



Judgment on merits of the Supreme Court of the Republic of North Macedonia in relation to confiscation from a third party

The Supreme Court of the Republic of North Macedonia by its judgment Kzz. no. 17/2021, in accordance with Article 458 and Article 461 of the Law on Criminal Procedure (“Official Gazette of RNM” nos. 150/10, 100/12, 142/16 and 198/18), endorsed the request for protection of legality that has been filed by the Public Prosecutor of the Republic of North Macedonia, labelled as KOZ. no. 121/21 of 11.11.2021. The Supreme Court reversed the judgment of the Basic Court Gevgelija K-78/21 of 20.04.2021 and the judgment of the Skopje Court of Appeal KZ-607/21 of 14.07.2021 in the part of the decision relating to confiscation of a freight motor vehicle and a semi-trailer, thereby deciding, in accordance with Article 117, paragraph 1 of the Law on Criminal Procedure, to hand over - return the freight motor vehicle – hauler of the “Mercedes Benz” brand with Kosovo license plates 01-595-PB with a traffic license CRA/YPB/VRC 1599371 and with a chassis number WDB 9340321L632850; and a semi-trailer of the “Schmitz” brand with Kosovo license plates 01-509-TA, with a traffic license CRA/YPB/VRC 1570412, and with a chassis number WSMD0000003197126 to the owner, legal entity N.SH ARI TRANSS Pristina, R. of Kosovo. The remaining part of the judgment was unchanged.

Facts: The Basic Court Gevgelija by the judgment K-78/21 of 20.04.2021 found the defendant Mile Aleksić from Rashka - Kraljevo, Republic of Serbia, guilty of a crime - Smuggling under Article 278, paragraph 1 of the Criminal Code and sentenced him to a fine in the amount of 100 - one hundred daily fines with a determined value of one daily fine of 15 - fifteen euros, or a fine in the amount of 1,500 - one thousand and five hundred euros in a denar counter value of 92,250.00 - ninety two thousand two hundred and fifty denars (MKD) calculated at the exchange rate of 1 euro = 61.50 denars (MKD), which includes the time spent in detention on remand counted from 31.03.2021 to 20.04.2021, so the remaining part of the fine amounts to 80 - eighty daily fines, with a determined value of one daily fine of 15 euros or a fine in the amount of 1,200.00 - one thousand and two hundred euros in a denar counter value of 73,800.00 - seventy-three thousand and eight hundred denars (MKD), calculated at the exchange rate of 1 euro = 61.50 denars (MKD). The defendant was obliged to pay the fine immediately without delay, otherwise it would have been executed in such a way that one day of imprisonment would have been set for a daily fine, provided that the imprisonment could not last longer than 6 - six months. The court also sentenced him to a punishment - Expulsion of a foreigner from the country, by which the defendant is expelled from the territory of the Republic of North Macedonia for a period of 1 year, counted from the day of expulsion. The defendant was obliged to reimburse the costs of the criminal proceedings in a total amount of 29,062.00 denars (MKD) and to pay a court lump sum in the amount of 3,000.00 denars (MKD), immediately without delay.



The following goods – instrumentalities of the crime were confiscated from the defendant, as follows: five pallets of corn seeds in the amount of 2,760 kilograms, as well as the means of transport, as follows: the freight motor vehicle – hauler of the “Mercedes Benz” brand with Kosovo license plates 01-595-PB with a traffic license CRA/YPB/VRC 1599371 and with a chassis number WDB 9340321L632850; and a semi-trailer of the “Schmitz” brand with Kosovo license plates 01-509-TA, with a traffic license CRA/YPB/VRC 1570412, and with a chassis number WSMD000003197126 owned by the legal entity N.SH ARI TRANSS Pristina, R. of Kosovo, in favor of the Republic of North Macedonia, in accordance with Article 278, paragraphs 8 and 9 of the Criminal Code.

The Skopje Court of Appeal by its judgment KZ-607/21 of 14.07.2021 dismissed as unfounded the appeals of the defendant Mile Aleksić from Rashka - Kraljevo, Republic of Serbia, filed through the defense counsel Keti Petkova, an attorney at law from Gevgelija and the legal entity N.SH ARI TRANSS Pristina, filed through the proxy Keti Petkova, an attorney of law from Gevgelija, and confirmed the judgment of the Basic Court Gevgelija K-78/21 of 20.04.2021.

The Public Prosecutor of the Republic of North Macedonia filed a request for protection of legality against the judgment of the Basic Court Gevgelija K-78/21 of 20.04.2021 and the judgment of the Skopje Court of Appeal KZ-607/21 of 14.07.2021, thereby stating that the judgments of the lower courts have violated the law, as prescribed by Article 278, paragraph 9 of the Criminal Code, in the part of the decision relating to the confiscation of the freight motor vehicle – hauler of the “Mercedes Benz” brand and a semi-trailer of the “Schmitz” brand, owned by the legal entity N.SH ARI TRANSS Pristina, R. of Kosovo. The Prosecutor asked the Supreme Court of the Republic of North Macedonia to endorse the request for protection of legality, to reverse the final judgment in the part of the decision relating to confiscation of instrumentalities and the freight motor vehicle, and to return them to the owner, the legal entity N.SH ARI TRANSS Pristina, R. of Kosovo.

The Supreme Court of the Republic of North Macedonia, after having made insight into the case file, and after having considered the allegations and the motion in the request for protection of legality, found that the request for protection of legality is well-founded. Namely, the first instance court based its decision of forfeiture of the particular freight motor vehicle with a semi-trailer upon Article 278, paragraphs 8 and 9 of the Criminal Code, finding that the convict participated in the transport on behalf and in favour of the legal entity - employer N.SH ARI TRANSS Pristina, R. of Kosovo, the latter being hired by the company-importer of the goods, and the convict as a responsible person in the legal entity could have known that the freight motor vehicle with a semi-trailer would be used to transport undeclared goods.

After having made insight into the case file, the Supreme Court found that the stances and conclusions of the lower courts regarding the decision to confiscate the means that have been used to commit the crime, as presented in the impugned judgments,



were unsupported by appropriate evidence and adequate reasoning, which resulted in incorrect application of the Criminal Code, as it was reasonably pointed out in the filed request for protection of legality. The provisions of the Criminal Code provide for mandatory confiscation of the means for transport and distribution of goods related to the crime only from the perpetrator, while they are confiscated from a third party when this party knew or was obliged to know and could have known that they would be used for transport or distribution. The means will always be confiscated if they are especially constructed, adapted, modified or adjusted in any way for the purpose of concealing goods.

According to the assessment of the Supreme Court, as it was reasonably indicated in the filed request, in the regular part of the procedure (before the judgment went into effect) it was not proven that the third party, in this case it is the legal entity N.SH ARI TRANSS Pristina, R. of Kosovo, knew or could have known that the particular motor vehicle was used to commit the crime. This was due to the fact that the entire documentation has been duly provided by the exporters, which the convict did not submit in full during the customs control, just as he did not submit it at the Greek border crossing point "Evzoni", where a customs information sheet was issued, thereby registering that two invoices and two consignment notes were reported, although three invoices and three consignment notes have been issued by the exporting companies. In addition to all the above, the vehicle was not especially designed, adapted, modified or adjusted in any way in order to hide goods, on the contrary, the undeclared goods were placed in one place with the declared goods and were available for inspection by the customs officers, which means that the second condition of Article 278, paragraph 9 of the Criminal Code for confiscation of the vehicle in favor of the Republic of North Macedonia is not met (*Andonoski v. Republic of Macedonia*). In the present case there were no indications that the legal entity knew or could have known that the motor vehicle in question was used to commit the crime, because the owner of the legal entity was familiar with the circumstance that all accompanying documents for transfer of the goods through the Republic of North Macedonia have been provided, and there is no evidence that he knew or could have known that the carrier would not report all the goods he was transporting at the border crossing points. There are neither indications that the freight motor vehicle has been previously used to commit a crime, nor are there reasons to fear that it would be used for such a purpose in the future. The Skopje Court of Appeal, acting upon the appeal, although it was obliged and had a legally prescribed opportunity to establish and eliminate the above-mentioned violations and shortcomings, failed to do so. On the contrary, it concluded that there are no reasons to reverse the judgment, thus endorsing the rationale of the first instance court in its entirety.

Having regard to all the above, the established decisive facts, as well as the case law of the European Court of Human Rights in Strasbourg (*Andonoski v. The Republic of Macedonia*, no. 16225/08, § 31, 17 September 2015; *Anev and Najdovski v. The Republic of the North Macedonia*, Nos. 17807/15 and 17893/15, §§ 22, 26 and 27, 17 September



2015), the Supreme Court found that the allegations in the filed request for protection of legality as to the violation of Article 278, paragraph 9 of the Criminal Code are well-founded. Therefore, the Supreme Court reversed the judgment of the Basic Court Gevgelija K-78/21 of 20.04.2021 and the judgment of the Skopje Court of Appeal KZ-607/21 of 14.07.2021 in the part of the decision relating to the confiscation of the freight motor vehicle and semi-trailer, so that, in accordance with Article 117, paragraph 1 of the Law on Criminal Procedure, it ordered to hand over - return the freight motor vehicle – hauler of the “Mercedes Benz” brand with Kosovo license plates 01-595-PB with a traffic license CRA/YPB/VRC 1599371 and with a chassis number WDB 9340321L632850; and a semi-trailer of the “Schmitz” brand with Kosovo license plates 01-509-TA, with a traffic license CRA/YPB/VRC 1570412, and with a chassis number WSMD0000003197126 to the owner, legal entity N.SH ARI TRANSS Pristina, R. of Kosovo.