AC.nr.286/2010

THE DISTRICT COURT OF GJILAN/GNJILANE

Through a panel composed of EULEX Civil Judge ROSITZA BUZOVA, as Presiding Judge, Kosovo Judge MUHAMET REXHA and Kosovo Judge ABDULLAH AHMETI, as panel members,

In the civil case of the claimants AGUSH AGUSHI, SABIT AGUSHI, REXHEP AGUSHI, SKENDER AGUSHI, AHMET AGUSHI, MUHAMET AGUSHI and FADIL RAMADANI from village ZHEGËR/ŽEGRA, the Municipality of PARTESH/PARTEŠ with an authorized representative Lawyer MUSTAFË MUSA from GJILAN/GNJILANE filed against the respondents BRANISLAV MILKOVIC from village BUDRIKA E POSHTME/DOLNJIE BUDRIGE, the Municipality of GJILAN/GNJILANE, FATLUM KADRIU from village ZHEGËR/ŽEGRA, the Municipality of GJILAN/GNJILANE with authorized representative Lawyer AVDULLAH ISMAJILI from GJILAN/GNJILANE, and LJUBISHA STAMENKOVIC from village ZHEGËR/ŽEGRA, the Municipality of GJILAN/GNJILANE with a temporary representative Lawyer ENVER HALILI from GJILAN/GNJILANE,

Upon claims for confirmation of preferential purchase right under Article 254, paragraph 1 of the Law No. 03/L-006 on Contested Procedure (Official Gazette of the Republic of Kosovo No. 38/2008) ("LCP") in conjunction with Article 19, paragraphs 1 and 2 of the Law on Transfer of Real Property (LTRP) (Official Gazette of SPAK No.45/81, 29/86 and 28/88) and claims for annulment of contracts on sale of immovable property under Article 26, paragraph 2 LTRP with value of the contest of 2 000 Euros,

Having adjudicated the appeal filed by AGUSH AGUSHI, SABIT AGUSHI, REXHEP AGUSHI, SKENDER AGUSHI, AHMET AGUSHI, MUHAMET AGUSHI and FADIL RAMADANI against judgment C.nr.509/2008 of the MUNICIPAL COURT of GJILAN/GNJILANE, dated 20th April 2010 in the second instance proceedings under Article 185 - 205 LCP

After deliberation and voting on the appeal above in a panel session under Article 190, paragraph 1, first hypothesis LCP held on 6th June 2011

Hereby pursuant Article 195, paragraph 1, item d) in conjunction with Article 200 LCP renders the following

JUDGMENT

The appeal of AGUSH AGUSHI, SABIT AGUSHI, REXHEP AGUSHI, SKENDER AGUSHI, AHMET AGUSHI, MUHAMET AGUSHI and FADIL RAMADANI, all from village ZHEGËR/ŽEGRA, the Municipality of GJILAN/GNJILANE, represented by Lawyer MUSTAFË MUSA from GJILAN/GNJILANE is **REJECTED** as unfounded and judgment C.nr.509/2008 of the Municipal Court of GJILAN/GNJILANE, dated 20th April 2010 is **CONFIRMED**.

REASONING

I. Procedural Background

1. By judgment C.nr.509/08 of the Municipal Court of GJILAN/GNJILANE, dated 20th April 2010 was rejected as non-based the claim of the claimants AGUSH AGUSHI, SABIT AGUSHI, REXHEP AGUSHI, SKENDER AGUSHI, AHMET AGUSHI, MUHAMET AGUSHI and FADIL RAMADANI, all from village ZHEGËR/ŽEGRA against the respondents BRANISLAV (STANIMIR) MILKOVIC from village BUDRIK E POSHTME, FATLUM KADRIU and LJUBISHA STAMENKOVIC, both from village ZHEGËR/ŽEGRA for confirmation of preferential purchase right on cadastral parcel nr.91 in the place "SUKA QESMA", with a surface of 0.15.71 ha, and on cadastral parcel nr.92 in the place "SUKA VISHE XHADE", with a surface of 0.16.78 ha, registered in Certificate for immovable property rights nr.913, CZ ZHEGËR/ŽEGRA. By the same judgment were rejected the claims for annulment of contract on sale of these immovable properties Vr.nr.2706/06, dated 31st July 2006 between the respondents BRANISLAV MILKOVIC and FATLUM KADRIU and contract on sale Vr.nr.4049/06, dated 16th October 2006 between the respondents LJUBISHA STAMENKOVIC and FATLUM KADRIU. The claimants were obliged to pay in solidarity the costs of the proceedings based on Article 452, paragraph 1 LCP.

2. On 1st June 2010, an appeal was filed by the claimants AGUSH AGUSHI, SABIT AGUSHI, REXHEP AGUSHI, SKENDER AGUSHI, AHMET AGUSHI, MUHAMET AGUSHI and FADIL RAMADANI through their authorized representative Lawyer MUSTAFË MUSA challenging entirely judgment C.nr.509/2008 of the Municipal Court of GJILAN/GNJILANE, dated 20th April 2010 for *substantial violations of the provisions of the contested procedure* as per Article 182, paragraph 2, item n) LCP, *incomplete and erroneous determination of the factual situation* as per Article 183 LCP and *erroneous application of the substantive law* as per Article 184 LCP. The appellants requested the second instance court to modify judgment C.nr.509/2008 of the Municipal Court of GJILAN/GNJILANE, dated 20th April 2010 with approval of the claim or alternatively to annul the judgment with remittal of the case for retrial to the first instance court.

3. According to Article 187, paragraph 2 LCP on 15th July 2010 a reply to the appeal was submitted on behalf the respondent LJUBISHA STAMENKOVIC by his temporary representative Lawyer ENVER HALILI. On 19th July 2010 a reply to the appeal was filed on behalf of the respondent FATLUM KADRIU by his authorized representative Lawyer AVDULLAH ISMAJILI. Summarized, both stated that judgment C.nr.509/2008 of the Municipal Court of GJILAN/GNJILANE, dated 20th April 2010 was lawfully rendered without any of the grounds indicated in the appeal and requested its confirmation.

4. Since the appeal was not fully administered by the court of first instance, the court of second instance served its copy to the respondent BRANISLAV MILKOVIC pursuant to Article 176, paragraph 1, first sentence in conjunction with Article 116, paragraph 5, first sentence and paragraph 2 LCP by posting it on the notice board for a 7-days period. The replies of the respondents LJUBISHA STAMENKOVIC and FATLUM KADRIU were served on 30th May 2011 to the appellants through their authorized representative

Lawyer MUSTAFË MUSA according to Article 187, paragraph 2 LCP.

II. Competence of the panel of the District Court of GJILAN/GNJILANE

5. This second instance civil case - AC.nr.286/2010 of the DC of GJILAN/GNJILAN - was selected pursuant to Article 5, paragraph 1, item c) of the Law No. 03/L-053 on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo ("the Law No. 03/L-053 on Jurisdiction") by ruling of EULEX Judge, dated 16th December 2010. The hearing under Article 5, paragraph 7, first sentence of the Law No. 03/L-053 on Jurisdiction was held on 22nd February 2011 by EULEX Judge appointed as Delegate of the President of the Assembly of the EULEX Judges according to Decision ref.nr.JC/EJU/OPEJ/2230/mgc/11, dated 28th January 2011. The same EULEX Judge based on Article 5, paragraph 7, second sentence of the Law No. 03/L-053 on Jurisdiction issued a ruling, dated 24th February 2011 for assignment of the case to a three-judge panel of the District Court of GJILAN/GNJILAN under Article 5, paragraphs 2 and 4 of the Law No. 03/L-053 on Jurisdiction with Presiding EULEX Judge and two Kosovo Judges members, designated after derogation Decision ref.nr.JC/EJU/OPEJ/2298/mgc/11 of the President of the Assembly of EULEX Judges, dated 3rd March 2011 under Article 5, paragraph 5 of the Law No. 03/L-053 on Jurisdiction by Decision Agj.nr.38/11 of the President of the District Court of GILAN/GNJILANE, dated 9th March 2011.

6. Being legally composed in conformity with the specific requirements of Article 5, paragraphs 1, 2, 4, 5 and 7 of the Law No. 03/L-053, this three-judge panel of the District Court of GJILAN/GNILANE is empowered to adjudicate AC.nr.286/2010 based on the functional competence of a second instance court foreseen by the general provisions of Article 15, paragraph 2 and Article 176, paragraph 3 LCP.

III. Admissibility of the appeal and the second instance procedure

7. No procedural impediments exist for adjudication of the appeal. *At first place*, its submission is not prohibited but explicitly foreseen by Article 176, paragraph 1, first sentence LCP as the challenged court decision is a first instance judgment on the merits of the claim. *At second place*, the appeal is not belated under Article 186, paragraph 2 LCP. Judgment C.nr.509/2008 of the Municipal Court of GJILAN/GNJILANE, dated 20th April 2010 was duly served to the authorized representative of the claimants Lawyer MUSTAFË MUSA on 24th May 2010. Their appeal was filed by him to the Municipal Court of GJILAN/GNJILANE on 1st June 2010, before the expiry of the 15-days time period prescribed by Article 176, paragraph 1, first sentence LCP on 8th June 2010. *At third place*, the appeal is not impermissible under Article 186, paragraph 3 LCP. It is lodged on behalf of the claimants in the first instance proceedings who have the right and the legal interest to submit it, since there is no renouncement and/or withdrawal made by any of them. It is signed by Lawyer MUSTAFË MUSA, authorized by power of attorney, dated 22nd October 2008 which is general in its scope of authorization and explicitly includes the right to use this regular legal remedy as previewed by Article 90, paragraph 2, item a) LCP. *At fourth place*, the appeal has the mandatory content as per Article 178, items a) – d) LCP and is not incomplete under Article 179, paragraph 1 LCP. Therefore

no legal grounds exist excluding the admissibility of this appeal and the second instance procedure under Article 176 - 205 LCP initiated by it.

IV. Summary of the first instance proceedings

8. The claim was submitted on 26th July 2007 and registered as C.nr.462/2007 of the Municipal Court of GJILAN/GNJILANE. According to its initial content it was filed by AGUSH AGUSHI as a claimant against BRANISLAV MILKOVIC and FATLUM BAJRAM KADRIU as respondents: 1) to confirm the claimant's preferential right to purchase cadastral parcel nr.91 in the place "SUKA QESMA", with a surface of 00.15.71 ha, and cadastral parcel nr.92 in the place "SUKA VISHE XHADE", with a surface of 00.16.78 ha, registered in Certificate nr. UL-70403026-00913, dated 20th July 2007, CZ ZHEGËR; 2) to annul the contract on sale of these immovable properties between BRANISLAV MILKOVIC as seller and FATLUM KADRIU as buyer at the price of 8 000 Euros, attested as Vr.nr.2706/2006 by the Municipal Court of GJILAN/GNJILANE on 31st July 2006; 3) to oblige the first respondent to sell the contested real estate to the claimant under the same conditions by a contract attested by the court in 15-days time period under the threat of compulsory execution of the judgment; 4) to oblige the second respondent to accept the registration of the parcels in the name of the claimant by the Directorate for Geodesy, Cadastre and Property (DGCP) - GJILAN/GNJILANE and to authorize him for reimbursement of the paid price from the equal amount deposited at the account of the Municipal Court of GJILAN/GNJILANE.

9. The initial claim was subsequently corrected and amended as per its subjective and objective scope during the trial of C.nr.462/2007. In the public court session on 27th December 2007 the authorized representative of the claimant Lawyer MUSTAFË MUSA corrected the name of the second respondent in the claim from "FATLUM BAJRAM KADRIU" to "FATLUM BAHRI KADRIU". By submission of same representative of 8th January 2008 the value of the dispute was increased from 250 to 2 000 Euros, and LJUBISHA STAMENKOVIC as previous owner of cadastral parcel nr.91 in the place "SUKA QESMA", with a surface of 00.15.71 ha, was constituted as a new respondent in the proceedings. During the main hearing on 14th May 2008 Lawyer MUSTAFË MUSA included in point II of the statement of the claim the annulment of contract on sale Vr.nr.4409/06 between the respondents LJUBISHA STAMENKOVIC and FATLUM KADRIU, attested by the Municipal Court of GJILAN/GNJILANE on 16th October 2006.

10. Judgment C.nr.462/2007 of the Municipal Court GJILAN/GNJILANE, dated 14th May 2008 for rejection of the claims as non-based upon appeal of AGUSH AGUSHI was annulled by judgment AC.nr.226/2008 of the District Court of GJILAN/GNJILANE, dated 26th August 2008 with remittal of the case to the first instance court for retrial pursuant to Article 369 of the Law on Contentious Procedure ("Official Gazette of the SFRY" No. 4/77, 36/80, 69/82, 58/84, 74/87, 57/89, 20/90, 27/90, 35/91 and "Official Gazette of the SRY" No. 27/92, 31/93, 24/94, and 12/98). The court of second instance found a substantial violation of the provisions of the contested procedure under Article 354, paragraph 1, point 13 of the Law on Contentious Procedure because of contradiction of the enacting clause with the reasoning and processed evidence as per the ownership of

the neighboring cadastral parcel nr.89, registered in the name of the deceased QAIL (AGUSHI) REXHEPI and the legal succession between him and the claimant AGUSH AGUSHI according to the final inheritance decision T.nr.91/2008 of the Municipal Court of GJILAN/GNJILANE, dated 18th June 2008.

11. For its retrial the case was registered as C.nr.509/2008 of the Municipal Court of GJILAN/GNJILANE. In its course on 17th November 2008 Lawyer MUSTAFË MUSA proposed amendment of the subjective scope of the claim as per the claimants so that it is considered filed by all legal successors of the deceased QAHIL (AGUSHI) REXHEPI pronounced by the final inheritance decision T.nr.91/2008 of the Municipal Court of GJILAN/GNJILANE, dated 18th June 2008 - AGUSH, SABIT, REXHEP, SKENDER, AHMET, MUHAMET AGUSHI, and FADIL RAMADANI.

12. By judgment C.nr.509/2008 of the Municipal Court of GJILAN/GNJILANE, dated 20th April 2010 the claims as corrected, completed and amended in the course of the proceedings were rejected as non-based. According to the reasoning, the respondent BRANISLAV MILKOVIC was the previous owner of cadastral parcel nr.92 in the place "SUKA VISHE XHADE", culture – field, 1st class, with a surface of 00.16.78 ha, registered in Possession List nr.70403026-884, CZ ZHEGËR/ŽEGRA, whereas the respondent LJUBISHA STAMENKOVIC was the previous owner of cadastral parcel nr.91 in the place "SUKA QESMA", culture – field, 1st class, with a surface of 00.15.71 ha, registered in Possession List nr.750, CZ ZHEGËR/ŽEGRA. Both of them sold the properties to the respondent FATLUM KADRIU by contract on sale V.nr.2706/06, dated 31st July 2006 and contract on sale V.nr.4096/06, dated 16th October 2006, respectively. Upon request of the buyer the cadastral registration of the parcels was changed in his name by Decision nr.951/1476/06, dated 26th October 2006 and Decision nr.951/1470/06, dated 26th October 2006 of the DGCP – GJILAN/GNJILANE. Based on these factual findings, the first instance court concluded that cadastral parcel nr.89 - co-ownership of the claimants by inheritance was not neighboring to cadastral parcel nr.92, bought by the respondent FATLUM KADRIU on 31st July 2006. Thus he had the preferential right to purchase its neighboring cadastral parcel nr.91 in its sale by the respondent LJUBISHA STAMENKOVIC on 16th October 2006. With this reasoning the claims were rejected.

V. Appellate review of the court of second instance pursuant to Article 194 LCP

Substantial violations of the provisions of the contested procedure - Article 182 LCP

13. The *first* ground for challenging judgment C.nr.509/2008 of the Municipal Court of GJILAN/GNJILANE, dated 20th April 2010 is under Article 181, paragraph 1, item a) LCP for *substantial violation of the provisions of the contested procedure as per Article 182, paragraph 2, item n) LCP*. However, its normative wording is just quoted without any concretization based on the content of the appealed judgment. No errors excluding its examination are specified by the appellants that might be reviewed by this panel. The enacting clause is comprehensible and not contradictory by itself or with the reasoning which is provided for all relevant facts, decisive in this dispute. The judgment contains clear and objective grounds in relation to these material facts, which are not ambiguous or contradictory. No inconsistencies exist between what is stated in the reasoning on the

documents or records of statements given in the course of the proceedings and their actual content. All collected evidences were evaluated separately and as a whole by the court of first instance in conformity with Article 8 LCP. Therefore this panel considers that the procedural ground under Article 182, paragraph 2, item n) LCP in the appeal is unfounded and does not exclude the sustainability of the judgment.

14. No violations of the contested procedure under Article 182, paragraph 2, items b), g), j), k) and m) LCP which the court of second instance is obliged to examine *ex officio* have been determined in this appellate review under Article 194 LCP. The judgment was rendered upon claims falling within the exclusive jurisdiction of the Municipal Court of GJILAN/GNJILANE under Article 41 LCP in immovable property-related disputes (*Article 182, paragraph 2, item b) LCP*). It was not based on unlawful disposition of the parties under Article 3, paragraph 3 LCP (*Article 182, paragraph 2, item g) LCP*). None of the litigants was denied the right of interpretation in his/her own language in the main hearing as previewed by Article 96 LCP (*Article 182, paragraph 2, item k) LCP*). The persons that participated in the case were entitled to act as parties in the proceedings with the required procedural capacity and due representation (*Article 182, paragraph 2, item k) LCP*). The publicity of the main hearing guaranteed by Article 444, paragraph 1 LCP was not excluded in any of its held sessions (*Article 182, paragraph 2, item m) LCP*).

15. Within the limitations of the appellate review imperatively defined by Article 194 LCP, the court of second instance concludes that the violation of the provisions of the contested procedure under Article 182, paragraph 2, item n) LCP indicated in the appeal and the ones under Article 182, paragraph 2, items b), g), j), k) and m) LCP, controlled *ex officio*, do not exist. No other procedural infringements, regardless of their substantiality, could be examined since they are not included in the permissible scope of the appellate review as restricted by Article 194 LCP. Therefore the challenged judgment could not be annulled on any procedural ground as per Article 181, paragraph 1, item a) LCP.

Erroneous and incomplete determination of the factual situation - Article 183 LCP

16. The *second* ground in the appeal is under Article 181, paragraph 1, item b) LCP for *erroneous and incomplete determination of the factual situation*. However, it is also non-based as per the criteria of Article 183, paragraph 1 LCP – the court of first instance did not determine any relevant material fact incorrectly and did not fail to establish it. There are no new facts or new evidence presented or proposed in the appeal pursuant to Article 180, paragraphs 1 and 2 LCP which according to Article 183, paragraph 2 LCP is indication that the factual situation in judgment C.nr.509/2008 of the Municipal Court of GJILAN/GNJILANE, dated 20th April 2010 is neither erroneous, nor incomplete. The statement on the grounds in compliance with Article 160, paragraph 4 LCP includes the facts presented and the evidence proposed by the parties, as well as the facts established by the first instance court with the evidence used. The latter are carefully examined and assessed separately and as a whole in conformity with Article 8, paragraphs 1 and 2 LCP. The factual findings reached on this evidentiary basis are correct and complete.

17. Cadastral parcel nr.P-70403026-00088-0 (cadastral parcel nr.88), cadastral parcel nr.P-70403026-00089-0 (cadastral parcel nr.89), cadastral parcel nr.P-70403026-00091-0 (cadastral parcel nr.91), cadastral parcel nr.P-70403026-00092-0 (cadastral parcel nr.92), and cadastral parcel nr.P-70403026-00093-0 (cadastral parcel nr.93) are units of CZ ZHEGËR/ŽEGRA, located in the sequence of their enumeration above, one after another in the form of parallel rectangles, all of them bordering on their left western side with the road BUDRIGË E POSHTME/DONJIE BUDRIGE - SHURDHAN nr.1095-0. This configuration is evidenced on the basis of all relevant cadastral graphical and numeric records by the findings of the geodesy expertise of 17th March 2010 and its attachments - the sketch of these parcels and the respective copy of the plan issued for the case by the DGCP - GJILAN/GNJILANE. The detailed characteristics of **cadastral parcels nr.89, nr.91 and nr.92,** relevant for the dispute, are as follows.

18. **Cadastral parcel nr.89** is located in CZ ZHEGËR/ŽEGRA in the place "TRSKE SUKA", with a surface of 00.28.41 ha (2 841 m^2), previously registered in Certificates of immovable property rights nr.P-70403026-0089-0, dated 20th July 2007 and 2nd August 2008 in the name of QAIL (AGUSH) REXHEPI. After his death on 21st March 1983 his inheritance was regulated in a non-contested procedure. In it after his inheritors from first and second line were identified and his daughters withdrew from the inheritance, by decision T.nr.91/08 of the Municipal Court of GJILAN/GNJILANE, dated 18th June 2008 for all his properties, including cadastral parcel nr.P-70403026-00089-0, registered in Possession List nr. P-70403026-00011, CZ ZHEGËR/ŽEGRA as inheritors of QAIL (AGUSH) REXHEPI were pronounced SABIT AGUSHI, AGUSH AGUSHI, REXHEP AGUSHI, SKENDER AGUSHI, for the ideal part of 1/5 each, AHMET AGUSHI, MUHAMET AGUSHI and FADIL RAMADANI (by substitution of his deceased son RAMADAN AGUSHI)-for the ideal part of 1/5 together. Inheritance decision T.nr.91/08 of the Municipal Court of GJILAN/GNJILANE, dated 18th June 2008 became final on 30th June 2008. Based on it, by Decision of the DGCP-GJILAN/GNJILANE nr.1065/08, dated 8th August 2008 cadastral parcel nr.P-70403026-00089-0, CZ ZHEGËR/ŽEGRA, culture-1st class arable land and surface-2 841 m^2, was registered on 26th August 2008 in the name of SABIT (QAIL) AGUSHI-3/15, AGUSH (QAIL) AGUSHI – 3/15, REXHEP (QAIL) AGUSHI - 3/15, SKENDER (QAIL) AGUSHI - 3/15, AHMET (RAMADAN) AGUSHI – 1/15, MUHAMET (RAMADAN) AGUSHI–1/15 and FADIL (RAMADAN) RAMADANI - 1/15 (Certificate of immovable property rights nr.P-70403026-0089-0, dated 16th March 2010, CZ ZHEGËR/ŽEGRA). It was clarified by the geodesy expert MAHMUT BAJRAMI in the main hearing on 20th April 2010 pursuant to Article 368 LCP that cadastral parcel nr.89 borders with: 1) cadastral parcel nr.91 in the north; 2) cadastral parcel nr.88 in the south (registered in Possession List nr.276 in the name of SHABAN ZEQIRI); 3) cadastral parcel nr.90 in the east (registered in Possession List nr.439 in the name of NAFIJE SADRIU); and 4) road BUDRIGË E POSHTME/DONJIE BUDRIGE-SHURDHAN in the west. According to the completion of the findings and opinion of the same expert in the main hearing on 20th April 2010, **no border exists between cadastral parcel nr.89 and cadastral parcel nr.92.**

19. Cadastral parcel nr.91 is located in CZ ZHEGËR/ŽEGRA in the place "SUKA ÇESMA", with *culture-1st class arable land,* in a total surface of 00.15.71 ha (1 571 m²), previously registered in Possession List nr.750, CZ ZHEGËR/ŽEGRA as ownership of LUBISHA (MILAN) STAMENKOVIC (Decision of the Kosovo Cadastral Agency CZ ZHEGËR nr.951-1470/06, dated 26th October 2006). By a written contract on sale of immovable property Vr.nr.4049/06, attested on 16th October 2006 by the Municipal Court of GJILAN/GNJILANE, LUBISHA (MILAN) STAMENKOVIC as owner according to Possession List nr.750, CZ ZHEGËR/ŽEGRA nr.70403026 of this cadastral parcel sold it in its total surface to FATLUM KADRIU, represented by OSMAN LIMANI based on a power of attorney nr.2711/06, dated 31st July 2006, for the price of 8 000 Euros - Article 1. The amount was received by the seller at the day of signature of this contract as explicitly confirmed in its Article 2. Pursuant to Article 321, paragraph 1 LCP there was no need to be proven in the case the facts established in the court proceedings for attestation of contract on sale Vr.nr.4049/06, dated 16th October 2006 that KOMBINATI BUJQESOR INDUSTRIAL "AGROKULTURA"-GJILAN/GNJILANE by a statement enclosed in the file declared that it was not interested in the offer of LUBISHA (MILAN) STAMENKOVIC to purchase cadastral parcel nr.91, registered in Possession List nr.750, CZ ZHEGËR/ŽEGRA, in the place called "SUKA ÇESMA", 1st class arable land with a surface of 00.15.71 ha and the refusal of the same offer by Decision nr.01.01101/3222, dated 24th July 2006 of the Municipality of GJILAN/GNJILANE - DGCP. On the date of attestation of contract Vr.nr.4049/06-16th October 2006 a receipt was drafted to certify that the buyer FATLUM KADRIU paid for cadastral parcel nr.91 to the seller LUBISHA STAMENKOVIC in cash the amount of 21 208.50 Euros, and both parties confirmed the fulfillment of their obligations. This receipt was signed by LUBISHA STAMENKOVIC and BAHRI KADRIU, father of FATLUM KADRIU. By Decision of the Kosovo Cadastral Agency nr.951-1470/06, dated 26th October 2006 pursuant to Article 3, paragraphs 3, 6 and 7 of the Law on Establishment of Immovable Property Rights Register it was approved the request of FATLUM KADRIU, dated 26th October 2006 related to the registration of cadastral parcel nr.91 in the place "SUKA ÇESMA", culture - 1st class arable land, with a surface of 00.15.71 ha - ownership of LUBISHA STAMENKOVIC by its change made on the basis of contract on sale Vr.nr.4049/06, dated 16th October 2006 under ordinal nr.39/06 in the name of FATLUM KADRIU as new owner, evidenced in Possession List nr.913, CZ ZHEGËR/ŽEGRA. The cadastral registration after this change is officially verified by Certificate nr.UL-70403026-00913 issued by the Municipal Cadastral Office-GJILAN/GNJILANE on 30th November 2006 and on 20th July 2007. Its validity is confirmed in the case by the geodesy expertise of 17th March 2010 and the attached Unit Base Data issued by the Municipal Cadastral Office GJILAN/GNJILANE on 16th March 2010. It is shown in the sketch to the geodesy expertise that cadastral parcel nr.91 borders with: 1) **cadastral parcel nr.92 in the north**; 2) **cadastral parcel nr.89 in the south;** 3) cadastral parcel nr.90 in the east (registered in Possession List nr.439 in the name of NAFIJE SADRIU); 4) road BUDRIGË E POSHTME/DONJIE BUDRIGE - SHURDHAN in the west. The border between cadastral parcels nr.91 and nr.92 is **159.83 m**, whereas the one between cadastral parcels nr.91 and nr.89 is **157.16 m.**

20. Cadastral parcel nr.92 is located in CZ ZHEGËR/ŽEGRA in the place "SUKA VISHE XHADE", culture 1st class arable land, with a total surface of 00.16.78 ha (1 678 m²), previously registered in Possession List nr.884, CZ ZHEGËR/ŽEGRA in the name of BRANISLAV (STANIMIR) MILKOVIC (Decision of the Kosovo Cadastral Agency CZ ZHEGËR/ŽEGRA nr.951-1476/06, dated 26th October 2006). By a written contract on sale of immovable property Vr.nr.2706/06, attested on 31st July 2006 by the Municipal Court of GJILAN/GNJILANE, BRANISLAV (STANIMIR) MILKOVIC as owner of this cadastral parcel sold it in its total surface to FATLUM KADRIU for the price of 8 000 Euros - Article 1. It was agreed that the amount would be received by the seller at the day of signing this contract - Article 2. Pursuant to Article 321, paragraph 1 LCP there was no need to be proven the facts established in the court proceedings for attestation of contract on sale Vr.nr.2706/06, dated 31st July 2006 that KOMBINATI BUJQESOR INDUSTRIAL "AGROKULTURA"-GJILAN/GNJILANE by a statement declared that it was not interested in the offer of BRANISLAV MILKOVIC to purchase cadastral parcel nr.92, in the place "SUKA VISHE XHADE", 1st class arable land with a surface of 00.16.78 ha, and the refusal of the same offer by Decision nr.01.01101/3491 of the Municipality of GJILAN/GNJILANE - DGCP, dated 26th July 2006. A written receipt was drafted to certify that BAHRI KADRIU on behalf of his son FATLUM KADRIU as buyer paid for cadastral parcel nr.92 in cash the total amount of 22 653.50 Euros to the seller BRANISLAV MILKOVIC, who handed over its possession. By Decision of the Kosovo Cadastral Agency nr.951-1476/06, dated 26th October 2006 in compliance with Article 3, paragraphs 3, 6 and 7 of the Law on Establishment of Immovable Property Rights Register it was approved the request of FATLUM KADRIU, dated 26th October 2006 related to the registration of cadastral parcel nr.92 in the place "SUKA VISHE XHADE", culture - 1st class arable land with a surface of 00.16.78 ha - ownership of BRANISLAV MILKOVIC according to Possession List nr.84, CZ ZHEGËR/ŽEGRA by its change made on the basis of contract on sale Vr.nr.2706/06, dated 31st July 2006 under ordinal nr.38/06 in the name of FATLUM KADRIU as new owner, evidenced in Possession List nr.913, CZ ZHEGËR/ŽEGRA. The cadastral registration of the property after the change is officially verified by Certificate nr.UL-70403026-00913 issued by the Municipal Cadastral Office - GJILAN/GNJILANE on 30th November 2006 and on 20th July 2007. Its validity is confirmed by the geodesy expertise of 17th March 2010 and the attached Unit Base Data issued by the Municipal Cadastral Office-GJILAN/GNJILANE on 16th March 2010. It is seen from the sketch to this expertise and the copy of the plan that cadastral parcel nr.92 borders with: 1) cadastral parcel nr.93 in the north; 2) cadastral parcel nr.91 in the south; 3) cadastral parcel nr.90 in the east (registered in Possession List nr.439 in the name of NAFIJE SADRIU); and 4) road BUDRIGË E POSHTME/ DONJIE BUDRIGE-SHURDHAN in the west. **There is absolutely no border between cadastral parcel nr.92 and cadastral parcel nr.89**

21. This factual situation determined by judgment C.nr.509/08 of the Municipal Court of GJILAN/GNJILANE, dated 20th April 2010 is neither erroneous, nor incomplete, contrary to what is oppositely stated in the appeal. *At first place,* it includes findings as for the registration of cadastral parcel nr.89 with a surface of 2 841 m² as inherited by claimants, its border with cadastral parcel nr.91 with a surface of 1 571 m², and the sales

of cadastral parcel nr.91 and cadastral parcel nr.92 from their previous owners LUBISHA STAMENKOVIC and BRANISLAV MILKOVIC, respectively to FATLUM KADRIU. Unfounded are the allegations of the appellants that these facts are not established by the court of first instance. *At second place*, pursuant to Article 319, paragraph 2 LCP only *the facts of relevance* to rendering the decision are to be proven in the proceedings – the 30-years possession of cadastral parcel nr.89 by the predecessors of the claimants is not envisaged as a condition in the applicable substantive law provision, as such it is legally irrelevant and its non-establishment in the challenged judgment is not incompleteness of its factual findings as per Article 183, paragraph 1 LCP. *At third place*, the allegations of the appellants that cadastral parcels nr.91 and 92 were bought by the respondent BAHRI KADRIU are *incorrect* – he has not been constituted as *respondent* in the case neither by the initial claim, nor by its subsequent amendments in the course of the proceedings; the same person has not concluded *as a buyer* contracts on sale Vr.nr.2706/06, dated 31st July 2006 and Vr.nr.4049/06, dated 16th October 2006. Therefore the determination of the first instance court that the respondent FATLUM KADRIU as a contracting party to these two legal transactions bought cadastral parcels nr.91 and 92 is correct and well corroborated by the collected evidence in conformity with Article 319, paragraph 3 LCP. *At fourth place*, erroneous is the allegation in the appeal that the border between **cadastral parcels nr.89 and nr.91** is **159.83 m** – its length as clearly indicated in the sketch to the geodesy expertise of 17th March 2010 is **157.16 m**, whereas **159.83 m** is the length of the border between **cadastral parcels nr.91 and nr.92**. *At fifth place*, only *positive* facts, such that have occurred in the reality, are to be proved in the proceedings – Article 319, paragraph 1 LCP. On the contrary, a *negative* non-realized fact such as the non-offering of cadastral parcels nr.91 and nr.92 by LUBISHA STAMENKOVIC and BRANISLAV MILKOVIC to the claimants as not presumed by law is not be proven - its non-existence had not to be ascertained by way of any evidence – Article 321, paragraph 4 LCP.

22. After this examination, the conclusion reached by the court of second instance is that all the arguments of the appellants related to the second ground in the appeal, the one falling under Article 181, paragraph 1, item a) LCP, are non-based – the factual situation in the challenged judgment is not erroneous or incomplete as per Article 183 LCP.

Erroneous application of the substantive law - Article 184 LCP

23. Pursuant to Article 194 LCP the present court of second instance shall examine the challenged judgment within the scope of the grounds indicated in the appeal, as well as *ex officio* for erroneous application of the substantive law under Article 184 LCP.

24. In view of the subject-matter of the claims, the *applicable law* under Section 1.1, item a) of UNMIK Regulation No. 1999/24 in this case is the Law on Transfer of Real Property (LTRP) (Official Gazette of SAPK No. 45/1981, 29/1986 and 28/1988) as being in force in Kosovo on 22nd March 1989. According to its Article 19, paragraph 1, the ownership right holder of agricultural land, who intends to sell it, is obliged to make a written offer first to the Organization of Associated Labour dealing with the agricultural production, agricultural cooperatives in the municipality where the land is located, the municipality in which the land is located and *the farmer–possessor of the neigbouring*

land. Article 19, paragraph 2 LTRP stipulates that if there are several farmers possessors of neighbouring land whose agricultural land borders with the one of the seller, the farmer-possessor *whose predominant part of agricultural land borders on the land of the seller* shall have priority in the exercise of the preferential right of purchase. If the ownership right holder does not make the offer in accordance with Articles 19 LTRP, or sells the real property to a third person under more favourable conditions, *the preferential right holder* may submit a claim seeking annulment of the contract, as well as sale of the real property to him/her under the same conditions based on Article 26, paragraph 2 LTRP.

25. Summarizing the provisions quoted above, the *active legitimacy* for the claim for confirmation of the preferential purchase right under Article 254, paragraph 1 LCP in conjunction with Article 19, paragraph 1 *in fine* LTRP and the claim for annulment of the contract on sale concluded in its violation under Article 26, paragraph 2 LTRP belongs to **the farmer-possessor(s) of the neighbouring agricultural land, the predominant part of which borders with the agricultural land of the seller.** The existence of this active legitimacy of a *preferential purchase right holder with priority* in its exercise is the first mandatory prerequisite for approval of the claims cumulatively requiring: 1) the capacity of farmer-possessor(s); 2) agricultural use of the lands; 3) their neighbourhood based on minimum one border; and 4) maximum length of this border between them in comparison with the borders of all the other lands, neigbouring the property of the seller. Only when all these conditions are fulfilled, the respective farmer possessor has the legal preference to purchase the neigbouring property removing any third person from its sale. Restrictive in character as they limit the scope of eventual buyers, all these requirements should be strictly interpreted. The *ratio* of this special regime under Chapter III of LTRP applicable for the transfer of agricultural land is its *amalgamation* with the neigbouring agricultural land predominantly bordering on it and hence overall *consolidation*.

The claims as per cadastral parcel nr.92

26. The preferential purchase right under Article 19, paragraph 1 *in fine* LTRP as explicitly foreseen in the same provision, as well as in Article 19, paragraph 2 LTRP is based on *the possession of agricultural land neigbouring the one under sale.* Therefore the non-existence of this *primary real right* excludes the *secondary right of preemption* as *accessorial* to it. This is exactly the hypothesis. *At first place*, the property of cadastral parcel nr.89 located in the place called "TRSKE SUKA", culture – arable land 1st class, with a surface of 00.28.41 ha, previously registered in Possession List nr. P-70403026-00011, CZ ZHEGËR/ŽEGRA in the name of QAIL (AGUSH) REXHEPI, was regulated as part of his inheritance in a non-contested procedure by decision T.nr.91/2008 of the Municipal Court of GJILAN/GNJILANE, dated 18th June 2008. As the latter is non-retroactive, until 30th June 2008 – the date of its entry into force, SABIT, AGUSH, REXHEP, SKENDER, AHMET, MUHAMET AGUSHI and FADIL RAMADANI were not pronounced as legal successors of QAIL (AGUSH) REXHEPI and their rights in cadastral parcel nr.89 were not determined in compliance with Article 13 in conjunction with Article 36 of the Law on Basic Property Relations (Official Gazette of SFRY, No.6/1980) and Article 94 of the Law on Non-contested Procedure (Official Gazette of

SFRY, No.42/1986). No evidences have been adduced by the claimants in accordance with Article 319, paragraph 1 LCP for their *possession on cadastral parcel nr.89* exercised through cultivation of its arable land prior to the establishment of their co-ownership on it by decision T.nr.91/08 of the Municipal Court of GJILAN/GNJILANE, dated 18th June 2008. Hence, complying with the burden of proof rule under Article 322, paragraph 1 LCP SABIT, AGUSH, REXHEP, SKENDER, AHMET, MUHAMET AGUSHI and FADIL RAMADANI could not be considered *farmers - possessors* of cadastral parcel nr.89 on 31st July 2006, when BRANISLAV MILKOVIC transferred to FATLUM KADRIU cadastral parcel nr.92. Without this dual quality - mandatory as per Article 19, paragraph 1 *in fine* LTRP, the claimants could not be qualified as holders of the preferential right to purchase cadastral parcel nr.92. *At second place*, it is established with certainty in the case that **cadastral parcel nr.89** is surrounded by: 1) cadastral parcel nr.91 in the north; 2) cadastral parcel nr.88 in the south; 3) cadastral parcel nr.90 in the east; and 4) road in the west. As for **cadastral parcel nr.92,** it is located among: 1) cadastral parcel nr.93 in the north; 2) cadastral parcel nr.91 in the south; 3) cadastral parcel nr.90 in the east; and 4) road in the west. These enumerations clearly demonstrate that **cadastral parcel nr.89 and cadastral parcel nr.92 are not neigbouring as they are not bordering at all.** This configuration is officially verified by the copy of the plan related to these cadastral units issued by the DGCP-GJILAN/GNJILANE, the sketch drafted by the geodesy expert appointed in the case as integral part of his written findings and opinion, as well as the completion made by him pursuant to Article 368 LCP in the main hearing on 20th April 2010. Cadastral parcels nr.89 and nr.92 are located in different places of CZ ZHEGËR/ŽEGRA-"TRSKE SUKA" and "SUKA VISHE XHADE", and are situated in a way that cadastral parcel nr.91 fully divides them - their surfaces are not connected in any part, and none of their borders are tangential. Thus **the neighbourhood of cadastral parcel nr.89 and cadastral parcel nr.92 as demanded by Article 19, paragraph 1 *in fine* and paragraph 2 LTRP does not exist**, which by itself is sufficient to exclude the preferential purchase right of the claimants as co-owners of the first one in the sale of the second one. Their location in the same cadastral zone and their vicinity (10 m is approximately their distance in north/south) are legally irrelevant as they could not compensate *the non-coincidence of their external property lines in at least one common border.* As stipulated in Article 19, paragraph 2 LTRP, only when the agricultural land *borders* on another one, they are *neigbouring* and the regime under Chapter III of LTRP is applicable for their transfer. Per argumentum ad contrario, as cadastral parcels nr.89 and nr.92 are *non-bordering* they are *non-neighboring* agricultural lands and this regime is out of application for their sale.

27. Generalizing, based exclusively and only on the co-ownership of cadastral parcel nr.89 acquired by inheritance regulated on 30th June 2008, the claimants were not *farmers - possessors of agricultural land neigbouring cadastral parcel nr.92 prior its sale on 31st July 2006.* The non-fulfillment of these mandatory conditions under Article 19, paragraph 1 *in fine* and paragraph 2 LTRP excludes the status of the claimants as *preferential right holders for the purchase* of cadastral parcel nr.92. This consequently deprives them from the *active legitimacy* in the claim under Article 254, paragraph 1 LCP for confirmation of the preferential right to purchase cadastral parcel nr.92, and in the claim under Article 26,

paragraph 2 LTRP for annulment of contract on sale Vr.2706/06, dated 31st July 2006 as concluded between the respondents BRANISLAV MILKOVIC and FATLUM KADRIU in its alleged violation. The lack of this active legitimacy of the claimants *suffices* the rejection of the two claims as per cadastral parcel nr.92 regardless whether its sale was offered in compliance with Article 19, paragraphs 3 and 6 LTRP and/or subsequently the property was sold to a third person under more favourable conditions. The annulment of the contract because of these infringements, according to Article 26, paragraph 2 LTRP could be sought from the court exclusively and only by *the preferential purchase right holders* - first absolute prerequisite which with respect to the claimants does not exist **as their cadastral parcel nr.89 is not neigbouring by any border with cadastral parcel nr.92 – subject of the contested contract Vr.nr.2706/06.**

The claims as per cadastral parcel nr.91

28. When there are several farmers - possessors of neigbouring land bordering on the agricultural land of the seller, according to Article 19, paragraph 2 LTRP the one **whose predominant part of agricultural land borders on the land of the seller shall have priority in the exercise of the preferential right to purchase.** In such hypothesis the competition is decided in favour of the agricultural land neighboring the one under sale by the longest border. However, in the correlation cadastral parcel nr.89/cadastral parcel nr.91, this additional criterion for preference is not met. It is undisputable that by culture both represent *arable land* of 1st class. It is indisputable also their *neighbourhood* - the northern border of cadastral parcel nr.89 coincides with the southern border of cadastral parcel nr.91. It is indisputable at the end that the other two properties neigbouring it - cadastral parcel nr.92 in the north and cadastral parcel nr.90 in the east - are agricultural lands. In this multitude based on Article 19, paragraph 2 LTRP the preferential purchase right as exclusive one is *accessorial only to the agricultural land having predominant border on the one of the seller*. As evidenced in the case by the copy of the plan issued by the DGCP - GJILAN/GNJILANE and the sketch to the geodesy expertise of 17th March 2010, the northern border between **cadastral parcels nr.91 and nr.92** is **159.83 m,** the southern border between **cadastral parcels nr.91 and nr.89** is **157.16 m** and the eastern border between **cadastral parcels nr.91 and nr.90** is **9.87 m** (the western border of cadastral parcel nr.91 is with road and not with agricultural land). This scale follows the succession of the border lengths and clearly illustrates the predominance under Article 19, paragraph 2 LTRP of **cadastral parcel nr.92** as neigbouring in maximum with cadastral parcel nr.91 for **159.83 m.** On the contrary, **cadastral parcel nr.89** is at second place in the scale and loses the precedence bordering with cadastral parcel nr.91 only for **157.16 m.** Their competition is solved by *this numerical proportion in the size of their borders with the property of the seller* pursuant to Article 19, paragraph 2 LTRP – titular of the preferential purchase right under Article 19, paragraph 1 *in fine* LTRP is the possessor of cadastral parcel nr.92 whose predominant part of agricultural land borders on the land of the seller LUBISHA STAMENKOVIC. The advantage is expressed in the priority given by law to this titular in the exercise of the preferential right upon the sale of cadastral parcel nr.91. Unfounded are the arguments of the claimants associating this priority with the 30-years duration of their family's possession on cadastral parcel nr.89.

Equally non-based are the considerations in the appeal that the priority depends on the surfaces of the competing lands, namely 2 841 m² of cadastral parcel nr.89 vs. 1 678 m² of cadastral parcel nr.92. None of these criteria independently or jointly are relevant for the priority when there are several farmers possessors of neigbouring lands. Article 19, paragraph 2 LTRP is solving their competition according to one explicitly defined criterion-*the predominant border* with the land of the seller, without providing alternative criteria or allowing discretionary application of the rule. Its legislative aim is to guarantee the merger of the agricultural land under transfer and the one closest to it, with maximum border in comparison to the other surrounding properties, and thus to ensure optimum amalgamation in view of their future utilization. In the case FATLUM KADRIU bought cadastral parcel nr.92 from LUBISHA STAMENKOVIC by contract Vr.nr.2706/06, attested by the Municipal Court of GJILAN/GNJILANE on 31st July 2006. On this date the contracting parties fulfilled their obligations - the buyer paid the price for the real estate, whereas the seller handed over to him its possession. Thus based on this legal transaction concluded in the form prescribed by law without modalities postponing the transfer, the ownership right on cadastral parcel was acquired by FATLUM KADRIU *by delivery of this private property in his possession* pursuant to Article 34, paragraph 1 of the Law on Basic Property Relations. Simultaneously he was entitled with the *accessorial preferential right* to purchase cadastral parcel nr.91 *as possessor* of the neigbouring cadastral parcel nr.92 with *the priority* in its exercise under Article 19, paragraph 2 LTRP based on their common predominant longest border. This status was not subsequently changed till 16th October 2006 when FATLUM KADRIU used this legal privilege to buy cadastral parcel nr.91 from LUBISHA STAMENKOVIC by contract Vr.nr.4046/06. Once applied through the participation in this transaction by FATLUM KADRIU - the titular under Article 19, paragraph 1 *in fine* LTRP of the preferential purchase right with the priority granted by Article 19, paragraph 2 LTRP, it was exercised and thus precluded *ex leges*. Therefore non-applicable is the hypothesis of entitlement of the claimants with the preferential right to purchase cadastral parcel nr.91 as co-owners of cadastral parcel nr.89 – the second in the priority row under Article 19, paragraph 2 LTRP because of its non-exercise by the primary titular. The latter used it in contract Vr.nr.4046/06, which automatically excluded the possibility for his eventual substitution in this capacity by the claimants. Therefore neither primarily, nor secondarily by succession they were ever authorized as holders of the preferential right to purchase cadastral parcel nr.91. This appropriation is at the end impossible since on 16th October 2006 the inheritance of QAIL REXHEPI was not regulated at all in favour of AGUSH, SABIT, REXHEP, SKENDER, AHMET, MUHAMET AGUSHI and FADIL RAMADANI as legal successors for the property of cadastral parcel nr.89. This status as pointed out above was granted to them by decision T.nr.91/2008 of the Municipal Court of GJILAN/GNJILANE, dated 18th June 2008 with its entry into force on 30th June 2008 *onwards without retroactive legal effect* back to 16th October 2006 when by contract Vr.nr.4049/06 cadastral parcel nr.91 was sold by BRANISLAV MILKOVIC to FATLUM KADRIU.

29. Summarizing, based on the co-ownership of cadastral parcel nr.89 acquired by inheritance regulated on 30th June 2008, the claimants were not *farmers – possessors of agricultural land neigbouring cadastral parcel nr.91 with predominant border compared*

to all the other neigbouring properties of the same culture, prior its sale on 16th October 2006. They lack the status under Article 19, paragraph 1 *in fine* and paragraph 2 LTRP of *preferential purchase right holders with priority* in the preemption of cadastral parcel nr.91 and hence the *active legitimacy* in the claim under Article 254, paragraph 1 LCP for confirmation the existence of this right, and in the claim under Article 26, paragraph 2 LTRP for annulment of contract on sale Vr.nr.4049/06, dated 16th October 2006 between LUBISHA STAMENKOVIC and FATLUM KADRIU as concluded in its violation. The lack of this active legitimacy of the claimants *suffices* by itself the rejection of the two claims as per cadastral parcel nr.91 since the first positive prerequisite for their approval is missing – the claimants are not preferential purchase holders with priority in its sale because **the border of their cadastral parcel nr.89 with it is shorter (157.16 m) than the border with the other neigbouring cadastral parcel nr.91 (159.93 m)** – subject of contract Vr.nr.4049/06.

30. Apart from the already formulated arguments, there are also other complementary ones for non-approval of the claims. *At first place*, based on Article 26, paragraph 2 LTRP the claimants could contest the respective contracts on sale only on the grounds envisaged in this *special* provision. Therefore the non-offering of agricultural land by its owner in accordance with Article 19 - 22 LTRP or its sale to a third person under more favourable conditions might serve as basis for annulment of the contracts in favour of the claimants as long as *their material rights have been violated by these deficiencies*. They could not invoke as grounds for annulment of the contracts such infringements affecting one or more of the holders of the preferential purchase right enumerated in Article 19, paragraph 2 LTRP in the sequence of exercise of this right under Article 19, paragraph 6 LTRP. This limitation ensues from the general imperative requirement set forth in Article 2, paragraph 4 LCP that the claimants must have a *legal interest* in the claim. Therefore it is procedurally impermissible the annulment of the contested contracts upon the claim of AGUSH, SABIT, REXHEP, SKENDER, AHMET, MUHAMET AGUSHI and FADIL RAMADANI for violations under Article 26, paragraph 2 LTRP with respect to any of the preferential purchase right holders in Article 19, paragraph 1 LTRP. Moreover, no such violations are alleged in the claim or identified in the case. Contract Vr.2706/06 and contract Vr.4049/06 were concluded after KOMBINATI BUJQESOR INDUSTRIAL "AGROKULTURA" and the Municipality of GJILAN/GNJILANE as holders of the preferential purchase right refused the offers of the ex owner of cadastral parcel nr.91 - LUBISHA STAMENKOVIC and the ex owner of cadastral parcel nr.92 - BRANISLAV MILKOVIC for their purchase. This offering requirement is explicitly limited by Article 19, paragraph 6 LTRP *to the preferential purchase rights holders* with priority under Article 19, paragraphs 1 and 2 LTRP. Its fulfillment was not due with respect of the claimants as they never had this status. Hence, the non-offering of cadastral parcels nr.91 and 92 to them did not violate Article 19 –22 LTRP and could not justify the annulment of contracts Vr.2706/06 and Vr.4049/06 pursuant to Article 26, paragraph 2 LTRP. *At second place,* the general requirements for validity of these contracts are fulfilled. Both have *the form prescribed by law* – they were concluded in writing and attested by the Municipal Court of GJILAN/GNJILANE in compliance with Article 26, paragraph 1 LTRP. The contractual obligations of the parties were fulfilled by payment of the prices

and delivery the possession of the transferred properties. At the end, contracts Vr.2706/06 and Vr.4049/06 were registered in the cadastre in conformity with Article 3, paragraphs 3, 6 and 7 of the Law on Establishment of Immovable Property Rights Register. Thus in the court procedure for attestation of these contracts and in the administrative procedure for cadastral registration of the property transfers, their validity was officially verified by the competent public authorities.

31. The overall final conclusion to be drawn from this analysis is that no erroneous application of the substantive law under Article 181, paragraph 1, item c) LCP exists - rendering the challenged judgment C.nr.705/2008, dated 20th April 2010 the Municipal Court of GJILAN/GNJILANE has neither failed to apply the correct substantive law, nor has applied in a improper manner its provisions as envisaged in Article 184 LCP.

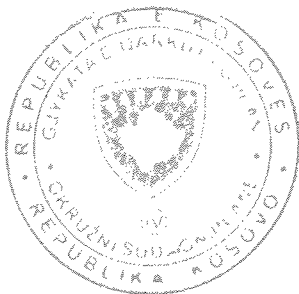
VI. Conclusion

32. In view of the foregoing considerations the court of second instance shall reject the appeal of AGUSH, SABITI, REXHEP, SKENDER, AHMET, MUHAMET AGUSHI and FADIL RAMADANI as non-based and shall confirm judgment C.nr.509/2008 of the Municipal Court of GJILAN/GNJILANE, dated 20th April 2010 pursuant to Article 195, paragraph 1, item d) in conjunction with Article 200 LCP. It is lawfully rendered without the grounds under Article 181, paragraph 1, items a) – c) LCP invoked in the appeal or others that have to be considered *ex officio* in this appeal procedure with respect to the rejection of claims with legal basis Article 254, paragraph 1 LCP for confirmation of preferential purchase right under Article 19, paragraph 1 *in fine* LTRP and the claims with legal basis Article 26, paragraph 2 LTRP for annulment of contracts on sale, as well as in regard to the costs in the proceedings charged in solidarity to the claimants pursuant to Article 452, paragraph 1 LCP.

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

LEGAL REMEDY: No appeal is allowed against this judgment.

THE DISTRICT COURT OF GJILAN/GNJILANE
AC. nr.286/2010 on 06.06.2011



PRESIDING JUDGE

ROSITZA BUZOVA

Republika e Kosovës Republika Kosovo

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.

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Ovlašćeni radnik