



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

FIFTH SECTION

DECISION

Application no. 55347/17
Besim NEZIRI
against North Macedonia

The European Court of Human Rights (Fifth Section), sitting on 8 July 2021 as a Committee composed of:

Stéphanie Mourou-Vikström, *President*,

Jovan Ilievski,

Arnfinn Bårdsen, *judges*,

and Martina Keller, *Deputy Section Registrar*,

Having regard to the above application lodged on 26 July 2017,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Besim Neziri, is a Macedonian/citizen of the Republic of North Macedonia who was born in 1976 and lives in Skopje. He was represented before the Court by Mr V. Angelov, a lawyer practising in Skopje.

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

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

4. On 19 March 2014 the applicant was stopped by customs officers of the respondent State at the border crossing with Kosovo.¹ After the

¹ The reference to Kosovo, whether to the territory, institutions or population, shall be understood in compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

applicant had stated that he had nothing to declare, the customs officers started searching the car. When asked whether he was in possession of any money in foreign currency, the applicant responded that he had 14,300 euros (EUR).

5. The customs officers temporarily seized EUR 12,300, as the sum exceeding the statutory limit of foreign currency that was allowed to be exported from the respondent State without being declared to the customs authorities. The on-site report indicated that the applicant had informed the customs officers that he had been loaned the money by his uncle in order to buy a flat in Pristina. On the same date, the border customs office imposed a fine for a misdemeanour on the applicant in the amount of EUR 1,500.

6. On 20 March 2014 the customs authorities instituted administrative offence proceedings against the applicant before the Commission for Customs-related Misdemeanours (“the Commission”). During the proceedings, the applicant submitted written statements made by his uncle and a third person, certified by a notary public, confirming that the confiscated sum belonged to his uncle and the third person (the latter’s share was set at the equivalent of approximately EUR 4,300). He also submitted a preliminary sales contract for the flat in Pristina in which his father was the designated buyer.

7. On 22 August 2014 the Commission found the applicant guilty of a misdemeanour and imposed a fine in the amount of EUR 1,500. The Commission also ordered, as a preventive measure, confiscation of EUR 12,300 pursuant to section 57(2) of the Foreign Currency Act, which provides for the confiscation of objects that are instruments or proceeds of an administrative offence. The applicant challenged that decision by means of an administrative-dispute claim.

8. On 23 December 2015 the Administrative Court upheld the applicant’s claim and quashed the Commission’s decision. It held that the fine had been imposed in accordance with the law. As regards the confiscation order, the court found that the Commission had not explained why partial confiscation, an exceptional measure provided for under the Foreign Currency Act, could not have been ordered in the applicant’s case.

9. On 21 February 2017, following an appeal lodged by the Solicitor General (*Јавен правобранител*), the Higher Administrative Court quashed the Administrative Court’s decision and upheld the Commission’s decision, endorsing the reasons given therein. The court reiterated that it had been the applicant’s statutory responsibility to declare the confiscated money. The court also held that the applicant had not submitted any evidence to prove his title to the confiscated sum. On 26 April 2017 that decision was served on the applicant.

COMPLAINT

10. The applicant complained that the confiscation of EUR 12,300 had violated his right of property. He relied on Article 1 of Protocol No. 1 to the Convention, 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.”

THE LAW

A. The parties’ submissions

11. The Government argued, *inter alia*, that the applicant had neither claimed nor had he proved that the confiscated sum had belonged to him. On the contrary, in the domestic proceedings he had stated that the assets in question had belonged to other persons. Accordingly, he could not be considered a victim of the violation complained of.

12. The applicant maintained that he had been entitled to dispose of the money in question, of which he had had *de facto* possession. There had been nothing to suggest that the money had been of criminal origin. Moreover, he did not have any criminal record and he had never been charged with any criminal offence with regard to the events of 19 March 2014. The confiscation order had been unnecessary and, accordingly, contrary to Article 1 of Protocol No. 1 to the Convention.

B. The Court’s assessment

13. The Court reiterates that, in order to rely on Article 34 of the Convention, an applicant must meet two conditions: he or she must fall into one of the categories of petitioners mentioned in that Article and must be able to make out a case that he or she is the victim of a violation of the Convention (see *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 47, ECHR 2013 (extracts)). The word “victim”, in the context of Article 34, denotes the person or persons directly or indirectly affected by the alleged violation (see *SARL du Parc d’Activités de Blotzheim v. France*, no. 72377/01, § 20, 11 July 2006).

14. The Court further reiterates that an applicant can allege a violation of Article 1 of Protocol No. 1 to the Convention only in so far as the impugned decisions related to his “possessions” within the meaning of this provision

(see *Von Maltzan and Others v. Germany* (dec.) [GC], nos. 71916/01, 71917/01 and 10260/02, § 74(c), ECHR 2005-V, and compare *Dagostin v. Croatia* (dec.), no. 67644/12, § 24, 23 May 2017).

15. In this connection, the Court notes at the outset that, according to the applicant's own admission before the domestic authorities, as well as the certified statements submitted in evidence in the domestic proceedings in question, the confiscated sum did not belong to the applicant, but to his uncle and a third person. On the basis of the evidence admitted in those proceedings, the confiscated money was to have been used for purchase of a flat in Pristina on behalf of the applicant's father, who was designated in the preliminary sales contract as the buyer (see paragraph 6 above). It follows that in so far as it concerns the confiscation of EUR 12,300, the order in question did not relate to the applicant's, but to other persons' possessions. In consequence, in respect of the confiscation order, the applicant cannot claim that he was a victim of the alleged violation of Article 1 of Protocol No. 1 to the Convention (compare *Dagostin*, cited above, § 25).

16. Accordingly, the application is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 9 September 2021.

Martina Keller
Deputy Registrar

Stéphanie Mourou-Vikström
President