A.c. No 623/09

DISTRICT COURT IN PRIZREN Three judges second instance panel with members judge Vladimir Kanev, international EULEX civil judge as presiding judge, judge Klaus Huener, international EULEX civil judge and judge Erdogan Haxhibeqiri, Prizren DC civil judge as associated judges, having considered an appeal, launched by D. S. represented by M. J. from Prishtina/Pristina against ruling dated 22.10.2009 for dismissal of Prizren municipal court case C N 422/09, with respondent B. M. from Prizren rendered the following :

RULING

The first instance ruling in case C N 422/09 dated 22.10.2009 is hereby REVOKED and the case is REFFERED BACK to Municipal court of Prizren for following up the regular procedure.

REASONING :

First instance case in issue was commenced in Prizren Municipal court on 19.05.2005. Claimant claims since 1993 she is a the owner of a real estate in Kosovo, namely a building plot No 65C, Cadastral parcel XXX in Prizren. In 1997 under valid building permission she started construction of a house and completed ground floor and the first one accordingly.

In August 1999 her family had to leave Prizren because of threats and attacks on her and her husband

According to the claim in the year 2002 defendant unlawfully occupied property at stake and continued construction works that had been undertaken by the claimant. The remedy sought is under Art. 25 Law on Basic Property Relations (LBPR). Djordjevic claims to have her plot restored in previous conditions by the respondent and at his expense.

On 22.10.2009 Prizren Municipal court dismissed proceedings as inadmissible. In its ruling first instance stated that:

"In a concrete case, pursuant to article 2.5 of the Regulation 1999/23, for foundation of the directorate and commission for reviewing the applications concerning the residential issues, read with article 1.2 (c) of the mentioned Regulation, in occasion when " the appeals filed by natural persons who were the owners or possessors of the property or they had right on dwelling before 24th March 1999, currently are not in possession of it, and when the right of property was not voluntary transferred", are expelled from local court

competence. The mentioned commission has the executive competence for those cases belong to category 1.2 of the aforementioned regulation.

The competence of the mentioned body and the applications that fall under their executive competence are foreseen also in article 2.2 and article 3.1 read with article 8.3 of the Regulation no 2000/60, including latest changes on it.

At the main hearing held on 22.10.2010 the Court observed the habitat document dated 30.04.2005, by which the claimant property was returned to her and the respondent was obliged that in terms of 30 days to release the mentioned property. The same decision was verified by the same body on 16.12.2005, subsequently in a concrete case the issue among the parties was settled with a decision issued by the commission for residential and property issues, thereof the Court is obliged that pursuant to article 2.7 of the aforementioned Regulation to consider the decision issued by the commission; such decisions cannot became a retrial subject.

The aforementioned provisions excludes the competences of this court in order to decide in this litigation issue; though this court cares even ex-officio, in conjunction with article 17 (1) of Law on Contested Procedure."

Basically Prizren MC dropped the case because of res judicata on the issue, ostensibly rendered by the abovementioned decision of HPCC.

Appeal, submitted timely on behalf of S. D. reads the first instance misunderstood the claim and wrongfully applied procedural law. According to the appeal ownership right, not possession is issue at stake. Defendant responded to the appeal and emphasized on his stance that claimant is not owner of the plot in issue.

The appeal shall be considered admissible. It is filed within legal deadline and has all the compulsory requisites. Considered in essence this appeal is well grounded.

The ruling appealed against represents a gross confusion between two different types of remedies. Remedy under Art. 1.2 (c) UNMIK Regulation 1999/23 is granted to claimants who lost their possession over a real estate in the circumstances set forth in that Regulation. Remedial action under Art. 25 LBPR is completely different. It is granted to substantive rights owners who's parcels have been illegally developed by unauthorized persons. It is only on claimant's disposal which of the three options under Art.25 LBPR to choose. In this case claimant chose "restoration of previous conditions" option, but the claim itself is unclear and unspecified, because Prizren Municipal court has not observed its duty under Art. 102 Law on Contested Procedure (LCP) and did not instruct claimant to specify the claim.

Claim literally reads that court shall adjudicate for the defendant to restore previous conditions on the plot. This is only a copy from the provision of Art.25 LBPR,not a proper claim. Plaintiffs who commence actions for restoration of conditions shall specify the exact conditions they want to have restored. In the case in issue Ms. Djordjevic has to specify previous conditions she wants to have restored and especially what constructions she wants to get rid of.

In this respect first instance has to summon her according to Art. 102.1 LCP.

Thus, the ruling appealed against shall be revoked and case remitted to the first instance for continuing of first instance procedure with abovementioned instructions.

On the reasons stated above the second instance panel took their ruling.

This second instance ruling is final and no remedy is allowed.

DISTRICT COURT IN PRIZREN
A.c. No 623/09 on 19.02.2010

Presiding judge ;
/Vladimir Kanev/