MUNICIPAL COURT OF GLLOGOVC/GLLOGOVAC

C.No.292/2009

THE MUNICIPAL COURT OF GLLOGOVC/GLLOGOVAC, through presiding EULEX judge Verginia Micheva-Ruseva, assisted by court recorder Christine Sengl and international interpreter in Albanian language Arlinda Gjebrea, in the case of the claimant XhH from Gllogovc/Gllogovac, represented by attorney ID against the respondent MG, represented by the public attorney HH, with the participation of the third party HZ from Gllogovc/Gllogovac, on the claims regarding compensation of damages, following a main trial session held on 27.12.2012, renders the following

JUDGMENT

1. The claim of XhH against MG for paying pecuniary compensation for material damages for destroyed business premises on 1-2 March 2005 in Gllogovc/Gllogovac, Skenderbeu street, built in parcel 765/11, in place called Ashanajka, with total surface of 71.40 m2 in two floors, is approved and the MG is obliged to pay to XhH 19 397 Euro compensation for pecuniary damages, together with the interest rate from 01.03.2005.
2. The claim of XhH against MG for paying pecuniary compensation for material damages for destroyed business premises om 1-2 March 2005 in Gllogovc/Gllogovac, Skenderbeu street, built in parcel 765/10, in place called Ashanajka, with total surface of 71.40 m2 in two floors, is PARTIALLY approved and the MG is obliged to pay to XhH 10 290 Euro compensation for pecuniary damages, together with the interest rate from 01.03.2005. The claim for the above claimed amount up to 19 397 Euro is rejected as ungrounded.
3. The claim of XhH against MG for paying pecuniary compensation for profit lost from the two demolished business facilities in the amount of 250 Euor monthly per each or 12 000 Euros total damage calculated for the period 1 March 2005 until now together with the interest over this sum, is rejected as ungrounded.

4. The MG is obliged to pay to XhH 2054 Euro reimbursement of court expenses.
5. The MG is obliged to pay the monetary obligations under points 1, 2 and 4 within 15 days after this judgment becomes final.
6. This judgment is issued following the participation of the third party HZ from Gllogovc/Glogovac in the court proceedings and therefore is binding upon him.

Reasoning

I. Background

In 1992 and the following years the MG granted to individuals plots of land to use temporary or permanently and to build business premises in the center of Gllogovc/Glogovac. More than 60 plots were allocated to different individuals. Most of them followed the obligation and constructed business premises. Different kind of business was run in the facilities; most of them were used as shops and offices of companies. After the war (1999) MG decided to clear the plots and to construct a new square in the center of the town. The owners of the business facilities were ordered to demolish the constructions and to vacate the plots. Some of the owners of the premises appealed these orders, others did not, and third category of owners was not even notified about this obligation. On 1 and 2.03.2005 the MG demolished the business premises.

II. The Claim

The claimant has lodged to the court the following three claims based on his allegations that the respondent had violated the Law on Obligation Relations ('Zakon o obligacionim odnosima' Official gazette of SFRY 29/1978, amendments in nrs. 39/85, 45/89,31/93, art 154, mostly translated into English as the Law on the obligations and torts) by demolishing her property :

(1) Compensation for the destroyed business premises on 1.03.2005 in plot 765/11 with surface of 71.40 m2 at an amount of 19 397 Euro;
(2) Compensation for the destroyed business premises on 1.03.2005 in plot 765/10 with surface of 71.40 m2 at an amount of 19 397 Euro;

(3) Compensation for lost profit for the both mentioned above business premises at an amount of 500 Euro per month since 1 March 2005;

(4) Interest on the claimed amounts under 1, 2 and 3 calculated on the interest for saving deposits in Kosovo banks starting from 1 March 2005.

The claimant states that she was never notified about the decision of the respondent to release the plots and to demolish the shops. She considers her property rights have been violated by the act of the respondent and thus alleges to be entitled to compensation. She states that both premises brought her monthly profit as she collected monthly rent in the amount of 250 Euro per each shop.

Furthermore the claimant requested compensation of procedural expenses at an amount of 3513.93 Euro.

In the final speech on 27.12.2012 the representative of the claimant requested additionally compensation for psychological suffering /immaterial damage at an amount of 7.000 Euro. This claim was not submitted during the proceedings and thus the court can not deal with it.

The respondent objected the claims stating that MG was fully entitled to clear the plots (including demolishing the shops) and did not violate any Law, since the contract signed between the parties foresaw that the owners had to remove their shops, if requested by the respondent. Additionally, the MG considered the buildings constructed after the foreseen deadline of 3 years (art.20 of the Law on construction land) and consequently they have lost their status of permanent building but shall be considered as temporary ones.

III. The Procedural History

The dispute began with a claim lodged to the Municipal Court of Gllogovc/Glogovac on 2.03. 2005. It was once adjudicated by the Municipal court under c.nr. 106/ 2005. Upon an appeal of one of the parties District court of Pristina has dealt with the contest deciding to quash the first instance decision and return the case back for retrial (decision of 20.10.2009 in AC.nr. 441/2007). Back in the Municipal court the contest was registered under C.nr.292/2009. With a decision dated 27.02.2012 of the President of the Assembly of EULEX Judges the case was taken over by EULEX and assigned to a EULEX civil judge. On 29.02.2012 the procedure was suspended as the Ministry of Justice and the Ministry of Economy and Finance were notified about the dispute due to the requirement of Article 67 and 68 of the Law on Financial Management and Accountability (Law 03-L-048). Upon the expiry of the foreseen deadline

the EULEX Judges scheduled a preparatory session on 18.12.2012. Following a main trail session on 27.12.2012 the case was concluded.

IV. Factual and legal assessment

Factual assessment:

In 1993 the MG through a decision dated 09.12.1993 granted the claimant XhH a plot of land for permanent use in a place called Asanajka, "Skenderbeu" street, location nr 765/11, in the Municipality of Gllogovc/Glogovac with a surface area of 34.30 m2 under the obligation to construct a shop on the said plot. On 23.04.1996 it also granted permission for the usage of the building constructed by the claimant on the plot. According to this decision the business facility was in total surface of 34.30m2, two floor building. This shop was used for commercial purposes during several years.

With a decision dated 09.12.1993 the Municipal council of Gllogovc/Glogovac granted to HZ a plot of land for permanent use in a place called Asanajka, "Skenderbeu" street, location nr 765/10, in the Municipality of Gllogovc/Glogovac with a surface area of 34.30 m2 under the obligation to construct a shop on the said plot. On 04.04.1996 it also granted permission for the usage of the building constructed by HZ on the plot. According to this decision the business facility was in total surface of 34.30m2, two floor building.

Parcels 765/11 and 765/10 were neighboring ones. The facilities were constructed by one construction Company hired by the claimant and by HZ together. They were semi-detached.

On 18.02.1995 HZ concluded a transaction contract with the claimant for purchasing the shop in parcel 765/10 for the price of 38 000 DM. This contract was not verified in the court.

The claimant presented a lease contract concluded between her , as leaser and AG from Pristina , as lessee , for renting the two shops in plots 765/10 and 765/11 for the monthly rent of 250 Euros per each shop or 500 Euros totally. The contract was concluded for the period 01.03.2004 until 4.03.2007. It is indicated that the contract entered into force on 01.03.2004. The claimant does not present evidence if the rent was paid (as requested by the Court). The respondent objected the allegation that the two shops were leased to AG. According to HH the two premises were used by BT Company and V Company. This statement is consistent with the photos of the two shops taken just before 1.03.2005, presented by the claimant. On one of the shops there is the logo of BT Company. With a ruling dated 15.02.2005 the MG, temporary prohibited BT company to perform any activity in the facility until the company

obtains work permit for performing business activity. The same decision was issued to V Company. The rulings did not indicate in which business facilities the two companies run their business.

On 26.02.2005 the local radio announced that the business facilities in the square of the town will be demolished by the MG.

The claimant took measures to secure evidence and on 28.02.2005 an expert JT made description, measurement and evaluation of the two shops.

Neither the claimant nor the third party were notified by the respondent about its decision to demolish the two shops.

On 1 and 2.03.2005 the MG demolished the business premises in the center of the town including the two shops in the current case.

On 3.03.2005 the MG issues a decision to annul its previous decision with which the plot 765/11 was allocated to the claimant for permanent use. The claimant was ordered to release the plot within the deadline "which will be determined by the competent authority". This decision was delivered to the claimant on 23.05.2005.

No decision was issued as to the neighboring plot 765/10.

Relevant law

As the legislation applicable in 2005 was quite complicated and had different sources, the Court will devote to the relevant provisions a special chapter of its judgment.

According to the Constitutional Framework for Provisional Self-Government in Kosovo (UNMIK Regulation No 2001/9, 15.05.2001, amended by UNMIK Regulation 2002/9, 03.05.2002, in force until the Constitution of Kosovo was adopted in 2008), Chapter 3

> "3.1 All persons in Kosovo shall enjoy, without discrimination on any ground and in full equality, human rights and fundamental freedoms".
>
> 3.2 The Provisional Institutions of Self-Government shall observe and ensure internationally recognized human rights and fundamental freedoms, including those rights and freedoms set forth in: The Universal Declaration on Human Rights; The European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols; The International Covenant on Civil and Political Rights and the Protocols thereto; The Convention on the Elimination of All Forms of Racial Discrimination; The Convention on the Elimination of All Forms of Discrimination

Against Women; The Convention on the Rights of the Child; The European Charter for Regional or Minority Languages; and The Council of Europe's Framework Convention for the Protection of National Minorities.

3.3 The provisions on rights and freedoms set forth in these instruments shall be directly applicable in Kosovo as part of this Constitutional Framework. "

According to Chapter 9.4.2,

anyone "claiming to have been directly and adversely affected by a decision of the Government or an executive agency under the responsibility of the Government shall have the right to judicial review of the legality of that decision after exhausting all avenues for administrative review".

According to Section 33 of UNMIK Regulation 2000/45 on self-government of municipalities in Kosovo, 11.08.2000,

"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. All administrative actions shall comply with the applicable law".

Section 2.4 provides that

"Each municipality shall have its own legal status, the right to own and manage property, the capacity to sue and be sued in the courts, the right to enter into contracts and the right to engage staff".

Section 35 of the same UNMIK regulation provides:

"35.1 A person may file a complaint about an administrative decision of a municipality if he or she claims that his or her rights have been infringed by the decision. Complaints must be submitted in writing to the Chief Executive Officer or made in person at the office of the Chief Executive Officer within the period of one month from the complainant being notified of the decision.

35.2 The Chief Executive Officer shall re-examine both the legality of the decision and the administrative process by which it was reached. He or she shall give the complainant a reasoned response in writing within one month of the receipt of the complaint.

35.3 If the complainant is dissatisfied with the response of the Chief Executive Officer, the complainant may refer the matter to the Central Authority, which shall consider the complaint and decide upon the legality of the decision.

35.7 The rights set out in this section shall be additional to any rights that the person may have to refer an administrative decision to the Ombudsperson or to a court of law".

Furthermore, Section 36 provides:

"A person may seek relief in a court of law against decisions of a municipality, in accordance with the rules and procedures of the relevant court".

Section 47 stipulates the powers of the Special Representative of the Secretary General that shall be also mentioned for clarity:

"47.1 The Special Representative of the Secretary-General shall retain in full the authority given to him pursuant to United Nations Security Council resolution 1244. He shall retain the final decision-making authority concerning any provisions of the present regulation.

47.2 The Special Representative of the Secretary-General shall set aside any decision of a municipality, which he considers to be in conflict with United Nations Security Council resolution 1244 or the applicable law or which does not take sufficiently into account the rights and interests of the communities which are not in the majority in the territory of the municipality".

Subsidiary the administrative review of administrative decisions was regulated also by the Law on the administrative procedure (SFRY Official gazette, No 47, 15.08.1986). This Law was in force until 13.11.2006 when the new Law on the administrative procedure (Law N0 02/L-28) entered into force.

The judicial review of the administrative decisions is regulated by the Law on Administrative Disputes (Official gazette of the SFRY N04, 14.01.1977). If the aggrieved party is dissatisfied with the final decision of the administrative authority a judicial appeal may be filed with the Supreme Court. A final administrative decision shall be considered one issued pursuant to an administrative appeal or a first instance administrative decision against which no administrative appeal is allowed (Article 7). The procedure may be initiated within 30 days from the day when the administrative decision was served to the party (Article 24). If the Supreme Court finds the submission admissible it may annul the challenged administrative act and instruct the administrative authorities how to act or may issue a judgment of a substitutive character replacing the original administrative act.

As to the legal ground on which the claimant was granted with the right to use the land, the Court recalls Article 14 of the Law on Land for Construction (Official gazette of SAP Kosovo, No 14/80):

"The Municipality may give non-constructed urban land for construction, on which it has the right of disposal, and contracted land in common use on temporary use for temporary needs".

According to Article 20.3 of this law:

"Persons who obtain the use of the parcel for construction, are obliged, within the term of 3 years from the day they receive the decision, to construct the building, or to finish substantial work".

According to Article 24 of the same law:

"The owner of a building on urban land for construction has the right to use the land under the building and the land that is necessary for its regular use, within the borders of construction parcel.

The right to use the land referred in paragraph 1 of this article continues as long as the building exists.

If the building from paragraph 1 of this article is no longer appropriate for use, due to age or damages incurred due to *vis major*, the owner of the building will be granted a priority for construction on the same parcel according under the conditions provided for in article 18 of this Law.

The right to use land referred to in paragraph 1 of this article cannot be transferred at all".

As to the liability of the MG in negligence the Court recalls Articles 170-173 of the Law on Obligation Relations ('Zakon o obligacionim odnosima' , OG SFRY 29/78) providing that enterprises, other employers and legal persons shall be liable for damages caused by its employees or members, or brunches to a third person in performing their work or function or in connection to performing work or function.

According to the general rule set forth in article 154

"whoever causes injury or loss to another shall be liable to redress it, unless he proves that the damage was caused without his fault".

Article 155 of the same law defines the injury or loss as a diminution of someone`s property (simple loss) and preventing its increase (profit lost) as well as inflicting on another physical or psychological pain or causing fear (non-material damage or mental anguish).

Article 185 regulates the restitution and indemnity in form of money:

(1) "A responsible person shall be liable to re-establish the situation existing prior to the occurrence of damage.

(2) Should re-establishing of the previous situation fail to eliminate the damage entirely, the responsible person shall be liable to pay an indemnity in money to cover for the rest of the damage.

(3) Should restitution be impossible, or should the court find it necessary for the responsible person to do so, the court shall order such person to pay to the person suffering loss an adequate amount of money as compensation for loss.

(4) At the request of the person suffering loss, the court shall award compensation in money to him, unless the circumstances of the specific case justify the restitution".

Article 186 provides when duty of compensation is due:

"Compensation for damage shall be due from the moment of the damage taking place".

According to article 189:

(1) "A person sustaining damage shall be entitled both to indemnity of common damage and compensation of profit lost.

(2) The amount of damages shall be determined according to prices at the time of rendering court decision unless something else be ordered by law.

(3) In accessing the amount of the profit lost the profit which was reasonably expected according to the regular course of events or particular circumstances, and whose realization has been prevented by an act or omission of the tort-feasor shall be taken into account".

Article 190 stipulates that:

"While also taking into account the circumstances after the occurrence of damage, the court shall determine damages in the amount necessary to restore the material state of the person sustaining damage into the state it would have been without the damaging act or omission".

Article 1 of Protocol 1 to the European convention on Human rights, directly applicable in Kosovo in 2005 based on the Constitutional Framework for Provisional Self-Government in Kosovo, Article 3.3, reads as follows:

„Every natural or legal person is entitled to the peaceful enjoyment of his posessions. No one shall be deprived of his posssessions except in the public interest and subject to the conditions provided for by the law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a sate to enforce such laws as it deems necessary to control the use of property in accordance

with the general interes or to secure the payment of taxes or other contributions or penalties."

According to Article 7.1 of the Law on contested procedure, Law No 03/L-006 it is a burden on the claimant to present evidence in support of his claim.[1]

Legal conclusions:

A. Admissibility

Before entering into conclusions on the merit the Court shall consider *ex officio* the admissibility of the claims. The claimant, alleging to be the owner of business facilities demolished by the respondent has the legal interest to submit the claims. The Respondent, MG has procedural capacity to respond to the claims as according to UNMIK Regulation 2000/45 on self-government of municipalities in Kosovo (applicable in 2005), Section 2.4 the municipality has its own legal status and could be sued in the court.

B. The merits

First of all the court has to examine whether the circumstances of the case, considered as a whole, conferred on the claimant to receive compensation and secondly, if positive, which law recognizes the liability of the MG as a legal person and local authority. As to the first question the Court has also to differentiate the two business facilities built on plots 765/10 and 765/11.

The claimant was owner of the shop built on parcel 765/11 and the plot was assigned to the claimant for permanent use by the respondent. As the owner of the building, the claimant had the right to use the land under the building and the land that is necessary for its regular use within the borders of the construction parcel (article 24 of the Law on land for construction).

The claimant was not the owner of the business facility built on parcel 765/10. She had concluded an informal contract with the owner in 1995, paid price for the premises constructed on the plot and used it as a shop until its demolishment in 2005. The law forbade

[1] The Law on contested procedure entered into force in 2008 after the claim was lodged in the court. Nevertheless, according to article 532 this law shall be applied for all pending civil proceedings

the right to use the land to be transferred to a third party (see Article 24.4 of the Law on Land for Construction). Thus the contract concluded between the owner, the third party in the present case, and the claimant did not have any legal effect. The Court however considers that the claimant has at least become the owner of the building as construction material, while she has no legal right to use the land within the borders of the construction parcel and to run the facility as a shop.

In 2005, apart from the domestic law, international instruments including the European Convention of Human Rights were directly applicable. The Convention in Article 1 of Protocol 1 protects existing possessions and assets against interference. The right to temporary use the land, the right of ownership over a building and over movable items is considered by the Convention as "possession". The European Court on Human Rights went even further in examining the circumstances in a case where property was held in possession contrary to national law or under a contract having no legal effect[2]. In Beyeler v Italy case the Court found an interest protected by Article 1 of the first Protocol on the bases that the applicant had been in possession of the property for several years, even when his purchase contract was null and void under the national law, and the authorities had, for some purposes, treated him as having a propriety interest. The Court had the same approach in the case of Oneryildiz v Turkey[3] where it considered that the illegally constructed dwelling built by the applicant and his residence there with his family represented a substantial economic interest which the authorities allowed to subsist over a long period of time (8 years), and thus amounts to a "possession" within the meaning of Article 1 of Protocol 1. The right under Article 1 of Protocol 1 includes the possibility to exercise those rights and this enjoyment is protected against interference by public and private entities. The interference may be in forms of deprivation or control of use, and must have a legitimate aim, satisfy the requirement of lawfulness and can be exercised with fair balance between the demands of the general interest of the community and the requirement of the protection of the individual`s fundamental rights.

Following these main principles and understanding of the ECHR this Court concludes that the claimant has the legal interest to ask for redress for both facilities.

As for the liability of the MG, the Court considers the following:

In 2005 Kosovo did not have special law engaging the responsibilities of the government and local self-governing authorities for damages caused to the citizens in negligence. Therefore,

[2] See Beyeler v Italy, judgment of 5 January 2000

[3] Application No 48939/99, Judgment of 18.07.2002

the general law of torts is applicable (the Law obligation relations, Official gazette SFRY 29/78) as it recognizes the liability of legal persons and enterprises for lost or damage caused by their staff while exercising functions or service.

The Court, after considering all administered evidence, finds that the MG had demolished the business facility of the claimant after arbitrary interference and with no effective respects of her property rights. The claimant was not notified about the order of the MG to remove the shops and release the land prior the demolishment on 1 March 2005 (she and the third party received the decision of the MG to annul the allocation of the plots after the demolishment took place). The claimant was not given any possibility to appeal such decision of the MG. UNMIK Regulation 2000/45 on self-government of municipalities in Kosovo does not foresee immediate enforcement of the administrative decision without the exhaustion of all judicial control over the decision of the municipality. The demolishment of the shops of the claimant shall be considered also in the light of all the activities undertaken by the MG in the implementation of the construction plan. In 1996-97 the MG allocated to individuals more than 60 plots of land for temporary or permanent use obliging them to build business facilities. Most of the individuals followed the obligation, built shops and run business. In 2001 the MG decided to implement the construction plan for the town, to remove the shops and make a square on the place where the shops were built. Thus in 2001 most of the owners of the shops were notified that their allocation rights were annulled and they had to remove the shops from the plots of land. Most of the owners appealed the decision of the MG – to the Chief Executive Officer, to the Supreme Court, to the Municipal Court, to the Special Representative of the Secretary-General of UNMIK, to the Ombudsperson. Nevertheless the MG demolished all the business facilities prior the finalization of the judicial control over the administrative decision ordering their removal. This situation required consideration by the local authority not only of the individual interest of the owners but also the public interest, as the demolishment of more than 60 shops before the Supreme Court allowed it could cause irreparable damage to more than 60 families of Gllogovac. The local authorities had the actual knowledge of the risk of damage to property if they acted before the decision of the Supreme Court but they neglected it. The damage to the claimant and other owners of shops was a reasonably foreseeable consequence. Additionally the MG breached its duty set forth in section 33 of UNMIK Regulation 2000/45 on self-government of municipalities in Kosovo to follow the law and to protect property, as a basic human right. There is no evidence that implementing the project of "Skenderbeu" square in Gllogovc/Glogovac was an urgency matter and required immediate vacation of the municipal land.

The respondent caused material damage to the claimant by destroying her shops without even notifying her about any deadlines for voluntarily and forcible execution. The MG did not present any evidence that the claimant was notified about the execution. Thus she was deprived of the possibility to remove the facilities. There is clearly a causal link between the actions of the MG and the destruction of the claimants' shops and respectively the caused damages. The material damage caused to the claimant is the amount of her pecuniary lost – the value of shops. The claimant could not sell the shops. The right to use the land is an individual right and can not be transferred to third party (see Article 24.4 of the Law on Land for Construction). That is why the loss of the claimant would be measured not by the market value of the facility but by its construction value. Damages in tort are awarded to place the claimant in the position in which she would have been had the tort not taken place. The business facility built on plot 765/11 was a permanent building and according to the construction expertise heard in this case the construction value of this shop was 19 397 Euro. The Court accepts the conclusion of the expert as he used as its base another expertise that was accomplished before the demolishment of the facility. The expert had reliable sources of information to make an objective assessment of the construction value of the building. This amount the respondent has to pay to the claimant as compensation under claim 1.

As to claim 2 – the Court accepted that the claimant has become owner of the construction materials of the business facility built on plot 765/10. There is no expertise heard in this case regarding their value. Even through it was not disputed between the parties that the two shops were identical, the Court can not make decisive conclusions and engage the liability of the respondent without any evidence. Additionally, the construction value of a shop and the value of the contraction materials of a shop differ. In 2012 is too late to engage an expert to assess the value of the construction materials of a building constructed in 1996 and demolished in 2005. In such a case the judge can decide on the amount of the compensation following average reasonable measures and implying the principles of fairness. As in similar cases the Court awarded the claimants with a compensation of 200 Euros per m2 ground floor and 100Euro per m2 attic, the same approach shall be applied in the present case. The total amount to be paid to the claimant for this shop is 10 290 Euro. The claim for the sum requested above the awarded shall be rejected.

Regarding the claim for compensation of profit lost.

The commercial activities in the shop built on plot 765/10 were exercised by the claimant without any legal base. She cannot request for compensation of an illegally run activity. The respondent cannot be liable on this point. This claim shall be rejected.
Regarding the shop built on parcel 765/11. The claimant presented a lease contract concluded between her and AG from Pristina alleging that she had received 250 Euro monthly rent for the shop. There is no evidence that she had actually received this amount. Additionally, as the representative of the respondent correctly noted, there are no evidence that AG was using the shop. The photos that depicted the shops just before their demolishment clearly show that other persons were managing the shop on 1 March 2005. Thus, this claim shall be rejected.
Reparations for pecuniary damages shall be paid by the MG with the interest requested, counted from the day the damage was done 1 March 2005 until the final payment is done pursuant to art.186 of the Law on Obligation Relations.

Procedural costs:

The claimant requested reimbursement of procedural costs in the amount of 3 513.94 Euro. Based on the outcome of the lawsuit and pursuant to article 452.2 of the LCP the claimant is entitled to be reimbursed with the costs of 2054 Euro. The total value of the claims is 50 794 Euros (claim 1 – 19 397 euro, claim 2 – 19 397 euro, claim 3 – 12 000 Euro) and the awarded amount is 29 687 Euro.

Objections of the respondent:

The representative of the respondent objects the competence of this Court stating that the competent court in this case is the Commercial court as the parties are legal entities. Furthermore he states that this is an administrative dispute and competent to deal with it is the Supreme Court. Additionally, he considers that EULEX judge is not competent to adjudicate the case as EULEX can deal only with property related cases.
The Court does not share these views. The claimant is an individual and not a legal entity, thus the Commercial court is not competent to adjudicate this case. This is not an administrative dispute as no administrative act is appealed. This is a dispute about liability for damages which occur as a result of an act of the MG in the territory of Gllogovc/Glogovac. According to article 47 of the LCP the Municipal court in whose territory the damage occurred is the competent court. This dispute is property related

as these damaged occurred from obstruction of property rights and thus falls under article 5.1 of the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors.

The Court does not share the opinion of the representative of the respondent that the constructions were temporary as they were not built in the 3 years deadline following the allocation of the land. The land was allocated to the claimant and the third party on 9.12.1993 and the permission to use the two constructed facilities was issued on 04.04.1996 for parcel 765/10 and on 23.04.1996 for parcel 765/11, and thus within the foreseen deadline.

The Court accepted the dimensions of the facility in plot 765/11 according to the measurements conducted by the expert in 2005, thus accepting that the shop was with surface of 71,40 m2 instead of 68.60 m2. The claimant was allowed to build a facility with surface of 34.30 m2 in two-floors. Actually the shop constructed by the claimant was bigger. Still the construction was approved by the Municipality on 23.04.1996 and since then until March 2005 it existed with this surface. Hence the building can not be considered illegal or a temporary one.

As stated above, pursuant to article 143.1 of the Law on Contested Procedure, it is decided in accordance with the enacting clause of this decision.

LEGAL REMEDY

The parties may appeal this judgment through the Municipal Court of Gllogovc/Glogovac to the Court of appeals in Pristina within fifteen (15) days from the day the copy of the judgment has been served to the respective party.

Municipal Court of Gllogovc/Glogovac

C.No. 292/09

Drafted in English,
an authorized language

Presiding Judge
Verginia Micheva-Ruseva