

THE BASIC COURT OF PRISHTINË/PRIŠTINA

CN.nr.249/13 & CN.nr.467/2013

19th August 2013

THE BASIC COURT OF PRISHTINË/PRIŠTINA in the first instance through the EULEX Judge ROSITZA BUZOVA in joined cases of the proposers A. S., H. S., B. S., D. S. and N. S., all from village Mazgit/Mazgit, Municipality of Obiliq/Obilić, represented by Lawyer A.A. K. from Prishtinë/Priština, against the counter-proposers the GK and the MESP - Prishtinë/Priština, represented by the MJ- Prishtinë/Priština through the Senior Legal Officers N. A. and SH. H. from the Division for Judicial Representation for determination of compensation for expropriated immovable properties with a temporary security measure under Article 306, paragraph 1 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) (“LCP”) in conjunction with Article 3 of the Law No.03/L-007 on Non-contested Procedure (Official Gazette No. 5/2009) (“LNP”) and Article 39, paragraph 1 of the Law No. 03/L-139 on Expropriation of Immovable Property (Official Gazette No. 52/2009), amended and supplemented by Law No. 03/L-205 (“LEIP”), after a hearing pursuant to Article 306, paragraph 2 LCP in conjunction with Article 3 LNP concluded on 19th August 2013, renders the following

R U L I N G

I. IT IS ANNULLED pursuant to Article 306, paragraph 3 LCP in conjunction with Article 3 LNP ruling CN.nr.249/2013 & CN.nr.467/2013 of the Basic Court of Prishtinë/Priština, dated 30th July 2013 in the part of points II – III of the enacting clause by **ABROGATION** of the temporary security measure prohibiting the counter-proposers the GK - the MESP and any other third persons to demolish the five-floor residential building in cadastral parcel nr.152-0, Certificate for Immovable Property Rights Nr. UL-72614046-00002, Cadastral Zone Mazgit/Mazgit, the Municipality of Obiliq/Obilić.

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- II.** The appeal does not stay the execution of this ruling according to Article 310, paragraph 4 LCP in conjunction with Article 3 LNP.
- III.** Copy of this ruling shall be served to the Police Station in Obiliq/Obilić.

REASONING

1. In the joined civil cases CN.nr.249/13 & CN.nr.467/13 of the Basic Court of Prishtinë/Priština, the proposers A. S., H. S., B. S., D. S. and N. S., all from village Mazgit/Mazgit, the Municipality of Obiliq/Obilić, have filed a proposal against the counter-proposers the GK and MESP for determination of the compensation due for the immovable properties, expropriated by Final Decision Nr. 03/100, dated 12th November 2012 for the construction of the Highway Vërmicë – Merdarë from their former owner the now deceased F.(H.) S. representing parts of cadastral parcels nr.149-0, nr.150-0, nr.152-0, CZ Mazgit/Mazgit. The request to the court is to modify the amount of the compensation specified in this Final Decision by increasing it up to the market value of the expropriated immovable properties.
2. On 11th July 2013, the proposers filed a proposal for security measure which was partly granted and partly rejected by ruling CN.nr.249/13 & CN.nr.467/13 of the Basic Court of Prishtinë/Priština, dated 30th July 2013 - pursuant to Article 306, paragraph 1 and Article 297, paragraph 1 LCP in conjunction with Article 3 LNP it was imposed a temporary security measure prohibiting the demolition of the five-floor residential building in cadastral parcel nr.152-0 until all legally foreseen conditions for its vacation, enumerated in point III of the enacting clause, have been fulfilled.
3. Ruling CN.nr.249/13 & CN.nr.467/13 of the Basic Court of Prishtinë/Priština, dated 30th July 2013 was immediately served to the counter-proposers according to Article 306, paragraph 2, first sentence LCP in conjunction with Article 3 LNP on 30th July 2013. It was also delivered to the proposers in compliance with Article 110, paragraph 1, first sentence LCP in conjunction with Article 3 LNP on 31st July 2013.

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4. On 2nd August 2013, within the 3-days deadline under Article 306, paragraph 2, second sentence LCP in conjunction with Article 3 LNP, a request ref.nr.1317, dated 2nd August 2013 for removal of the temporary security measure was filed by the counter-proposers the GK – MESP through the MJ as their legal representative under Article 67, paragraphs 3 and 4 of the Law No. 03/L-221 on Public Financial Management and Accountability (Official Gazette No. 56/2008), amended and supplemented by Law No. 03/L-048 (Official Gazette No.76/2010) and Law No.04/L-116 (Official Gazette No. 46/2012). Within the 3-days deadline prescribed pursuant to Article 102, paragraph 1 in conjunction with Article 99, paragraph 2, first sentence, Article 78, paragraph 2, Article 93, paragraphs 3 and 4 LCP in conjunction with Article 3 LNP by ruling CN.nr.249/2013 & CN.nr.467/2013 of the Basic Court of Prishtinë/Priština, dated 5th August 2013, MJ has completed its initial request, dated 2nd August 2013 through submission ref.nr.1317, dated 7th August 2013. Summarized, the counter-proposers challenge the temporary security measure as ungrounded since all conditions for vacation of the building in cadastral parcel nr.152-0 have been duly fulfilled in conformity with the law and request its immediate removal.

5. The security measure hearing under Article 306, paragraph 2, second sentence LCP in conjunction with Article 3 LNP commenced on 13th August 2013. After being postponed for obtaining the requested evidence from the Central Bank of Kosovo about the payment of the expropriation compensation as per Article 438, paragraph 1, item a) LCP in conjunction with Article 3 LNP, and for reaching an extrajudicial settlement by the parties as per Article 438, paragraph 1, item a) LCP in conjunction with Article 3 LNP, it was concluded on 19th August 2013.

6. The submission ref.nr.1317 of the MJ, dated 2nd August 2013, initially filed as a request for termination of the temporary security measure, imposed by ruling CN.nr.249/13 & CN.nr.467/13 of the Basic Court of Prishtinë/Priština, dated 30th July 2013, was precised by subsequent submission nr.1317 of the MJ, dated 7th August 2013 and the statement of its representative the Senior Legal Officer SH. H. in the session on 13th August 2013. Thus the deficiency as per the legal qualification of this

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motion has been removed and it was retroactively validated pursuant to Article 102, paragraph 2 LCP in conjunction with Article 3 LNP to be considered initially filed as a reply of the counter-proposers, objecting according to Article 306, paragraph 2 LCP in conjunction with Article 3 LCP the temporary security measure imposed by ruling CN.nr.249/13 & CN.nr.467/13 of the Basic Court of Prishtinë/Priština, dated 30th July 2013 and requesting after a held hearing on it to be annulled by a ruling of this first instance court pursuant to Article 306, paragraph 3 LCP in conjunction with Article 3 LNP. There are no grounds for its dismissal. *At first place*, ruling CN.nr.249/2013 & CN.nr.467/2013 of the Basic Court, dated 30th July 2013 was served to the counter-proposers on 30th July 2013 - submission ref.nr.1317 of the MJ, dated 2nd August 2013 was filed before the lapse of the 3-days time period prescribed by Article 306, paragraph 2, second sentence LCP in conjunction with Article 3 LNP. Hence, it is not belated. *At second place*, it has all the requisites demanded by the *general* provisions of Article 99, paragraphs and 3 LCP in conjunction with Article 3 LNP, as well as *statement on the grounds* required by the *special* provisions of Article 306, paragraph 2, third sentence LCP in conjunction with Article 3 LNP. Submissions ref.nr.1317, dated 2nd and 7th August 2013 consist of 11 pages with detailed objections against the grounds for the temporary security measure ordered and could not be dismissed for incompleteness because of missing reasoning under Article 306, paragraph 2, third sentence LCP in conjunction with Article 3 LNP. *At third place*, excluded is also the dismissal for impermissibility of the legal redress sought – it has been explicitly precised by the representative of the counter-proposers as a reply under Article 306, paragraph 2 LCP in conjunction with Article 3 LNP, legal remedy specifically foreseen for reconsideration of the temporary security measure by the first instance court that has imposed it without a prior notification of the party objecting to the security. For these reasons, the dismissal request of the authorized representative of the proposers made in the session on 13th August 2013 shall not be granted.

7. After conscientious and careful consideration of all evidence administered and arguments of the parties posed in the hearing under Article 306, paragraph 2 LCP in conjunction with Article 3 LNP, the Court finds proven as fulfilled in the case the

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legal conditions for vacation of the residential building in cadastral parcel nr.152-0, CZ Mazgit/Mazgit set by ruling CN.nr.249/13 & CN.nr.467/13 of the Basic Court of Prishtinë/Priština, dated 30th July 2013 as modalities for the effect of the temporary security measure imposed by prohibiting the demolition of this property.

Preliminary Decision under Article 10 LEIP

8. It was presented by submission ref.nr.1317 of the MJ, dated 7th August 2013, and administered in the hearing held on 19th August 2013, Preliminary Decision Nr. 07/87 of the Government, dated 17th August 2012 based on Article 92, paragraph 4 and Article 93, paragraph 4 of the Constitution, Articles 10 and 45 LEIP, Article 4 of Regulation No. 02/11 for the areas of administrative responsibility of the Office of the Prime Minister and ministries, amended by Regulation No. 07/11, and Article 19 of the Rules of Procedure of the Government, No. 09/2011, adopted at its meeting on 8th August 2012. By this Preliminary Decision *it was approved the expropriation for public interest of the owners of real estate and interest holders*, located within the Cadastral Section 9.1 Mazgit/Mazgit and Llazarevë/Lazarevo, the Municipality of Obiliq/Obilić, specified in its table - annex, including the following properties in Cadastral Zone Mazgit/Mazgit in the name of F.S.: 1) **cadastral parcel nr.149-0**, culture – agricultural land 1st class, with a total surface of 1 262 m², out of which 775 m² have been foreseen for expropriation of the highway as a new cadastral parcel nr.149/1, while non-expropriated have remained 487 m² as a new cadastral parcel nr.149/2; 2) **cadastral parcel nr.150-0**, culture – agricultural land 1st class, with a total surface of 41775 m², out of which 7 655 m² have been foreseen for expropriation of the highway as new cadastral parcel nr.150/3 and non-expropriated have remained 22 212 m² as new cadastral parcel nr.150/1 and 11 908 m² as new cadastral parcel nr.150/2; 3) **cadastral parcel nr.152-0**, culture – agricultural land 1st class, with a total surface of 2 144 m², out of which 1115 m² have been foreseen for expropriation as new cadastral parcel nr.152/3 (390 m² for road N2 and 725 m² for the highway), while non-expropriated have remained 839 m² for a new cadastral parcel nr.152/1 and 190 m² for a new cadastral parcel nr.152/2.

9. By Preliminary Decision Nr. 07/87, dated 17th August 2012, GK in its capacity of Expropriation Authority under Article 2, paragraph 1 and Article 4, paragraph 3 LEIP has determined as per Article 10, paragraph 1, sub-paragraph 1 LEIP *that the expropriation of these private immovable properties under Article 3, paragraph 3 LEIP satisfies the conditions set by Article 4, paragraph 1, sub-paragraphs 1–4 LEIP* (point 1 of enacting clause). Included in Preliminary Decision Nr. 07/87, dated 17th August 2012 as per Article 10, paragraph 1, sub-paragraph 2 LEIP is a *notice to the Owners and Interest Holders with respect to the affected properties of their right to file a complaint* against it with the competent court for its challenging in compliance with Article 35 LEIP (point 4 of the enacting clause). Included as per Article 10, paragraph 1, sub-paragraph 3 LEIP is a *notice that it shall become effective on the date of publication in the Official Gazette and a newspaper of general circulation in Kosovo* in compliance with Article 10, paragraphs 4 and 5 and Article 43 LEIP. Therefore Preliminary Decision Nr.07/87, dated 17th August 2012 has all requisites under Article 10, paragraph 1, sub-paragraphs 1 – 3 LEIP demanded as elements of its content. On 7th September 2012 it was published in Official Gazette Nr. 24/12 and in a newspaper of general circulation in Kosovo (Koha Ditore), thus becoming effective according to Article 10, paragraph 5 LEIP.

10. Refuted is the allegation of the authorized representative of the proposers Lawyer A.A.K. in point 6 of his submission, dated 15th August 2013 that *Preliminary Decision is missing in this expropriation*. Officially verified with binding evidentiary effect in the proceeding as per Article 329, paragraph 1 LCP in conjunction with Article 3 LNP by the copy under Article 101, paragraph 1 LCP in conjunction with Article 3 LNP of this public document, Preliminary Decision Nr. 07/87, dated 17th August 2012 has been issued in the appropriate written form prescribed by Article 10, paragraph 1, sub-paragraph 1 LEIP by the competent public body – the GK within the scope of its powers as Expropriation Authority under Article 4, paragraph 3 LEIP, following its Rules of Procedure No. 09/11. Refuted is also the allegation in the submission of Lawyer A. K., dated 15th August 2013 – point 6 that no notice under Article 10, paragraph 1, sub-paragraph 2 LEIP has been given to the Owners and

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Interest Holders of properties affected by the Preliminary Decision of their right to appeal it before the competent court within a period of thirty (30) days. Contrariwise, such notice under Article 10, paragraph 1, sub-paragraph 2 LEIP on the applicable legal remedy against Preliminary Decision Nr.07/87, dated 17th August 2012 has been included in point 4 of its enacting clause.

11. The lack of individual notifications served to A. S., H. S., B. S., D. S. and N. S. under Article 10, paragraph 3 LEIP is irrelevant in this proceeding. *At first place*, according to Article 10, paragraph 3 LEIP within five (5) business days after adopting the Preliminary Decision the Expropriation Authority shall send it to the persons, identified in the application under Article 8, paragraph 1, sub-paragraph 3 LEIP and any other person who subsequent to its date before the adoption of the Preliminary Decision was accepted for processing and asserted a claim to be an Owner or Interest Holder with respect to the concerned property. As cadastral parcels nr.149-0, nr.150-0 and nr.152-0, CZ Mazgit/Mazgit on the date of adoption of Preliminary Decision Nr. 07/87, dated 17th August 2012 and till the expiry of the 5-days time period under Article 10, paragraph 3 LEIP were all registered in the name of F. S.(Certificate for the Immovable Property Rights UL-72614046-0002), deceased as of 22nd May 2005 (Death Certificate ordinal Nr. 026, ref.nr.178 of the Civil Registration Agency – Obiliq/Obilić, dated 9th July 2008). In view of the death of F. S. on 22nd May 2005, the lack of final decision under Article 171 LNP for regulation of his inheritance as of the date of adoption of the Preliminary Decision–17th August 2012 or until the expiry of the deadline of 5 business days afterwards set by Article 10, paragraph 3 LEIP on 24th August 2012, there were no Owner(s) based on any legal ground for acquisition of cadastral parcels nr.149-0, nr.150-0 and nr.152-0 or any parts thereof, neither Interest Holders – titulars of lawful interests, different from the ownership, with rights or interests documented by due titles required by law and accepted on this basis as participants in the expropriation procedure at stake. As until the adoption of Preliminary Decision Nr.07/87, dated 17th August 2012 the parts of cadastral parcels nr.149-0, nr.150-0 and nr.152-0, CZ Mazgit/Mazgit with approved expropriation have all been registered in cadastre in the name of the deceased F. S. without subsequent

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cadastral change, *inter alia*, one reflecting legal succession with respect to these properties, Preliminary Decision Nr. 07/87, dated 17th August 2012 could not be notified pursuant to Article 10, paragraph 3 LEIP neither to this late ex-owner, nor to any officially designated inheritor(s) of his. *At second place*, Article 10, paragraph 5 LEIP explicitly states that each Preliminary Decision *shall become effective on the date it has been published according to the requirements of Article 10, paragraph 4 and Article 43 LEIP*. The 12-months time period set forth by Article 11, paragraph 1, first sentence LEIP for issuing a Final Decision begins to run on the date occurring 15 days *after the effective date of the respective Preliminary Decision* – its basis, unless extended pursuant to Article 11, paragraph 2 LEIP, consequent to complaint filed pursuant to Article 35, paragraph 1 LEIP. The time period for its filing by the affected Owners and Interest Holders against a Preliminary Decision with the competent court, according to Article 35, paragraph 3, first sentence LEIP *starts to run after its effective date as specified in Article 10, paragraph 5 LEIP*, i.e. the date of its publication in the Official Gazette and a newspaper of general circulation in Kosovo. Therefore, the individual service of a Preliminary Decision under Article 10, paragraph 3 LEIP *does not predetermine the date of its effectiveness, the beginning of the time period for filing a complaint with the competent court against it or the one for issuance of a Final Decision on its basis*. Or, there are no legal consequences that are normatively associated with the individual notifications for a Preliminary Decision under Article 10, paragraph 3 LEIP sent to the Owners and Interest Holders, relevant in the present proceeding. In view of these rules and procedure, specifically laid down for the expropriation process as per Article 3, paragraph 1 LEIP and prevailing over any other general ones based on the supremacy guaranteed by Article 39, paragraph 1 LEIP, regardless of the non-service of Preliminary Decision Nr. 07/87, dated 17th August 2012 to the proposers as per Article 10, paragraph 3 LEIP, it has become even though effective according to Article 10, paragraph 5 LEIP with its publication under Article 10, paragraph 4 and Article 43 LEIP on 7th September 2012. On the same date the time period prescribed by Article 11, paragraph 1, first and second sentences LEIP for the issuance of a Final Decision has started to run, as well as the one prescribed by

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Article 35, paragraph 3, first sentence LEIP for filing a complaint under Article 35, paragraph 1 LEIP against this Preliminary Decision before the competent court by all Owners and Interest Holders with respect to all immovable properties – subject to this expropriation.

12. It was admitted according to Article 321, paragraph 2 LCP in conjunction with Article 3 LNP by the authorized representative of the proposers in the hearing on 19th August 2013 that none of them has initiated judicial proceeding under Article 35 LEIP for challenging Preliminary Decision Nr. 07/87, dated 17th August 2012. Consequent to its non-initiation, the Final Decision Period set by Article 11, paragraph 1, first and second sentence LEIP has not been extended pursuant to Article 11, paragraph 1, third sentence in conjunction with paragraph 2 LEIP for the duration of the first and/or second instance judicial proceedings. For the same reason – the lack of a complaint of A. S., H. S., B. S., D. S. and N. S. pending before any court against Preliminary Decision Nr.07/87, dated 17th August 2012 the adoption of a Final Decision on its basis could not be considered blocked pursuant to Article 11, paragraph 3, first sentence LEIP until a final court judgement or order would be rendered pursuant to Article 35 LEIP.

13. There are numerous arguments elaborated by Lawyer A. K. in the submission, dated 15th August 2013 – point 7 and in the hearing on 19th August 2103 for alleged violations of Article 4, paragraph 1, sub-paragraphs 1 – 5 LEIP in this expropriation. Namely, the proposers confer that no legitimate public purpose has been achieved by the construction of the highway Vërmicë – Merdarë contrary to Article 4, paragraph 1, sub-paragraph 1 LEIP; the expropriation was not “clearly performed” and there were “many complications and uncertainty, not eliminated by the GK - MESP” contrary to Article 4, paragraph 1, sub-paragraph 2 LEIP; the public benefits derived from this project do not outweigh the private interests negatively affected contrary to Article 4, paragraph 1, sub-paragraph 3 LEIP; the choice of the properties to be expropriated has been made in discriminatory manner contrary to Article 4, paragraph 1, sub-paragraph 4 LEIP; the Expropriation Authority has not complied with all applicable provisions

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of the law contrary to Article 4, paragraph 1, sub-paragraph 4 LEIP. However, all these arguments should have been invoked by a timely filed complaint against the Preliminary Decision Nr.07/87, dated 17th August 2012 pursuant to Article 35, paragraph 1 LEIP. Only the court of jurisdiction before which this special judicial proceeding has been initiated in due time would have been empowered to review the compliance with conditions specified in Article 4, paragraph 1, sub-paragraphs 1 – 5 LEIP and if would find one or more of them not satisfied to issue a judgment terminating the entire expropriation procedure pursuant to Article 35, paragraph 7, sub-paragraph 1 LEIP or a judgment, requiring the Expropriation Authority to modify the Preliminary Decision and the scope of the expropriation procedure to exclude certain properties or rights pursuant to Article 35, paragraph 7, sub-paragraph 2 LEIP. A., H., B., D. and N. S. have not filed a complaint under Article 35, paragraph 1 LEIP against Preliminary Decision Nr.07/87, dated 17th August 2012 within the deadline set by Article 35, paragraph 3 LEIP. Thus it has been precluded for each one of them the possibility to later challenge the expropriation, approved by Preliminary Decision Nr. 07/87, dated 17th August 2012, for non-compliance with the conditions specified in Article 4, paragraph 1, sub-paragraphs 1 – 5 LEIP. Such review is impermissible in the present proceeding under Article 36 LEIP - paragraph 1 explicitly limits its subject to *challenging a Final Decision under Article 11 LEIP*, thus excluding the possibility to challenge in its framework directly or indirectly *any other act* of the Expropriation Authority, *inter alia*, the Preliminary Decision under Article 10 LEIP in the concerned expropriation. Article 36, paragraph 1 LEIP further limits the subject-matter to the amount of compensation and/or damages that this Final Decision provides to be paid to the affected Owners and Interest Holders of expropriated properties. Symmetrically to these restrictions, pursuant to Article 36, paragraph 6 LEIP the court in this first instance proceeding shall have only the authority to re-calculate the compensation or damages specified in the Final Decision and if finds it less or greater than the one that is required by law to issue a judgment modifying the amount accordingly. Given these limitations in the scope of the proceeding in Article 36, paragraph 1 LEIP and in the powers of the Court under Article 36, paragraph 6 LEIP, the legitimacy of the

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expropriation, approved by Preliminary Decision Nr. 07/87, dated 17th August 2012 could not be reviewed in the course CN.nr.249/13 & CN.nr.467/13 of the Basic Court of Prishtinë/Priština neither directly, nor or indirectly as a preliminary issue. The latter would mean to rectify the omission of A., H., B., D. and N. S. to file a complaint against Preliminary Decision Nr. 07/87, dated 17th August 2012 contrary to Article 35, paragraph 1 LEIP, to exceed the limits of this proceeding as set by Article 36, paragraph 1 LEIP, as well as to impermissibly mix the competences of the court under Article 35, paragraph 7 in cases against a Preliminary Decision on the legitimacy of expropriation with the ones under Article 36, paragraph 6 LEIP in cases for adjusting the amount of the expropriation compensation determined by a Final Decision. This is why all considerations raised by the proposers for non-compliance with Article 4, paragraph 1, sub-paragraphs 1-4 LEIP, given the restrictions of Article 36, paragraph 1 LEIP could not be reviewed at all in CN.nr.249/13 & CN.nr.467/13 of the Basic Court of Prishtinë/Priština and hence could not directly/indirectly pre-determine the outcome in these joined cases as the judgment rendered in them could only increase or decrease the expropriation of the Final Decision pursuant to Article 36, paragraph 6 LEIP. This automatically excludes all these alleged violations of Article 4, paragraph 1, sub-paragraphs 1 - 4 LEIP as a justification to replace the temporary security measure imposed on 30th July 2013 by a security one as per Article 306, paragraph 3 LEIP in conjunction with Article 3 LNP.

Final Decision under Article 11 LEIP

14. It has been presented by the opposing parties in numerous corresponding copies and administered in the hearing on 19th August 2013, Final Decision Nr. 03/100 of the Government of the Republic of Kosovo, dated 12th November 2012 based on Article 92, paragraph 4 and Article 93, paragraph 4 of the Constitution, Articles 11 and 45 LEIP, Article 4 of Regulation No. 02/11 for the areas of administrative responsibility of the Office of the Prime Minister and ministries, amended by Regulation No. 07/11, and Article 19 of the Rules of Procedure of the Government, No. 09/2011. By point 1 of its enacting clause it has been approved the expropriation for public interest of immovable properties of the Owners and Interest Holders affected by the construction

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of the highway VËRMICË–MERDARE, Section 9, CZ Mazgit/Mazgit, indicated in the attached tables. The last one on page 22, points 9 - 11 includes as properties in the name of F. (H.) S.: 1) **cadastral parcel nr.149-0**, culture – agricultural land, with a total surface of 1 262 m², out of which 775 m² have been foreseen for highway, while non-expropriated have remained 487 m²; 2) **cadastral parcel nr.150-0**, culture – agricultural land, with a total surface of 41 775 m², out of which 7 655 m² have been foreseen for the highway and 971 m² for road N2, while non-expropriated have remained 33 149 m²; 3) **cadastral parcel nr.152-0**, culture – agricultural land, with a total surface of 2 144 m², out of which 725 m² have been foreseen for the highway and 390 m² for road N2, while non-expropriated have remained 1 029 m².

15. Final Decision Nr. 03/100, dated 12th November 2012 has been adopted by the GK based on its competence of Expropriation Authority under Article 2, paragraph 1 and Article 4, paragraph 3 LEIP within the 12-months period that has begun to run on the date occurring fifteen (15) days after the effective date of Preliminary Decision Nr. 07/87, dated 17th August 2012 – 7th September 2012, in conformity with Article 11, paragraph 1, first sentence LEIP. So, there is no failure of the Expropriation Authority to comply with this Final Decision Period under Article 11, paragraph 1, first and second sentence LEIP that could be presumed pursuant to Article 11, paragraph 11, first sentence LEIP as Final Decision rejecting the expropriation application in entirety. As there were no complaints filed pursuant to Article 35 LEIP as per cadastral parcels nr.149-0, nr.150 and nr.152-0, CZ Mazgit/Mazgit, Final Decision Nr. 03/100, dated 12th November 2012 in the part of the same properties has been issued only for *unchallenged aspects* of Preliminary Decision Nr. 07/87, dated 17th August 2012 in compliance with Article 11, paragraph 3, second sentence LEIP. Non-violated is the prohibition of Article 11, paragraph 3, second sentence LEIP the Expropriation Authority not to adopt a Final Decision for properties - subject to complaints under Article 35 LEIP, pending before the court. Hence, there were no applicable court order or judgment under Article 35 LEIP, Final Decision Nr. 03/100, dated 12th November 2012 should comply with as per Article 11, paragraph 4, subparagraph 1 LEIP in regard to the parts of cadastral parcels nr.149-0, nr.150 and

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nr.152-0, authorized for expropriation by Preliminary Decision Nr. 07/87, dated 17th August 2012. The tables and the valuation reports – integral parts of Final Decision Nr. 03/100, dated 12th November 2012 as per points 1 and 4 of its enacting clause contain the requisites of its content demanded by Article 11, paragraph 4, sub-paragraph 2 LEIP. Included in point 7 of the enacting clause is also the statement envisaged in Article 11, paragraph 4, sub-paragraph 3 LEIP for effectiveness of this Final Decision on the date of its publication in accordance with Article 11, paragraph 6 LEIP in the Official Gazette of the Republic of Kosovo and a newspaper of general circulation in Kosovo. Provided in point 5 of the enacting clause is the notice under Article 11, paragraph 4, sub-paragraph 3 LEIP advising all persons who own or holds interests in immovable property or property rights affected by Final Decision Nr. 03/100, dated 12th November 2012 of their right to file a complaint to the competent court challenging the amount of compensation specified in it within 30 days after the date of its effectiveness pursuant to Article 36 LEIP.

16. On 23rd November 2012 Final Decision Nr. 03/100, dated 12th November 2012 was published in Official Gazette and a newspaper of general circulation in Kosovo (Koha Ditore) in compliance with Article 11, paragraph 6 LEIP, thus becoming on the same date effective pursuant to Article 11, paragraph 6 LEIP.

17. The amount of compensation determined by the Office of Immovable Property Valuation of the Ministry of Finance based on the respective valuation reports of the Consultancy Enterprise “IMMOBILIA”, dated 6th September 2012 - integral parts of Final Decision Nr. 03/100, dated 12th November 2012 is for: 1) cadastral parcel nr.149-0 - 775 m² land - 23 250 Euros; 2) cadastral parcel nr.150-0 - 7 655 m² land - 191 375 Euros; and 3) cadastral parcel nr.152-0 - 725 m² land - 30 450 Euros; 5-floor building - 143 050 Euros (currently with temporary security measure); a stable - 1 250 Euros, a well - 430 Euros; orchard trees - 2 246 Euros. In recapitulation the compensation specified in Final Decision Nr. 03/100, dated 12th November 2012 for the aforementioned properties of F. (H.) S. with their fixtures, accessory parts and

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fruits amounts totally to **392 051 Euros**, evidenced by the Table form of the Office for Immovable Property Valuation of the Ministry of Finance.

18. After this first partial expropriation, a second one was approved for additional parts of cadastral parcels nr.150 and nr.152, CZ Mazgit/Mazgit, registered in the name of F. (H.) S. by Final Decision Nr. 06/130 of the Government of the Republic of Kosovo, dated 16th May 2013 pursuant to Article 92, paragraph 4 and Article 93, paragraph 4 of the Constitution, Articles 11 and 45 LEIP, Article 4 of Regulation No. 02/11 for the areas of administrative responsibility of the Office of the Prime Minister and ministries, amended by Regulation No. 07/2011, and Article 19 of the Rules of Procedure of the Government, No. 09/2011. Seen by the respective table, appended to this Final Decision for the properties of F. H. S., from cadastral parcels nr.150-0 nr.152-0 respectively 3 380 m² and 281 m² have been additionally expropriated for the highway. On 30th May 2013, Final Decision Nr. 06/130, dated 16th May 2013 was published in the Official Gazette and a newspaper of general circulation in Kosovo (Koha Ditore) in compliance with Article 11, paragraph 6 LEIP, thus becoming effective pursuant to Article 11, paragraph 6 LEIP.

19. The amount of compensation determined by the Office of Immovable Property Valuation of the Ministry of Finance based on the respective annex valuation reports of the Consultancy Enterprise "IMMOBILIA", dated 29th April 2013 - integral parts of Final Decision Nr. 06/130, dated 16th May 2013 is for: 1) cadastral parcel nr.150-0 - 3380 m² land – 84 500 Euros; 3-floors building – 150 000 Euros, planting - 814 Euros; fence – 850 Euros and well – 700 Euros; and 2) cadastral parcel nr.152-0 – 281 m² land – 11 802 Euros, a well – 830 Euros and a concrete fence – 320 Euros. In recapitulation the compensation specified in Final Decision Nr. 06/130, dated 16th May 2013 for the aforementioned properties of F. (H.) S. with their fixtures, accessory parts and fruits amounts totally to **249 816 Euros**, evidenced by the Table form of the Office for Immovable Property Valuation of the Ministry of Finance.

20. Thus the amount of compensation specified in Final Decision Nr. 03/100, dated 12th November 2012, as well as the one specified Final Decision Nr. 06/130, dated

16th May 2013 pursuant to Article 11, paragraph 4.3.2.3 and Article 16, paragraph 2, first sentence LEIP as payable for the expropriated properties in the name of F. (H.) S. with their fixtures, accessory parts and fruits, being both equal to the respective amounts established in the valuation determination as per Article 16, paragraph 2, sub-paragraph 1 LEIP accumulated add up totally to the sum of **641 867 Euros**. This recapitulation of the official compensation is verified by an internal summary report to the General Secretary of MESP for its payment exactly in this total amount.

Payment of the compensation according to Article 16 LEIP

21. The Expropriating Authority is obliged to pay the officially determined amount of compensation to *the affected Owners and Interest Holders* – Article 16, paragraph 2, first sentence LEIP. If the respective person *refuses* to accept such compensation, it shall be put in a trust account in his/her name at the CBK as per Article 16, paragraph 3, first sentence LEIP. Similarly, *if a dispute arises regarding the identity of the person lawfully entitled to receive a payment for such compensation*, that amount shall be deposited at the Central Bank of Kosovo (CBK) for a beneficiary yet to be determined, and the dispute submitted to the competent court for resolution as per Article 16, paragraph 3, second sentence LEIP. *Any amount put into such a trust account shall be deemed to have been paid for the purposes of this law* pursuant to Article 16, paragraph 3, third sentence LEIP. This payment is valid even if a person files a complaint before the court pursuant to Article 36 LEIP for challenging the adequacy of the compensation in the Final Decision – non-prejudiced is the authority of the court pursuant to Article 16, paragraph 4, Article 36, paragraph 6 and paragraph 8, second sentence LEIP to re-calculate the amount specified in the Final Decision, deposited in a trust account, and to increase it by modifying the Final Decision and by obliging the Expropriation Authority to pay the additional compensation up to the difference.

22. It has been ascertained that in the expropriation process the proposers have not provided the Expropriation Authority with all documents necessary for payment of the expropriation compensation through regular transfer(s) to one or more personal bank

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accounts in their name. The full expropriation file presented by the MJ does not contain original Possession List or Certificate for Immovable Property Rights with non-expired 6-months validity, copy of the identification cards of A., H., B., D. and N. S., copy of their bank cards with the number(s) of any private bank account(s), death certificate of F. S. – original, and the decision for regulation of his inheritance – original.

23. In the course of the security measure proceeding at the session on 13th August 2013 based on the statements of the representative of the parties the court has given them the opportunity to reach extra-judicial settlement on the conditions for vacation of the expropriated immovable property. In this regard the authorized representative of the proposers has declared that all documents requisite for payment of the official compensation specified in Final Decision Nr. 03/100, dated 12th November 2012 and Final Decision Nr. 06/130, dated 16th May 2013 will be presented to the MESP within 3 days, *inter alia*, the number of a private bank account of the proposer(s) for ordering a direct transfer of the total amount of 641 867 Euros. At the next session held on 19th August 2013 it became clear that these documents were not submitted to the MESP during the postponement, regardless of the opportunity given by the court and also the readiness of the counter-proposers for immediate payment of the total sum of 641 867 Euros to personal bank account(s) of the proposer(s). Further, their representative, as well as A., H., B., and D. S. expressed in the session on 19th August 2013 their *refusal* to accept the compensation specified in Final Decision Nr. 03/100, dated 12th November 2012 and Final Decision Nr. 06/130, dated 16th May 2013, amounting to 641 867 Euros in total. The refusal being general refers also to the part of 143 050 Euros, determined based on valuation of the 5-floor residential building in cadastral parcel nr.152-0, now with a temporary security measure prohibiting its demolition.

24. Given the *refusal* of the proposers to accept 641 867 Euros as total amount of the compensation specified Final Decision Nr.03/100, dated 12th November 2012 and Final Decision Nr. 06/130, dated 16th May 2013, *it could not be directly paid by the Expropriation Authority to them as affected Owners and Interest Holders according*

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to Article 16, paragraph 2, first sentence LEIP. The proposers are in *creditors' delay* under Article 325, paragraph 1 of the Law on Contracts and Tort (Official Gazette of the SFRY No. 29/78, with amendments No. 39/85, 45/89, 57/89 and Official Gazette of the FRY No. 31/93) ("LCT") by refusing *without a justified ground to accept the fulfillment offered by the Expropriation Authority as debtor* and by preventing through their conduct such fulfillment through direct payment of the compensation amount to their personal bank accounts as per Article 16, paragraph 2, first sentence LEIP and Article 305, paragraph 1, first hypothesis LCT. Given this creditors' delay the interest rate has stopped to run pursuant to Article 326, paragraph 2 LCT and hence could not be considered accrued pursuant to Article 16, paragraph 2, sub-paragraph 2 LEIP.

25. As evidenced by the submission of Lawyer A. K., dated 15th August 2013 and the non-official sketches attached to them, and his statements in the session on 19th August 2013, each of the proposers claim ownership over real parts of cadastral parcels nr.149-0, nr.150-0 and nr.152-0, however, without any documents for such physical division and/or corresponding individual property titles, legitimating them as their owners or interest holders. As the beneficiary of the compensation for their expropriation, specified in Final Decision Nr.03/100, dated 12th November 2012 and Final Decision Nr. 06/130, dated 16th May 2013 is not known and is not certain, excluded is the possibility for depositing its amount to a trust account in the name of one or more of the proposers at the CBK pursuant to Article 16, paragraph 3, first sentence LEIP. As there is a dispute arising regarding the identity of the person(s) lawfully entitled to receive a payment of the compensation or parts thereof, the only possibility left is the whole amount to be deposited in a trust account at the CBK for a *beneficiary yet to be determined through a court proceeding* pursuant to Article 16, paragraph 3, second sentence LEIP.

26. Evidenced by official documents with binding evidentiary effect under Article 329, paragraph 1 LCP in conjunction with Article 3 LNP, presented by the MJ and requested pursuant to Article 322 LCP in conjunction with Article 3 LNP by the CBK, all administered in the security measure proceeding, MESP has acted in compliance

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with Article 16, paragraph 3, second sentence LEIP. In a trust account Nr. xxxxxxxxxx opened at the CBK by the Ministry of Finance for Expropriation Trust Funds (letter ref.nr.1923/1 of the CBK, dated 16th August 2013), after a request of the MESP for payment of compensation through this trust account under protocol nr.2077, dated 13th June 2013 by a payment order ref.nr.2101131263 of the Ministry of Finance, dated 18th June 2013 to it were transferred 641 867 Euros as payment of compensation for the properties of FETAH SELMANI. Thus its amount specified in Final Decision Nr.03/100, dated 12th November 2012 and Final Decision Nr. 06/130, dated 16th May 2013 was fully deposited at a trust account at the CBK in compliance with Article 16, paragraph 3, second sentence LEIP. As long as the beneficiary of the amount or the beneficiaries of parts thereof are *yet to be determined by a court proceeding*, it was deposited in a trust account administered by the Ministry of Finance in view of its exclusive competence to pay the future final judgment as per Article 40, paragraphs 1 and 3 of the Law No. 03/L-221 on Public Financial Management and Accountability (Official Gazette No. 56/2008), amended and supplemented by Law No. 03/L-048 (Official Gazette No. 76/2010) and Law No.04/L-116 (Official Gazette No. 46/2012) (“LPFMA”) out of appropriations, already transferred by the budget for compensation of the properties of F. S. in the amount of 641 867 Euros. As clarified by letter ref.nr. 1923/1 of the CBK, dated 16th August 2013 this is consequent to the restriction of Article 40, paragraph 2, first sentence (i) LPFMA all payments of court judgments and orders to be effected through the Treasury Single Account and the prohibition of Article 40, paragraph 2, first sentence (ii) LPFMA neither the CBK, nor any other bank, a public authority or a person other than the Ministry of Finance to take any actions for enforcement of such a judgment or order, including any payment in its satisfaction.

27. Therefore the amounts of compensation specified in Final Decision Nr.03/100, dated 12th November 2012 and Final Decision Nr. 06/130, dated 16th May 2013 for the expropriated properties of F. S. -392 051 Euros and 249 816 Euros, respectively, in total 641 867 Euros, were deposited on **18th June 2013** by the MESP to the trust account Nr. xxxxxxxxxxxxxx - *Expropriation Trust Funds* - at the CBK with this

explicit justification so that the Ministry of Finance pursuant to Article 40, paragraphs 1 and 2 LPFMA would enforce the future final judgment, determining the beneficiary of beneficiaries of this amount by ordering its payment out of the these appropriations already transferred and thus available for this purpose through the Treasury Single Account system. By the deposit of these 641 867 Euros in this trust account at the CBK for payment of the compensation for the expropriated properties of F. S. to a beneficiary or beneficiaries, the legal requirement of Article 16, paragraph 3, second sentence LEIP has been met. These 641 867 Euros once deposited in such a trust account at CBK pursuant to Article 16, paragraph 3, second sentence LEIP shall be deemed to have been “paid” for the purposes of LEIP on 18th June 2013.

Expiry of the time period for vacation under Article 11, paragraph 9 LEIP

28. Article 11, paragraph 9, sub-paragraph 1 LEIP states that *persons owning or possessing the concerned property shall not be required to vacate or surrender it until in case of a building actively used for residential purposes 20 days have been passed from the date on which the compensation specified in the Final Decision has been paid in accordance with Article 16 LEIP.*

29. Being included in the aforementioned deposit of 641 867 Euros, put into the trust account Nr. 1000400070003575 at the CBK for payment of the compensation for the expropriated properties of F. S., the part of 143 050 Euros specified in the Final Decision Nr.03/100, dated 12th November 2012 for the building in cadastral parcel nr.152-0, should be considered also paid pursuant to Article 16, paragraph 3, second and third sentences LEIP on 18th June 2013. On the date of this payment the 20-days time period prescribed by Article 11, paragraph 9, sub-paragraph 1 LEIP with this initial moment started to run for vacation of the residential building in cadastral parcel nr.152-0 by its owner(s) and possessors and without being interrupted or ceased elapsed on 8th July 2013. With expiration of this applicable period under Article 11, paragraph 9, sub-paragraph 1 LEIP, the *Expropriation Authority has become entitled to take the possession of this property* pursuant to Article 25 LEIP.

Temporary accommodation under Article 20 LEIP

30. According to Article 20, first sentence LEIP in the event of expropriation of a building that has been *lawfully constructed* and that has been used as a dwelling, the Expropriation Authority shall provide the inhabitants with *temporary accommodation* for a period of 4 months following the expiration of the time period provided for in Article 11, paragraph 9 LEIP, unless otherwise agreed.

31. It was admitted by the proposers in the hearing on 19th August 2013 according to Article 321, paragraph 2 LCP in conjunction with Article 3 LNP that the house in cadastral parcel nr.152-0 has been built *without a construction permit* issued by the Municipality of Obiliq/Obilić. Hence, it *could not be considered lawfully constructed*, which automatically excludes the application of Article 20 LEIP – the Expropriation Authority is not bound by the provision to ensure to the inhabitants of this house any temporary accommodation for any duration. Not being formally obliged to proceed as per Article 20 LEIP, the MESP even though undertook steps to find new dwellings for the families living in this building. Evidenced by Routing Slip ref.nr.1085, dated 16th July 2013 a commission of officials of the MESP visited Obiliq/Obilić, contacted a real estate agency there, inspected two houses and two flats offered by it and chose an apartment in Prishtinë/Priština as suitable for the needs of the S. family. Seen by Routing Slips, dated 18th and 22nd July 2013 the Expropriation Department of MESP continued to search the market, contacted real estate agencies, had negotiations but could not finally choose a flat or house for rent. By Routing slip dated 22nd July 2013 of the MESP it was approved as a solution of the accommodation problem of the S. family the conclusion of a contract with Hotel “A.” in Sllatinë e Madhe.

32. On 22nd July 2013, MESP as Lessee and NTSH “A.” - Prishtinë/Priština as Lessor concluded Contract on Lease of Building – Rooms in Hotel “A.”. It was agreed the Lessor to give on lease to the Lessee rooms in the hotel for persons, as concretized by a special order of the Expropriation Department of MESP at the price of 10 Euros per day for each person. It was agreed the lease relationship to commence on 22nd July 2013 and to end on 31st December 2013. Copy of this contract was served

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to the proposers on 2nd August 2013 as an attachment to the submission ref.nr.1317 of the MJ, dated 2nd August 2013. At the session on 13th August 2103, the Senior Legal Officer SH. H. from the MJ declared on behalf of the counter-proposers in the presence of the representative of the proposers that based on this contract of 22nd July 2013 with still non-expired term of validity, Hotel "A." remains offered as a temporary accommodation in its rooms for all family members now living in the house in cadastral parcel nr.152-0. This statement, recorded in the minutes of the hearing on 13th August 2013 as per Article 135, paragraph 2 LCP in conjunction with Article 3 LNP, signed by the representative of the proposers without objections, serve as a notification of the counter-proposers for the offered accommodations in Hotel "A.". Its non-acceptance by the proposers without any justified ground places all them in creditor's delay as per Article 325, paragraph 1 LCT, which exonerates pursuant to Article 326, paragraph 1 LCT the Expropriation Authority from any delay in fulfillment of the obligation laid down by Article 20 LEIP for providing a temporary accommodation.

33. Based on the statements of the representatives of the parties in the session on 13th August 2103, it was postponed, *inter alia* with the aim the proposers to find on their own a new dwelling, satisfying their main residential needs, with reasonable rent and to inform MESP for approval and conclusion of a lease contract. However, during the postponement of the security measure hearing pursuant to Article 438, paragraph 1 LCP in conjunction with the Article 3 LNP, *the proposers did not find on their own any house or flat to be rented as their temporary accommodation after releasing the house—their current dwelling, nor informed the MSEP for its renting in the respective standardized procedure.*

34. The additional condition for vacation of an expropriated *lawfully* constructed residential building used as a dwelling set by Article 20 LEIP as an obligation to the Expropriation Authority to provide a temporary accommodation to all its inhabitants *is not applicable* here as the house in cadastral parcel nr.152-0 has been unlawfully constructed without permits. Though not formally mandatory in these circumstances,

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Article 20 LEIP has been *de facto* complied with by MESP by the conclusion of a general lease agreement with Hotel "A." on 22nd July 2013 allowing straight away accommodation of all families living of the building in cadastral parcel nr.152-0 in the hotel premises for the 4-months legal deadline. The non-acceptance of this proposal without any justified ground and the non-assistance in finding any other alternative dwelling by S. family as creditor's delay do not extinguish the fulfillment of Article 20 LEIP by the Expropriation Authority without being obliged to fulfill it.

Article 36, paragraph 8, first sentence LEIP

35. According to Article 36, paragraph 8, first sentence LEIP neither the filing of a complaint against the Final Decision under Article 36, paragraph 1 LEIP, nor the filing an appeal against the first instance judgment under Article 36, paragraph 7 LEIP shall have any effect on the effectiveness of this Final Decision or the power of the Expropriation Authority to continue with its implementation. This explicit imperative restriction pursuant to Article 39, paragraph 1 LEIP prevails over any conflicting norm of any other procedural law. Consequent to the limitation and its supremacy over the provisions of Chapter XXI LCP, the Court may stop the implementation of Final Decision Nr.03/100, dated 12th November 2012 by prohibiting demolition of the house in cadastral parcel nr.152-0 only until all conditions provided for by the law for this implementation have been evidenced as regularly met. Contrariwise, the Court cannot authorize any security measure beyond this limit because this will stay the enforcement of Final Decision Nr.03/100, dated 12th November 2012 in contradiction with Article 36, paragraph 8, first sentence LEIP, which excludes any effect of the present judicial proceeding over its effectiveness, including direct/indirect suspension, and unconditionally guarantees the powers of the Expropriation Authority to continue with the construction of the highway as a national infrastructural project in public interest. Not exceeding the limits of Article 36, paragraph 8, first sentence LEIP, by ruling CN.nr.249/13 & CN.nr.467/13 of the Basic Court of Prishtinë/Priština, dated 30th July 2013 the demolition of house in cadastral parcel nr.152-0, CZ Mazgit/Mazgit was prohibited *only* until the conditions specified in the law for implementation of the

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Final Decision Nr. 03/100, dated 12th November 2012 have been met. By the evidence administered in the hearing under Article 306, paragraph 2 LCP in conjunction with Article 3 LNP it has been proven the adoption of Preliminary Decision Nr. 07/87, dated 17th August 2012 according to Article 10 LEIP and Final Decision Nr.03/100, dated 12th November 2012 according to Article 11 LEIP, their effectiveness after publications under Article 43 LEIP, payment of the compensation specified in this Final Decision according to Article 16, paragraph 3, second and third sentence LEIP through deposit at a trust account at the CBK on 18th June 2013, expiration on 8th July 2013 of the 20-days period following this payment, set for vacation of the property by Article 11, paragraph 9, sub-paragraph 1 LEIP, and also a temporary accommodation provided as of 22nd July 2013 regardless of the non-applicability of Article 20 LEIP. Upon such ascertained conformity residential building in cadastral parcel nr.152-0, CZ Mazgit/Mazgit has been transferred from private into state ownership according to Article 4, paragraph 5 and Article 26 LEIP, with entitlement of the Expropriation Authority after 8th July 2013 to take its possession pursuant to Article 11, paragraph 9, sub-paragraph 1 and Article 25 LEIP. Being ordered with duration within the limits of Article 36, paragraph 8, first sentence LEIP the temporary security measure under Article 306, paragraph 1 LCP in conjunction with Article 3 LNP could not be replaced by a security measure under Article 306, paragraph 1 LCP in conjunction with Article 3 LNP - the prohibition the residential building in cadastral parcel nr.152-0, CZ Mazgit/Mazgit to be demolished until the applicable conditions specified by the same law for the implementation of Final Decision Nr. 03/100, dated 12th November 2012 in the respective part have been evidenced as regularly fulfilled in the case could not stay after such compliance has been proven in the proceeding. The temporary security measure could not be converted into a security one under Article 306, paragraph 3 LCP in conjunction with Article 3 LEIP since this will compromise the effectiveness of Final Decision Nr.03/100, dated 12th November 2012 and block its implementation for indefinite period of time contrary to Article 36, paragraph 8, first sentence LEIP which prohibits such discontinuation.

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36. The maintenance of the security is not justified as per Article 297, paragraph 1, item b) LCP in conjunction with Article 3 LNP since the demolition of the building in cadastral parcel nr.152-0, after the expert report secured as evidence in CN.nr.308/13 of the Basic Court of Prishtinë/Priština with full description of its characteristics and measurements of its surfaces, may not render the determination of the compensation for its expropriation or the enforcement of the judgment under Article 36, paragraph 6 LEIP impossible or substantially difficult. Further, there is no danger that the existing state will be changed without prior fulfillment of all legal conditions set for transfer of the ownership over the house and its release or the proposers' right to be adequately compensated for its expropriation shall be adversely affected.

37. The security could not be further justified by any of the arguments invoked in the submission of Lawyer A. K., dated 15th August 2103. *At first place*, the allegations that *cadastral parcel nr.149-0* with a total surface of 1 262 m² has been expropriated in the part of 775 m², while the rest 487 m² was *de facto* taken without expropriation are irrelevant for the temporary security measure imposed with respect to the building in *cadastral parcel nr.152-0*. Besides, pursuant to Article 36, paragraph 6 LEIP in this proceeding the court is authorized only to re-calculate the compensation determined in the Final Decision for *formally* expropriated immovable properties as per Article 3, paragraph 2, first sentence LEIP. *Out of the scope* of this proceeding, however, according to Article 3, paragraph 2, second sentence LEIP are all claims seeking compensation for losses caused by measures or acts, or by a series of measures and acts, taken or adopted by one or more public authorities with effect, substantially equivalent to expropriation, that should be filed in a contested procedure and could not be incorporated in the present non-contested proceeding under Article 36 LEIP in conjunction with Articles 215 – 222 LNP. The discrepancies between the *formally* expropriated parts of the land and ones *de facto* used for construction cannot be decided in this proceeding restricted by Article 36, paragraph 1 LEIP in its scope to adjusting the compensation for the *de jure* expropriated properties only. *At second place*, the evaluation of expropriated parts of cadastral parcels nr.149-0, nr150-0 and nr.152-0 with culture - agricultural land, while having as actual use – residential land

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plots could be reviewed only in the main proceeding in CN.nr.249/13 & CN.nr.467/13 of the Basic Court of Prishtinë/Priština, being irrelevant in the accessorial security proceeding under Article 306 LCP in conjunction with Article 3 LNP, limited to the demolition of the house built in cadastral parcel nr.152-0. Moreover, the realization of construction works on the highway in the expropriated surfaces of cadastral parcels nr.149-0, nr.150-0 and nr.152-0 will not make impossible, nor will substantially impede the estimation in the affected *land plots apart* from the now secured *building*. *At third place*, through the expertise appointed in CN.nr.308/13 of the Basic Court of Prishtinë/Priština with finding and opinion submitted to the case, and examination of the expert in the session on 25th June 2013, this evidence has been secured according to Article 385, paragraph 1 LCP in conjunction with Article 3 LNP, and shall be incorporated pursuant to Article 385, paragraph 2 LCP in conjunction with Article 3 LNP in CN.nr.249/13&CN.nr.467/13 of the Basic Court of Prishtinë/Priština without the need to be re-administered. Hence, the measurements of the building in cadastral parcel nr.152-0 have been taken by this expertise could be confronted with the ones in the valuation report of the Ministry of Finance, dated 6th September 2012. Since the differences in the surfaces have been already documented, the non-demolition of the house is not needed to establish these discrepancies once again. *At fourth place*, the alleged non-expropriation of 800 m², three water wells and fruit tress in cadastral parcels nr.150-0 and nr.152-0 in vicinity to the expropriation red line of the highway could not be decided in this proceeding under Article 36 LEIP, given the restrictions of its subject to compensation for expropriated properties, nor it could justify the future non-demolition of the building in cadastral parcel nr.152-0. No security interest is justified and no measure proposed for preserving the respective fixtures, accessory parts and fruits and/or for identifying any demonstrable direct damages incurred in the expropriation process, localized in parcels nr.149-0, nr.150-0 and nr.152-0, in view of ensuring eventual future application of Article 15, paragraph 2 LEIP. *At fifth place*, the temporary security measure could not be preserved until the completion of a *fair, correct, impartial, non-discriminatory expropriation based on market value* which is the first request in the petitum of the submission, dated 15th August 2013. This means

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the ordered non-demolition to stay until a final judgment rendered in the first instance pursuant to Article 36, paragraph 6 LEIP or in the second instance pursuant to Article 36, paragraph 7 LEIP. However, the security cannot be ordered until such end of the dispute on the expropriation compensation as this means the implementation of Final Decision Nr. 03/100, dated 12th November 2012 to be suspended for indefinite time period in violation of Article 36, paragraph 8, first sentence LEIP, prohibiting any effect of the judicial proceedings under Article 36, paragraphs 1 – 7 LEIP over the effectiveness on this Final Decision, including partial suspension by interim security. Impermissible is also the second request in the submission, dated 15th August 2013, *the measure to remain in force until the expropriation of the immovable properties shall be annulled for legal irregularities and shall commence from the beginning*. As pointed above, A.S., H. S., B. S., N.S. and D. S. failed to file a complaint under Article 35, paragraph 1 LEIP against Preliminary Decision Nr. 07/87, dated 17th August 2012 within the 30-days deadline prescribed by Article 35, paragraph 1 LEIP – as such proceeding on the legitimacy of the expropriation has not been initiated, it has been precluded the possibility for its termination or modification of its scope by excluding certain property or rights by a judgment rendered pursuant to Article 35, paragraph 7, sub-paragraphs 1 - 2 LEIP, respectively. Within the present proceeding under Article 36, paragraph 1 LEIP for challenging the adequacy of the compensation, specified in the Final Decision, the Court could only *re-calculate its amount* as per Article 36, paragraph 6 LEIP, but not to annul the expropriation ordering its repetition from the very beginning. As no such judgment could be issued in CN.nr.249/13 & CN.nr.467/13 of the Basic Court of Prishtinë/Priština, it is not permissible the temporary security measure to last until its impossible issuance.

38. The temporary security measure imposed according to Article 306, paragraph 1 in conjunction with Article 3 LNP by ruling CN.nr.249/13 & CN.nr.467/13 of the Basic Court of Prishtinë/Priština, dated 30th July 2013 after the hearing held pursuant to Article 306, paragraph 2 in conjunction with Article 3 LNP shall be annulled by this ruling under Article 306, paragraph 3 in conjunction with Article 3 LNP – since the legal conditions under Articles 10, 11, 16, 20, 25 and 26 LEIP for implementation

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of Final Decision Nr.03/100, dated 12th November 2012 have been fulfilled in the case with respect to the five-floor residential building in cadastral parcel nr.152-0 and there are no impediments for transfer of the private ownership over it and for handing over its possession to the Expropriation Authority, the modalities of the measure have occurred, while its further maintenance is no longer justified with any impediments in determining the compensation for its expropriation or difficulties in the enforcement of the judgment to be rendered according to Article 36, paragraph 6 LEIP.

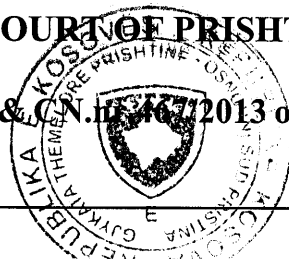
39. In order to guarantee the effectiveness of Final Decision Nr. 03/100, dated 12th November 2012 and its further implementation according to Article 36, paragraph 8, first sentence LEIP the temporary security measure ordered on 30th July 2013 shall be annulled with an immediate effect pursuant to Article 306, paragraph 3 LCP in conjunction with Article 3 LNP.

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

LEGAL REMEDIES: All parties may file an appeal against this ruling to the Court of Appeals through the Basic Court of Prishtinë/Priština within seven (7) days from the date of service of its copy pursuant to Article 310, paragraph 1 LCP in conjunction with Article 3 LNP.

THE BASIC COURT OF PRISHTINË/PRIŠTINA

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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.