

The Municipal Court of Gllogovc/Glogovac, as the civil court in first instance with EULEX judge Johanna Schokkenbroek, in the dispute between the claimant HG from Obiliqi, represented by the lawyer Sadije Mjekiqi and the respondent MG, represented by the Municipal Public Attorney Hakif Hasi in the case for compensation renders the following

J u d g m e n t

1 The statement of the claim of the claimant HG from Obiliqi for compensation for the annulment of the right for permanent use of the immovable property at an amount specified by a court expert is hereby REJECTED.

2 The statement of claim of the claimant for the compensation of the destroyed shop, is hereby PARTLY APPROVED and the respondent, the MG is obliged to compensate the material damages caused to the claimant by demolishing his shop in 2007. (the shop at the place called "Ashanajka" in Gllogovc, cadaster number no 726/10 , location number 9, with 301 m2. surface, hereinafter referred to as – the shop) at an amount of € 120.400,-.

3 The statement of the claim of the claimant for compensation for lost profit is hereby REJECTED as ungrounded.

- 1. The statement of claim for calculating interest as per the bank deposits for savings in Kosovo banks is hereby approved for the amount stipulated in point 2 of this enacting clause, calculated from 4.1.2005 until the fulfillment of this judgment.**
- 2. The statement of claim for compensation of procedural costs is hereby approved at an amount of € 270.**

Reasoning:

1. General background

In 1992/1993 the MG offered the opportunity to individuals to obtain plots of land for the construction of business premises on the main street of Glllogovc/Glogovac. Approximately 60 plots were allocated to individuals in the following years. Some plots were issued for permanent use. Other plots were issued for temporary use. The plots are issued with the obligation to build business premises. Prior permission of the MG for the construction was required. Premises were constructed on most of the issued plots and were given business permits after a construction inspection by the Municipality.

After the war (in September 1999) the MG decided to clear the plots and ordered all individual owners of premises to demolish their premises and to evacuate the plot. Regarding the permanent contracts for use the Municipal Court of Glllogovc/Glogovac in 2005 decided to terminate the contracts for permanent use and ordered to evacuate the plots.

In 2005 the MG demolished all premises on plots given for temporarily use (on 1 and 2 March) all plots were evacuated. Same applies for some premises on plots given for permanent use: they were demolished in 2005 or on a later date.

Earlier decisions of the MG to demolish these premises were suspended by the UNMIK Municipal Administrator (September 1999) as well as the Special Representative of the Secretary General of the United Nations in Kosovo (7 May 2001) or postponed due to a request of the Ombudsperson of Kosovo.

After the demolition in March 2005 and 2007 many owners of the demolished premises filed claims before the Municipal Court of Glllogovc/Glogovac against the MG for compensation.

Court proceedings (appeals and retrials) regarding the claims followed and lasted for many years.

At the request of initially 19 claimants/shop owners Eulex decided to take over these 19 cases (claims for compensation) by decision dated 8 December 2009(17) and dated 25 June 2010 (2). In a decision of the President of the Assembly of Eulex judges dated 27 February 2012 it was decided to take over another 5 cases.

At least two owners of the premises with a contract for permanent use of their plot received compensation as a result of a decision of the Municipal Court of Glllogovc/Glogovac in 2007 (in second instance confirmed by the District Court of Pristina in 2008).

2. The claim

HG claimed:

- 1- Compensation for the annulment of the right for permanent use of the immovable property at an amount specified by a court expert;
- 2- Compensation for the destroyed shop nr. 9 in "Skenderbeu" square - one floor and attics, with a total surface 301 m², an amount of € 79.665, with an interest pursuant to the law from the day when the shop was destroyed (from 24.07.2007);
- 3 Compensation for lost profit from 04.01.2005 until the final payment;
- 4 Interest on the claimed amounts pursuant to the law; and
5. Compensation for procedural expenses pursuant to the final calculation made by the court, with the interest pursuant to the law.

Claimant ground his claim on the fact that the MG demolished the property of the late HG (the son of claimant HG).

MG takes the position that it was fully entitled to clear the plot (including demolishing the shop) and did not violate any Law, since the late HG was not the owner of the plot, but it was given to him for temporary use in accordance with article 14 of the Law on Construction Land (Official Gazette of SAPK, nr. 14/80 and 42/86). According to the respondent, the shop was destroyed pursuant to an administrative procedure and, therefore the dispute should be resolved in an administrative procedure and not in a civil dispute, which makes the Municipal Court incompetent. In addition, the respondent opposes the claim on the grounds that the claimant do not have the active legal legitimacy, since the plot was given to HG (the late son of the claimant) and not to the claimant and the inheritance procedure is not finalized at the moment of the submission of the claim. The respondent requested compensation of procedural costs at an amount of 202 Euro.

3. Procedural History

The claim was filed on 25.02.2008 by HG. The claim was extended on 02.06.2009 by including RG and SHG as claimants.

On 05.12.2008 the Municipal Court of Glllogvc stopped the procedure for 180 days in order to inform the Ministry of Justice and the Ministry of Economy and Finance about the ongoing dispute as required by articles 67 and 68 of the Law on Financial Management and Accountability.

EULEX took over the case on 27.02.2012. The main hearing held on 30.03.2012 was postponed due to the absence of the respondent. In the main hearing held on 24.7.2012, the claimants provided the inheritance ruling pursuant to which HG is the inheritor of the late HG. Consequently, claimants RG and SHG withdrew their claims during the main hearing held on 24.7.2012.

4. The Facts

The Court refers to the administrated evidence as registered in the minutes of the Court hearings.

The following facts in this case are established or anyhow undisputed:

In 1993 and the MG issued for permanent use a plot of land to HG referred to as Asanajka, cadaster parcel no 726/10 in MG, location number 9, with a surface area of 140 m². HG was allotted the plot of development land under the obligation to construct a building (shop) on the said plot. The shop to be constructed should meet the construction conditions set by the MG and prior permission for the construction was required. The MG issued a permit for a building of a permanent nature on 22.2.1994.

The court refers to the administered evidence submitted by the parties:

- The decision of the MG dated 2.7.1993;
- The contract dated 2.7.1993 conclude between MG and HG;
- The decision of the MG dated 22.2.1994 to grant permission to construct a business facility;

The business facility a two floor shop) was constructed and used for commercial purposes during several years. The shops within the premises were rent out.

On 3.3.2005 the MG took decisions by which it annulled the decision allocating the plot to the HG and decided to execute this decision.

In 2007 the MG demolished the premises of the late HG.

HG died in 1999 during the war. In the certificate of inheritance issued by the Municipal Court of Pristina dated 29.6.2012 it is established that claimant HG, father of the late HG, is entitled to the inheritance of the late HG.

At least two owners of premises with a contract for permanent use of their plot received compensation as a result of a decision of the Municipal Court of Glogovac/Glogovac dated 16 March 2007 (C.nr 78/05) and 21 September 2007 (C.nr 95/05). The MG appealed both the decisions. The District Court of Pristina confirmed these decisions by decisions dated 30 April 2008 (AC.nr 445/2007) and 15 June 2009 (AC.937/2007). In the first mentioned case the shop owner received a compensation of € 282 per m² and the other shop owner received € 540,82 m².

Procedural issues raised by the parties

Submissions:

Incompetence of the court

During the preliminary hearing the respondent filed a submission. The MG objected the competence of the Court and requested the Court to dismiss the claim based on the incompetence of the Court.

The court decided to dismiss this submission and refers to the Ruling issued during the Preparatory hearing which is included in the minutes of the preparatory hearing.

Request for expertise

During the preliminary hearing the claimants filed a submission to assign an expert. The Court refers to the Ruling issued during the Preparatory hearing which is included in the minutes of the preparatory hearing. During the main hearing the (remaining) claimant filed once more a submission to assign an expert for (1) assessment of the value of the parcel, (2) the value of the premises as well as an assessment (3) for the compensation for the lost profit. This submission is rejected on the ground that no expertise is needed (1 and 3) and on the ground that an expert can not be of any use since no remains are left from the former building (2).

Lacking of legitimacy of the claimant

The respondent contested the active legitimacy of claimant on the date this claim was submitted (25.2.2008). The Court refers to article 5.3 of the Law on Inheritance of Kosovo. The right to inheritance is acquired upon the death moment of the decedent. HG died in 1999. The Courts concludes that the claimant has the legitimacy to submit the claim on 25.2.2008. The Certificate of Inheritance issued on 29.6.2012 is only the confirmation of claimant being the heir of HG 's inheritance.

6 Legal assessments on the merits

Claim 1 (Compensation for the annulment of the right for permanent use of the immovable property at an amount specified by a court expert);

Claimant grounded his claim on the fact that the MG violated the Law by demolishing his property.

This part of the claim is related to the decision of the MG to terminate the contract for permanent use of the plot. The decision of the MG to discontinue the right to use of the plot has been taken in an administrative procedure and, therefore, should have been challenged pursuant to the rules of administrative procedure and before the competent organs to act in this procedure. This court is not competent to decide about the legality of the said administrative act. Consequently, this court is incompetent to decide related to the claim for allocation of a similar plot, as this issue is not within the jurisdiction of the Municipal Court of Glogovac/Glogovac.

Claim 2 (Compensation for the destroyed shop)

This claim and collateral claims are about compensation of damaged (demolished) property.

It is undisputed that the MG obliged the late HG to make an investment (meaning to construct premises on the plot).

It is undisputed that the late HG constructed a permanent facility and was the owner of the facility (shop) constructed on the said plot.

It is disputed that the use of the plot was of a permanent nature. From the submitted original documents (decision of MG dated 2.7 1993 and the contract concluded between parties on 2.7.1993) the Court concludes that the contract for use is of a permanent nature since this is explicitly stated in the contract.

From the submitted documents it can be concluded that claimant was granted permission to build premises of a permanent nature on 22.2.1994.

At that time (February/March 2005) the regulation on self – government of municipalities in Kosovo (UNMIK regulation 2000/45) was in force.

This regulation contains a chapter “Execution of Municipal Affairs”(chapter 5 section 33).

This chapter contains the following quoted clause:

“ Principle of Legality

Law and justice shall bind the administration of the municipality, and in particular the human rights and freedoms contained in the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto shall be observed.”

Protocol nr 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms reads as follows:

Article 1

Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

While executing such power for the purpose of the general interest as mentioned above the state or any administrative body being part of the State (like in this case the MG) is bound to law and justice. (Section 33 of the regulation on self – government of municipalities in Kosovo / UNMIK regulation 2000/45).

Even when the MG executed its power to have the plots cleared on a proper legal basis the MG has the obligation to compensate the shop owners for the loss of their investment based on the general principles of justice. This obligation is relevant particularly in this situation where it is undisputed that the MG obliged the user of the plot to construct a shop on the plot.

Therefore the demolition of the shop in 2007 by the MG is a clear violation of the property rights of claimants for the premises belonging to them and should therefore be compensated.

The damage and the compensation:

The demolition took place in 2007. Meaning more than five years ago. No remains of the former shops are left. By now it is not possible anymore to establish the exact amount of damage caused by the demolition. So an expert cannot be of any help to establish the damage and an appropriate compensation. The loss of evidence regarding the damage is a direct result from the total demolishment of the shops. These circumstances are entirely at the risk and expense of the MG. The amount of compensation will be based on the total surface to an amount of € 400,- per m². The Court approves the claim for the destroyed shop to the amount of € 120.400(301 x € 400,-) The amount of compensation is based on general principles of fairness and reasonability. The Court takes into account that contracts of permanent use are subject to selling to a third parties and the common practice at that time of the Municipalities (tasked with the management of socially owned property) who usually used to accept a subsequent counterpart regarding the contract for permanent use. The Court takes into account as well the fact that the premises were of a permanent nature. The Court also takes into account the amounts of compensation granted in other cases regarding the demolished area. Due to the permanent nature of both the contract and the premises there is no justification to distinguish between ground floor and attic/second floor.

Claim 3 (compensation for lost profits)

The issue of the legality of the termination of the contract is contested by claimants in an administrative procedure. Since the issue of the legality of the termination of contracts depends on a decision in

administrative procedure/dispute, this court is incompetent to decide about this claim. This Court cannot establish a liability for damage resulting from the finalizing of the commercial activities in the demolished shops and this claim is, therefore rejected as ungrounded.

7 Procedural costs

Although the statement of the claim has been approved only partially, the court has decided in accordance with Article 452.3 of the Law on Contested Procedure that the respondent will bear all procedural expenses. This has been decided because of the fact that the activities of the respondent gave rise to the dispute. This dispute could have been avoided in the event that the respondent would have shown a will to reach an agreement with the claimants for compensation of damages. The position of the respondent as a public authority should be considered as an additional obligation to reconcile with the citizens and to pay attention to their legitimate property rights. The court did not notice any kind of such a will on the side of the respondent. Therefore, the court decided that the full amount of procedural costs should be reimbursed to the claimant by the respondent.

The amount of the compensation for procedural costs has been established in accordance with the regulation of the Chamber of Lawyers (2007) . This results in € 60 per attended session and € 60 for preparing the claim. The session postponed on 30th March 2012 has been calculated at the rate of 50% of the compensation for an attended session. Including the takeover hearing for this case, there were in total 3 sessions a € 60, equaling € 180, one postponed session € 30, totaling the expenses to € 270, together with the claim.

Municipal Court in Glogovac/Glogovac,
C.No 77/08, dated 2012

***EULEX* judge**
Johanna Schokkenbroek

8 Legal remedy

Against this judgment, the parties may file an appeal to the District Court of Prishtina through this court, within fifteen (15) days after the receipt of this judgment.

Drafted in English as authorized language