

C. No. 462/10

MUNICIPAL COURT OF PRIZREN/PRIZREN

The Municipal Court of Prizren/Prizren through EULEX Judge Franciska Fiser in the case of the claimant Slavica Djordjevic from Prizren with temporary residence in Novi Sad, Str. Milenka Grcica 3/38, represented by Rastko Brajkovic, legal adviser of project Further Support for Refuges and IDPs against the respondent Beg Morina from Prizren, Str. Jerenin de Rada, represented by lawyer Orhan Rekathati from Prizren in the claim relating to building on another's land, value of the subject matter 25,200 EUR following main trial sessions held on 12 December 2011 and 21 December 2011, renders the following

J U D G M E N T

I.

The respondent Beg Morina from Prizren, Str. Jerenin de Rada is hereby ordered to reconstitute the land to the previous situation and for that purpose remove all construction works arbitrarily carried out on the cadastral parcel 7140/1, construction plot no. 65c, which borders on the east side with parcel 66c, on the north side with another private house, on the south side with the road and on the west side with parcel 64c in total a surface area of 180 square/meters, namely all works carried out without the knowledge and permission of the claimant. The claimant has made foundations and foundation slab, installation to the foundation slab and the wall on the east side which borders with the neighboring parcel 66c along its entire length, therefore the respondent Beg Morina from Prizren, Str. Jerenin de Rada is ordered to remove all works apart from the mentioned ones within 30 days after this judgment becomes final.

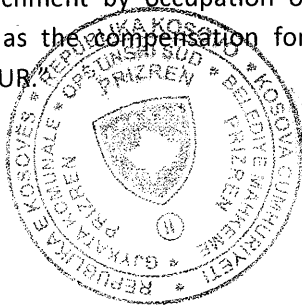
The respondent Beg Morina from Prizren, Str. Jerenin de Rada is ordered to pay the amount of 400 EUR in respect of procedural costs, within the period of 15 days after the receipt of this decision under the threat of execution.

II.

The following alternative proposal of the claim:

"On behalf of the damage caused to the claimant by carrying unauthorized and arbitrary works on the plot over which claimant has the right of usage and where the claimant carried out all preparatory construction works and infrastructure works including the foundation slab, also on behalf of compensation and unjustifiable enrichment by occupation of other's property Article 210 Law on Obligations and Torts, and as well as the compensation for lost profit, respondent is ordered to compensate the amount of 150,000 EUR.

is rejected.



R e a s o n i n g :

On the 14 February 2005 the claimant Slavica Djordjevic filed a claim in respect of illegal construction on her property. She alleged that on the basis of the compensation she paid to the Municipality of Prizren she has obtained the right to use the construction land in the construction parcel no. 65c part of the parcel category 7140 a surface area of 180 square/meters. She started the construction of her residence in 1997 and had completed laying the foundations and had connected it to the sewerage and water systems. On 28 August 1999 she had to leave Prizren temporarily because she and her husband had been physically assaulted several times and they have been kidnapped in the premises of the Red Cross. After this the respondent took into possession the parcel where the construction had already started and built over it the ground and the first floor. The respondent knew that he was building on another's land without permission from the owner. Therefore the claimant pursuant to article 25 paragraph 1 of the Law on Basic Legal Property Relations - LBPR claims that the builder demolishes the premises and returns the land in its previous state.

The first instance court by ruling C. no. 422/05 dated 22 October 2009 dismissed the claim as inadmissible with the reasoning that the case is excluded from the jurisdiction of local courts since the decision dated 30 April 2005 has been issued by the Housing Property Claims Commission – HPCC. By this decision the claimant was returned possession of the contested parcel and the respondent was ordered to vacate the same within 30 days. This decision was confirmed by another decision of the same body issued on 16 December 2005.

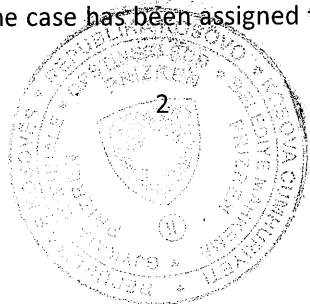
Upon an appeal filed by the claimant's representative the case was received and registered by the District Court of Prizren on 16 December 2009 under the case number Ac 623/09.

By the ruling dated 4 February 2010 the case was selected to be taken over by EULEX Civil Judges at the District Court of Prizren pursuant to the article 5.1 of the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors and by another ruling dated 19 February 2010 the District Court panel revoked the first instance ruling and referred the case back to the first instance court for retrial.

At the first instance court the case was registered under the new case number C. 462/10.

In accordance with the order of the court dated 29 September 2009 the representative of the claimant amended the claim and clarified the construction works made by the claimant and what the previous situation was before the construction works that were carried out by respondent. By submission dated 18 March 2011 the claimant expanded the claim request onto the Municipality of Prizren as second respondent.

On 31 May 2011 Judge Lumni Salluka from the first instance court addressed to the President of the Assembly of EULEX Judges a letter and requested EULEX to take over the case. By decision dated 11 July 2011 the request was accepted and the case has been assigned to EULEX Judges of the District Court of



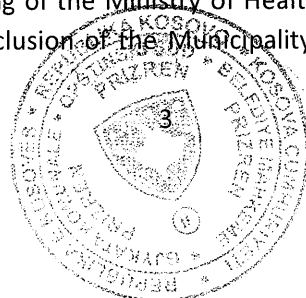
Pejë/Peć since EULEX Judges of the District Court of Prizren/Prizren presided over this case in the second instance.

On the basis of the withdrawal of the claim against the Municipality of Prizren dated 2 June 2011 the first instance court on 17 November 2011 issued the ruling and ascertained that the claim filed against the Municipality of Prizren has been withdrawn.

The claimant corrected the claim and specified the borders of construction plot number 65c, its total surface area and the number of neighboring parcels where the wall borders along the entire length of the building from the east side by the submission dated 20 October 2011 and on the preliminary hearing held on 21 November 2011.

The respondent through his lawyer filed a response to the claim on 10 October 2011. The respondent has contested and objected to the alternative claim application; also the amended claim dated 29 September 2010 since they were incomprehensible, incomplete and with deficiencies about the legal and material demands, especially at the enacting clause of the claim since it did not clearly stressed what it requested with the claim. The respondent contended that the claimant is not the owner of the immovable property which is the object of this issue for the reason that she unlawfully obtained this parcel and in contradiction of the Municipal Assembly - MA of Prizren. Among other things he alleged that the claimant did not build the house but abandoned it so people could turn the plot into a dump site, where the infections and various diseases from the trash could arise. The respondent stated he was aware that he was constructing the house on the municipality property but not on Slavica Djordjević's property. In relation to the HABITAT authority he made an assertion that HPD could only implement the procedure upon the tenure of one premises or apartment which was as personal property of the certain person but could not as herein be involved with the social property of MA Prizren. Accordingly the respondent proposed that the court rejects the claim as ungrounded and sends the case to the MA Prizren as competent authority for solving this property issue since this belongs to MA authorities but not to the court.

At the proposal of the litigants and in order to establish the factual situation, the court produced and read the following evidence: copy of the decision on legal property matters of the Municipality of Prizren, no. 03/3-463-138 dated 30. 3. 1993, copy of the decision of the Unit for urbanism, municipal housing and construction activities of the Municipality of Prizren no. 04/4-351-323 dated 8. 11. 1993, copy of the decision record at the unit for legal property activities no. 03/3-463-138 dated 17. 4. 1995, copy of decision – ruling of the Municipality of Prizren, no. 03/3-463-138 dated 2. 4. 1993, copy of decision – ruling of NP ELEKTROKOSMET” Distribution Prizren, no. 1829 dated 15. 10. 1993, copy of Act on spatial regulation conditions of the Municipality of Prizren, Spatial planning, municipal services – housing and construction works unit, no. 04/4-353-1020 dated 18. 10. 1993, copy of Information on location of the Municipality of Prizren, Spatial planning, municipal services – housing and construction works unit, no. 04/4-353-1020 dated 21. 10. 1993, copy of Confirmation of the Municipality of Prizren, Spatial planning, municipal services – housing and construction works unit, no. 04/4-353-1020 dated 26. 10. 1993, copy of the decision – ruling of the Ministry of Health Sanitary Inspection Unit no. 53-61/93 dated 27. 10. 1993, copy of the conclusion of the Municipality of Prizren, Spatial planning, municipal



services – housing and construction works unit, no. 04/4-351-233 dated 28. 10. 1993, expert detailed urban plan of Prizren, dated 18. 10. 1993, copy of the decision of the Unit for Urbanism, Municipal housing and construction activities of the Municipality of Prizren no. 04/4-351-323 dated 8. 11. 1993, copy of decision – ruling of the Municipality of Prizren, no. 03/3-463-138 dated 2. 4. 1993, document no. 03/3-463-138 dated 30. 3. 1993 issued by Municipality Assembly in Prizren, expertise drafted by geodesy and civil engineering experts Teuta Kajmakçi and Liman Mustafa, respectively dated 28. 8. 2009, Habitat's decision dated 16.12.2005, photocopy of the records on entry into possession MA Prizren dated 17. 4 1995, Criminal report filed on 21. 7. 2008, Submission to construction directorate of Prizren Municipality 30. 4. 2010 and Respond from the same directorate dated 9. 8. 2010, Rulings of Prizren of Assembly in relation to the legal property matters number 03/3-463 dated 30. 3. 1993, HPD decisions dated 30. 4. 2005 and 16. 12. 2005 and testimony of the claimant and respondent.

In relation to the evidence of new expertise and visual inspection proposed by the claimant the court decided pursuant to article 319 paragraph 3 of the Law on Contested Procedure – LCP that they are not needed and they have not to be taken as evidence.

Having assessed each and every piece of evidence separately and as a whole conscientiously and carefully pursuant to article 8 of the LCP, the court comes to its conclusion that the claim request in point 1 of the claim is grounded.

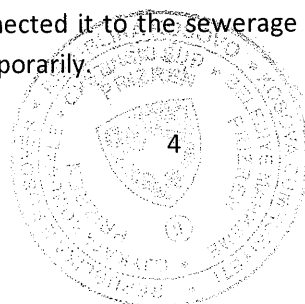
During the evidence procedure the following factual situation was established.

By the Ruling no. 03/03-463-138 issued on 28 October 1993 the Municipality of Prizren transferred the right to use the building land from the Municipality of Prizren to the claimant; namely the part of the parcel category no 7140/1 in the construction parcel no. 65c in the place called Ortakoll, 180 square meters of surface area in order to build a residential dwelling. On 28 October 1993 the validity of this ruling was extended to 30 days from the reception day. By another Ruling no. 03/3-463-138 issued on 2 April 1993 the MA Prizren set the compensation amount at 16.470.000 dinar which the claimant had to pay within 8 days of receipt of this ruling.

The claimant's request to build a residential construction in this parcel has been approved by the Municipality of Prizren by Ruling no. 04/4 351 233 issued on 8 November 1993.

The legal representative of MA Prizren drafted the minutes from taking up possession and has determined the borders of the land for construction in the presence of representatives of professional services of MA Prizren and the claimant on 17 April 1995. As regards this minutes the construction land no. 65c which the right of use was transferred to the claimant was bordered by a private house in the north, by a road in the south, by the land no. 66c in the east and by the land no. 64c to the west. Also the surface area of the land for construction no. 65c and around the building in 180 square meters was determined.

The claimant stated that she has started the construction of the residence in 1997 and had completed laying the foundations and had connected it to the sewerage and water systems. On August 28, 1999 she and her husband left Prizren temporarily.



The respondent started to build on the contested land in 2000; this fact was confirmed by the claimant and also by the respondent when they were heard as witnesses.

At first the court assessed if the claimant is the owner of the immovable property which is the subject of this claim.

On the basis of the Ruling no. 03/3-463-138 dated on March 30, 1993 and issued by the Municipality of Prizren Unit for legal property matters the right to use the building land, namely the part of the parcel category no. 7140/1 in the construction parcel no. 65c in the place called Ortakoll, 180 square meters of surface, has been transferred to the claimant. The quoted ruling has been issued on the basis of article 22 paragraphs 1 and 2 in conjunction with article 23 of the Law on Construction Land (Official Gazette of the Republic of Serbia, no. 23/90).

The respondent stated that the claimant is not the owner due to the fact that she unlawfully obtained this parcel and in contradiction of the decision of the MA of Prizren. The court is convinced that the respondent's statement is not relevant in this contested procedure. The Ruling no. 03/3-463-138 is final and since it had been issued within administrative procedure only remedies pursuant to the Law on Construction Land could be filed.

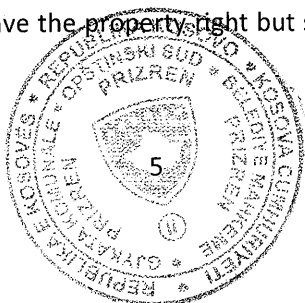
The respondent also alleged that the claimant did not build the house but left it so people could turn the plot into a dump site. It is true that the claimant did not build the house but the court has ascertained within the evidentiary procedure with certainty that the claimant after taking up the possession of the construction land in April 1995 started to build in the year 1997. When the claimant has been heard as a witness (in the hearing held on 12 December, 2011) she has stated in detail all the works carried out on the plot and has listed all necessary materials for these works. Irrespective of the respondent's statement that he did not notice any works carried out on the plot the court has no doubts about the claimant's statement which was exhaustive and cogent. So the court considers the fact that the claimant built the foundation and foundation slab, installation to the foundation slab as proved. Even the respondent confirmed when he was heard as a witness (in the hearing held on 12 December 2011) that the escalator dug out not only soil and scrubs but also the concrete.

It is true that the claimant left the country in 1999 but the court is not obliged to assess if this act was justifiable or not since it is publicly known that the war started in Kosovo in 1998 and almost all inhabitants of Serbian nationality left the country.

The respondent started to build on the contested plot on 24 July 2000 as he stated in the hearing held on 12 December 2011. In his statement he confirmed that he was aware that the plot has not been his property and that he has built on the land which was socially owned property.

The court approved the claim as appears in the enacting clause on the basis of article 25 paragraph 1 of the Law on Basic Property Relations - LBPR (Official Gazette SFRY, No. 6/80) which provides amongst other things that if the builder has known that he/she builds on somebody else's land, the land owner can request that the builder break down the building object and recover the land to the previous condition.

It is true that the claimant does not have the property right but she has the right of use on constructed land for construction means.



the foundation slab as well as the wall on the east side where the claimant has the (expected) property right.

The respondent objected such amended claim; he has alleged that the claim is incomprehensible, incomplete and with deficiencies in the legal and material demands. He did not define in which way the claim was incomprehensible and incomplete. The court made an examination of the claim corrected by the claimant in the submission dated on 20 October 2011 and on the preliminary hearing held on 21 November 2011. After these two corrections it is clear what the previous situation was and what the respondent is ordered to do.

Pursuant to article 146 paragraphs 1 and 2 of the LCP the court prescribes a period of 30 days within which the obligation must be discharged.

Pursuant to article 25 paragraph 5 of the LBPR the land owner can realize the right prescribed in paragraph 1 of the same article at the latest within the time limit of three years from the day when the construction of the building is finished. The claimant filed the claim in 2005. The respondent in his statement confirmed that he has finished the house in 2009 so the claim was filed in due time.

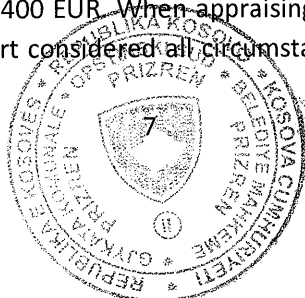
The court also considered the circumstances pursuant to article 25 paragraph 2 of the LBPR. The claimant is at the moment an internally displaced person as well as all her family members. She is the beneficiary of a retirement pension and a sub-tenant in Novi Sad. She and her family do not own another immovable property or movables of significant value; her husband and children are unemployed. The right to use the building land was transferred to her by final ruling; she paid the compensation for this transfer; she had acquired all other documents before she has started to build and she has already build the foundations, foundation slab and installation to the foundation slab as well as the wall on the east side. Because of the war she was stopped against her will and she stated that she is willing to come back with her family.

On the other hand the respondent's behavior has been inexcusable. He knew that he built on another's land; it was not important who officially owned the property; it is important that the respondent knew all the time that he had no right to build on the contested plot. In 2003 the claimant visited the plot and she also spoke with the respondent about the land; in 2005 the respondent received the decision issued by HPCC by which he was ordered to vacate the property. Irrespective of all these he has continued with the building. Also his statements that the plot became a dump site and that other people wanted to usurp the land could not be excusable.

From all the above the court has assessed that in this case legal conditions are met from article 25 paragraph 1 of the LBPR, which pursuant to article 1.1, sub-paragraph b) UNMIK Regulation 1999/24 dated 12 December 1999 was the law applicable in Kosovo during the proceedings in this case.

The claimant joined two claims pursuant to article 255 paragraph 2 of the LCP. As the court granted the claim under point 1 the claim under point 2 has to be rejected.

Pursuant to article 452 paragraph 1 of the LCP the court also orders the respondent to pay the procedural expenses in the amount of 400 EUR. When appraising the expenses pursuant to article 453 paragraphs 1 and 2 of the LCP the court considered all circumstances and decided that only the travel



expenses incurred by the claimant have been necessary. The representative of the claimant specified them in the amount of 40 EUR per each hearing, which were all together 10 (6 in the repeating procedure and 4 in the previous one). The claimant's representative requested also the expenses for 6 hearings; 100 EUR per each and for drawing up one submission. These costs are not justifiable since pursuant to article 453 paragraph 2 of the LCP the claimant's representative is not a lawyer.

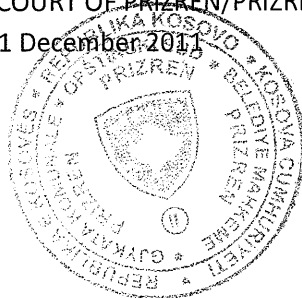
Pursuant to article 532 paragraph 1 of the LCP the first instance court has continued the proceedings in accordance with the provisions of Law No. 03/L-006.

Legal remedy:

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

MUNICIPAL COURT OF PRIZREN/PRIZREN

21 December 2011



Franciska Fiser
EULEX Judge