

MUNICIPAL COURT OF DEÇAN/DEČANI**Presiding Judge:****EULEX Judge Riku Jaakkola****10.06.2011****C nr. 275/2009**

Claimants	Miloš Vukčević, Podgorica, Montenegro; Stevan Vukčević, Podgorica, Montenegro; Jovanka Vukčević, Podgorica, Montenegro; all presented by lawyer Selim Cacaj
Respondent	Lipljan Teodosije Šibalić, Deçan/Dečani; presented by lawyer Ljubomir Pantović
Issue	Compensation for damages, value of the dispute 70.000 Euros
Main hearing	18 th , 19 th and 26 th of May 2011

JUDGMENT

The claim is REJECTED. The claimants are jointly obliged to pay the respondent 1.186,50 Euros as compensation for procedural costs. From that sum 500 Euros will be taken from the deposit the claimants have put in the court for procedural expenses.

REASONING**Undisputed background**

Ilija Vukčević has on 4 January 1967 made a contract on the use of an apartment with surface of 38,23 m² and located in a house at Edvard Kardelj Street (later Manatirska Street) No. 35. The house consisted of two apartments and Ilija Vukčević inhabited one of those. In 1993 Ilija Vukčević has bought the apartment according to article 16 of the Law on Housing (50/92). According to the contract "the buyer gains the ownership right over all other spaces".

Ilija Vukčević died on 12.6.2002. The claimants gained ownership of the property owned by Ilija Vukčević through inheritance. Jovanka Vukčević is the widow of the deceased. Miloš and Stevan Vukčević are sons of the deceased. The Municipal Court of Deçan/Dečani issued a ruling on inheritance examination on 20.1.2011. According to this ruling, each of the claimants owns one third of a real estate –flat with surface of 38,23 m², located in "Edvard Kardelj" -street no. 35 in Deçan/Dečani.

Claim

The claimants are requesting, that the respondent is obliged to pay each of them:

- 20.000 Euros for material damage, and
- 3.333,33 Euros for pain, fear and distress,

the total sum being 70.000 Euros with legal interest since the claim was filed on 11.6.2009 up to final payment. They further claim that the respondent also has to compensate them the costs of the proceedings, 2.082 Euros.

Grounds for the claim

The respondent has by the end of October 2007 illegally demolished their apartment with surface of 38,23 m², located in a house at Edvard Kardelj Street (later Manatirska Street) No. 35 and also an economic building with surface of 80 m². Both the house and the economic building were built in early 1950's. The economic building was built by Ilija Vukčević. Both the apartment and the economic building were built from stone and the total value of those was at least 60.000 Euros.

By illegally demolishing these buildings the respondent has also caused immaterial damage for the claimants. The claimants have been traumatized by the demolition of the house where they lived since 1966. They have been highly distressed about this issue and they have suffered from fear and pain also. Adequate compensation for this is 3.333,33 Euros for each of them, in total the sum of 10.000 Euros.

Reply

The respondent has denied the claim. Firstly, there is a procedural obstacle for the court to act on the claim. Secondly, the respondent has not demolished any buildings owned by Ilija Vukčević. The respondent has also requested that the claimants are obliged to compensate him the cost of proceedings, 1.550,18 Euros.

Grounds for the reply

There is a procedural obstacle for the court to act on the claim, since the claimants have not proven that they have active legitimacy in this case.

The respondent has not demolished these buildings. The claimants haven't proven that there has ever been any economic house on this site. Even if there was an economic house, there is no proof that Ilija Vukčević ever gained ownership on it. Therefore the claimants haven't owned any economic house.

Even under an assumption that the claim would be considered as justifiable the claim request for material damage has been assessed too highly. The real value of this apartment and possible economic building is not even near to 60.000 Euros.

In any circumstances, the claimants are not entitled to any compensation for immaterial damage. There is no evidence of any pain, fear and distress that should be compensated.

The procedural history

Through a decision of a Eulex Judge acting on delegation by the President of the Assembly of Eulex Judges on 04 November 2010, the case was assigned to Eulex Judge Riku Jaakkola.

The Court conducted two preliminary hearings on 23 February 2011 and 12 April 2011. In the hearing 23 February 2011 the Court issued a ruling on the question whether the claimants have active legitimacy or not. According to that ruling (see minutes of preliminary hearing 23 February 2011, page 11) the claimants have active legitimacy since the ruling of Municipal Court of Dečan/Dečani dated 20 January 2011 proves that the claimants have inherited the apartment in question from their late father. Each of the claimants now own one third of the apartment.

In the hearing 23 February the Court also issued a ruling on the proposal by the respondent and ordered the claimants to pay the sum of 500 Euros as a deposit for procedural expenses (see minutes of preliminary hearing 23 February 2011, pages 16-17).

It can also be noted that there is also an ongoing criminal procedure against the respondent regarding the same matter. After the Eulex prosecutor on 10 June 2010 decided to withdraw from the prosecution, the claimants Miloš, Stevan and Jovanka Vukčević have on 21 June 2010 filed a summary indictment to the Municipal Court of Dečan/Dečani against the respondent. The case has been assigned to a Eulex judge.

List of evidence

All the evidences listed below are presented by the claimants. After the title of the piece of evidence, there is a description of what this piece of evidence allegedly proves.

Documentary evidence

Claimants:

- 1) Contract to purchase the apartment 16.3.1993
- the claimants have gained ownership for the apartment and economic house.
- 2) Contract on the use of apartment 31.3.1966
- (has to be read together with evidence no. 1)
- 3) Decision by the Housing and Property Claims Commission HPCC/D/126/2004/C dated 18.6.2004
- legal representative of the respondent has repeatedly contested the existence of this building.
- 4) HPD letter to Vukčević family 11.9.2006

- existence and value of the apartment and economic building.
- 5) HPD letter to Vukčević family 10.11.2006
 - existence and value of the apartment and economic building.
- 6) Inspection letter 6.3.2006
 - the chief inspector was present on the critical day, when the buildings were demolished.
- 7) Notification 7.3.2007
 - information that the apartment has been demolished on 5.3.2007.
- 8) Notification 7.5.2007
 - information about the demolition of the house.

Hearing of the claimants

- 1) Miloš Vukčević
- 2) Stevan Vukčević

Witnesses

Claimants:

- 1) Jashar Hulaj
 - existence of the economic building; demolition of the house and economic building.
- 2) Shkelzen Goqi
 - existence of the economic building; demolition of the house and economic building.
- 3) Ajne Iberhusaj
 - existence of the economic building; demolition of the house and economic building.
- 4) Ali Cekaj
 - existence of the economic building; demolition of the house and economic building.

Expert witnesses

Claimants:

- 1) Geodesy Expert of the Municipality of Deçan/Dečani, Muhamet Vishaj
 - Geodesy expert has taken part to the site inspection on 18th of May.
- 2) Construction Engineer of the Municipality of Deçan/Dečani, Hyse Dinaj
 - evaluation of the value of the buildings in question.

Factual and legal assessment

Introduction

Articles 154, 155 and 158 of the Law on Contracts and Torts (SFRY 29/1978, later LCT) provide the legal basis for the case. According to article 154 paragraph 1, whoever causes injury or loss to another shall be liable to redress it, unless he proves that the damage was caused without his fault. According to article 155 both material damage and immaterial damage, for example psychological pain or causing fear is considered to be “injury or loss”. According to article 158 a fault exists if a tort-feasor has caused injury or loss intentionally or out of negligence.

In this case the main question is has the respondent caused injury or loss to the claimants (articles 154 -155 of LCT) by intentionally or out of negligence demolishing the apartment and economic building belonging to them (article 158). The claimants first of all have to prove that the respondent has demolished their apartment and economic building.

The undisputed facts of this case are stated on page 1. Regarding factual issues the following questions have to be resolved first:

- Was there also an economic building on the site in question?
- Did the respondent intentionally or out of negligence demolish the apartment and economic building in question?

If it is determined that the respondent demolished these buildings, also the following questions have to be resolved:

- Do the claimants own this economic building?
- What is the value of the apartment and economic building?
- Did the claimants suffer from pain and fear (article 155 of LCT)?

The existence of the economic building

According to the claimants there was also an economic building next to the apartment of late Ilija Vukčević. The Geodesy Expert of the Municipality of Deçan/Dečani, Mr. Muhamet Vishaj has shown from an aerial photograph taken in 1983 that next to building consisting of two apartments, there was also another building.

The Court notes that the testimony of Muhamet Vishaj is consistent with testimonies of the claimants. Moreover, the respondent has not claimed that there would have been some other buildings on this site besides these two buildings mentioned in the claim. Therefore it is obvious that the other building in this aerial photo is exactly this economic building meant by the claimants. Another issue is, whether the claimants own this building or not.

Demolition of the buildings

The claimants have presented some documentary evidence regarding the demolition of the buildings. The inspection letter dated 6.3.2007 (evidence no. 6) was written by Mr. Jashar Hulaj, the Chief Inspector of the Municipality of Deçan/Deçani, who was also heard as a witness. This letter was addressed to the President of the Municipality of Deçan/Deçani. Notifications dated 7.3. and 7.5.2007 (evidence no. 7 and 8) were both from Mr. Haki Tahirukaj, the Director of socially owned company FIE "Gjeravica", which was the former owner of the apartment in question. Both letters were addressed to Regional Office of KTA in Peja. The Court notes that according to all of these letters "the Deçan/Deçani Monastery" destroyed these buildings in question. Jashar Hulaj has written letter dated 6.3.2007 (evidence no. 6) based on what he saw. The letters written by Haki Tahirukaj (evidence no. 7 and 8) are both based on the letter from Jashar Hulaj (evidence 6). Therefore all the evidence is based on what Jashar Hulaj and two other persons with him, Shkelzen Goqi and Ajne Iberhusaj, saw on 5.3.2007.

Witnesses *Jashar Hulaj, Shkelzen Goqi and Ajne Iberhusaj* have all testified that they saw when this demolition of the buildings took place on 5 March 2007. They were all working for the Municipality of Deçan/Deçani and they were doing their regular construction inspection. All these eyewitnesses have testified that they saw some person with a black robe and a beard driving the excavator and demolishing the buildings on the site in question. They also saw some other people on site with "civilian" clothes. They didn't identify any persons on site, but from the circumstances and the dressing of this person driving the excavator they all concluded that people they saw on site were from the Monastery. They were watching the events from a moving vehicle from a distance of about 20 - 25 meters. They were not allowed to stop because this happened on the Monastery area, which was protected by KFOR.

The Court notes that there is no reason to question the credibility of the above mentioned witnesses and their observations. Therefore, and considering also, that this site is in the Monastery area and it is – and has also been in 5.3.2007 – protected by KFOR, it is clear that people from the Monastery have demolished these buildings. Only people from the Monastery have even been able to access this site. On these grounds the Court finds that it has been proven that some people from the Deçan/Deçani Monastery have demolished the buildings in question. However, there is no evidence suggesting that the respondent would have been responsible for that. None of the eyewitnesses have identified the respondent as being one of the persons on the site.

Conclusions

The Court notes that according to the claim "*the respondent has demolished*" these buildings. In order to prove this argument, the claimants have to prove either that the respondent physically himself demolished the buildings or at least that he has given orders for that. The claimants haven't done that – they have only proven that some people from the Monastery did this. The fact that the respondent is the bishop of Deçan/Deçani

Monastery does not prove that he would have given orders to demolish these buildings. Some other person from the Monastery or Orthodox Church may have given the order or someone from the Monastery may have demolished these buildings on his own, without any orders.

On these grounds the Court finds that the claimants have not proved that the respondent has demolished these buildings. The claim has to be rejected. Therefore there is no need to resolve the remaining issues under dispute: did the claimants own this economic building, the value of these buildings and did the claimants suffer from pain and fear.

The costs of the proceedings

According to article 452 paragraph 1 of the law on contested procedure the losing party shall have the obligation to reimburse all the costs incurred by the winning party. According to article 453 paragraph 1 when deciding the expenses payable to a party, the court shall only have regard to the expenses that were necessary to pursue the case in court. The court shall decide which expenses were necessary and the amount of such expenses by considering all circumstances. According to paragraph 2 if there is a set fee for lawyers or for other expenses, these expenses shall be set according to such fee.

Since the claimants have lost the case, they are jointly obliged to reimburse the costs of the proceedings to the respondent. The lawyer of the respondent has provided the Court with an explanation of procedural expenses and requested a total sum of 1.550,18 Euros.

The court notes that there are tariffs of the Bar Association of Kosovo, which are based on Law on the Bar (03/L-117). According to these tariffs the basic fee for a hearing is 101,40 Euros and 18 Euros for each extra hour. According to the minutes, the following hearings were held and the costs of each hearing are as below:

- hearing for Eulex to take over the case on 4.11.2010, 35 minutes => 101,40 Euros;
- preliminary hearing on 23.3.2011, 5 hours (lunch break excluded) => 173,40 Euros;
- preliminary hearing on 12.4.2011, 4 hours => 155,40 Euros;
- main hearing on 18.5.2011, 5 hours (lunch break excluded) => 173,40 Euros;
- main hearing on 19.5.2011, 3 hours => 137,40 Euros;
- main hearing on 26.5.2011, 3 hours => 137,40 Euros.

Additionally the lawyer of the respondent is entitled for 78 Euros compensation for both the written reply on the claim and the written motion dated 8.4.2011, as he has requested. Moreover he is entitled for a compensation of being absent from the office. According to tariffs this compensation is 25,35 Euros per day, in total 152,10 Euros, as he has requested. The Court has rejected the request for 55,70 Euros for reviewing the paperwork of a case file, because the case has been fairly easy for the lawyer of the respondent and it is unclear what this request is based on. The Court has calculated the amount of necessary expenses based on this information and has come to a conclusion, that an appropriate amount is 1.186,50 Euros in total.

LEGAL REMEDY

The parties may file an appeal against this judgment in the District Court of Pejë/Peć through the Municipal Court of Deçan/Dečani within fifteen (15) days of the day the copy of the judgment has been served to the party.

The Municipal Court of Deçan/Dečani, 10 June 2011

