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

FIRST SECTION

DECISION

Application no. 17828/15
Duško ČANGOV
against North Macedonia

The European Court of Human Rights (First Section), sitting on 4 February 2020 as a Committee composed of:

Tim Eicke, *President,*
Jovan Ilievski,
Raffaele Sabato, *judges,*

and Renata Degener, *Deputy Section Registrar,*

Having regard to the above application lodged on 7 April 2015,

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 Duško Čangov, is a Macedonian/citizen of the Republic of North Macedonia, who was born in 1942 and lives in Skopje. He was represented before the Court by Mr A. Vasilev, a lawyer practising in Skopje.

2. The Government of North Macedonia ("the Government") were represented by their former Agent, Mr K. Bogdanov, and subsequently by his successor in that office, Ms D. Djonova.

A. The circumstances of the case

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

4. On 20 November 2012 the applicant lodged a claim before the Skopje Court of First Instance (*Основен суд Скопје* – "the first-instance court") against the Cadastral Records Agency (*Агенција за катастар на*

недвижности) seeking the removal of a certain entry regarding registered property rights due to alleged irregularities.

5. At a preparatory hearing held on 7 October 2013, it was decided that the main hearing would be held on 27 November 2013. As the parties were present at the hearing, they were considered to have been properly notified of the date of the next hearing.

6. Subsequently, the Government declared that 27 November 2013 (a Wednesday) would be a non-working day (*Ден на дрвото* – "Tree Day").

7. On 29 November 2013 the Government announced that 30 November 2013 (a Saturday) would be a working day to compensate for Tree Day.

8. On 30 November 2013 the first-instance court held a hearing in the applicant's absence. The defendant's representative, who was present, agreed that the applicant's claim should be declared withdrawn. The first-instance court dismissed the applicant's claim as withdrawn and ordered him to cover the defendant's costs. It held that the applicant had failed to appear and to justify his absence. It further held that as the claimant, he should have taken the initiative to inform himself that as 30 November 2013 was a working day, the cases scheduled for 27 November 2013 would be examined on that day.

9. On 17 December 2013 the applicant applied for reinstatement of the proceedings (*предлог за враќање во поранешна состојба*), alleging that he had gone to the court for the scheduled hearing on 27 November 2013, as he had not been aware that it had been declared a non-working day. However, he had found the court building closed and there had been no notification regarding the date on which the hearings set for that day had been rescheduled, either at the court building, or on the court's website. He had then left Skopje on 29 November 2013 and had been unable to attend the subsequent hearing.

10. On 25 February 2014 the first-instance court dismissed the applicant's request, finding that there were no justified reasons for his failure to attend the hearing held on 30 November 2013. It held that he should have been diligent and made enquiries with the court administration as to the date on which the hearings set for 27 November 2013 had been rescheduled.

11. On 18 September 2014 the Skopje Court of Appeal (*Апелационен суд Скопје* – "the Court of Appeal") dismissed an appeal lodged by the applicant and upheld the first-instance decision. It held that as the Government's decisions had been widely published in the media, the applicant should have known about the postponement of the hearing. That decision was served on the applicant on 15 October 2014.

12. On 23 April 2015 the Court of Appeal rejected as belated a request lodged by the applicant for reopening of the proceedings.

B. Relevant domestic law

1. Civil Procedure Act

13. Under section 126(1) of the Civil Procedure Act – consolidated version (*Закон за парничната постапка – пречистен текст*, Official Gazette no. 7/2011) if a party that has been properly notified of a hearing fails to appear before the court, irrespective of the reason, the court is not obliged to further notify it. Under section 126(2), if the court is not working on the day of the scheduled hearing, it must publish the date and time of the next hearing on its website and display the information at a visible place in the building, and the party has a duty to inform itself thereof.

14. Section 183(3) provides that a claim that has been withdrawn is considered as never having been submitted, and may be submitted anew.

15. Under section 280(1), the claim will be considered withdrawn if the claimant fails to appear at the first main hearing, as well as at subsequent hearings, and fails to justify his absence.

2. Cadastral Records Act

16. Under section 238 of the Cadastral Records Act (*Закон за катастар на недвижности*, Official Gazette no. 55/2013) any person with a legal interest may submit a claim with the administrative courts and seek removal of an entry from the cadastral records within three years of the date of the entry.

COMPLAINT

17. The applicant complained under Article 6 § 1 of the Convention that his right to a fair trial had been violated.

THE LAW

18. The applicant complained under Article 6 § 1 of the Convention that he had not been properly notified of the date of the trial hearing held on 30 November 2013 and as a result his claim had been declared withdrawn. The Court notes, that this complaint concerns essentially the right of access to a court under Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

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

1. The parties' submissions

19. The Government argued that the domestic courts' decisions had caused only insignificant disadvantage to the applicant and that he had failed to exhaust domestic remedies. The essence of his right of access to a court had not been impaired given that he could have lodged a claim before the administrative courts under section 238 of the Cadastral Records Act (see paragraph 16 above), seeking removal of entries regarding registered property rights. Due to his failure to seek legal counsel, he had failed to make use of that remedy. The Government further argued that there had been no violation of the applicant's right of access to a court as the decision declaring his claim withdrawn had been taken as a result of his own lack of diligence in the course of the proceedings and that he had had ample opportunity to inform himself of the adjournment of the hearing. Namely, the Government decision declaring 27 November 2013 a non-working day had been published in the national media as early as 21 November 2013. On 27 November 2013 the national media notified the public that 30 November 2013 would be a working day and that all activities scheduled for 27 November 2013 would take place on that date.

20. The applicant submitted that he had appeared at the court on 27 November 2013, only to find the building closed. He had neither been notified of the date of the postponed hearing, nor had the court published information regarding the postponement of the hearing, as required under section 126(2) of the Civil Procedure Act (see paragraph 13 above). He further argued that the public announcements in the media had had no bearing on the domestic courts with regard to the organisation of scheduled hearings. Lastly, the company which would have benefited from the removal of the registered entry from the cadastral records (a company in which he was a shareholder) had been liquidated and deleted from the Company Register in 2016, which meant that it had not been possible to claim compensation for the damage sustained by means of any other court proceedings.

2. The Court's assessment

21. The applicable general principles concerning the right of access to a court have been summarised in *Zubac v. Croatia* ([GC], no. 40160/12, §§ 76-79, 5 April 2018).

22. In the present case, the applicant's claim against the Cadastral Records Agency seeking the removal of a certain entry regarding registered property rights due to alleged irregularities was declared withdrawn due to his failure to appear at the hearing held on 30 November 2013. The hearing had been initially set for 27 November 2013 (a Wednesday). However, as that date had been subsequently declared a non-working day by the

Government, the hearing took place on 30 November 2013 (a Saturday), which in the meantime had been declared a working day.

23. The Court must ascertain whether on the facts of the case, a fair balance was struck between, on the one hand, the interests of the effective administration of justice and, on the other hand, those of the applicant (see, *mutatis mutandis*, *Zavodnik v. Slovenia*, no. 53723/13, § 75, 21 May 2015).

24. On the one hand, a procedural rule which allows the domestic court to declare a claim withdrawn when the claimant fails to appear at the hearing can be seen to serve the legitimate aim of ensuring efficient and expeditious proceedings, which is in line with the observance of the rule of law and proper administration of justice (see, *mutatis mutandis*, *Aždajić v. Slovenia*, no. 71872/12, § 49, 8 October 2015).

25. On the other hand, the Court notes that the applicant had not been subsequently notified of the domestic court's decision to have the hearing scheduled for 27 November adjourned until 30 November 2013 (a Saturday). There is nothing to suggest that the first-instance court complied with the requirement of section 126(2) of the Civil Procedure Act (see paragraph 13 above), namely to publish the date and time of the next hearing on its website and display the information at a visible place in the building. However, the Government's decision to declare 30 November 2013 a working day had been published in the media and the applicant had an opportunity to inform himself and to enquire with the court administration in the course of the subsequent days as to whether any decision had been made regarding the hearings scheduled for 27 November 2013, as was his duty under section 126(2) of the Act. In such circumstances, the Court is unable to come to the conclusion that the applicant, who was a claimant in the proceedings and therefore had an interest in pursuing his claim, was denied a fair opportunity to have knowledge of the postponed hearing.

26. Lastly, the Court notes that under domestic law a decision declaring a claim as withdrawn does not prevent the claimant from re-submitting an identical claim (see paragraph 14 above). Alternatively, as the Government suggested, the applicant could also have pursued such a claim before the administrative courts (see paragraph 19 above). The applicant did not argue that any of the above-mentioned remedies would have been unavailable or ineffective. The arguments concerning the liquidation of the purported beneficiary of his claim (see paragraph 20 above) are of no relevance in this respect.

27. In such circumstances, the Court considers that the very essence of the applicant's right guaranteed under Article 6 § 1 of the Convention was not impaired. It follows that the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 27 February 2020.

Renata Degener Deputy Registrar	Tim Eicke President