

The Municipal Court of Glllogovc/Glogovac, as the civil court in first instance with EULEX judge Johanna Schokkenbroek, in the dispute between the claimant Ramiz Isufi from Qikatova e Re of Glllogovc/Glogovac , represented by the lawyer Zenullah Pirraku and the respondent Municipality of Glllogovc/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 Ramiz Isufi from Qikatova e Re of Glllogovc for the compensation of the destroyed shops, IS hereby **PARTLY APPROVED** and the respondent, the Municipality of Glllogovc is obliged to compensate the material damages caused to the claimant by demolishing his shop on 1st and 2nd of March 2005 (a shop at the place called "Ashanajka" in Glllogovc, cadaster number 765 (by the claimant sometimes referred to as number 763), location number 23 and 24, with 21,6 m2 surface, hereinafter referred to as – the shop) at an amount of € 6.480,-, together with the interest which is applied in accordance with the bank deposits for savings for over one year time, counted from the date 24 March 2005, when the lawsuit has been filed until the final payment.
- 2 The statement of claim of the claimant Ramiz Isufi from Qikatova e Re of Glllogovc for the compensation of the damaged shop, IS hereby **PARTLY APPROVED** and the respondent, the Municipality of Glllogovc is obliged to compensate the material damages caused to the claimant by demolishing his shops on 30 March 2001 at an amount of € 500,- - together with the interest which is applied in accordance with the bank deposits for savings for over one year time, counted from the date 24 March 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- 5 The statement of claim for compensation of expenses on purchasing the land for construction is considered as **withdrawn**.

The respondent, the Municipality of Glllogovc/Glogovac is ordered to pay to the claimant Ramiz Isufi the amounts from items 1, 2 and 4 above, the amount of € 1004,- for reimbursement of procedural costs, as well as € 50 for reimbursement for paid court tax within 15 days after this judgment becomes final.

Reasoning:

1. General background

In 1992 the Municipality of Glllogovc/Glogovac 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 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).

C.No 40/05

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

2. The claim

Ramiz Isufi claimed:

- 1- compensation for the destroyed business premises (two shops) at an amount of € 70.000,-;
- 2- compensation for the on 30 march 2001 partly destroyed business premises (two shops) at an amount of € 15.000,-
3. - compensation for lost profit at an amount of € 5.000,-
4. -compensation for psychological suffering /immaterial damage at an amount of € 5.500,-
- 5 -compensation for expenses on purchasing the land for construction at an amount of € 10.000,-

By means of submission dated 14 November 2005 claimant modified his claim and increased his statement of claims with compensation for the destroyed business premises (a shop) at an amount of € 60.000,- (1). During the main hearing (final speech) claimant modified the claimed amount under 1 to the amount of € 70.000,-

During the main hearing (final speech) the claimant modified his claim and lowered the amount for compensation for the on 30 march 2001 partly destroyed business premises (2) to an amount of € 5.000,-;

During the main hearing (final speech) the claimant modified his claim and increased the amount for compensation for lost profit (3) to an amount of € 60.000,-;

During the main hearing (final speech) the claimant modified his claim and increased the amount for compensation for psychological suffering /immaterial damage (4) to an amount of € 15.000,-;

During the main hearing (final speech) the claimant withdrew the claim related to compensation for expenses on purchasing the land for construction (5);

C.No 40/05

Claimant grounds his claim on the fact that the Municipality of Glogovac/Glogovac violated the Law by damaging and demolishing his property. Claimant request for compensation of procedural expenses at an amount of € 2500,-(during the main hearing -final speech- increased to an amount of € 3.000,-.

Municipality of Glogovac/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 signed between the parties 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 (€ 711,-).

3. Procedural History

The claim was submitted before the Municipal Court of Glogovac on 24 March 2005. On 14 November 2005 the Municipal Court of Glogovac decided to stop the procedure pending the administrative procedure before the Municipal Directorate for Urban Planning, or when the court deems the continuation of the procedure as appropriate (C.nr. 40/05).

In this case, the Municipal Court of Glogovac never issued a judgment.

On 26 November 2009, the claimant requested from EULEX to take over the case.

On 25 June 2010, EULEX took over the case for retrial. On 5 May 2010, the procedure was stopped 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.

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 1997 the Municipality of Glogovac/Glogovac issued for temporary use a plot of land to claimant referred to as Asanjka, cadaster parcel no 765, nr 23 and 24 in Municipality of Glogovac/Glogovac with a surface area of 22 m². Claimant was allotted the plot of development land under the obligation to

C.No 40/05

construct a building (shop) on the said plot. If the claimant failed to construct the shop within a year he would lose his right to use the plot. The shop to be constructed should meet the construction conditions set by the Municipality of Gllgovc/Glogovac and prior permission for the construction was required.

It was stated by the Municipality of Gllgovc/Glogovac that this body has the power to order claimant to clear the plot (meaning remove the constructed shop) for reasons of urban use within a deadline set by Municipality of Gllgovc/Glogovac. In case the claimant would not meet the said deadline, the Municipality of Gllgovc/Glogovac could carry out the clearance on the expenses of the claimant.

It was ordered by the Municipality of Gllgovc/Glogovac that the right to use the plot was individual and could not be transferred to a third party or handed over to a third party.

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

-The ruling of the Municipality of Gllgovc/Glogovac (Department of Urban Planning, Housing, Communal Infrastructure and Property) dated 23 May 1997;

-The contract dated 27 May 1997;

-The decision of the Municipality of Gllgovc/Glogovac dated 2 June 1997 to grant permission to construct a business facility;

The business facility (a building consisting of two floors with a separate shop on each floor) was constructed and used for commercial purposes during several years. The shop has a surface of 21.6 m² (6.00 x 3.60 m²)

On 30 March 2001 the Municipality of Gllgovc/Glogovac intended to demolish claimants shop (and the premises of other shop owners). Due to legal intervention of the regional Administrator of Pristina the Municipality of Gllgovc/Glogovac was ordered to suspend the operation of the demolition. Claimant's shops were partly demolished.

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 the claimant (and the other shop owners).

Claimant did not agree with this decision and contested the decision through proceedings of administrative nature (as many other shop owners did).

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 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)

C.No 40/05

and 21 September 2007 (C.nr 95/05). The Municipality of Glllogovc/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,

C.No 40/05

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 modification of the claim

In another submission the Municipality of Glogovac/Glogovac made a remark related to the modification of the claim by the claimant in the stage of the final speech. The court accepts/grants this submission as far as it is related to the increase of the claim. According to art 258 LCP the modification should be made before the beginning of the main hearing.

So the modification of the claim related to the increased amount of claim sub 3 (compensation for lost profit at an amount of originally € 5.000, increased to an amount of € 60.000,-) and 4 (compensation for psychological suffering /immaterial damage at an amount of originally € 5.500,- increased to an amount of € 15.000,-) will be neglected by the Court.

However the modification of the claim related to the claim sub 5 (compensation for expenses on purchasing the land for construction at an amount of € 10.000,) which claim is left out during the final speech will be accepted by the Court since it is possible in all stages of the procedure to (partially) withdraw a claim. The Court shall therefor consider this part of the claim as withdrawn.

6 Legal assessments on the merits

Claim 1 (claim as a result from the demolition in 2005)

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

It is undisputed that the Municipality of Glogovac/Glogovac obliged the claimant to make an investment (meaning to construct a shop on the plot).

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

It is undisputed that the use of the plot was of a temporary nature. The Municipality of Glogovac/Glogovac was entitled to terminate the use of the plot only for reasons of urban planning. It can be concluded from the submitted documents that the Municipality of Glogovac/Glogovac was

C.No 40/05

obliged to allow the claimant to clear the plot and announce a deadline before clearance would be executed by the Municipality of Glllogovc/Glogovac.

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

The claimant (as many more shop owners) contested the decisions of Municipality of Glllogovc/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 Glllogovc/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.

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).

C.No 40/05

Even when the Municipality of Glogovc/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 Municipality of Glogovc/Glogovac 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 Municipality of Glogovc/Glogovac obliged the user of the plot to construct a shop on the plot.

While executing these power for the purpose of the general interest 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 Glogovc/Glogovac while executing its power did not at all take into account the interests of the shop owners involved.

First of all the Municipality of Glogovc/Glogovac failed to announce a deadline before the plots should be cleared and also failed to announce the date the Municipality of Glogovc/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 Glogovc/Glogovac did not reveal any circumstances of this nature and the court could not conclude any of such circumstances from the submitted documents).

Apart from the clause in the contract 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 (claimant). In this particular case the Municipality of Glogovc/Glogovac should have informed all shop owners timely about the deadline the plots should be cleared and should have warned the shop owners that the Municipality of Glogovc/Glogovac would clear the plot themselves in case they fail to do it themselves (by demolition all premises left).

It is explicitly acknowledged during the main hearing that the Municipality of Glogovc/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 Glogovc/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 Glogovc to vacate (meaning demolish) in the near future. However, the court concludes that the Municipality of Glogovc/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.

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

The damage and the compensation:

C.No 40/05

The demolition took place on 1 and 2 th March 2005. Meaning more than six 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. 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. The amount of compensation will be based on m2 ground floor (€200) and m2 attic (€ 100). The Court approves the claim for the destroyed shop to the amount of € 6.480,- (21.6 m2).

For this, the court calculated the approximate construction costs at the time of the construction and not the commercial value of the shop, because according to the applicable conditions between the parties, the user did not have the right to sell the premises.

Claim 2 (claim as a result from the partly demolition in 2001)

This claim is about compensation of damage caused by the Municipality of Glogovac/Glogovac to the same shop. However this claim is related to the events on 30 March 2001. The court refers to the reasoning on claim 1 (except for the two last paragraphs). The Municipality of Glogovac/Glogovac did not contest that she caused the damage. The damaged was caused more than 10 years ago. According to the stands of the claimant he did repair the damage. By now it is not possible anymore to establish the exact amount of damage caused by Municipality of Glogovac/Glogovac. So an expert cannot be of any help to establish the damage. The claimant did not present any specification, document or picture of the caused damage. However it is evident (and not contested) that claimant did suffer damage. The Court approves the claim for the damaged shop to a symbolic amount of € 500,-,-

Claim 3 (compensation for lost profits)

The administrative proceedings regarding the orders of the Municipality of Glogovac/Glogovac to clear the premises were not continued after the demolition in March 2005. This is the result of lack of initiative of both parties involved.

Since the issue of the legality of the termination of contracts depends on a decision in administrative procedure/dispute and 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. For most of shop owners involved it means that they lost their source of income for their living. 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 (Compensation for expenses on purchasing the land for construction)

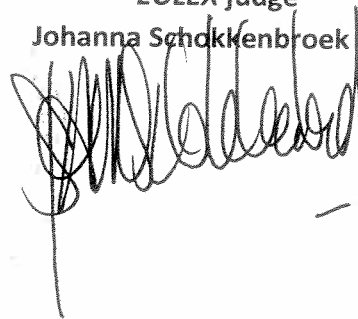
With reference to the reasoning under 5 sub F the Courts considers this claim as withdrawn. So there is no need to decide of this claim.

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 ex officio that the an amount of € 1004,- procedural costs should be reimbursed to the claimant by the respondent.

Municipal Court in Glogovac/Glogovac,
C.No 40/05, dated 27 September 2011

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

