

## THE COURT OF APPEALS

Case: AC.nr.1469/2012

Date: 2<sup>nd</sup> August 2013

**THE COURT OF APPEALS** in the second instance through a panel composed of EULEX Civil Judge ROSITZA BUZOVA, as Presiding, Judge MEDIHA JUSUFI and Judge NENAD LAZIĆ, as panel members;

In the civil case of the claimant RSM from Podujevë/Podujevo against the respondent the MUNICIPALITY of Podujevë/Podujevo for confirmation of ownership over apartment with value of the contest 12 500 Euros;

Having received the appeal filed by the MUNICIPALITY of Podujevë/Podujevo, respondent in the first instance and appellant in the second instance proceedings, and the appeal of CB formerly from Podujevë/Podujevo, now residing in Kuršumljia, the Republic of Serbia, against judgment C.nr.407/2008 of the Municipal Court of Podujevë/Podujevo, dated 2<sup>nd</sup> February 2009;

After deliberation and voting in a close panel session held in accordance with Article 190, paragraph 1, first hypothesis of the Law No 03/L-006 on Contested Procedure (Official Gazette No. 38/2008), amended and supplemented by Law No 04/L-118 (Official Gazette No. 28/2012) (hereinafter "LCP") on 2<sup>nd</sup> August 2013;

Hereby pursuant to Article 195, paragraph 1, item a), Article 196 in conjunction with Article 186, paragraph 3 LCP issues the following

### R U L I N G

**I.** The appeal of the respondent MUNICIPALITY OF PODUJEVË/PODUJEVO against judgment C.nr.407/2008 of the Municipal Court of Podujevë/Podujevo, dated 2<sup>nd</sup> February 2009 is **DISMISSED** as impermissible due to its withdrawal.

**II.** The appeal of CB against judgment C.nr.407/2008 of the Municipal Court of Podujevë/Podujevo, dated 2<sup>nd</sup> February 2009 is **DISMISSED** as impermissible as filed by a non-entitled person and without legal interest.

### R E A S O N I N G

#### **I. PROCEDURAL BACKGROUND**

1. On 3<sup>rd</sup> November 2008, RSM from Podujevë/Podujevo as claimant filed

against the MUNICIPALITY of Podujevë/Podujevo as respondent a claim before the Municipal Court of Podujevë/Podujevo with allegations that being an employee of the Municipality of Podujevë/Podujevo from January 1971 till July 1990 he was allocated an apartment in Podujevë/Podujevo, “Zahir Pajaziti” Street nr.20, building P+5/7, floor II, entrance 2, consisting of 2 rooms, 1 kitchen, 1 bathroom, 1 toilet, 1 vestibule, 1 corridor and 1 storage by Decision nr.04-360-1397, dated 9<sup>th</sup> October 1987 issued in his name and signed contract on use nr.282, dated 3<sup>rd</sup> November 1987. Since in 1993 the claimant was not able to privatize the apartment as the Serbs discriminatorily did not transfer it to him, by the claim he pretends its privatization and recognition of his ownership over it. In *petitum* the claimant requests the court to confirm that he is the owner of the aforementioned apartment and to oblige the Directorate for Cadastre, Geodesy and Property - Podujevë/Podujevo to register it in his name.

2. Attached to the claim was Certificate nr.03-726 issued by the Directorate of Administration and Human Resources of the Municipality of Podujevë/Podujevo on 7<sup>th</sup> October 2008 to verify that RSM was employed by the Municipal Assembly of Podujevë/Podujevo from 1970 until July 1971. Presented also with the claim was Decision nr.04-360-1397 issued by the Secretary for Economy - the Municipal Assembly of Podujevë/Podujevo on 9<sup>th</sup> October 1987 based on Article 32 of the Law on Housing (Official Gazette of the SAPK No.11/83, 29/86 and 42/86), Article 202 of the Law on General Administrative Procedure (Official Gazette of the SFRY No. 32/78) and Article 232 of the Statute of the Municipality for allocation to RSM of a two-rooms apartment nr.20, floor 2, entrance 2, with a surface of 52.51 m<sup>2</sup> in “APJ” Street, Building P+5/7, Podujevë/Podujevo. Finally appended to the claim was contract on use nr.282, dated 3<sup>rd</sup> November 1987 signed on the basis of Article 37 of the Law on Housing between BVI – Housing Directorate - Podujevë/Podujevo as giver of the apartment and RSM as its occupancy right holder.

3. The claim was registered for its adjudication in C.nr.407/2008 of the Municipal Court of Podujevë/Podujevo. In its first instance proceedings no preliminary hearing was held as per Article 401 LCP. The main hearing was conducted in one session on 2<sup>nd</sup> February 2009 with the participation of RSM as claimant in person and the MUNICIPALITY of Podujevë/Podujevo as respondent, represented in the case by MS – Professional associate for legal contests, authorized by the Mayor with power of attorney Nr.01-1/08-02, issued on 20<sup>th</sup> January 2009 pursuant to Article 58, paragraph 1, sub-paragraph 1 of the Law No. 03/L-040 on Local Self-Government with general scope for all actions in proceedings before all courts with participation of the Municipality of Podujevë/Podujevo and validity till 28<sup>th</sup> February 2009. In this

session the claimant presented his claim, the representative of the respondent replied, in the evidentiary procedure the documents attached to the claim were administered and the final speeches were heard. No other procedural actions were taken in the first instance, *inter alia*, for any precision, amendment or modification of the claim in its objective and/or subjective scope.

4. By judgment C.nr.407/2008 of the Municipal Court of Podujevë/Podujevo, dated 2<sup>nd</sup> February 2009 it was approved the claim of RSM and it was confirmed that he is the owner of the apartment located in Podujevë/Podujevo, “Zahir Pajaziti” Street nr.20, Building P+5/7, floor II, entrance 2, consisting of 2 rooms, 1 kitchen, 1 bathroom, 1 toilet, 1 vestibule, 1 corridor and 1 storage, whereas the respondent the MUNICIPALITY of Podujevë/Podujevo was obliged to recognize his ownership right over this property and to allow changes in the cadastral books within 15 days after the entry into force of the judgment. It was decided each party to bear its own expenses. According to the reasoning, RSM after being allocated the above apartment for personal and family needs pursuant to Article 2, paragraph 1 of the Law on Housing based on his employment relationship with the Municipality of Podujevë/Podujevo had possessed it for more than 10 years and thus acquired the right on its permanent use. At no time could thereafter his contract on use could be terminated by the allocation right holder pursuant to Article 52 of the Law on Housing. Further the first instance court referred to Section 2.2 of UNMIK Regulation No. 60/2000 that any property right acquired according to the law applicable at the time of acquisition remains valid notwithstanding the change of the applicable law in Kosovo, except where the same regulation provides otherwise. Thus out of the validly acquired permanent use over the apartment based on employment relationship, its continuous possession, and the inability of the respondent as allocation right holder to renounce the contract on use of the claimant, he was recognized as it lawful owner.

5. Judgment C.nr.407/2008 of the Municipal Court of Podujevë/Podujevo, dated 2<sup>nd</sup> February 2009 was notified pursuant to Article 110, paragraph 1, first sentence LCP through service of its copies to the claimant RSM on 26<sup>th</sup> October 2009, and to the respondent the MUNICIPALITY of Podujevë/Podujevo on 23<sup>rd</sup> October 2009, verified by acknowledgement receipts under Article 121 LCP.

6. On 28<sup>th</sup> October 2009, on behalf of the respondent the MUNICIPALITY of Podujevë/Podujevo an appeal C.Nr.2/2009, dated 23<sup>rd</sup> October 2009 was filed against judgment C.nr.407/2008 of the Municipal Court of Podujevë/Podujevo, dated 2<sup>nd</sup> February 2009 by MS – Professional associate for juridical contests. The grounds invoked were for substantial violations of the provisions of the contested procedure as

per Article 181, paragraph 2, item a) LCP, incomplete and erroneous determination of factual situation as per Article 181, paragraph 1, item b) LCP, and erroneous application of the substantive law as per Article 181, paragraph 1, item c) LCP. The request to the second instance was to annul the challenged judgment in its entirety with remittal of the case to the first instance court for retrial.

7. As required by Article 187, paragraph 1 LCP, on 3<sup>rd</sup> November 2009 a copy of this first appeal was served to RSM in person for reply within 7 days. It was submitted to the case on 4<sup>th</sup> November 2009, within the deadline. The position expressed was that the challenged judgment had been based on the law and the evidence administered in the main hearing, while the appeal did not provide new facts or evidence, not reviewed by the Municipal Court of Podujevë/Podujevo and should not have been filed just because it is allowed to. Further, RSM stated that the first instance court had found discriminatory measures applied against him as an Albanian employee dismissed from work by the Serbian forces and was not allowed to participate in the privatization of the apartment. For the procedural ground under Article 182, paragraph 2, item a) LCP, invoked in the appeal, he pointed in the reply that since the trial Judge Shaban Ganiu passed away on 9<sup>th</sup> February 2009, the case was re-assigned to Judge Muharrem Sadiku who drafted the judgment.

8. On 31<sup>st</sup> December 2009, CB from Kuršumlija, Serbia filed an appeal to the District Court of Prishtinë/Priština against judgment C.nr.407/2008 of the Municipal Court of Podujevë/Podujevo, dated 2<sup>nd</sup> February 2009 stating that he had been unofficially informed of the case initiated by RSM, a person unknown to him, against the Municipality of Podujevë/Podujevo. CB further contended being the legitimate exclusive owner of the contested two-room apartment with a surface of 52.51 m<sup>2</sup> in Podujevë/Podujevo, “Nuhi Pajaziti” Street Nr.10 (P+P+7) and that unlawfully had he been denied the ownership. CB requested the District Court of Prishtinë/Priština to annul judgment C.nr.407/2008 of the Municipal Court of Podujevë/Podujevo, dated 2<sup>nd</sup> February 2009 as entirely illegal and to recognize his ownership. Attached to this second appeal was Decision Nr.04-360-345 of the Department of Economy, Urbanism, Housing Utilities and Property Legal Affairs of the Municipal Assembly of Podujevë/Podujevo, dated 19<sup>th</sup> November 1992 for allocation on lease of the apartment with a surface of 52.51 m<sup>2</sup> in residential building P+P+7, II floor, nr.13, “JNA” St., Podujevë/Podujevo – social ownership to CB as employee of the Primary School “Kosta Vojinovic” based on Articles 5 and 7 of the Law on Housing (Official Gazette of Republic of Serbia No. 50/92). Appended to the appeal was also contract nr.496, dated 24<sup>th</sup> November 1992 concluded between JSP (Public Housing

Company)-Podujevë/Podujevo as lessor and CB as lessee for leasing for an indefinite period of time of the apartment in Podujevë/Podujevo, “JNA” Street, nr.10 based on Decision Nr.04-360-345, dated 19<sup>th</sup> November 1992. Finally presented was contract nr.360-88, dated 11<sup>th</sup> March 1993 on purchase of apartment nr.13 located in “JNA” Street nr.10, Podujevë/Podujevo with a surface of 52.51 m<sup>2</sup>, consisting of 2 rooms, 1 kitchen, 1 dining room, 1 bathroom with toilet, 1 lobby, concluded between the Municipal Assembly of Podujevë/Podujevo as seller and CB as buyer, attested with Vr.nr.401/93 by the Municipal Court of Podujevë/Podujevo on 12<sup>th</sup> August 1993.

9. Pursuant to Article 188, paragraph 1 LCP the appeal of the Municipality of Podujevë/Podujevo of 28<sup>th</sup> October 2009 and the appeal of CB of 31<sup>st</sup> December 2009 were sent by the Municipal Court of Podujevë/Podujevo to the District Court of Prishtinë/Priština and registered for adjudication as AC.nr.1446/09.

10. By Ruling ref.nr.2012.OPEJ.0100-001 of the Vice President of the Assembly of EULEX Judges pursuant to Article 5, paragraphs 1, item c) and paragraph 7 of the Law No.03/L-053 on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (Official Gazette No.27/08) this second instance civil case was taken over in the EULEX executive mandate and initially assigned to a mixed panel of the District Court of Prishtinë/Priština under Article 5, paragraphs 2, first sentence and paragraphs 4 and 5 of the same law.

11. AC.nr.1446/2009 of the District Court of District Court of Prishtinë/Priština as non-completed on 31<sup>st</sup> December 2012, pursuant to the transitional rule of Article 39, paragraph 1 of the Law No. 03/L-199 on Courts (Official Gazette No 49/11) on 1<sup>st</sup> January 2013 became *ex lege* a case of the Court of Appeals and was re-registered under a new file number – AC.nr.1469/12, evidenced by Letter GJ.a.nr.24/2013 of the Court of Appeals, dated 15<sup>th</sup> February 2013.

12. By Decision ref.nr.2013.OPEJ.0279-001 of the President of the Assembly of EULEX Judges, dated 24<sup>th</sup> June 2013 this second instance civil case was re-assigned according to Article 4, paragraph 6 of the Guidelines for Case Selection and Case Allocation for EULEX Judges in Civil Cases, last amended on 11<sup>th</sup> December 2012, to a panel composed of the current EULEX Judge as Presiding and two local Judges as panel members. The latter were designated by the President of the Court of Appeals with Decision AGJ.nr.298/13, dated 17<sup>th</sup> July 2013.

13. Being legally composed in conformity with the specific requirements of Article 5, paragraphs 1, 4, and 5 of the Law No. 03/L-053 on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo, this panel of the

Court of Appeals is empowered to decide AC.nr.1469/12 based on its general second instance competence in civil cases under Article 15, paragraph 2 LCP and Article 18, paragraph 1, sub-paragraph 1 of the Law No.03/L-199 on Courts.

## **II. ADMISSIBILITY REVIEW OF THE APPEALS IN THE SECOND INSTANCE**

14. In order to be able to decide the two appeals lodged in AC.nr.1469/2012 of the Court of Appeals on the merits, the panel needs first to examine whether the legal requirements for their procedural admissibility have been met with respect to each one of them. If belated, incomplete or impermissible, and not dismissed by the first instance pursuant to Article 186, paragraph 1 LCP, the appeal has to be dismissed by the second instance without a hearing pursuant to Article 196 LCP.

### ***Appeal of the MUNICIPALITY of Podujevë/Podujevo, dated 28<sup>th</sup> October 2009***

15. The appeal of the MUNICIPALITY of Podujevë/Podujevo is not *belated* as per Article 196, first hypothesis in conjunction with Article 186, paragraph 2 LCP. Judgment C.nr.407/2008 of the Municipal Court of Podujevë/Podujevo, dated 2<sup>nd</sup> February 2009 was served to this party in compliance with Article 107, paragraph 1 and Article 110, paragraph 1, first sentence LCP on 23<sup>rd</sup> October 2009. Its appeal was lodged on 28<sup>th</sup> October 2009 to the District Court of Prishtinë/Priština through the Municipal Court of Podujevë/Podujevo in conformity with Article 186 LCP. Thus it should be deemed filed in due time in accordance with Article 127, paragraph 1 LCP as served to the court before the 15-days period of time, prescribed by Article 176, paragraph 1, first sentence LCP, elapsed under the terms of Article 126, paragraph 5 LCP on 9<sup>th</sup> November 2009.

16. The appeal of the MUNICIPALITY of Podujevë/Podujevo is not *incomplete* as per Article 196, second hypothesis in conjunction with Article 179, paragraph 2 LCP. It contains all the requisites demanded by Article 178, items a) – d) LCP – a statement specifying the judgment against which it is filed, a motion to reverse it completely, the grounds for its challenging and signature of the representative of the appellant.

17. The appeal of the MUNICIPALITY of Podujevë/Podujevo is *impermissible* as per Article 196, third hypothesis in conjunction with Article 186, paragraph 3, third hypothesis LCP. Given the status of this legal person-respondent in the first instance, it was filed by a party, legitimated to be the appellant in the second instance as per Article 176, paragraph 1, first instance LCP *that subsequently withdrew from the same appeal.*

18. In the course of the taking over procedure conducted under Article 5, paragraph 7, first sentence of the Law No. 03/L-053 on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo and Article 3, paragraph 6 of the Guidelines for Case Selection and Case Allocation for EULEX Judges in Civil Cases, last amended on 11<sup>th</sup> December 2012, all parties were given the opportunity for statements on the transfer of the second instance jurisdiction in this case to EULEX. On that occasion, the MUNICIPALITY of Podujevë/Podujevo by its Submission with ref.nr.03/106-07, dated 13<sup>th</sup> November 2012 declared that on 25<sup>th</sup> November 2009 it *withdrew* its appeal filed against judgment C.nr.407/2008 of the Municipal Court of Podujevë/Podujevo, dated 2<sup>nd</sup> February 2009 for the lack of passive legitimacy as the dispute had been already resolved by the Housing and Property Claims Commission (HPCC) of the Housing and Property Directorate (HPD). The MUNICIPALITY of Podujevë/Podujevo hence took the stance that regardless of the outcome of the second instance case, due to the lack of its passive legitimacy, no rights and obligations could be created and applied for the apartment with the ownership decided by the appealed judgment. Submission ref.nr.03/106-07, dated 13<sup>th</sup> November 2012 was signed by FR – Professional associate for legal proceedings based on authorization Nr. 02/166-02, issued by the Mayor of the Municipality of Podujevë/Podujevo on 9<sup>th</sup> July 2012 pursuant to Article 58, point b) of the Law No. 03/L-040 on Local Self-Government and Article 56, point b) of the Municipal Statute, with general scope and validity until 31<sup>st</sup> December 2012.

19. As the withdrawal of the appeal, mentioned in submission ref.nr.03/106-07, dated 13<sup>th</sup> November 2012 as lodged on 25<sup>th</sup> November 2009, has not been enclosed in the case file and recorded in the respective annual registry of the District Court of Prishtinë/Priština, to rectify it, the MUNICIPALITY of Podujevë/Podujevo filed on 1<sup>st</sup> August 2013 a new submission ref.nr.03/87, dated 31<sup>st</sup> July 2013 explicitly stating that in view of the entry into force of the Law No. 04/L-061 on Sale of Apartments on Which There is a Tenure Right in 2012, *they withdraw their appeal against judgment C.nr.407/08 of the Municipal Court of Podujevë/Podujevo, dated 2<sup>nd</sup> February 2009.* This withdrawal complies with the requirements for its admissibility. *At first place*, according to Article 177, paragraph 1 LCP a *party* may waive his/her right to appeal from the moment the judgment has been served on him/her; according to Article 177, paragraph 2 LCP the appellant may withdrawal its appeal before the court of second instance. Being *respondent* in the first instance - *appellant* in the second instance, the MUNICIPALITY of Podujevë/Podujevo is entitled by Article 177, paragraph 2 LCP to withdraw its own appeal. The legal remedy has been *disposed of by the litigant that*

*has submitted it* in compliance with Article 3, paragraph 1 LCP and the freedom of this disposal guaranteed by the same provision. *At second place*, the deadline set forth by Article 177, paragraphs 1 and 2 LCP for this procedural action has been observed. The withdrawal was declared on 1<sup>st</sup> August 2013 *after* judgment C.nr.407/08 of the Municipal Court of Podujevë/Podujevo, dated 2<sup>nd</sup> February 2009 was served to the MUNICIPALITY of Podujevë/Podujevo on 23<sup>rd</sup> October 2009 and *before* the second instance has rendered its decision on the appeal. Therefore its withdrawal stated on 1<sup>st</sup> August 2013 in the course of the non-finalized pending AC.nr.1469/12 of the Court of Appeals is within the deadline prescribed by Article 177, paragraph 2 LCP and is not belated. *At third place*, being declared out of hearing, the withdrawal was made by a submission, filed to the Court of Appeals in the written form required by Article 99, paragraph 1, first sentence LCP with the content envisaged in Article 99, paragraph 2, second instance and paragraph 3 LCP. There are no special requisites demanded by Article 177, paragraph 2 LCP. Hence, the withdrawal is not incomplete for the lack of mandatory content, nor it is otherwise formally deficient. Being *legally* irrevocable as per Article 177, paragraph 3 LCP it was not *de facto* revoked by the appellant. On the contrary, it was identically reiterated three times by this litigant – on 25<sup>th</sup> November 2009, 14<sup>th</sup> November 2012 and 1<sup>st</sup> August 2013. *At fourth place*, the withdrawal of the appeal is always a *unilateral* procedural action of the *appellant*. Regardless whether its has been declared before or after the reply to the appeal has been submitted by the opposing party pursuant to Article 187, paragraph 1 LCP, the consent of the appellate – explicit or tacit - is not a normative pre-requisite for the withdrawal of the appeal to produce its legal effect and/or for the second instance court to dismiss it pursuant to Article 195, item a) and Article 196 LCP. Sufficient is the appellant's statement for withdrawal of the appeal as per Article 177, paragraph 2 and Article 186, paragraph 3 LCP, while the dismissal does not depend on the appellate's position at all. Article 261 LCP is non-applicable – it regulates *the withdrawal of the claim* in the first instance, while *the withdrawal of the appeal* in the second instance is governed by Article 177, paragraph 2 LCP. *At fifth place*, submission ref.nr.03/87, dated 31<sup>st</sup> July 2013 was signed and filed by FR, representative of the MUNICIPALITY of Podujevë/Podujevo in judicial proceedings with Authorization Nr.02/114-02 issued by the Mayor on 2<sup>nd</sup> April 2013 pursuant to Article 58, point b) of the Law No. 03/L-040 on Local Self-Government and Article 56, point b) of the Municipal Statute with general scope and validity till 31<sup>st</sup> December 2013. This representation is regular. The MUNICIPALITY of Podujevë/Podujevo as legal person under Article 5, first sentence of the Law Nr. 03/L-040 on Local Self-Government has the procedural capacity to sue and to be sued in the courts pursuant to Article 5, second sentence, item a) of the Law



Nr.03/L-040 on Local Self Government and Article 73, paragraph 1 LCP. In the proceedings it might conduct actions through its legal representative determined by law or statute - Article 75, paragraph 3 LCP or an authorized representative – Article 85, paragraph 1 and Article 89 LCP. *Legal representative* of the MUNICIPALITY of Podujevë/Podujevo is its Mayor who, as the highest executive municipal body under Article 56 of the Law Nr. 03/L-040 on Local Self Government, is empowered by the general provision of Article 58, item a) of the same law, and the special provision of Article 58, item a) of the Statute No.01-1/298-10, dated 12<sup>th</sup> October 2009 with the competence to represent the MUNICIPALITY of Podujevë/Podujevo and to act on its behalf. Being explicitly determined as the legal representative of this municipality both by the applicable law and its general act pursuant to Article 75, paragraph 3 LCP, the Mayor is empowered to personally designate its authorized representative in this case - Article 85, paragraph 1 LCP and the scope of the authorization - Article 89 and Article 90, paragraph 1 LCP. In compliance with these rules, submission ref.nr.03/87, dated 31<sup>st</sup> July 2013 was filed on 1<sup>st</sup> August 2013 on behalf of the MUNICIPALITY of Podujevë/Podujevo for withdrawal of the appeal in AC.nr.1469/12 of the Court of Appeals, signed by FR, duly authorized to represent it by Authorization Nr. 02/114-02 issued by its Mayor on 2<sup>nd</sup> April 2013 based on the special provisions of Article 58, point b) of the Law No. 03/L-040 on Local Self-Government and Article 56, point b) of the Municipal Statute, and the general norms of Article 75 and Article 77, paragraph 1 LCP. The withdrawal was declared before this second instance court on 1<sup>st</sup> August 2013 within the term of validity of this authorization (2<sup>nd</sup> April – 31<sup>st</sup> December 2013). It is general in scope for all proceedings before all courts in which the MUNICIPALITY of Podujevë/Podujevo is a party, as well as for all procedural actions in their course. Though the party has not specified in detail this authorization of its representative, who is not attorney-at-law, no express authorization is needed for withdrawal of the appeal as per Article 91, paragraph 1 LCP. Applicable is the special provision of Article 91, paragraph 2 LCP stating that the authorized representative of a party who is a *legal person*, what is exactly the status of the MUNICIPALITY of Podujevë/Podujevo in the case, may even without being an attorney-at-law undertake all the actions under Article 91, paragraph 1 LCP, including withdrawal of the appeal, *without needing an express authorization to that effect*. In conformity with this, submission ref.nr.03/87, dated 31<sup>st</sup> July 2013 was duly filed by FR for the MUNICIPALITY of Podujevë/Podujevo to the Court of Appeal on 1<sup>st</sup> August 2013 based on the Authorization Nr.02/114-02, dated 2<sup>nd</sup> April 2013 issued by the Mayor which being general, non-detailed regularly authorizes him by itself to withdraw the appeal of this appellant - legal person pursuant to Article 91, paragraph 2 LCP without

the need of an additional express authorization under Article 91, paragraph 1 LCP. *At sixth place*, the formulated motives for this withdrawal of the appeal related to the lack of passive legitimacy the MUNICIPALITY of Podujevë/Podujevo, the existence of a final HPCC decision on the dispute, the entry into force of the Law No. 04/L-061 on Sale of Apartments on Which There is a Tenure Right (Official Gazette No. 1/12), are all equally irrelevant. Article 177, paragraph 2 LCP entitles the appellant to freely dispose of the appeal as ordinary legal remedy used as per Article 176, paragraph 1, first sentence, while the second instance court is not empowered to review the reasons for this disposal.

20. Summarizing, complied with are all legal conditions foreseen for validity of the withdrawal of the appeal as a unilateral procedural action of the appellant, renouncing the legal remedy protection previously sought in this second instance proceeding and precluding the possibility for its future pursuit at the appellate level. The appeal has been withdrawn in its *entirety* against judgment C.nr.407/2008 of the Municipal Court of Podujevë/Podujevo, dated 2<sup>nd</sup> February 2009. Therefore after its submission in the course of the proceedings in AC.nr.1469/12 of the Court of Appeals the appeal of the MUNICIPALITY of Podujevë/Podujevo as withdrawn has become impressible under Article 186, paragraph 3, third hypothesis LCP and as such shall be dismissed based on Article 195, item a) and Article 196 LCP.

***Appeal of CB, dated 31<sup>st</sup> December 2009***

21. On 31<sup>st</sup> December 2009, CB submitted through the Municipal Court of Podujevë/Podujevo to the District Court of Prishtinë/Pristina his personally signed appeal against “judgment/decision C.nr.407/08” with request for its annulment and other content detailed in paragraph 8. This second appeal is impermissible as per Article 196 in conjunction with Article 186, paragraph 3, first and last hypotheses LCP as filed *by non-entitled person with no legal interest in its filing*.

22. Chapter XIII LCP regulates *the appeal against judgments* as the *ordinary legal remedy* in the contested civil procedure. According to Article 176, paragraph 1, first sentence LCP only the *parties* may file an appeal against a judgment rendered at first instance within fifteen (15) days after its copy has been served to it, unless another period of time is prescribed by the present law. Thus Article 176, paragraph 1, first sentence LCP, titled “*Right of Appeal*”, explicitly and restrictively grants the right of this regular legal remedy to the *parties* in the proceedings only, denying it to all other natural and legal persons not having acquired the procedural status of litigants in the respective civil case. In line with this limitation, according to Article 176, paragraph 2

LCP only an appeal filed in due time by an *entitled person* shall stay the execution of the challenged part of the judgment. The appeal of a non-entitled person even if being *de facto* lodged could not produce this *suspension effect* over the entry into force of the first instance judgment and its executability. It does not also have *the devolution effect* under Article 176, paragraph 3 LCP transferring the authority to decide the case on the appeal against the first instance judgment to the second instance court. Further, the rules for disposal of the appeal by waiver of the right to submit it or withdrawal after its submission are formulated by Article 177, paragraphs 1 – 3 LCP with respect to the *parties* in the proceedings. Similarly, all requirements for the content of the appeal under Article 177 LCP, and for the new facts and evidence to be presented and proposed before the second instance court under Article 180, paragraphs 1 – 2 LCP are set forth in regards to the *appellant* that has filed an admissible appeal, having *the procedural legitimacy* envisaged in Article 176, paragraph 1, first sentence LCP, and *the legal interest* demanded by Article 2, paragraph 4 LCP to challenge the judgment rendered in the first instance, unfavourable for its pretended material right(s).

23. The second appeal in AC.nr.1469/12 of the Court of Appeals was *de facto* filed by CB, however, without having *de jure* the right of appeal under Article 176, paragraph 1, first sentence LCP since contrary to this provision *he was not party in the first instance proceedings* completed by judgment C.nr.407/08 of the Municipal Court of Podujevë/Podujevo, dated 2<sup>nd</sup> February 2009. Without having this procedural capacity of a party, explicitly demanded by Article 176, paragraph 1, first sentence LCP, CB was not legitimated to initiate this second instance proceeding against judgment C.nr.407/2008 of the Municipal Court of Podujevë/Podujevo, dated 2<sup>nd</sup> February 2009 on any of the possible grounds under Articles 181 – 184 LCP for its challenging with any possible motion for its full or partial reversal.

24. CB was not *claimant* in C.nr.407/2008 of the Municipal Court of Podujevë/Podujevo. The claim for confirmation of ownership over the apartment in Podujevë/Podujevo, “Zahir Pajaziti” Street nr.20, building P+5/7, floor II, entrance 2 in this case was submitted by RSM from Podujevë/Podujevo as the *only claimant in this civil litigation*. There is no ambiguity in the personal individualization of RSM or his procedural status indicated in the requisite content of the claim. By its submission on 3<sup>rd</sup> November 2008 to the Municipal Court Podujevë/Podujevo in written form prescribed by Article 252 LCP, RSM became *ex lege* the claimant in the contested procedure initiated by it according to Article 2, paragraph 1 LCP. The claim was not subsequently *corrected* as per Article 102, paragraph 1 LCP, *amended* as per Article 257, paragraph 1 in conjunction with Article 258 LCP or *modified* as per Article 257,

paragraph 2 LCP in any moment and in any form, *inter alia*, in order to substitute RSM as the claimant; he had not been also *joined by another claimant* pursuant to Article 264, paragraph 2 LCP in joint litigation under Article 264, paragraph 1 LCP. CB had not filed a claim in C.nr.407/08 of the Municipal Court of Podujevë/Podujevo against RSM and the MUNICIPALITY of Podujevë/Podujevo pretending the ownership over the whole contested apartment under the terms of Article 266, paragraph 1 LCP – theoretically and practically is thus *excluded* the possibility for his procedural status of a claimant acquired through *main interference* in the first instance proceeding as per Article 266, paragraph 1 LCP. Therefore, the subjective scope of the contest remained unchanged during the entire course of C.nr.407/2008 of the Municipal Court of Podujevë/Podujevo - being initiated by RSM it was adjudicated and decided with respect to this natural person as the one and only claimant in the case. Contrariwise, CB *was not formally constituted* in C.nr.407/08 of the Municipal Court of Podujevë/Podujevo as a *claimant* and did not *de facto* participate as such in the first instance adjudication of the dispute.

25. CB was not a *respondent* in the first instance. The claim in C.nr.407/08 of the Municipal Court of Podujevë/Podujevo was submitted against the MUNICIPALITY of Podujevë/Podujevo as the sole respondent in the dispute. The lawsuit is without obscurities or other irregularities in the regard – its title part names explicitly the MUNICIPALITY of Podujevë/Podujevo as per Article 253, paragraph 1, item f) in conjunction with Article 99, paragraph 2 LCP as the legal person with respect to which issuance of declaratory judgment on the pretended ownership right is sought as per Article 254, paragraph 1 LCP. Accordingly, *Lis Pendens* under Article 262, paragraph 1 LCP was established through the service of this claim only in regard to the MUNICIPALITY of Podujevë/Podujevo. Again, it was not *precised* according to Article 102, paragraph 1 LCP, *amended* according to Article 257, paragraph 1 in conjunction with Article 258 LCP or *modified* according to Article 257, paragraph 2 LCP – hence, the initial subjective scope of the claim was not at all altered in the subsequent course of the first instance proceeding and CB had not become respondent *in lieu* of the MUNICIPALITY of Podujevë/Podujevo. There was also no joint litigation between them *the claim was not initially filed* against the MUNICIPALITY of Podujevë/Podujevo and CB as two separate respondents under the conditions laid down in Article 264, paragraph 1 LCP, nor *was later expanded* to include CB as an additional respondent pursuant to Article 264, paragraph 2 LCP. The trial was conducted adhering to these subjective limits of the litigation defined by the claim with the MUNICIPALITY of Podujevë/Podujevo being the first and last respondent

in it, and *vice versa* CB not having *de jure* place or *de facto* participation of *opposing party* to the dispute resolved in the first instance.

26. CB was not a *third party* under Article 271, paragraph 1 LCP in the first instance as none of the mandatory requirements for the acquisition of this procedural status set forth by the provisions of Chapter XVII LCP have been fulfilled. *Firstly*, in C.nr.407/2008 of the Municipal Court of Podujevë/Podujevo there was *no statement* of CB to join as a third party its proceedings submitted in writing or made orally in the hearing on 2<sup>nd</sup> February 2009 according to Article 271, paragraph 3 LCP; no such statement had been served to the claimant RSM and/or the respondent the MUNICIPALITY of Podujevë/Podujevo pursuant to Article 271, paragraph 3 LCP for *objections* under Article 272, paragraph 2 LCP; no ruling had been issued granting the participation of CB as third party as per Article 272, paragraph 3 LCP. Consequently, this natural person had not *joined* C.nr.407/08 of the Municipal Court of Podujevë/Podujevo according to Article 274, paragraph 1, first sentence LCP as a third party at any state of affairs, nor had he taken any procedural actions under Article 274, paragraph 1, second sentence LCP in the first instance in such or any other capacity. In sum, CB had not requested himself in any form or at any moment in the course of C.nr.407/08, nor had he been admitted by the Municipal Court of Podujevë/Podujevo to intervene as a third party in order to support and assist any main litigant as per Article 271, paragraph 1 LCP. Therefore, CB *had not become a third party* in C.nr.407/08 of the Municipal Court of Podujevë/Podujevo after such *intervention* upon his own initiative. *Secondly*, neither the claimant RSM, nor the respondent the MUNICIPALITY of Podujevë/Podujevo had *impleded* CB to the proceedings as a third party—he had never been notified for any hearing in C.nr.407/08 of the Municipal Court of Podujevë/Podujevo. Hence, no summon under Article 276, paragraph 2 LCP had been sent and served to CB to appear before the Municipal Court of Podujevë/Podujevo at any stage of the trial in C.nr.407/2008 prior to its completion on 2<sup>nd</sup> February 2009. Inexistent are all prerequisites set by Article 276, paragraphs 1 – 3 LCP for impleading of CB by any of the litigants in this contest. *Thirdly*, since CB had not become a third party in the first instance, impermissible *de jure* and non-utilized *de facto* was the possibility to act in the proceeding in lieu of any of the main parties, substituting the claimant or the respondent and excluding it from participation in the further proceeding pursuant to Article 273, paragraph 5 LCP. In synopsis, *there is not a single document in the case file reflecting any formal admission of CB as a third party and/or his factual participation in the first instance in third party's procedural capacity.*

27. The legitimacy of CB as appellant could not be justified with procedural status of a party in this litigation, *acquired in the second instance* directly. *Firstly*, his appellant's status in AC.nr.1469/12 of the Court of Appeals could not be derived as required by Article 176, paragraph 1, first sentence LCP from his litigant's status in C.nr.407/2008 of the Municipal Court of Podujevë/Podujevo—as CB was not claimant, respondent or a third party in the first instance, *ex lege* excluded is his entitlement to act as appellant in the second instance based on the non-complied general rule of Article 176, paragraph 1, first sentence LCP. *Secondly*, the conditions for joinder of CB as a third party in the second instance proceedings in AC.nr.1469/12 of the Court of Appeals have not been fulfilled as well. The appeal filed by CB on 31<sup>st</sup> December 2009 to the District Court of Prishtinë/Priština contains only grounds for challenging judgment C.nr.407/2008 of the Municipal Court of Podujevë/Podujevo, dated 2<sup>nd</sup> February 2009 for a substantial procedural violation under Article 182, paragraph 2, item i) LCP (non-attendance of the trial hearings by CB due to non-summoning) and erroneous application of the substantive law under Article 184 LCP (ownership right allegedly acquired by him over the contested apartment as its exclusive owner). The request in the appeal is for annulment of judgment C.nr.407/2008 of the Municipal Court of Podujevë/Podujevo, dated 2<sup>nd</sup> February 2009 with rejection of the claim. His appeal neither textually, nor with numerical reference to Article 271 LCP incorporates any statement of CB *to join* the second instance proceeding initiated on 28<sup>th</sup> October 2009 by the appeal of the MUNICIPALITY of Podujevë/Podujevo against judgment C.nr.407/08 of the Municipal Court of Podujevë/Podujevo, dated 2<sup>nd</sup> February 2009. In the absence of the procedural motion demanded by Article 271, paragraph 3 LCP – an explicit written request of CB to intervene in the second instance case as a third party for supporting one of the litigants, specified in the same request with the legal interest in such assisting, the interference procedure under Article 271 – 273 LCP could not be considered initiated, hence should not have been conducted and decided by a ruling on the participation of CB as a third party in AC.nr.1469/12 of the Court of Appeals. Finally, pursuant to Article 271, paragraph 2 LCP *the third party may join the proceedings during the entire course until they are completed by a final decision on the claim, as well as during the proceeding initiated upon the filing of an extraordinary legal remedy*. None of these alternative conditions for interference of CB as a third party in the case have been met. The appeal of the MUNICIPALITY of Podujevë/Podujevo was withdrawn pursuant to Article 177, paragraph 2 LCP and dismissed as impermissible due to its withdrawal pursuant to Article 195, paragraph 1, item a), Article 196 and Article 186, paragraph 3, third hypothesis LCP by point I of the enacting clause of the present ruling. This second instance court decision could

not be appealed (Article 176, paragraph 1, first sentence LCP) – hence, with its issuance the second instance proceeding in AC.nr.1469/12 of the Court of Appeals in its admissible part has been finished which automatically has lead to the entry into force of judgment C.nr.407/08 of the Municipal Court of Podujevë/Podujevo, dated 2<sup>nd</sup> February 2009, challenged by this already withdrawn regular legal remedy. Since *this contested proceeding has been thus completed by a final judgment on the claim* filed by RSM for the ownership right over apartment nr.20, floor II, entrance nr.2, with a surface of 52.51 m<sup>2</sup> in “Zahir Pajaziti” St. Building P+5/7, Podujevë/Podujevo, according to Article 271, paragraph 2, first sentence LCP, it may not be joined at the appellate level by any natural or legal person as a third party, including CB. Such *interference (joinder)* is permissible only until *there is a pending trial* and is *vice versa* impermissible after the trial, being already completed by a final judgment on the claim, *is not pending* any more in the first or second instance. So far there is no extraordinary legal remedy initiated which excludes the interference of any third party, including CB, under the terms of Article 271, paragraph 2, second hypothesis LCP. For the same reason – lack of an on-going first or second instance proceeding, non-completed by a final decision on the claim, or extraordinary legal remedy used, *the impleading* of CB as a third party pursuant to Article 276 LCP by any of the litigants in this case, apart from not being requested, is equally impermissible as is the interference pursuant to Article 271, paragraph 1 LCP upon his own initiative. Summarizing, *CB has not become a third party directly in the second instance*—his legitimacy of an appellant in AC.nr.1469/12 of the Court of Appeals could not be based on *this non-acquired procedural status of a third party* under Article 271, paragraph 1 or Article 276 LCP, while his appeal against judgment C.nr.407/08 of the Municipal Court of Podujevë/Podujevo, dated 2<sup>nd</sup> February 2009 has remained as initially filed *without the third party’s entitlement to use this ordinary legal remedy* pursuant to Article 273, paragraph 3 LCP. *Thirdly*, none of the alternative legal grounds set in Article 269, paragraph 1 LCP exists for *consolidated joint litigation* in this case – neither according to the law, nor due to the nature of the legal relationship the dispute in it has to be resolved in the same manner in relation to RSM and CB or in relation to the MUNICIPALITY of Podujevë/Podujevo and CB. This is why they could not be considered a *single party* in the contest which automatically excludes the possibility a procedural action of any of the main parties to be extended to CB as its consolidated joint litigant that has failed to undertake it pursuant to Article 269, paragraph 1 LCP. In particular, *non-applicable* is the rule emanating from the same Article 269, paragraph 1 LCP that *all joint litigants, having guaranteed by law participation in the trial as a main party, have the right to appeal the judgment*

*rendered without their participation in the first instance proceeding.* In the absence of consolidated joint litigation the appeal of the MUNICIPALITY of Podujevë/Podujevo could not be assumed extended to CB as per Article 269, paragraph 1 LCP, and this norm could not serve as legal basis for his *ex officio* constitution by the second instance in the appellate proceeding, regardless of his non-participation in C.nr.407/08 of the Municipal Court of Podujevë/Podujevo. This automatically excludes also prevalence of his non-withdrawn appeal over the withdrawn appeal of the MUNICIPALITY of Podujevë/Podujevo under Article 269, paragraph 2 LCP. As the MUNICIPALITY of Podujevë/Podujevo and CB are not in consolidated joint litigation, the procedural legitimacy of CB to challenge judgment C.nr.407/2008 of the Municipal Court of Podujevë/Podujevo, dated 2<sup>nd</sup> February 2009 could not be extracted from the appeal of the MUNICIPALITY of Podujevë/Podujevo - in view of the non-applicability of Article 269, paragraph 1 LCP it has never broadened its legal effect to CB. In sum, CB has not become appellant in the case based on its *capacity of a party in the first instance proceedings* challenging judgment C.nr.407/2008 of the Municipal Court of Podujevë/Podujevo, dated 2<sup>nd</sup> February 2009 as per Article 176, paragraph 1, first sentence LCP; he has not joined AC.nr.1469/12 of the Court of Appeals *intervening as a third party* because of the completion of the proceeding by a final decision on the claim after the withdrawal of the appeal of the MUNICIPALITY of Podujevë/Podujevo according to Article 271, paragraph 2 LCP; at last, he has not become appellant in AC.nr.1469/2012 of the Court of Appeals out of *consolidated joint litigation* due to expansion of the appeal filed by the MUNICIPALITY of Podujevë/Podujevo to him as per Article 269, paragraph 1 LCP and/or stay of its withdrawal as per Article 269, paragraph 2 LCP.

**28.** Therefore the appeal of CB against judgment C.nr.407/08 of the Municipal Court of Podujevë/Podujevo, dated 2<sup>nd</sup> February 2009 is impermissible according to Article 186, paragraph 3, first hypothesis LCP *as filed by a person not entitled to file it.* Without being a party in the first and/or second instance proceeding, CB did not have the right to this legal remedy recognized by Article 176, paragraph 1, first sentence LCP expressly and restrictively to the parties in the respective litigation only. Lacking this mandatory procedural capacity of a party, CB was not legitimated to challenge judgment C.nr.407/2008 of the Municipal Court of Podujevë/Podujevo, dated 2<sup>nd</sup> February 2009, whereas his appeal is impermissible under Article 186, paragraph 3, first hypothesis LCP and shall be dismissed pursuant to Article 195, paragraph 1, item a) and Article 196 LCP.



29. The appeal of CB is also impermissible according to Article 186, paragraph 3, last hypothesis LCP for being submitted *without legal interest* in challenging judgment C.nr.407/2008 of the Municipal Court of Podujevë/Podujevo, dated 2<sup>nd</sup> February 2009, though mandatory pursuant to Article 2, paragraph 4 LCP for any procedural action taken in contested procedure. *Firstly*, according to Article 167, paragraph 1 LCP *a final judgment shall produce a legal effect only between or among the litigants, except where, due to the nature of the contested relationship, or subject to a provision of the law, it produces an affect against third parties*. None of these two alternatives exist with respect to CB. Since he was not a party in the first instance proceeding, judgment C.nr.407/2008 of the Municipal Court of Podujevë/Podujevo, dated 2<sup>nd</sup> February 2009 *did not produce any legal effect for him under the terms of Article 167, paragraph 1, first hypothesis LCP*. As long as the subjective scope of the claim – subject – matter in C.nr.407/08 of the Municipal Court of Podujevë/Podujevo was not exceeded by the judgment rendered in the first instance its *res judicata* pursuant to Article 167, paragraph 1, first hypothesis and Article 166, paragraph 1 LCP is restricted to the claimant RSM and the respondent the MUNICIPALITY of Podujevë/Podujevo. Given these subjective limits of the *res judicata* formed by judgment C.nr.407/2008 of the Municipal Court of Podujevë/Podujevo, dated 2<sup>nd</sup> February 2009, *it has no legal force to third persons like CB – non-parties in the case* pursuant to Article 167, paragraph 1, first hypothesis and Article 166, paragraph 1 LCP. *Neither due to the nature of the contested relationship in the case, nor based on any provision of the law*, the legal effect of judgment C.nr.407/2008 of the Municipal Court of Podujevë/Podujevo, dated 2<sup>nd</sup> February 2009 could be considered extended to CB as a third person under the terms of Article 167, paragraph 1, second hypothesis LCP. Namely, such expansion could not be justified by *legal succession* since it has not occurred in any form during the proceeding between any of the parties and CB. In particular, the contested apartment was not alienated at any stage of the proceeding in the first and/or second instance by any of the litigants to CB in the hypothesis of Article 263, paragraph 1 LCP – hence, judgment C.nr.407/08 of the Municipal Court of Podujevë/Podujevo, dated 2<sup>nd</sup> February 2009 could not have legal consequences on CB as acquirer of this litigious object during the proceedings based on Article 263, paragraph 3 LCP. The expansion of the *res judicata* of judgment C.nr.407/2008 of the Municipal Court of Podujevë/Podujevo, dated 2<sup>nd</sup> February 2009 could not also derive from dependence of the legal state of CB to the one of RSM or the MUNICIPALITY of Podujevë/Podujevo since they are not independent and not accessory to one another. Since there is *no consolidated joint litigation* for the ownership right of the contested apartment between CB and none of the litigants in C.nr.407/2008 of the

Municipal Court of Podujevë/Podujevo, the legal effect of the judgment rendered in it could not be extended to CB pursuant to Article 269, paragraph 1 LCP, regardless of his non-participation in the proceeding decided by it. There could not be *res judicata* expansion based on Article 168 LCP as there was *no intercession* in C.nr.407/08 of the Municipal Court of Podujevë/Podujevo, *inter alia*, one between any of the litigants in the case and CB. The dispute in C.nr.407/2008 of the Municipal Court of Podujevë/Podujevo is not on the legal status of the parties and hence its resolution is not on *erga omnes* basis. Finally, no provision of the law applies the legal effect of a final judgment on any property dispute to third persons, non-participants in its adjudication. For all those reasons, CB is not legally bound by judgment C.nr.407/08 of the Municipal Court of Podujevë/Podujevo, dated 2<sup>nd</sup> February 2009 neither pursuant to Article 167, paragraph 1, first hypothesis LCP (*given the lack of party's procedural capacity in the present case*), nor pursuant to Article 167, paragraph 1 second hypothesis LCP (*given the lack of particularities of the contested right and/or a provision widening the subjective scope of the decision to non-parties*). Secondly, as long as judgment C.nr.407/2008 of the Municipal Court of Podujevë/Podujevo, dated 2<sup>nd</sup> February 2009 does not apply to CB, without being addressee of its *res judicata* he remains fully entitled to file a property claim for the apartment in his alleged ownership against any person, contesting it, including the parties in C.nr.407/08 of the Municipal Court of Podujevë/Podujevo. If initiated, such new contested procedure would not be inadmissible under Article 391, item d) LCP on *res judicata* ground as the property dispute in C.nr.407/08 of the Municipal Court of Podujevë/Podujevo has only been resolved between RSM and the MUNICIPALITY of Podujevë/Podujevo and *vice versa* remained non-adjudicated in this case with respect to CB. The filing a new property claim by CB could not be procedurally barred by *statutory limitation* as there is no such deadline established by law. All time limits under Articles 371 – 380 of the Law on Contracts and Tort (Official Gazette of SFRY No. 29/78, amendments in № 39/85, 45/89, 57/89 and in Official Gazette of FRY No. 31/93), as well as under Articles 352 – 362 of the Law on Obligational Relationships (Official Gazette No. 16/2012), in force from 20<sup>th</sup> November 2012, are prescribed for unenforceability of claims for *fulfillment of obligations*, contractual/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 2 of the Law No. 03/L-154 on Property and Other Real Rights (Official Gazette No.57/09) to be abused *are not subject to extinction*, while the *procedural right to seek their legal protection before the court of competence cannot expire or otherwise become legally obsolete*. Thirdly, judgment C.nr.407/2008 of the Municipal Court of Podujevë/Podujevo, dated 2<sup>nd</sup>

February 2009 does not affect or undermines in any manner the legal effect of Decision No. HPCC/REC/60/2006 of the HPCC, dated 31<sup>st</sup> March 2006 granting the claim of CB for reinstatement as property right holder in possession of apartment nr.123 in Podujevë/Podujevo, "JNA" Street nr.10, pursuant to Section 1.2 (c) of UNMIK Regulation No 1999/23 and Section 2.6 of UNMIK Regulation No 2000/60. Decision No. HPCC/REC/60/2006 being final remains fully binding and enforceable, not subject to review by any court or administrative authority in Kosovo, pursuant to Section 2.7 of UNMIK Regulation No 1999/23.

30. The right to appeal being emanation of the right to defence in the contested civil proceeding belongs only to the *parties* in the respective case with *legal interest* in challenging judgment rendered in it as negatively affecting their material right(s) and/or interest(s). By this ordinary legal remedy the party dissatisfied by the outcome in the first instance initiates the appeal proceeding before the second instance court in order to receive a new favorable decision on the contest. Therefore, among the other admissibility prerequisites, the appeal should be permissible as filed by a party that is entitled to challenge the first instance judgment according to Article 176, paragraph 1, first sentence LCP and has the legal interest demanded by Article 2, paragraph 4 LCP. Contrary to these mandatory requirements, the second appeal of CB against judgment C.nr.407/08 of the Municipal Court of Podujevë/Podujevo, dated 2<sup>nd</sup> February 2009 is *filed by a non-entitled person without legal interest*. Impermissible on these grounds under Article 186, paragraph 3, first and last hypotheses LCP it shall be dismissed pursuant to Article 195, paragraph 1, item a) and Article 196 LCP.

### III. COSTS OF THE PROCEEDINGS

31. When the second instance court dismisses an appeal against judgment, pursuant to Article 465, paragraph 1 LCP it must also decide the costs in the appeal proceeding. However, no such decision shall be taken here since there is no special request filed pursuant to Article 463, paragraph 1 LCP for reimbursement of such costs by any of the parties in AC.nr.1469/2012 of the Court of Appeals. In particular, as RSM does not pretend costs in the second instance proceedings as per Article 463, paragraph 1 LCP, nor has he specified or evidenced them as per Article 463, paragraphs 2 and 3 LCP, the MUNICIPALITY of Podujevë/Podujevo regardless of the withdrawal of its appeal is not liable for their payment pursuant to Article 456, paragraph 2 LCP. CB is not entitled to any costs of proceedings being non-party in the case pursuant to Articles 449–451 LCP with a dismissed appeal pursuant to Article 452, paragraph 1 LCP.

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

**LEGAL REMEDY:** No appeal is permitted against this ruling according to Article 206, paragraph 1 *in fine* in conjunction with Article 208 and Article 176, paragraph 1, first sentence LCP.

**THE COURT OF APPEALS – PRISHTINË/PRIŠTINA**

**AC.nr.1469/2012 on 02.08.2013**

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**PRESIDING JUDGE ROSITZA BUZOVA**

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