

THE MUNICIPAL COURT OF GJILAN/GNJILANE in a panel composed of EULEX Civil Judge ROSITZA BUZOVA as Presiding Judge, Kosovo Judge BERAT SPAHIU and Kosovo Judge HALIL ZAHIRI as panel members, according to Article 5, paragraphs 2, 4 and 5 of the Law No. 03/L-053 on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (Official Gazette of the Republic of Kosovo No. 27/2008),

In the civil case of the claimant ENVER AHMETI from GJILAN/GNJILANE against the respondents DRAGOLJUB SIMONOVIC and JOVAN SIMONOVIC according to the claim both from GJILAN/GNJILANE, currently with unknown residence and addresses, with subject matter - confirmation of ownership on immovable property with value of the contest in the amount of 250 Euros,

Acting upon a request for reopening of the first instance proceedings completed by judgment C.nr.610/2002 of the Municipal Court of GJILAN/GNJILANE, dated 12th December 2002, filed on behalf of the above mentioned respondents DRAGOLJUB SIMONOVIC and JOVAN SIMONOVIC by VLASTIMIR PETROVIC and ELMI QERIMI, both Lawyers from GJILAN/GNJILANE,

Having held deliberation and voting in a panel session on 12th May 2011,

After assessment of the admissibility of this extraordinary legal remedy pursuant to Articles 425, paragraph 1 of the Law on Contentious Procedure ("Official Gazette of the SFRY" No. 4/1977, 36/1980, 69/1982, 58/1984, 74/1987, 57/1989, 20/1990, 27/1990, 35/1991 and "Official Gazette of the SRY" No. 27/1992, 31/1993, 24/1994, and 12/1998) (LCP 1977) in conjunction with Article 533, paragraph 1 of the Law No. 03/L-006 on Contested Procedure (Official Gazette of the Republic of Kosovo No. 38/2008) (LCP 2008),

Hereby renders the following

R U L I N G

I. The request for reopening of the first instance proceedings completed by judgment C.nr.610/2002 of the Municipal Court of GJILAN/GNJILANE, dated 12th December 2002, filed on 7th February 2008 for the respondents DRAGOLJUB SIMONOVIC and JOVAN SIMONOVIC by VLASTIMIR PETROVIC and ELMI QERIMI, both Lawyers from GJILAN/GNJILANE, is **DISMISSED**.

II. Officially certified copies of judgment C.nr.610/2002 of the Municipal Court of GJILAN/GNJILANE, dated 12th December 2002 with translations in Serbian are to be **SERVED** to the respondents for appeal within 15-days period from the date of the receipt before the District Court of GJILAN/GNJILANE in accordance with Article 348, paragraph 1, first sentence of the Law on Contentious Procedure ("Official

Gazette of the SFRY” No. 4/1977, 36/1980, 69/1982, 58/1984, 74/1987, 57/1989, 20/1990, 27/1990, 35/1991 and “Official Gazette of the SRY” No. 27/1992, 31/1993, 24/1994, and 12/1998) in conjunction with Article 533, paragraph 1 of the Law No. 03/L-006 on Contested Procedure (Official Gazette of the Republic of Kosovo No. 38/2008).

REASONING

I. Procedural background

1. On 25th November 2002, ENVER AHMETI from GJILAN/GNJILANE filed a claim against DRAGOLJUB SIMONOVIC and JOVAN SIMONOVIC. Allegedly in 1978 the claimant bought from the respondents cadastral parcel nr.457/1, with culture – field, II class, in the place “GAVRAN”, with surface of 0.22.00 ha, registered in Possession List nr.406, CZ GJILAN/GNJILANE. After payment of the price, the real estate was handed over from the sellers to the buyer, who from 1978 used it without being obstructed by anyone. No written contract was signed because of administrative obstacles. Later the transactions of this kind between parties of different nationalities were forbidden by a discriminatory law. The statement to the court was to confirm the ownership of the claimant on this cadastral parcel based on reverse possession and legal transaction of purchase, to oblige the respondents to recognize his right, and the registration of this real estate by the Department for Geodesy, Cadastre and Property – GJILAN/GNJILANE in the name of the claimant.
2. The claim was registered for adjudication as C.nr.610/2002 of the Municipal Court (MC) of GJILAN/GNJILANE.
3. The claimant was never obliged by the court as provided by Article 281 in conjunction with Article 109, paragraphs 1 and 2 LCP 1977 to complete this claim with the current residence and/or addresses of the respondents as requisites mandatory for its content according to Article 186, paragraph 1 in conjunction with Article 106, paragraph 2 LCP 1977.
4. No summons or other notifications were ever sent in C.nr.610/2002 by the MC of GJILAN/GNJILANE to the respondents in order to verify officially that they could not be found out at their last registered permanent residence in GJILAN/GNJILANE.
5. No procedural actions were undertaken *ex officio* in C.nr.610/2002 by the MC of GJILAN/GNJILANE to obtain the required information for the actual addresses of DRAGOLJUB and JOVAN SIMONOVIC from the competent administrative bodies or in some other way as legally demanded by Article 148 LCP 1977.
6. No ruling was issued in C.nr.610/2002 by the MC of GJILAN/GNJILANE for appointment of a temporary representative of any of the two respondents pursuant to Article 84, paragraph 2, item 3 and Article 278 LCP 1977. The court did not notify also the competent guardianship institution in order to initiate the appointment of their guardian as foreseen by Article 84, paragraph 3 LCP 1977.

7. The claim was not served to the respondents for reply as required by Article 277, paragraph 2 and Article 284, paragraph 2 LCP 1977.
8. No preliminary hearing was scheduled, without any justification under Article 284, paragraph 3 LCP 1977 based on the statement of the claim and the nature of the dispute.
9. The main hearing was held in one public court session on 12th December 2002, 17 days after C.nr.610/2002 of the MC of GJILAN/GNJILANE was registered on 25th November 2002. None of the litigants was summoned.
10. Despite all procedural irregularities above, and without explicit withdrawal of the objections by the parties to the conduct of the session of the main hearing on 12th December 2002, it was not postponed but announced open by the Presiding Judge without checking whether the respondents had been duly summoned and if there were justified reasons for their absence as previewed by Article 294 LCP 1977. According to the minutes, apart from the claimant who was present in person, in the hearing on 12th December 2002 participated also Lawyer MASAR MORINA as a “*temporary representative of the respondents*”. However, no ruling was recorded as rendered in the same hearing for his appointment in this procedural capacity on whatever grounds.
11. During the hearing on 12th December 2002, the Possession List nr.406, CZ GJILAN/GNJILANE, attached to the claim, was read and two witnesses proposed by the claimant were heard. Without any other evidence adduced the trial was completed.
12. By judgment C.nr.610/2002 of the MC of GJILAN/GNJILANE, dated 12th December 2002, the claim was fully approved—the ownership of the clamant ENVER AHMETI on cadastral parcel nr.457/1, with culture name – field, II class, in the place “GAVRAN”, with surface of 0.22.00 ha, registered in Possession List nr.406, CZ GJILAN/GNJILANE was confirmed based on reverse possession, the respondents DRAGOLJUB and JOVAN SIMONOVIC were obliged to recognize his right and the Directorate of Geodesy, Cadastre and Property – GJILAN/GNJILANE was ordered to make the respective changes in the cadastral books.
13. On 19th December 2002, judgment, dated 12th December 2002 was served in copies to ENVER AHMETI, to MASAR MORINA, Lawyer from GJILAN/GJILANE and to the Directorate of Geodesy, Cadastre and Property – GJILAN/GNJILANE.
14. On 7th February 2008, a request for reopening of the first instance proceedings completed by judgment C.nr.610/02 of the MC of GJILAN/GNJILANE, dated 12th December 2002 was filed on behalf of the respondents DRAGOLJUB SIMONOVIC and JOVAN SIMONOVIC by VLASTIMIR PETROVIC and ELMI QERIMI, both of them Lawyers from GJILAN/GNJILANE. The legal ground explicitly invoked in its content as previewed by Article 424, paragraph 2 LCP 1977 was under Article 421, point 2 LCP 1977 that these litigants were not given the right to participate in the trial, because of unlawful acts of the court like non-service of the claim for reply, non-summoning for the main hearing, lack of information inquiries sent to the competent administrative authorities for their addresses pursuant to Article 148 LCP 1977. The

request is this first instance court to allow reopening of the proceedings completed by judgment C.nr.610/2002 of the MC of GJILAN/GNJILANE, dated 12th December 2002 after its annulment and for continuation of the contested procedure in this civil case after the respective ruling becomes final.

15. No procedural actions were undertaken by the court in the instant extraordinary legal remedy procedure after its initiation on 7th February 2008 until the assignment of the case to EULEX Judges' jurisdiction.

II. Competence of the Municipal Court of GJILAN/GNJILANE

16. C.nr.610/2002 of the MC of GJILAN/GNJILANE was selected according 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 the Jurisdiction) by ruling of EULEX Judge, dated 16th December 2010. Hearing under Article 5, paragraph 7, first sentence of the same law was held on 22nd February 2011 by EULEX Judge upon delegation of the President of the Assembly of the EULEX Judges by Decision ref.nr.JC/EJU/OPEJ/2230/mgc/11, dated 28th January 2011. By ruling of this delegate, dated 24th February 2011 pursuant to Article 5, paragraph 7, second sentence of the Law No. 03/L-053 on the Jurisdiction, the case was assigned as per the pending extraordinary legal remedy procedure to a three-judge panel of the MC of GJILAN/GNJILANE under Article 5, paragraph 2, first and second sentences and paragraph 4 of the Law No. 03/L-053 on the Jurisdiction with Presiding EULEX Judge and two Kosovo Judges-panel members. The latter were designated based on Decision ref.nr.JC/EJU/OPEJ/2298/mgc/11 of the President of the Assembly of the EULEX Judges, dated 3rd March 2011 for derogation under Article 5, paragraph 5 of the Law No. 03/L-053 on the Jurisdiction by Decision AGJ.nr.17/11 of the President of the MC of GILAN/GNJILANE, dated 21st March 2011.

17. All property related civil cases in EULEX Judges' jurisdiction regardless of the type of their pending proceedings are to be adjudicated by panels of three professional judges with EULEX Judge as Presiding - Article 5, paragraphs 2 and 4 of the Law No. 03/L-053 on the Jurisdiction. The composition of the court in these civil cases is to be determined in accordance with the Law No.03/L-053 on the Jurisdiction which as *lex specialis* prevails over Article 41 – 42 LCP 1977, as well as Article 15 LCP 2008. This is why being legally composed in conformity with the Law No. 03/L-053 on the Jurisdiction this three-judge mixed panel is empowered with the competence to decide the instant civil case as per the pending extraordinary legal remedy procedure.

III. Assessment of the admissibility of the reopening request

18. By the challenged judgment C.nr.610/2002 of the MC of GJILAN/GNJILANE, rendered on 12th December 2002 the proceedings of this case was concluded in the first instance prior the entry into force of LCP 2008 on 6th October 2008. Therefore according to the explicit transitional rule of Article 533, paragraph 1 LCP 2008 for

such hypotheses, the old provisions of LCP 1977 shall be applicable for any further proceedings in the same case. Hence, the instant extraordinary legal remedy, initiated on 7th February 2008 is under the normative regime of Articles 421 – 428 LCP 1977.

19. In order to decide on the reopening request, the court has to assess beforehand whether all legal requirements of its admissibility have been met. Respectively, the first stage in this extraordinary legal remedy procedure is the preliminary examination under Article 425, paragraph 1 LCP 1977 in conjunction with Article 533, paragraph 1 LCP 2008 whether the request is belated, incomplete and/or impermissible.

20. All legal remedies regulated in the six sections of Chapter XXVI of LCP 1977, including the repetition under its Section 5, are qualified in its heading and provisions as *extraordinary*, unlike the legal remedies under the two sections of Chapter XXV of LCP 1977 which are *ordinary (regular)*. The main distinction between them is based on the *finality/non-finality* of the court decisions challenged by the ones from the first and second category, respectively. In compliance with this general differentiation, the repetition under Chapter XXVI, Section 5 of LCP 1977 as extraordinary legal remedy is explicitly limited in its scope by Article 421 only to proceedings completed by *final court decisions*. The requirement for absolute decree is applicable for *all judicial acts* challenged by this legal remedy as the proceedings may be completed by a judgment or a ruling (Article 129, paragraph 1 LCP 1977). The repetition is a legal instrument against all these court decisions that have come into force, though rendered with the grievous procedural violations enumerated in Article 421, points 1 - 9 LCP 1977 in conjunction with Article 533, paragraph 1 LCP 2008. It is not appealing as it could be initiated only if the trial has been concluded by a legally enforceable court decision. Hence, it is not its phase, stage, but *an independent judicial procedure for their out-of-instance control* when the infringements exhaustively enumerated in Article 421, points 1- 9 LCP 1977 in conjunction with Article 533, paragraph 1 LCP 2008 exist. It is designed to reopen the proceedings repealing the *final court decision* previously unlawfully rendered in it (Article 427, paragraph 2 LCP 1977 in conjunction with Article 533, paragraph 1 LCP 2008), so that the retrial could be conducted on the principal issue and it could be adjudicated by a new, valid court decision (Article 427, paragraph 3 LCP 1977 in conjunction with Article 533, paragraph 1 LCP 2008).

21. The repetition under Chapter XXVI, Section 5 of LCP 1977 in conjunction with Article 533, paragraph 1 LCP 2008 is therefore permissible exclusively and only for *judicial acts that have entered into force* being: 1) in principle non-challengeable by regular legal remedy under Chapter XXV of LCP 1977 or Chapter XIII LCP 2008 (e.g., second instance judgment); 2) not-challenged by appeals in the legal deadline or with withdrawn appeal; *or* 3) challenged by appeal, dismissed or rejected by the court of second instance.

22. This admissibility requirement laid down by Article 421, items 1 - 9 LCP 1977 in conjunction with Article 533, paragraph 1 LCP 2008 as mandatory for all repetition grounds is not fulfilled in the instant civil case as *judgment C.nr.610/2002 of the MC of GJILAN/GNJILANE, dated 12th December 2002 is not yet final*. Since the claim for

confirmation of ownership of ENVER AHMETI against DRAGOLJUB and JOVAN SIMONOVIC was decided on the merits through its approval in the absence of a counterclaim, pursuant to Article 333, paragraph 1 LCP 1977 in conjunction with Article 533, paragraph 1 LCP 2008 the judgment could *become effective when it could not be further challenged by an appeal*. As long as all parties in C.nr.610/2002 of the MC of GJILAN/GNJILANE are individually granted this procedural right by Article 348, paragraph 1, first sentence LCP 1977 in conjunction with Article 533, paragraph 1 LCP 2008, according to the same provisions *the finality* of this judgment may occur only when: 1) its copies have been duly received by *all litigants*; and 2) the 15-days appeal deadline has expired *for each one of them*. As these requirements are equally mandatory for the parties, regardless of their status, their non-fulfillment with respect to the respondents in the case at stake automatically *excludes the finality* of judgment C.nr.610/2002 of the MC of GJILAN/GNJILANE, dated 12th December 2002 under Article 333, paragraph 1 LCP 1977 in conjunction with Article 533, paragraph 1 LCP 2008. As it may be still appealed by these litigants, it has not acquired absolute decree and according to Article 421 LCP 1977 in conjunction with Article 533, paragraph 1 LCP 2008 is non-eligible for repetition. The arguments are as follows.

23. The 15-days time period for appeal against a first instance judgment as stated explicitly by Article 348, paragraph 1, first sentence LCP 1977 in conjunction with Article 533, paragraph 1 LCP 2008 starts to run for each party from *the date when its copy has been received by him/her*. To produce these legal consequences, its service should comply with all relevant notification rules of Chapter XI of LCP 1977.

24. Article 142, paragraph 1, first sentence LCP 1977 in conjunction with Article 533, paragraph 1 LCP 2008 stipulates that the judgment should be served to *the party in person*, to his/her *legal representative or authorized representative in person*. In view of the importance for the proceedings, its personal service is mandatory and is limited to one of these three alternatives, which are now reproduced in Article 110, paragraph 1 LCP 2008. None of them is realized in the case as per the respondents.

25. The addresses of these litigants were not identified in C.nr.610/2002 of the MC of GJILAN/GNJILANE - the claimant was not obliged by the court to complete the claim with them based on Article 281 in conjunction with Article 109, paragraphs 1 and 2 LCP 1977; no summons were sent to DRAGOLJUB or JOVAN SIMONOVIC in order to verify officially the change of their residence in GJILAN/GNJILANE; no information about their current domicile was obtained *ex officio* from the competent administrative bodies pursuant to Article 148 LCP 1977. In continuation to this, in the case file there is no notification with a copy of judgment C.nr.610/2002 of the MC of GJILAN/GNJILANE, dated 12th December 2002 sent by this court to DRAGOLJUB SIMONOVIC or JOVAN SIMONOVIC in any form, in any moment at any address. Consequently, *none of the two respondents received it in person* as expressly foreseen in the *first* hypothesis of Article 142, paragraph 1, first sentence LCP 1977 and Article 110, paragraph 1, first sentence LCP 2008. Thus the 15-days period under Article 348, paragraph 1, first sentence LCP 1977 in conjunction with Article 533, paragraph 1

LCP 2008 for appeal of judgment C.nr.610/2002 of the MC of GJILAN/GNJILANE, dated 12th December 2002 because of its non-service to DRAGOLJUB or JOVAN SIMONOVIC in person has not begun and expired for any of them. Thus it has not become effective for these parties pursuant to Article 334, paragraph 2 LCP 1977 in conjunction with Article 533, paragraph 1 LCP 2008 and being challengeable by their appeal did not reach the finality envisaged in Article 333, paragraph 1 LCP 1977 in conjunction with Article 533, paragraph 1 LCP and defined by Article 421 LCP 1977 in conjunction with Article 533, paragraph 1 LCP 2008 as the first precondition for any repetition of concluded civil proceedings.

26. The *second* hypothesis under Article 142, paragraph 1, first sentence LCP 1977 in conjunction with Article 533, paragraph 1 LCP 2008, corresponding to Article 110, paragraph 1, first sentence LCP 2008, *also did not take place* - judgment C.nr.610/02 of the MC of GJILAN/GNJILANE, dated 12th December 2002 *was not served to any legal representative of the respondents in person*. Namely, this requirement could not be considered met by the notification delivered to MASAR MORINA, Lawyer from GJILAN/GNJILANE, on 19th December 2002. The reasons are as follows. Pursuant to Article 80, paragraph 2 LCP 1977 *the legal representative shall be determined by law or an act of a competent state body adopted on the basis of the law*. In conformity with this and subject to the conditions set forth in Article 84, paragraph 1 LCP 1977, the court is empowered to appoint a temporary representative to a respondent with unknown residence and no authorized representative pursuant to Article 84, paragraph 2, item 3 LCP 1977. The same shall have in the proceedings of his appointment all rights and obligations of legal representative—Article 85, paragraph 1 LCP. However, this procedural status could be acquired *only by a ruling of the court under Article 278, paragraph 1 LCP 1977*. C.nr.610/2002 of the MC of GJILAN/GNJILANE does not contain documents verifying the existence of the conditions set forth in Article 84, paragraph 1 and paragraph 2, item 3 LCP 1977; a judicial act with the respective content and its announcement under Article 86 LCP 1977 are not enclosed neither in originals, nor in copies to the file. In these circumstances, the only conclusion to be drawn is that *ruling under Article 278, paragraph 1 LCP 1977 for the appointment of Lawyer MASAR MORINA as a temporary representative of the respondents has not been rendered at all*. Such a court decision in the written form of validity prescribed by Article 338, paragraph 1 in conjunction with Article 347 LCP 1977 and having the mandatory content under Article 338, paragraphs 2–5 in conjunction with Article 347 LCP 1977 is missing in the case. This means absence of an act for the appointment of Lawyer MASAR MORINA as a *temporary representative* of the respondents under Article 278, paragraph 1 LCP 1977, as well as the absence of an act under Article 80, paragraph 2 LCP 1977 for his determination as their *legal representative*. His non-assignment as a temporary representative excludes automatically his status of a legal representative of these parties since according to Article 85, paragraph 1 LCP 1977 the second one is accessory to the first one. As the act of appointment of the competent court according to Article 80, paragraph 2 LCP 1977 is the only possible source of this procedural legal representation, without such a mandatory judicial act,

the authorization ensuing from it was not instituted at all in C.nr.610/2002 by the MC of GJILAN/GNJILANE. Therefore in the case the participation of Lawyer MASAR MORINA was only *factual* since *legally* he was not entitled according to Article 80, paragraph 2, Article 278, paragraph 1 and Article 85, paragraph 1 LCP 1977 to represent any of the respondents. This is why he could not undertake on their behalf any procedural actions in the case, as previewed in Article 81, paragraph 1 LCP 1977. Hence, the notification of judgment C.nr.610/2002, dated 12th December 2002 was only *de facto* received by Lawyer MASAR MORINA on 19th December 2002 without being *de jure* its service to a *legal representative* of the respondents in the second hypothesis of Article 142, paragraph 1, first sentence LCP 1977, corresponding now to Article 110, paragraph 1, first sentence LCP 2008. Since this notification was accepted by this lawyer without the procedural rights under Article 85, paragraph 1 LCP 1977 as per DRAGOLJUB and/or JOVAN SIMONOVIC in violation of Article 138, paragraph 1 LCP 1977, it is *invalid and non-binding for these litigants*. Namely, *this service of the judgment because of its deficiencies could not regularly initiate for them the 15-days appeal period*. As the duly acquired capacity of a temporary (legal) representative is a condition for the validity of all procedural actions undertaken on behalf of the parties (Article 81, paragraph 1 and Article 85, paragraph 1 LCP 1977), the lack of this status as per Lawyer MASAR MORINA in this case makes *invalid also the waiver under Article 349, paragraph 1 LCP 1977 of appeal* against judgment C.nr.610/2002 of the MC of GJILAN/GNJILANE, dated 12th December 2002, noted by him on the receipt of 19th December 2002. Done without representation power it has no legal effect in the proceedings – it has not precluded the right of appeal of the respondents and has not made the judgment non-challengeable by them. Based on these considerations, the participation of Lawyer MASAR MORINA in C.nr.610/02 should be qualified as *factual* only – without a ruling for his appointment by the court as a temporary/legal representative of the respondents under Article 80, paragraph 2 and Article 278, paragraph 1 LCP 1977, he did not acquire at any moment this status, all his procedural actions were therefore invalid and considered cancelled pursuant to Article 83, paragraph 4 LCP 1977. The service of judgment C.nr.610/2002 of the MC of GJILAN/GNJILANE, dated 12th December 2002 to Lawyer MASAR MORINA on 19th December 2002 is *not to a legal representative of the respondents* in the second hypothesis of Article 142, paragraph 1, first sentence LCP 1977. Therefore the period prescribed by Article 348, paragraph 1, first sentence LCP 1977 has not started to run from its date for the respondents. Consequently, the judgment remained challengeable by their appeal and non-final as per the criteria of Article 333, paragraph 1 LCP 1977 in conjunction with Article 533, paragraph 1 LCP.

27. The *third* hypothesis under Article 142, paragraph 1, first sentence LCP 1977 in conjunction with Article 533, paragraph 1 LCP 2008, corresponding to Article 110, paragraph 1, first sentence LCP 2008, *also did not take place* - judgment C.nr.610/02 of the MC of GJILAN/GNJILANE, dated 12th December 2002 *was not served to an authorized representative of the respondents in person*. Enclosed in the case file is a power of attorney signed on 20th November 2006 by DRAGOLJUB SIMONOVIC in

the name of ZEJNEPE YMERI from the Civil Rights Project in GJILAN/GNJILANE CRP/K GJILAN/GNJILANE to request on his behalf three judgments, including the one in C.nr.610/02 of the MC of GJILAN/GNJILANE, in Serbian and English. As it is clearly expressed in its content, by signing this power of attorney in accordance with Article 90, paragraph 1 and Article 94 LCP 1977, this respondent authorized ZEJNEPE YMERI *as a natural person*. However, after this power of attorney was presented to the case, the court sent a notification with judgment of 12th December 2002 to *CRP/K GJILAN/GNJILANE instead to the representative ZEJNEPE YMERI as an addressee*. The receipt was returned to the case with *illegible signature of the recipient* and the date of acceptance in his/her handwriting - 29.01.2007 *without any data as per the name and position of this person*. As long as this notification was not formally directed by the court to ZEJNEPE YMERI, and this name was not noted in the receipt of 29th January 2007, none of the general requirements for service to an authorized representative under Article 138, paragraph 1 and Article 141, paragraph 1 LCP 1977 were met. Moreover, non-fulfilled was the specific rule under Article 142, paragraph 1, first sentence LCP 1977 *for delivery of the judgment to this authorized representative in person*. Because of all these irregularities, the notification, dated 29th January 2007 did not initiate the period for appeal of judgment C.nr.610/02 of the MC of GJILAN/GNJILANE, dated 12th December 2002 for DRAGOLJUB SIMONOVIC. Furthermore, it had absolutely *no legal effect regarding JOVAN SIMONOVIC as the power of attorney of ZEJNEPE YMERI from CRP/K GJILAN/GNJILANE was not signed by him*. This respondent has never issued in the case a power of attorney under Article 94, paragraph 1 and Article 97, paragraph 1 LCP 1977 to determine this or any other person as his authorized representative pursuant to Article 89, paragraph 1 and Article 90, paragraph 1 LCP for specific procedural actions or the whole proceedings according to Article 94, paragraph 1 LCP 1977. This *excludes factually and legally the possibility of any service of judgment C.nr.610/02, dated 12th December 2002 to an authorized representative of the respondent JOVAN SIMONOVIC* and makes non-applicable for him the *third hypothesis* under Article 142, paragraph 1, first sentence LCP 1977 in conjunction with Article 533, paragraph 1 LCP 2008.

28. The finality of judgment C.nr.610/02 of the MC of GJILAN/GNJILANE, dated 12th December 2002 could not be reasoned with the content of the reopening request in the part with the allegations that on 1st February 2008, while requesting from the Directorate for Cadastre, Geodesy and Property-GJILAN/GNJILANE possession list for the contested real estate, DRAGOLJUB SIMONOVIC noticed that its registration in the name of the claimant and was informed about this judgment. *At first place*, the 15-days appeal period according to Article 348, paragraph 1, first sentence LCP 1977 could commence only after a *copy of the judgment was duly served by the court to the party*. This requirement is imperative the *ratio* being that only after the regular receipt of the full text of the judicial act in official copy the party would be able to appeal it efficiently. To this end, it is inadmissible that the 15-days period under Article 348, paragraph 1, first sentence LCP 1977 being preclusive for this procedural right of the litigants is initiated by factual and/or legal action, different from the one demanded by

this provision—procedurally regular delivery of a copy of the judgment from the court to the party. Therefore, the date 1st February 2008 when DRAGOLJUB SIMONOVIC learned in the Directorate for Cadastre, Geodesy and Property-GJILAN/GNJILANE for judgment in C.nr.610/2002 of the MC of GJILAN/GNJILANE could not define the initial moment for the 15-days appeal period as it is not envisaged in Article 348, paragraph 1, first sentence LCP 1977 as an alternative of its service in full copy by the court. *At second place*, the request for reopening was submitted for DRAGOLJUB or JOVAN SIMONOVIC by VLASTIMIR PETROVIC and ELMI QERIMI, Lawyers from GJILAN/GNJILANE, based on a power of attorney, given on 6th February 2008 *by the first respondent only, and not by the second one*. This is why the allegations in this reopening request that on 1st February 2008 DRAGOLJUB SIMONOVIC learned about judgment C.nr.610/2002 of the MC of GJILAN/GNJILANE do not engage in any way JOVAN SIMONOVIC, in particular as a confession under Article 221, paragraph 1 LCP 1977. As JOVAN SIMONOVIC did not sign the power of attorney, dated 6th February 2008, the mentioned lawyers had not been authorized to represent him in the case according to Article 94, paragraph 1 LCP 1977. Hence, pursuant to Article 92 LCP 1977 they were not entitled to undertake any procedural actions on his behalf, namely to admit any facts related to the legal deadline for appeal against judgment C.nr.610/02 of the MC of GJILAN/GNJILANE, dated 12th December 2002 or to confess its finality under Article 333, paragraph 1 LCP 1977 in conjunction with Article 533, paragraph 1 LCP.

29. The entry into force of any court decision may occur upon expiry of the appeal period for *all litigants*. Thus, the fact that the notification of judgment C.nr.610/2002 of the MC of GJILAN/GNJILANE, dated 12th December 2002 as per the respondent JOVAN SIMONOVIC has neither been officially verified by the court as required by law, nor it has been unofficially acknowledged by him and/or his representative (legal or authorized), is sufficient to exclude the expiry of the 15-days appeal period under Article 348, paragraph 1, first sentence LCP 1977 *for this litigant and thus the entry into force of the same judgment at whole, with respect to the other parties as well*.

30. Contrary to Article 103, paragraph 2 LCP, judgment C.nr.610/02 of the MC of GJILAN/GNJILANE, dated 12th December 2002 was never served to any of the two respondents in Serbian. This violation of the language rules in the civil proceedings laid down by Chapter 6 of LCP 1977 is an additional ground excluding the regularity of the delivery and its legal consequences set forth in Article 348, paragraph 1, first sentence LCP 1977.

31. In principle the repetition under Chapter XXVI, Section 5 of LCP 1977 in conjunction with Article 533, paragraph 1 LCP 2008 as reasoned above is *permissible exclusively for proceedings concluded by judicial acts that have entered into force*. This absolute admissibility requirement of Article 421 LCP 1977 in conjunction with Article 533, paragraph 1 LCP 2008 is not fulfilled as judgment C.nr.610/2002 of the MC of GJILAN/GNJILANE, dated 12th December 2002 *has not acquired this finality* as per the criteria of Article 333, paragraph 1 LCP 1977 in conjunction with Article

533, paragraph 1 LCP 2008. Without *being of absolute decree*, it could not be subject of the extraordinary legal remedy governed by Chapter XXVI, Section 5 of LCP 1977. The latter is non-applicable as long as the regular legal remedy through appeal to the second instance court is not still exhausted for the respondents. Summarizing, the reopening request is *impermissible* being filed against judgment C.nr.610/2002 of the MC of GJILAN/GNJILANE, dated 12th December 2002, *which as non-final first instance court decision is non-eligible for the proposed repetition under Article 421 – 428 LCP 1977 in conjunction with Article 533, paragraph 1 LCP 2008.*

32. With respect to JOVAN SIMONOVIC, as pointed out in section 28 above, the reopening request is submitted by VLASTIMIR PETROVIC and ELMI QERIMI, Lawyers from GJILAN/GNJILANE, *without any written power of attorney for his representation*. Non-confirmed subsequently by this respondent, it remains invalid for him. As such it is to be *annulled* in accordance with Article 98, paragraph 1 LCP 1977 in conjunction with Article 533, paragraph 1 LCP 2008 and on this supplemental legal ground is to be qualified as impermissible under Article 425, paragraph 1 LCP 1977 in conjunction with Article 533, paragraph 1 LCP 2008.

33. If hypothetically, judgment C.nr.610/2002 of the MC of GJILAN/GNJILANE, dated 12th December 2002 is presumed as final then the reopening request would be *belated*. As the legal ground explicitly invoked in its content according to Article 424, paragraph 2 LCP 1977 is the one under *Article 421, point 2 LCP 1977*, the deadline for its submission is defined by: 1) Article 423, paragraph 1, point 2 LCP 1977 - 30 days from the date the decision is served to the party; *and* 2) Article 423, paragraph 2 LCP 1977 stipulating that if the time period under Article 423, paragraph 1 LCP 1977 has started to run before the decision has become final, its initial moment shall be the date of its finality if no appeal has been filed against it. Counted from 19th December 2002 (when the delivery of copies of judgment C.nr.610/2002, dated 12th December 2002 *de facto* took place with appeal waivers) the 30-days period under Article 423, paragraph 2 in conjunction with paragraph 1, point 2 LCP 1977 would have elapsed on 18th January 2003. The reopening request was filed on 7th February 2008, after this deadline. Thus upon theoretically presumed finality of judgment C.nr.610/2002 of the MC of GJILAN/GNJILANE, dated 12th December 2002, the procedural right of the respondents to repetition would be *precluded* by the expiry of the 30-days time period under Article 423, paragraph 2 LCP 1977 in conjunction with Article 533, paragraph 1 LCP 2008.

IV. Conclusion

34. After this admissibility assessment, the request for reopening the proceedings concluded by judgment C.nr.610/2002 of the MC of GJILAN/GNJILANE, dated 12th December 2002 *shall be dismissed* pursuant to Article 425, paragraph 1 LCP 1977 in conjunction with Article 533, paragraph 1 LCP 2008 based on the *inadmissibility grounds* determined above, without a hearing. In this hypothesis its copy is not to be served to the opposing party for answer according to the explicit requirement of Article 425, paragraph 2 LCP 1977 in conjunction with Article 533, paragraph 1 LCP

2008. No further procedural actions under Article 426 – 427 LCP 1977 in conjunction with Article 533, paragraph 1 LCP 2008 should be undertaken in this extraordinary legal remedy procedure as by the full dismissal under Article 425, paragraph 1 LCP 1977 in conjunction with Article 533, paragraph 1 LCP 2008 it is terminated.

35. In order to remove all deficiencies in the service of judgment C.nr.610/2002 of the MC of GJILAN/GNJILANE, dated 12th December 2002, identified above, its new delivery to the respondents shall be ordered. It is to be effected in officially certified copies with translations in Serbian in compliance with Article 348, paragraph 1, first sentence and Article 142 LCP 1977 in conjunction with Article 533, paragraph 1 LCP 2008, corresponding now to Article 176, paragraph 1, first sentence and Article 110, paragraph 1, first sentence LCP 2008, so that the respondents are given the right to appeal this first instance judgment before the competent court of second instance in a regular legal remedy procedure.

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

LEGAL REMEDY: This ruling may be challenged by an appeal filed to the District Court of GJILAN/GNJILANE within 15-days time period from the date of its service to the parties.

THE MUNICIPAL COURT OF GJILAN/GNJILANE
C. nr.610/2002 on 12.05.2011

PRESIDING JUDGE



ROSITZA BUZOVA

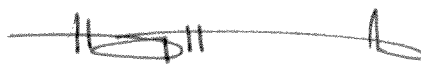
NOTE OF DELIBERATION AND VOTING

THE MUNICIPAL COURT OF GJILAN/GNJILANE in a panel composed of EULEX Judge ROSITZA BUZOVA, as Presiding Judge, Kosovo Judge BERAT SPAHIU and Kosovo Judge HALIL ZAHIRI, as panel members, **on 12th May 2011 deliberated and voted unanimously as in the enacting clause of this ruling.**

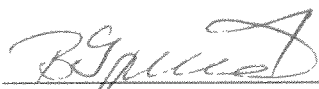
This note is added to ruling of the MUNICIPAL COURT of GJILAN/GJILANE C.nr.610/2002, dated 12th May 2011.

THE MUNICIPAL COURT OF GJILAN/GNJILANE

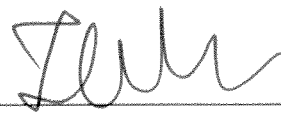
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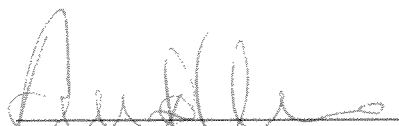
ROSITZA BUZOVA
PRESIDING JUDGE



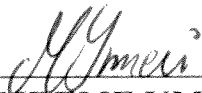
BERAT SPAHIU
PANEL MEMBER



HALIL ZAHIRI
PANEL MEMBER



ANDRÉS MORENO
EULEX LEGAL OFFICER



MEJREME YMERI
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 Judge after translation by the above referred interpreter/translator.