BASIC COURT OF FERIZAJ/UROŠEVAC
BRANCH KAÇANIK/KACANIK
C.nr.133/2009 & C.nr.148/2009
Date: 9th May 2013

BASIC COURT OF FERIZAJ/UROŠEVAC, BRANCH KAÇANIK/KACANIK in the first instance through the EULEX Judge ROSITZA BUZOVA with the Court Recorders NEXHMIJE MEZINI, TSVETELINA ZHEKOVA and VLORA JONSON in the joined civil cases of the claimant BL from Kaçanik/Kacanik, represented by Lawyer MI from Ferizaj/Uroševac, TL and SL, from Kaçanik/Kacanik, against the respondent the MINISTRY OF INFRASTRUCTURE – Prishtinë/Priština, represented by the MINISTRY OF JUSTICE-Prishtinë/Priština through the Senior Legal Officer SH, and the respondent the MUNICIPALITY of KAÇANIK/KACANIK, represented by the Legal Officer ML, for confirmation of ownership with value of the contest 10 000 Euros, after main hearing concluded on 24th April 2013 pursuant to Article 160, paragraphs 1 – 5 and Article 254, paragraph 1 of the Law No. 03/L-006 on Contested Procedure (Official Gazette of the Republic of Kosovo No.38/08), amended and supplemented by Law No. 04/L-118 (Official Gazette of the Republic of Kosovo No. 28/12) ("LCP"), on 9th May 2013 renders the following

JUDGMENT

I. IT IS REJECTED as ungrounded the statement of the claim of the claimant BL from Kaçanik/Kacanik against the respondents the MINISTRY OF INFRASTRUCTURE and the MUNICIPALITY of KAÇANIK/KACANIK based on construction on somebody else's land under Article 24 of the Law on Basic Property Relations, as well as adverse possession under Article 28 the Law on Basic Property Relations and Article 40 of the Law No. 03/L-154 on Property and Other Real Rights:

1. to confirm that the claimant BL WAS until 29th September 2009 the OWNER of OBJECT – business facility - autoservice and shop for car spare parts, of one floor, with dimensions 20.86 m length and 7.43 width, and a surface of 155 m^2, located on

part of cadastral parcel nr.1850 (now nr.P-70917048-1850-0) at the place called "Dushkaja", culture – uncategorized road, with a total surface of 22 529 m^2, registered as social property–Public and Uncategorized Roads - Kaçanik/Kacanik, in Possession List nr.860 (Certificate for Immovable Property Rights nr.UL-70917048 -00860), Cadastral Zone Kaçanik/Kacanik with borders of its location: on the north-eastern part – the highway M2 Prishtinë/Priština - Skopje, on the northern part - vulcanizer used by XB; on the north-western part – the old road Ferizaj/Uroševac-Kaçanik/Kacanik, and on the southern part – car service shop used by RF, as determined by the geodesy expertise;

2. to confirm with respect to the respondent the MINISTRY OF INFRASTRUCTURE – that the claimant BL IS the OWNER of LAND with a surface of 198 m^2 - part of cadastral parcel nr.1849 (now nr.P-70917048-1849-0), located at the place called "Dushkaja", culture – road of 1st order, with a surface of 73 205 m^2, registered as social property - Roads Enterprise - Prishtinë/Priština in Possession List nr.1159 (Certificate for Immovable Property Rights nr.UL-70917048-01159), Cadastral Zone Kaçanik/Kacanik, occupied till 29th September 2009 by part of the compound of the object described in point 1 above, as determined by the geodesy expertise;

3. to confirm with respect to the respondent the MUNICIPALITY OF KAÇANIK/ KACANIK that the claimant BL IS the OWNER of LAND with a surface of 182 m^2 - part of cadastral parcel nr.1850 (now nr.P-70917048-1850-0) at the place called "Dushkaja", culture – uncategorized road, with a total surface of 22 529 m^2, registered as social property–Public and Uncategorized Roads - Kaçanik/Kacanik, in Possession List nr.860 (Certificate for Immovable Property Rights nr.UL-70917048-00860), Cadastral Zone Kaçanik/Kacanik, occupied till 29th September 2009 by the object specified in point 1 above (155 m^2) and part of its compound (27 m^2), as determined by the geodesy expertise;

4. to order the cadastral registration of these property rights in the name of the claimant within 15 days after the date the judgment has become final.

II. **IT IS REJECTED** the request of the claimant BL under Article 463, paragraph 1 LCP for reimbursement of the costs of the proceedings made in the total amount of 2 264.08 Euros according to specification, dated 29th April 2013.

III. The claimant BL from Kaçanik/Kacanik, "Komandant Bardhi" Street № 38 is **OBLIGED** to pay to the budget the court fee due for issuance of this judgment in the amount of 50 Euros according to Section 10.12 in conjunction with Section 10.1 of Administrative Direction № 2008/02 of the Kosovo Judicial Council for Unification of the Court Fees, within a time period of fifteen (15) days after the judgment has become final.

REASONING

I. PROCEDURAL BACKGROUND

1. On 22nd July 2009, the claimant BL from Kaçanik/Kacanik filed a claim against the respondent (s) the REPUBLIC OF KOSOVO - DIRECTORATE OF ROADS - Prishtinë/Priština as successor of the former Road Enterprise or the former District Road Institution, registered for adjudication in C.nr.133/09 of the Municipal Court of Kaçanik/Kacanik. The initial statement (*petitum*) of the claim was the court to confirm that the claimant, on the basis of construction under Article 24 of the Law on Basic Property Relations (Official Gazette of the SFRY No. 6/80 with amendments and supplements in Official Gazette of the SFRY No. 29/90 and Official Gazette of the SRY No 26/96) (hereinafter "LBPR") is the *owner of the object* built in cadastral parcel nr.1849, at the place called "Dushkaja", culture – road of 1st order, with a total surface 7.32.05 ha, registered in Possession List nr.1159, Cadastral Zone (CZ) Kaçanik/Kacanik, and *user of the land* - part of this cadastral parcel under the object and the part necessary for its regular use in borders to be determined by a geodesy expert. This claim was supplemented as per the facts – its basis by submission of the claimant, dated 6th September 2010. Its deficiency under Article 78, paragraph 1 LCP as per the individualization of the respondent(s) and the lack of procedural capacity of the DIRECTORATE OF ROADS to be a party in this contested procedure without

being a legal person, as identified according to Article 390 LCP by ruling C.nr.133/09 of the Municipal Court of Kaçanik/Kacanik, dated 10th December 2012, was removed by submission of the claimant, dated 13th December 2012 by directing this claim against the MINISTRY OF INFRASTRUCTURE. It was amended at the preliminary hearing in C.nr.133/09 held on 6th March 2013 pursuant to Article 257, paragraph 1 LCP as per the pretended part of cadastral parcel nr.1849 from confirmation of the claimant's *right on use* into confirmation of his *ownership* on it.

2. On 2nd August 2009, the claimant BL from Kaçanik/Kacanik filed a claim against the respondent(s) the Municipal Assembly of Kaçanik/Kacanik – Directorate for Urbanism, Cadastre and Environmental Protection, registered for its adjudication in C.nr.148/09 of the Municipal Court of Kaçanik/Kacanik. Its initial statement is the court to confirm that on the basis of construction under Article 24 LBPR the claimant is *owner of the object* built in cadastral parcel nr.1850, at the place called "Dushkaja", culture – uncategorized road, with a total surface 2.25.29 ha, registered in Possession List nr.860, CZ Kaçanik/Kacanik, and *user of the land* - part of this cadastral parcel under the object and the part necessary for its regular use in borders to be determined by a geodesy expert. This claim was supplemented as per its factual basis and its scope was expanded to cadastral parcel nr.1849 by submission of the claimant, dated 7th December 2009. At the preliminary hearing in C.nr.148/09 on 20th March 2013 this claim was corrected pursuant to Article 78, paragraphs 1 and 3 LCP by its filing against the MUNICIPALITY OF KAÇANIK/KACANIK as respondent. Its content was completed with description of the contested object pursuant to Article 102, paragraph 2 LCP. The legal basis was changed to include, apart from Article 24 LBPR, also Article 28 LBPR pursuant to Article 257, paragraph 2 LCP. The petitum was amended pursuant to Article 257, paragraph 1 LCP into confirmation of *the past* existence of the claimant's ownership right over the object built in cadastral parcels nr.1849 and nr.1850, until its demolition on 29th September 2009, and his *present* ownership right over the land-parts of these two cadastral parcels, previously situated under the object and the ones needed for its regular use.

3. By ruling C.nr.133/2009 & C.nr.148/2009 of Basic Court of Ferizaj/Uroševac, Branch Kacanik/Kacanik, dated 8th April 2013 based on the prior consent of all parties and in compliance with Article 408 LCP, the first instance civil cases C.nr.133/09 and C.nr.148/09 of Basic Court of Ferizaj/Uroševac, Branch Kacanik/Kacanik were joined for adjudication in one and the same proceeding and issuance of a single judgment. At the main hearing session on 24th April 2013 after the joinder, the claims in the two cases were fully equalized by the representative of the claimant through respective modifications of their statements according to Article 257, paragraph 2 LCP.

4. After all these changes in the course of the proceedings, the claim determined finally as subject–matter of the joined C.nr.133/09 & C.nr.148/20 of Basic Court of Ferizaj/Uroševac, Branch Kacanik/Kacanik, is filed by the claimant BL against the respondents MINISTRY OF INFRASTRUCTURE and MUNICIPALITY of KAÇANIK/KACANIK the court: 1) to confirm that *the claimant was the owner* of *the object - business facility - autoservice and shop for car spare parts, of one floor, with dimensions 20.86 m length and 7.43 width*, and a surface of 155 m^2 in cadastral parcel nr.1850 (now nr.P-70917048-01850-0), located at the place called "Dushkaja", culture–uncategorized road, with a total surface 22 529 m^2, registered in Possession List nr.860, CZ Kaçanik/Kacanik, until its demolition on 29th September 2009; 2) to confirm with respect to the first respondent that *the claimant is the owner* of the *land with a surface of 198 m^2 - part of cadastral parcel nr.1849 (now nr.P-70917048-01849-0)* at the place called "Dushkaja", culture-road of 1st order, with a total surface 73 205 m^2, registered in Possession List nr.1159, CZ Kaçanik/Kacanik, occupied till the demolition on 29th September 2009 by the compound of the object, as determined by the geodesy expertise. 3) to confirm with respect to the second respondent that *the claimant is the owner of the land with a surface of 182 m^2 - part of cadastral parcel nr.1850 (now nr.P-70917048-01850-0)*, occupied till its demolition on 29th September 2009 by the object (155 m^2) and its compound (27 m^2), as determined by the geodesy expertise; 4) to order the cadastral registration of these property rights in the name of the claimant within 15 days after the finality of the judgment.

5. The facts alleged by the claimant are to be summarized as follows. In 1987 he was granted by the Municipality of Kacanik/Kacanik a permit to place a temporary object on socially-owned land, allocated to him for temporary use through annual contracts. However, in all documents issued in his name by the municipal bodies, the number of the cadastral parcel – location of the object was erroneously indicated as nr.1148, nr.148, nr.1378, and nr.72. Actually, the claimant entered into possession of cadastral parcels nr.1849 and nr.1850, and in 1987 built there a business facility with compound, finally reconstructed in 2003. He had been using the land since 8th July 1987 and the object since 8th August 1987 as an auto-service, without any interruption or obstruction by anyone. On 29th September 2009 in violation of the security measure imposed by ruling AC.nr.394/09 of the District Court of Pristinë/Priština, dated 20th September 2009, the object was demolished by the Municipality of Kaçanik/Kacanik. In its final speech the representative of the claimant proposes the claim to be approved entirely and the respondents to be obliged in solidarity to reimburse to the claimant the costs of the proceedings as per specification under Article 463, paragraph 2 LCP.

6. The first respondent the MINISTRY OF INFRASTRUCTURE through its legal representative the MINISTRY OF JUSTICE submitted on 21st January 2013 reply to the claim under Article 395 LCP contesting it as ungrounded and continued to deny it after all its changes in the course of the joined proceedings. Summarily, the arguments are that the contested two cadastral parcels are officially registered in the cadastre as social ownership, verified by possession lists and certificates, never opposed by the claimant, who could not prove by any evidence his ownership on them. He had it only on use for a limited period of time, based on annual contracts with the Municipality of Kaçanik/Kacanik for placement of a temporary object with respective surface against compensation. After the expiry of the contract for 2008, it was not extended for 2009. Since the claimant did not vacate the location, being notified by the Municipality of Kaçanik/Kacanik, the demolition of the object was carried out, his rights on it ceased to exist, and the usage of the area was terminated through a finalized administrative procedure. The claimant could not have acquired the pretended ownership through

adverse possession since Article 28 LPBP was not applicable for social properties, moreover, being conscientious that the object was given to him only for limited time duration of use and all this in short periods. The final position of the first respondent is the claim to be rejected as ungrounded. No costs of the proceedings are requested.

7. The second respondent the MUNICIPALITY OF KAÇANIK/KACANIK by its written reply under Article 395 LCP, dated 17th January 2013 and the statements of its representative during the trial contested the claim, as initially filed and as changed in the course of the joined proceedings. This litigant's stance is that the contested object in cadastral parcel nr.1850 being permitted as temporary one has been demolished in general public interest for realization of the project - widening the main entry road to the town of Kaçanik/Kacanik, without violation of the security measure imposed by ruling AC.nr.923/2009 of the District Court of Pristinë/Priština, dated 25th September 2009 for cadastral parcel nr.1849 only. Further, the legal requirements for acquisition of property right through adverse possession have not been met - it had never been noted in the cadastral books as *modus adquirendi* with respect to the contested parcels and the claimant had never been their legal holder, legitimated by a valid legal ground (*jus titulus)* for acquisition of the ownership, as he was only entitled to use the land based on subsequent annual contracts. The final position of the second respondent is for rejection of the claim as ungrounded. No costs of the proceedings are requested.

II. SUMMARY OF THE FIRST INSTANCE PROCEEDINGS

8. C.nr.133/09 was initiated on 22nd July 2009 by the claim in paragraph 1, while in C.nr.148/09 commenced on 2nd August 2009 by the claim in paragraph 2.

9. The proposal, in the first claim, for a temporary security measure pursuant to Article 297, Article 300, paragraph 1, item c) and Article 387, paragraph 1, item i) LCP by prohibiting any actions that might damage the object or modify the factual situation in cadastral parcel nr.1849 was granted by ruling AC.nr.923/2009 of the District Court of Pristinë/Priština, dated 25th September 2009 until the relinquishment of the location would be regulated in the administrative procedure.

10. The disqualification petition submitted by the claimant BL on 28th September 2009 pursuant to Article 67, item g) LCP was granted by ruling Agj. Nr. 412/2009 of the President of the Municipal Court of Kaçanik/Kacanik, dated 25th November 2009 under Article 70, paragraph 1 LCP by recusal of the Kosovo Judge, initially assigned to C.nr.133/09 and C.nr.148/09.

11. By two separate Decisions ref.nr.JC/EJU/PRSDC/0150/fq/09 of EULEX Judge – Delegate of the President of the Assembly of EULEX Judges, dated 29th December 2011 pursuant to Article 5, paragraph 1, item c), sub-item (ii) of the Law No. 03/L-053 on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo, C.nr.133/2009 and C.nr.148/2009 of the Municipal Court of Kaçanik/Kacanik were taken over by EULEX.

12. The proceeding in the two cases were suspended on 16th January 2012 pursuant to Article 277, item f) LCP in conjunction with Article 67, paragraph 1 of the Law No. 03/L-048 on Public Financial Management and Accountability for a period of 180 days, and resumed on 26th December 2012 pursuant to Article 280, paragraph 4 LCP.

13. C.nr.133/09 and C.nr.148/09 of the Municipal Court of Kaçanik/Kacanik being first instance civil case non-completed on 31st December 2012, with the entry into force of the Law No. 03/L-199 on Courts (Official Gazette of the Republic of Kosovo No. 49/11) on 1st January 2013 pursuant to its Article 39, paragraph 2 were transferred in the jurisdiction of the Basic Court of Ferizaj/Uroševac, Branch Kaçanik/Kacanik.

14. The preliminary hearing in C.nr.133/09 and C.nr.148/09 of the Basic Court of Ferizaj/Uroševac, Branch Kaçanik/Kacanik were held on 6th and 20th March 2013, respectively. After the joinder of the two cases on 8th April 2013, their adjudication continued in one and the same proceeding pursuant to Article 408, paragraph 1, first sentence LCP with main hearing which commenced on 23rd April 2013 and was completed on 24th April 2013.

III. EVIDENCE ADMINISTERED AND FACTS ESTABLISHED

15. The court collected as evidence in the dispute the testimonies of the witnesses

BT and QS, proposed by the respondents and heard in the main hearing session on 23rd April 2013. The geodesy expertise of the licensed geodesist MS, proposed by the claimant, submitted written finding and opinion on 4th August 2009, 2nd and 18th April 2013 and gave clarifications in the main hearing session on 24th April 2013. The documents presented by the parties and obtained according to Article 332 LCP from public institutions were administered in the main hearing session on 24th April 2013, as recorded in the minutes.

16. After conscientious and careful consideration of the evidence, separately and as a whole, and based on the overall picture gained during the proceedings according to Article 8 LCP, the court has established the following factual situation.

17. On 25th February 1976, the Municipal Assembly of Kaçanik/Kacanik on the session of the Chamber of the Local Communities held that day adopted Decision Nr. 01-35/1 on Placement of Temporary Objects in the Territory of the Municipality of Kaçanik/Kacanik (Official Gazette of SAPK № 15/76), which came into force on 2nd May 1976, eight (8) days after its publication on 23rd April 1976 – Article 34. Its legal basis was Article 10, paragraph 2 of the Law on Construction of Investment Facilities (Official Gazette of SAPK № 39/72) which delegated to the municipal assembly to determine which small montage objects and under what pre-conditions can be placed on construction land or on public surfaces and the period of time they can remain on this land, respectively surface. The second provision – its legal basis was Article 237 of the Statute of the Municipality of Kaçanik/Kacanik (Official Gazette of SAPK № 48/75) which determined the competences of the Council of the Local Communities of the Municipal Assembly of Kaçanik/Kacanik, *inter alia,* to take decisions and other general acts within the competences of the municipality unless otherwise provided. Decision Nr. 01-35/1 remained applicable after 1986 when the Law on Construction of Facilities for Investment and Commercial Purposes (Official Gazette of SAPK № 5/86) entered into force - its Article 102 abrogated the Law on Construction of Investment Facilities (1972), but the transitional rule of Article 101, paragraph 1 preserved the legal effect of all provisions promulgated on its basis not confronting

the new law, while its Article 11, paragraph 2 similarly delegated to the municipal assembly the competence to determine the placement of small montage objects on construction land and on public surfaces in the territory of the respective municipality. Both Decision Nr. 01-35/1 of the Municipal Assembly of Kaçanik/Kacanik, dated 25th February 1976 and the Statute of the Municipality of Kaçanik/Kacanik, adopted by Decision Nr. 01-010-01 of the Municipal Assembly of Kaçanik/Kacanik, dated 6th March 1974, represent *local municipal regulations* which being normative acts shall not to be proven – arg. Article 319, paragraph 1 and Article 321, paragraph 1 LCP.

18. By Conclusion 05-Nr.463-70/86 issued by the Head of the Department for Urbanism, Communal and Housing Affairs - Kaçanik/Kacanik on 19th June 1987 pursuant to Article 137, paragraph 2, Article 147, paragraph 2 and Article 202 of the Law on the General Administrative Procedure (Official Gazette of SFRY № 18/65) and Article 283 of the Statute of the Municipality of Kaçanik/Kacanik (1975), in relation to a request filed by BL on 31st July 1986 for permission "*to set up temporary object–mechanical workshop for washing and lubrication of vehicles*" he was ordered within 15 days to submit documents, not attached to it, needed in this administrative proceeding. The enacting clause states that while it is given general consent for placement of a *temporary object* – mechanical workshop for washing and lubrication of vehicles next to the highway Skopje – Prishtinë/Priština, on the north side of the existing workshop "Tranzit", in accordance with the consent issued by the Provincial Committee for Communications and Connections - Prishtinë/Priština to MK, BL was demanded qualification, a certificate from Self-Governing Community of Interests for unemployment, consent of the Local Community, and to go to the site to determine the exact dimensions and location of the object, with entrance from the old road.

19. The request of BL on 31st July 1986, mentioned in Conclusion 05 Nr. 463-70/86, dated 19th June 1986, is not presented in this case. Hence, it could not be verified that this administrative proceeding was duly initiated in compliance with Article 19, paragraph 2 *in fine* and paragraph 3 of the Decision Nr. 01-35/1 of the Municipal Assembly of Kaçanik/Kacanik, dated 25th February 1976 and Article 126

LGAP. Further, since BL is born in 1970, it could not be verified that this request filed in 1986 by him as a 16-years child, without the procedural capacity under Article 53, paragraph 1 LGAP to act personally in administrative proceeding, was signed by his legal representative according to Article 53, paragraph 2 LGAP.

20. It is also not evidenced that the request of BL, dated 31st July 1986, after the expiry of the 15-days time period prescribed by Conclusion 05-Nr.463-70/86, dated 19th June 1986, but no later that 8th July 1987, was supplied with all the mandatory attachments listed in Articles 14 and Article 20 of Decision Nr.01-35/1 of the Municipal Assembly of Kaçanik/Kacanik, dated 25th February 1976. *At first place,* on 8th July 1987 there was *no contract* concluded for allocation of land on use for this temporary object as required by Article 20, point 1 in conjunction with Article 10 of Decision Nr. 01-35/1, dated 25th February 1976. The latter demands the contract to precede the issuance of permit for temporary object and not *vice versa. At second place,* there was no produced *copy of plan of any cadastral parcel with the opinion of the Office for Urban Planning* on consent and conditions for placing the temporary object on it, as required by Article 20, point 2 in conjunction with Article 5, paragraph 1 of Decision Nr. 01-35/1, dated 25th February 1976. *At third place,* there was *no technical project* will all measurements of the object as required by Article 20, point 4 of Decision Nr. 01-35/1, dated 25th February 1976. Its submission by the concrete investor in the administrative proceeding initiated by him was not derogated by the existence of such project provided by other investor (MK) in previous administrative proceeding, finalized by Decision 05-Nr.463-94 of the Head of the Department for Urbanism, Communal and Housing Affairs - Kaçanik/Kacanik, dated 12th October 1984, which had never been implemented. Such *"re-activation"* of documents from proceeding completed by a final administrative act issued to one investor by their *"transfer"* in subsequent proceeding initiated by other investor lacks legal basis and is impermissible. *At fourth place,* the consent of the Local Community "Vllazerimi" - Kaçanik/Kacanik required pursuant to Article 20, point 5 of Decision Nr. 01-35/1, dated 25th February 1976 was granted under protocol nr.453/87, dated 5th September

1987, *post factum* after the issuance of the permit instead of prior to that. *At fifth place*, BL presented certificate for finished II year in secondary school, dated 18th June 1987, and not for qualifications pertinent to the operation of an auto-mechanic workshop, as demanded by Article 14, point 4 of Decision Nr. 01-35/1, dated 25th February 1976.

21. By Decision 05 Nr. 463-70/86, dated 8th July 1987 issued by the Head of the Department for Urbanism, Communal and Housing Affairs - Kaçanik/Kacanik on *giving permit for construction – placement of temporary-montage object* pursuant to Article 19, paragraph 2 of Decision Nr. 01-35/1 on Placement of Temporary Objects in the Territory of the Municipality of Kaçanik/Kacanik (Official Gazette of SAPK № 15/76), Article 202 LGAP and Article 283 of the Municipality of Kaçanik/Kacanik it was approved to the investor BL *the construction–placement of a temporary–montage object–Auto-service for washing and lubrication of vehicles on cadastral parcel nr.148,* CZ Kaçanik/Kacanik, north from the petrol station, beside the highway road Skopje–Prishtinë/Priština, which parcel is *social property* (point 1). The investor was obliged to solve the problem with the drainage of the waste waters in the best possible way to protect the environment from pollution (point 2), and to report the beginning of the works eight (8) days in advance (point 3). He was required to comply with the investment - technical documentation nr.05.463-70/86, dated 8th July 1987 (point 4). After the full completion of object, the investor had to request commission for its technical control, acceptance, and issuance of permission for use (point 5). The permit was with a 30-days term of validity (point 6).

22. By Protocol 05-Nr.463-70, dated 8th July 1987 issued by the Directorate for Urbanism, Communal and Housing Affairs-Kaçanik/Kacanik pursuant to Article 202 LGAP and Article 283 of the Statute of the Municipality of Kaçanik/Kacanik the investor BL was obliged to construct the object on *cadastral parcel nr.1148, Possession List nr.86,* CZ Kaçanik/Kacanik as per the earlier determined dimensions and distances presented in the sketch. It was noted that their determination was carried out at the site by the Geometer RV as per sketch nr.8/87. It was forbidden any change

of these parameters, as well as zooming in or out of the object in comparison with its surroundings and the roads. Pursuant to Article 31 of the Decision Nr. 01-35-4 of the Municipal Assembly of Kaçanik/Kacanik, dated 17th June 1976 on Construction of Buildings of Citizens and Legal Persons (Official Gazette of SAPK № 36/1976) the investor was obliged 8 days before commencing the works to inform the construction inspector for control. This protocol incorporates a hand drawn sketch designating the location of the object on cadastral parcel nr.1148, its size - 10 m length in north-southern direction along the Ferizaj/Uroševac Kaçanik/Kacanik road and 5 m width in the east-western direction; and its surface of 50 m^2 (10 m x 5 m), and its distances from adjacent objects.

23. After the issuance of the permit, the Municipal Assembly of Kaçanik/Kacanik – the Directorate for Urbanism, Communal and Housing Affairs as giver of location for use, on one side, and BL as user of the location, on the other side, concluded contract Nr. 463-70/86/87, dated 21st July 1987 on allocating location for a fixed period of time for placement of temporary montage object in social property (point I). It was agreed the giver of the location to give out to *for temporary use* to the user BL from Kaçanik/Kacanik the location in *cadastral parcel nr.1148, Possession List nr.86,* property of the Municipal Assembly of Kaçanik/Kacanik, with a surface of 50 m^2, for placement of a temporary montage object – Service for washing and lubrication of vehicles (point II). The user was obliged to pay for the use of the said location 10 dinars for 1 m^2 per month by transfers to bank account of the Enterprise for Housing and Regulation of the Land for Construction (point III, first sentence). The user was obliged to place/montage the object in the location identified in the sketch–protocol of the Directorate (point IV, first sentence). Should the urban plan is to be realized or a decision of the Municipal Assembly of Kaçanik/Kacanik is taken for its replacement for construction of any facility in social interest, it was agreed the montage object to be removed from the location without any compensation and without obligation for allocation of another (point IV, second sentence). Upon expiry of the contract, the

competent authority had to remove the object (point V). The contract entered into force on the date of its signing by the parties with one year validity term (point VI).

24. By Decision nr.453/87, dated 5th September 1987, the Local Community "VLLAZERIMI" at the Municipal Assembly of Kaçanik/Kacanik gave its consent to BL for construction of a *temporary object* – Auto-service for washing and lubrication of vehicles at the right side of the highway road Prishtinë/Priština – Skopje, near the petrol station in Kaçanik/Kacanik.

25. BL filed on 3rd October 1987 appeal against Decision 05 Nr. 463-70/86, dated 8th July 1987 of the Directorate for Urbanism, Communal and Housing Affairs - Kaçanik/Kacanik, delivered by its letter 05 Nr. 463-70/86, dated 8th October 1987 to the Provincial Committee for Urbanism, Communal and Housing Affairs - Prishtinë/Priština. The outcome of this appeal procedure has not been evidenced.

26. Without other documents issued in his name, in 1987 BL built car service workshop along the highway Skopje–Prishtinë/Priština, to the north to the petrol station, with his materials and work. It is not evidenced in the case whether this initial construction took place in the 30-days term of validity of Decision 05 Nr. 463-70/86, dated 8th July 1987 of the Department for Urbanism, Communal and Housing Affairs - Kaçanik/Kacanik, after a preliminary 8-day notice, with control after its finalization, acceptance and utilization permission for the object. Hence, its initial characteristics, their compliance with the officially approved parameters and/or the eventual changes till 2009 are not documented.

27. From 21st July 1988, when contract Nr. 463-70/86/87, dated 21st July 1987 elapsed, during the next 12 years till 21st July 2001, no contracts were signed between the Municipality of Kaçanik/Kacanik through any of its bodies and BL. Even though, the object erected in 1987 had not been removed and its functioning had not been sanctioned or otherwise obstructed by the public authorities.

28. On 20th July 2001, the Municipal Assembly of Kaçanik/Kacanik – Directorate for Urbanism, Communal and Housing Affairs as *giver of the land on use* and BL as

the *user of the land* concluded *Contract on giving out for temporary use construction land-state owned property for temporary objects*. It was agreed the giver of the land to give out *for temporary use* to the user *parcel - state-owned property in Kaçanik/Kacanik, without indicated number and/or possession list,* at the place called "Magjistralja", covering a surface of 97 m^2, for placement of temporary object – auto-mechanic workshop (point II). The user was obliged to pay 1.80 DM per 1 m^2 or in total 2 095.20 DM per year (point III). In the event of change of the urban plan for the said site, the object had to be removed without compensation and without assignment of another location (point V). The contract was in force from 1st January 2001 to 31st December 2001, with renewal after this term based on agreement of the parties under conditions to be laid down by the giver of the land (point VII).

29. Evidenced by receipt nr. 00908, dated 29th July 2001, receipt nr.00932, dated 3rd August 2001, receipt nr.0019, dated 10th September 2001, receipt nr.0042, dated 5th October 2001, receipt nr.0135, dated 7th November 2001, receipt nr.0196, dated 18th January 2002, all issued by the Municipality of Kaçanik/Kacanik, BL paid as compensation for the land used in 2001 the total amount of 2095 DM.

30. On 3rd April 2002, the Municipal Assembly of Kaçanik/Kacanik – Directorate for Urbanism, Communal and Housing Affairs as *giver of the land on use* and BL as *user* of the land concluded *contract Nr.311/02 on extension of the right on use of construction land-property of the Municipal Assembly of Kaçanik/Kacanik.* It was agreed the giver of the land to give out for *temporary use* to BL *cadastral parcel nr.1387* – property of the Municipal Assembly of Kaçanik/Kacanik located in Kaçanik/Kacanik, without indicated possession list, covering the surface of 98 m^2, *for placement of temporary object*-business facility (point II). The user was obliged to pay 0.75 € per 1 m^2, in total 882 € per year (point III). The contract applied from 1st January 2002 till 31st December 2002 (point VII). The other clauses in its content reproduced the ones of the 2001 contract.

31. Evidenced by receipt nr.0283, dated 17th April 2002 for 220 €, receipt nr.1344, dated 31st October 2002 for 220 €, receipt nr.0362, dated 16th December 2002 for paid

270 € and receipt nr.6725, dated 23rd December 2002 for 172 €, all issued by the Municipality of Kaçanik/Kacanik, BL paid for the land used in 2002 the total due amount of 882 €, as determined by contract Nr.311/02, dated 3rd April 2002.

32. By Decision 07.Nr.948/2002 issued by the Director of the Directorate for Urbanism, Communal and Housing Affairs of the Municipality of Kaçanik/Kacanik on 17th January 2003 based on the Regulation for Construction of Investing Buildings, approved by the Municipal Assembly of Kaçanik/Kacanik on 12th June 2001, and Article 3, paragraph 1, item b) of UNMIK Regulation No 2000/45 to BL was given construction permission to reconstruct – adapt the business facility – *auto-mechanic workshop of temporary type* located in the part of *cadastral parcel nr.72,* registered in Possession List nr.86, CZ Kaçanik/Kacanik, property of the Municipal Assembly of Kaçanik/Kacanik. The dimensions of the facility were determined as 6.50 m x 20.70 m (134.55 m^2) and its type as TIP-P+0. The permission was valid for one year and the investor was obliged to start the works within this term.

33. It is not contested, moreover confirmed by point 1.4 of the geodesy expertise, dated 2nd and 18th April 2013 that this 2003 reconstruction – adaptation above was not permitted or realized with re-location of the object. The technical project – its basis in none of the components approved with 07.Nr.948/2002 on 17th January 2003 in their official copies attached to submission Nr.01-16-10440, dated 8th April 2013 of the Directorate for Urbanism, Cadastre and Environmental Protection - Kaçanik/Kacanik do not foresee the type of the object to be converted from temporary into permanent.

34. The witness QS, who in 2003 was Director of the Directorate for Urbanism, Communal and Housing Affairs, and signed Decision 07. Nr.948/2002, dated 17th January 2003, testified in the session on 23rd April 2013, that it was valid for the same object erected in 1987, not allowing its modification from temporary into permanent type. The witness stressed that there was not a single sentence in this regard in the document and also stated that in view of his position in 2003 he did not have the competences to issue construction permissions for permanents buildings. He also clarified that Decision 07. Nr.948/02, dated 17th January 2013 legally prevails over the

technical project approved by it as per the type of the object, whereas the materials planned for its reconstruction did not pre-determine the urban status of the facility at its whole. Decision 07.Nr.948/2002, dated 17th January 2003 was issued for the surface of the object only, and not for the compound in front. The witness could not explain why cadastral parcel nr.72 was indicated as location of the object in this 2003 reconstruction permission, whereas in the 1987 construction permission was for cadastral parcel nr.148, though they should have matched.

35. On 3rd February 2003, the Municipal Assembly of Kaçanik/Kacanik – the Directorate for Urbanism, Communal and Housing Affairs as giver of the land on use and BL as user of the land concluded Contract 07 Nr.83/03 *on extension of the right on use of construction land - property of the Municipal Assembly of Kaçanik/Kacanik.* It was agreed the giver of the land on use *to give out for temporary use* cadastral parcel – property of the Municipal Assembly of Kaçanik/Kacanik *with not indicated number and possession list*, covering the surface of 98 m^2, *for placement for temporary object - business facility* (point I). BL was obliged to pay 0.75 € per 1 m^2, or the annual amount of 882 € (point III). This contract applied from 1st January till 31st December 2003 (point VII, first sentence). The rest of its clauses duplicate the ones under the previous 1987, 2001 and 2002 contracts.

36. By bank transfers, ordered on 27th May 2003, 6th August 2003, 15th December 2003 and 19th January 2004, BL paid *for the use of land, property of the Municipal Assembly of Kaçanik/Kacanik for the year 2003* the amounts of 220 €, 221 €, 221 €, and 220 €, respectively, entirely fulfilling his annual obligation for 882 €.

37. On 13th May 2004, the Municipal Assembly of Kaçanik/Kacanik – Directorate for Urbanism, Communal and Housing Affairs as giver of the land on use and BL as user of the land concluded contract 07 Nr.151/04, dated 5th May 2004 on *extension of the right on use of construction land-property of the Municipal Assembly of Kaçanik/Kacanik.* It was agreed the giver of the land *to give out for temporary use* to BL *land near the highway road Prishtinë/Priština-Skopje,* without indicated cadastral parcel and possession list, in the surface of 98 m^2, *for placement of temporary object-*

business facility (point II). BL was obliged to pay 0.60 € per 1 m^2 or annually the amount of 705.60 €. This contract applied from 1st January till 31st December 2004 (point VII, first sentence). The rest of its clauses duplicate the ones under the previous 1987, 2001 - 2003 contracts.

38. By bank transfers, ordered on 7th October 2004 and 4th January 2005, BL paid to the Municipal Assembly of Kaçanik/Kacanik *for use of construction land for the year 2004* the amounts of 352.80 € and 322.80 €, respectively, or 675.60 € in total, thus partially fulfilling his annual obligation for 705.60 €.

39. On 5th August 2005, the Municipal Assembly of Kaçanik/Kacanik–Directorate for Urbanism, Communal and Housing Affairs as giver of the land on use, and BL as user of the land concluded contract 07 Nr.05-91/2005 *on extension of the right on use of construction land-property of the Municipal Assembly of Kaçanik/Kacanik* (point I). It was agreed the giver of the land to give out *for temporary use* to BL land located in Kaçanik/Kacanik, without indicated number of cadastral parcel and possession list, in the surface of 155 m^2 for business activities (point II). BL was obliged to pay 0.60 € per 1 m^2, or annually 1 116 € (point III). This contract applied from 1st January till 31st December 2005 (point VII). The rest of its clauses duplicate the ones under the previous 1987, 2001 - 2004 contracts.

40. By bank transfers, dated 20th June 2005, 8th November 2005 and 15th December 2005, BL paid to the Municipal Assembly of Kaçanik/Kacanik *for use of construction land for the year 2005* the amounts of 279 €, 279 € and 558 €, respectively, thus entirely fulfilling his annual obligation for 1 116 €.

41. On 12th April 2006, the Municipal Assembly of Kaçanik/Kacanik – Directorate for Urbanism, Communal and Housing Affairs as giver of the land on use, and BL as user of the land concluded contract 07 Nr.187/2006 *on extension of the right on use of construction land-property of the Municipal Assembly of Kaçanik/Kacanik* (point I). It was agreed the giver of the land to give out *for temporary use* to BL land located in Kaçanik/Kacanik, without indicated number of cadastral parcel and possession list, in the surface of 155 m^2, for business activities (point II). BL was obliged to pay 0.60 €

per 1 m^2, annually the amount of 1 116 € (point III, first sentence). The payment under this contract covered the period 1st January 2006 - 31st December 2006 (point VII). The rest of its clauses duplicate the ones under the previous 1987, 2001 - 2005 contracts.

42. By bank transfers, dated 29th June 2006 and 3rd January 2007, BL paid to the Municipal Assembly of Kaçanik/Kacanik *for the use of construction land for the year 2006* the amounts of 558 € and 558 €, respectively, entirely fulfilling his annual obligation for 1 116 € under contract 07 Nr.187/2006, dated 12th April 2006.

43. On 14th March 2007, the Municipal Assembly of Kaçanik/Kacanik – the Directorate for Urbanism, Communal and Housing Affairs as giver of the land on use and BL as user of the land concluded contract 07 Nr.20-105/2007 *on extension of the right on use of construction land of the Municipal Assembly of Kaçanik/Kacanik* (point I). It was agreed the giver of the land to give out *for temporary use* to BL land located in Kaçanik/Kacanik, without indicated number of cadastral parcel and possession list, in the surface of 155 m^2, for business activities (point II). The user BL was obliged to pay 0.60 € per 1 m^2, or annually the amount of 1 116 € (point III, first sentence). This contract applied from 1st January 2007 till 31st December 2007 (point VII). The rest of its clauses duplicate the ones under the previous 1987, 2001 - 2006 contracts.

44. By bank transfers, dated 19th June 2007 and 11th December 2007, BL paid to the Municipal Assembly of Kaçanik/Kacanik *for use of construction land* the sums of 558 € and 558 €, respectively, thus entirely fulfilling his annual obligation for 2007 amounting to 1 116 € in total.

45. The witness QS, Director of the Directorate for Urbanism, Communal and Housing Affairs - Kaçanik/Kacanik from 1999 to 2008, confirmed as authentic his signatures placed below his name on the 2001 – 2007 contacts above. They were all based on the initial permission issued to BL in 1987. As the location of the object was clear, it was not verified at the site before each annual contract would be concluded. The witness explained that for this reason the number of the cadastral parcel was not

mentioned in the contracts, but the location was indirectly specified by the name of BL as user and the surface allocated on use.

46. On 14th November 2008, the Municipal Assembly of Kaçanik/Kacanik – the Directorate for Urbanism, Cadastre and Environmental Protection as giver of the land on use and BL as user of the land concluded contract 06 Nr.7811/75 *on extension of the right on use of construction land of the Municipal Assembly of Kaçanik/Kacanik* (point I). It was agreed the giver of the land to give out *for temporary use* to BL land located in Kaçanik/Kacanik, without indicated number of cadastral parcel and/or possession list, in the surface of 155 m^2, for business activities (point II). The user BL was obliged to pay 0.60 € per 1 m^2, or annually the amount of 1 116 € (point III, first sentence). Failure to pay as per point III was presumed as lack of interest of the user in extension of the contact, however, if the use of the land would continue *the rent fee* should remain due (point IV). This contract covered the period 1st January 2008 – 31st December 2008 (point V, first sentence). After the expiry of this term, the parties may renew it under the conditions determined by the giver of the land (point V, second sentence). In the event the destination of the location would be changed, the object had to be removed within the deadline set up by the Municipality of Kaçanik/Kacanik, without compensation and without obligation to provide another location (point VI).

47. Evidenced by invoice Nr.0099507 and fiscal bon, dated 31st December 2008, the annual amount of 1 116 € due for the land used in 2008 was fully paid by BL to the Municipal Assembly of Kaçanik/Kacanik on 31st December 2008.

48. After the term of contract 06 Nr.7811/75, dated 14th November 2008 expired on 31st December 2008, it was not renewed or otherwise extended in any form. It has been explicitly verified by submission 01 Nr. 16-10440, dated 8th April 2013 of the Director of the Directorate for Urbanism, Cadastre and Environmental Protection - Kaçanik/Kacanik that there is *no contract for allocation of land on temporary use for 2009 between the Municipal Assembly of Kaçanik/Kacanik and BL.*

49. It is not disputed the fact that in the period 1st January - 28 September 2009 the *status quo* was not changed - the object continued to exist and function on its location.

50. By Notification 06 Nr. 5146/09, dated 7th July 2009 issued by the Director of the Directorate for Urbanism, Cadastre and Environmental Protection based on Article 82 of the Statute of the Municipality of Kaçanik/Kacanik, governing its competences, BL was notified to relinquish the location rented no later than 7th August 2009 for the purpose of widening the road at the entrance to the town, in general public interest. He was warned that upon non-compliance with the set deadline, the Municipal Assembly of Kaçanik/Kacanik would remove the object at his expenses.

51. According to the testimonies of the Director of the Directorate for Urbanism, Cadastre and Environmental Protection - Kaçanik/Kacanik BT, heard as a witness in the session on 23rd April 2013, the demolition decision above was taken within his competences, in public interest with the aim of the best possible utilization of the entrance to the town and to avoid endangerment of the citizens. There was no need for change of the urban plan as the object was placed on terrain, already destined for a public road where construction was prohibited, also without permit for this particular location and contract for its allocation on use after 1st January 2009.

52. Objection 06 Nr. 6035/09 filed by BL on 20th July 2009 against Notification 06 Nr.5146, dated 7th July 2009 for removal of the object was rejected by Decision 06-Nr. 6035/09, dated 3rd August 2009 of the Director of the Directorate for Urbanism, Cadastre and Environmental Protection based on Article 82 of the Statute of the Municipality of Kaçanik/Kacanik and Article 77 of the Law No. 02/L-28 on Administrative Procedure (point I). It was provided the location of the object to be used for construction of the entrance to the town of Kaçanik/Kacanik in the interest of the citizens of the municipality (point II). According to the reasoning the objection could not be granted as the location to be removed is planned for construction of the entrance to the town, on property managed by the Municipality of Kaçanik/Kacanik, allocated to BL for temporary use by already expired 1-year contract.

53. Appeal 06 Nr. 6924/09 filed by BL on 7th August 2009 against Decision 06 Nr. 6035/09 of the Director of the Directorate for Urbanism, Cadastre and Environmental Protection, dated 3rd August 2009 was rejected by his Decision 06 Nr. 6924/09, dated

26th August 2009 (point I), with confirmation of Notification 06-Nr.5146/09, dated 7th July 2009 and Decision 06 Nr.6035/2009, dated 3rd August 2009 (point II). According to the reasoning the object to be removed was placed in 1987 on cadastral parcel nr.1850, registered in Possession List nr.860 as public uncategorized road, managed by the Municipality of Kaçanik/Kacanik, designed in 2009 for the road main entrance to the town of Kaçanik/Kacanik from highway M2. The legal remedy foreseen by Decision 06 Nr. 6924/09, dated 26th August 2009 was appeal to be filed against it within 30 days after its receipt to the Ministry of Environment and Spatial Planning. No such subsequent appeal was lodged by BL.

54. Simultaneously to this demolition administrative procedure, BL seized the Municipal Court of Kaçanik/Kacanik on 22nd July 2009 with the claim in C.nr.133/09 and on 2nd August 2009 with the claim in C.nr.148/09, proposing in each one of the cases a temporary security measure under Article 300, paragraph 1, item c) LCP. To decide this interlocutory motion, on 31st July 2009 the court conducted site inspection under Article 326 LCP with the assigned expert MS in the presence of the clamant. According to the record of this site inspection on its date the object was identified as being situated on cadastral parcel nr.1850 at the place called "Dushkaja", culture – uncategorized road, with a total surface 22 529 m^2, registered in Possession list nr.860, CZ Kaçanik/Kacanik. The compound (plateau) existing in front of the object was with a surface 225 m^2, including 27 m^2 in part of cadastral parcel nr.1850 and the rest 198 m^2 in part of cadastral parcel nr.1849. The object was on the right side of Ferizaj/Uroševac–Kaçanik/Kacanik road, at the entrance to the town. It consisted of two business facilities – one used as shop for sale of car spare parts, and the other - as auto-mechanic service for repairing vehicles, built of white "Silcapor" blocks, at one floor, with a common roof, covered with red tiles. The object was qualified in the site inspection record as one of a temporary type.

55. The initial geodesy expertise of the assigned expert-licensed geodet MS, dated 4th August 2009 based on the site inspection on 31st July 2009 and terrain survey on 2nd August 2009 confirmed the identification of the contested object of 155 m^2,

located on part of cadastral parcel nr.1850, with compound of 225 m^2, from which 27 m^2 - part of cadastral parcel nr.1850, and 198 m^2 - part of cadastral parcel nr.1849, near the Prishtinë/Priština - Skopje highway at its entrance to the town with internal borders: on the north-eastern part – the highway Prishtinë/Priština – Skopje, cadastral parcel nr.1849; on the northern part – vulcanizer used by XB; on the north - western part – the old Ferizaj/Uroševac-Kaçanik/Kacanik road, cadastral parcel nr.1850; and on the southern part – car service shop used by RF.

56. By point 1.3 of the geodesy expertise, dated 2nd April 2013 and 18th April 2013, the description above was confirmed and complemented with data from the terrain survey of 2nd August 2009. The object used by BL at that time was with external dimensions - 20.86 m length and 7.43 m width, covering the surface of 155 m^2, fully located on part of cadastral parcel nr.1850, without crossing its cadastral border with cadastral parcel nr.1849, delineated in red on the terrain survey sketch to the expertise with view of the coordinates in points 1 - 4 in the Kosovo coordinate system of this border in the section where the object was built. Its distances from the passable (asphalt) layer of the Prishtinë/Priština-Skopje highway were 11.68 m to the north and 14.84 m to the south, and from the border of the utilized area of the old road Ferizaj/Uroševac-Kaçanik/Kacanik - 0.48 m to the north and 1.73 m to the south. BL used also a compound (plateau) of reinforced concrete in front of the object in the area up to the passable (asphalt) layer of the road entering the town from the highway. The form and position of the object are graphically indicated on the terrain survey sketch of the expertise as a rectangle hatched in read diagonal lines, and those of the compound – as a trapezium hatched in black diagonal lines. This was their *last state* when the demolition process commenced, and when it was finalized.

57. BL did not voluntarily remove the object and did not vacate the location within the deadline set up by Notification 06 Nr. 5146/09, dated 7th July 2009 – 7th August 2009. On 29th September 2009, the Directorate for Urbanism, Cadastre and Environment Protection - Kaçanik/Kacanik organized the demolition through a company contracted for. After some of the movable items inside were transported to a

depot designated by the claimant, the destruction of the object began. It was then temporarily interrupted to give the claimant time to take away the rest of the movable items still inside. Afterwards the clearance works were resumed and the remaining part of the object was destroyed. As verified by minutes 06 Nr. 9599/09, dated 30th September 2009, signed by the official persons in charge, the demolition of the object was fully executed on 29th September 2009.

58. It is not disputed the fact, moreover, it has been ascertained by the witness BT, the current Director of the Directorate for Urbanism, Cadastre and Environment Protection - Kaçanik/Kacanik, that in the same time period the objects, adjacent to the contested one - the vulcanizer on the north, and the car service shop on the south, were also removed with clearance of the terrain of the whole surrounding zone at the road entrance to the town from the highway Prishtinë/Priština-Skopje.

59. Evidenced by the documents, attached to the submission of the Municipality of Kaçanik/Kacanik 01 Nr. 16-813/13, dated 28th March 2013 - Decision 01 Nr. 8346/09 of the Mayor, dated 7th September 2009, contract 01 Nr.9003, dated 15th September 2009, purchase request Nr.652090933, dated 22nd October 2009, Estimation of the works on the rehabilitation of the main entrance to the town of Kaçanik/Kacanik from the highway M2, Routing Slip 06 Nr. 10753/09, dated 30th October 2009, Invoice Nr. 01-11/09, dated 2nd November 2009, payment order Nr. 39125, dated 12th November 2009, and report on receipt, dated 13th November 2009, in the period September – November 2009 through public procurement it was contracted, financed and realized within the project fund "Rehabilitation and asphalting of local roads" a public project of the Municipality of Kaçanik/Kacanik for widening of the main entrance to the town from the highway M2 through excavation and asphalting works for its regularization.

60. Based on the additional geodesy expertise, dated 2nd and 18th April 2013, the submission 06 Nr. 16-7706/13, dated 8th April 2013 of the Directorate for Urbanism, Cadastre and Environment Protection - Kaçanik/Kacanik with their attachments, and the possession lists and copies of the plan, presented by the parties in the course of the proceedings, it has been determined the following status of the cadastral parcels that

are *formally* indicated in the permissions and contracts of BL and the ones – *factual* location of the contested object.

61. ***Cadastral parcel nr.148*** (Decision 05 Nr. 463-70/86, dated 8th July 1987) was registered in the name of NHL as per Possession List nr.197, CZ Kaçanik/Kacanik. In the period 1990 – 2006 it underwent physical division, as well as changes of the rights titles based on contracts for separation of family communion and giving away of wealth within the close relatives circle. As a result, out of the former cadastral parcel nr.148 have been formed the following seven (7) cadastral parcels, all located in CZ Kaçanik/Kacanik, at the place called "Dushkaja", with culture – 6th class arable land: 1) cadastral parcel nr.P-70917048–00148-1, Possession List nr.1214, 4785 m^2, of LN (H); 2) cadastral parcel nr.P-70917048–00148-2, Possession List nr.1467, 261 m^2, of LN (H); 3) cadastral parcel nr.P-70917048–00148-3, Possession List nr.197, 1840 m^2, of LN (H); 4) cadastral parcel nr.P-70917048–00148-4, Possession List nr.1358, 1684 m^2, of LY (N); 5) cadastral parcel nr.P-70917048–00148-5, Possession List nr.1359, 1670 m^2, of LS; 6) cadastral parcel nr.P-70917048–00148-6, Possession List nr.197, 1665 m^2 of LN; 7) cadastral parcel nr.P-70917048–00148-7, Possession List nr.1360, 1666 m^2, of LX.

62. ***Cadastral parcel nr.1148*** (Protocol 05-Nr.463-70, dated 8th July 1987 and contract Nr. 463-70/86/87, dated 21st July 1987) was initially registered in Possession List nr.114, CZ Kaçanik/Kacanik, located at the place called "Obor", culture – house – residential building and yard, with total surface of 382 m^2, in the name of SRK as per Possession List Nr. 114, CZ Kaçanik/Kacanik. In 2008 its registration was changed first as co-ownership of SK (½) and SRK (½) based on inheritance decision T.nr.86/2007, dated 14th December 2007, then as exclusive ownership of SRK (1/1), and finally based on contract on sale Vr.nr.1662/07, dated 31st December 2007 on 8th January 2008 it was transferred to NTN "BARDHI" as per Possession List nr.393.

63. ***Cadastral parcel nr.1387*** (Contract Nr.311/02, dated 3rd April 2002) was initially registered in Possession List nr.114, CZ Kaçanik/Kacanik in the name of OSB. Based on Expropriation decision Nr. 04-465-11, dated 14th June 1982 in 1984, it

was transferred to the Public enterprise for dwellings, adjustment and utilization of construction land-Kaçanik/Kacanik as per Possession List nr.317, culture – residential building and 3rd class pasture, with a total surface of 166 m^2.

64. ***Cadastral parcel nr.72*** (Decision 07.Nr.948/2002, dated 17th January 2013) was initially registered in Possession List nr.86, CZ Kaçanik/Kacanik, at the place called "Dushkaja", pasture of 4th class, with a surface of 3943 m^2, social property of the Municipal Assembly of Kaçanik/Kacanik, bordered on the north with cadastral parcel nr.73, on the south/south-west with cadastral parcel nr.1850, and on the east with cadastral parcel nr.1849. It was subsequently divided in 2006 based on judgment C.nr.232/05, dated 8th March 2006 and in 2008 based on judgment C.nr.46/06, dated 18th June 2008 to form: 1) cadastral parcel nr.P-70917048–00072-1, culture–4th class pasture, 3 783 m^2, social property, Possession List nr.86; 2) cadastral parcel nr.P-70917048–00072-2, culture–non-arable land–business premise, 80 m^2, social property with user ST, Possession List nr.1384; 3) cadastral parcel nr.P-70917048–00072-3, culture – house – residential building, 80 m^2, social property with user IL, Possession List nr.1442.

65. ***Cadastral parcel nr.1849*** (now nr.P-70917048-1849-0), CZ Kaçanik/Kacanik, located at the place called "Dushkaja", culture – road of 1st order, with a surface of 73 205 m^2 (7.32.05 ha), *was registered and is still registered as social property* (P.SH.) in the name of the Roads Enterprise (1/1)-Prishtinë/Priština, as per Possession List nr.1159 (Certificate for Immovable Property Rights nr.UL-70917048-01159). The latter is presented in numerous corresponding versions, issued on 20th July 2009, 15th January 2013, 18th March 2013 and 29th March 2013, with attached copies of the plan. Their comparison does not reveal any cadastral changes, which is also verified by the cadastral history of the property provided upon request of the court by the Directorate for Urbanism, Cadastre and Environment Protection - Kaçanik/Kacanik as 06 Nr. 16-7706/2013, dated 19th March 2013.

66. ***Cadastral parcel nr.1850*** (now nr.P-70917048-1850-0), CZ Kaçanik/Kacanik, located at the place called "Dushkaja", culture – uncategorized road, with a surface of

22 529 m^2 (2.25.29 ha), *was registered and is still registered as social property* (P.SH.) - Public and Uncategorized Roads (1/1) - Kaçanik/Kacanik, as per Possession List nr.860 (Certificate for Immovable Property Rights nr.UL-70917048-00860). The latter is submitted to the case file in numerous corresponding copies, issued on 15th October 2010, 19th March 2013 and 29th March 2013 with attached copies of the plan. There are no cadastral changes made, which is also verified by the cadastral history of this property, provided upon request of the court by the Directorate for Urbanism, Cadastre and Environment Protection-Kaçanik/Kacanik as 06 Nr.16-7706/2013, dated 19th March 2013.

67. The expert MS also explicitly clarified in the session on 24th April 2013 that cadastral parcel nr.1849 and cadastral parcel nr.1850 have never been divided, merged, renumbered and otherwise changed since 1969 when the first official orto photos in the area were taken. Nowadays both exist in the state identified in 1969, without any subsequent changes. The contested object has never been registered in the cadastre, nor does the name of BL appear at all in the cadastral books with respect to this building and/or cadastral parcels nr.1849 and/or nr.1850.

68. According to Letter ref. nr.449, dated 5th March 2013 of the Ministry of Justice and Letter ref.nr.751, dated 25th March 2013 of the Ministry of Infrastructure, cadastral parcel nr.1849 is *land of the national highway road M2 Prishtinë/Priština-Skopje*, under the maintenance of the Ministry of Infrastructure, where the Directorate of Roads is part thereof. It is categorized as a *national highway public road* according to the Law No. 2003/11 on Roads (Official Gazette No. 16/2007), as amended and supplemented by Law No. 03/L-120 (Official Gazette No. 46/2009), Administrative Instructions No. 2006/18, No. 2005/13 and No. 2004/5. Cadastral parcel nr.1850 is verified as being *land of the uncategorized road Ferizaj/Uroševac - Kaçanik/Kacanik*, under the maintenance of the Municipality of Kaçanik/Kacanik.

V. PROCEDURAL PREREQUISITES FOR ADMISSIBILITY OF THE CLAIM

69. The claim in the joined cases C.nr.133/09 and C.nr.148/09 of the Basic Court

of Ferizaj/Uroševac, Branch Kaçanik/Kacanik after being corrected and completed in its factual basis (Article 102, paragraph 1 LCP), regularized in its subjective scope (Article 78, paragraph 1 LCP), modified as per its legal basis (Article 257, paragraph 2 LCP), and amended as per the pretended rights and properties in its objective scope (Article 257, paragraph 1 LCP) in the course of the proceedings, has been determined finally to confirm that BL *was* the owner of the OBJECT with a surface of 155 m^2 in cadastral parcel nr.1850 (now nr.P-70917048-01850-0) until demolished on 29th September 2009 and that BL *is* the owner of the LAND – part with a surface of 27 m^2 of cadastral parcel nr.1850 (now nr.P-70917048-01850-0) and part with a surface of 198 m^2 of cadastral parcel nr.1849 (now nr.P-70917048-01849-0), both occupied by the compound in front of the object till the demolition.

70. According to Article 254, paragraph 1 of the Law No. 03/L-006 on Contested Procedure (Official Gazette of the Republic of Kosovo No. 38/08), as supplemented by Article 13 of Law No. 04/L-118 (Official Gazette of the Republic of Kosovo No. 28/12), the claimant may request through the claim that the court decides whether or not a right or a legal relationship *existed in the past or exists in present.* Thus after this explicit supplementation of Article 254, paragraph 1 LCP, a confirmation claim under Article 252, second hypothesis LCP may be filed for obtaining a declaratory judgment as per the *previous* and/or *current* existence or non-existence of any right, including property. Therefore the claim in this litigation is equally admissible in its part the court to confirm through its declaratory judgment *the past existence of the* ownership right of BL over the contested OBJECT until the demolition on 29th September 2009 and *the present existence of his ownership right* over the LAND, previously occupied by the same object and its compound. The claimant has the legal interest demanded by Article 2, paragraph 4 LCP to determine his lost property over the demolished *object* as a preliminary issue to be decided before subsequently filing a new claim for compensation of the damages caused by its demolition in a separate contested procedure. The legal interest under Article 2, paragraph 4 LCP as per the

land exists as the respondents deny any property right of the claimant on it, while he requests recognition as being the titular of its ownership with cadastral registration.

71. The Basic Court of Ferizaj/Uroševac, Branch Kaçanik/Kacanik has *substantive jurisdiction* to decide in the first instance this dispute pursuant to Article 29 LCP in conjunction with Article of 11, paragraph 1 of Law No. 03/L-199 on Courts. It has also the *exclusive territorial jurisdiction* under Article 41, paragraph 1 LCP in view of the location of the contested immovable properties in its territory under Article 10, paragraph 8, subparagraph 1 of the Law No. 03/L-199 on Courts, which covers the territory of the Municipality of Kaçanik/Kacanik under Article 2, paragraph 1 of the Law No. 03/L-141 on Administrative Municipal Boundaries. The latter itself includes Cadastral Zone Kaçanik/Kacanik as formed according to Article 2, paragraph 1 and Annex 6 of the Law No. 2003/25 on Cadastre, amended by Law No.02/L-96, and as now preserved by Article 7, paragraph 5 of the Law No. 04/L-013 on Cadastre.

72. The claimant as a natural person and the respondents as legal persons – the Ministry of Infrastructure according to Article 17, paragraph 1 in conjunction with Article 18, paragraph 1, subparagraph 17 of Regulation No. 02/2011 on the Areas of Administrative Responsibility of the Office of Prime Minister and Ministries and the Municipality of Kaçanik/Kacanik according to Article 5 of the Law No. 03/L-040 on Local Self-Government – all have the procedural capacity under Article 73, paragraph 1 LCP to be parties in the case. The active procedural legitimacy in this litigation is based on the property rights pretended by the claimant. The passive legitimacy of the respondents is based on their status and entitlement of public road authorities - the Ministry of Infrastructure in respect to cadastral parcel nr.1849 as land of the *highway* M2 pursuant to Article 5, paragraph 1 of the Law No. 2003/11 on Roads, amended and supplemented by Law No. 03/L-120, and the Municipality of Kaçanik/Kacanik in respect to cadastral parcel nr.1850 as land of the Ferizaj/Uroševac-Kaçanik/Kacanik *uncategorized road* according to Article 5, paragraph 2 of the same law.

73. There is no *statutory limitation* or *preclusive deadline* established by law for the submission of this ownership claim. All time limits under Articles 371 – 380 of

the Law on Contracts and Tort (Official Gazette of SFRY № 29/78, with amendments in № 39/85, 45/89, 57/89 and in Official Gazette of FRY № 31/93) ("LCT") pursuant to Article 360, paragraph 1 LCT are prescribed for unenforceability only of claims for *fulfillment of obligations,* contractual or non-contractual in origin, and *vice versa* are not applicable for *property rights*. The latter being absolute in nature with *erga omnes* prohibition under Article 2, paragraph 1 LBPR (now Article 2, paragraph 2 LPORR) to be abused *are not subject to extinction*, whereas the *procedural right to claim their judicial protection cannot expire or otherwise become legally obsolete* – arg. Article 37, paragraph 3 in conjunction with paragraph 2, first hypothesis and Article 7 LBPR.

74. None of the other procedural impediments under Article 391 LCP exist, *inter alia,* related to the referral filed by BL to the Constitutional Court on 31st May 2010 based on Article 113, paragraph 7 of the Constitution for alleged violation of the right to property, as protected by Article 46, paragraphs 1 and 2 of the Constitution. By Resolution on Inadmissibility of the Constitutional Court in Case No.KI 39/10, dated 12th December 2011 this referral was rejected pursuant to Article 47, paragraph 2 of the Law No. 03/L-121 on the Constitutional Court as inadmissible with immediate effect.

75. Summarizing, all positive procedural prerequisites required for admissibility of the claim in this litigation exist, whereas there is no procedural obstacle invoked by the parties or identified by the court *ex officio* for its inadmissibility.

VI. APPLICABLE LAW

76. The Law on Basic Property Relations (Official Gazette of the SFRY No. 6/80 with amendments and supplements in Official Gazette of the SFRY No. 29/90 and Official Gazette of the SRY No 26/96) was in force from 1st September 1980 (Article 90), until it lost its effect pursuant to Article 296 of the Law No. 03/L-154 on Property and Other Real Rights (Official Gazette of the Republic of Kosovo No. 57/2009) on 20th August 2009 (Article 297). LBPR regulated basic property relations - Article 281, paragraph 3 of the Constitution of SFRY (Official Gazette of SFRY No. 9/74) in the entire federal territory. Thus being in force in Kosovo on 22nd March 1989, according

to Section 1.1 (b) of UNMIK Regulation No. 1999/24, LBPR is applicable law in this dispute for the period from the commencement of the possession on 8th July 1987 till 20th August 2009, when LBPR was replaced by LPORR. According to Article 282, paragraph 1 LPORR this new law regulates only conveyances of ownership right *after* its entry into force. In the lack of its explicitly foreseen retroactive effect, LPORR is applicable in this dispute for the period from the date it became effective - 20th August 2009 till the date of the demolition - 29th September 2009.

77. According to Article 20, paragraph 1 LBPR property right could be acquired *by law itself (Article 21 – 32)*, a *legal transaction (Article 33-35)* and *inheritance* (Article 36). According to Article 20, paragraph 2 LBPR ownership could also be acquired by a *decision of a state body* in a way and under conditions determined by law. It was the duty of the claimant according to Article 319, paragraph 1 LCP to prove all the facts requisite for *ex lege* acquisition of the ownership over the pretended object and land based on at least one of two legal grounds, invoked by him in the litigation - *the first one*, construction through self-investment under Article 24 LBPR, and *the second one*, adverse possession under Article 28 LBPR and Article 40 LPORR.

Acquisition based on construction on somebody else's land – Article 24 LBPR

78. Article 21 LBPR enumerates the grounds for acquisition of the property rights by law itself envisaged in Article 20, paragraph 1, first hypothesis LBPR, including explicitly in this list the *"construction on somebody else's land"*, whereas Articles 24 – 26 LBPR regulate further in details its concrete hypotheses, differentiated according to conscientiousness – non-conscientiousness of the builder *versus* the land owner, the value of the building *versus* the value of the land, etc. Some of these hypotheses – Article 25 and Article 26, paragraph 2 LBPR are regulated according to the Roman rule "*superficies solo cedit*" (the surface yields to the ground) according to which the building shares the legal destiny of the land, so that the land owner acquires *ex leges* everything built on it, unless otherwise provided by law. This universally recognized Roman rule is overturned in the hypotheses of Article 24 and Article 26, paragraph 1

LBPR into its opposite *"solum cedit superficiei"*, allowing the land in legal terms to be *"absorbed"* by the building object constructed on it. This upside down conversion, however, is permissible only in strict compliance with these exceptional provisions.

79. According to Article 24, paragraph 1 LBPR *a person who can be holder of the property right, and who builds a house or some other building (building object) on land over which somebody else holds the property right (builder), he/she will acquire the property right also over the land on which the building object has been erected, as well as on the land necessary for the regular use of such building object, if he or she has not known nor could have not known that he/she has built on somebody else's land, and the land owner has known for the building but has not put his/her objections immediately*.

80. These conditions *cumulatively* foreseen by Article 24, paragraph 1 LBPR for the acquisition of the ownership over the building, and the land are only *partially* met in this case. *At first place,* Article 1 LBPR in its initial version (Official Gazette of the SFRY No. 6/80) provided that *citizens, associations of citizens and other civil legal entities* can be holders of property rights within the limits and under the conditions prescribed by law. Article 1 LBPR in its amended version (Official Gazette of the SRY No. 26/96) provided that *natural and legal persons* can have ownership right over immovable and movable properties. Therefore based on his citizenship in the period 1987 – 1996 and later in the period 1996 – 2009 based on his status of natural person, BL was entitled to be *holder of property rights*. This first formal condition of Article 24, paragraph 1 LBPR is met. *At second place*, in factual terms BL erected the contested object in 1987 on 50 m^2, in the period 1988 - 2003 he expanded up to 98 m^2, in 2003 it was reconstructed – adapted on 135 m^2, and before the demolition on 29th September 2009 existed on 155 m^2. Though *formally* permitted by the competent municipal authority as a temporary object, it *was not a movable facility* placed easily and temporarily over the land, as demanded by Articles 1 and 6 of Decision Nr.01-35/1 of the Municipal Assembly of Kaçanik/Kacanik, dated 25th February 1976. Instead it was *de facto* built as a physical structure incorporated in the ground,

covered, suitable for shelter of people and objects, independently usable as auto-service and shop for car spare parts. Hence, it had all the characteristics of "*building*" as legally defined by Article 2, paragraph 4 of the Law No. 2004/15 on Construction, promulgated by UNMIK Regulation No. 2004/37 on 14th October 2004. Its compound of 225 m^2, *de facto* set in front as parking space for motor vehicles –physical structure, connected to the ground, and consisting of building materials, was "*building object*" as per the legal definition of Article 2, paragraph 3 of the Law No. 2004/15 on Construction. Thus the second condition set forth by Article 24, paragraph 1 LBPR – *construction of a building (building object)* – was also fulfilled. *At third place*, the contested object of 155 m^2 was built on part of cadastral parcel nr.1850, whereas its compound was located on the neigbouring parts of cadastral parcel nr.1849 (198 m^2) and cadastral parcel nr.1850 (27 m^2), crossing their cadastral border in this section. In all these components, this land has always been *social ownership* ever since 1969. Therefore the object and its compound were built by BL *not on his land, but on land in social ownership*. This third normative prerequisite – the construction to be on *land over which somebody else, different from the builder, holds the property right* – was also met.

81. Non-complied, however, was the fourth condition of Article 24, paragraph 1 LBPR –*"the builder has not known nor could have not known that he/she has built on somebody else's land"*. It is this non-knowledge that makes the builder *conscientious* and entitled based on the *construction* to acquire the property over the building with the land beneath and the land necessary for its regular use. Contrary to this, BL throughout the years has always known that the contested object *was built on public land in social ownership*. This status of the land allocated on temporary use for the object is explicitly indicated in point 1 of the enacting clause of Decision 05 Nr. 463-70/86, dated 8th July 1987, and point II of the enacting clause of Decision 07. Nr.948/2002, dated 17th January 2003, both served to BL. All his contracts with the Municipality of Kaçanik/Kacanik expressly stated in the title and in the subject-matter clause that the land given out on temporary use as location of the object is *social*

property. The contracts were personally signed by BL, who was served their copies. In almost all receipts and bank transfers for payments made by BL to the Municipality of Kaçanik/Kacanik in 2001 – 2008 he specified the sums as paid for use of *land, social property of the Municipal Assembly of Kaçanik/Kacanik*. In addition, the actual location of the object was in the triangle formed by two public roads, at the conjunction from the highway Prishtinë/Priština – Skopje to the entrance of the town of Kaçanik/Kacanik, which had always been public space, with no private parcels in this area. Finally, BL admitted in the session on 20th March 2013, *that he knew the contested object was built on land-social ownership,* without being aware only of the number(s) of the cadastral parcels. Based on all these documents and the admission of the claimant which excludes the need for further proves - Article 321, paragraph 2 LCP, it is to be concluded with certainty that BL *has known that the he has built the contested object with its compound on land – public roads space - social ownership, not belonging to him,* contrary to the opposite requirement *not to have known for constructing it on somebody else's land.* Without this mandatory prerequisite, Article 24, paragraph 1 LBPR could not be applied and the pretended property rights have not been *ex leges* acquired by the claimant on its basis neither over the object, nor over the land.

82. There are additional arguments for non-application of Article 24 LBPR based on the jurisprudence on this provision. *At first place,* BL had never had a construction permit issued in any moment from 1987 to 2009 by the competent public authority for any kind of object in cadastral parcels nr.1850 and/or nr.1849. Similarly, he had never concluded any kind of contract for cadastral parcels nr.1850 and/or nr.1849 and/or parts thereof. In this hypothesis being a builder of *illegally constructed object* without permit for the concrete socially-owned land – its location, BL could not acquire property rights based on construction on someone else's land under Article 24 LBPR, because *he was not given for use in a legal way* the parts of cadastral parcels nr.1850 and nr.1849 where the object and its compound were built. The jurisprudence on Articles 24 – 26 LBPR stands that the acquisition of ownership by construction on

someone else's land could not be applied for social property *not given in a legal way* to the builder for use. *At second place* only person who builds on someone else's land with *the consent and permit of the land owner* may become owner of constructed object under Article 24, paragraph 1 LBPR. This is why, without construction permit for cadastral parcels nr.1850 and nr.1849, and consent of the public entities - holder(s) of the right on disposal, their pretended parts have not been acquired by BL by merely constructing the object with its compound on them. This hypothesis is treated by the jurisprudence as *occupation* based on which pursuant to Article 32, paragraph 2 LBPR *no property right over a real estate could be acquired*, whereas Article 32, paragraph 1 LBPR excludes from its scope all *socially-owned assets. At third place,* the re-construction in 2003 does not constitute a separate ground for acquisition of the contested object and its compound under Article 24 LBPR. The Principle Position of the Federal Court and the Supreme Courts, adopted on their joint session on 23rd October 1990, is that by upgrading, annexing or adaptation of a building object cannot be acquired the property on its separate part based on Article 24 LBPR only if the owner of the land knew and did not object it. Moreover, by *"building"* Article 24 LBPR implies only *new construction* and not repairs, reconstructions, annexes or adaptations, where the relations are regulated as building up of movables into immovable property as joinder of minor (secondary) items to major (principal) item. Therefore, the fact that BL reconstructed the contested object in 2003 self-investing his own assets did not make him owner of the *whole pre-existing object*, nor of its *upgraded new part in its increased volume*. Because this reconstruction was realized by him again as a *non-conscientious builder*, knowing that the object under renovation was located on public land, *not his own,* without a permit issued by the Municipality of Kaçanik/Kacanik for its realization in cadastral parcel nr.1850 and/or nr.1849 and without a contract signed for allocation of cadastral parcel nr.1850 and/or nr.1849 for such use. *At fourth place,* according to the jurisprudence, the person who *places a temporary–montage object on someone else's land, including such in social property, could not acquire the property right over this land.* In this case BL transgressing the 1987 permit for erection–placement of *a temporary object* and the 2003 permit for its

reconstruction *de facto* built a *permanent building* (business facility). This is a substantial deviation from the type and purposes of the given permits which could not be removed through *post factum* harmonization of the contested object with their requirements, made its construction illegal and therefore *ineligible as basis for acquisition of the ownership right* over the object and/or the land pursuant to Article 24, paragraph 1 LBPR.

83. Since BL has always known that the contested object with its compound were built on public land in social ownership, not belonging to him, the opposite imperative requirement of Article 24, paragraph 1 LBPR *the builder not to have known for the construction on somebody else's land* has not been fulfilled in the case. The lack of this cumulative element is *sufficient* to make this provision fully non-applicable as a ground for *ex lege* acquisition of the claimed ownership over the object with its compound and the land – their location. As *non-conscientious builder* the claimant could not acquire these property rights, though the respondents did not put objections against the construction immediately. The lack of such objections being the separate *fifth element* of Article 24, paragraph 1 LBPR does not compensate the absence of its preceding *fourth element*, namely the awareness of BL as a builder for the alien ownership over the land. The non-opposition of the respondents to the construction on it does not obliterate the claimant's *non-conscientiousness as a builder,* and does not convert it into *conscientiousness.* BL could not acquire *legally* the ownership over the contested object with its compound being a *non-conscientious* builder, knowing for their construction on a socially-owned land though the respondents without objections endured its existence until the demolition.

84. The conditions for acquisition of ownership *by law itself* through construction on somebody else's land, *cumulatively established* by Article 24, paragraph 1 LBPR *have not been cumulatively fulfilled* which makes the provision non-applicable with *its accessorial Article 24, paragraph 2 LBPR.* The said construction lead to merging of the contested object with the land into *a single immovable property* that could not be co-ownership and required consolidation of the ownership over its two parts into

one exclusive titular. As thus no transfer of the land to the builder under Article 24, paragraph 1 LBPR occurred, there was no need to compensate its value pursuant to Article 24, paragraph 2 LBPR based on requests of the respondents filed in the 3 - years subjective or 10-years objective deadline prescribed by the same provision. Therefore the lack of such requests is irrelevant in the dispute. As the contested object was built by BL without any grounds under Article 24, paragraph 1, Article 25, paragraph 5, second sentence and Article 26, paragraph 1 LBPR for its acquisition by him as its builder *together* with the land or any other ground allowing *separate legal existence* of his ownership right only over the object, and not on the land, "*superficies solo cedit*" rule, being non-derogated, consolidated the two elements (object & land) of the newly emerged immovable property, where the social ownership over cadastral parcels nr.1849 and nr.1850 was *ex lege* extended to the object with its compound.

85. Summarizing, the claimed property have not been acquired by BL by law itself through *construction on somebody else's land* pursuant to Article 21 in conjunction with Article 24, paragraph 1 LBPR as he had built the contested object with its compound, knowing the public social ownership over the land – its location. Thus this first acquisition legal ground, invoked by the claimant in the proceedings, is equally unfounded with respect to the object and the land.

Acquisition based on adverse possession – Article 28 LBPR and Article 40 LPORR

86. Article 21 LBPR lists the *"adverse possession"* among the grounds to acquire property rights by law itself, whereas its detailed regulation is provided by Articles 28 – 30 LBPR read in conjunction with Article 70 – 81 LBPR. Based on this regulation, *the adverse possession is to be defined as a mode for acquisition of ownership and other real rights over an alien property by the factual exercise of their content during a time period prescribed by law*. The law allows the possessor through the continuous *factual exercise* of a real right over a certain property to self-produce a *legal ground* for its acquisition, while terminating it for its previous titular. It is differentiated according to: a) the duration of the possession into *long* – Article 28, paragraphs 3 and

4 LBPR or *short* - Article 28, paragraphs 1 and 2 LBPR; b) the type of property – adverse possession for movables - Article 28, paragraphs 1 and 3 LBPR or for real state - Article 28, paragraphs 2 and 4 LBPR; and c) the *right* to be acquired - adverse possession for ownership or for a limited real right.

87. In the course of the proceeding the authorized representative of the claimant consecutively invoked first in the preliminary hearing on 20th March 2013 the *20-years adverse possession for the acquisition of ownership over a real estate* governed by Article 28, paragraph 4 LBPR, whereas in the main hearing on 24th April 2013, the final recourse was to the *10-years adverse possession for the acquisition of ownership over a real estate* governed by Article 28, paragraph 2 LBPR counted from the date of entry into force of the Law on amendments and supplements of the LBPR (Official Gazette of the SRY No. 26/96).

88. Pursuant to Article 28, paragraph 4 LBPR *conscientious holder of a real estate over which somebody else disposes of the property right, shall acquire its ownership by adverse possession after expiration of 20 years.* The cumulative elements of this *long acquisitive prescription* are: 1) *possession* as defined by Article 70 LBPR; 2) its *conscientiousness* as defined by Article 72, paragraph 2 LBOR; 3) *expiration of 20 years time period*; and 4) *lack of any statutory prohibition.*

89. BL constructed the contested auto-mechanic workshop in its initial state in 1987 covering the surface of 50 m^2 on a part of cadastral parcel nr.1850, as a physical structure, connected to this land in social ownership. *At first place*, as a result of its incorporation in the terrain emerged a new *single immovable property,* consisting of this new building object and the socially-owned land – its plot. Since it was not co-acquired in ideal parts by the titular of the social property and BL, no *co-ownership* under Article 13, paragraph 1 LBPR was established on it. *At second place,* the auto-mechanic workshop with the land on which it was built were not acquired by BL through *construction on somebody else's land* based on any of the alternative norms of Article 24, paragraph 1, Article 25, paragraph 5, second sentence or Article 26, paragraph 1 LBPR, as reasoned in paragraphs 80 – 85. *At third place*, BL could not

also gain only the property over the building, *legally separately* from the terrain beneath since he had no *right on use of construction land for construction* according to Article 11, paragraph 1 of the Law on Land for Construction (Official Gazette of SAPK No.14/80), moreover, in its actual parameters and location in cadastral parcel nr.1850. As the *construction* carried out was not *transformed into consolidated ownership* over the object and its plot, and there was no established *building right* allowing as a legal buffer ownership over the object *on the surface of the land*, they merged according to the "*superficies solo cedit*" rule with *ex lege* extension of *the social ownership over cadastral parcel nr.1850* into *social ownership over the auto-mechanic workshop,* newly built by BL on this socially-owned land by 8th August 1987, within the 30-days term of Decision 05 Nr.463-70, dated 8th July 1987. No factual or legal changes occurred in respect to the object and/or its plot in the period from 8th July 1987 till 8th July 1996, eligible to produce loss, alienation or conversion of the social ownership over them.

90. According to Article 29 LBPR over *objects in social property the ownership right cannot be acquired through adverse possession.* This provision while in force from 1st September 1980 (Article 90 LBPR) till its abrogation on 8th July 1996 by Article 16 in conjunction with Article 36 of the Law on amendments and supplements of LBPR (Official Gazette of SRY No. 26/96) explicitly prohibited the acquisition of social property by adverse possession, thus limiting and narrowing the scope of this *ex lege* ground under Article 21 LPBR. Article 29 LBPR was *generally* formulated for *all categories of adverse possession*, for *all properties* in use or disposal of *all socio-political communities and other social legal persons,* without introducing any kind of exceptions. The jurisprudence has consistently with no controversies interpreted this norm as imperative interdict to acquire social properties through adverse possession, regardless of its duration, the status of the holder, its conscientiousness and legality. Based on the expressed ban in Article 29 LBPR, the adverse possession as a primary (non-derivative) mode for acquisition of ownership right *was restricted to private properties* only *with absolutely no application for socially-owned assets* - Article 29

LBPR prevailed over Article 28 LBPR. Therefore from 8th July 1987, when BL established his factual power over the location in cadastral parcel nr.1850, and then by 8th August 1987 built the auto-mechanic workshop in its initial state there, till 8th July 1996, when Article 16 of the Law on amendments and supplements of LBPR (Official Gazette of SRY No. 26/96) entered into force 8 days after its publication on 29th June 1996, the contested object with its plot on part of cadastral parcel nr.1850, being social property, could not be acquired through any adverse possession pursuant to the imperative prohibition of Article 29 LBPR. Therefore from 8th July 1987 till 8th July 1996 no adverse possession time period could run for this contested asset in social ownership. The period after 8th July 1996, when Article 29 LBPR was repealed, till 29th September 2009, when the object with its compound being demolished ceased to exist and could no longer be possessed and/or acquired, lasted *13 years, 2 months and 21 days*. Its duration is *below the 20-years minimum* under Article 28, paragraph 4 LBPR and Article 40, paragraph 1 LPORR. This non-compliance suffices for non-application of each of these provisions in the case and hence for *non-acquisition of the disputed object with its plot by long adverse possession*. Article 29 LBPR was deleted by Article 16 of the Law on amendments and supplements of LBPR (Official Gazette of SRY No. 26/96) without validation or strengthening of earlier possession status and establishment of property right through adverse possession over properties in social ownership. As the Law on amendments and supplements of LBPR (Official Gazette of SRY No. 26/96) *does not contain a transitional rule for retroactive application*, its Article 16 is to be applied *ex nunc*. Thus the time periods for adverse possession for properties of social ownership in the scope of the repealed Article 29 LBPR may run only for the future, *starting from the moment of entry into force of its abrogation on 8th July 1996 onwards*. Counted from this initial moment – 8th July 1997, the 20-years time period of the long acquisitive prescription had not expired till 29th September 2009, when the object with its plot was demolished and BL lost factual power on it pursuant to Article 74, paragraph 1 LBPR. *Without expiration of this 20-years minimum,* the pretended property right over the contested object and the land has not

been acquired by the claimant based on the long acquisitive prescription, as provided for by Article 28, paragraph 4 LBPR, now Article 40, paragraph 1 LPORR.

91. Pursuant to Article 28, paragraph 2 LBPR *conscientious and legal holder of a real estate over which somebody else disposes of the property right, shall acquire its ownership by adverse possession after expiration of 10 years.* The cumulative elements of this *short acquisitive prescription* are: 1) *possession* as defined by Article 70 LBPR; 2) *conscientiousness* of the holder as defined by Article 72, paragraph 2 LBOR; 3) *legality* of the possession as defined by Article 72, paragraph 1 LBPR; 4) *expiration of the 10 years time period*, counted according to Article 30 LBPR; and 4) *lack of statutory prohibition(s)*, general or special.

92. ***Possession*** exists when the content of the ownership or other real right is *de facto* exercised by a person, *different* from the formal *de jure* titular of this right, as established by law. According to the legal definition of Article 70, paragraph 1 LBPR possession shall have each person who directly exercises the factual power over a property (*direct possession*). Article 70, paragraph 2 LBPR states that possession shall *also* have a person who exercises the factual power over a property *through some other person*, who based on usufruct, contract on use, rent, care, or some other legal transaction has been given the property in direct possession (*indirect possession*). Or, the possession is the exercise of factual power over a property hold personally or through another person. It is not the *right* to possession (*ius possesionis*) as element of the ownership according to Article 3, paragraph 1 LBPR, but a factual state protected by law. LBPR adheres to the *objective* concept for the possession based on the factual power of the property (*corpus*) only, regardless of the *subjective* intent (*animus*) of the possessor to hold it as its owner. These postulates shall be now transposed to the facts in this case as they stand. *At first place*, the Municipality of Kaçanik/Kacanik initially allocated to BL socially-owned land on temporary use with a surface of 50 m^2 for placement of temporary montage object by contract Nr. 463-70/86/87, dated 21st July 1987 with one-year term of validity from 21st July 1987 to 21st July 1988. After its expiry, as admitted by the claimant in the preliminary hearing on 20th March 2013, the

contract was *tacitly* renewed by the parties under the same conditions according to the existing pre-war practice, while he continued to pay the amounts due for the used land. The conclusion of written contracts was resumed after the war in 2001 when the Municipality of Kaçanik/Kacanik as giver of the land and BL as its user signed subsequently eight contracts each of 1-year term for giving out on temporary use of construction land in social ownership for a temporary object: 1) Nr. 463-70/86, dated 20th July 2001 for 97 m^2; 2) Nr. 311/02, dated 3rd April 2002 for 98 m^2; 3) 07-Nr.83/03, dated 3rd February 2003 for 98 m^2; 3) 07 Nr.151/2004, dated 5th May 2004 for 98 m^2; 4) 07 Nr.05-91/05, dated 5th August 2005 for 150 m^2; 5) 07 Nr.20-05/07, dated 14th March 2007 for 150 m^2; and 6) 06 Nr.7811/75, dated 14th November 2008 for 150 m^2. All these contracts expressly indicate in the title and throughout its almost identical clauses that the respective construction land–social ownership is given out by the Municipality of Kaçanik/Kacanik *on temporary use* for placement of temporary object – business facility under obligations of BL to pay the set amounts for the used land through monthly installments, as well as to remove the object upon non-renewal of the contract without compensation and assignment of a new location. Thus the Municipality of Kaçanik/Kacanik *exercised its factual power as a right of use holder over the construction land* within its territory *through* BL who based on these annual contracts was given out the plot allocated to him to use it for fixed periods of time and against monetary payments. He held the land where the contested object was built, equal in their surfaces throughout the years, based on these *contracts* with the Municipality of Kaçanik/Kacanik. Having the elements of contract on use and rent, regardless of their precise qualification, they are all legal transactions by which the land plot allocated to BL was given to him for exercise of factual power over it within the limits of the agreed temporary use. Holding the land where the contested object was constructed *for* the Municipality of Kaçanik/Kacanik as its *giver*, BL as its *user* had *contractual legal status* gravitating to that of a *lessee* of this land plot, incompatible with the *factual non-contractual status* of its *possessor*. Moreover, the temporary allocation of this land *always for short 1-year contractual terms* is incompatible with the possession where the factual power over the property should be

durably established to allow the possessor to perform all the actions otherwise attributable to the *ius possesionis* – element of the ownership right. All this lead to the conclusion that the Municipality of Kaçanik/Kacanik possessed the land allocated to BL *through* him under the terms of *corpore alieno* based on the respective annual contracts, giving this allocated plot under his factual power on temporary use until returned again back to the Municipality of Kaçanik/Kacanik. This hypothesis resembles the lease contract where the lessee holds the rented property for the lessor, while the lessor holds it through the lessee. And, no lease, regardless of its duration, could be converted into ownership. Therefore as per the land plots covered by the said contracts, the Municipality of Kaçanik/Kacanik exercised its factual power over them through BL in indirect possession under Article 70, paragraph 2 LBPR. It was never lost by the Municipality of Kaçanik/Kacanik with its consent in favour of BL (*traditio brevi manu*), nor it was appropriated by BL with his unilateral actions (*interversio possesionis*) - till 31st December 2008 he was bound by such contract on temporary use, which was not renewed by decision of any of the municipal bodies, but he continued to pay the amounts due for the land used in 2009 to the Municipality of Kaçanik/Kacanik. According to Article 28, paragraphs 2 and 4 LBPR the acquisitive prescription runs only for *possessor* holding the property *personally or through another person*. As a result of the indirect possession exercised by the Municipality of Kaçanik/Kacanik *over the land plot given out by the contracts on temporary use* to BL under direct possession, he himself was not entitled to acquire their ownership based on acquisitive prescription. Moreover, as the jurisprudence states, no possession under Article 70, paragraph 2 LBPR could lead to such property acquisition as it is neither conscientious, nor legal, contrary to Article 72, paragraphs 1 and 2 LBPR. The conclusion is that, being *user* of the land plot given out to him on temporary use by the annual contracts above, BL in the terms of their validity possessed it *for* the Municipality of Kaçanik/Kacanik in indirect possession under Article 70, paragraph 2 LBPR, and hence was not entitled to acquire it in his ownership through acquisitive prescription. *At second place,* the object itself (without the terrain beneath) initially with the surface of 50 m^2, and finally - 155 m^2, and its compound in front finally with

the surface of 225 m^2, co-located partially in cadastral parcel nr.1850 and partially in cadastral parcel nr.1849, were not subject- matter of these annual contracts as they regulated only the temporary use of the land. The object itself and the compound as surrounding area were out of the scope of these contracts; their possession was also not given by any other legal transaction under Article 70, paragraph 2 LBPR. Since BL *exercised factual power over the building object with its compound* according to Article 70, paragraph 1 LBPR he had them in his *direct possession.* However, it is *not equal to acquisitive prescription*, nor automatically leads to its application without the other legally foreseen elements.

93. ***Conscientious possession***. This is a legally technical term (*terminus technicus)* – out of its linguistic content could not be extracted its meaning. Conscientious is not the possession exercised by conscientious citizens having a good name in the society or treating with the care of good master the hold property. This is not ethical, but legal category where relevant are its formal characteristics established by law. Article 72, paragraph 2 LBPR defines *the possession as conscientious if the holder has not known or could have known that the property he/she is holding is not his/hers*. Therefore this is a *subjective* element expressed in lack of knowledge of the possessor for holding a property not belonging to him/her. The differentiation is a factual question *(quaestio facti)* that has to be decided by the court according to the circumstances in each case. *At first place*, in this dispute it has been established that throughout the years 1987 – 2009 BL has known that the plot occupied by the contested object with its compound (155 m^2 + 225 m^2) is *land in social ownership*. The numerous documents issued to him or signed by him expressly referring to this property status, the location of the autoservice in public roads space and the admission of the claimant in the session on 20th March 2013 manifest this knowledge. The arguments in paragraph 81 being equally valid here will not be repeated. Knowing that the land hold by him in the total surface of 380 m^2 is not his, but social ownership, contrary to Article 72, paragraph 2 LBPR, BL *was not its conscientious holder*. Being based according to Article 72, paragraph 2 LBPR exclusively and only on his knowledge of the public property

status of the land, this *non-conscientiousness of his possession over the terrain* is not deleted, nor is converted into conscientiousness for the lack of pretences or lawsuits filed by the respondents for this land. No unconscientious holder could be treated as conscientious for the fact that no one has claimed recognition of the ownership or reinstatement in the possession over the property hold by him/her. Ever since 1987, BL has known that the plot allocated to him for auto-mechanic workshop was public roads terrain–social ownership, administered by the Municipality of Kaçanik/Kacanik – as a result of this knowledge, his possession of the land started as unconscientious in 1987, and continued to be unconscientious till its loss in 2009, with no conversion in the interim. *At second place*, the *conscientiousness of the possession pursuant to Article 72, paragraph 3 LBPR shall be assumed.* This is a legal presumption which according to Article 321, paragraph 4, first hypothesis LCP excludes the need the facts covered by it to be proven. It has not been rebutted in this litigation with respect to the *contested building object.* On the opposite, it was verified that BL *has always subjectively perceived as his own the building object* itself, functioning from 1987 to 2003 as an auto-mechanic workshop for washing and lubrication of vehicles on 50 – 98 m^2, and from 2003 to 2009 as an auto-service with a shop for car spare parts on 135 - 155 m^2. While BL has always known that *the land* in the contested location is in social ownership, on the contrary, *he has never* known that *the building object hold by him there was actually not his.* This non-knowledge is the only criteria established by Article 72, paragraph 2 LBPR needed to qualify his *possession over the building object* (without the land) as *conscientious*, regardless of the its cause – mistake in the facts or in the law. Article 72, paragraph 2 LBPR does not make this differentiation and the general rule *"error juris nocet, error facti prodest"* (*the mistake in the law harms, the mistake in the fact benefits*) should be considered derogated. Therefore being obliged to apply the presumption of Article 72, paragraph 3 LBPR, the court shall qualify the possession of BL over the object (separately from the terrain) as *conscientious* – this qualification, however, by itself in not acquisitive prescription.

94. ***Legal possession***. According to Article 72, paragraph 1 LBPR the possession is legal *(possession iusta) if: 1) it is based on valid legal ground that is necessary for the acquisition of the property right;* and *2) it is not acquired by force, deceit or misuse of trust.* These two conditions are cumulative – upon non-compliance with one of them *the possessor could not be qualified as a legal holder of the real estate* as required by Article 28, paragraph 2 LBPR which automatically excludes the entitlement to acquire its ownership based on the 10-years acquisitive prescription governed by this norm.

95. The term "*valid legal ground necessary for acquisition of a property right"* in Article 72, paragraph 1 LBPR covers all legal acts enumerated in Article 20 LBPR or defined by other law according to Article 7 LBPR which *derivatively transfer* or non-*derivatively establish a property right.* These are legal transactions, court decisions or administrative acts with *constitutive legal effect of a property title*. The ground should be: 1) real, objectively existing, not supposititious (*titulus putativus*); 2) valid, though originating from non-owner; and 3) not annulled, revoked or otherwise retroactively invalidated in the duration of the possession.

96. *Decision 05Nr.463-70/86, dated 8th July 1987 of the Department for Urbanism, Communal and Housing Affairs - Kaçanik/Kacanik* could not be qualified as a valid legal ground for acquisition of a property right as per Article 72, paragraph 1 LBPR. *At first place,* it was issued under the regime for placement of temporary objects in the territory of the Municipality of Kaçanik/Kacanik regulated by Decision Nr.01-35/1 on the Municipal Assembly of Kaçanik/Kacanik, dated 25th February 1976 (Official Gazette of SAPK № 15/76) in accordance with Article 10, paragraph 2 of the Law on Construction of Investment Facilities (Official Gazette of SAPK № 39/72). This last norm delegated to the municipal assembly to determine *which small montage objects and under what pre-conditions can be placed on construction land or public surfaces and the period of time they can remain on this land or surface.* Consequent to this delegation, Article 10, paragraph 1 of the same law excluded the application of all its provisions on construction/reconstruction of investment objects for the *small montage objects,* listing them as: *montage barracks for food products sale, kiosks for tobacco,*

newspapers, souvenirs, lotto tickets, flowers, bijouterie and similar articles, montage barracks for exercising handcraft and other services, montage garages, camping houses and similar objects. The Law on Construction of Facilities for Investment and Commercial Purposes (Official Gazette of SAPK № 5/86) in its Article 11 identically excluded the temporary montage objects from its scope, delegating to the municipal assembly their regulation. In compliance with these statutory provisions, Decision Nr. 01-35/1 of the Municipal Assembly of Kaçanik/Kacanik, dated 25th February 1976 determined the small montage objects regime for the territory of the Municipality of Kaçanik/Kacanik. Cited will be its provisions relevant as per Article 72, paragraph 1 LBPR. Its scope as defined by Article 1 was to determine the conditions under *which prefabricated and movable facilities could be placed easily and temporarily on construction land or in public space, where in accordance with the urban planning, cannot be placed permanently*. Article 2 reproduced literally the illustrative list above for *small montage objects* under Article 10, paragraph 2 the Law on Construction of Investment Facilities (1972), and Article 11, paragraph 1 of the Law on Construction of Facilities for Investment and Commercial Purposes (1986). Article 6 required the montage objects to be made from wood and metal, riveted inside, with glass main frontage – *in general their had to be easily and quickly assembled and dissembled.* Article 10 stated that the land for the placement of *the objects on temporary use would be permitted by a contract* to be concluded by the Municipality of Kaçanik/Kacanik Directorate for Communal and Housing Affairs, further regulated by Articles 11 – 18. The grounds for their removal under Article 27 included, *inter alia, development and arrangement of the land and construction of objects foreseen in the urban planning, and the expiry of the contract on use.* Article 30 obliged the user to remove the object, to clear the terrain and return it back in its previous state. If not, Article 31 allowed its forceful demolition. The systematic interpretation clearly indicates that *the special regime of this municipal regulation* out of the scope of the general statutory regime for construction/reconstruction of investment facilities was applicable exclusively and only for *temporary montage - movable objects* (barracks, kiosks, garages, bungalows, pavilions, sale booths, street stalls, billboards, etc.) that could be easily and quickly

assembled, placed temporarily on construction land or public space, and afterwards easily and quickly dissembled for removal without compensation and/or re-location to another place. Therefore the regime under Article 11 of the Law on Construction of Facilities for Investment Commercial Purposes and Decision Nr. 01-35/1, dated 25th February 1976 of the Municipal Assembly of Kaçanik/Kacanik Decision 05 Nr.463-70/86, dated 8th July 1987 was issued for *temporary placement of temporary objects on land in social ownership, allocated on temporary use for this temporary need.* Decision 05 Nr. 463-70/86, dated 8th July 1987 represented *permit for placement of a concrete temporary – prefabricated object* - autoservice for washing and lubrication of vehicles by BL, under this regime, explicitly based on Article 19 of Decision Nr. 01-35/1 of the Municipal Assembly of Kaçanik/Kacanik, dated 25th February 1976. By its issuance it was verified compliance with the conditions under Article 20 for placement of this object by this investor, its parameters were set as per Article 24 with data for the investor, main data for the object (type, size, purpose), and data for the land - its location. This permit had all the characteristics of *administrative act* - *"decision"* under Article 206 LGAP, issued by Department for Urbanism, Communal and Housing Affairs as *competent administrative body* under Article 202 LGAP and Article 283 of the Statute of the Municipality of Kaçanik/Kacanik (Official Gazette of SAPK № 48/1975), responsible for the implementation of Decision Nr. 01-35/1, dated 25th February 1976 according to its Article 33. This *permit for placement of a temporary object,* though simplified in its requisites, approximates a *construction permission* under Article 41, paragraph 1 of the Law on Construction of Facilities for Investment/Commercial Purposes (1986) authorizing the start of the works (Article 7). It approaches also the *urban permits* under Article 26, paragraph 1 of the Law No. 2003/14 on Spatial Planning. Summarizing, Decision 05-Nr.463-70/86, dated 8th July 1987 is an *administrative act* of the category of the construction and urban permits, which verified compliance of the request of BL, dated 31st July 1986 with the urban and technical requirements, allowed him to erect workshop for washing/lubrication of vehicles in cadastral parcel nr.148 in the dimensions and location set by Protocol 05-Nr. 463-70, dated 8th July 1987. Being an administrative act of the municipal body

competent for construction affairs, Decision 05-Nr.463-70/86, dated 8th July 1987 is *vice versa* not a *legal act of disposal with any property right.* In view of its basis and effect, such permit being for placement of temporary object was not eligible to transfer to BL the ownership of the future temporary object, or the land–its location. It did not legitimate him as a titular of any property rights. The jurisprudence is constant in the stance that the permits issued by of administrative bodies under construction, reconstruction and urban planning regime are not property titles and do not legitimate the investors as owners. Therefore, Decision 05-Nr.463-70/86, dated 8th July 1987 as administrative act–simplified construction/urban permit, *and not legal act of disposal of the owner,* could not constitute non-derivatively or derivatively convey the right of ownership over the temporary object, and/or the land – its plot. Hence, *it was not the legal ground necessary for acquisition of these property rights,* and based on it the claimant's possession *was not legal* as per Article 72, paragraph 1 LBPR. *At second place,* Decision 05-Nr.463-70/86, dated 8th July 1987 does not conform to Article 72, paragraph 1 LBPR also as per the requirement for validity. The *general grounds for nullity (absolute invalidity) of the administrative acts* at the time of its issuance were defined by Article 266 LGAP, while Article 267, paragraph 1 LGAP allowed their existence to be taken into account *ex officio* in any proceeding, including contested, without limitation in time. Therefore they can be incidentally identified in this case which also complies with Article 93, paragraphs 1 – 3 of the Law No. 03/L-2002 on Administrative Procedure, now in force. Upon this review, the court finds Decision 05 Nr.463-70/86, dated 8th July 1987 null (absolutely invalid) pursuant to Article 266, paragraph 3 LGAP as its *implementation was not possible.* According to Article 11 of the Law on Construction of Facilities for Investment and Commercial Purposes (1986) and Articles 1 and 3 of Decision Nr. 01-35/1, dated 25th February 1976 of the Municipal Assembly of Kaçanik/Kacanik, temporary montage objects could be placed only *on construction land or in public space in social ownership.* Contrary to this, Decision 05-Nr.463-70/86, dated 8th July 1987 allowed to BL to erect the autoservice on *cadastral parcel nr.148*, which in 1987 was registered in the name of NHL as per Possession List nr.197, with culture - 6th class arable land. As Decision 05 Nr.463-

70/86, dated 8th July 1987 permitted a temporary object on cadastral parcel nr.148 *its implementation was not possible* since this terrain in 1987 *was not construction land or public space in social ownership but agricultural land in private property*. As Decision 05-Nr.463-70/86, dated 8th July 1987 under the conditions set by it could not be implemented, this administrative act is null pursuant Article 266, paragraph 3 LGAP. The deficiency could not be considered removed by the reference to Protocol 05-Nr.463-70, dated 8th July 1987, according to which the location of the object had to be on *cadastral parcel nr.1148*. In 1987 it was registered in Possession List nr.114, with culture – house and yard, in the name of SRK. BL could not erect *autoservice on terrain in private constructed residential property;* therefore *the implementation* of Decision 05-Nr.463-70/86, dated 8th July 1987 was equally *impossible* if based on Protocol 05-Nr.463-70, dated 8th July 1987, thus again *null* pursuant to Article 266, paragraph 3 LGAP. This defect could not be removed by Decision 05-Nr.463-70/86, dated 8th July 1987 in which the number of the cadastral parcel nr.148 in point 1 of the enacting clause had been erased and replaced with handwritten new number - *nr.1849* with this change being signed and stamped in the right field. This *version* of Decision 05 Nr.463-70/86, dated 8th July 1987 was presented to the case *only by the claimant* with his submission, dated 4th September 2012, and never by the respondents, though the whole documentation was requested by the court twice and accordingly provided by the Directorate for Urbanism, Cadastre and Environmental Protection, attached to Routing Slip 06. Nr. 6467/2009, dated 31st July 2009 and submission 01-Nr.16-10440, dated 8th April 2013. The numerous officially presented copies of Decision 05-Nr.463-70/86, dated 8th July 1987 fully correspond to each other and none contains such corrigendum. Bound by their evidentiary effect of public documents - Article 329, paragraph 1 LCP, the court holds proven the truthfulness of Decision 05-Nr.463-70/86, dated 8th July 1987, as verified by its official copies, without the corrigendum. To check its authenticity, the court further acting in accordance with Article 329, paragraph 4 LCP instructed the Municipality of Kaçanik/Kacanik to make a statement in this regard – in reply its representative declared in the hearing on 24th April 2013 that in the *municipal archive this changed version of Decision 05-Nr.463-70/86, dated*

8th July 1987 is not kept at present, nor there are available documents for officially conducted procedure for its correction as administrative act. The representatives of the respondents objected the authenticity of the corrigendum in the same session on 24th April 2013, stating that it was made in an improper manner. The contested version of Decision 05-Nr.463-70/86, dated 8th July 1987 itself does not indicate the name and/or the position of person who made this corrigendum and/or signed it. The clarification given by the representative of the claimant in the session on 24th April 2013 that the corrigendum was inserted, and signed in 1995 by the Director of the Department for Urbanism and Public Housing Works at that time, Serbian by nationality, *does not represent a statement of a party or a witness,* hence this is not testimonial evidence, but assertion of a representative of a litigant with no probative value under Article 319, paragraph 2 LBPR, not corroborated by any procedurally permissible evidence. After this analysis, the court holds that the corrigendum has not been made in the appropriate form by the competent administrative authority within is powers, contrary to the requirements of Article 329, paragraph 1 LCP, and hence has no evidentiary effect that Decision 05-Nr.463-70/86, dated 8th July 1987 has been really modified. Finally, the correction of technical mistakes in administrative acts according to Article 219 LGAP required a *separate conclusion issued by the respective authorized official person* with a note on the administrative act signed by the same official person and delivery to all parties of this conclusion for correction with the right to file a separate appeal under Article 222, paragraph 1 LGAP. Such administrative procedure for correction of Decision 05-Nr.463-70/86, dated 8th July 1987 has not been conducted though prescribed by Article 219 LGAP – as a result, *lacking probative value*, the contested corrigendum *lacks also legal value* and this administrative act could not be considered corrected by it. Finally, it could not stabilize the status of the contested object - the corrigendum was for its location on cadastral parcel nr.1849, whereas it was *de facto* built on cadastral parcel nr.1850. Consequent to its nullity (*absolute invalidity*) under Article 266, paragraph 3 LGAP, Decision 05-Nr.463-70/86, dated 8th July 1987 could not generate legal consequences of any kind, which even theoretically excludes the possibility this permit to serve as a *valid* legal ground for acquisition of

property right of BL over the object and/or the land as per Article 72, paragraph 1 LBPR, and accessorily does not legitimate him as their legal possessor. *At third place,* the ground under Article 72, paragraph 1 LBRR *limits the property*, with respect to which the consequences of the possession may occur. As it mandatorily indicates the real estate over which the ownership is transferred and the possession is handed over, *possession of another property or of part, exceeding the conveyed one, would not be legal* in the criteria of Article 72, paragraph 1 LBPR. This is the case. Decision 05 Nr.463-70/86, dated 8th July 1987 permitted to BL to erect the contested facility as a *temporary object on cadastral parcel nr.148*, whereas he *de facto* built a *permanent object on cadastral parcel nr.1850.* Relevant in the dispute is this full discrepancy itself, and the reasons that have caused it. Issued as a permit for cadastral parcel nr.148, Decision 05 Nr.463-70/86, dated 8th July 1987 could not serve as a ground for the possession of BL over cadastral parcel nr.1850 and/or cadastral parcel nr.1849. There is no renumbering, amalgamation, sub-division, and/or other changes registered in the cadastre that may link cadastral parcel nr.148 with cadastral parcels nr.1850 and/or nr.1849. As there is no identity between the *formally* permitted *temporary object* on *cadastral parcel nr.148*, to which the legal effect of Decision 05-Nr.463-70/86, dated 8th July 1987 is restricted, on one side, and the *permanent object de facto* built by BL on *cadastral parcel nr.1850*, fully transgressing the scope of this permit, on the other side. Throughout the years 1987 – 2009 he *had never had any documents issued in his name by the Municipality of Kaçanik/Kacanik or other public authority even mentioning cadastral parcels nr.1850 and nr.1849.* In other words, in July 1987 BL entered into possession in part of cadastral parcel nr.1850 to erect the contested object on 50 m^2, later in the years extended this possession to cadastral parcel nr.1849 enlarging the object and building a compound in front up to the total surface of 380 m^2 in 2009, *literally without a single document in his name for cadastral parcels nr.1849 and/or nr.1850.* Its physical absence is sufficient to exclude automatically even the theoretical possibility for available legal ground under Article 72, paragraph 1 LBPR, objectively existing in reality. This is why the putative ground (*titulus putativus)* when the possessor only presumes/supposes the title does not make him

legal holder of the property as Article 72, paragraph 1 LBPR expressly requires a ground necessary for the acquisition of the ownership. The putative ground (*titulus putativus)* being imaginary, pre-supposed by the possessor, but non-existing in reality is not eligible to produce ownership as demanded by Article 72, paragraph 1 LBPR. Therefore even if BL has thought in the years that the documents issued to him by the Municipality of Kaçanik/Kacanik were valid to become owner of the object with its compound in cadastral parcel nr.1849 and cadastral parcel nr.1850, *this was just his subjective presumption* for a property title in his name (*titulus putativus)* which *could not substitute the objective non-existence of any document in his name for cadastral parcels nr.1849 and 1850*; moreover, to compensate the lack of a legal ground needed by law for acquisition of ownership as per Article 72, paragraph 1 LBPR. For all thus formulated reasons, Decision 05-Nr.463-70/86, dated 8th July 1987 does not represent a "v*alid legal ground necessary for acquisition of a property right"* under Article 72, paragraph 1 LBPR, based on it *the possession is not legal* under Article 72, paragraph 1 LBPR, while *BL is not legitimated* by this permit *as legal holder* under Article 28, paragraph 4 LBPR of the pretended object and parts of cadastral parcels nr.1849 and nr.1850.

97. *Decision 07-Nr.948/2002 of the Directorate for Urbanism, Communal and Housing Affairs of the Municipality of Kaçanik/Kacanik, dated 17th January 2003* also does not satisfy the requirements for a "v*alid legal ground necessary for acquisition of a property right"* as per Article 72, paragraph 1 LBPR. The arguments are identical with the ones provided in paragraph 96 and shall not be reiterated. The differences are not substantial for the final conclusion. *At first place,* Decision 07-Nr.948/2002, dated 17th January 2003 was issued based on the Regulation for Construction of Investing Buildings, adopted by the Municipal Assembly of Kaçanik/Kacanik on 12th June 2001. It was also based on Section 3.1, item b) of UNMIK Regulation No 2000/45 on Self-Government of Municipalities in Kosovo, authorizing each municipality within its territory as responsible for the *urban planning and land use*. Decision 07 Nr. 948/02, dated 17th January 2003 was a *permission for reconstruction–adaptation* of

the contested building object under Article 41, paragraph 1 and Article 5, paragraph 2 of Law on Construction of Facilities for Investment and Commercial Purposes (Official Gazette of SAPK № 5/86). Its legal effect was *limited* to verify compliance of the documentation and technical project of the investor with the requirements – Article 7, paragraph 1, to define the conditions for the reconstruction–adaptation and to allow its commencement - Article 41, paragraph 1. As any other technical permit, Decision 07-Nr.948/02, dated 17th January 2003 *did not transfer any property rights* to BL as investor over the old object as damaged after the war and the earthquakes, the upgraded object formed in 2003 or the terrain beneath and around. This suffices for its disqualification as a legal ground under Article 72, paragraph 1 LBPR – therefore by this 2003 permit the possession of BL *was not "legalized"* and remained *unlawful* till 2009. *At second place,* Decision 07-Nr.948/02, dated 17th January 2003 did not permit *conversion of the type of the object from temporary into permanent,* contrary to the allegations of the claimant. *Firstly*, the very request 07-Nr.948/2002, dated 31st October 2002 of BL was for permit for reconstruction-adaptation of auto-mechanic workshop of *temporary type*. Upon its review of this request the Directorate for Urbanism, Communal and Housing Affairs ascertained in the site that the facility was of *temporary type*. The technical project presented by BL and approved as 07-Nr.948/2002 on 17th January 2003 in its *general description* specified that the project was made for *temporary object* – auto-mechanic workshop with investor BL. By the enacting clause, Decision 07-Nr.948/2002, dated 17th January 2003 allowed reconstruction–adaptation of business facility–auto-mechanic workshop of *temporary type.* These parameters of the permission, expressly formulated in the administrative act itself, *legally* prevail over the *technical* project approved for this reconstruction-adaptation. Because the type of the object is a *legal category* which *depends on the urban planning* and *vice versa* not *technical category* depending on its design, structure, installations, materials and/or incorporation in the land. The conclusion to be drawn is that this 2003 permit *preserved the temporary urban status* of the auto-mechanic workshop as a *temporary objec*t not included in the urban planning, that could not be permanently placed on the terrain and that would be subject to removal

upon re-arrangement of the area based on the planned land use. The conversion of this status from *temporary* into *permanent* would have been possible only after partial modification of the urban plan according to the existing purpose of the land used by the object. It is neither alleged, nor proven in the case that *such administrative procedure for transformation of the type of the object has been conducted*. Therefore Decision 07-Nr.948/02, dated 17th January 2003 while explicitly *re-affirming the urban status of the reconstructed – adapted facility as a temporary object, did not directly modify or even indirectly affect its property status. At third place*, the permit for reconstruction – adaptation of the object from 2003 and the 1987 permit for its placement, neither separately, nor together dealt with the land plot since its allocation on temporary use was formalized by contract(s) with the municipality. Giving the permits, the administrative body as a preliminary issue had to assess if the investor in a legal way had acquired *the right to use* the land for the object; the permits themselves did not generate any consequences for the land. Generally, the 2003 permit, as well as the 1987 permit, did not produce any property rights for BL as investor with respect to the object and/or its plot. *At fourth place*, apart from its principle illegibility to serve as a property title, Decision 07-Nr.948/2002, dated 17th January 2003 explicitly specified as location of the object to be reconstructed-adapted *cadastral parcel nr.72,* registered in Possession List nr.86. It has been ascertained in the case that *cadastral parcel nr.72* in its state in 2003, and later cadastral parcels nr.72/1, nr.72/2 and nr.72/3 formed by consecutive subdivisions in 2006 and 2008, have always been with culture - pasture of 4th class, social property of the Municipal Assembly of Kaçanik/Kacanik. In 2003 and afterwards it has existed *independently* from its neigbouring cadastral parcels nr.1849 and nr.1850, without any overlapping, renumbering, and/or other re-configuration. This is why, issued for reconstruction-adaptation of object in cadastral parcel nr.72, Decision 07-Nr.948/02, dated 17th January 2003 could not produce any legal consequences for the object in cadastral parcel nr.1850 with compound in cadastral parcels nr.1849 and/or nr.1850, *inter alia,* to legalize in 2003 their possession as per Article 72, paragraph 1 LBPR.

98. *Contracts Nr. 463-70/86/87, dated 21st July 1987; Nr. 463-70/86/87, dated 20th July 2001; Nr. 311/02, dated 3rd April 2002; 07-Nr. 83/03, dated 3rd February 2003; 07 Nr. 151/2004, dated 5th May 2004; 07 Nr. 05-91/05, dated 5th August 2005; 07 Nr. 187/2006, dated 12th April 2006, 07 Nr. 20-05/07, dated 14th March 2007; 06 Nr. 7811/75, dated 14th November 2008* also do not qualify under Article 72, paragraph 1 LBPR. *At first place,* they were signed between the Municipality of Kaçanik/Kacanik as *giver of the land on use* and BL as *its user* on the basis of Article 10 of Decision Nr.01-35/1 on the Municipal Assembly of Kaçanik/Kacanik, dated 25th February 1976 to give out on temporary use construction land of respective surface for the placement of temporary object on year-by-year basis. The content of all these contracts - through their titles, the capacities of the parties and the concrete clauses – clearly indicates that by their conclusion, BL was granted only *the right on temporary use of construction land-common space for temporary need* pursuant to Article 14, paragraph 1, second hypothesis of the Law on Land for Construction (Official Gazette of SAPK No. 14/80 and No. 42/86). It included *the right to place a temporary object* on the respective location and *the right to use the land* in the surface of the location with the placed temporary object *until its removal.* Contrariwise, *none of these contracts conveyed to BL the ownership of the land plot*, while the object itself has always being outside of their scope and has never been regulated by them as per its property status. *At second place,* the contracts did not convey to BL the *right of use on construction land for construction* under Article 11, paragraph 1 of the Law on Land for Construction (the analog of the building right under Article 271 LPORR). *Firstly,* there is not a single clause–material expression of such will of the contracting parties; moreover, it premises permanent use of land for building objects with permanent urban status according to the urban planning, usually exercised for construction of houses, fully incompatible with the facts in the case. *Secondly,* Article 14, paragraph 1 of the Law on Land for Construction explicitly differentiates *the right of use on construction urban land for construction* as its first hypothesis from *the right on temporary use of constructed land – common space for temporary needs* as its second hypothesis. In view of this express normative distinction, they shall not be equalized, mixed or

converged. This general difference is corroborated by the *transferability* of the first right pursuant to Article 11, paragraph 3 in conjunction with paragraph 1 of the Law on Land for Construction *versus* the *non-transferability* of the second right pursuant to Article 22 of Decision Nr.01-35/1 on the Municipal Assembly of Kaçanik/Kacanik, dated 25th February 1976. The jurisprudence without controversy accepts that the object erected based on decision of competent municipal organ, allocating socially-owned land on temporary use with the purpose of placement of this object, cannot be even *leased* to another person. *Thirdly,* according to Article 11, paragraph 2 of the Law on Land for Construction *the right of use on construction urban land for construction* under paragraph 1 could be not generally constituted – it could be validly granted only for construction of a *concrete object with permanent urban status with specified parameters, restricted within the borders of a concrete cadastral parcel.* None of the contracts contains this mandatory individualization; *inter alia*, none of them envisages cadastral parcel nr.1849 and/1850. This automatically discounts the creation of a right under Article 11, paragraph 1 of Law on Land for Construction in any parameters and location within the borders of cadastral parcel nr.1849 and/or nr.1850 according to its Article 11, paragraph 2. *Fourthly*, as no such right has been constituted and existed, it could not be acquired through adverse possession, as this acquisitive mode requires *existing* right with deficient transfer to the possessor from non-titular. Furthermore, Article 28 LBPR regulates o*nly the adverse possession for ownership right* and not the "*quasi possession*" (*quasi possesionis*) for *limited real rights,* which according to Article 7 LBPR means non-applicability of this acquisitive mode for them. Summarizing, the consecutive annual contracts with the Municipality of Kaçanik/Kacanik being concluded for giving out of construction land on temporary use for temporary need-placement of a temporary object *could not transfer any right of ownership* to BL. By their conclusion he has not acquired property rights over the object and/or the land–its location, nor has appropriated lawfully their possession as per the first requirement of Article 72, paragraph 1 LBPR.

99. The considerations in paragraphs 92 – 98 are to be systematized as follows. *At first place*, with respect to the *part of cadastral parcel nr.1850 under the object, given out as construction land on temporary use by the aforementioned contracts* (in the years consecutively with a surface of 50 m^2, 97 m^2, 98 m^2, and 155 m^2), BL exercised *indirect possession* for the Municipality of Kaçanik/Kacanik under Article 70, paragraph 2 LBPR, which was *not conscientious* contrary to Article 72, paragraph 2 LBPR, and *not legal* contrary to Article 72, paragraph 1 LBPR. *At second place, the parts of cadastral parcels nr.1849 and nr.1850, occupied by the compound of the object, outside the scope of the contracts,* not covered by them, were hold by BL in *direct possession* under Article 70, paragraph 1 LBPR, which was *not conscientious* contrary to Article 72, paragraph 2 LBPR, and *not legal* contrary to Article 72, paragraph 1 LBPR. *At third place*, over the *object* he exercised *direct possession* under Article 70, paragraph 1 LBPR, *conscientious* as per Article 72, paragraph 2 LBPR, but *not legal* as per Article 72, paragraph 1 LBPR.

100. ***Time periods***. For the adverse possession to transform into ownership right, it has to continue for the respective minimum time limits prescribed by law. According to Article 30, paragraph 1 LBPR the time needed for adverse possession starts to run from the day when the holder has entered into possession of the object and shall be terminated with the expiration of the last day of the period needed. Pursuant to Article 30, paragraph 3 LBPR for interruption and cessation of the adverse possession shall be accordingly applied the provisions on interruption and cessation of the statutory limitation time periods – Articles 381–386, and Articles 387–393 LCT, respectively.

101. *Initial moment(s).* BL entered into possession of part of cadastral parcel nr.1850 immediately after the issuance of Decision 05-Nr.463-70/86 on 8th July 1987, and within its 30-days term erected by 8th August 1987 the contested object in its initial state as an auto-mechanic workshop on 50 m^2. The possession of the land refers not only to its surface but also to its layer that might be used for cropping and this is why every unauthorized construction is to be counted as its commencement-the non-authorization here is expressed in the lack of permit of any works on a plot in this

cadastral parcel. However, the properties finally hold by him immediately before the demolition, pretended in the case were substantially increased in dimensions, surface and/or volume. *At first place,* the plot, initially occupied on 8th July 1987 by the object erected in 1987, was of 50 m^2 as determined by Decision 05-Nr.463-70/86, dated 8th July 1987. It has been proven its *first increase* up to 97 m^2 from 1st January 2001 by contract Nr.463-70/86/87, dated 20th July 2001; its *second increase* up to 98 m^2 from 1st January 2002 by contract Nr. 311/02, dated 3rd April 2002; its *third increase* up to 155 m^2 from 1st January 2005 by contract 07-Nr.05-91/2005, dated 5th August 2005. It has not been proven at all in the case by the claimant having the burden of proof for this fact when the compound in front of the object with the surface of 225 m^2 was formed as parking place made of reinforced concrete. So, for the difference of 47 m^2 from the initial surface of 50 m^2 of the land to the first increased increase surface of 97 m^2 the possession commenced on 1st January 2001; for the difference of 1 m^2 from the first increased surface 97 m^2 (2001) to the second increased surface of 98 m^2 (2002) it commenced on 1st January 2002; for the difference of 57 m^2 from the second increased surface 98 m^2 (2002) to the third increased surface of 155 m^2 (2005) it commenced on 1st January 2005, while for the difference of 225 m^2 from the third increased surface of 155 m^2 (2005) to the finally measured surface of the object with its compound of 380 m^2 (2009) the possession was not proven as per its beginning. This means that the possession for the *plot of 283 m^2* formed as difference from the 2001 surface of 97 m^2 to the 2009 total surface of 380 m^2 *mathematically* could not have the absolute minimum of 10-years for real estate acquisitive prescription up to 29th September 2009 when the claimant lost possession. *At second place,* it is verified by Decision 07 Nr. 948/02, dated 17th January 2003 that shortly before its issuance officials of the Directorate for Urbanism, Communal and Housing Affairs visiting the site found the auto-mechanic workshop existing but quite damaged as a consequence of the war and the last earthquake and as such risking the safety of its users. It is evidenced by the technical project approved by Decision 07-Nr.948/2002, dated 17th January 2003 and it is not contested in the case that the 2003 reconstruction of the object was realized by repairing of the preserved parts, overbuilding of the damaged

ones, change of constructive elements for the sake of stability, change of installations, reorganization of the internal space into four new premises, etc. As a result all these works under Article 5, paragraph 2 of the Law on Construction of Facilities for Investment and Commercial Purposes (1986), the object was *substantially upgraded into a building of massive structure on beton foundations*, with extension of its 1987 parameters (length 10 m; width 5 m; surface 50 m^2) to its 2003 parameters (length 20.70 m; width 6.50 m; surface 135 m^2), which furthermore expanded to the 2009 parameters (length 20.86 m; width 7.43 m; surface 155 m^2). As a result of the *substantial partial damages* from the war 1999 and the 2002 earthquake and the *2003 substantial overall up-grading,* the *1987 auto-mechanic workshop for washing and lubrication of vehicles on 50 m^2* was modified into *the 2003 auto-service with shop with sale of car spare parts to 155 m^2*, increased its volume, tripled in its quadrature. This reconstructed-adapted business facility in its state after 2003 did not exist prior to 2003 and could be retroactively possessed. This 2003 changed physical structure with new its characteristics could be possessed by BL from the issuance of Decision 07-Nr.948/02 on 17th January 2003 onwards. Counted from this earliest possible moment, the adverse possession over the 2003 upgraded object in its substantially transformed physical state *mathematically* does not have the 10-years absolute minimum for a real estate acquisitive prescription. Or, the properties (object and land) in view of the changes of their physical characteristics and increase of their total surface more than 7 times (from 50 m^2 in 1987 to 380 m^2 in 2009) have not been held by BL in their last state and dimensions before the 2009 demolition for more than 10 years, which derogates even theoretically the possibility for their acquisition under Article 28, paragraphs 2 and 4 LBPR, or Article 40 – 41 LPORR.

102. *Interruptions*. All aforementioned contracts signed between the Municipality of Kaçanik/Kacanik and BL in 1987, 2001, 2002, 2003, 2004, 2005, 2007, and 2008 explicitly indicated that he was given out on temporary use for placement of a temporary object construction *land – social ownership*. Thus personally signing each and every one of these contacts on 21st July 1987, 20th July 2001, 3rd April 2002, 3rd

February 2003, 5th May 2004, 5th August 2005, 12th April 2006, 14th March 2007 and 14th November 2008, BL acknowledged that the land plot under the object is not his property, *but social ownership*. These acknowledgements of BL were known by the Municipality of Kaçanik/Kacanik, being expressed by his signing of all the written contracts concluded between them. Similarly, the payment documents for sums paid by BL to the Municipality of Kaçanik/Kacanik in their prevailing part also indicate that the amounts are for *used construction land – social property* of the Municipality of Kaçanik/Kacanik. In their respective parts, the contracts and payment documents are acknowledgements of BL *for the social ownership* over the contracted land which *ex leges* pursuant to Article 30, paragraph 3 LBPR in conjunction with Article 387, paragraph 1 LCT interrupted the adverse possession for this land. Afterwards it had to start to run a new from the date of each of these acknowledgements, without counting the time period expired prior to the respective interruption, according to Article 30, paragraph 3 LBPR in conjunction with Article 392, paragraphs 1 and 2 LCT. This accumulation of interruption grounds under Article 30, paragraph 3 LBPR read in conjunction with Article 392 LCT hindered the expiration of the 10-years adverse possession time period for the contracted land in the period 8th July 1996 – 8th July 2006, as finally specified by the claimant.

103. *Cessation based on social ownership of the properties.* Article 30, paragraph 3 LBPR in conjunction with Article 384, paragraph 1 LCT stipulate that should the adverse possession is blocked due to a cause specified by a statute, it shall start to run after such cause has come to an end. It is further elaborated in Article 30, paragraph 3 LBPR in conjunction with Article 384, paragraph 2 LCT which state that, *should the adverse possession has begun to run before the occurrence of the cause blocking its further course, it shall again start to run after this cause has come to an end, while the time period expired prior to the cessation shall be counted for the expiration of the adverse possession provided by the statute.* In the period 8th July 1987 – 8th July 1996 the acquisitive prescription under Article 28, paragraphs 2 and 4 LBPR did not run for the pretended parts of cadastral parcel nr.1849 and nr.1850, both in social ownership,

and the object built on part of cadastral parcel nr.1850, having the same status as per the "*superficies solo cedit*" rule, consequent to the prohibition of Article 29 LBPR for properties in social ownership to be acquired by any adverse possession. Its running was blocked in this case for the pretended land and object by this statutory interdict according to Article 30, paragraph 3 LBPR in conjunction with Article 384, paragraph 1 LCT from the very commencement of the possession of BL on 8th July 1987 till the abrogation of Article 29 LBPR on 8th July 1996 by Article 16 of the Law on amendments and supplements of LBPR (Official Gazette of SRY No. 26/96). There is no time period expired prior to that cessation that might be counted based on Article 30, paragraph 3 LBPR in conjunction with Article 384, paragraph 2 LCT as the prohibition of Article 29 LBPR was in force from 1st October 1980 to 8th July 1996, not being amended in the interim. Therefore on this *first cessation* ground under Article 30, paragraph 3 LBPR in conjunction with Article 384, paragraph 1 LCT *the acquisitive prescription was blocked in the period 8th July 1987 – 8th July 1996* for the pretended properties consequent to their social ownership status.

104. *Cessation based on construction land restrictions.* The second cessation ground ensues from the construction land status of the claimed parts of cadastral parcels nr.1849 and nr.1850. *At first place,* the Constitution of the Socialist Federal Republic of Yugoslavia (CSFRY) (Official Gazette of SFRY No. 9/74), the Constitution of Socialist Republic of Serbia (Official Gazette of SFRY No. 9/74) and the Constitution of Socialist Autonomous Province of Kosovo (Official Gazette of SAPK No. 4/74), introduced normatively the *social property* as a common material basis of society existence and development, self managed by the organizations of associated labor, the self-managing communities, the local communities and the other basic organizations in all spheres of public life. This was *sui generis* in its nature *collective* ownership under self-management. No asset, while in social property, could belong to another owner because it had never ceased to be owned by the broader social community understood as unique group comprising all citizens of the former Yugoslavia. No one could have socially-owned resources *in ownership* or *in possession* as regardless of

their physical and legal form they *could not belong individually to anyone* being generally and indivisibly vested to all citizens in the social community. In this case being *construction land* under Articles 5, paragraph 1, Articles 6 - 7 of the Law on Land for Construction (Official Gazette of SAPK No 14/80), cadastral parcels nr.1849 and nr.1850 were in *exclusive social property* as *goods of common interest in general use* that could not be individually acquired in private property - Article 12, paragraph 1 and Article 85 of Constitution of SFRY (1974), Article 10, paragraph 1 and Article 85 of Constitution of SAPK (1974). *At second place,* in line with these constitutional restrictions, Article 4 of the Law on Transfer of Real Property (Official Gazette of SAPK No. 45/81) *prohibited the transfer of construction land from social ownership,* except between social legal persons. *At third place,* the Law on Nationalization of Leased Buildings and Construction Land (Official Gazette of FNRY No. 52/58), the Law on Determination of Construction Land in Cities and Urban Settlements (Official Gazette of the FRS, No. 32/68), the Law on Construction Land (Official Gazette of SAPK No. 14/80) placed under *"moratorium"* the alienation of construction land as a *good of common interest* that serves the general needs of the society. In view of this restrictive regime, even after the *general* prohibition for acquisition of properties in social ownership under Article 29 LBPR was abolished on 8th July 1986, the adverse possession for cadastral parcels nr.1849 and nr.1850 could not start to run since after this date until the entry into force of Article 159 of the Constitution of the Republic of Kosovo on 15th June 2008 *the alienation of construction land from social ownership into private property remained prohibited on any legal ground, including acquisitive prescription.* These *statutory interdicts based on the construction land status* of the claimed parts of cadastral parcels nr.1849 and nr.1850 *continued to block* after 8th July 1996 the adverse possession as a separate ground for cessation of its running under Article 30, paragraph 3 LBPR in conjunction with Article 384, paragraph 1, second hypothesis LCT. Accordingly the jurisprudence holds that in this case the possibility of acquisition of construction land by regular or extraordinary adverse possession in the terms of Article 28, paragraphs 2 and 4 LBPR should be entirely excluded.

105. *Cessation based on public roads restrictions.* The third cessation ground stems from the *public road status* of cadastral parcel nr.1849. *At first place,* evidenced with full certainty in the case by all exhibits listed in paragraph 65 that ever since 1969, the year of the first official orto photos of the area, till nowadays with no interim changes cadastral parcel nr.1849 (now nr.P-70917048-1849-0), CZ Kaçanik/Kacanik has been always registered as located at the place called "Dushkaja", *culture- road of 1st order*, with a surface of 73 205 m^2, social ownership, as per Possession List nr.1159 (now Certificate for Immovable Property Rights nr.UL-70917048-01159). According to the Law on Measurement and Cadastre (Official Gazette of SAPK No. 12/80), in force till its abrogation and replacement on 18th February 2004 by the Law No. 2003/25 on Cadastre, amended and supplemented by Law No. 02/L-96, the latter being in its turn abrogated and replaced by the Law No. 2011/04-L-013 on 16th September 2011, the cadastre keeps data on the *actual use* of the land parcels in 5 types – agriculture, forestry, water area, construction land and others, and *vise versa* does not keep data for the special categorizations of the properties under special laws or their changes, as long as they do not affect their actual use entered into the cadastre. In this case though not reflected in the cadastre, it is publicly known fact under Article 321, paragraph 1 LCP, also officially verified by Letter Nr. 751, dated 25th March 2013 of the Ministry of Infrastructure in its capacity of public road authority responsible for all highways, national, regional roads and linking roads in Kosovo according to Article 5, paragraph 1 of the Law No. 2003/11 on Roads, as amended and supplemented by Law No. 03/L-120, that *cadastral parcel nr.1849 was and is still land of the public road - highway M2 Prishtinë/Priština – Skopje.* It is identified as such on the sketch in Protocol 05-Nr.463-70, dated 8th July 1987, and in the sketch issued on 28th January 2003 for the reconstruction adaptation permitted by Decision 07 Nr. 948/2002, dated 17th January 2003. As determined by the geodesy expertise, in 2009 the contested autoservice was located on cadastral parcel nr.1850, alongside the *highway Prishtinë/Priština–Skopje.* On this evidentiary basis, the court finds proven that during the contested period (1987 – 2009), and nowadays *cadastral parcel nr.1849, CZ Kaçanik/Kacanik was and is still part of the public road-highway M2 Prishtinë/Priština – Skopje.* It is irrelevant

when exactly prior to 8th July 1987 this public road was categorized from *"first order (regional) road"* into *"highway"*, as the property restrictions for these two categories public roads have been always identical. *At second place,* the Law on Roads (Official Gazette of SAPK No. 43/74) (hereinafter "the Law on Roads (1974)"), in force from 31st December 1974 (Article 45) until its abrogation on 27th June 2003 (Articles 41 and 43 of the Law No. 2003/11 on Roads) was applicable for the *property regime of the roads* in Kosovo in this period – Article 1, paragraph 1. Pursuant to Article 3, paragraph 1 of the Law on Roads (1974) *all public roads within its scope are socially-owned goods in general use.* Pursuant to its Article 3, paragraph 2 of the Law on Roads (1974) *over public roads cannot be acquired property rights through adverse possession.* This is *imperative prohibition under a special law* which as foreseen by Article 2, paragraph 1 LBPR excludes the *existence of private property rights over the public roads as goods in general use–exclusive social ownership.* Being *goods in general use* under Article 85 CFRY 1974, the public roads could not be traded as per Article 3, paragraph 2 of the Law on Trade of Immovable Property (Official Gazette of SRS No 43/81) *by alienation of the social ownership on them and/or its acquisition by citizens.* Therefore in this case consequent to the status of cadastral parcel nr.1849, CZ Kaçanik/Kacanik of *"public road"* with assigned category - Article 2, paragraph 1 of the Law on Roads (1974), and a socially-owned good in general use - Article 3, paragraph 1 of the Law on Roads (1974), the acquisition of property rights over its land in the total surface of 73 205 m^2 by adverse possession was forbidden by Article 3, paragraph 2 of the Law on Roads (1974) *erga omnes* from 31st December 1974 till 27th June 2003. Thus regardless of any factual power exercised by BL over the pretended 198 m^2 of cadastral parcel nr.1849, *its adverse possession being blocked by the statutory prohibition of Article 3, paragraph 2 of the Law on Roads (1974) did not run from 8th July 1987 till 27th June 2003* pursuant to Article 30, paragraph 3 LBPR in conjunction with Article 384, paragraph 1, first hypothesis LCT. *At third place,* the Law No 2003/11 on Roads ("the Law on Roads (2003)") became effective on 27th June 2003 with its promulgation by UNMIK Regulation No. 2003/24 and by its Article 41 repealed the Law on Roads (1974). Pursuant to Article 3 of the Law on

Roads (2003) each public road is designated for *general use and field of interest of Kosovo*. To guarantee this public destination, Article 11 of the Law on Roads (2003) *prohibits the ownership over a public road or a part of a public road to be transferred to any natural person or legal entity*. Being generally formulated, this explicit imperative prohibition is equally applicable for *all grounds for acquisition* of real estate under Article 20 - 36 LBPR till 20th August 2009, and under Article 36 – 43 LPORR after 20th August 2009, including *adverse possession*. After the entry into force of the Law on Roads (2003) on 27th June 2003, the *highway Prishtinë/Priština – Skopje* preserved its status of a *public main road* under its Article 4, paragraph 1, item a); cadastral parcel nr.1849 being in its entire surface land of this highway could not be transferred into private property to any natural or legal person on any ground as per its Article 11. The Law No. 03/L-120 for amendments and supplements of the Law No. 2003/11 on Roads (Official Gazette of the Republic of Kosovo No. 46/09) which became effective on 31st January 2009 did not change at all Article 11. It continued to apply after 31st January 2009 and is still applicable as per the *non-transferability of all public roads into private property* which is imperative, unconditional and without any exceptions. Therefore even though BL hold the pretended 198 m^2 of cadastral parcel nr.1849, being *part of a public road*, it could not be acquired by him through *adverse possession,* as any transfer of a part of a public road was prohibited by Article 11 of the Law on Roads 2003 from its entry into force on 27th June 2003 till the demolition on 29th September 2009. Thus throughout this time period the adverse possession over the pretended 198 m^2 of cadastral parcel nr.1849 being blocked by Article 11 of the Law on Roads 2003 pursuant to Article 30, paragraph 3 LBPR in conjunction with Article 384, paragraph 1, first hypothesis LBPR did not run at all. *At fourth place*, summarizing, all public roads in Kosovo as goods in general use (*res publicae*) has always been excluded from civil circulation. The public ownership over all of them has never been transferable into private property and thus has never been acquirable by any natural or legal person based on adverse possession of any kind of duration. Consequent to the public road status of cadastral parcel nr.1849, from 8th July 1987 till 29th September 2009, all adverse possession periods under Article 28, paragraphs 2

and 4 LBPR were *ceased* for its pretended part of 198 m^2 pursuant to Article 30, paragraph 3 LBPR in conjunction with Article 384, paragraph 1, first hypothesis LCT. From 8th July 1987 till 27th June 2003 their running was blocked by Article 3, paragraph 2 of the Law on Roads (1974) and from 27th June 2003 till 29th September 2009 by Article 11 of the Law on Roads (2003). Since these interdicts were in force one after the other, this cessation of the adverse possession periods did not come to an end in any moment throughout the contested period 8th July 1987 – 29th September 2009 as per Article 30, paragraph 3 LBPR in conjunction with Article 384, paragraph 1, second hypothesis LCT and barred without interruption(s) their running and hence their expiration. Therefore the possession exercised by BL over the pretended 198 m^2 of cadastral parcel nr.1849 could not produce the legal consequences of acquisitive prescription, *inter alia*, could not make him owner of this claimed property, no matter how long it had lasted.

106. *Cessation based on public road protective zone restrictions.* The last cessation ground ensues from the construction of the contested object on cadastral parcel nr.1850 and its compound as parking place for vehicles on cadastral parcels nr.1849 and nr.1850, *within the protective zone* of the *highway M2 Prishtinë/Priština – Skopje* contrary to the permanent construction moratorium within its scope. *At first place*, Article 90, paragraph 1 of the Law on Roads (1974) stated that alongside the public roads could not be constructed buildings, placed facilities and settle any other objects within determined distances from these roads (*protective zone*). Its function indicated in its naming and the regulation by a norm, systematically placed in Chapter VI of the Law on Roads (1974), titled "*Public Roads Protection*", was to preserve the road network from damages, and to guarantee safety of the traffic and the inhabitants in surrounding areas. Pursuant to Article 90, paragraph 3 of the Law on Roads (1974) the width of the protective zone of public roads within which could not be constructed houses, business, supporting and similar objects *alongside highway roads could not be less than 10 meters,* and alongside regional and local roads not less than 5 meters. However as these were absolute general minimums, the concrete distances for each

concrete object had to be determined according to Article 90, paragraph 8 of the Law on Roads (1974) by individual permission issued for the highways and regional roads by the provincial body competent for road links. In this case, by Letter Nr. 0303-634/2 of the Provincial Committee for Communications and Links - Prishtinë/Priština, dated 8th August 1984 such consent was issued upon request of MK from Kaçanik/Kacanik to temporary construct a montage barrack - autoservice along the highway Prishtinë /Priština–Hani i Elezit/Đeneral Jankovic, near the petrol station, and existing service, *20 meters far away from the road line*. This consent could be realized only by MK to whom it was issued – as administrative act it produced its effect only for this applicant as its addressee. Under no conditions it could be *"transferred"* to anyone else, different from MK, even if later he gave up the project, moreover *3 years after its issuance in 1984 without any actualization by the Provincial Committee according to the road state in 1987*. Thus the construction carried out BL along the highway Prishtinë/Priština–Skopje were not based on any consent issued according to Article 90, paragraph 8 of the Law on Roads (1974) upon his application in his name. This means that the prohibition for construction of objects within the protective zone of the highway M2 Prishtinë/Priština – Skopje under Article 90, paragraphs 1 and 3 of the Law on Roads (1974) *was not duly lifted* with respect to BL by the administrative authority competent to permit the existence of the objects listed in the provision in vicinity of a public road of this category. Besides this irregularity, the 20 meters distance from the road line explicitly determined by Letter Nr. 0303-634/2 of the Provincial Committee for Communications and Links - Prishtinë/Priština, dated 8th August 1984 for *temporary construction a montage barrack for autoservice* in this location was not complied with. *Firstly,* the distances of the *contested object* before the demolition from the highway M2 Prishtinë/Priština – Skopje were *11.68 m to the north* in the direction to Ferizaj/Uroševac and *14.84 m to the south* in the direction to Hani i Elezit/Đeneral Jankovic, measured from *the very edge of the asphalt layer*. The *compound* – parking for vehicles was situated in the space between the object and the highway as a trapezium with widths of 11.68 m and 14.84 m, *directly bordering* the asphalt layer of the road entering the town of Kaçanik/Kacanik. Thus its total surface

was within the 20-meters protective strip of the highway Prishtinë/Priština – Skopje, along its right side in the direction Hani i Elezit/Đeneral Jankovic, measured from the road line of the highway. Therefore the contested autoservice and its plateau were built in violation of the prohibition under Article 90, paragraphs 1, 3 and 8 of the Law on Roads (1974) for construction in the 20-metres protective zone of the highway M2 Prishtinë/Priština – Skopje, determined by Letter Nr. 0303-634/2 of the Provincial Committee for Communications and Links, dated 8th August 1984 pursuant to Article 90, paragraph 8 of the Law on Roads (1974). The conclusion remains valid even if the *initial* state of the object is taken into account. By Protocol 05-Nr.463-70, dated 8th July 1987 it was permitted auto-mechanic workshop in the form of a rectangle with 5 m width; in 2009 its width was measured increased up to 7.43 m. If the difference of 2.43 between its initial and final widths (7.43–5 m) was due to expansion towards the old road Ferizaj/Uroševac-Kaçanik/Kacanik, the above referred distances from the highway Prishtinë/Priština – Skopje - 11.68 m to the north and 14.84 m to the south would not be changed; if the expansion was towards the highway, then the distances of the object from its road line in 1987 would be 12.41 m (14.84 m - 2.43 m) to the south and 9.25 m (11.68 m - 2.43 m) to the north. Therefore in any of these variants, the autoservice was built within the 20-metres protective zone of the highway under Article 90, paragraph 3 in conjunction with paragraph 8 of the Law on Roads (1974), contrary to the prohibition for construction in its scope under Article 90, paragraph 1 of the Law on Roads (1974). *Secondly,* while the consent Nr. 0303-634/2 of the Provincial Committee for Communications and Links, dated 8th August 1984 was for *temporary montage barrack,* BL *de facto* built a *massive business facility,* contrary to the prohibition of Article 90, paragraph 1 of the Law on Roads (1974) for construction of such permanent buildings in the protective zone of the highway under Article 90 paragraph 8 of the Law on Roads (1974). Its existence could not be justified by Article 54 of the Law on Roads (1974) as the autoservice was not built *based on the project for construction of the highway Prishtinë/Priština–Skopje* on space along this public road particularly foreseen for it. *At second place,* the entry into force of the Law on Roads (2003) on 27th June 2003 did not reverse these restrictions as per the

public roads protective zone, on the contrary – it was reinforced in its limitations. Article 2 of the Law on Roads (2003) introduces the term *"road reserve"* defining it as a designated area along a road where restrictions as per its use are applied with the aim of protecting the public roads. Article 26, paragraph 2, item a) of the Law on Roads (2003) *explicitly states that within the defined area of the road reserve no one shall construct business facilities within the distance of 20 meters from the main roads*. The norm preserved the moratorium for construction of these objects within the road reserve, while increasing its width up to 20 m from the main roads. Thus the construction of the contested autoservice as a business facility built in distances less than 20 meters away from the highway Prishtinë/Priština–Skopje (11.68 m to the north and 14.84 m to the south) within the scope of its road reserve after 27th June 2003 remained impermissible pursuant to Article 26, paragraph 2, item a) of the Law on Roads (2003). *At third place,* the Law No 2003/11 on Roads, as amended and supplemented by the Law No. 03/L-120 as of 31st January 2009, introduced in Article 2 instead of "*road reserve*" the term *"protection strip"* as a *land strip on both sides of the road where the construction of objects is forbidden starting from the verge point of the road strip.* Article 26, paragraph 2, item a) of the Law No 2003/11 on Roads, as amended by the Law No. 03/L-120, determined the protection strip for motorways in 40 meters. Thus as of 31st January 2009 it was extended by twofold increase of its width from 20 meters to 40 meters, and also by moving its border to the verge point of the 2-metres road strip, the latter measured from the transverse profile verge points of the road, as defined by the amended Article 2. As a consequence, after the entry into force of the Law No. 03/L-120 on 31st January 2009 the distances of contested object from the highway Prishtinë/Priština–Skopje measured from the verge point of its road strip were further decreased with its 2-meters width from 11.87 m down to 9.87 m to the north and from 14.80 m down to 12.80 m to the south. Thus the autoservice with its compound after 31st January 2009 remained fully situated within the 40-meters protective strip of the highway Prishtinë/Priština–Skopje where such construction was impermissible. *At fourth place*, Article 90, paragraph 1 of the Law on Roads (1974) from 31st December 1974 to 27th June 2003 and Article 26, paragraph 1, item a) of the

Law on Roads (2003) from 27th June 2003 onwards prohibited imperatively in the whole contested period (1987 - 2009) the construction of business buildings in the respective minimum distances from the highway Prishtinë/Priština–Skopje in its both sides, delineating the protective zone (road reserve; protection strip) of this public road. By prohibiting such construction in this area *the norms banned the existence of such buildings in this designated area, thus disallowing the acquisition of property rights over such objects*. The *construction* of the contested autoservice in 1987 as a *massive business facility* less then 20 m away from the highway Prishtinë/Priština–Skopje (11.68 m to the north and 14.84 m to the south) fully situated in its protective zone violated Article 90, paragraphs 1 of the Law on Roads (1974), and the consent Nr. 0303-634/2 issued by the Provincial Committee for Communications and Links on 8th April 1984 under Article 90, paragraph 8 of the Law on Roads (2003) for construction of a *temporary montage barrack at 20-meters distance away from the road line*. The reconstruction of the autoservice in 2003 in the same area without re-location from the road reserve of the highway Prishtinë/Priština–Skopje breached Article 26, paragraph 1, item a) of the Law on Roads (2003), both before and after its amendment in 2009. As a business facility impermissibly built within the protective zone of a public road contrary to the construction moratorium in it, the contested object could not be acquired by adverse possession as this would have circumvented the imperative statutory prohibitions of Article 90, paragraph 1 of the Law on Roads (1974) and Article 26, paragraph 1, item a) of the Law on Roads (2003) for existence of such objects in this designated area. The adverse possession was therefore blocked as per *the contested business facility with its parking* pursuant to Article 31, paragraph 3 LBPR in conjunction with Article 384, paragraph 1, first hypothesis LCT by all these construction restrictions in the protective zone of the highway Prishtinë/Priština – Skopje, while its periods were ceased from 8th July 1987 till 29th September 2009.

107. Due to the *accumulation of all these grounds for interruption and cessation* under Article 31, paragraph 3 LBPR the adverse possession could not run in its legally demanded duration and, hence, could not expire neither in the 20-years time period

under Article 28, paragraph 4 LBPR (now Article 40, paragraph 1 LPORR), nor in the 10-years time period under Article 28, paragraph 2 LBPR (now Article 40, paragraph 1 LPORR). Without non-interrupted and non-ceased full expiration of these minimum time limits, the possession could not be transformed into ownership.

108. The reasons in paragraphs 86 – 107 lead to the following inferences. *At first place,* BL has not acquired the ownership over the pretended *part of cadastral parcel nr.1850* on which the object was built, given out to him on year-by year basis by contracts annually concluded with the Municipality of Kaçanik/Kacanik, since he exercised only *indirect possession* for this second respondent under Article 70, paragraph 2 LBPR, which was *not conscientious* as per Article 72, paragraph 2 LBPR contrary to Article 28, paragraphs 2 and 4 LBPR, and *not legal* as per Article 72, paragraph 1 LBPR contrary to Article 28, paragraph 2 LBPR. The time periods set for acquisitive prescription did not run at all for this pretended part of cadastral parcel nr.1850 from 8th July 1987 till 29th September 2009 being ceased under Article 30, paragraph 3 LBPR in conjunction with Article 384, paragraph 1 LCT by the statutory prohibitions to acquire socially owned construction land within the protective zone of the highway Prishtinë/Priština – Skopje, as well as being interrupted according to Article 30, paragraph 3 LBPR in conjunction with Article 387 LCT by the numerous acknowledgements of BL for the social ownership of the land allocated on his temporary use (paragraphs 103, 104, 105, and 107 above). *At second place,* the parts of cadastral parcels nr.1849 and nr.1850, occupied by the compound of the object (27 m^2 and 198 m^2 respectively), not covered by contracts, were hold by BL in *direct possession* under Article 70, paragraph 1 LBPR, which was *not conscientious* as per Article 72, paragraph 2 LBPR contrary to Article 28, paragraphs 2 and 4 LBPR, and *not legal* as per Article 72, paragraph 1 LBPR contrary to Article 28, paragraph 2 LBPR. The acquisitive prescription time periods for this pretended parts of cadastral parcels nr.1849 and nr.1850 did nor run from 8th July 1987 till 29th September 2009 being permanently ceased pursuant to Article 30, paragraph 3 LBPR in conjunction with Article 384, paragraph 1 LCT by the statutory prohibitions to acquire socially

owned construction land - part of public road. *At third place*, over the *object* BL exercised *direct possession* - Article 70, paragraph 1 LBPR, *conscientious* - Article 72, paragraph 2 LBPR, but *not legal* - Article 72, paragraph 1 LBPR. The acquisitive prescription time periods for the object did not run from 8th July 1987 till 29th September 2009 being permanently ceased according to Article 30, paragraph 3 LBPR in conjunction with Article 384, paragraph 1, first hypothesis LCT with respect to this business facility impermissibly built within the protective zone of the highway Prishtinë/Priština–Skopje, in breach of the construction legal moratorium in force in this designated area.

109. Therefore the conditions *cumulatively required* by Article 28, paragraphs 2 or 4 LBPR for acquisition of ownership over a real estate by adverse possession *have not been cumulatively fulfilled* for none of the claimed properties. As the pretended *land* in the total surface of 380 m^2 – parts of cadastral parcels nr.1849 and 1850 was hold by BL in *unconscientious* and *illegal* possession without non-ceased and/or non-interrupted expiration of 20 years period, he has not become its owner based on the regular long adverse possession under Article 28, paragraph 4 LBPR. The *object* of 155 m^2 in cadastral parcel nr.1850 was not acquired by BL neither based on Article 28, paragraph 2 LBPR, nor based on Article 28, paragraph 4 LBPR as he hold the autoservice in possession which though conscientious *was not legal* and did not legally last even 10 years given the cessations under Article 90, paragraph 1 of the Law on Roads (1974) and Article 26, paragraph 1, item a) of the Law on Roads (2003), as well as its commencement in 2003 for the last upgraded state and expanded volume of this business facility as building object under Article 2, paragraphs 3 and 4 of the Law No. 2004/15 on Construction.

110. *The arguments in the final speech of the claimant's representative* are not adopted by the court. *At first place,* in the case it has been proven only the *physical existence of the object in cadastral parcel nr.1850* and *vice versa* not that this facility in juridical terms *"belonged"* to BL in his validly acquired ownership. There is no material or testimonial evidence in this regards. Through their replies to the claim, and

by the statements of their representatives in the trial the respondents *have denied the claim in its entirety* with respect to the object, and the land. Neither the Ministry of Infrastructure nor Municipality of Kaçanik/Kacanik *has ever admitted* ownership of the claimant over the object in any moment of the proceedings. This excludes the issuance of judgment based on its acceptance in this part as per Article 148, paragraph 1 LCP. In the session on 20th March 2013 in the process of separating the contested from non-contested facts, the representative of the second respondent declared as non-disputable the fact that the object was built by BL. This is not acceptance of the claim - the *physical construction of a building* or *its physical existence in any parameters* could be equalized to ownership. *At second place,* the inaction of the respondents in these years made possible the possession of BL merely as exercise of factual power as per Article 70, paragraph 1 LPORR, without making it *conscientious* as per Article 72, paragraph 2 LBPR or *legal* as per Article 72, paragraph 1 LBPR. This endurance did not convert the type of the object from *temporary* to *permanent* – as explained in paragraph 96 the categorization of the object as *temporary* indicated its *urban status* and did not depend on the duration of its forbearance by the authorities. *At third place,* relevant in this dispute is that by the demolition on 29th September 2009, the autoservice was fully ruined, it ceased to exist as immovable property under Article 2, paragraph 1 LBPR; Articles 10 LPORR, which lead to *ex leges* termination of the ownership right over it - Article 47, paragraph 1 LBPR; Article 18, paragraph 1 LPORR, and to loss of its possession - Article 74, paragraph 1 LBPR; Article 107, paragraph 1 LPORR. The judicial review over the demolition decision of the Director for Urbanism, Cadastre and Environmental Protection – Kaçanik/Kacanik as per its validity pursuant to Article 140 of the Law No. 02/L-28 on Administrative Procedure was permissible only within administrative conflict court proceedings, if initiated in due time. Contrariwise, *this administrative issue* could not be decided in this *civil litigation*, moreover, being outside the limits of its scope of adjudication under Article 2, paragraph 1 LCP. The demolition on 29th September 2009, notwithstanding its lawfulness/unlawfulness, by itself could not retroactively legitimate BL as owner of object up to that date, nor as its legal possessor. *At fourth place*, the non-removal of

the autoservice as a business facility built within the protective zone of highway did not legalize it, nor could make the possession of BL over it lawful without a ground for acquisition of its ownership. Such *non-removal* does not convey property right(s) or possession. *At fifth place,* the expansion of the land used by BL in the years from 50 m^2 to 380 m^2 was not based on approval of the respondents. Actually, the surface of the object according to the 2003 permit should be 135 m^2, while the last surface of the land given out by the 2008 contract was 155 m^2 – the difference up to the pretended twofold increased total surface of 380 m^2 had never been allocated to the claimant by any of the respondents as "*land needed for the regular use of the auto-service*", nor had BL ever paid to the municipality for 380 m^2 used land. In fact, the difference between the last contracted surface of 155 m^2 and the last used land of 380 m^2 was *unilaterally occupied by the claimant* without any permit by the respondent(s). Non-based is also the thesis that they had promised the claimant not to withdraw the object with the land needed for its normal usage from his possession. There are no such proven acts or actions of the Ministry of the Infrastructure or the Municipality of Kaçanik/Kacanik.

111. *The Law No. 03/L-154 on Property and Other Real Rights (Official Gazette of the Republic of Kosovo No. 57/09)* (LPORR) entered into force on 20th August 2009 *ex nunc.* Being a substantive law, it does not have retroactive legal effect, unless such has been explicitly provided by its transitional rule. In line with this Article 291, paragraph 1 LBPR states that the provisions of this law are applicable for possessory relationships that *exist* on the date of its entry into force. *At first place,* in this case the regular 20-years adverse possession is invoked by the claimant for the period 1987 – 2007, while the extraordinary 10-years adverse possession for the period 1996 – 2006 (minutes of the hearings on 20th March 2013 and 23rd April 2013, respectively). Being bound by the acquisitive prescription(s) time period as set by the claimant – Article 30, paragraph 3 LBPR in conjunction with Article 360, paragraph 3 LCT, the court notes that there is no possessory relationship, *alleged* as existing by the claimant for the time period 20th August 2009 – 29th September 2009, that has to be regulated by

the new law according to the transitional rule of Article 292, paragraph 1 LPORR. *At second place,* the pretended ownership right was not acquired by BL by the 20-years proprietary possession foreseen by Article 40, paragraph 1 LPORR as a result of the statutory prohibitions in paragraphs 103–106 above which could not be derogated and which did not allow acquisition of the claimed object and/or land by any possession, regardless of its duration and characteristics. Moreover, according to Article 1, paragraph 5 LPORR the provisions of LPORR *do not apply to real rights in public or common assets which are subject to specific legislation, unless otherwise provided in this law.* As all types of public properties are *generally* excluded from its scope, and *not explicitly included* in Articles 40 – 41 LPORR, their acquisition based on adverse possession should be considered in principle impermissible – this ground is regulated for acquiring ownership of *private* immovable properties – arg. Article 1, paragraph 1 LPORR, and *vice versa* not for any real rights in any public assets – arg. Article 1, paragraphs 5 and 2 LPORR. *At third place,* BL has never been registered as *owner* of the contested properties (object and/or land), though without acquired ownership over them – the lack of such registration in his name, moreover, for 20 years, as demanded by Article 41 LPORR, also excludes its acquisition by 20-years possession. *At fourth place,* pursuant to Article 40, paragraph 2 LPORR the proprietary possessor acquires an immovable property, or a part thereof, after 10 years of uninterrupted possession, and if he is registered as its *proprietary possessor* in the immovable property rights register and no objection against this registration is filed during this period. BL has never been registered as *"possessor"* of the pretended object and land in the cadastre, which makes the ownership right over them *non-acquirable by him based on the 10-years proprietary possession* regulated by Article 40, paragraph 2 LPORR. *At fifth place*, the possession of BL was also not *proprietary* and *uninterrupted* as per Articles 40 – 41 LPORR – in the years he was aware that the object was permitted to him as a temporary, while the land was given out to him as alien socially-owned property for a limited time duration of use, all this in short one-years periods by annual contracts *interrupting* in juridical terms the possession as per Article 387 LCP and nullifying its *proprietary animus*. Therefore, the claimed ownership has not been acquired by

proprietary possession regulated after 20th August 2009 by Article 292, paragraph 1 read in conjunction with Articles 40 – 41 LPORR and does not find its legal basis in the provisions of the new law.

112. *Official cadastral registration.* It has been verified by the administered material exhibits listed in paragraphs 65 – 68 above that cadastral parcel nr.1849 (now nr.P-70917048-1849-0), *was registered and is still registered as social property* (P.SH.) in the name of the Roads Enterprise - Prishtinë/Priština, as per Possession List nr.1159 (Certificate for Immovable Property Rights nr.UL-70917048-01159), while cadastral parcel nr.1850 (now nr.P-70917048-1850-0) *was registered and is still registered as social property* (P.SH.) - Public and Uncategorized Roads - Kaçanik/Kacanik, as per Possession List nr.860 (Certificate for Immovable Property Rights nr.UL-70917048-00860). The expert MS also explicitly clarified in the session on 24th April 2013 that cadastral parcels nr.1849 and nr.1850 now exist in the state identified in 1969, without any subsequent technical or legal changes in their registration and without objections filed by the claimant against it. All possession lists and certificates being public documents with binding evidentiary effect under Article 329, paragraph 1 LCP *officially verify the status of cadastral parcels nr.1849 and nr.1850 as social property* registered according to the Law on Registration on Real Properties in Social Ownership (Official Gazette of SAPK No. 37/71), the Law No. 2003/25 on Cadastre, promulgated by UNMIK Regulation No. 2004/4 on 18th February 2004, amended and supplemented by Law No. 02/L-96, promulgated by UNMIK Regulation No. 2007/32 on 16th November 2007, and the Law No. 04/L- 013 on Cadastre (Official Gazette of the Republic of Kosovo No. 37/2011). While throughout the contested period and up to date the cadastral parcels nr.1849 and nr.1850 have always been registered as social ownership, on the contrary, the name of BL does not appear at all in the public books on immovable properties with respect to them, in particular as the *owner* or the *possessor* of their pretended parts, and/or the building object that existed in cadastral parcel nr.1850 till 29th September 2009.

VIII. CONCLUSION

113. In the present proceeding the claimant has failed to prove as obliged by Article 319, paragraph 1 and Article 322, paragraph 2 LCP his legitimacy as owner of the contested object and land, validly acquired on any of the legal grounds for acquisition of the property right determined by Articles 20 – 36 LBPR till 20th August 2009, and Articles 36 – 42 LPORR after 20th August 2009. In particular, such acquisition does not find its legal basis neither in the *construction on somebody else's land* governed by Article 24 LBPR, nor in the *acquisitive prescription* regulated by Article 28 – 33 LBPR and/or Articles 40 – 41 LPORR, as the conditions set forth by these provisions are not cumulatively met. Without strict compliance with all these requirements of the applicable law, the construction of the object, its physical existence in the years, the occupation of the land over the surface not given out on temporary use, as well as the functioning of the autoservice as a business facility remained just *factual state, never stabilized by its transformation into legal state by valid acquisition of ownership*. As the existence of the pretended property right has not been proven by the claimant in conformity with Article 319, paragraph 1 LCP, the court applying the burden of proof rule under Article 322, paragraph 1 LCP has to accept this alleged non-proven right as non-existing and hence to refuse to declare its existence as per Article 254, paragraph 1 LCP. For all these reasons, the statement of claim is entirely rejected as unfounded.

IX. COSTS OF THE PROCEEDINGS

114. The request of the claimant under Article 463, paragraph 1 LCP the court to oblige the respondents in solidarity to reimburse him the costs of proceedings made shall be rejected. Considering the outcome of the case, the claimant is not a winning party in this litigation and therefore is not entitled to such reimbursement pursuant to Article 452, paragraph 1 LCP. The respondents have not filed special requests as per the costs of the proceedings according to Article 463, paragraph 1 LCP.

115. In compliance with Section 10.12 in conjunction with Section 10.1 of the Administrative Direction № 2008/02 of the Kosovo Judicial Council for Unification

of the Court Fees, amended and supplemented by Decisions № 20/12, dated 9th March 2012 and № 37/12, dated 23rd March 2012, the claimant shall be obliged to pay to the budget the court fee due for issuance of this judgment within fifteen (15) days after it has become final.

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

LEGAL REMEDY: According to Article 176, paragraph 1, first sentence LCP each party may file an appeal against this judgment to the Court of Appeals through the Basic Court of Ferizaj/Uroševac, Branch Kaçanik/Kacanik within fifteen (15) days from the date its copy has been served to it.

THE BASIC COURT OF FERIZAJ/UROŠEVAC
BRANCH KAÇANIK/KACANIK
C. nr.133/2009 & C.nr.148/2009 on 09.05.2013

EULEX 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.