THE DISTRICT COURT OF
GJILAN/GNJILANE
23rd December 2011 AC.nr.49/2011

THE DISTRICT COURT OF GJILAN/GNJILANE in a panel composed of the 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 claimant Socially-owned Enterprise (SOE) "INDUSTRIA E BATERIVE "IBG" - GJILAN/GNJILANE, renamed in the course of the proceedings to SOE "FABRIKA E BATERIVE" - GJILAN/GNJILANE, with the Privatization Agency of Kosovo as its legal representative pursuant to Article 29, paragraph 3 of the Law No. 04/L-034 on the Privatization Agency of Kosovo (Official Gazette of the Republic of Kosovo No.19/2011), against the initial respondent ISA KRASNIQI from GJILAN/GNJILANE, after his death on 3rd August 2010 replaced by his successors BEKGIZARE KRASNIQI - spouse, GENC KRASNIQI and MILOT KRASNIQI – sons, all of them from GJILAN/GNJILANE with an authorized representative Lawyer NASUF NASUFI from GJILAN/GNJILANE upon a claim for annulment of contract on transfer of immovable property with legal basis Article 109 *in fine* and Article 110 of the Law on Contracts and Tort (LCT) (Official Gazette of the SFRY No. 29/1978, amendments in No. 39/1985, 45/1989, 57/1989 and Official Gazette of the FRY No. 31/1993),

Having adjudicated the appeal filed against judgment C.nr.127/2005 of the Municipal Court of GJILAN/GNJILANE, dated 4th December 2009 for approval of the statement of the claim above in a panel session under Article 190, paragraph 1 of the Law No. 03/L-006 on Contested Procedure (LCP) (Official Gazette of the Republic of Kosovo No. 38/2008) held on 23rd December 2011,

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

JUDGMENT

The appeal filed by BEKGIZARE KRASNIQI, GENC KRASNIQI and MILOT KRASNIQI as legal successors of ISA KRASNIQI, all from GJILAN/GNJILANE, is **REJECTED** as non-based and judgment C.nr.127/2005 of the Municipal Court of GJILAN/GNJILANE, dated 4th December 2009 is **CONFIRMED**.

REASONING

I. Procedural Background

1. By judgment C.nr.127/2005 of the Municipal Court of GJILAN/GNJILANE, dated 4th December 2009 it was approved in whole as founded the statement of the claim of SOE "FABRIKA E BATERIVE"–GJILAN/GNJILANE and was annulled the contract on transfer of immovable property concluded between the same factory

and ISA KRASNIQI from GJILAN/GNJILANE, attested by the Municipal Court of GJILAN/GNJILANE as Vr.nr.2051/2002 on 6th September 2002. It was also decided each party to bear its own costs of the proceedings.

2. On 17th December 2010, an appeal was submitted on behalf of ISA KRASNIQI against this judgment challenging it entirely on the grounds of *substantial violations of the provisions of the contested procedure* as per Article 182 LCP, *incomplete and erroneous determination of the factual situation* as per Article 183 LCP, as well as *erroneous application of the substantive law* as per Article 184 LCP. It was requested the judgment to be annulled with remittal of the case to the court of first instance for retrial *or* to be modified with rejection of the statement of the claim.

3. According to Article 187, paragraph 1 LCP on 20th January 2011 copies of the appeal were served to REXHEP SYLEJMANI, the Director of the SOE "FABRIKA E BATERIVE" GJILAN/GNJILANE, and XHELAL SALIHU, Legal Officer of PAK – Regional Office GJILAN/GNJILANE for reply within 7 days. The latter was filed on 26th January 2011 - the legal representative of the appellate asked the appeal to be rejected and judgment C.nr.127/2005 of the Municipal Court of GJILAN/GNJILANE, dated 4th December 2009 to be confirmed.

4. On 26th January 2011, the Municipal Court of GJILAN/GNJILANE sent the appeal, the reply to it and the case file to the District Court of GJILAN/GNJILANE pursuant to Article 188, paragraph 1 LCP, where they were registered as AC.nr.49/11.

5. In the course of the second instance proceedings it had been determined by Death Certificate N.Sr.V00063296, Ordinal nr.25, Reference nr.76060, issued by the Civil Registry Agency–GJILAN/GNJILANE that ISA KRASNIQI died on 3rd August 2010. In order to regulate the procedural legal succession of the deceased litigant the appeal proceeding was suspended according to Article 277, item a) LCP by ruling AC.nr.49/11 of the District Court of GJILAN/GNJILANE, dated 4th November 2011. It was resumed on 9th November 2011 when BEKGIZARE KRASNIQI, GENC KRASNIQI and MILOT KRASNIQ, all from GJILAN/GNJILANE as successors of ISA KRASNIQI, evidenced by Act of Death Nr.1716, issued by the Department of General Administration – GJILAN/GNJILANE on 11th August 2011, filed a written submission to take over the proceedings pursuant to Article 280, paragraph 1 LCP.

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

6. This second instance civil case AC.nr.49/11 of the DC of GJILAN/GNJILANE was selected based on 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") (Official Gazette of the Republic of Kosovo No.27/08) through ruling issued on 18th July 2011 by EULEX Judge acting as Delegate of the President of the Assembly of the EULEX Judges as per Decision ref.nr.JC/EJU/OPEJ/2496/ff/11, dated 5th July 2011. The latter after having conducted the taking over procedure foreseen by Article 5, paragraph 7, first sentence of the Law No. 03/L-053 on Jurisdiction and Article 3, paragraph 7 of the Guidelines for Case

Selection and Case Allocation for EULEX Judges in Civil Cases, adopted by the Assembly of the EULEX Judges on 27th January 2011, issued on 22nd August 2011 a ruling under Article 5, paragraph 7, second sentence of the Law No. 03/L-053 on Jurisdiction to assign the case to a panel of the District Court of GJILAN/GNJILANE under Article 5, paragraphs 2 and 4 of the Law No.03/L-053 on Jurisdiction composed of Presiding EULEX Judge and two Kosovo Judges - panel members. The latter after derogation Decision ref.nr.JC/EJU/OPEJ/2496/ff/11 of the President of the Assembly of EULEX Judges, dated 5th July 2011 under Article 5, paragraph 5 of the Law No. 03/L-053 on Jurisdiction were designated by Decision Agj.nr.172/11 of the President of the District Court of GILAN/GNJILANE, dated 25th August 2011.

7. 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 on Jurisdiction, this panel of the District Court of GJILAN/GNILANE is empowered to adjudicate AC.nr.49/2011 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

8. 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 the terms of Article 186, paragraph 2 LCP. Judgment C.nr.127/2005 of the Municipal Court of GJILAN/GNJILANE, dated 4th December 2009 was served to Lawyer VLASTIMIR PETROVIC, authorized representative of the respondent in the first instance case, on 14th December 2010. The appeal was filed on 17th December 2010 before the expiry of the 15-days time period, prescribed by Article 176, paragraph 1, first sentence LCP, on 19th December 2010. *At third place,* the appeal is not impermissible under Article 186, paragraph 3 LCP. It is lodged by the legal successors of the respondent in the first instance proceedings, each one of them individually entitled with the procedural right and the legal interest to submit it. No renouncement or withdrawal of the appeal has been declared by any of them. *At fourth place*, it has the requisite content under Article 178, items a) – d) LCP and is not incomplete as per Article 179, paragraph 1 LCP. In sum, there are no legal grounds excluding the admissibility of the appeal and the second instance procedure under Article 176 – 205 LCP initiated by it.

IV. Summary of the first instance proceedings

9. On 23rd February 2005, SOE "INDUSTRIA E BATERIVE - IBG" filed a claim against ISA KRASNIQI for annulment of contract, attested by the Municipal Court of GJILAN/GNJILANE as Vr.nr.2051/02 on 6th September 2002 by which the claimant instead of payment of the compensation for personal incomes due to the respondent in the amount of 14790 Euros transferred to him in permanent ownership a shop, located in GJILAN/GNJILANE, building with residential and commercial premises P+6+PK, technical number of the main project 494 – commercial premise "D" P+6+PK, former

"RADE POPOVIC" Street, now Road "BRIGADA e UÇK", with a surface of 38.65 m^2, registered in Possession List nr.4650, Cadastral Zone (CZ) GJILAN/GNJILANE. The contract was challenged as unlawfully concluded without legal grounds for the transfer of socially-owned property administered by the Kosovo Trust Agency (KTA) pursuant to UNMIK Regulation No. 2001/12. On behalf of SOE "INDUSTRIA E BATERIVE-IBG", it was signed by ATULLA QERIMI, at that time its Secretary, based on a power of attorney nr.339/02, dated 9th September 2002, given by the respondent, without decision of the Workers' Council, lacking the legitimacy for this authorization, as the enterprise was under the administration of the KTA. Therefore the contract had legal deficiencies in its subject and grounds, and its conclusion was impermissible. The statement of the claim was for its annulment as null and void.

10. The trial in C.nr.127/2004 of the Municipal Court of GJILAN/GNJILANE commenced with a preparatory hearing on 6th April 2005, which was adjourned for non-summoning the KTA as a legal representative of the socially-owned enterprise – claimant. It was held on 5th May 2005 - the representative of the claimant presented concisely the claim, the representative of the respondent replied to it, and both parties made their proposals for the evidence to be collected in the first instance proceedings.

11. In the main hearing on 7th June 2005 the respondent ISA KRASNIQI was heard, the witnesses SAMI KRASNIQI and EROL IMAMI gave their testimonies and graphology expertise was appointed to determine the authenticity of the signature of SAMI KRASNIQI in his capacity as former President of the Workers' Council of the SOE "INDUSTRIA E BATERIVE" IBG" on the aforementioned power of attorney nr.339/2002, dated 9 September 2002. The subsequent sessions in the main hearing on 9th November, 22nd November and 12th December 2005 were postponed.

12. By Order C.nr.127/2005 of the Municipal Court of GJILAN/GNJILANE, dated 12th December 2012 the appointed graphology expertise was assigned to the Kosovo Police Service – Forensic Unit in PRISTINË/PRIŠTINA. The latter by its Letter ref. nr.LF/KKP-05-54, dated 14th December 2002 refused it since at that time it worked only in criminal cases according to Chapter XXII "Experts" of the Provisional Code of Criminal Procedure of Kosovo. After this reply, on 9th January 2006 the Municipal Court of GJILAN/GNJILANE sent a request for international legal assistance to the Department of Justice. Following 2-years correspondence among different institutions on this issue, the graphology expertise was fulfilled by the Forensic Centre of the Ministry of Interior of the Republic of Croatia - by Report on Examination nr.511-01-43/IV-1149/-7.I.J, dated 26th March 2008 of the Handwriting and Document Expert Prof. IGOR JELOVAC the signature of SAMI KRASNIQI on power of attorney nr.339/2002, dated 9 September 2002 was verified as authentic.

13. The main hearing continued on 17th June 2009 - the representatives of the parties made their statements and proposals for the examination as witnesses of the members of the Commission for Ownership Matters of the Immovable Property of SOE "INDUSTRIA E BATERIVE IBG" - ALAUDIN SERIFI testified on 31st July 2009, ATULLA QERIMI on 5th October 2009 and FAZIL AHMETI on 4th December

2009. At this last session the parties made their final speeches with arguments on the factual and legal aspects of the dispute and the main hearing was completed.

14. By judgment C.nr.127/2005 of the Municipal Court of GJILAN/GNJILANE, dated 4th December 2009 the statement of the claim was APPROVED in whole as grounded and the contract on transfer of immovable property concluded between the SOE "INDUSTRIA E BATERIVE IBG" - GJILAN/GNJILANE and ISA KRASNIQI from GJILAN/GNJILANE, attested by the Municipal Court of GJILAN/GNJILANE as Vr.nr.2051/2002, dated 6th September 2002, was ANNULLED. It was also decided each party to bear its own procedural expenses due to the lack of claimant's request for their reimbursement.

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

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

15. The *first* ground for challenging judgment C.nr.127/05 of the Municipal Court of GJILAN/GNJILANE, dated 4th December 2009 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, the legal reasons to be invoked are not substantiated. *At first place*, the enacting clause is not unclear or incomplete. In compliance with Article 160, paragraph 3 LCP it contains decision by which the rights of the claimant related to the principal matter have been granted and decision on the costs of the proceedings. Namely, the contested contract, annulled with the full approval of the statement of the claim, is individualized in the enacting clause by its parties, type (title), number and date of court attestation. Thus it is specified with its essential characteristics to an extent, sufficient for its identification. The description of the premise – object of this contract under its point 1 is not a mandatory requisite of the enacting clause and therefore its non-inclusion does not constitute a formal and/or procedural deficiency. All these details from the content of the disputed contract are reproduced in the reasoning of the appealed judgment which is the correct systematic place according to Article 160, paragraph 4 LCP. At the end, the enacting clause is textually formulated in full correspondence with the wording of the statement of the claim as required by Article 2, paragraph 1 LCP. It is neither incomprehensible, nor contradictory in itself, contrary to the allegations in the appeal. *At second place,* the annulled contract is referred as concluded between SOE "INDUSTRIA E BATERIVE IBG" - GJILAN/GNJILANE and ISA KRASNIQI from GJILAN/GNJILANE and attested by the Municipal Court of GJILAN/GNJILANE as Vr.nr.2051/2002, dated 6th September 2002" *in the enacting clause* of the judgment, whereas in *the reasoning* apart from this it is further individualized as one on the transfer of real estate, located in GJILAN/GNJILANE, building with residential and commercial premises P+6+PK, technical number of the main project 494 – commercial premise "D" P+6+PK, former "RADE POPOVIC" Street, now Road "BRIGADA e UÇK", with a surface of 38.65 m^2, registered in Possession List nr.4650, CZ GJILAN/GNJILANE. Thus the enacting clause and the reasoning of the judgment as its integral parts *complement one another without antimony* within the scope of Article 182, paragraph 2, item n) LCP. *At third*

place, the evidence collected in the first instance proceedings neither separately, nor as a whole establishes lawfulness of the challenged contract and/or is assessed as such in the judgment. So, no discrepancy as per Article 182, paragraph 2, item n) LCP exists between the *processed evidence*, their evaluation by the first instance court in the *reasoning* and the annulment of the same contract as null and void in the *enacting clause*. *At fourth place*, there are no inconsistencies under Article 182, paragraph 2, item n) LCP between what is reflected in the reasoning of the judgment on the content of the documents or records of the statements given in the course of the proceedings and the actual content of those documents and records. In particular, the testimonies of the witnesses EROL IMAMI and ATULLA QERIMI are accurately reproduced in the judgment pursuant to Article 160, paragraph 4 LCP as recorded in the minutes of the hearings on 7th June 2005 and 5th October 2009, respectively. However, they are *inadmissible* in the parts where these two witnesses testify for the lack of any legal violation in this case, namely for non-necessity of the KTA consent for conclusion of the contested contract and the respect of all requirements of the procedure for its court attestation. These are *legal opinions* of these natural persons, which are not official and binding for the court. As *no facts* are established by these statements as required by Article 339, paragraph 2 LCP, *they do no represent witness testimonies and have no probative value* as such according to Article 319, paragraph 2 LCP. The persons summoned as witnesses pursuant to the explicit limitation of Article 339, paragraph 2 LCP can give information only for *facts* that need to be established and *vice versa* are not entitled to give legal qualifications or any other legal comments for such facts. For this reason, the aforementioned statements of EROL IMAMI and ATULLA QERIMI are inadmissible as witness testimonies and have neither legal, nor evidentiary value in this lawsuit. Consequently, the evidence assessment of the first instance court could not be considered improper for disregarding these statements or for non-coinciding with their interpretation in the appeal. This difference is not a procedural infringement within the scope of Article 182, paragraph 2, item n) LCP. *At fifth place,* the judgment contains clear and objective grounds as per the material facts, decisive in this dispute, which are not ambiguous or contradictory and fully justify its issuance. The lack of reasoning about the facts *irrelevant* for the nullity of the contested contract is not a procedural deficiency - according to Article 319, paragraph 2 LCP the court should based its decision *only on the facts of relevance* to its rendering, disregarding all the others even if presented in the proceedings. After this review, the panel considers that the errors under Article 182, paragraph 2, item n) LCP indicated in the appeal do not exist and do not justify its approval.

16. 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 within this appellate review under Article 194 LCP. The judgment was rendered on a claim falling within the exclusive territorial jurisdiction of the Municipal Court of GJILAN/GNJILANE under Article 41 LCP in immovable property 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 j) LCP*). The persons that participated in the case were entitled to act as parties 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 none of the trial sessions (*Article 182, paragraph 2, item m) LCP*).

17. 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, restricted by Article 194 LCP. Therefore the challenged judgment could not be annulled for procedural reasons as per Article 181, paragraph 1, item a) LCP.

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

18. 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 non-based as per the criteria of Article 183, paragraph 1 LCP – the court of first instance did not determine any relevant fact incorrectly and did not fail to establish it.

19. It is publicly known, not contested, on the contrary admitted by the parties according to Article 321, paragraphs 1 and 2 LCP that the on 13th June 2002 (the date of entry into force of UNMIK Regulation No. 2002/12 on the Establishment of the Kosovo Trust Agency), and on 6th September 2002 (the date of attestation of contract Vr.nr.2051/02 by the Municipal Court of GJILAN/GNJILANE), SOE "INDUSTRIA E BATERIVE-IBG" was a *socially-owned enterprise* under Article 2, paragraph 1 of the Law on Enterprises (Official Gazette of the SFRY No. 77/1988 with amendments in No. 40/1989, № 46/1990 and № 61/1990).

20. Based on the exception under Article 321, paragraph 1 LCP there was no need to prove in C.nr.127/05 of the Municipal Court of GJILAN/GNJILANE as established in previous proceedings that by judgment C.nr.236/1992 of the Municipal Court of GJILAN/GNJILANE, dated 11th June 1996 was approved the statement of the claim of ISA KRASNIQI by annulment of Decision nr.15/209, dated 11th February 1991 and Decision nr.284, dated 25th February 1991 of SOE "INDUSTRIA E BATERIVE-IBG" for termination of his employment relationship and this enterprise as *employer* was obliged to return him as *employee* at his previous working position as "*engineer*". By judgment AC.nr.334/96 of the District Court of GJILAN/GNJILANE, dated 23rd December 1996 the appeal of SOE "INDUSTRIA E BATERIVE-IBG" against this first instance judgment was rejected. By judgment Rev.nr.4769/2007 of the Supreme Court of Serbia, dated 22nd July 1998 its revision was also rejected.

21. The execution initiated by ISA KRASNIQI based on judgment C.nr.236/1992 of the Municipal Court of GJILAN/GNJILANE, dated 11th June 1996 after its entry into force on 23rd December 1996 was first allowed by execution decision E.nr.26/97 of the Municipal Court of GJILAN/GNJILANE, dated 4th March 1997. Later it was postponed by decision AC.nr.322/1997 of the District Court of GJILAN/GNJILANE, dated 22nd June 1998, which modified decision E.nr.26/97 of the Municipal Court of GJILAN/GNJILANE, dated 5th June 1997, until the revision above would be finalized pursuant Article 63, paragraph 1, sub-paragraph 1 of the Law on Executive Procedure (Official Gazette of the SFRY No 20/1978) (LEP 1978). After expiration of the time for which it was postponed, the execution continued based on decision E.nr.51/2002, of the Municipal Court of GJILAN/GNJILANE, dated 1st February 2002 according to Article 67, paragraph 1 LEP 1978. Within the executive procedure for return to his previous work in SOE "INDUSTRIA E BATERIVE-IBG" under Article 231 LEP 1978, ISA KRASNIQI proposed to the court by its decision to oblige this employer to pay him compensation for the monthly personal incomes that would otherwise had been received if he had been at work pursuant to Article 232, paragraphs 1, 2, 3 and 5 LEP 1978. Related to this, economic expertise calculated this compensation for the period 11th February 1992 24th May 2002 to 14 287.58 Euros. However, there is no court decision under Article 232, paragraph 3 LCP 1978 by which the proposal of ISA KRASNIQI for this compensation was approved in this or any other amount with obligation to SOE "INDUSTRIA E BATERIVE-IBG" to pay it.

22. The Commission on Ownership Matters of the Immovable Property of SOE "INDUSTRIA E BATERIVE-IBG" on 6th August 2002 took Decision with Protocol nr.118/02 ISA KRASNIQI instead of payment of the damage compensation in the amount of 14 790 Euros - value determined by court expert – to receive in permanent ownership shop with a surface of 38.65 m^2 of SOE "INDUSTRIA E BATERIVE-IBG" in Residential and business building P+6+PK, former "RADE POPOVIC" Street, now Road "BRIGADA e UÇK", technical number of the main project 494, shop "D" P+6+PK, registered in Possession List nr.4650, CZ GJILAN/GNJILANE. This decision was signed by FAZLI AHMETI, ALAUDIN SHERIFI and ATULLA QERIMI as members of the Commission. The latter, however, was designated as such by Decision Protocol nr.132/02 of the Workers' Council, dated 8th August 2002.

23. By a written power of attorney nr.339/2002, signed by the President of the Workers' Council of SOE "INDUSTRIA E BATERIVE-IBG" on 9th September 2002 ATULLA QERIMI from GJILAN/GNJILANE, lawyer employed as its Secretary, was authorized to represent this socially-owned enterprise at the Municipal Court of GJILAN/GNJILANE and sign on its behalf a contract on transfer of immovability – shop its property to ISA KRASNIQI for compensation of the value of indemnity.

24. The contested contract on transfer of immovable property was concluded in writing between SOE "INDUSTRIA E BATERIVE-IBG" represented according to the text by its Secretary ATULLA QERIMI and ISA KRASNIQI and attested by the Municipal Court of GJILAN/GNJILANE as Vr.nr.2051/2002 on 6th September 2002.

It was agreed, SOE "INDUSTRIA E BATERIVE-IBG" instead of payment for damage compensation in the amount of 14 790 € to transfer to ISA KRASNIQI the aforementioned shop and all obligations due to him to be terminated. The contract was not registered at SOE "INDUSTRIA E BATERIVE-IBG" with protocol number and was not sealed with its stamp.

25. In the first instance all proves proposed by the parties were regularly collected. Rendering its judgment the Municipal Court of GJILAN/GNJILANE conscientiously and carefully examined each and every piece of evidence, separately and as a whole - Article 8, paragraph 2 LCP. Based on this examination, and the overall picture gained in the proceedings, the court decided which of the facts presented by the parties are established - Article 8, paragraph 1 LCP, and then solved the lawsuit using the ones of relevance-Article 319, paragraph 2 LCP. The factual state in the appealed judgment could not be therefore qualified as *erroneous* for being non-based on evidence of the respondent in the first instance proceedings or different from his allegations. Further, it could not be qualified as *incomplete* for disregarding facts irrelevant for the dispute. The latter refers to ones mentioned in the appeal – the debt of SOE "INDUSTRIA E BATERIVE-IBG" to ISA KRASNIQI under execution decisions E.nr.26/97, dated 4th March 1997 and E.nr.51/02, dated 1st February 2002, the financial situation of this enterprise, the motives to arrange the contested real estate transfer and the feasibility of this settlement. None of these facts fall within the subject-matter of the claim since they are not related to the validity of the challenged contract and/or to the grounds for its nullity. Summarizing, the arguments in the appeal on Article 181, paragraph 1, item a) LCP are non-based–*the factual situation determined by the first instance court is neither erroneous, nor incomplete* as per the criteria set out by Article 183 LCP.

Erroneous application of the substantive law - Article 184 LCP

26. Pursuant to Article 194 LCP this 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.

Contradiction with compulsory provisions of UNMIK Regulations

27. By Resolution 1244 (1999) of 10th June 1999, the United Nations Security Council, acting under Chapter VII of the United Nations, authorized the Secretary – General, with the assistance of the relevant international organizations, to establish an international civil presence in Kosovo in order to provide its interim administration according to Article 10 with responsibilities defined by Article 11. Pursuant to Section 1 of UNMIK Regulation No. 1999/1 on the Authority of the Interim Administration, all legislative and executive authority with respect to Kosovo was vested to UNMIK to be exercised by the Special Representative of the Secretary-General. Apart from this general provision, Section 6 of UNMIK Regulation No. 1999/1 specifically stated *inter alia* that UNMIK shall administer *the state immovable property* of, or registered in the name of the Federal Republic of Yugoslavia or the Republic of Serbia or any of its organs, which is in the territory of Kosovo. UNMIK Regulation No. 2000/54

amended UNMIK Regulation No. 1999/1 - Section 6.1 was reformulated providing that UNMIK shall administer the immovable property in the territory of Kosovo, where it has reasonable and objective grounds to conclude that it is: (a) property of, or registered in the name of, the Federal Republic of Yugoslavia or the Republic of Serbia or any of their organs; or (b) *socially owned property*. As non-prejudicial for this administration Section 6.2 defined the confirmation of ownership or other real rights by a competent court in Kosovo or a judicial mechanism to be established by regulation. Therefore, Section 6.1 (b) of UNMIK Regulation No.1999/1, as amended effective from 27th October 2000 *placed all the socially-owned immovable property in Kosovo under the administration of UNMIK* through its competent bodies.

28. On 7th December 2000, by Section 1.1 of UNMIK Regulation No. 2000/63 the Administrative Department of Trade and Industry was established. By Section 2.2 it was empowered to act as administrator or trustee with respect to any enterprise in the territory of Kosovo, administered by UNMIK pursuant to Section 6.1 of UNMIK Regulation No.1999/1, as amended, *inter alia,* including its assets in social ownership.

29. Even after the promulgation of the Constitutional Framework for Provisional Self-Government by UNMIK Regulation No. 2001/9 on 15th May 2001, according to its Section 8.1 (q) the Provisional Institutions of Self-Government of Kosovo were not granted the powers and responsibilities, reserved for the Special Representative of the Secretary – General, *to administer public, state and socially-owned property*. To this end on 13th June 2002, UNMIK Regulation No. 2002/12 on the Establishment of the Kosovo Trust Agency entered into force. The agency was founded as an independent body under Section 11.2 of the Constitutional Framework (Section 1.1.) with main *objective* to *administer* publicly-owned and *socially-owned enterprises and related assets* within the context of Section 8.1 (q) of the Constitutional Framework (Section 2.1).

30. Following the entry into force of UNMIK Regulation No. 2002/12 on 13th June 2002 (Section 33), SOE "INDUSTRIA E BATERIVE-IBG" acquired *ex leges* the status of a *socially-owned enterprise* under the administration of KTA pursuant to Section 5.1. *At first place,* in view of the alternatives in the definition of this term under Section 3 it is legally irrelevant whether it has been created as en enterprise in social ownership under the Law on Enterprises (Official Gazette of the SFRY No. 77/1988 with amendments in No.40/1989, № 46/1990 and № 61/1990), the Law on Associated Labour (Official Gazette of the SFRY No. 53/1976 with amendments in No. 57/1983, and No. 85/1987) or other applicable law since there is no subsequent transformation affecting this status according to Section 5.3 or Section 5.4 of UNMIK Regulation No. 2002/12. *At second place*, on 13th June 2002 SOE "INDUSTRIA E BATERIVE-IBG" having its actual management control in GJILAN/GNJILANE was operating in the territory of Kosovo pursuant to Section 5.2 (a) of UNMIK Regulation No. 2002/12, *within the limits of the authority of KTA* under Section 5.1 of UNMIK Regulation No. 2002/12. This authority encompassed also the real property – subject of contract Vr.nr.20151/02, dated 6th September 2002 as an *asset in the territory of*

Kosovo of a socially-owned enterprise, administered and managed since 10th June 1999 independently of other assets outside of Kosovo according to Section 5.2 (b) of UNMIK Regulation No. 2002/12. Therefore KTA had the authority to administer SOE "INDUSTRIA E BATERIVE-IBG", and this concrete business premise pursuant to Sections 5.1, 5.2 and 5.5 (a) of UNMIK Regulation No. 2002/12. *At third place*, consequent to this, KTA was granted the *administrative* authority for his enterprise, including the powers enumerated in Section 6.1 (a) – (s) of UNMIK Regulation No. 2002/12. In addition, due to the status of this enterprise as socially-owned, KTA had additional powers to take the actions appropriate to preserve or enhance the value of viability of the activities concerned under Section 6.2 (a) – (c) of UNMIK Regulation No.2002/12. The last norm explicitly authorized *KTA to dispose of moneys and other assets of socially-owned enterprises.* It was *generally* applicable for all enterprises of this kind placed under the administration of KTA pursuant to Section 5.1 of UNMIK Regulation No. 2002/12, regardless whether the agency had assumed or not the direct control over the concrete enterprise based on Section 6.1 (e) of UNMIK Regulation No.2002/12. Section 6.2 (c) of UNMIK Regulation No.2002/12 was formulated for all kind of assets, *including the immovable properties.* The power for their disposal was exclusively granted by Section 6.2 (c) of UNMIK Regulation No. 2002/12 to KTA without possibility for its exercise by any of the managing, control or other bodies of the enterprise – the combination of day-to-day business conducted by them and the general management of KTA under Section 7.1 of UNMIK Regulation No. 2002/12, according to is Section 7.2 was without prejudice only to the administrative powers of KTA under Section 6.1 and *per argumentum ad contrario* was incompatible with its non-administrative privatization related powers under Section 6.2 (a) – (c) of UNMIK Regulation No. 2002/12. Consequently, *KTA had the exclusive authority to dispose of the contested immovable property according to Section 6.2 (c) of UNMIK Regulation No. 2002/12 as asset of* a *socially-owned enterprise under its administration pursuant to Section 5.1.* This imperative requirement was not complied with. The challenged contract on transfer of property of a socially-owned enterprise administered by KTA as of the date of entry into force of UNMIK Regulation No.2002/12 on 13th June 2002 was signed on 6th September 2002 *without any decision of any of the bodies of KTA for its conclusion.* This consent was not given in advance as preliminary permission, simultaneously through participation as a legal representative of SOE "INDUSTRIA E BATERIVE-IBG" in the attestation at the Municipal Court of GJILAN/GNJILANE according to Section 29, paragraphs 2 and 3 of UNMIK Regulation No. 2002/12, or as subsequent approval. The lack of consent of the KTA as legal representative of SOE "INDUSTRIA E BATERIVE-IBG" for the asset disposals excludes the lack of mutual agreement of the parties and hence their common will on the constitutive elements of this legal transaction under Article 26 LCT, which pursuant to Article 55, paragraph 6 LCT excludes the validity of the contract and its effect. Without action of KTA under Section 6.2 (c) of UNMIK Regulation No. 2002/12, the conclusion of the challenged contract with subject – matted disposal of an asset of a socially-owned enterprise *is contrary to the aforementioned compulsory regulations* on the administration of the

social property by UNMIK through KTA and as such is *void pursuant to Article 103, paragraph 1 LCT.* This conclusion reached by the first instance court complies with the substantive law without failure in its application as per Article 184 LCP.

Impermissible subject

31. The court of second instance within the *ex officio* review of the substantive law identifies additional grounds for nullity of the challenged contract related to its subject under Article 46, paragraph 1 LCP. *At first place,* according to Article 160 of the Law on Enterprises the assets of an enterprise consist of items, rights and money. Article 163 of the Law on Enterprises distinguishes them as assets that can be subject of legal transactions, and when so specified by law - in a restricted manner, or shall not be subject at all. Thus the assets are categorized depending on their trade legal regime. The contested real estate belongs to the category of assets of SOE "INDUSTRIA E BATERIVE-IBG", transferable with restrictions which in the case were not observed. *At second place,* the Law on Trade of Immovable Property (Official Gazette of the SRS No. 43/1981, 24/1985, 28/1987, 6/1989 and 40/1989) ("LTIP") entered into force on 10th August 1981 and being in force in Kosovo on 22nd March 1989 is applicable in this lawsuit under Section 1.1 (b) of UNMIK Regulation No. 1999/24, as amended. LTIP regulates, *inter alia,* the alienation, exchange and any other disposal of socially-owned immovable property – Articles 1 and 2 LTIP. Regarding the socially-owned buildings, parts thereof and business premises, Article 13, paragraph 1 LTIP permits their transfer from one social legal person to another social person against or without remuneration, whereas *Article 13, paragraph 2 LTIP restricts their alienation from a social legal person to acquirer without this status only against remuneration.* This last restriction was not respected in the instant hypothesis – by the challenged contract SOE "INDUSTRIA E BATERIVE-IBG" was obliged to transfer a business premise – socially-owned asset of this enterprise to ISA KRASNIQI *without receiving against it remuneration.* Since such alienation is explicitly prohibited by Article 13, paragraph 2 LTIP, the contract is null and void based on Article 3, paragraph 3 LTIP. This subject of the obligation of SOE "INDUSTRIA E BATERIVE-IBG" is not permitted contrary to Article 46, paragraph 2 LCT. Violating Article 13, paragraph 2 LTIP, it is *unlawful,* whereas pursuant to Article 47 LTIP the contract is void. *At third place*, this also ensues from the Law on Transfer of Real Property (Official Gazette of the SAPK No. 45/1981 and 29/1986) (LTRP). Article 7, paragraph 2 LTRP stipulates that *a social legal person may only transfer a socially-owned business premise, or a particular part of building against reward.* Article 9, paragraph 1 LTRP requires the transfer to be conducted through *public tendering* or *collecting written offers*, and only if they are unsuccessful through *direct bargaining*. Article 12, paragraph 1 LTRP demands a contract by which a social legal person transfers a real property from social ownership to be annulled if at the time of its conclusion, the contractual price is not proportionate to the market value. None of these imperative statutory requirements were fulfilled. *Firstly*, the contested contract was concluded on behalf of SOE "INDUSTRIA E BATERIVE-IBG" for the transfer of a socially-owned business premise - particular part of a building, without payment of any reward contrary to Article 7, paragraph 2

LTRP. Since this type of socially-owned immovable property cannot be traded under such terms, its *gratuitous alienation without reward* contradicts Article 3, paragraph 2 LTIP and is null and void according to Article 3, paragraph 3 LTIP. *Secondly*, the transfer was conducted through *direct bargaining* which, however, was not preceded by unsuccessful *public tendering* or *collecting of written offers* contrary to Article 9, paragraph 2 LTRP. The non-conduct of any of these competitive procedures, though mandatory for the transfer of socially-owned immovable properties, is a next cause for invalidity of the contract according to Article 9, paragraph 2 LTRP. *Thirdly*, the imperative requirement of Article 12, paragraph 1 LTRP was not complied with as well. No contract price was agreed for the shop, moreover, one proportionate to its market value at the time the contract was concluded as legally demanded by Article 12, paragraph 1 LTRP. In its point I was mentioned only the amount of 14 790 Euros as compensation due by SOE "INDUSTRIA E BATERIVE-IBG to ISA KRASNIQI, with no value of the shop transferred for fulfillment of this obligation, indicated at all. It had not been evidenced by the respondent in the first instance case, though he had the burden under Article 319, paragraph 1 LCP to prove the *market value* of this shop determined taking into account the price reached at the free market, the location and surroundings in conformity with Article 12, paragraph 2 LTRP. Therefore there is neither factual, nor legal basis to consider the amount of 14 790 Euros of the damage compensation as *equal* to the market value of the shop transferred instead of payment of this pecuniary obligation. Their inequality is indirectly proven by Invoice for the Property Tax Payment of Immovable Property nr.2662003, issued by the Municipality of GJILAN/GNJILANE on 30th April 2003 in the name of ISA KRASNIQI in which the market value of the shop is officially determined in the amount of *52 800 Euros, which is 3.5 times higher than the compensation of 14 790 Euros "paid" by it.* This disproportion between the debt, fulfilled by the transfer of the shop and its market value clearly contradicts Article 12, paragraph 1 LTRP and being disadvantageous for SOE "INDUSTRIA E BATERIVE-IBG" is a ground for annulment of the contract according to Article 12, paragraph 1 LTRP. The latter, as explicitly stayed by Article 12, paragraph 3 LTRP, *could not exclude the application of Article 12, paragraph 2 LTRP* as per its requirement for transfer of any property in social ownership against price, at minimum equal to its market value. Since Article 12, paragraph 1 LTRP could not be derogated by the contract according to Article 12, paragraph 3 LTRP, the violation of its proportionate rule invalidates this contract and requires its annulment under Article 12, paragraph 1 LTRP. Summarizing, since the transfer of the contested shop after direct bargaining is not permitted as subject of the obligation of SOE "INDUSTRIA E BATERIVE-IBG" to alienate this business premise-social ownership to ISA KRASNIQI without remuneration against it, contract Vr.nr.2051/02, dated 6th September 2002 is void pursuant to Article 49 LCT for being signed with unlawful subject. The non-compliance with the compulsory restrictions set out for this category of transactions under Article 163 of the Law on Enterprises, namely the inadmissible alienation of a business premise of SOE "INDUSTRIA E BATERIVE-IBG" without any competitive procedure, under disadvantageous terms, with no payment of price

proportionate to its market value, for fulfillment of an obligation in an amount 3 times lower, represents *de facto* privatization which is unlawful and invalidates the contract according to Article 103, paragraph 1 LCT.

Undue authorization

32. On behalf of SOE "INDUSTRIA E BATERIVE-IBG" contract Vr.nr.2051/02, was attested by the Municipal Court of GJILAN/GNJILANE on 6th September 2002 as signed by the Secretary ATULLA QERIMI. However, his authority to represent it in the conclusion of this transaction was not based on law, a general act of this legal person, an act of competent body or authorization according to Article 84, paragraph 2 LCT. In particular, his authority of a proxy could not be considered duly granted by power of attorney nr.339/2002, signed by the President of the Workers' Council of SOE "INDUSTRIA E BATERIVE-IBG" SAMI KRASNIQI on 9th September 2002. *At first place*, the form prescribed by Article 4, paragraph 2 LTIP for the validity of all contracts on alienation of socially-owned immovable property *is written with attestation of the signatures of the parties by the court.* Based on Article 90 LCT, the same form applies to the authorization for their conclusion. Since pursuant to Article 89, paragraph 1 LCT the authorization is granted by a legal transaction, the sanction for lack of this mandatory form according to Article 70, paragraph 1 LCT is lack of legal effect. This is exactly the hypothesis. The power of attorney nr.339/02 given to ATULLA QERIMI, Secretary of SOE "INDUSTRIA E BATERIVE-IBG" was signed in writing, but not attested by the court. Without this mandatory form prescribed by Article 90 LCT in conjunction with Article 4, paragraph 2 LTIP, this authorization is without legal effect pursuant to Article 70, paragraph 1 LCT and has not granted to ATULLA QERIMI the authority to represent SOE "INDUSTRIA E BATERIVE-IBG" in signing the contract. *At second place,* the same power of attorney was issued on *9th September 2002,* while the attestation of the contract, officially verified by the court with binding evidentiary effect under Article 329, paragraph 1 LCT was on *6th September 2002*. This sequence makes factually and legally impossible the conclusion of this contract on the basis of this authorization – on 6th September 2002 ATULLA QERIMI had not yet been granted the authority to represent SOE "INDUSTRIA E BATERIVE-IBG and could not act as its proxy in signing the contract, considering that his power of attorney was issued 3 days later, on 9th September 2002, without retroactive approval. *At third place*, according to Article 91, paragraph 1 LCT any proxy may undertake only legal actions which fall in the scope of his authorization. A transaction going beyond the regular business requires particular authorization under Article 91, paragraph 3 LCT. In this case, by power of attorney nr.339/02 ATULLA QERIMI was authorized to represent SOE "INDUSTRIA E BATERIVE-IBG" in signing a contract on transfer of *a shop in GJILAN/GNJILANE* in the name of ISA KRASNIQI. However, this real property was not individualized by its exact location - street, building, and number, surface or any other data neither directly in the power of attorney, no indirectly with reference to a document containing this information. Thus the shop, generally envisaged in the power of attorney, could not be identified with the one, specified with details in the contract. Without this correspondence, its transfer

could be considered as falling in the scope of authorization of ATULA QERIMI for SOE "INDUSTRIA E BATERIVE-IBG" as required by Article 91, paragraph 1 LCT, which in addition lacks the particularity demanded by Article 91, paragraph 2 LCT. Therefore ATULLA QERIMI was not granted the authority to act as a proxy of SOE "INDUSTRIA E BATERIVE-IBG" in conclusion of the contract on transfer of shop, located in GJILAN/GNJILANE, in building with residential and commercial premises P+6+PK, technical number of the main project 494 commercial premise "D" P+6+PK, former "RADE POPOVIC" Street, now Road "BRIGADA e UÇK", with a surface of 38.65 m^2, registered in Possession List nr.4650, CZ GJILAN/GNJILANE, since this individualization of the real estate *was not included* in his authorization under Article 89, paragraph 1 LCT. *At fourth place*, the same one was signed by SAMI KRASNIQI as President of the Workers' Council of SOE "INDUSTRIA E BATERIVE-IBG", who did not have the right to grant it based on law, a general act of this legal person, an act of competent body or its legal representative pursuant to Article 84, paragraph 1 LCT. According to Article 47, paragraph 1 of the Law on Enterprises, *the managing body* of a socially-owned enterprise at that time was the Workers' Council, composed of delegates elected by the workers according to Article 47, paragraphs 2 – 4, making decisions by majority vote of all its members pursuant to Article 50 with competences under Article 49. Therefore only the Workers' Council as *collective body* was entitled with powers, whereas its President did not have the status of its *individual body* and was not granted any competences, including the one to authorize in person ATULLA QERIMI to sign the challenged contract. There was no *by-law* of SOE "INDUSTRIA E BATERIVE-IBG" under Article 51 of the Law on Enterprises or *any other general act* of this socially-owned enterprise providing such authority for the President of the Workers' Council. There was *no act of a competent body* in this respect, namely decision of KTA under Section 6.2 (c) of UNMIK Regulation No. 2002/12. The President of the Workers' Council could not sign power of attorney nr.339/02, dated 9th September 2002 as *a legal representative* of this enterprise since only the *Director* of SOE "INDUSTRIA E BATERIVE-IBG" could act as such according to Article 57, paragraph 1 of the Law on Enterprises. For all these deficiencies as per its form, date, content and author, this power of attorney of ATULLA QERIMI was without legal effect. Based on improper authorization, this person *had no authority to sign the contract.* As Secretary of SOE "INDUSTRIA E BATERIVE-IBG" he was not entitled to represent it on any of the alternative grounds in Article 84, paragraph 1 LCT - based on law, a general act of this enterprise or decision of KTA as a competent body under Section 6.2 (c) of UNMIK Regulation No.2002/12. Thus the contract was concluded on behalf of SOE "INDUSTRIA E BATERIVE-IBG" by ATULLA QERIMI without the authority requisite to represent it. Signed by an unauthorized person, with no subsequent approval of the principal, the contract is legally ineffective pursuant to Article 88, paragraph 3 LCT.

Datio in solutum

33. Consequent the unlawful termination of his employment relationship with SOE "INDUSTRIA E BATERIVE-IBG", ISA KRASNIQI had the right to compensation

for his non-received personal incomes until his return to work based on Article 232, paragraph 1 LEP 1978. Pursuant to Article 307, paragraph 1 LCT the corresponding obligation of this enterprise employee had to be fulfilled by performing what formed its content the amount of money due for this indemnity. Based on the exception under Article 308, paragraph 1 LCT, the termination of this obligation was also possible if the creditor, upon agreement with the debtor, accepted something else instead of what was due to him. However, since in the case it was agreed the payment of the monetary debt of ISA KRASNIQI under Article 232, paragraph 1 LEP 1978 to be substituted *by transfer of real property* of SOE "INDUSTRIA E BATERIVE-IBG" the compulsory provision of Section 6.2 (c) of UNMIK Regulation No. 2002/12 being generally applicable for all forms of disposal of all types of assets of socially-owned enterprises should have been complied with. It could not be considered derogated by Article 308, paragraph 1 LCT since Section 32 of UNMIK Regulation No. 2002/12 supersedes any provision of the applicable law inconsistent with it. As the substitution of fulfillment (*datio in solutum*) was agreed by transfer of property - asset SOE "INDUSTRIA E BATERIVE-IBG" instead of payment of the monetary debt due to ISA KRASNIQI, conformity with both Section 6.2 (c) of UNMIK Regulation No. 2002/12 and Article 308, paragraph 1 LCT was cumulatively required. This is why the lack of decision of KTA for such arrangement, incompatible with Section 6.2 (c) of UNMIK Regulation No. 2002/12 has nullified the contested transfer of real estate of SOE "INDUSTRIA E BATERIVE-IBG" and consequent to this has invalidated the accessorial substitution of fulfillment (*datio in solutum*) under Article 308, paragraph 1 LCT based on it. The motives of the parties for entering into this arrangement, enumerated in the appeal – the alleged lack of financial means of SOE "INDUSTRIA E BATERIVE-IBG" to pay the debt, the long duration of the civil proceedings for the labour dispute with ISA KRASNIQI and the need to find settlement for the pending executive procedure under Chapter XVIII of LEP 1978 – according to Article 53, paragraph 1 LCT do not affect the validity of this contract and being irrelevant for it could not neutralize its nullity. As the autonomy of choice of the parties to arrange freely their obligations is not absolute, but restricted by Article 10 LCT to the limits of compulsory legislation, the contradiction with its regulations makes the contested contract void under Article 103, paragraph 1 LCT, regardless of its expedience. This refers also to the argument in the appeal for lack of damages from its conclusion – their non-occurrence does not result in subsequent disappearance of the causes of nullity of this contract and hence does not validate it pursuant to Article 107, paragraph 1 LCT. As it has no legal effect, the monetary obligation under Article 232, paragraph 1 LEP 1978 of SOE "INDUSTRIA E BATERIVE-IBG" to ISA KRASNIQI *has not been terminated* pursuant to Article 308, paragraph 1 LCT and *each party has to restitute to the other everything received on its basis*. According to Article 104, paragraph 1 LCT these are *consequences of the nullity* of the contract, not *reasons to exclude this nullity*. Though it was concluded on 9th September 2002 after the executive procedure in E.nr.26/97 of the Municipal Court of GJILAN/GNJILANE was initiated on 4th March 1997 and resumed in E.nr.51/2002 of the Municipal Court of GJILAN/GNJILANE on 1st May 2002, the contract was

reached as non-judicial settlement out of this executive procedure. The contested shop was not sold to ISA KRASNIQI after public sale or direct bargaining under Articles 156 167 LEP 1978, nor the debt of SOE "INDUSTRIA E BATERIVE-IBG" was satisfied by the proceeds from the sale according to Articles 170 - 175 LEP 1978. As the contract was concluded *out of the pending executive procedure*, it could not be presumed valid pursuant to Article 184 LCP, while the rights of SOE "INDUSTRIA E BATERIVE-IBG" on the real estate its subject had not been precluded by the same provision.

34. Unfounded are all the other arguments invoked in the appeal as per Article 181, paragraph 1, item a) LCP. *At first place,* the attestation of the disputed contract as Vr.2051/02 by the Municipal Court of GJILAN/GNJILANE on 6th September 2002 is an element of the *form* prescribed according to Article 67 *in fine* LCT in conjunction with Article 4, paragraph 2 LTIP. The compliance with this condition for its validity excludes only the sanction under Article 70, paragraph 1 LCT for lack of this form. It does not exclude the non-compliance with the other statutory conditions for validity and its consequences. The attestation by the court does not verify conformity with all of them as absolute guarantee for lawfulness of the contract and does not hinder the right to claim subsequently its nullity according to Article 110 LCT on these grounds. *At second place,* it has not been proven in the case that the Workers' Council of SOE "INDUSTRIA E BATERIVE-IBG" as its highest management body according to Article 49 of the Law on Enterprises has ever taken decision for the transfer of the contested real estate with the quorum and majority required by Article 50. Its lack could not be considered neutralized by Decision nr.118/2002 of the Commission for Ownership Matters of the Immovable Property, dated 6th August 2022 as in the case has not been proven any by-law of SOE "INDUSTRIA E BATERIVE-IBG" of the ones envisaged in Article 51 of the Law on Enterprises which regulates its formation and functions. Moreover, this decision was taken by the Commission on 6th August 2002 with the participation of ALAUDIN SHERIFI, though he was selected for its member by the Workers' Council on 8th August 2002. Nonetheless, the authority of KTA established after 13th June 2002 for disposal of all assets of all socially-owned enterprises under Section 6.2 (c) of UNMIK Regulation No. 2002/12 being *exclusive* derogates the competences of all bodies of SOE "INDUSTRIA E BATERIVE-IBG" in this regard. None of them could substitute KTA in authorizing the transfer of the contested business premise of this socially-owned enterprise. The lack of decision of KTA for its alienation violates the compulsory provision of Section 6.2 (c) of UNMIK Regulation No.2002/12 and according to Article 103, paragraph 1 LCT leads to full nullity of the contested contact as a ground which suffices its annulment, apart from all other aforementioned infringements in its conclusion–reasons to be null and void. *At third place,* the referral to Article 107 LCT contained in the appeal is unfounded. The main cause for nullity of the contract – the lack of consent of KTA as violation under Article 103, paragraph 1 LCT and Section 6.2 (c) of UNMIK Regulation No. 2002/12 has not subsequently disappeared. This requirement was not revoked by UNMIK Regulation No.2005/18 amending UNMIK Regulation No. 2002/12, but

preserved and renumbered as Section 6.2 (d), which was not subsequently changed by UNMIK Regulation No. 2008/16 and/or UNMIK Regulation No. 2008/27. Identical authority was granted to the Privatization Agency of Kosovo (PAK) by Article 6, paragraph 2, item d) of the Law No. 03/L-067 and later by Article 6, paragraph 2, sub-paragraph 3 of Law No. 04/L-034. As long as the compulsory regulations violated by the contested contract in 2002 remained part of the legal regime for disposal of assets of SOE by KTA and then PAK, the prohibition for exercise of this competence by the bodies of SOE "INDUSTRIA E BATERIVE-IBG" has not subsequently disappeared and the contract has not become valid based on Article 107, paragraph 1 LCT. Since this prohibition is not of minor importance, its nullity could not be precluded because of performance based on Article 107, paragraph 2 LCT. *At fourth place*, the debt of SOE "INDUSTRIA E BATERIVE-IBG" to compensate ISA KRASNIQI for the non-received personal incomes according to Article 232, paragraphs 1 LEP 1978 *occurred* according to the same provision on 23rd December 1996, when judgment C.nr.236/92 of the Municipal Court of GJILAN/GNJILANE, dated 11th June 1996 entered into force. Since ISA KRASNIQI was not returned to his work in SOE "INDUSTRIA E BATERIVE-IBG", this compensation for non-received personal incomes had been increasing progressively to the period of delay according to Article 232, paragraph 5 LEP 1978. The agreement to *terminate* this obligation by substituting the payment of this monetary debt of SOE "INDUSTRIA E BATERIVE-IBG" with *transfer* of shop – its asset in ownership of ISA KRASNIQI pursuant to Article 308, paragraph 1 LCT, as well as its formalization through the contested contract took place on the date of its attestation by the Municipal Court of GJILAN/GNJILANE - 6th September 2002. At that time the aforementioned compulsory provisions on administration of the socially-owned immovable properties, including assets of SOE, by UNMIK through KTA were effective. Section 6.2 (c) of UNMIK Regulation No.2002/12 in particular came into force on 13th June 2002 as applicable law under Section 1.1 (a) of UNMIK Regulation No. 1999/24 for disposal of assets of SOE after this date. The thesis in the appeal for their non-application is wrongfully based on the *moment of occurrence of the debt,* whereas relevant for the nullity of the contested contract was *the moment of its conclusion* on 6th September 2002. *At fifth place,* the statement of EROLL IMAMI who as official person of the Municipal Court of GJILAN/GNJILANE attested it for non-necessity of the KTA consent and legality of the procedure, heard in the first instance, represents *legal opinion* which is inadmissible as witness testimony, has no probative value and is not binding for the court. *At sixth place*, the consequences of eventual *non-conclusion of the contract* – non-fulfillment of the obligation of SOE "INDUSTRIA E BATERIVE-IBG", now SOE "FABRIKA E BATERIVE", under Article 232, paragraph 1 LEP 1978 and non-compensation of ISA KRASNIQI – do not derogate *the validity requirements for conclusion of the same contract* and do not exclude its nullity as sanction for non-compliance with them.

35. The appellate review revealed no erroneous application of the substantive law under Article 181, paragraph 1, item c) LCP – by annulment of the contested contract as null and void, the Municipal Court of GJILAN/GNJILANE has neither failed to

implement the correct applicable law provisions, nor has applied them in a improper manner as per Article 184 LCP.

VI. Conclusion

36. Based on the foregoing considerations, the court of second instance shall reject the appeal as non-based and shall confirm judgment C.nr.127/2005 of the Municipal Court of GJILAN/GNJILANE, dated 4th December 2009 pursuant to Article 195, paragraph 1, item d) in conjunction with Article 200 LCP. It is lawfully rendered without the grounds for its challenging under Article 181, paragraph 1, items a) c) LCP invoked in the appeal or others to be identified *ex officio* by the second instance.

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.49/2011 on 23.12.2011

PRESIDING JUDGE

ROSITZA 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.

NOTE OF DELIBERATION AND VOTING

THE DISTRICT COURT OF GJILAN/GNJILANE in a panel composed of EULEX Civil Judge ROSITZA BUZOVA, as Presiding, Kosovo Judge MUHAMET REXHA and Kosovo Judge ABDULLAH AHMETI as panel members, **on 23rd December 2011 deliberated and voted unanimously as in the enacting clause.**

The present note is added to judgment of the District Court of GJILAN/GNJILANE AC.nr.49/2011, dated 23rd December 2011 in accordance with Article 140, paragraph 1, second sentence LCP.

THE DISTRICT COURT OF GJILAN/GNJILANE

AC.nr.49/2011 on 23.12.2011

ROSITZA BUZOVA
Presiding Judge

MUHAMET REXHA
Panel member

ABDULLAH AHMETI
Panel member

ANDRES MORENO
EULEX Legal Officer

DAUT LATIFAJ
Interpreter/Translator (English/Albanian)

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 and signed by the Kosovo Judges after translation by the above referred interpreter/translator.