C.No 159/07

The Municipal Court of Gllogovc/Glogovac, as the civil court in first instance with EULEX judge Johanna Schokkenbroek, in the dispute between the claimant HJ from Skenderaj 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 HJ from Skenderaj for allocation of a similar plot with a surface of 0.00,48 ha for a business shop is hereby rejected as ungrounded.**
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 on 1st and 2nd of March 2005 (the shop at the place called "Ashanajka" in Gllogovc, cadaster number 763, location number 42, with 24 m2 surface, hereinafter referred to as – the shop) at an amount of € 9.600,-.**
3. **The statement of the claim of the claimant for compensation for lost profit is hereby REJECTED as ungrounded.**
4. **The statement of claim for compensation of immaterial damages is hereby PARTLY APPROVED and the respondent is obliged to compensate the immaterial damage caused to the claimant at an amount of € 250. The claim for interest is REJECTED.**
5. **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 1 March 2005 until the fulfillment of this judgment.**
6. **The statement of claim for compensation of procedural costs is hereby approved at an amount of € 430,-.**

The respondent, the MG is ordered to pay to the claimant HJ the above mentioned due amounts, as well as € 50 paid by HJ as court tax within 15 days after this judgment becomes final. The respondent is hereby warned that in the event it fails to comply with this judgment, the judgment will be forcibly executed.

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 Gllogovc/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 Gllogovc/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 Gllogovc/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 Gllogovc/Glogovac in 2007 (in second instance confirmed by the District Court of Pristina in 2008).

2. The claim

In a submission dated 16.03.2012, HJ adjusted his original claim and claimed:

1. Allocation of a similar plot with a surface of 0.00,48 ha for a business shop;
2. Compensation for the destroyed business facility at an amount of 48.000 Euro (48 m2 x 1000 Euro = 48.000 Euro);
3. Compensation for the lost profit at an amount of 600 Euro per month, from 1st of March 2005 until the day of adjudication of this case;
4. Compensation for moral sufferings (immaterial damage) at an amount of 7.500 Euro;
5. Interest as per the bank deposits for savings of Kosovo banks for the amounts stipulated in points 2, 3 and 4 of the claim; and
6. Compensation of procedural costs as assessed by the court.

Claimant grounds his claim on the fact that the MG violated the Law on Obligations (art 154 and 158) by demolishing his property.

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 claimant 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. The respondent requested compensation of procedural costs at an amount of 488 Euro.

3. Procedural History

The claim was filed on 22.03.2005. The Municipal Court of Gllogovc decided on 28.04.2006 and rejected the claim (C.nr. 39/05). Pursuant to the appeal of the claimant, on 03.04.2007, the District Court of Prishtina quashed the judgment of the Municipal Court of Gllogovc and sent the case back for retrial (Ac.nr. 645/2006).

On 03.12.2008 the Municipal Court of Gllogovc 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 and the main hearing was held on 28.03.2012.

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 claimant referred to as Asanajka, cadaster parcel no 763 in MG with a surface area of 24 m2. Claimant 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. Claimant submitted a request for a building permit in 1997. The MG issued a permit for a building of a temporarily nature on 15.5.1997.
The court refers to the administered evidence submitted by the parties:
-The decision of the MG (Department of Urban Planning, Housing, Communal Infrastructure and Property) dated 28.9.1993;
-The contract dated 29.9.1993;
-The decision of the MG dated 15.5.1997 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.

On 28.1.2005 the MG took decisions by which it annulled the decision allocating the plot to the claimant .

In March 2005 the MG demolished claimants premises.

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 MG 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.

5 Procedural issues raised by the parties

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.

6 Legal assessment on the merits

Claim 1 (allocation of similar plot)

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

This 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 Gllogovc/Glogovac.

Claim 2 (compensation for the damaged property)

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

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

It is undisputed that the claimant constructed a temporary 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 28.9. 1993 and the contract concluded between parties on 29.9. 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 temporarily nature on 15.5.1997. Regarding the not contested statement of the M G this restriction (premises with temporarily nature instead of – originally- a permanent nature) has to do with the fact that claimant did not build the premises in the period 1993 till 1997. No appeal to this restriction is mentioned by any of the parties. Therefor the Court concludes that claimant was granted in 1997 permission by the MG to build premises with a temporarily nature.

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 February/March 2005 by the MG is a clear violation of the property rights of claimant for the premises belonging to him and should therefore be compensated.

The damage and the compensation:

The demolition took place in 2005. Meaning more than seven 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 M. The amount of compensation will be based on the total surface to an amount of € 200,- per m2. The Court approves the claim for the destroyed shop to the amount of €9.600,- (48 x**€** 200,).

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 temporary 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 the contract 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 not contested by claimant 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. 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.

Claim 4 (compensation for psychological suffering /immaterial damage)

It is obvious that this event causes psychological suffering /immaterial damage to the claimant. From its nature this kind of damage cannot be compensated by means of money, neither the damage can be precisely established. Therefore, the court approves a symbolic compensation of an amount of € 250,-. There is no legal ground to approve the claimed interest since the amount for compensation is set as per today.

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. For procedural activities of lawyers representing the claimant, the costs have been calculated as follows: Lawyer Bekim Veliqi represented the claimant in one session (60 Euro) and in one postponed session (30 Euro), filed two submissions (50 Euro per submission, or 100 Euro in total) and filed an appeal (120 Euro). Subtotal costs are calculated to amount 310 Euro. Lawyers Fadil Hoxha and Veton Rrecaj represented the claimant in one session each (60 Euro per session, together 120 Euro). Therefore, the total amount of procedural costs amounts 430 Euro.

Municipal Court in Gllogovc/Glogovac,
C.No 159/07, dated 01.08.2012

***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