

C.No 283/07

The Municipal Court of Glogovac/Glogovac, as the civil court in first instance with EULEX judge Johanna Schokkenbroek, in the dispute between the claimants IV from Pristina , represented by the lawyer Gani Tigani 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 claim of the claimant IV 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 24 July 2005(the shop at the place called "Ashanajka" in Glogovac, cadaster number 726/7, location number 6, with 110 m2 surface, hereinafter referred to as – the shop) at an amount of € 88.000,- The statement of the claim of the claimant for compensation for lost profit is hereby REJECTED as ungrounded**
- 2. The statement of claim for compensation of procedural costs is hereby approved at an amount of 750 Euro.**

The respondent, the MG is ordered to pay to the claimant IV the above mentioned due amounts, as well as € 30 paid by the claimant 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 Glllogovc/Glogovac. Approximately 60 plots were allocated to individuals in the following years. Some plots were issued for permanent use. Other plots were issued for temporary use. The plots are issued with the obligation to build business premises. Prior permission of the MG for the construction was required. Premises were constructed on most of the issued plots and were given business permits after a construction inspection by the Municipality.

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

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

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

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

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

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

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

2. The claim

IV claimed:

-1 compensation for the destroyed shop at an amount of 220.000 Euro, or the return to the original state by obliging the respondent to build a same building

- 2 and compensation for the lost profit at an amount of 400 Euro per month from 01.04.2005 until the end of dispute,
- 3 as well as the compensation for procedural expenses as per the list of expenses.

Claimant grounds his claim on the fact that the MG violated the Law on Obligations (art 154) by demolishing his property, as well as on the provisions of art. 20 and 21 of the Law on Property Relations and art. 39 of the Law on Construction Land, as well as on the provisions of art. 1 of the European Convention on Human Rights.

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 202 Euro.

3. Procedural History

The claim was filed on 10.10.2007.

On 05.12.2008 the Municipal Court of Glogovc 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 03.04.2012.

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 1994 and the MG issued for permanent use a plot of land to claimants referred to as Asanajka, cadaster parcel no 726/7 in MG with a surface area of 110 m². Claimants were allotted the plot of development land under the obligation to construct a building (shop) on the said plot. The Municipality allowed the construction of the shop in 1998, pursuant to the urban planning. The shop to be constructed should meet the construction conditions set by the MG and prior permission for the construction was required.

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 21.02.1994;
- The decision of the MG dated 27.01.1998 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 01.04.2005 the MG took decisions by which it annulled the decision allocating the plot to the claimant.

On 24 July 2007 the MG demolished claimants premises.

In the then ongoing administrative procedure, the Supreme Court returned the administrative case back to the M (Supreme Court judgment A.530/2005, dated 14.02.2007), which on 01.06.2007, two years after the destruction occurred, again annulled the decision of the M to allocate the plot for permanent use.

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

Procedural issues raised by the parties

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.

Violation of art 394 Law on Contested Procedure

During the preliminary hearing the respondent filed a submission regarding the regularity of the procedure, claiming that the MG should have given the chance to submit a written reply to the claim. 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 assessments on the merits

Claim 1 (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 permanent facility and was the owner of the facility (shop) constructed on the said plot.

It is disputed that the use of the plot was of a permanent nature. From the submitted original documents (decision of MG dated 21.02.1994 and the contract concluded between parties on 4.3.1994 the Court concludes that the contract for use is of a permanent nature since this is explicitly stated in the contract.

From the submitted documents it can be concluded that claimant was granted permission to build premises of a permanent nature on 27.01.1998.

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 claimants for the premises belonging to them and should therefore be compensated.

Claim 1 alternative (return to the original state by obliging the respondent to build a similar building);

This claim is not relevant anymore since the Court decides on the claim for compensation.

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 MG. The amount of compensation will be based on the total surface to an amount of € 400,- per m². The Court approves the claim for the destroyed shop to the amount of € 88.000 (220x€ 400)

The amount of compensation is based on general principles of fairness and reasonability. The Court takes into account that contracts of permanent use are subject to selling to a third parties and the common practice at that time of the Municipalities (tasked with the management of socially owned property) who usually used to accept a subsequent counterpart regarding the contract for permanent use. The Court takes into account as well the fact that the premises were of a permanent nature. The Court also takes into account the amounts of compensation granted in

other cases regarding the demolished area. Due to the permanent nature of both the contract and the premises there is no justification to distinguish between ground floor and attic/second floor)

Claim 2 (compensation for lost profits)

The issue of the legality of the termination of the contract is contested by claimants in an administrative procedure. Since the issue of the legality of the termination of contracts depends on a decision in administrative procedure/dispute, this court is incompetent to decide about this. This Court cannot establish a liability for damage resulting from the finalizing of the commercial activities in the demolished shops and this claim is, therefore rejected as ungrounded.

7 Procedural costs

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

The amount of the compensation for procedural costs has been established in accordance with the request of the lawyer of respondents made in the session of 03.04.2012, where he requested 150 Euro per attended session and 150 Euro for preparing the claim. Including the takeover hearing for this case, there were in total 4 sessions a 150 Euro, equaling 600 Euro, totaling the expenses to 750 Euro, together with the claim.

**Municipal Court in Glogovac/Glogovac,
C.No 283/07, 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