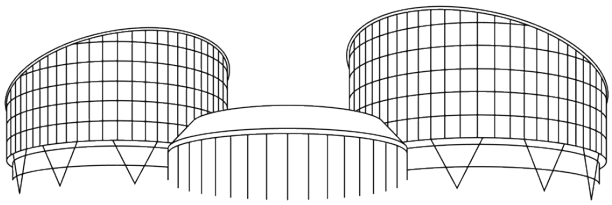

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

Application no. 18716/09
by Dafče JANČEV
against the former Yugoslav Republic of Macedonia

The European Court of Human Rights (First Section), sitting on 4 October 2011 as a Chamber composed of:

Nina Vajić, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and Søren Nielsen, *Section Registrar,*

Having regard to the above application lodged on 31 March 2009,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Dafče Jančev, is a Macedonian national who was born in 1951 and lives in the village Dolni Disan, Negotino. He was represented before the Court by Mr M. Mančev, a lawyer practising in Kavadarci, the former Yugoslav Republic of Macedonia.

A. The circumstances of the case

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

The applicant and Mr Dz.I. ("the plaintiff") are neighbours whose plots of land are adjacent. On 16 February 2008 the applicant constructed a wall, a meter long and 90 cm high, and put three concrete bricks on a passage that the plaintiff used to access his property. The plaintiff brought a civil action requesting the Negotino Court of First Instance ("the first-instance court") to establish that the applicant disturbed his possession (*смеќавање на владение*) and to order reinstatement in previous state.

On 10 November 2008 the first-instance court allowed the plaintiff's claim and ordered the applicant to demolish the wall and remove the bricks. The transcript of a hearing held on that date did not contain any indication that the decision or its operative provisions were delivered.

The applicant appealed arguing *inter alia* that the first-instance court had not pronounced the decision publicly, as required under section 324 of the Civil Proceedings Act (see "Relevant domestic law" below). He further complained that that failure was incompatible with Article 6 of the Convention.

On 5 February 2009 the Skopje Court of Appeal dismissed the applicant's appeal and confirmed the lower court's decision. As regards the applicant's arguments that the first-instance court's decision had not been pronounced publicly, the court stated that it was a procedural flaw that did not affect the validity of the decision. This decision was served on the applicant on 9 March 2009.

B. Relevant domestic law

Section 324 § 3 of the Civil Proceedings Act of 2005 provides that a decision is delivered immediately after the public hearing and is pronounced publicly by a single judge or presiding judge of the adjudicating panel.

COMPLAINT

The applicant complains under Article 6 of the Convention that the first-instance court's decision was not pronounced publicly.

THE LAW

The Court must first determine of its own motion whether the complaint is admissible under Article 35 of the Convention, as amended by Protocol No. 14, which entered into force on 1 June 2010.

The Protocol added a new admissibility requirement to Article 35 which, in so far as relevant, provides as follows:

"3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:

(...)

(b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal."

A. Whether the applicant has suffered a "significant disadvantage"

The Court has previously held that this criterion applies where, notwithstanding a potential violation of a right from a purely legal point of view, the level of severity attained does not warrant consideration by an international court (see *Adrian Mihai Ionescu v. Romania* (dec), no. 36659/04, 1 June 2010; *Korolev v. Russia* (dec.), no. 25551/05, 1 July 2010; *Gaftoniuc v. Romania* (dec.), no. 30934/05, 22 February 2011). The level of severity shall be assessed in the light of the financial impact of the matter in dispute and the importance of the case for the applicant (see *Burov v. Moldova* (dec.), no. 38875/03, § 25, 14 June 2011).

The Court notes that the present case concerned a civil dispute related to a passage that the plaintiff used to access his property. The domestic courts established that the applicant had obstructed the plaintiff's access to his property by constructing a small wall and placing three concrete bricks on the passage. The applicant was ordered accordingly to demolish the wall and remove the bricks. In the Court's view, this obligation, which was a result of the applicant's unlawful behaviour, did not impose a significant financial burden on him. The applicant did not provide any evidence that his financial circumstances were such that the outcome of the case would have had a significant effect on his personal life.

Given the fact that in the domestic proceedings which are the subject of the complaint before it the applicant was not the party aggrieved, but rather, source of the plaintiff's grievances, the Court does not find that they raised any issues of subjective nature relevant for the applicant (see, *a contrario*, *Giuran v. Romania*, no. 24360/04, § 22, 21 June 2011).

In such circumstances, the Court finds that the applicant has not suffered any "significant disadvantage" with respect to his complaint that the first-instance court's decision was not pronounced publicly (see, *mutatis mutandis*, *Adrian Mihai Ionescu v. Romania* (dec.), cited above, § 35).

B. Whether respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits

The Court reiterates that under this safeguard clause, it is compelled to continue examining an application if it raises questions of a general character affecting the observance of the Convention (see *Korolev v. Russia* (dec.) and *Gaftoniuc v. Romania* (dec.), cited above).

The Court observes that it has already had a number of opportunities to address the issue of public pronouncement of judgments in other cases before it (see *Werner v. Austria*, 24 November 1997, §§ 52-60, *Reports of Judgments and Decisions* 1997-VII; *Ryakib Biryukov v. Russia*, no. 14810/02, 17 January 2008; and *Gorgievski v. the former Yugoslav Republic of Macedonia* (dec.), no. 18002/02, 10 April 2006). Therefore, the Court does not see any compelling reasons to examine the merits of this application.

The Court therefore concludes that respect for human rights as defined in the Convention and its Protocols does not require an examination of the application on the merits.

C. Whether the case was duly considered by a domestic tribunal

Article 35 § 3 (b) does not allow the rejection of an application on the grounds of the new admissibility requirement if the case has not been duly considered by a domestic tribunal. The purpose of this second safeguard clause is to avoid any denial of justice. The clause is also consonant with the principle of subsidiarity, as reflected notably in Article 13 of the Convention, which requires that an effective remedy against violations be available at the national level (see *Korolev*, cited above).

The Court notes that the first-instance court, after a duly consideration on the merits, accepted the plaintiff's claim that the applicant had obstructed the access to his property. This decision was upheld by the Skopje Court of Appeal, which examined also the applicant's complaint that the first-instance court's decision had not been pronounced publicly and found that it had been a procedural flaw of no relevance for the validity of that decision. In the Court's view, this situation does not constitute a denial of justice imputable to the respondent Government.

The Court concludes that the applicant's case was duly considered by a domestic tribunal within the meaning of Article 35 § 3 (b).

D. Conclusion

The three conditions of the new inadmissibility criterion having therefore been satisfied, the Court finds that the application must be declared inadmissible under Article 35 §§ 3 (b) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Søren Nielsen	Nina Vajić
Registrar	President