

THE BASIC COURT OF PRISHTINË/PRIŠTINA

CN.nr.249/13 and CN.nr.467/2013

30th July 2013

THE BASIC COURT OF PRISHTINË/PRIŠTINA in the first instance through EULEX Judge ROSITZA BUZOVA in the civil cases of the proposers A. S., H. S., B. S., N. S., and D. S., all from village Mazgit/Mazgit, the Municipality of Obiliq/Obilić, represented by Lawyer A. A. K. from Prishtinë/Priština, against the counter-proposers GK and MESP - Prishtinë/Priština with legal representative MJ - Prishtinë/Priština for determination of compensation for expropriated immovable properties with filed proposals for security measures according to Article 387, paragraph 1, item h), Article 297 and Article 306, paragraph 1 of the Law No. 03/L-006 on Contested Procedure (Official Gazette No. 38/2008), amended and supplemented by Law No. 04/L-118 (Official Gazette No. 28/2012) (“LCP”) in conjunction with Article 3 of the Law No. 03/L-007 on Non-contested Procedure (Official Gazette No. 45/09) (“LNP”) and Article 39, paragraph 1 of the Law No. 03/L-139 on Expropriation of Immovable Property (Official Gazette No. 52/09), amended and supplemented by Law No. 03/L-205 (“LEIP”), in a camera session on 30th July 2013 renders the following

R U L I N G

I. CN.nr.249/13 and CN.nr.467/13 of the Basic Court of Prishtinë/Priština are hereby JOINED for hearing in one and the same proceeding and issuance of a single judgment in them pursuant to Article 408 LCP in conjunction with Article 3 LNP.

II. The proposals for security measures filed on 11th July 2013 in CN.nr.249/13 and CN.nr.467/13 of the Basic Court of Prishtinë/Priština by Lawyer A. A. K. from Prishtinë/Priština on behalf of the proposers in these joined cases A.S., B.S., N.S., and D.S., all from village Mazgit/Mazgit, the Municipality of Obiliq/Obilić are partly APPROVED.

III. IT IS IMPOSED TEMPORARY SECURITY MEASURE by prohibiting the counter-proposers the GK and the MESP Prishtinë/Priština as parties objecting the

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security and any other third persons to demolish the five-floor residential building situated in cadastral parcel nr.152-0, registered in Certificate for Immovable Property Rights Nr. UL-72614046-00002, Cadastral Zone Mazgit/Mazgit, the Municipality of Obiliq/Obilić, until all conditions provided by law for its vacation have been duly fulfilled as follows:

1. Final Decision on the expropriation of this property has been adopted according to Article 11, paragraphs 1-3 LEIP based on a previously issued effective Preliminary Decision under Article 10 LEIP for valid change of its ownership under Article 11, paragraph 8 in conjunction with Article 26 LEIP;
 2. the compensation specified in the respective Final Decision for expropriation of the aforementioned property has been fully paid in the name of the affected Owners and Interest Holders according to Article 16 LEIP, including the 7 % annual interest accrued between the effective date of the Final Decision and the date of payment;
 3. the time period of 20 calendar days prescribed by Article 11, paragraph 9, subparagraph 1 LEIP for vacation of this residential building from the date of payment of the compensation specified in the Final Decision in accordance with Article 16 LEIP has expired; and
 4. all inhabitants of the aforementioned building used as their dwelling have been provided with temporary accommodations in accordance with Article 20 LEIP.
- IV. The temporary security measure imposed by point III shall remain in force until a new ruling on security measure will be rendered by this court.
- V. The proposals for security measures filed in CN.nr.249/13 and CN.nr.467/13 of the Basic Court of Prishtinë/Priština on 11th July 2013 by the proposers A.S, B.S., N.S., and D.S., are REJECTED as ungrounded in the remaining part for prohibiting the demolition of the aforementioned residential building till the expropriation compensation challenged in this proceeding shall be finally decided.
- VI. The appeal does not stay the execution of this ruling pursuant to Article 310, paragraphs 4 and 5 LCP in conjunction with Article 3 LNP.

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VII. Copy of this ruling shall be served to the Police Station in Obiliq/Obilić for implementation in the part of the imposed temporary security measure.

VIII. The proposal in CN.nr.249/13 of the Basic Court of Prishtinë/Priština and the appeal in CN.nr.467/13 of the Basic Court of Prishtinë/Priština shall be served in 5 copies to the counter-proposers for response in 30 days after their receipt according to Article 36, paragraphs 4 and 5 LEIP.

IX. The MESP is hereby OBLIGED based on Article 216, paragraph 1, Article 218, paragraph 1 *in fine* LNP and Article 332 LCP in conjunction with Article 3 LNP to present to the court within a time period of 3 days the full administrative file on the expropriation of cadastral parcels nr.149-0, nr.150-0, nr.152-0, CZ Mazgit/Mazgit, the Municipality of Obiliq/Obilić, including, *inter alia*, the Preliminary Decision under Article 10 LEP, all annexes, tables, copies of plan, valuation reports to the Final Decision under Article 11 LEP, bank documents for paid compensation under Article 16, paragraph 2 LEIP, statement of CBK for a trust account opened in the name of the Owners and Interest Holders of the aforementioned immovable properties under Article 16, paragraph 3 LEIP with structure of the deposited amounts – principals and interest accrued, and all documents for temporary accommodations under Article 20 LEP for all inhabitants of the residential building in cadastral parcel nr.152-0, CZ Mazgit/Mazgit, including the minor family members.

X. All parties are given a time period of 7 days after the receipt of this ruling to specify all evidence that need to be secured with urgency in this proceeding according to Article 379 – 381 LCP in conjunction with Article 3 LNP.

REASONING

1. On 19th December 2012, A.S., B.S., N.S., and D.S. as legal successors of the deceased F.H.S., formerly from village Mazgit/Mazgit, Municipality of Obiliq/Obilić, filed to the Supreme Court of Kosovo an appeal against Decision Nr. 03/100 of the GK, dated 12th November 2012 in the part for expropriation of the immovable properties owned by F. H. S. for the construction of the Highway Vërmicë - Merdarë,

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Sector 9 CZ Mazgit/Mazgit, Municipality of Obiliq/Obilić. The decision is challenged for formal deficiencies of its enacting clause and reasoning under Articles 77, 84 and 85 LAP, contradiction with all requirements of Article 11 LEIP, non-evaluation of accessory parts and fruits affected by the expropriation - 2 water wells, 1 stable, 100 trees, and a business premise on the ground floor of the residential building in cadastral parcel nr.152-0, CZ Mazgit/Mazgit, determination of the compensation for this building and the expropriated parts of the agricultural land in cadastral parcels nr.149-0, nr.150-0 and nr.152-0, CZ Mazgit/Mazgit below the market value contrary to Article 15 LEIP. The request is the court to modify by its judgment this Final Decision by adjusting the amount of the expropriation compensation accordingly.

2. The appeal above was initially registered as A.nr.1535/2012 of the Supreme Court of Kosovo in administrative conflict proceeding under Article 36 LEIP. Based on Decision of the General Session of the Supreme Court of Kosovo adopted on 15th January 2013 pursuant to Article 23, paragraph 1 of the Law No. 03/L-199 on Courts (Official Gazette of the Republic of Kosovo No. 49/11) for uniform application of the law, this case was referred to the Basic Court of Prishtinë/Priština as competent to decide it in a non-contested procedure according to Article 216 LNP in view of the location of the immovable properties with expropriation compensation to be fixed in the territory of the Municipality of Obiliq/Obilić, included in its judicial region under Article 9, paragraph 2, sub-paragraph 1 of the Law No. 03/L-199 on Courts. After this referral on 10th June 2013 the case was registered as CN.nr.467/13 of the Basic Court of Prishtinë/Priština.

3. Meanwhile, on 3rd April 2013 A.S., B.S., N.S., and D.S. filed against the GK and the MESP as counter-proposers proposal directly to the Basic Court of Prishtinë/Priština for determination of real compensation for the immovable properties expropriated by Decision Nr. 03/100, dated 12th November 2012. The latter are specified as building facilities, orchards and agricultural land with complaints that in the estimation were not included two wells, one stable, approximately 100 trees, a business premise on the ground floor of the 5-floor house, a fence and columns while all assessments made were not based on market prices contrary to Article 15 LEIP.

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The proposal further outlines that all expropriated properties being located alongside the asphalted road Prishtinë/Priština–Mitrovicë/Mitrovica between Mazgit/Mazgit and Llazavera/Llazavera where the Highway Vërmicë – Merdarë will pass with adequate infrastructure, should have been esteemed as land plots at levels for the properties along the highway Prishtinë/Priština–Skopje - 10 000 € per 1 are. Instead, the entire expropriated surface was evaluated as agricultural land at minimum prices of 25 €, 30 € and 42 € for 1 m². The request is the court through judicial experts in the field of civil engineering, agronomy and arboriculture to determine the real compensation due for the expropriated immovable properties.

4. The non-contested procedure initiated by the proposal in point 3 above was registered as CN.nr.249/2013 of the Basic Court of Prishtinë/Priština.
5. By ruling ref.nr.2013.OPEJ.0293-004 of the Vice President of the Assembly of EULEX Judges, dated 11th July 2013 pursuant to Article 5, paragraph 1, item c), sub-items (ii) - (iii) and paragraph 7 of the Law No. 03/L-053 on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (Official Gazette of the Republic of Kosovo No.27/08), CN.nr.249/13 and CN.nr.467/13 of the Basic Court of Prishtinë/Priština were taken over in EULEX Judges jurisdiction.
6. Therefore there are two proceedings ongoing in the same first instance court, involving the same parties, based on essentially the same factual and legal grounds, partially overlapping in their subject-matter and partially different as per the grounds for challenging the determined compensation and the expropriation-related damages to be included in the pretended one. As the cases are pending at one and the same stage with no hearings held, their joinder will avoid delays out of formal duplication of procedural actions and will also minimize the procedural costs of the parties in compliance with Article 10, paragraph 1 LCP in conjunction with Article 3 LNP. CN.nr.249/2013 and CN.nr.467/2013 of the Basic Court of Prishtinë/Priština shall be therefore joined to be heard in one and the same proceeding and decided by a single judgment according to Article 408 LCP in conjunction with Article 3 LNP.
7. On 11th July 2013, identical proposals for temporary security measures were

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filed in CN.nr.249/13 and CN.nr.467/13 of the Basic Court of Prishtinë/Priština by the proposers A.S., B.S., N.S., and D.S. Consequent to the ruled joinder of the principal proceedings for determination of the expropriation compensation, the accessorial security proceedings under Article 306 LCP in conjunction with Article 3 LNP in these two cases shall be also joined and decided by the present ruling.

8. In the proposals for security measures filed on 11th July 2013 it is stated that the compensation due for the expropriated properties was not adequately determined by Decision Nr. 03/100, dated 12th November 2012 – the surfaces of the cadastral parcels were reduced; the residential areas of the house were not properly measured and hence downsized; the ground floor was not assessed as a business premise and the basement - as storage; omitted were facilities and trees - subject to compensation as accessory parts and fruits in the expropriated properties, the latter were assessed under their real market value. In the proceedings for securing evidence under Article 385 LCP in conjunction with Article 3 LNP initiated by CN.nr.308/13 of the Basic Court of Prishtinë/Priština by A.S., B.S., N.S., and D.S., their proposal for temporary security measure was approved by ruling, dated 21st June 2013 by prohibiting the construction and any other activities in cadastral parcel nr.152-0, CZ Mazgit/Mazgit. However, it was lifted 7 days later by ruling, dated 28th June 2013 with reasoning that all proposed evidence had been secured and CN.nr.308/13 of the Basic Court of Prishtinë/Priština had been finalized. Thus the situation has become crucial as imminent is the danger the house built with long lasting commitment, efforts and investments, now used as a dwelling of 4 families with 12 members (minors and old persons included), to be demolished in the coming days. In case of its destruction, all these people will remain on the road without solution as no compensation has been paid and no alternative shelter has been provided by the Expropriation Authority. Additionally, the building, once demolished, cannot be properly evaluated with all its relevant characteristics and the determination of its adequate compensation will be hindered. The construction on-going in cadastral parcels nr.149-0 and nr.150-0 if not prohibited will impede their measurements and real assessment based on market value. Security is needed to prevent escalation of the situation in view of the

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deteriorated relations of the opposing parties and to avoid new serious conflicts. The request to the court, as literally formulated, is to impose a security measure prohibiting the GK – MESP “to demolish the five-floor house in cadastral parcel nr.152-0 up to its real assessment by construction expertise and to do the exact measurements in cadastral parcels nr.149-0, nr.150-0 and nr.152-0, and in this way to do their real assessment based on market price until the dispute on their compensation shall end.

9. The proposal for security measures filed on 11th July 2013 with fully identical content in CN.nr.249/13 and CN.nr.467/13 of the Basic Court of Prishtinë/Priština is admissible. *At first place*, the interim security measures regulated by Chapter XXI of LCP can be applied in the special procedure for determination of the compensation for expropriated properties under Article 36 LEIP and Articles 215 – 222 LNP based on the general subsidiarity rule of Article 3 LNP, not derogated by any provision of this law or LEIP explicitly prohibiting such application. Moreover, the need of security may occur apropos of all types of legal protection, including the one sought based on Article 36 LEIP and Article 1 LNP. *At second place*, in conformity with Article 304, paragraph 1 LCP in conjunction with Article 3 LNP the security is proposed during the course of the proceedings in CN.nr.249/13 and CN.nr.467/13 of the Basic Court of Prishtinë/Priština. *At third place*, according to Article 296, paragraph 1, first sentence LCP in conjunction with Article 3 LNP having first instance jurisdiction in the joined cases, the Basic Court of Prishtinë/Priština is also competent to decide the security proposals filed in them. *At fourth place*, the latter are submitted in the written form prescribed by Article 304, paragraph 1, first sentence LCP in conjunction with Article 3 LNP, with content under Article 304, paragraph 1, first sentence LCP in conjunction with Article 3 LNP, signed by Lawyer A. A. K. as the authorized representative of A., B., N. and D.S. based on a power of attorney, dated 10th July 2013.

10. This security proposal, dated 11th July 2013, being procedurally permissible, is partly founded on its merits. *At first place*, the proceeding for determination of the compensation of the immovable properties of the late F. H. S., expropriated by Decision Nr. 03/100 of the GK, dated 12th November 2012 was initiated on 19th

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December 2012, within the 30-days deadline prescribed by Article 36, paragraph 3, first sentence LEIP after it has become effective pursuant to Article 11, paragraph 7 LEIP with its publication in the Official Gazette No. 33/2012 on 23rd November 2012. Or, the main proceedings could not be terminated for expiration of this legal deadline pursuant to Article 36, paragraph 3, first sentence LEIP. *At second place*, the compensation for the expropriated properties is challenged in this proceeding by D.S. as their *Owner* – exclusive legal successor of F. H. S. for cadastral parcels nr.149-0, nr.150-0 and nr.152-0, Certificate Nr. UL-72614046-00002, CZ Mazgit/Mazgit, based on inheritance, regulated by Decision Nr. rendor LPR-104/2013 Nr. ref. LRP-50/2013 issued by Notary N. RR. in Obiliq/Obilić on 14th February 2013. As for the other proposers A., B. and N.S., being inhabitants of the building situated in cadastral parcel nr.152-0 they have the status of *Interest Holders* as legally defined by Article 2, paragraph 1 LEIP. Or, the active legitimacy demanded by Article 36, paragraph 1 LEIP is based on alleged *ownership* of the expropriated properties with respect to D.S. and *lawful interest*, other than ownership, with respect to A, B and N.S. *At third place*, there are no impediments under Article 391 LCP in conjunction with Article 3 LNP and/or any others, excluding the admissibility of the joined cases. Hence, the issuance of judgment in them pursuant to Article 36, paragraph 6 LEIP and Article 220 LNP is permissible, while *its future legal consequences and enforcement can be secured*. This first pre-requisite for approval of the security is met.

11. In compliance with Article 297, paragraph 1, item a) LCP in conjunction with Article 3 LNP *the proposers have substantiated their proposal for determination of expropriation compensation* in CN.nr.249/13 and CN.nr.467/13 of the Basic Court of Prishtinë/Priština with: a) the attached Final Decision Nr. 03/100 of the GK, dated 12th November 2012, and the evaluation reports of the Ministry of Finance, dated 6th September 2012 for cadastral parcels nr.149-0, nr.150-0 and nr.152-0 Cadastral Zone Mazgit/Mazgit; b) the evidence secured in CN.nr.308/13 of the Basic Court of Prishtinë/Priština, incorporated with the records for their collection in CN.nr.249/13 and CN.nr.467/13 in accordance with Article 385 LCP in conjunction with Article 3 LNP. The evidence adduced at this initial procedural stage contain *data indicating the*

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existence of the right for adjustment of the expropriation compensation as probable given for example the difference in the total surface of the 5-floors house in cadastral parcel nr.152-0, CZ Mazgit/Mazgit set in the expropriation procedure as 955 m² and by the judicial expertise, dated 24th June 2013 as 1 398.01 m² combined with the discrepancies in the evaluation of some expropriation-related direct damages. Thus the proposal the compensation to be fixed by the court so far is supported to an extent of eventuality which suffices the security standard set forth by Article 297, paragraph 1, item a) LCP in conjunction with Article 3 LNP.

12. The next pre-condition is the necessity of security and the legal interest in *it*. It is formulated by Article 297, paragraph 1, item b) LCP in conjunction with Article 3 LNP stating that *a security measure may be ordered if there is a danger that without ordering it the opposing party may render the enforcement of the judgment impossible or substantially difficult, particularly by changing the existing state or otherwise adversely affecting the rights of the person proposing the security*. Here the proposed security measure for prohibiting demolition of the house in cadastral parcel nr.152-0, CZ Mazgit/Mazgit is *requisite* to preserve it until all legal requirements for vacation of expropriated residential building have been duly fulfilled. *At first place*, pursuant to Article 11, paragraph 1, first sentence LEIP the expropriating authority shall adopt a Final Decision approving or rejecting the expropriation application during the 12-month period that begins on the date occurring 15 days after the effective date of the Preliminary Decision unless it is extended according to Article 11, paragraph 2 LEIP for the duration of the first and/or second instance judicial proceedings under Article 35 LEIP. Per argumentum ad contrario of Article 11, paragraph 1, first sentence and paragraph 3, first instance LEIP, the Expropriating Authority is not empowered to adopt a Final Decision affecting properties/rights without effective and judicially non-appealable Preliminary Decision on the legitimacy of the expropriation under Article 10 LEIP. The same follows from Article 3, paragraph 1, second sentence LEIP stating that the powers of the Expropriating Authority to expropriate immovable property shall be strictly subject to the limits, procedures, rules and conditions specified in law. In this case Decision Nr. 03/100 of the GK, dated 12th November 2012 is not

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evidenced as being issued in compliance with Article 11, paragraph 1 LEIP on the basis of effective non-appealable Preliminary Decision under Article 10 LEIP of the legitimacy of the expropriation in question in order to verify the transfer of private ownership over cadastral parcels nr.149-0, nr.150-0 and nr.152-0, CZ Mazgit/Mazgit into public property according to Article 4, paragraph 5 LEIP. *At second place*, in accordance with Article 11, paragraph 8, first sentence LEIP if the Final Decision authorizes the expropriation, no change in the ownership or other rights of persons in or to the concerned property shall be *effected or implemented until the compensation required by this Final Decision has been fully paid in accordance with Article 16 LEIP*. Pursuant to Article 11, paragraph 8, second sentence LEIP only after its payment the concerned property shall be registered in the name of Republic of Kosovo if the Expropriation Authority is its Government. Further persons owning or possessing the concerned property shall not be required to vacate or surrender in the case of a building actively used for residential and business purposes until 20 days have passed from the date on which the compensation in the Final Decision has been paid in accordance with Article 16 LEIP – Article 11, paragraph 9, sub-paragraph 1 LEIP or in the case of any other property 10 days have passed - Article 11, paragraph 9, sub-paragraph 1 LEIP. The Expropriating Authority is obliged to pay the amount of compensation in the Final Decision to the affected Owners and Interest Holders – Article 16, paragraph 2, first sentence LEIP, including the amount established in the concerned valuation - Article 16, paragraph 2, second sentence, sub-paragraph 1 LEIP plus the default statutory interest on this principal accrued between the effective date of the Final Decision and the date of payment at a rate of 7 % simple annual interest - Article 16, paragraph 2, second sentence, sub-paragraph 2 LEIP. If a person refuses such compensation, it shall be put in a trust account in his/her name at the CBK and the amount deposited shall be deemed “*paid*” for the purposes of this law – Article 16, paragraph 3 LEIP. If a person appeals with the court pursuant to Article 36 LEIP the adequacy of the compensation provided by the Final Decision and a judgment for its increase, the Expropriation Authority shall pay such additional compensation - Article 16, paragraph 4 LEIP. As long as Article 16, paragraph 5, first sentence LEIP requires

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the compensation in the Final Decision to be paid within 2 years from its effective date, the non-payment in this deadline entitles the person to whom it is due after its expiry to file a complaint to the court to revoke and cancel such decision - Article 16, paragraph 5, second sentence LEIP. When transposed to the circumstances in this case these provisions exclude the change of the ownership over the house constructed in cadastral parcel nr.152-0, CZ Mazgit/Mazgit to be changed – Article 11, paragraph 8 LEIP to be effected and/or implemented and this residential building to be vacated – Article 11, paragraph 9, sub-paragraph 1 LEIP *without payment of the compensation* in the Final Decision plus the 7 % annual interest accrued - Article 16, paragraph 2 LEIP to the Owner(s) and Interest Holder(s) entitled to receive it or upon their refusal to accept by putting the amount due to a trust account in their name at CBK - Article 16, paragraph 3 LEIP. In the case there is not single evidence that the compensation specified in Decision Nr. 03/100 of, dated 12th November 2012 for expropriation of the properties of F. S. has been paid in any moment to his legal successor(s) according to Article 16, paragraphs 2 and/or 3 LEP. Without this payment the ownership right over these properties could not be considered transferred as per Article 11, paragraph 8 LEIP, while their possession could not be taken as per Article 11, paragraph 9 LEIP. By submission filed on 26th July 2013 to the case the representative of the proposers Lawyer A. A. K. has presented to the case Notification ref.nr.2073 of the Ministry of Infrastructure, dated 24th July 2013 to S. (H.) S. for release of cadastral parcels nr.150-0 and nr.152-0, CZ Mazgit/Mazgit within 5 days after its receipt on 25th July 2012. According to this notification the compensation due for their expropriation was paid on 18th June 2013 – the respective bank document is not appended to verify that the principal(s) and the interest rate have been transferred; even effected the payment it is not valid as per Article 16, paragraph 3 LEIP being in the name of S. (H.) S – relative of the proposers (uncle on paternal side) but otherwise owner of cadastral parcels nr.154-1 and nr.155-1, CZ Mazgit/Mazgit, affected by the expropriation in the area, but situated across the road, away from cadastral parcels nr.149-0, nr.150-0 and nr.152-0, CZ Mazgit/Mazgit, being different from them and not neighbouring them. As S. (H.) S. is without rights and/or interests in cadastral parcels nr.149-0, nr.150-0 and

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nr.152-0 any payment in his favour by the Expropriating Authority is without legal effect in respect to A., B., N. and D. S. *Firstly*, it contradicts Article 16, paragraph 2 LEIP requiring the expropriation compensation to be paid to the *affected Owners and Interest Holders* and *vice versa* not to other persons without rights or interests in the concerned properties. *Secondly*, it contradicts also Article 305, paragraph 1 of the Law on Contracts and Tort (Official Gazette of the SFRY No. 29/78, with amendments No 39/85, 45/89, 57/89 and Official Gazette of the FRY No. 31/93) (“LCT”) according to which the fulfillment on any obligation must be *effected to the creditor or to a person designated by law, court decision, a contract between the creditor and the debtor, or the creditor himself*. There is no exhibit in the case that the payment indicated in Notification ref.nr.2073 of the Ministry of Infrastructure, dated 24th July 2013 was effected on 18th June 2013 to S. (H.) S as a person, authorized to receive it on behalf of A., B., N. and D.S. based on designation on any of the alternative grounds under Article 305, paragraph 2 LCT. *Thirdly*, the payment indicated in the Notification ref.nr.2073 of the Ministry of Infrastructure, dated 24th July 2013 being effected to S. (H.) S as a third non-authorized person could not be considered validated based on Article 305, paragraph 2 LCT since A., B., N. and D.S. have not approved it or benefited from its amount. At this stage the compensation specified in Decision Nr. 03/100 of the GK, dated 12th November 2012 for the disputed properties has not been proven as validly paid in any of its elements directly to the affected Owners and Interest Holders according to Article 16, paragraph 2 LEIP or by putting the total amount due to a trust account in their name at the CBK according to Article 16, paragraph 3 LEIP. *At third place*, the provision of Article 11, paragraph 9, subparagraph 1 LEIP states that persons owning or possessing the concerned property shall not be required to vacate or surrender it if this is a building actively used for residential purposes 20 days have been passed from which the compensation specified in the Final Decision has been paid in accordance with Article 16 LEIP. It is ascertained by the evidence secured in the course of CN.nr.308/13 of the Basic Court of Prishtinë/Priština that as present in the house built in cadastral parcel nr.152-0, CZ Mazgit/Mazgit in the inhabitable floors live four families, 12 persons in total,

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including minor children. As this is a *building used for residential purposes* in the absence of valid payment of the compensation due for its expropriation according to Article 16 LEIP, the 20-days time period prescribed by Article 11, paragraph 9, subparagraph 1 LEIP for its release has not started to run and has not expired. *At fourth place*, according to Article 20, first sentence LEIP in the event of expropriation of a building that is used as a dwelling, the Expropriation Authority shall provide the inhabitants with a temporary accommodation for a period of 4 months following the expiry of the 30 days provided for in Article 11, paragraph 9 LEIP, unless otherwise agreed. This obligation might be fulfilled by allowing the inhabitants to occupy the expropriated building for all or in part of such 4-month period pursuant to Article 20, second sentence LEIP. This *additional legal condition for vacation of expropriated residential buildings used as a dwelling* is not evidenced as complied with in the case – so far the inhabitants of the house in cadastral parcel nr.152-0, CZ Mazgit/Mazgit have not been provided with temporary accommodation contrary to Article 20 LEIP. Mentioned in Notification ref.nr.2073 of the Ministry of Infrastructure, dated 24th July 2013 is that such temporary accommodation will be provided in Hotel N.T.S.H.N ‘A’ based on contract signed with MESP on 22nd July 2013. However, as this notification is addressed to S. (H.) S, who has no rights/interests in the house in cadastral parcel nr.152-0, CZ Mazgit/Mazgit, nor *de facto* lives in it, the inhabitants of this residential building remain without temporary accommodation, provided in compliance with Article 20 LEIP.

13. According to Article 3, paragraph 1, second sentence LEIP the expropriation of immovable property shall be always *strictly* subject to the limits, procedures, rules and conditions specified in LEIP. Contrary to this in the present case it has not been verified such compliance with the aforementioned requirements of Articles 10, 11, 16 and 20 LEIP all mandatorily demanded for change of the ownership over the building in cadastral parcel nr.152-0, CZ Mazgit/Mazgit and handing over its possession to the Expropriation Authority. Under these circumstances, the proposed security measure is justified as per Article 297, paragraph 1, item b) LCP in conjunction with Article 3 LNP to neutralize the imminent danger the house to be demolished in the upcoming

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days thus irreversibly changing the existing state of this residential property though the legal conditions, imperatively foreseen by Articles 10, 11, 16 and 20 LEIP, for its expropriation and release have not been fulfilled and adversely affecting the rights of the parties proposing this security as its owner(s), possessor(s) and/or inhabitants.

14. According to the data contained in the numerous submissions of A., B., N. and D.S. filed to different public institutions and presented in the case, all their efforts to discuss the issues related to the expropriation of cadastral parcels nr.149-0, nr.150 and nr.152-0 with the Ministry of Environment and Spatial Planning in the last months have failed. Without such regularization of the expropriation consequences from the beginning of this year there has been systematic impermissible access of Construction Company "B-E" to the properties with numerous attempts of its personnel to force the proposers to release them. On several occasions men of the S. family were summoned to the Police station in Obiliq/Obilić to give statements for non-surrendering the properties. There were also incidents that finished with their arrests, the last one being on 25th July 2013. The house has been placed under police surveillance. In the meantime, the construction works in this section of the highway are on-going in full 24-hours capacity; with numerous personnel and machinery. As a result of all these developments, for months on the family has been placed under extreme psychological pressure, facing full uncertainty for its home. Though wrongly addressed and served, Notification ref.nr.2073 of the Ministry of Infrastructure, dated 24th July 2013 is indicative that the demolition of the family house is forthcoming. The relations of the parties are so deteriorated that the risk of future escalation with new serious conflicts is imminent. For these reasons, the court finds met condition of Article 306, paragraph 1 LCP in conjunction with Article 3 LNP to decide the security proposal, dated 11th July 2013 without prior notification of the opposing parties or a preliminary hearing - this request under Article 304 LCP in conjunction with Article 3 LNP is based on plausible allegations that the temporary prohibition of the demolition of the house is grounded and urgent, and that acting otherwise would render the purpose of the security futile.

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15. Based on these considerations, the proposed temporary security measure will be imposed according to Article 297, paragraph 1, Article 300, item c), Article 301, item a) and Article 306, paragraph 1 LCP in conjunction with Article 3 LNP – the counter-proposers shall be prohibited to demolish the house in cadastral parcel nr.152-0, CZ Mazgit/Mazgit to preserve the existing state and to prevent any violations of the *right to property* and *the right to adequate expropriation compensation*, guaranteed by Article 46 of the Constitution and Article 1 of the First Protocol of the ECHR, as well as the right to home, protected by Article 36 of the Constitution and Article 8 of the ECHR, for the owner(s), possessor(s) and inhabitants of this residential building and/or any other adverse effects and/or damages. However, the demolition can only be prohibited by the court until all legal conditions specified in Articles 10, 11, 16 and 20 LEIP, analyzed in paragraph 12 of the reasoning and enumerated in point III of the enacting clause of this ruling, have been regularly fulfilled. Upon such compliance, this residential building should be considered expropriated, thus transferred from private into state ownership according to Article 4, paragraph 5 and Article 26 LEIP with its release being due after expiration of the 20-days period prescribed by Article 11, paragraph 9, sub-paragraph 1 LEIP and provision of temporary accommodation under Article 20 LEIP with entitlement of the Expropriation Authority to take its possession according to Article 25 LEIP. The temporary security measure might be imposed only with this duration given the limits set by Article 36, paragraph 8, first sentence LEIP – the norm explicitly states that the appeal against Final Decision under Article 36, paragraph 1 LEIP, as well as of the appeal against the first instance judgment under Article 36, paragraph 7 LEIP shall have no effect on the effectiveness of the decision and on the powers of the Expropriation Authority to continue with its implementation. This restriction of Article 36, paragraph 8, first sentence LEIP prevails over any conflicting provision of any other procedural law pursuant to Article 39, paragraph 1, second sentence LEIP. Consequent to the limitation of Article 36, paragraph 8 LEIP and its supremacy over the provisions of Chapter XXI LCP, the court is empowered to stop the implementation of the challenged Final Decision by prohibiting demolition of the house in cadastral parcel nr.152-0, CZ Mazgit/Mazgit only until all conditions

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provided for its implementation by the same law, namely Articles 11, 16 and 20 LEIP, have been met for this residential property. Contrariwise, the court cannot authorize any security measure beyond this limit since this will stay the enforcement of this Final Decision in direct contradiction with Article 36, paragraph 8, first sentence LEIP, which excludes any effect of the present proceedings over its effectiveness, including direct or indirect suspension, and unconditionally guarantees the powers of the Expropriation Authority to continue with its implementation for realization of the national infrastructural project in public interest. Complying with the limits of Article 3, paragraph 1, second sentence and Article 36, paragraph 8, first sentence LEIP, the court shall prohibit the demolition of residential building in cadastral parcel nr.152-0, CZ Mazgit/Mazgit with duration until the applicable conditions specified by the same law for the implementation of Decision Nr. 03/100, dated 12th November 2012 in the respective part are evidenced as regularly fulfilled in the case.

16. The security proposal, dated 11th July 2013 shall be rejected in its remaining part requesting duration of the measure, longer than the ordered one. *At first place*, non-justified is its imposition *until construction expertise will be performed for “real evaluation” of this residential building*. Such expertise has been already appointed in CN.nr.308/13 of the Basic Court of Prishtinë/Priština with written finding and opinion submitted to the case, and examination of the expert in the session on 25th June 2013. As this evidence has been already secured according to Article 385, paragraph 1 LCP in conjunction with Article 3 LNP, it shall be incorporated in this case pursuant to Article 385, paragraph 2 LCP in conjunction with Article 3 LNP without the need to be re-administered. The *past* collection of this evidence on 25th July 2013 hence could not determine the *future* deadline for security imposed on 30th July 2013 onwards. *At second place*, the demolition of the building could not be prohibited *until the exact measurements* of cadastral parcels nr.149-0, nr.150-0 and nr.152-0 in this case will be made, as further requested in the petitem of the proposal, dated 11th July 2013. *Firstly*, their *total surfaces* are officially registered in the cadastre, evidenced in Certificate for the Immovable Property Rights Nr. UL-72614046-00002, CZ Mazgit/Mazgit as 1 262 41 775 m², and 2 144 m², respectively and could not be reviewed and changed in this

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proceeding as its subject-matter is restricted to fixing the amount of the compensation only according to Article 36, paragraph 1 LEIP and Article 215 LNP. *Secondly*, the parts of cadastral parcels nr.149-0, nr.150-0 and nr.152-0, expropriated by Decision Nr. 03/100 of the GK, dated 12th November 2012 are with surfaces 775 m², 7 655 m², and 725 m², respectively, indicated in its Annex in conformity with Article 11, paragraph 4.3.2.2 LEIP. The court is not empowered to revise these expropriated parts, hence all evidentiary motions for their measurement in the present judicial proceeding might only be impermissible. *Thirdly*, the demolition of the building cannot be prohibited until any such measurements in cadastral parcels nr.149-0, nr.150-0 and nr.152-0, as the valuation of the *building* factually and legally does not depend on the valuation of *land* in their boundaries. *At third place*, security shall not be ordered till *real assessment of these cadastral parcels based on their market price* as finally proposed in the petitum. This deadline bound with valuation of the terrain in the judicial proceedings does not at all depend on the chosen measure for non-demolition of the building. *Secondly*, the realization of the construction works on the highway in the expropriated surfaces of cadastral parcels nr.149-0, nr.150-0 and nr.152-0 will not make impossible, nor will substantially impede the estimation in the affected *land* plots apart from the building. The eventual discrepancies between the *formally* expropriated parts of the land and ones *de facto* used for construction cannot be decided in this proceeding restricted by Article 36, paragraph 1 LEIP in its scope to adjusting the compensation for the *de jure* expropriated properties only. No security interest is justified and no measure proposed for preservation of fixtures, accessory parts and fruits and/or for identifying any demonstrable direct damages incurred in the expropriation process, localized in parcels nr.149-0, nr.150-0 and nr.152-0, in view of ensuring future application of Article 15, paragraph 2 LEIP. *Thirdly*, the expropriation compensation challenged in this case could be officially qualified as “*real*”, i.e. based on the market value of the properties in compliance with Article 15, paragraph 1 LEIP and the subsidiary legislation under Article 15, paragraph 6 LEIP, only through a final judgement rendered in the first instance pursuant to Article 36, paragraph 6 LEIP or in the second instance pursuant to Article 36, paragraph 7 LEIP. However, the security

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cannot be ordered until such end of the dispute on the expropriation compensation as this means the implementation of Decision Nr. 03/100, dated 12th November 2012 to be suspended for indefinite period of time in violation of Article 36, paragraph 8, first sentence LEIP which explicitly prohibits any effect of the first and second instance judicial proceedings under Article 36, paragraphs 1 – 7 LEIP over the effectiveness on this Final Decision on expropriation, including partial suspension through a security. Therefore its implementation could be stayed for the residential building in cadastral parcel nr.152-0, CZ Mazgit/Mazgit only within the limits of Article 36, paragraph 8, first sentence LEIP by prohibiting its demolition until fulfillment of all conditions specified in Articles 10, 11, 16, 20, 25 and 26 LEIP for implementation of Decision Nr. 03/100, dated 12th November 2012 by expropriation of the private ownership over it and handing over of its possession to the Expropriation Authority.

18. For all these reasons, the proposal under Article 304 LCP in conjunction with Article 3 LNP, dated 11th July 2013 shall be partly granted and partly rejected.

19. The request of the proposers to be compensated by the counter-proposers for the costs incurred during the course of the security proceedings according to Article 314, paragraph 1 LCP in conjunction with Article 3 LNP could not be decided in this ruling without their specification and presented evidence for such procedural expenses under Article 463, paragraphs 1 – 2 LCP in conjunction with Article 3 LNP and hence shall remain for reimbursement by the judgment pursuant to Article 314, paragraph 2 LCP in conjunction with Article 3 LNP.

20. This ruling shall be immediately served to the counterproposers for reply within a period of 3 days with statement on the grounds for objecting the security and request for scheduling a hearing on it within the next 3 days according to Article 306, paragraph 2 LCP in conjunction with Article 3 LNP.

21. To prepare the trial in the joined cases, the proposal in CN.nr.249/13 of the Basic Court of Prishtinë/Priština and the appeal in CN.nr.467/13 of the Basic Court of Prishtinë/Priština shall be served in 5 copies with all their attachments to the counter-proposers through the Ministry of Justice as their legal representative for response in

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30 days according to Article 36, paragraphs 4 and 5 LEIP. At the same time the full administrative expropriation file will be requested according to Article 216, paragraph 1, Article 218, paragraph 1 LNP and Article 332 LCP in conjunction with Article 3 LNP. The parties shall be given a time period to specify all evidence that have to be secured with urgency in the present proceeding according to Article 379 – 381 LCP in conjunction with Article 3 LNP.

In view of the aforementioned reasoning it is decided as in the enacting clause.

LEGAL REMEDIES: No separate appeal is permitted against point I of this ruling according to Article 408, paragraph 5 LCP in conjunction with Article 3 LNP.

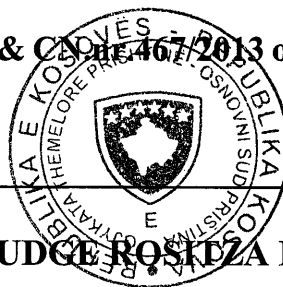
The counterproposers objecting the security may file an objection to points II – IV, VI - VII of this ruling according to Article 306, paragraph 2 LCP in conjunction with Article 3 LNP before the Basic Court of Prishtinë/Priština within three (3) days from the date of its service. No appeal is permitted against points II – IV, VI - VII of the ruling as imposing a temporary measure pursuant to Article 310, paragraph 5 LCP.

All parties may file an appeal against point V of this ruling according to Article 310, paragraph 1 LCP in conjunction with Article 3 LNP to the Court of Appeals through the Basic Court of Prishtinë/Priština within seven (7) days from the date of service.

No separate appeal is permitted against point VIII – X of this ruling according to Article 387, paragraph 2 LCP in conjunction with Article 3 LNP.

THE BASIC COURT OF PRISHTINË/PRIŠTINA

CN.nr.249/2013 & CN.nr.467/2013 on 30th July 2013



EULEX JUDGE ROŠIĐA BUZOVA

Prepared in English as an official language according to Article 17 of the Law No. 03/L-053 on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo.