the domestic courts to hold an oral hearing;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the principle of adversarial proceedings;

4. *Holds* that it is not necessary to consider the applicant company's complaints under Article 7 of the Convention and Article 1 of Protocol No. 1 to the Convention;

5. *Dismisses* the applicant company's claims for just satisfaction.

Done in English, and notified in writing on 1 April 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller	Mārtiņš Mits
Deputy Registrar	President