07_Legal Interest in Claiming Ownership and Other Property Rights_february_14_GI

The General Assembly of the Civil and Commercial Colleges of the Supreme Court of Cassation (SCC) has issued its Interpretative Decision (ID) No. 8 of 27 November 2013 under Interpretative Case No. 8/2012 on the issue of the legal interest in positive and negative claims to establish ownership and other property rights which was resolved inconsistently by different SCC panels.

The need for consistency and uniformity in SCC practices raises the following two questions to be examined by the court:

As far as the first question is concerned, the SCC college maintains that there exists legal interest in filing a negative claim to establish ownership and other property rights in the cases, where: the claimant holds an independent right which is challenged; the claimant invokes a factual condition or has the opportunity to acquire rights by negating the rights of the defendant. In the course of these proceedings, the burden of proof of the legal interest falls on the claimant, whereas the defendant has to prove the facts engendering his rights. Proceedings are dropped where no legal interest exists.

The major reasons underlying the broader understanding of the cases in which a negative claim to establish ownership and other property rights is admissible are as follows:

The SCC distinguishes between the contested right and the right which may be affected by the legal dispute. The contested right turns into the subject-matter of the court cases since the parties maintain contradictory legal assertions concerning it. It is the claimant to determine the subject-matter of the defence which is the right that the claimant rejects in the negative claim.

The reasons of the Interpretative Decision enumerate the cases in which the claimant has legal interest in filing a negative claim to establish ownership and other property rights:

- the claimant asserts that he is the holder of a right to the same property other than the contested right, the existence of which right would be negated or the origins/exercise of which right would be thwarted by the unjustified claim of the defendant;

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- the claimant makes a statement on an independent right to the property;
- where competing rights to the same property are alleged by both parties, it is admissible for both parties to the proceedings to claim ownership;
- factual conditions are claimed to exist (e.g. disturbance of possession without dismissal of possession) prior to the expiration of six months of its establishment by a person alleging unjustifiably to be the owner;
- the claimant has the opportunity to acquire the property on grounds of origin or restitution, while rejecting the rights claimed by the defendant.

Where a negative claim is filed to establish ownership and other property rights, the burden of proof falls upon the claimant to prove his assertions of existing legal interest. The claimant has to prove the existence of his enforceable right affected by the legal dispute by proving the facts which generate this right.

The SCC answers in the negative the question whether the claim to establish ownership and other property rights constitutes a subsidiary remedy admissible in the cases in which the claimant is not in a position to defend the contested right through a res judicata claim.

The reasons of ID No. 8 of 27 November 2013 of the SCC colleges contain a non-exhaustive list of cases in which a claim to establish ownership and other property rights would be admissible, while the possibility for a res judicata claim to be filed is retained:

the filing of a claim to establish rights against a person holding the possession of another person’s property would lead to suspension and, in case the claim is granted, to discontinuation of the acquisitive prescription. Although the defendant will not be sentenced to returning the actual holding of the property, the acquisitive prescription which lapsed prior to the suspension loses its legal relevance;
the beneficial owner who possesses the property files a claim to establish rights, where the dispute with the defendant relates to the spatial boundaries of the ownership rights;
the claim to establish rights is filed by a co-owner against the defendants holding the possession of the property; the claimant will discontinue the acquisitive possession to their benefit and, where his co-ownership is established, the claimant will commence his possession of the property through them, having also the opportunity to seek compensation

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for the use of his portion of the property without any interest in using the property in person and holding it for this reason;
legal interest exists also in the case of a dispute among the co-owners with regard to the volume of the rights each of them holds to the shared property.

The principle that the existence of legal interest in the remedy is to be judged by the court on a case-by-case basis, depending on the assertions of the claimant, allows the filing of a claim to establish ownership and other property rights also in other cases, in which the claimant has the opportunity to file a res judicata claim to defend the same right.

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