

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

Judgment

1. The statement of claim of the claimant Mevlude Zymberi from Gllgovc for the compensation of the destroyed shop, IS hereby **PARTLY APPROVED** and the respondent, the Municipality of Gllgovc is obliged to compensate the material damages caused to the claimant by demolishing her shop on 1st and 2nd of March 2005 (the shop at the place called "Ashanajka" in Gllgovc, cadaster number 764, location number 30, with 48 m2 surface, hereinafter referred to as – the shop) at an amount of € 7.200, 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.
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 her shop 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 Gllgovc/Glogovac is ordered to pay to the claimant Mevlude Zymberi the amounts from items 1, 2 and 4 above, the amount of € € 1004 for reimbursement of procedural costs, as well as € 50 as reimbursement for the paid court tax within 15 days after this judgment becomes final.

Reasoning:

1. General background

In 1992 the Municipality of Gllgovc/Glogovac offered the opportunity to individuals to obtain plots of land for the construction of business premises on the main street of Gllgovc/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 Gllgovc/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 Gllgovc/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 Gllgovc/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 Gllgovc/Glogovac demolished all premises involved and all plots were evacuated.

Earlier decisions of the Municipality of Gllgovc/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 Gllgovc/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 Gllgovc/Glogovac against the Municipality of Gllgovc/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 Gllgovc/Glogovac (in second instance confirmed by the District Court of Pristina).

2. The claim

Mevlude Zymberi claimed:

1. compensation for the destroyed business premises at an amount of € 45.600, (€ 950 per square meter, on the basis of the total surface of the shop, 48 m2 including the attics);
2. compensation for the lost inventory at an amount of € 24.900;
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 her claim on the fact that the Municipality of Glllogvc/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 Glllogvc/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 Glllogvc on 15 April 2005. On 14 November 2005 the Municipal Court of Glllogvc 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. 61/05). On 22 November 2006, the claimant submitted an appeal against this decision before the District Court of Prishtina. The District Court of Prishtina quashed this decision of the Municipal Court of Glllogvc on 3 July 2007 and returned the case back for retrial (Ac.nr. 949/2005).

On 19 September 2008, the Municipal Court of Glllogvc 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.

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

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 1992 the Municipality of Gllgovc/Glogovac issued for temporary use a plot of land to claimant referred to as Asanajka, cadaster parcel no 764, nr 30 in Municipality of Gllgovc/Glogovac 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. If the claimant failed to construct the shop within a year he would lose her 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 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 20 April 1992;
- The contract dated 25 March 1992;
- The contract dated 10 October 1995;
- The decision of the Municipality of Gllgovc/Glogovac dated 26 June 1997 on the urban conditions for constructing the removable shop.

The business facility of two floors was constructed and used for commercial purposes 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 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).

From the submitted decisions this Court concludes that the administrative procedures related to the decision of the Municipality of Gllgovc/Glogovac to annul the decision allocating the plot to the claimant are never finalized.

On 1 and 2 March 2005 the Municipality of Glllogovc/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 Glllogovc/Glogovac dated 16 March 2007 (C.nr 78/05) 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 the Law on Financial Management and Accountability

In another submission the Municipality of Glllogovc/Glogovac objected regarding the obligation of the Court to inform the Ministry of Economy and Finance with the ongoing procedure in accordance with the Law on Financial Management and Accountability and stop the procedure for a period of 6 months,

as required by the same Law. This court notes hereby that the provision of the Law on Financial management and Accountability has been fully applied by the court. The court has informed the Ministry on 5 December 2008 and has stopped the procedure as required by the same Law. Therefore, the court considers this objection of the respondent as unfounded.

D) Objection regarding art 394 Law on Contested Procedure

In another submission the Municipality of Glogovac made a remark regarding the regularity of the procedure, claiming that the Municipality of 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 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.

6 Legal assessments on the merits

Claim 1 and 2

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

It is undisputed that the Municipality of 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 and its inventory.

It is undisputed that the use of the plot was of a temporary nature. The Municipality of 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 was obliged to allow the claimant to clear the plot and announce a deadline before clearance would be executed by the Municipality of Glogovac.

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

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

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 Municipality of Glllogovc/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

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situation where it is undisputed that the Municipality of 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 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 Glogovac failed to announce a deadline before the plots should be cleared and also failed to announce the date the Municipality of 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 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 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 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 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 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 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 her property and inventory.

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

The damage and the compensation:

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. Same applies for the 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 demolition of the shops. These circumstances are entirely at the risk and expense of the Municipality of 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 attics (€100). The Court approves the claim for the destroyed shop to the amount of € 7.200,-.

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. The compensation for the lost inventory is not specified by the claimant, although explicitly requested by the Court (ruling dated 27 august 2010). Since the Municipality of 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)

The administrative proceedings regarding the orders of the Municipality of 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 (assignment of an equal plot for business premises)

This claim is rejected as ungrounded since the court cannot establish from the submitted document or the law any obligation for the Municipality of Glogovac to offer the (former) shop owner another equal plot of land (for business premises). In addition, the issue of the assignment of a new plot would depend from the legality of the decision to terminate the contract. Again, 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 an obligation of the

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respondent to assign new premises to the claimant as replacement for the plots given in temporary use and vacated in 2005.

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 Glogovac/Glogovac,
C.No 61/05, dated dated 27 September 2011

EVLEX 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

