

The Municipal Court of Glogovac/Glogovac, as the civil court in first instance with EULEX judge Johanna Schokkenbroek, in the dispute between the claimant Shaban Elshani from Glogovac/Glogovac, represented by the lawyer Feriz Gervalla and the respondent Municipality of Glogovac/Glogovac, represented by the Municipal Public Attorney Hakif Hasi in the case for compensation of damages renders the following

J u d g m e n t

1. The statement of claim of the claimant Shaban Elshani from Glogovac for the compensation of the destroyed shop, IS hereby REJECTED as ungrounded.
2. The statement of claim of the claimant for the compensation of destroyed inventory in the shop IS hereby PARTLY APPROVED and the respondent is obliged to compensate the material damages caused to the inventory of the claimant by demolishing the shop used by the claimant on 1st and 2nd of March 2005 at an amount of € 1500, together with the interest which is applied in accordance with the bank deposits for savings for over one year time, counted from the date 15 April 2005, when the lawsuit has been filed until the final payment.
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 assignment of an equal plot for business premises is hereby REJECTED as ungrounded.

The respondent, the Municipality of Glogovac/Glogovac is ordered to pay to the claimant Shaban Elshani the amounts from items, 2 and 4 above, the amount of € 1004 for reimbursement of procedural costs, as well as € 50 as reimbursement for paid court tax within 15 days after this judgment becomes final.

Reasoning:

1. General background

In 1992 the Municipality of Glogovac/Glogovac offered the opportunity to individuals to obtain plots of land for the construction of business premises on the main street of Glogovac/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 Municipality of Glllogovc/Glogovac 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 Municipality of Glllogovc/Glogovac decided to clear the plots and ordered all individual owners of premises to demolish their premises and to evacuate the plot.

The administrative procedures related to this decision of the Municipality of Glllogovc/Glogovac lasted until 2005, when the Supreme Court in an administrative dispute on 21 March 2005 decided to quash the administrative decisions and return the issue back to the administrative procedure.

However, before the decision of the Supreme Court was made, the Municipality issued on 15 January 2005 a decision to evacuate the plots.

On 1 and 2 March 2005 the Municipality of Glllogovc/Glogovac demolished all premises involved and all plots were evacuated.

Earlier decisions of the Municipality of Glllogovc/Glogovac 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.

The administrative proceedings regarding the orders of the Municipality of Glllogovc/Glogovac to clear the premises were not continued after the demolition in March 2005. At that time, since the premises were already destroyed, there was also no object for any administrative procedure.

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

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

At the request of 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).

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 second instance confirmed by the District Court of Pristina).

2. The claim

Claimant claimed:

- 1- compensation for the destroyed business premises at an amount of € 61.864,

- (€ 950 per m2, on the basis of the total surface of the shop, 65,12 m2 including the attics);
- 2 - compensation for the lost inventory at an amount of € 23.760;
- 3 - compensation for lost profit at an amount of € 600,- per month since 1 March 2005;
- 4- compensation for psychological suffering /immaterial damage at an amount of € 7.000;
- 5- assignment by the respondent of an equal plot for business premises;
- 6 - interest on the claimed amounts under 1, 2, 3 and 4 calculated on the interest for saving deposits in Kosovo banks.

Claimant grounds his claim on the fact that the Municipality of Glllogovc/Glogovac violated the Law on Obligations (art 154) by demolishing his property. Claimant request for compensation of procedural expenses at an amount of € 1004,-.

Municipality of Glllogovc/Glogovac takes the position that it was fully entitled to clear the plot (including demolishing the shop) and did not violate any Law, since the contract for the plot (signed with Fadil Dervishi) foresaw that the Municipality may request the owners to remove their shops, if requested by the Municipality. The respondent requested the compensation of procedural costs (€ 911,-).

3. Procedural History

The claim was submitted before the Municipal Court of Glllogovc on 15 April 2005. The Municipal Court of Glllogovc decided on 21 September 2006 and rejected the claim (C.nr. 67/2005). On 20 October 2006, the claimant submitted an appeal against this decision before the District Court of Prishtina. The District Court of Prishtina decided on 9 June 2008 and quashed the decision of the Municipal Court of Glllogovc and returned the case back for retrial (Ac.nr. 953/2006). The case was registered in the Municipal Court of Glllogovc with the present register number C.nr. 179/08.

On 5 December 2008, the Municipal Court of Glllogovc stopped the procedure in order to inform the Ministry of Justice and the Ministry of Economy and Finance as required by articles 67 and 68 of the Law on Financial Management and Accountability.

On 25 June 2009, the claimant requested from EULEX to take over the case.

On 8 December 2009, EULEX took over the case for retrial. In the retrial, the preparatory hearing and the main hearing were held as described in the minutes of these hearings.

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 1996 the Municipality of Gllgovc/Glogovac issued to Fadil Dervishi for use a plot of land referred to as Asanajka, cadaster parcel no 765/7 in Municipality of Gllgovc/Glogovac with a surface area of 32,56 m². Since both parties lost possession of the original contract it remains uncertain whether this contract was of permanent (according to claimant) or temporarily use (according to the respondent).

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

- The decision of the Municipality of Gllgovc/Glogovac (Department of Urban Planning, Housing, Communal Infrastructure and Property) dated 23 April 1996;
- The decision of the Committee for the technical quality of the Municipality of Gllgovc/Glogovac dated 23 April 1996 to approve the quality of the construction;

Fadil Dervishi concluded a contract with claimant dated 23 April 1996. This contract is about granting the use of the premises built on it (a 2 floors building). The court refers to the contract dated 23 April 1996 administered as evidence.

The business facility was used for commercial purposes by claimant during several years.

On 5 May 2004 and 19 September 2004 the Municipality of Gllgovc/Glogovac took decisions by which it annulled the decision allocating the plot to Fadil Dervishi (and to the other original shop owners).

Fadil Dervishi did not agree with this decision and contested the decision through proceedings of administrative nature (as many other shop owners did). Fadil Dervishi authorized claimant to take care for his interest by proxy dated 15 March 2005.

On 21 March 2005 the Supreme Court decided to quash the decision of the Ministry of Environment and Spatial Planning dated 19 October 2004 and return the case for retrial. This decision of the Supreme Court was the last decision in the administrative proceedings regarding the decision of the Municipality of Gllgovc/Glogovac to clear the plots.

On 1 and 2 March 2005 the Municipality of Gllgovc/Glogovac demolished all premises involved and all plots were cleared. This demolition took place without a prior announcement addressed to the claimant (nor to Fadil Dervishi nor to any of the other shop owners).

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 Gllgovc/Glogovac dated 16 March 2007 (C.nr 78/05) and 21 September 2007 (C.nr 95/05). The Municipality of Gllgovc/Glogovac 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

Submissions:

A) Incompetence of the court

In a submission the Municipality of Glllogovc/Glogovac objected the competence of the Court and requested the Court to dismiss the claim based on the incompetence of the Court. According to the Municipality of Glllogovc/Glogovac the competent authority for administrative disputes is the Supreme Court.

The court is of the opinion that this is a dispute about liability for damages. The said damages are a result of an act of the Municipality of Glllogovc/Glogovac occurred in Glllogovc/Glogovac. According to article 47 of the Law on Contested Procedure the competent Court is the Court in whose territory the damage occurred.

The Court dismissed the objection of the Municipality of Glllogovc/Glogovac as not founded. The Court refers to a similar decision submitted by the Municipality of Glllogovc/Glogovac in an earlier stage of this contest.

B) Incompetence of EULEX

In a submission the Municipality of Glllogovc/Glogovac objected the competence of Eulex since this dispute is not property related.

This court (this Eulex Judge) is of the opinion that this dispute is a property related civil case as meant in art 5.1 c. Law on Jurisdiction, Case Selection and Case allocation of Eulex Judges and Prosecutors in Kosovo.

C) Objection regarding art 394 Law on Contested Procedure

In another submission the Municipality of Glllogovc/Glogovac n made a remark regarding the regularity of the procedure, claiming that the Municipality of Glllogovc/Glogovac should have been given the chance to submit a written reply to the claim, in accordance with the article 394 of the Law on Contested Procedure (LCP). The court has not requested the Municipality of Glllogovc/Glogovac to file a reply to the claim, due to the fact that the article 394 of the LCP requires the Court to request from the respondent a reply to the claim, "within 15 days after the Court received the claim". In the present case, this was obviously not feasible due to the fact that the claim has been submitted to the Court in 2005, when the said procedural provision requiring the reply to the claim was not in force. In addition, since the present case was a retrial and the parties already provided their positions in earlier procedures and from these positions it was not possible to act in accordance with articles 398 or 399 of the LCP, the Court did not see any substantial benefit in requesting the respondent to reply to the claim, 5 years after the claim has been filed and after trials in two instances. Therefore, this objection of the respondent has not been taken into account.

D) Objection regarding the lack of legitimacy of the claimant

In its closing statement, the respondent objected regarding the active legitimacy of the claimant, stating that the claimant is not the owner of the property and the property was not given for use to him and, therefore, the claimant does not have the legitimacy to be a party in this case. However, the object of the trial is not the administrative relation between the parties, nor the property rights of any party, but only about the obligations related to compensation of damages on the shop and its inventory, which was without any doubt under the possession of the claimant. Also, it is uncontested that the claimant paid for the use of the shop, which additionally legitimates the claimant as a party with legal interest, thus as a party with active legitimacy, as required by article 2.4 of the Law on Contested Procedure.

6 Legal assessments on the merits

Claim 1 (compensation for the demolished shop)

This claim is about compensation of a damaged (demolished) property (a shop and its inventory).

It is undisputed that the Municipality of Glogovac/Glogovac assigned the plot of construction land to Fadil Dervishi. Fadil Dervishi constructed the facility and was granted the permission for the use of the plot and was given the approval of the construction as well. In April 1996 he allowed claimant to use the facility. From the contract concluded between Fadil Dervish and claimant it appears that it was never the intention of the parties involved (claimant and Fadil Dervish) to sell the facility (shop) constructed on the said plot to claimant and to make him the owner. Consequently he never became owner of the facility (shop). From the documents submitted by parties claimant cannot be considered as an investor since there is not submitted any evidence that he made (significant) investments in the facility. Therefore his claim for compensation of the demolished shop cannot be approved.

Claim 2 (compensation for the inventory)

It is undisputed that claimant was the owner of the inventory of the shop.

From 1999 the Municipality of Glogovac/Glogovac took several decisions all with the aim to announce Fadil Dervishi (and the other shop owners) to clear the plot.

Fadil Dervishi (as many more shop owners) contested the decisions of Municipality of Glogovac/Glogovac to make him leave the plot (on the ground of the lack of a need of urban planning). These administrative proceedings were never finalized. So it is never established by a final Court decision whether the Municipality of Glogovac/Glogovac was entitled to decide to terminate the contracts for the plot and to decide to clear the plot. However, this Court does not enter into administrative law issues, since this should be decided in an administrative procedure, or in an administrative dispute, which is not under the competence of this court.

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In this claim for compensation of the inventory, property issues are involved as well. Regarding (the protection of) property rights the Court refers to the following legislation.

At that time (1 and 2 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 Municipality of Glllogovc/Glogovac) 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 Municipality of Glllogovc/Glogovac executed its power to have the plots cleared on a proper legal basis (which has never established since the administrative procedures are never finalized) the principle of justice implies that the administrative body should take into consideration the interest of the individuals involved.

The court concludes that the Municipality of Glllogovc/Glogovac while executing its power did not at all take into account the interests of the claimant (as user of the shop).

First of all the Municipality of Glllogovc/Glogovac failed to announce a deadline before the plots should be cleared and also failed to announce the date the Municipality of Glllogovc/Glogovac would clear the plot (demolish the premises) themselves. It is considered by the court that in this particular case there

was no urgency to execute the decision to clear the plot before a specific date (anyhow the Municipality of Glogovac/Glogovac did not reveal any circumstances of this nature and the court could not conclude any of such circumstances from the submitted documents).

The general principles of justice implies also that the administrative body ,while executing the power to clear the plot for the purpose of the general interest should pay efforts to reduce the possible damage to the shop owners and users of the shops (including claimant as representative of the shop owner and user of the shop). In this particular case the Municipality of Glogovac/Glogovac should have informed all shop owners and shop users timely about the deadline the plots should be cleared and should have warned the shop owners and users of the shops that the Municipality of Glogovac/Glogovac would clear the plot themselves in case they fail to do it themselves (by demolishment all premises left).

It is explicitly acknowledged during the main hearing that the Municipality of Glogovac/Glogovac did not announce a (any) timely deadline before the demolition of the shops on 1 and 2 March 2005 took place. It is undisputed that the demolition on 1 and 2 March 2005 was unexpected for the shop owners. From the submitted documents by the parties it is concluded that the Municipality of Glogovac/Glogovac did not send any notification (by means of conclusions, letters , decisions, etc.) after 2002. The court concluded from the submitted report of the Ombudsperson that some of the shop owners were aware of the intention of the Municipality of Glogovac to vacate (meaning demolish) in the near future. However, the court concludes that the Municipality of Glogovac/Glogovac failed to inform the claimant properly and timely about the scheduled day of demolition. With the result that the claimant was deprived from the option to remove his property (the inventory of the shop he used).

Therefore the demolition of the shops on 1 an 2 March 2005 by the Municipality of Glogovac/Glogovac is a clear violation of the property rights of claimant for the inventory belonging to him and he should therefore be compensated.

The demolition took place on 1 and 2 th March 2005. Meaning more than six years ago. No remains of the former shops and its inventory are left. By now it is not possible anymore to establish the exact value of the inventory. So an expert cannot be of any help to establish the damage. The loss of evidence regarding the damage is a direct result from the unexpected total demolishment of the shops. These circumstances are entirely at the risk and expense of the Municipality of Glogovac/Glogovac. The amount of damage is based on general principles of fairness and reasonability.

Since the Municipality of Glogovac/Glogovac did not dispute that the inventory was left in the shop the Court will accept that the inventory is lost or damaged as a result of the demolition activity of the Municipality, from which the claimant suffered material damages. The Court will approve the claim for lost inventory to the amount of € 1.500,-. Since there was no specification about the real value of the inventory, this amount has been established as an approximation of the reasonable furniture of a shop of that size.

Claim 3 (compensation for lost profits)

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The Municipality of Gllgovc/Glogovac and claimant never entered into any relationship in the past regarding the plot of land involved. Consequently there is no legal base for claimant towards the respondent for compensation for not being able to use the plot/shop in the future. This court therefore rejected this claim as ungrounded.

Claim 4 (compensation for psychological suffering /immaterial damage)

It is obvious that the event of demolition causes psychological suffering /immaterial damage to the claimant. For most of shop owners involved it means that they lost their source of income for their living. This applies as well for claimant as user of the shop owned by Fadil Dervishi .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.

Claim 5 (assignment of an equal plot for business premises)

This claim is rejected as ungrounded since the Municipality of Gllgovc/Glogovac in the past never entered into any relationship with claimant regarding the plot of land involved.

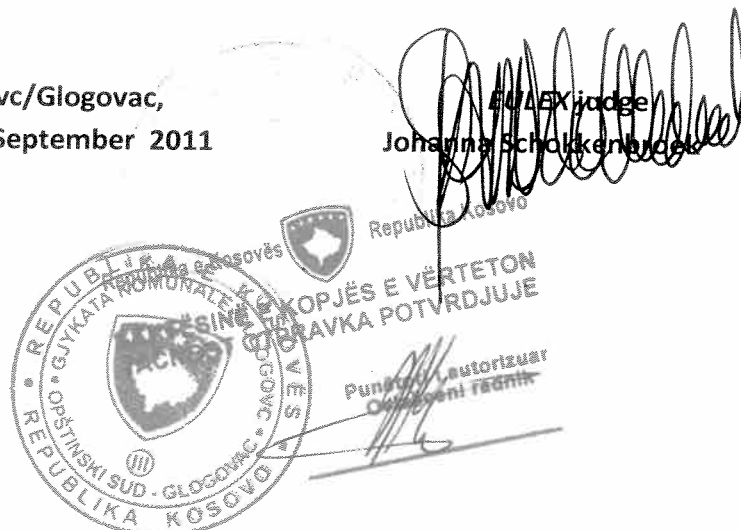
7 Procedural costs

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.

**Municipal Court in Gllgovc/Glogovac,
C.No 179/08, dated 27 September 2011**

**EU JUDGE
Johanna Scholken-Engel**

8 Legal remedy



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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