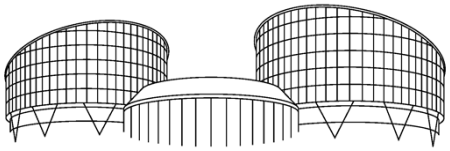

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ANASTASOV v. NORTH MACEDONIA

(Application no. 46082/14)

JUDGMENT

STRASBOURG

26 September 2019

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Anastasov v. North Macedonia,

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

Aleš Pejchal, *President,*
Tim Eicke,
Jovan Ilievski, *judges,*
and Renata Degener, *Deputy Section Registrar,*

Having deliberated in private on 3 September 2019,

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

PROCEDURE

1. The case originated in an application (no. 46082/14) 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 a Macedonian/citizen of the Republic of North Macedonia, Mr Mite Anastasov ("the applicant"), on 13 June 2014.

2. The applicant was represented by Mr T. Dimkovski, a lawyer practising in Veles. The Government of North Macedonia ("the Government") were represented by their former Agent, Mr K. Bogdanov, and subsequently by their present Agent, Ms D. Djonova.

3. On 20 October 2017 notice of the complaint under Article 1 of Protocol No. 1 to the Convention was given to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

4. The applicant was born in 1966 and lives in Veles.

5. On 5 June 2006 he bought a car in Germany for which he paid 1,400 euros (EUR). The car was subsequently brought into the respondent State by a third person.

6. On 31 January 2008 the applicant arrived at a border-crossing point with Bulgaria with the above car. The customs authorities seized the vehicle and fined him for having failed to undergo the relevant import procedures with respect to the car. The applicant contested the fine along with the seizure order.

7. Following the case having been returned to them once by the Administrative Court (*Управен суд*), the customs authorities found him in contravention of the customs regulations for having received and kept the above car (*примил на чување и користење*) in full knowledge that import

procedures and duties had not been complied with. He was fined EUR 800 and the car was confiscated pursuant to section 267 of the Customs Act, which provided for mandatory confiscation of goods in respect of the above misdemeanour.

8. On 14 December 2012 the Administrative Court allowed an action on the part of the applicant and discontinued the proceedings, holding that the prescription period for the above misdemeanour had expired. However, citing section 100-A of the Criminal Code which envisaged mandatory confiscation of any object used in the commission of a crime, or which was the product thereof, it refused the applicant's request to have the car restored to him, holding that its confiscation had been mandatory.

9. On 12 July 2013 the Higher Administrative Court (*Виш управен суд*) dismissed an appeal by the applicant, holding that the title to the car had never been transferred to him in accordance with the law of the respondent State.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

10. The applicant complained that the decision to confiscate his vehicle had violated his property rights. 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."

A. Admissibility

11. The Government objected that the application was inadmissible *ratione materiae*, alleging that the applicant had not been the owner of the car, as established by the Higher Administrative Court.

12. The applicant contested that argument, arguing that the car had been transferred to him by means of a purchase agreement concluded in Germany.

13. The Court notes that the applicant concluded a purchase agreement in Germany by which the title of the car was transferred to him on 5 June 2006. Nothing suggests that a third person had any property rights over the car, or that the applicant did not have factual possession over it. The car therefore constituted a possession for the applicant, as required for the applicability of Article 1 of Protocol No. 1. It follows that the Government's objection must be rejected (see, for example, *Öneryıldız v. Turkey* [GC], no. 48939/99, § 129, ECHR 2004-XII).

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

B. Merits

1. The parties' submissions

15. The applicant submitted that his intention had been to register the car in Bulgaria under his name.

16. The Government submitted that the confiscation of the car had been carried out in accordance with section 100-A of the Criminal Code. That provision had pursued the legitimate aim of preventing unlawful acts in the future and protecting the safety of road users. Lastly, the confiscation had been necessary and proportionate in view of the low value of the car, the fact that the applicant had not submitted it to the proper import procedure and the possibility to seek damages from the person who had brought the car into the respondent State. In this connection they submitted three judgments of the Administrative and Higher Administrative Courts according to which it had been the established practice of the domestic courts to order the confiscation of cars in similar circumstances.

2. The Court's assessment

17. The general principles relevant to the instant case are, among others, laid out in the case of *G.I.E.M. S.R.L. and Others v. Italy* ([GC], nos. 1828/06 and 2 others, §§ 292, 293, 28 June 2018).

18. The Court considers that the confiscation of the applicant's car constituted an interference with his possessions, which was lawful, as it was based on section 100-A of the Criminal Code.

19. Notwithstanding the Government's arguments as to the legitimate aim which the confiscation measure allegedly pursued, which do not appear unreasonable, the Court is prepared to accept that it was done with the aim of collection of tax and duties (see *S.C. Service Benz Com S.R.L. v. Romania*, no. 58045/11, § 32, 4 July 2017). 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 applicant's fundamental right to respect for its property, on the other.

20. In this connection the Court notes that the applicant did not provide an adequate explanation as to why he had failed to undergo the requisite import procedures and pay the relevant duties in the respondent State in respect of the car for a period of over one and a half years.

21. However, the Court cannot but note that irrespective of the fact that the misdemeanor proceedings against the applicant were discontinued, a confiscation measure, which was mandatory under domestic law, was ordered in respect of the car. Such an automatic confiscation deprived the applicant of any possibility to argue his case and have any prospect of success in the confiscation proceedings, irrespective of his behaviour, or degree of liability (see paragraph 8 above, and compare *Andonoski v. the former Yugoslav Republic of Macedonia*, no. 16225/08, § 37, 17 September 2015). The practice of the domestic courts appears to support this conclusion (see paragraph 16 above).

22. As to the Government's argument that the applicant could have sought damages from the person who brought the car into the respondent State, the Court observes that they failed to provide any examples of domestic case-law where such a claim had been successful. Therefore, the general nature of their argument in this connection is incapable of convincing the Court (see *B.K.M. Lojistik Tasimacilik Ticaret Limited Sirketi v. Slovenia*, no. 42079/12, § 50, 17 January 2017, with references). This being so, the Court considers it excessive to require the applicant to seek damages from a person who had a tenuous relationship at best with the events leading up to the confiscation (see, conversely, *Sulejmani v. the former Yugoslav Republic of Macedonia*, no. 74681/11, § 41, 28 April 2016).

23. In the light of the above considerations, the Court takes the view that mandatory confiscation of the applicant's vehicle coupled with the lack of a realistic opportunity to obtain compensation for his loss imposed on the applicant an excessive burden which cannot be justified by the legitimate aim pursued by the State.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant claimed just satisfaction in the amount of 50,000 euros (EUR) without specifying whether it concerned pecuniary or non-pecuniary damage.

27. The Government contested the amount claimed as excessive and unsubstantiated.

28. The Court finds that the applicant was deprived of his possessions in connection with the violation found and must take into account the fact that he undoubtedly suffered some pecuniary and non-pecuniary damage. In the absence of any supporting material in respect of the pecuniary damage claimed, making an assessment on an equitable basis, as required under Article 41 of the Convention, the Court awards the applicant EUR 1,500 to cover all heads of damage, plus any tax that may be chargeable.

B. Costs and expenses

29. The applicant did not make any claim in respect of costs and expenses. Accordingly, the Court makes no award under this head.

C. Default interest

30. 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. *Declares* the application admissible;

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

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months, EUR 1,500 (one thousand five hundred euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement plus any tax that may be chargeable;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 September 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener	Aleš Pejchal
Deputy Registrar	President