



The Role of Mediation in Resolving Problems Created by Disorder of Possession

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Abstract *In modern society where life takes place within human communities large and a very brisk rhythm, it is easy to show conflicts, and among those living in the same building disputes likelihood is even greater. And, if often disputes between neighbors are not serious, sometimes they can easily turn into criminal offenses, including disorder of possession by the other persons, which prevents the use of a building by its legal owner. This article aims to examine how mediation, an alternative dispute resolution can help resolve such conflicts by making communication between the parties and find a compromise to resolve the situation occurred.*

Key words:

Possession, conflict, crime, mediation.

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1. Introduction

According to art 220 par.1 of the Criminal Code offense disorder of possession is to occupy, in whole or in part, without right, a property in the possession of another, without his consent and without prior approval received under law, or refusing release the property so occupied. The legal object consisting mainly of social relationships on the possession of real estate.

Material element can be achieved either by action or by inaction. In method committed, the act is occupancy action of taking possession of a property in the possession of another. Occupying the building, total or partial, must be effective and have certain duration. Occupancy building must be done without right without the consent of the person having possession of that property.

As concrete ways, offense is committed by means other than those that determine the form of par aggravating (2), may consist, for example, fencing of land occupied, moving into a building, perform maintenance of occupied land, etc.

In the manner omitted fact is refusing to leave the building occupied in text incrimination conditions. In this way, after occupying the building, the perpetrator refuses to release. It required an application for the building, demand must be express and come from the owner of the infringed right. If the application for a building to be explicit, the refusal to issue it may be explicit or implicit.

Solution not to indict the accused in this regard can only encourage his behavior, a breach of the criminal law and, not least, by defiance of the provisions of a court attitude which will culminate probably in opposition to the judgment of exhaust law and thus committed the crime by violation of judgments, provided by art 271 of the Criminal Code.

Also, according to art 320 par.1 of the Criminal Code offense of disturbing home usage is that which disturbs repeatedly use housing tenants in a building or which prevent normal use of the dwelling, subject to the legal consisting of social relationships on the right each person to use their house in quiet, undisturbed.

Material element of the objective side is done alternative by deeds, which use repeatedly troubled housing residents in a building or prevent the normal use of the house. If these acts are crimes themselves, shall be punished also. Acts which disturb residents' use a building housing must be repeated character, otherwise the act constituting an offense. Repeated acts may have different shapes and various and may bring usage restrictions at home.

Deed can watch a building with several residents, but also a building inhabited by one person, and the tenant has only person who occupies the property pursuant to a legal title. Preventing normal to the home uses involves an activity that is impossible to use normal of the house.

2. Case Study: Disorder of possession

A.M. and V.B. have one building consisting of ground floor flat, apartment respectively a villa floor consisting of ground floor, first floor and attic of Bucharest. Along with this also bought G.L. a storage room located in a building located in the attic to get on a scale that they have access to service all three owners, who are neighbors and share thus access to each home.

A.M. and V.B. have made the rehabilitation and improvement of the common area without the consent of GL and at their own expense, changing old wooden door (on which each person has a right of use in individuals forced) by providing access to the entrance hall of the building, with a new metal door.

When G.L. demanded a new door key access A.M. and V.B. refused to hand over a row of keys, because this does not contributed to pay for its holding, telling him he can always enter the building, with their help, but he will receive the new key only after pay performed according to the share held by each.

Under these conditions G.L. complained to the police that he could not use their property as believes appropriate accusing AM and V.B. by offense of possession disorder of provided by art 220 Criminal Code and demanding to be handed the key to the access door without expense from his side.

Analyzing cause Prosecutor attached to the Court of Appeal held, by resolution (Public Ministry, Prosecutor by the Court of Appeal, Resolution pronounced in case no. 970/P/2012 on 13.06.2012 not published), that the case is found that the charge was a necessary and useful, not one of luxury, the front door was a 20 year old and unable to protect residents.

With regard but this expense, the Prosecutor stated that residents do not have a right of retention because of a case of sale of immovable property for which the owner or a third party would have a right of retention and may refuse to surrender the keys, but the good of the common area, which is good for all owners, without distinction.

If expense is a necessary and useful, even if one of the owners to make the entire arrangement on charges, even if others have not consented to the work, he is entitled to reimbursement expenses in share, provided that the good itself is not one that can provide the same destination and where it was cheaper, because even if necessity is useful asset in itself should not be bought at an exorbitant price.

More than three are co-owners of the storage facility, but all parties have a right to use together, can become owners of the property itself respectively the door, so there are now a right of retention.

Whether the co habitation has an association of owners, so costs are passed directly to the maintenance rate after were approved, the remedy is

not only an action claims where the person may be forced to penalties if dishonesty is proved, you can not be denied access to common space allows further access at home, no matter what their destination dependencies of house person.

Since the offense is committed both ways, noting that prevention may materialize through inaction, leaving only one offense when committed intentionally, the subjective element can not be accepted, because we and V.B. allow her access to the home, but do not want awarding a row of keys.

However it can not be but that the obligation to hand over the key person does not continue, because otherwise it would mean that GL to stay always at their disposal to open the door, they would mean that any person could change the door, only to deny access to others, relying on different grounds.

Only for handover of keys G.L. is an action that comes from the obligation to make, and on this occasion, MA and V.B. may require associated charges their lien on the door is just as good, not as a destination, or, its property is not in question, but its destination and the space is.

Than those used above, the solution Prosecutor was not starting the criminal investigation against PM and V.B (Disorder of possession. Disorder of house usage. Criminal sentence No. 488/9.06.2008 of Bucharest district 1 Court).

3. Mediation - an alternative method for resolving conflicts

As can be seen, the proposed solution, or not to prosecute, of the problem is not resolved, the conflict still remaining between the parties, and alternative open a lawsuit based on the obligation to make the GL against its neighbors A.M. VB, open, turn the door to claims that they may have reported the recovery of common costs.

But such a process takes quite a long time, requires hiring a lawyer, travel to court, publicity and an uncertain result, not to mention the escalating conflict between the parties. Or if that person has no time and no money alternative process is extremely damaging.

On the other hand, it can be seen that the prosecutor understood that a dispute between neighbors does not always mean that you committed a crime and the threat of police not saves respect for obligations upon you, including by pay policy.

And then how to solve a conflict?

The answer can only be one: use the system solutions offered by alternative methods (ADR) (Fiscuci, 2012), like mediation which implies a mediator, a person trained, neutral and impartial parties trying to communicate in order to find one a solution to satisfy

(Sandru, Radulescu, Calin, 2012), thus leading to a win-win solution.

It can be seen that the solution rests solely with the parties as they are likely to be applied by the parties leading to conflict.

Furthermore mediation is a confidential procedure takes place in restricted and involved only parts and possibly their lawyers, because during mediation the parties may be accompanied by lawyers, which explain the legal aspects of resolving disputes between them, while the role of the mediator is dealing parties to communicate again.

Especially the role of mediation is to rediscover communication between the parties so that they can provide steps to be taken if such a situation arises and possession disorder is precisely the lack of communication between the parties in disagreement common and personal needs (Popsor, 2012) of each owner, which must be linked to community living.

It should be made clear that attendance of lawyers is not mandatory, because the parties may participate themselves to say what they want to achieve through mediation and reach a solution that meets their needs.

The procedure is extremely flexible of mediation, the parties may meet depending on their program and mediator at it deems appropriate, and the mediation session can last as long as the parties deemed fit, being able to settle the case in a meeting or in several without a time limit imposed, but clearly in a more reasonable time than any trial before the courts.

Also costs are significantly lower than the costs it involves a process, especially since mediation agreement is negotiated by the parties establish how the obligations will be passed by the Parties, the Parties will work mode then and steps they will go after signing the mediation agreement.

Negotiated mediation agreement can be implemented through by expedient judgment to be enforceable and may be enforced if enforced, and then the parties would not violate its obligations.

With regard to the offense of disorder of possession is observed that the mediator intervention is required both when disputes arise and after state authorities have completed investigations as outcome of starting the prosecution, does not resolve the existing conflict, and alternative process is extremely unpleasant, expensive and extremely long lasting.

Moreover, in the present case there is a disposal to communicate the parties, even if partial, because we VB, those who made repairs, refuse to communicate, and do not forbid access the other side and asks only value work done.

Thus be seen which position of the GL, meaning to see if the other party accepts discussion, being dissatisfied with the carrying out of repairs, their value and how they were made, and without his consent.

The mediation procedure the parties will determine how to recover the expenses incurred and how they will share the future costs arising from the implementation by such work or any other work caused by common management of the property, for such conflicts to not occur, and the relationship of the parties to be kept within reasonable limits.

4. Conclusions

Disorder of possession is an offense under the law, which serves to stop the property owner to use his property or deprive the owner of his property by occupying it without law and without release it at his express request.

Usually the most frequent conflicts are related to the noise of neighbors and replacing/upgrading the entrance door to the property and dividing the input keys owners who do not want to contribute to the common expenses.

If most owners decide these repairs and allow access for others owners, without providing a key without paying what is everyone of the expenses incurred, then you can not talk of a crime and one of the best ways is to use mediation a confidential method that does not involve high costs or long term, which is operated with a flexible procedure without formalities. The mediator is prepared to provide all those involved can communicate again to find the solution that will please everyone and can be applied subsequently achieving a lasting peace that all enjoy.

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