

THE DISTRICT COURT OF PRIZREN, in a panel composed of EULEX judge Vladimir Kanev as Presiding judge, EULEX Judge Witold Jakimko and Kosovo Judge Engjëll Çeta as panel members, in the execution case of creditor J. G. from Prizren, represented by G. S. from Prizren, against the debtor R. M. from Prizren, represented by attorney E. Rogova from Prizren, in relation to the execution of the ruling on temporary measures, deciding upon the appeal of creditor's representative submitted on 18.12.2008, against the Ruling of Municipal court of Prizren E.no.569/2005 dated 11.12.2008, in the panel session held on 18.06.2010 rendered the following:

R U L I N G

Ruling of The Municipal Court of Prizren in execution case E.no.569/2005 dated 11.12.2008 is hereby **REVOKED** and the case is **REMITTED** to first instance Court executive judge for further proceedings.

R e a s o n i n g

Admissibility of appeal: The challenged ruling of Municipal court of Prizren E.no.569/2005 dated 11.12.2008 suspended the procedure of execution of temporary measure issued by MC Prizren Ruling C.no.420/05 dated 24.05.2005 against the debtor R. M. from Prizren.

The representative of the creditor timely filed an appeal against the impugned ruling on base of procedural violation, erroneous and incomplete verification of the factual situation and violation of substantive law. The representative thus requests abrogation of the ruling in issue and remittal of the case for further proceedings. The appeal is considered timely and appellant vested with legal interest in filing.

Procedural background: On 19.05.2005, J. G. filed a claim application against the respondent for obstruction of possession with motion for provisional measures to cease construction works on parcel in dispute, registered as no. XXX, in quarter "Lakuriqi Verior", Prizren. Case got Court number C.no. 420/05. On 24.05.2005 Prizren MC rendered ruling ordering the respondent R. M. to cease immediately all construction works

on the parcel. On 01.08.2005 the claimant filed a motion for execution of temporary measure pursuant to the article 444 of LCP(old). Actual execution has never been carried out, so claimant's rights have been greatly compromised.

Meanwhile – after three years of inactivity – Prizren MC rendered a new ruling in case 420/05. On 12.09.2008 the court rejected obstruction of possession claim as ungrounded and lifted temporary measure provided for with ruling C.no.420/05 dated 24.05.2005.

The Court reasoned this ruling with referral to final decision in case C.no.805/07 dated 19.02.2008 that confirmed ownership of the respondent over parcel in issue.

Pursuant to that final decision and acting on debtor's motion Prizren MC Execution judge suspended proceedings for temporary measure as there was no measure to execute.

The decision in case 420/05 was timely appealed by J. G. and appeal was approved by Prizren DC ruling dated 17.05.2010 in DC case A.c.595/08. Second instance entirely revoked ruling that rejected obstruction of possession claim and lifted temporary order to seize developing of the plot.

Legal assessment: series of procedural mistakes and omissions have effectively prevented appellant from enjoying provisional measure he had been granted and prolonged proceedings far beyond reasonable time. Though temporary measure has not been executed, execution case was left pending for years. Than the suspension in execution procedure that took place on 11.12.2008 is questionable itself. It is reasoned with the fact that temporary measure had been lifted on 12.09.2008. But ruling that lifted it was not final and was successfully appealed against. As general principle temporary measures granted as provisions for civil claims shall stay in place and are executable since final judgment as to the claim. On 11.12.2008 judgment in issue was not final and thus execution was still enforceable.

On the other hand, court shall consider all relevant procedural developments that took place up to the time a judgment is rendered. With a final ruling second instance revoked first instance ruling in case 420/05 thus restoring pending procedure along with temporary measure granted.

In this regard second instance found that civil case 420/05 and execution case 569/05 has been affected by proceedings in civil case 805/07 that are not really relevant. Case 805/07 was litigation between R. M. and

Prizren municipality and issue at stake was ownership over the same parcel that is subject to obstruction of possession claim filed by J. G. Nevertheless, neither parties nor remedy sought for in case 805/07 should legally affect obstruction of possession claim. Remedial actions over ownership and possession are different and shall not be confused.

Taking into consideration the aforementioned reasons, The District Court of Prizren found the appealed ruling groundless and therein allowed the appeal.

DISTRICT COURT of PRIZREN
A.c. 22/2009 on 21.06.2010

Presiding judge

Vladimir Kanev

Legal remedy: No appeal is allowed against this ruling.